

## JUDICIAL CONDUCT AND ACCOUNTABILITY

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### **ABSTRACT**

Absolute power given to the judiciary accounts to arbitrary power and action bestowed upon a group of well learned law regulators, the judges. “Power corrupts man and absolute power corrupts absolutely”. The powers and discretions such as contempt of court adds on to the supremacy of the judges. Certain Questions such as the immunity of court and the objections of the citizens against the judicial procedure are stated. The subjectivity of justice and its extensions would be dealt with extensively. There is a firm stance for better transparency in judicial proceedings, its implications and contraventions and the significance of the right to information Act (RTI ACT) as well as the passing of the judicial standard and accounting bill (which has been lapsed therein in 2014) after its predecessor the judge’s inquiry act was superseded and their role in developing better transparency. The role of judicial ethics leads to better judicial function and fixture of its discrepancies. There is need for a national judicial commission to regulate the judicial judgment and arbitrary actions of the judiciary. The need and the effect of arbitration is to supersede the current stance of the judicial framework in force, whereas constraining arbitrary judgments of the judiciary has its own restraints on its unbiased judgment there should be a cord in which a balance should be maintained between independent judgment and its accountability.

### **INTRODUCTION**

The judiciary plays the most important role in the democracy while administrating justice and an independent judiciary is known as the corner stone for justice. The concept of separation of powers plays an essential role in this scenario as the two other organs that are legislature and

executive ought to not interfere in the working of the judiciary, which grants an unbiased and arbitrary decision making power to this body.

It is only if people look deep within the Government's functioning that they can fulfill the role which democracy assigns to them and make a democracy a really effective participatory Democracy<sup>1</sup>. In a democratic setup such as India which is also Federal in its structure and nature, the people have a voice and it's clearly a sign of information asymmetry wherein the government's activities are held confidentially and there exists lack of transparency, leading to a black eye being waved to the people by the political system. The judiciary which is the administrator of justice, the regulator of laws and the guardian of the constitution, is one such body that needs transparency while one would argue that leading the judiciary down a dire path of transparency would lead to the accountability reign mentioned and therein would lead to ineffectiveness of true justice which would have been procured else the absence of the accountability clause. The acts such as Judges Inquiry Act, Judicial standards and accountability bill, NJAC etc, were put into place as to implicate any omnipotent authority from ever existing.

The question which comes up now is that what made the framers of our constitution so inclined towards or concerned about providing a separate entity to the judiciary and giving the judiciary the power of self competence, the answer to this question lies in the fact that the framers deemed fit that as there was a need to secure the stability and prosperity of the society , upholding and protecting the fundamental rights of people and punishing the people who infringe such personal rights of a person there needed to be a body which acts not for any other person but for the purpose of protecting the peoples interests and providing them with justice, which was only possible through a separate body such as the Indian judiciary.

### **What is judicial independence?**

Judicial Independence of Judiciary refers to an environment where judges are free to make decisions or pass judgment without any pressure from the government or other powerful entities. The Constitution guarantees our rights on paper, but this would mean nothing without

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<sup>1</sup> 4R.S. Pathak, Administration of Justice and Public Accountability, 15 Indian Bar Review 213 (1988).

independent courts to protect them. The judiciary is also known as the guardian of the Constitution and it is essential that the judiciary must be independent. It is only when judiciary is independent of the control of executive and legislature that justice can be assured to the citizens. Judges who are able to apply law with a high degree of impartiality, dignity, integrity are essential for the applicability of the rule of law.

***“There can be no difference of opinion in the House that our judiciary must be both independent of the executive and must also be competent in itself. And the question is how these two objects can be secured” - DR.B.R.Ambedkar***

A question that one bothers with is how can judiciary be independent even though the three organs’ are so vital and pivotal in each other’s spectrum that one could not leave the bounds of the sphere without influencing the other?

The constitution has laid down certain provisions such as the judicial separation of power wherein each organ has its own separate function and the judiciary would not be influenced by any sort due to the provisions made to the judges as laid down in the next question.

- Judicial separation of powers, enforced by the constitution would be applicable wherein the judiciary must be free from the encroachment from the other the organs or spheres such as executive and legislature for effective decision making as in one body would not interfere with the working of another.
- Although the separation of powers makes the judiciary an Independent body, it is still not free from legislative interference wherein the legislature can in some respects override the decisions of the judiciary by legislation. The Income-tax Amendment Ordinance of 1954 is an example of constitutional irregularity.
- It may become oppressive if judiciary is subjected to the executive control and the majority might become tyrannical and violate the constitution and freedom of the people if subjected to legislature.

Although the debate of whether arbitrary actions of the judges being a progression towards anarchy of the judiciary body without a regulating factor comes into place, **section 77 of the Indian Penal code** states that “Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law” This states that the law purviews him to function in his judicial capacity for which he does and cannot be accounted for an offence, he is just an interpreter of law just as he **Moses** carried out the ten commandments given by the divine entity known as god to govern the dawn of the new civilization of man, same as in the case of the judiciary wherein they’re the interpreters of law and would deal as a lawful regulator on those infringing the legal systems and curtailing the rights of the rest of the citizens or being a threat to the society.

The constitution of India has laid down diverse devices to ensure the independence of the judiciary in keeping pace with both the doctrines of constitutional and Parliamentary sovereignty. Elaborated provision is in place for ensuring the independent position of the Judges of the Supreme Court and the High Courts.

- Recognition of the doctrine of constitutional sovereignty is implicit while the judges of both the Supreme Court and the high court take an oath to defend the constitution and its laws and perform their duties faithfully.
- The constitution tries to make the appointments of the judges of Supreme Court and high unbiased by political considerations. The constitution makes it obligatory for the President to make the appointments in consultation with the highest judicial authorities and the cabinet.
- The Constitution provides for the security of tenure of Judges wherein they serve up on the basis of “good behavior” and not during the pleasure of the executive body. They cannot be arbitrarily removed by the President and would rather have to go through a process of impeachment. A Judge can be removed on the ground of proved misbehavior or incapacity on a report by both Houses of Parliament supported by a special majority.

- The salaries and allowances of the Judges of Supreme court and High courts are charged upon the Consolidated Fund of India and be tampered with, except during a financial emergency under Article 360 of the constitution.
- The age of retirement for Supreme Court judges is 65 years and 62 years for High court judges. Such long tenure enables the judges to function impartially and independently.

### **Judicial Independence Ousting Judicial Accountability**

Justice RD Nicholson of the Supreme Court of Western Australia, states that the two values of independence and accountability, should be perceived as complementary rather than antithetical<sup>2</sup>

David Pannick<sup>3</sup>, a noted commentator of this field had written:

*“The value of the principle of judicial independence is that it protects the judge from dismissal or other sanctions imposed by the Government or by others who disapprove of the contents of his decisions. But judicial independence was not designed as, and should not be allowed to become, a shield for judicial misbehavior or incompetence or a barrier to examination of complaints about injudicious conduct on apolitical criteria...That a man who has an arguable case that a judge has acted corruptly or maliciously to his detriment should have no cause of action against the judge is quite indefensible”*

In today's outlook the judiciary will not be exempted from close scrutiny for its performance and conduct of its members. The concept that the judiciary cannot be accountable because of its independence is no longer a valid argument and of being unelected and enjoying security of tenure, will not pass a muster of greater transparency and accountability in the government.

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<sup>2</sup> RD Nicholson, Judicial independence and accountability: can they co-exist? , (1993) 67 ALJ 404 at 414

<sup>3</sup>D Pannick, *Judges*, Oxford University Press 1987, p 99



The Judicial standards and accountability bill of 2010 replaced the Judges (Inquiry) Act, 1968. Though this act itself was repealed and replaced by better-framed and scrutinized acts like those of NJAC etc. This act consisted of various essential, key issues which came to light which were not looked at previously, like Firstly as a part of accountability; the judges were required to disclose their personal assets including those of their spouses and children. It also proposed for the establishment of the National judicial oversight committee which on complaints against judges by people, on grounds of 'misbehavior' which could lead to the removal or dismissal of such judges could be put forward in the parliament.

There was a progressive approach wherein steps for confidentiality of the complainants against the judges were taken up, frivolous complainants were penalized severely. The committee could recommend the removal of judges to the president as well. The implementation of this act was essential in nature for the purpose of creating an enforceable standards for the conduct of judges of High Courts and the Supreme Court, establishing certain change into the existing mechanism for investigation of any allegations of misbehavior or incapacity of judges of High Courts and the Supreme Court and thus enabling minor disciplinary measures to be taken against the judges.

Though the bill was implemented with the purpose of enabling an accountable judiciary there were various issues with the provisions of the bill such as maintaining a difference between accountability and independence of the judiciary, it was not paid due attention to, the oversight committee which was meant for regulating the judges consisted of non judicial members such as people with no judicial background, there was ambiguity in the provisions of the act as they were unclear and incomplete. There was no such remedy given to judges if they were accused of misbehavior, like approaching the Supreme Court etc. This act was essential so as to bring to notice the issues in the Indian Judicial system and shortcomings in the formation or thought process of an act which would govern one of the world's largest judicial systems and its members.

An act on similar lines for the purpose of governing and creating accountability of the judiciary was the National Judicial Appointment Commission (NJAC) which was said to be an act burdened with the responsibility of the appointment of judges of the Supreme Court and High

courts. This would so be done by a commission which would pick from the judiciary, the legislature and large civil society. This act was highly debated and highly criticized because judges were previously appointed through the provisions of Articles 124 and 217 of the Indian Constitution which specifically stated that judges would be elected by the President with the consultation of the Chief Justice of India (CJI) of India which was completely reformed with respect to this act and the existence of collegiums system which stated that the senior most judges of the Supreme Court would elect the judges of the Supreme Court which was entirely reformed by the introduction of NJAC, as this was a major change in the Indian Judiciary. Certain amendments made in the Article 124 of the constitution in sub section (A), (B), (C) of article 124 so as to make NJAC constitutionally valid.

After the implementation of NJAC and making the past process redundant the commission or the people appointing the future judges will include the CJI, Law and Order Minister at the centre, two senior most Supreme Court judges and two other eminent people who will be picked by the CJI, Minister and a leader of the opposition. The problem which arose due to the act was that even though it was passed by both the houses and got its assent from the president as well, there were numerous PIL's filed by the public once the notification was sent across. All these acts brought in, only aimed towards making the judiciary more transparent and accountable.

*"Judges are without constituency and answerable to no one except their consciences and the law"*<sup>4</sup>- Lord Donaldson

### **Right to Information Act (RTI), 2005**

On the belief that the citizens of the democracy have a right to know the functions of various bodies of the country, the Right to Information was recognized as a Fundamental Right and is guaranteed as per Article 19 and 21 of the Constitution of India it was enacted by Parliament of India in 2005. While the enactment of such a provision would lead to a regressive or progressive change of the function of the judiciary has been a dilemma to many citizens.

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<sup>4</sup>Sturges & Chubb, *Judging the world*, Butterworth's, 1988 at pg. 182

Bureaucrats, politicians and the judges all come under the purview of the RTI act. The difference between governance models such dictatorship and democracy have a thin line between them and that line is stated by many as a line referred to anarchy, wherein dictatorship seemingly doesn't recognize the rights of its citizens, democracy on the other hand gives voice to each and every individual irrelevant of their position which makes them all assets to a nation and in such a setup the people are the ones who run it. In such a set up the collective power assigned should be duly emphasized and even delegated to a progressive decentralized society should come into place. The purpose of the enactment of the RTI act was to abolish the information asymmetry and increase the accountability and transparency factor of governance of the three organs judiciary, executive and the legislation.. While it is not entirely possible for the entire governance to come under this purview as it would lead to the compromise of security and secrecy of the nation as well as the judicial system of this country.

While the implementation of the Right To information Act (RTI) upon the judicial system would lead to various advantages for making the judicial setup more transparent and accountable to the people it serves and provides justice implementation would lead to:

- There being a greater level of transparency in judicial appointment of judges.
- There are chances that there would be a decrease in nepotism and despotism as criticized to be present in judiciary.
- It will increase accountability of judiciary. Judges actions and decisions taken would be reviewed and judged on the basis of whether they were under the ambit of law and are not ultra vires.
- Increased transparency would lead to timely conclusion of cases as the said reason to adjourn the cases would have to be specified and after a period a decision has to be formulated rather than extending the timeline and lead to timely grant of justice.
- The main motive of RTI is to instill a sense of trust and faith in the minds of the people regarding the functioning of the judiciary and providing relevant information regarding its procedural function.
- It will give more power to people to get their answers easily without any delay & informal paperwork.



- RTI sets a clock on Corruption and will extensively through NJAC and other sources check the discrepancies of the judicial functioning leading to it being checked with increased lucidity.

The Indian judiciary which is one of the strongest legal system in the world, which is a source of justice for all, needs to instill the RTI itself so as to set a hallmark across the country that it is itself not hesitant to adopt the act and it promotes and believes in transparency and wash away its image of being a opaque system in the country, adoption of the RTI will provide a sense of belongingness and faith in the judicial system to the people of the country who believe that the judicial system will see them good. But as know the judiciary is guard dog of constitution and it has drawn a boundary for public officials and departments but it is not willing to be under purview of RTI. This has led to a lot of criticism stating that the judiciary should have its wings clipped and it should rather be tamed than let loose to fly all across. While this is one line of the argumentation it is important to know both the ends of the tunnel before one move into it rather than reaching the other side to find a dead end.

A few repercussions and collateral damage which may be found by implementing the RTI act on the judiciary they are stated herewith:

- The implementation of RTI would lead to citizens challenging each and every judicial proceeding and try to base law on morals and ethics rather than statutes and legislations. This would not and cannot be justified in sorts by the law that is laid down and the judiciary which is bound to implement those said laws, it will compromise independence of judiciary as specified by constitution.
- The supreme court of India is the epitome of decision making and it is the final body which decides a case and any decision given by the supreme court is said to be binding by bringing it under the ambit of RTI, It will challenge the decision making power of Supreme Court.
- The judiciary by itself is burdened by innumerable cases to be solved by changing its policy and trying to follow RTI's guideline would lead heavy burden on judiciary as every case filed and judgment passed would need to be backed by and answer by the judiciary.

- Certain cases regarding the safety and security of the nation example: Kasab's (Mumbai Terror Attack-26/11) case it would be very vital to be kept under wraps information relating to the case which has the power to influence and can also have an adverse effect on National security, rather than being transparent about the entire proceedings, it would prove detrimental for the country.
- Judiciary is the organ which enforces sanctions if the laws are infringed by the citizens and they are to remain a separate body of governance rather than becoming a puppet in the hands of people it should remain a sole justice provider of the country.
- Judicial separation of powers stated by the constitution was a mode of keeping the justice rendered unbiased, independent and just if the RTI implements its policies; it would lead to an increase in the political involvement of the judiciary.

It is rightly said by the apex court of the country that offices of all constitutional functionaries shall be made amenable to the RTI act to bring transparency and accountability in their functioning and it also states that the offices of the governors and Chief Justice of India (CJI) shall also come under the purview of this act. In this statement it is clearly depicted that the constitutional functionaries that include the judicial members shall also be included.

## **CONCLUSION**

There was an era when the Indian Judicial System waxed eloquently about the "Right to information Act", being a part of the constitutionally recognized right to speech and expression, It was stated that in a government such as ours, where all the agents of public must be responsible for their conduct and where there ought to be no scope for secrecy in public departments, the people of the country have a right to have knowledge regarding all public acts done by public functionaries, But the legal system in India has obtained a place wherein they are not completely made accountable under the ambit of law. The judicial proceedings in the court of law are heavily criticized due to the presence of information asymmetry which does not pertain to people with judicial background only but all the citizens equally. The functioning of judiciary or the legal system has a direct impact on the society and the rights of the people. If a criminal could challenge a magistrate or court dealing with his case and its judgment, then

who will protect the society from evil forces? We cannot be ambiguous in stating that most of the judiciary is corrupt as it is a frivolous charge pertained on the court but rather look for the mechanism to subsist the irregularities of the court. The Judiciary has a big role to play in protecting the rights and interests of the people, ensuring a systematic order in the system would lead to fulfillment of the purpose.

The problem with judicial reforms in India is that we lack clarity as to who is ultimately responsible to the citizens. While critics argue that a reform is extensively needed to account to the affective progression of the judicial progression, the key is to not clipping the wings of the judiciary and allowing other organs to overlap in its function, rather let the bird fly and let justice prevail. But on the other hand where a society has chosen to accept democracy as it creedal faith, it elementary that the citizens ought to know what their judiciary is doing with respect to their interests.

