

Judicial accountability in India: A myth or reality

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Abstract

The judiciary is one of the three organs of the state. The article 12 of the Constitution of India though provides meaning of the state purposefully does not contain the word judiciary. This kind of leaving of the word judiciary is purposefully done by the Constituent Assembly to accord special and independent status to the judiciary. The Oxford Dictionary of English Language defines the word 'accountable' as 'responsible for your own decisions or actions and expected to explain them when you are asked. Accountability is the sine qua non of democracy. Transparency facilitates accountability. In modern period no public institution or public functionary is exempt from accountability. The Constitution of India guarantees the special status to the judiciary as it is an essential wing of the State, it is also accountable. Judicial accountability, however, is not on the same plane as the accountability of the executive or the legislature or any other public institution.

The people turn to the judiciary as it is the last bastion of hope to redress their problems when their elected and executive authorities have failing in their duties. It is pain to note that even the some of the officers in judiciary are sailing in same directions as the elected representatives and executive authorities in neglecting their sacred duties. The independence and impartiality of the judiciary is one of the hallmarks of the democratic system of the government. The Constitution of India provides many safeguards to maintain the independence of judiciary.

The author in his paper focuses on judicial accountability at higher echelons of judiciary in our country. Already there is laws are available to maintain judicial accountability but they are perfect enough to meets of the day. The governments in time and again framing such laws to strengthen judicial accountability in such direction it is enacted a comprehensive act.

Keywords: accountability, functions, virtual, motion, oversight, exempts, amend, administration of justice

Introduction

The judiciary is one of the three organs of the state. Article 12 of the Constitution of India though provides broad meaning of the state but purposefully does not contain the word judiciary. This kind arrangement is done by the Constituent Assembly to accord special and independent status to the judiciary.

Nature and Meaning of Judicial Accountability

The Oxford Dictionary of English Language ^[1] defines the word 'accountable' as 'responsible for your own decisions or actions and expected to explain them when you are asked'. Accountability is the sine qua non of democracy. Transparency facilitates accountability. No public institution or public functionary is exempt from accountability. The Constitution of India guarantees the special status to the judiciary as it is an essential wing of the State, it is authority to interpret laws or constitution and same time it is also accountable for its actions. Judicial accountability, however, is not on the same plane as the accountability of the legislature or the executive or any other public institution.

The people turn to the judiciary as it is the last bastion of hope to redress their grievances when their elected and executive authorities have failing in their duties. It is pain to note that even the some of the officers in judiciary are sailing in same directions as the elected representatives. The independence and impartiality of the judiciary is one of the hallmarks of the democratic system of the government. The Constitution of India provides many privileges to maintain the independence of judiciary. The Preamble to our constitution is regarded as the reflection of the aspirations and spirit of the people. No

institution is exempt from accountability, including the accountability of the judiciary in respect of its judicial functions and orders is vouchsafed by provisions for appeal, revision and review of orders. What is the mechanism for accountability for serious judicial misconduct, for disciplining errant judges? Our constitution provides for removal of a judge of the Supreme Court or the High Court for proved misbehaviour or proved incapacity, by what is popularly called the process of impeachment, where under two thirds of the members of each House of Parliament can vote for the removal of such errant judge ^[2].

Indispensability of judicial accountability

The accountability must be comprehensive to include not only the politicians, but also the bureaucrats, judges and everyone invested with power and position in a democracy is depicted as attendant with responsibility, and every incumbent of a public office must remain constantly accountable to the people, who are the repository of political sovereignty. The judicial system deals with the administration of justice through the agency of courts. Judges are the human stuff who presides over the courts. They are not merely visible symbols of courts; they are actually their representatives in flesh and blood. The manners in which judges discharge their duties determine the image of courts and the creditability of judicial system itself. In our country from time immemorial judges have been held in high esteem and revered but due to various reasons people have slowly losing their faith in judiciary ^[3]. This is highly deplorable to note that derogation of values in judiciary is far more dangerous than in any other wing of the government as

judiciary has to act as the guardian of our constitution. Judicial accountability and answerability of the judges is not a new concept. Throughout the world several countries in their constitutions have already provided for ensuring accountability of judiciary. This is to prevent concentration of power in the hands of a single organ of the state especially in countries where judicial activism interferes with and invades into the domain of other organs.

The well-known legal luminaries from time to time stressing that there should be accountability of judges of in their discharge of their duties The former Chief Justice of India, S. Venkataramaiah and former Judges of the Supreme Court D.A. Desai and Chennappa Reddy had respectively have expressed that if all the sections of the society are accountable for their actions, there is no reason why the judges should not be so.

Lack of Judicial Accountability in our country:

The framers of the Indian Constitution would not have imagined that within sixty years of the framing of the Constitution, the Indian Judiciary would emerge as the most potent institution of the State. The Constitution established the High Courts and the Supreme Court as watchdog institutions, independent of the executive and the legislature interference, to not merely dispense justice, but also to ensure that the executive and the legislature did not exceed the authority conferred upon them by the Constitution. Thus, the Judiciary was given the powers to interpret the laws and the Constitution, and also to strike down executive action which violated any law or the fundamental rights of citizens. It was also the authority to examine whether laws framed by the Parliament conformed to the Constitution and declare them void if they violated it. By a creative interpretation of the provision authorizing the Parliament to amend the Constitution, the Supreme Court in 1973 also acquired the power to strike down even constitutional amendments which were held by the Court to violate the basic structure of the Constitution. Many laws and some constitutional amendments have been struck down by the Courts during this period^[4].

The courts in India enjoy virtually absolute and unchecked power unrivalled by any Court in the world. In these circumstances, it is absolutely vital that judges of the superior judiciary be accountable for their performance and their conduct – whether it is for corruption or for disregard of constitutional values and the rights of citizens. Unfortunately, neither the Constitution, nor any other law has created any institution or system to examine the performance of judges or examine complaints against them. The Constitution provides that High Court and Supreme Court judges cannot be removed except by impeachment proceedings in the Parliament. That process requires signatures of one hundred members of Parliament of the House of People or fifty members of Parliament of the Council of States for its initiation. If a motion containing charges of serious misconduct with the requisite signatures is submitted, and admitted by the Speaker of the House of People or the Chairperson of the Council of States, then an Inquiry Committee of three judges is constituted to hold a trial of the judge. Only if he is found guilty, the motion is placed before each House of Parliament where it has to be passed by a 2/3 majority of each House.

So far in our country only a few impeachments proceedings were launched against judges those include, V. Ramaswamy J.

Ashok Kumar J., Soumitra Sen J. Aswini Kumar Mata J. but all these impeachments have taken a lot time but the impeachments proceedings were withdrawn as those judges had submitted their respective resignations while impeachments proceedings were progressing in different stages.

Judicial Accountability and Discipline

The judiciary needs to be independent of outside influence, particularly of political and economic entities such as government agencies or industry associations. But judicial independence does not mean that judges and court officials should have free rein to accountability.

The Government of India after many confabulations introduced the Judicial Standards and Accountability Bill in the Parliament in 2010. The bill talks about the judges working in the higher echelon of the judiciary that is the High Courts and the Supreme Court and it leaves subordinate judiciary, which occupies much of judiciary in our country.

The key features of the Bill

The 2010 Bill replaces the Judges (Inquiry) Act, 1968. It seeks to: (a) create enforceable standards for the conduct of judges of High Courts and the Supreme Court, (b) change the existing mechanism for investigation into allegations of misbehaviour or incapacity of judges of High Courts and the Supreme Court, (c) change the process of removal of judges, (d) enable minor disciplinary measures to be taken against judges, and (e) require the declaration of assets of judges.

Judicial Standards

The Bill requires judges to follow certain standards of conduct. The complaints against judges can be made on grounds of non-compliance with these standards or certain activities such as corruption, wilful abuse of power or persistent failure to perform duties.

Some activities are prohibited under the Bill are: (a) close association with individual members of the Bar who practice in the same court, (b) allowing family members who are members of the Bar to use the judge's residence for professional work, (c) hearing or deciding matters in which a member of the judge's family or relative or friend is concerned, (d) entering into public debate on political matters or matters which the judge is likely to decide, and (e) engaging in trade or business and speculation in securities^[5].

Investigation Authorities

The Bill establishes three bodies to investigate complaints against judges: the National Judicial Oversight Committee, the Complaints Scrutiny Panel and allows for the constitution of an investigation committee.

The National Judicial Oversight Committee: will consist of a retired Chief Justice of India as the Chairperson, a judge of the Supreme Court, a Chief Justice of the High Court, the Attorney General for India, and an eminent person appointed by the President of India. The Oversight Committee shall have supervisory powers regarding investigation into complaints against judges, and also the power to impose minor measures.

The Scrutiny Panel: will be constituted in the Supreme Court and every High Court. It shall consist of a former Chief Justice and two sitting judges of that court. The panel shall conduct an initial investigation into the merits of a complaint made against

a judge. It shall also have the power to report frivolous or vexatious complaints. Persons making frivolous or vexatious complaints can be penalised by rigorous imprisonment of up to five years and fine of up to five lakh rupees.

The Investigation Committee: will be set up by Oversight Committee to enquire into complaints. The investigation committee will be set up if the Scrutiny Panel recommends that an inquiry should be carried out to investigate a complaint. The Bill does not specify the qualifications of members of the investigation committee, but leaves this to the discretion of the Oversight Committee.

Confidentiality and Exemption from Right to Information Act of 2005

The Bill prohibits participants in investigations against a judge from revealing any information regarding the investigation or the complaint without the written consent or direction of the Oversight Committee. The Bill imposes penalties on those violating the confidentiality provisions. Anyone violating these provisions may be imprisoned for up to one month, and may also be fined. The Bill exempts documents and records of proceedings related to a complaint from the purview of the Right to Information Act, 2005. The reports of the investigation committee and the order of the Oversight Committee shall be made public. Proceedings of the investigation committee will not be open to the public ^[6].

Disclosure of Assets and Liabilities

Judges will be required to declare their assets and liabilities, and also that of their spouse and dependent children. Such declaration has to take place within 30 days of the judge taking his oath to enter his office. In addition, every judge will have to file an annual report of his assets and liabilities. The assets and liabilities of the judge will be displayed on the website of the court to which he or she belongs ^[7].

The aforesaid bill was passed by Lok Sabha in 2012 when the United Progressive government headed by the Prime Minister Mr. Manmohan Singh but it has not seen light of the day before the Rajya Sabha therefore it is lapsed. As there was change of government at the centre, the National Democratic government assumed power under leadership of Mr. Narendra Modi in 2014, the N.D.A government wanted to overhaul the bill to include appointment of judges, performance and accountability of them to be incorporated in the bill and in tune with the Parliament has passed the National Judicial Appointments Commission Act in 2014.

The National Judicial Appointments Commission Act of 2014

There is a broad perception among most stakeholders that the present collegiums system has not performed well and needs radical change. The controversial collegium system came into existence mainly by three significant cases i.e., *S. P. Gupta v. Union of India – 1981* (also known as the *Judges' Transfer case*) which declared that the "primacy" of the Chief Justice of India's recommendation on judicial appointments and transfers can be refused for "cogent reasons." The ruling gave the executive primacy over the Judiciary in judicial appointments for the next 12 years, *Supreme Court Advocates-on Record Association vs. Union of India – 1993* (also known as the *Second Judges case*) in which the majority verdict gave back Chief Justice of India's power over judicial appointments and

transfers. It says that the CJI only need to consult two senior-most judges. "The role of the CJI is primal in nature because this being a topic within the judicial family, the Executive cannot have an equal say in the matter," the verdict reasoned. The President is reduced to only an approver. Lastly, *Special Reference case of 1998 or the Three Judges Case (October 28, 1998)* which on a reference from former President K.R. Narayanan, the Supreme Court laid down that the CJIs should consult with a plurality of four senior-most Supreme Court judges to form his opinion on judicial appointments and transfers ^[8]. But, the worrying concerns continued relating to appointment of unsuitable candidates and selection based on favouritism and nepotism, influential connections and personal likes and dislikes ^[9]. Considering such flaws, the Law Ministry in 2014 sought to put an end to the collegium system of judges appointing judges. So, they took a step to make such a body which could bring transparency in judicial appointments.

The National Judicial Appointments Commission Bill, 2014 was introduced by Lok Sabha on 11th August, 2014. The Constitution amendment bill requires ratification by at least fifty percent of the state legislatures. As many as sixteen out of twenty nine states have already ratified the bill. It was passed by both the houses in August and cleared by the President on 31 of December 2014. As the Constitution is supreme the law of the land, therefore, the Constitution itself had to be first amended before any such Commission could be put into place. Amendments are made to Articles 124 (2) and 217 (1) of the Constitution that deals with the appointment of judges in the Supreme Court and the High Courts, respectively and some words in other articles are also been substituted. Therefore, new Articles, i.e., *Article 124A, 124B and 124C* are been inserted in the *CONSTITUTION (NINETY-NINTH AMENDMENT) ACT, 2014*. The newly inserted *Article 124A and 124B* establishes and gives to the National Judicial Appointments Commission constitutional status, while at the same time describes its composition, functions and powers. Through *Article 124C*, the NJAC Act, confer upon both the Central Government as well as the Commission itself, with rule making power to further define the manner in which appointments are to be made.

The National Judicial Appointment Committee (NJAC) will now serve as a constitutional body like the Election Commission, Comptroller and Auditor General etc. The Act holds to put in place the new mechanism to select Supreme Court and High Court judges. The Act will lead to the establishment of the National Judicial Appointments Commission, which will appoint and transfer judges to the Supreme Courts and the twenty four High Courts. The headquarters of the Commission shall be at Delhi. As per the amended provisions of the constitution, the Commission's composition would comprise of the Chief Justice of India who will be the chairperson, and next to him would be two other senior most judges of Supreme court, along with the Union law minister and two other eminent members to be jointly chosen by the Prime Minister, the Law Minister and the Leader of Opposition, one of which is to belong to the category of Scheduled Castes, Scheduled Tribes, Other Backward Classes, minorities or women ^[10].

The Commission shall on the basis of ability, merit and any other criterion of suitability will nominate and also recommend persons for the appointment as the Chief Justice of India and other Judges of the Supreme Court and Chief Justices and other

Judges of High Courts and for their transfers. Before any nomination of Judges of High Courts, the Chief Justice of the concerned High Court shall consult two senior-most Judges of that High Court and such other Judges and eminent advocates of the High Court. The Commission shall elicit in writing the views of the Governor and the Chief Minister of the State concerned before making such recommendation in such manner as may be specified by regulations. Further, if any two members do not agree, then the Commission shall not make such recommendation. In such a case, the President may ask the Commission to reconsider the recommendation and then make the appointments accordingly. Thus, this Act will provide a significant role for the judiciary, the executive and the eminent persons by being the part of the commission^[11]. It will introduce a transparent selection procedure and thereby replace the collegium system of judges choosing judges.

However, there is no doubt the collegium system has developed serious flaws. In direct reference to these flaws, the NJACB, 2014 is littered with words such as “ability” and merit”. The appointment and rejection of judges through the collegium system had been marred by personal preferences and rivalries of those selecting/appointing the judges. Justice Markandey Katju, current Chairperson of the Press Council of India, highlighted that elevation of alleged corrupt judge Justice S. Ashok Kumar as a Madras High Court judge under the pressure of the Dravida Munnetra Kazhagam, a Tamil political party and an alliance partner of the previous United Progressive Alliance (UPA) government at the center. If certain Chief Justices had failed to stand up to pressure of the UPA Government, which itself was under pressure from the DMK, for the elevation of Justice S. Ashok Kumar, it is unlikely that in future, members of the National Judicial Appointments Commission shall be able to stand up to any government^[12]. This Act will mark the start of the executive encroaching upon the judiciary and will threaten the independence of judiciary.

Supreme Court Stand on NJAC

In the interesting turn of events, the 99th Amendment of the Constitution, establishing the National Judicial Commission to appoint Supreme Court and High Court judges, has been set aside by the Supreme Court. The Lok Sabha and Rajya Sabha have respectively passed the NJAC in month of August, 2014 and The NJAC Bill and the Constitutional Amendment Bill, was ratified by 16 of the state legislatures in India, and subsequently assented by the President of India Mr. Pranab Mukherjee on 31 December 2014. The NJAC Act and the Constitutional Amendment Act came into force from 13 April 2015.

On 16 October 2015 the Constitution Bench of Supreme Court by 4:1 Majority upheld the collegium system and struck down the NJAC as unconstitutional after hearing the petitions filed by several persons and bodies with Supreme Court Advocates on Record Association (being the first and lead petitioner). Justices J S Khehar, MB Lokur, Kurian Joseph and Adarsh Kumar Goel had declared the 99th Amendment and NJAC Act unconstitutional while Justice Chelameswar upheld it^[13]

Conclusions and Suggestions

The passing of the Judicial Standards and Accountability bill only covers judges of higher judicial authorities like the High Courts and the Supreme Court but it does not cover the lower

subordinate judges who constitute much of judicial disposition system in our country. The decision of apex court setting a side of NJAC again resulted into standoff position. In near future it should be settled amicably otherwise it always creates rift between the legislature and judiciary. This kind of rift is not augur well for the democracy. In our country much of judicial work is done by the lower level of judicial officers and where it affects every litigants and where a corruption is rampant. It is high time that the Bill should be amended as such to judges working in the subordinate judiciary should also be covered under the above act. Then only we could clear cut standards and accountability of administration of justice in our country. Thus, in the end to give impetus to the duty of higher judiciary and judges, it can be quoted through the words of Justice Sabyasachi Mukherjee, during the controversy regarding the impeachment of Justice V. Ramaswami, stated: “... *The Supreme Court must uphold the rule of law. It is, therefore, necessary that those who uphold the rule of law must live by law and Judges must, therefore, be obliged to live according to law*^[14].”

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