

JUDICIAL ACCOUNTABILITY IN INDIA - WHERE TO DRAW THE LINE?

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INTRODUCTION

Indian Judiciary system is the most powerful bench in the world second to USA. Judiciary in India being a democratic country is established with the highest authority by the countrymen and is considered as strongest support of democracy. Judiciary in India has granted Supreme authority by the Legislature managed to non-responsibility of the judiciary to anyone. Judiciary in India enjoys judicial freedom but it is sometimes results to abuse of power and privileges.

India's concept of Judicial Responsibility of interrogation is questioned nowadays. The conferences and the discussion from all over the world are considering whether the judiciary can be held answerable for its actions in connection with the search for truth and justice leading to judges' conformity to a definite position. What the Constitutional provision procures is that "there should be an impartial and independent judicial body to adjudicate upon the matters and to act as the interpreter and guardian of the Constitution."¹ The modern-day governance likewise settles the principle of the authority in its existence of the same source is not to be considered to be absolute and unexplainable.

It must be explained with the attachment of the original institution and more importantly to the India countrymen. No one is above the law; no agency or institution is accountable to justify. Finally, every institution is answerable to the people in every democratic policy like ours. Several countries have provided security and accountability of the judiciary.² This is to avoid abuse of power to monopolize the judicial activities to be a hindrance the invasion of the domain of other organizations. The judicial independence³ is the next step for a judge who is

¹ Bhagat Ram Sharma, p. 28, *Judiciary on trial: appointment, transfer, accountability*, Deep & Deep Publications

² M. Hidayatullah, *Democracy in India and the judicial process*, Asia Pub. House

³ Peter H. Russell, David M. O'Brien, *Judicial Independence in the Age of Democracy: Critical Perspectives from Around the World*, University of Virginia Press

in oath to perform his duty without fear and hesitations especially when the Constitution is at stake. In this case, disputes arise between the Judicial Freedom and the Judicial Accountability.

“Ironically the Higher Judiciary in India has powers of control over every organ under the Constitution but there exists no effective method of disciplining its own members.”⁴

JUDICIAL ACCOUNTABILITY ACCORDING TO THE CONSITUTION OF INDIA

The Preamble to our Constitution declares India as a ‘Democratic’ State. This only mean that we have a government for the people and by the people’⁵. following principle is that, the Government should be held answerable for all its actions or failures to those who exists.

The third branch of the government- the judiciary. The authority that the judiciary is enjoying, the role that it plays in each of our existence and the unity task to perform beyond understanding. In fact, it is not suitable to overdo it with respect to the three branches of the Government, the Judiciary is most likely the utmost implication to the people. Bringing it closer to people will give warning signs when there is any grievance in action.

In a Democratic Country, the responsibility of every individual is delighted with it thus giving the necessity to prevent catastrophe for any democratic system. The responsibility must be broad to include not only the government authorities but also the bureaucrats, justices and everyone involved with the power. Power and position is portrayed and is accompanied with great responsibilities thus every incumbent public officer must continue to look after the welfare of the people who are in the repository of the political supremacy.

The judicial system deals with the agency of the Court of Justice. Judges are also human to lead over the courts.⁶ They will be a living representative by flesh and blood. The attitude on which judges should portray is the reputations of the judiciary system itself. In India, the justices have built an immeasurable record in the case of Bihar, the killing of the suspect in-trial and doubted to be assassinated. The description that has given a disappointment to get the

⁴ Available at <https://www.lawteacher.net/free-law-essays/constitutional-law/the-accountability-of-the-judiciary-constitutional-law-essay.php#ftn1> (last accessed on 26/7/2017)

⁵ Abraham Lincoln, Gettysburg Address, November 19th 1863

⁶ Pran Chopra, *The Supreme Court Versus the Constitution: A Challenge To Federalism*, Sage Publication

justice aimed, with this people are slowly doubting the judiciary and are taking the law into their hands.⁷ This is extremely alarming.⁸

WHY THE JUDICIARY NEED TO BE ACCOUNTABLE?

There is a need to specifically to pinpoint the accountability of the judiciary accountable. As detractor of importance of the judiciary is way beyond in danger than anyone from the political authority has to do everything to give the valuable security of the Constitution. Judicial accountability and responsibility of the justices is an old concept. There are several countries have already provided the security and the accountability of their judicial system. The purpose of which is to prevent the abuse of power to be monopolized by one organization of the state especially in those countries who practice judicial arguments interfering and trespassing the domain of the organization.

But at the same time Judicial independence is a pre-requisite for every judge whose oath of office requires him to act without fear or favour, affection of ill-will and to uphold the constitution and laws of the various countries.⁹

The framers of the Indian Constitution would not have imagined that within 60 years of the framing of the Constitution, the Indian Judiciary would emerge as the most powerful institution of the State.¹⁰ The Constitution established the High Courts and the Supreme Court as watchdog institutions, independent of the executive and the legislature, 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.¹¹ 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 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

⁷ Abhinav Chandrachud, p.83, *The Informal Constitution: Unwritten Criteria in Selecting Judges for the Supreme Court of India*, Oxford University Press

⁸ *Ibid*

⁹ Bruce Peabod; *The Politics of Judicial Independence: Courts, Politics, and the Public*; JHU Press

¹⁰ K. S. Hegde, *Crisis in Indian judiciary*, Sindhu Publications

¹¹ *Ibid*

also acquired the power to strike down even constitutional amendments which were held by the Court to violate the basic structure of the Constitution.¹² Many laws and some constitutional amendments have been struck down by the Courts during this period.

Through all this, the superior courts in India have emerged as perhaps the most powerful courts in the world, exercising virtually Imperial & unchecked powers.¹³ While executive action and even legislation could often be struck down by the courts, the directions of the courts, sometimes issued without even notice to the affected parties, were beyond question, and had to be obeyed by all executive officers on pain of contempt of court. Of course, often these powers were wisely exercised to correct gross executive inaction.¹⁴

The well-known legal luminaries including Former Chief Justice of India S.Venkataramaiah and Former Judge of the Supreme Court D.A.Desai and another Former Judge of the Supreme Court Chennappa Reddy have expressed the view that if all the sections of the society are accountable for their actions, there is no reason why the Judges should not be so. Former Chief Justice, Verma recognized the validity of this plea when he remarked on one occasion, “These days we (Judges) are telling everyone what they should do but who is to tell us? We have task of enforcing the rule of law, but does not exempt and even exonerate us from following it”. For proper implementation of this concept of judicial accountability, it is necessary that the Judges should follow a code of conduct which may be broadly called as ethics for Judges.¹⁵

CONCLUSION

Corruption in the judiciary is hardly a new phenomenon, though it has certainly increased over the years. It is worthwhile however to examine the reasons for the sudden spate of exposures of judicial corruption. Having enjoyed enormous powers, including the power of contempt, without any accountability, the higher judiciary has over the years, tread on the toes of many persons and institutions, particularly the media. Not wanting to suffer criticism, the judiciary has used its power of contempt to stifle criticism. More than 50 editors, publishers and

¹² Prashant Bhushan, *The Lack of Judicial Accountability in India*, taken from the Talk delivered at Princeton University on March 10, 2009 at the Department of South Asian Studies

¹³ *Ibid*

¹⁴ *Judiciary Vs. Legislature & Judiciary Vs. Executive*, available at <https://www.scribd.com/document/66000092/Judicial-Accountability> (last accessed on 26/7/2017 at 1:28 PM)

¹⁵ R. C. Lahoti, *Canons of Judicial Ethics*, Universal Law Publishing

journalists have been issued contempt notices by the Karnataka High Court for having written stories about a judicial sex scandal, reportedly involving three judges of the Karnataka High Court.

There has been corruption in the judiciary for many years one reason why judges have been treated as demigods in this country is because of the power of contempt wielded by them. This is a jurisdiction in which a judge against whom an allegation has been made can himself act as the complainant, prosecutor and judge. The judge can even refuse to allow the maker of the allegation to prove its truth. The very existence of this power has been enough to silence the media and inhibit them from exposing judicial misbehavior or corruption.¹⁶ The amendment recently moved in Parliament to make truth a defense in a contempt action is not an adequate safeguard for the citizens and the press. As the case involving the journalists who wrote about the Karnataka sex scandal shows, though the allegation may be made bona fide and on a reasonable basis, it may not always be possible to prove its truth. This could be because the witnesses are won over or the evidence disappears for some other reason.

¹⁶ N Vittal, Central Vigilance Commissioner, Retd, Keynote Address in the International Seminar on Judiciary in Asia, "Legal Prevention and Judicial Control of Corruption", 15th February 1999, New Delhi.