

## JUDICIAL ACCOUNTABILITY: PROBLEMS AND SOLUTIONS

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### ABSTRACT

*This project speaks about the judicial accountability in the present scenario and methods which make judiciary more accountable and reliable. All the three vital part of our country the executive, the legislative and the judiciary works for the enforcement of law, bring the law into existence and examine the law respectively whether it is in accordance to the basic structure of the constitution. All of these three organs if work simultaneously than it bring the law more accountable which in furtherance work for the betterment and safeguard of the people. These three organs comprise with different sort of power and as we know through human experience all those powers should be balanced by confronting them with some limits. The constitution imposes limits over all the organs separately but in judiciary it emerges out with more stronger and more independent judiciary. Article 235 of the constitution gives control of high courts on subordinate courts which make judiciary more accountable. The power to impeach contains the same purpose of accountability but the problem in that is judiciary is neither accountable to the people nor to the other two (executive and legislative) as one dishonest judge not only dishonor himself but also jeopardize the entire legal system.<sup>1</sup>.*

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**Keywords:** Judicial Accountability, Enforcement of Law, Article 235, Legal System, Constitution.

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### Introduction

#### Why need Judicial Accountability

Judicial accountability always persists in the independence of judiciary as the pioneers and philosophers opined that in a country all citizens are equal and contain same rights. For both judiciary and government constitution abides them by some limits from which neither of them can discriminate any citizen. Hence judges have the obligation to give fair judgment but in order to do so there are some litigants who use threats, coercion, force, influence, duress, oppression, inducement, insistence, and demand to fulfill their desire. To settle this dispute constitution gives the safeguards, privileges, pensions, leave and allowances to judges.<sup>2</sup>

The prime aim of the judiciary is to help the harassed and convict the culprit without any delay. Accountability is requires for the same so that no innocent would be convicted though now a days cases come to the light which misuse the judiciary such as use of 498A and many more. Pandit Jawaharlal Nehru also condemn the than approach of court by saying that "the Supreme Court judges have made themselves demi God who thinks they know everything but in reality, unaware about the truth. This image of demi God should be removed." Constitution compels judiciary to work more accountably and introduce more reforms required. Accountability in judiciary increases belief in rule of law, expand the relationship between citizens and judiciary and promote individual responsibility. When individual became accountable to law then automatically transparency makes its space in the system.

#### Obstacles against Judiciary Accountable

#### Impeachment

One of the most powerful measure to make judiciary accountable is impeachment. Parliament can impeach any member of higher judiciary on the bases of misbehavior and incapacity only if proved. According to article 124(4) of the Indian Constitution which says that both house of the parliament should

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<sup>1</sup> Anil diwan, Judicial Integrity also available in Administrative law module page 347(compiled by Ms. Mercy K. Khaute)

<sup>2</sup> Article 125 of the Constitution of India

pass it with the majority of 2/3<sup>rd</sup> of present voters and proceeding conclude only if misbehavior or incapacity is proved. Apart from this there is no such proceeding which can remove judges from their post as not a single judge is being impeached till date by said proceeding. This being a difficult proceeding makes the judiciary more independent and accountable.

Impeachment being one of the firm step controlling judiciary though it is not possible to impeach a judge as the MPs do not sign the signatory or pass the resolution as there are so many civil and criminal cases are under trial before those judges. A well cited example for the same is when BJP did not sign the impeachment signatory of Justice Bhalla as Lal Krishna Advani was acquitted by Justice Balla in Babri Maszid Case.<sup>1</sup>

Secondly the judges of higher authority don't wasn't to initiate any proceeding against their fellow colleagues as it will ashamed the judiciary in an entire.<sup>2</sup>

#### **K. Veeraswami vs. Union of India case<sup>3</sup>**

CBI filled a case against former high court justice under Prevention of Corruption Act, 1947. Supreme Court held that any higher judiciary member either the judge of high court or the Supreme Court will not subjected to probe in any criminal offence relating to corruption. Apart from this no FIR will be lodged against any higher judiciary member prior to the permission of the Chief Justice of India. The same reasoning will apply here as one would not give any permission to lodge any FIR against their colleague as they don't want to ashamed the Judiciary in an entire. This case becomes one of the major problems in implementing accountability as following this case law there in an increase in the judicial corruption in the country and there are no appropriate measures to deal with it.

#### **Court Contempt**

Contempt of court is also seen as an instrument which help judiciary to help make it independent. But now days the same is used to give shade to judges of higher judiciary from being criticized. Contempt in an offence of disobedience of any judgment or court of laws. We have different act the Contempt of Court Act, 1971 to deal with this type of disrespect of the court. There are two types of contempt mentioned in the act. One is civil contempt and other is criminal one.

- **Civil Contempt:** According to the Contempt of court act, 1971 a civil contempt is deliberately disrespecting the order, judgment, directions or any court proceeding.
- **Criminal Contempt:** Any act of publication or disobedience which tends to demean the reputation of court will amount to criminal contempt.

The idea of contempt derived from the British Modal as they were the pioneers of federal system and wants judiciary stronger and more independent. This idea was always criticized about its validity because of no proper definition mentioned in constitution or in any act. The Contempt of Court act, 1971 was also questioned as it violates two fundamental rights, fundamental right of personal liberty and right to freedom of expression. Recent example where the Supreme Court of India take suo moto action against the Kolkata High Court judge CS Karnan when justice Karnan write an open letter to Prime Minister Narendra Modi to take action against the corruption spread in judicial system.

Another Example of contempt is when the court orders to raise the walls of the dam Sradar Sarovar Baandh which left many life in danger. The judgment was strongly criticized by social activist Medhapatkar, Prashant Bhushan and Arindhatiroy through there rapidly spread Narmada Bachao Andolan. The court booked them for contempt of court. It was argued that it is a clear violation of the fundamental right of expression though court held them guilty and gives them punishment for one day and some fine.<sup>4</sup>

A group of journalist publishes a documentary on Delhi high court judge Sabarwal who order to seal all the commercial lands in residential sites. The controversy in this case was that this judgment was proved beneficial for his son who got partnership in a shopping mall in the residential area. The contempt was filled against the media group though there were no convictions ordered. This made both judiciary and media a rival of each other.<sup>5</sup>

<sup>1</sup> Judicial Accountability in India by Isha Tirkey, available on [https://ccsinternship.files.wordpress.com/2011/03/247\\_judicial-accountability-in-india\\_isha-tirkey.pdf](https://ccsinternship.files.wordpress.com/2011/03/247_judicial-accountability-in-india_isha-tirkey.pdf) last seen 10:03pm date 8-2-17

<sup>2</sup> ibid

<sup>3</sup> K. Veeraswamivs Union of India 1991 SCR (3) 189

<sup>4</sup> ibid

<sup>5</sup> ibid

### **Exemption from Right to Information**

Right to information emerges as a helping hand of the poor to reach every single information whether it belongs to government, judiciary or any other fora provided that it should be governed by the government. By this people directly compels the judiciary to become accountable. This law comes after the case *Raj Narayan v Indira Gandhi* where the court held that in a democracy every citizen has the right to know what their government is up for. This become the part of the freedom of speech and gave a strong blow on corruption.

There are countries which reply to this law and give the required information in order to prove their governance. The United States of America also come up with this law many years before we came. The USA government also revealed information in order to answer the plea of RTI which reveals the strategic policy making and its funding which shows good governance. But in India it is not effective as the central information commission doesn't comply with power and also have no safeguards by the Constitution. In an old case when an applicant ask whether the judge comply with the code of conduct. The CIC referred the question in front of judiciary (CJI court) where they got the answer that such revelation would be exempted as such disclosure is based on fiduciary relationship. It also shows double standard when the high courts are supposed to appoint a public officer for better implementation of RTI act, but the High Courts doesn't even appoint anyone years after the act come to existence. The Delhi High court judgment also inserted exemption clause in the act only for judiciary that no revelation of information has been commenced regarding the class three and class four employee of the court. The exemption clause is as under:

- "No such information would be revealed under section 8 of the Right to Information Act which in any manner out of the domain or related to judicial function and judicial duties of the court employees."<sup>1</sup>

### **Judicial Inquiry Act**

The Indian judiciary in order to make judiciary more independent and more accountable come up with the mechanism of judicial inquiry in which if any irregularity was found than an inquiry commission would being formed to probe. This judicial inquiry commission is something like a departmental inquiry which always ends with no proof and no conviction. According to judicial inquiry and amendment bill, 2006 a national judicial council has been formed headed by Chief justice of India, two judges form Supreme Court and to chief justice of the high court which was being enquired. This inquiry doesn't end with any strict action as it is something like departmental inquiry because an employee would not took any action against his colleague. The same is mentioned in the sec 33 of the judicial inquiry act that no information would be revealed regarding to the proceeding when it was ordered by the council. If by the end of this proceeding he found guilty or the misconduct of the judge is proved than he was sent for impeachment which again a long and difficult task to complete.

### **Judicial Activism**

Now days judicial activism seen as a requirement to control the judiciary through strong criticism as in recent cases the judiciary involves in disputes which are not relevant and in public good for example the removal of BCCI chief Anurag Thakur, the ban on Tamil Nadu' cultural fest Jallikattu and many more. The Arunarooy case is a good example of judicial activism where they protest against the judgment of increasing the walls of Sardar Sarovar Dam by 90 feet which can turn hazardous to many lives living peacefully. Through there well known Narmada Bachao Andolanthey criticize the court's decision though further they have to face contempt of court charges. Judicial activism stops judiciary to indulge in random disputes which is actually under the ambit of legislative or executive. Years before when the Supreme Court orders the government (Food Corporation of India) to immediately allocate five million ton of grain as the FCI don't have the appropriate measure to stock the grain which was destroying due to rain. According to the Indian Constitution judiciary cannot involve in the matter which are not justifiable like budget allocation, foreign policy etc. But the court surpasses the constitution when first it condemns the government for the students discriminated and attacked in Australia. The court when questioned the than Mayawati government for her statues and misuse of budget allocations. In both this cases the judiciary was strongly criticized and shown the power of judicial activism.

The judiciary has the right to question the government only on the occasions when such interference is justifiable as the Judiciary is the third vital organ of Indian democracy and the guard of the

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<sup>1</sup> ibid

constitution hence contains certain responsibility. A dispute occurs when the court directly questions the legitimacy of Reserve Bank OF India without analyzing the litigants' claim and such frivolous action of the court was criticized as it is the question of integrity of a well-established institution. If the same happened with the Supreme Court than till now they were booked for contempt of court.<sup>1</sup>

### Collegium System

The Supreme Court in its nine judge bench decision introduces new criterion to appoint the High Court and the Supreme Court judges which gives more power to the Supreme Court collegium system. There was no presence of accountability in the appointment of the judges, no specified criterion for eligibility to become the judge in the higher judiciary. The whole process was yet under question as it is not more than an arbitral process which gives rise to political influence in the appointment. In the case of the appointment of judiciary is in the government's ambit when the same appointment commenced by National Judicial Appointment Commission or in the hand of judiciary when the same appointment commenced through collegium system in both cases it doesn't help to make judicial accountable.<sup>2</sup>

### Other Obstacles

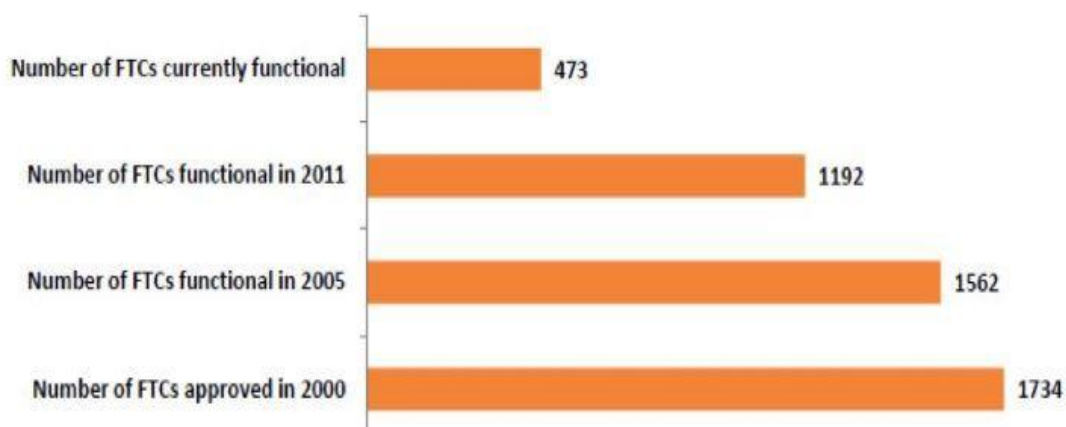
Apart from all these, there are some practical problems which doesn't let the common man reach to the higher judiciary as it is not possible to keep with the long proceeding, don't have sufficient economical backup to pay the remunerations during the proceedings. The battle for power between government and judiciary also crating obstacle to make judiciary more accountable. In the year 2015 the NJAC judgment come which clearly held NJAC unconstitutional as the appointment of the judges by the judiciary if the basic structure and the same is unalienable.

Literacy rate is also increasing the number of case been lodged as the of state Kerala have above 90% of literacy having 28 cases on 1000 population and in state of Jharkhand four case only on 1000 of population as the literacy of Jharkhand is only 53%. Yet these are good statics that the awareness regarding law and literacy is going hand in hand.

Another problem in making judiciary accountable is that there are more than two crores are pending cases in India's District courts only. Law Commission had recommended that "increasing the number of judges from 10 judges per one million people then to 50. The result of not taking the issue up in due time has resulted in over three crore cases being pending in court."<sup>3</sup>

In Delhi, High Court judge calculate that it will take a total of 456 years to clear all those pending case with the present strength in the courts. Though there are establishment of fast track court, encouragement to arbitration and conciliation, online proceedings and many more are the steps taken by the judiciary to decrease the burden. Though the number of fast track court is decreasing.

## Number of Fast Track Courts Since 2000 in India



<sup>1</sup> ibid

<sup>2</sup> ibid

<sup>3</sup> 5 Reasons why there ate 3 crore cases pending in the court, Available on <https://www.youthkiwaaz.com/2016/05/judiciary-pending-cases-india/> last seen 7:39pm date 9-2-17

### **Solution for Judicial Accountability**

Taking measures which can make judiciary independent is not sufficient as independent judiciary doesn't mean by accountable judiciary. The appointment in higher judiciary through collegium can make judiciary independent but it will never make it accountable as there would be some sort of unprecedented influence will come over. Here are some solutions through which accountability can be executed in judiciary.

#### **Adoption of Restatement of Values**

On the date of December 3<sup>rd</sup>, 1999 a conference of all the chief justice was organized and a resolution named restatement of values was adopted which suggested about the methods through which impartial justice has been done. This resolution ultimately comes up with the idea of stronger and independent judiciary. The resolution contain several guidelines some of them are here-

The judge of any high court would not commence any election for any society, group, club, any association or any office with benefits. This includes heading arbitration and reconciliation proceedings.

The judge of any session's court, district court, high court or Supreme Court would not decide or judge any case in which one of the parties or both the parties are in relation with the judge.

The judge would not have any other business or not hold any office of benefit neither have any share in a company nor have any partnership stock in a company.

#### **Appointment of National Judicial Commission**

Increasing dissatisfaction with the collegium system the parliament come up with NJC as a regulatory and appointment body through which the goal to achieve accountability can be succeed. The requirement of such sort of regulatory body was first recommended by the 80<sup>th</sup> and 121<sup>st</sup> Law Commission Report of India which also gives the features of the body. The body will comprise of five members. One nominated directly by supreme court collegium, one nominated by high court collegium, one nominated by the cabinet, one member from the opposition either from the Rajyasabha or the Loksabha and the last one would be the member of the any of the statutory authority like vigilance commission, National Human Rights Commission or the Comptroller or the auditor General. This five people will be the all-time members. By this judiciary can become accountable as there would be neither the influence of parliament nor there is any influence of the judiciary itself. But in the apex court judgment in 2015 where the Supreme Court held the creation of National judicial commission as unconstitutional and against the basic structure of the constitution of India as court says it violates the independence of the judiciary. The court struck down NJC by saying it ultra-virus.<sup>1</sup>

#### **Standards of Judiciary and its Accountability Bill**

To settle public in the accountability criterion the parliament come with the idea of committee headed by the Chief Justice of India comprising two leaders from the government, one leader from the opposition party and one from minorities. The committee will be appointed by the president of India and he is bound to accept all the appointment referred by the Prime minister. A committee will be formed first to look into the charges and if found the committee can even call off the judge from his duty as the same committee is a statutory one and have the power of a civil court. If the decision of the committee is not enforced and the judge in case refuse to resign than the case will go to the president with the recommendation of immediate removal. The aim behind this bill was to implement full form accountability as it stops any association between the lawyers and the judges. The same is being replaced by the inquiry of judge's act.<sup>2</sup>

#### **The Contempt of Court and its Amendment**

There are so many amendment seen as requirement in today's judicial scenario and this been the accurate time to amend. The amendment bill was put in front of the standing committee of the parliament to examine and recommend. These recommendations are as under:

- Every accuse should have the reasonable opportunity to defend.
- The trial of the contempt should be done by any independent authority which should not have any influence by the same court which was dishonored.

<sup>1</sup> Judicial Accountability in India by Isha Tirkey, available on [https://ccsinternship.files.wordpress.com/2011/03/247\\_judicial-accountability-in-india\\_isha-tirkey.pdf](https://ccsinternship.files.wordpress.com/2011/03/247_judicial-accountability-in-india_isha-tirkey.pdf) last seen 10:03pm date 8-2-17

<sup>2</sup> ibid

### NGO's and role of Media

Media and the NGO's are considered as the forth pillar of the nation's democracy as they are the only method to reach out to every citizen. Media and NGO's can only go against the government or any judicial decisions as only these two can protest against it through various ways. Media and NGO's should not being affected by sedition and contempt respectively as only independence of media and freedom of the NGO's would claim themselves as forth pillar. There are some negative ways of these two but we should not forget the role of media in unveiling the truth of the landmark case *Jesikalal*. The social activities of the NGO's curbing the basic problems in rural areas are phenomenal.

### Conclusion

Through the critical analysis of the paper it is absolute that accountable judiciary needs to be independent and an independent judiciary needs to suffer some interference which leads to completely fair and completely unbiased trails. If we don't think seriously about accountable judiciary then we will found the whole system filled with corrupt politicians and judges which will throttle our democracy. The distinctive work of the judiciary is to provide fair, unbiased and fast and satisfactory justice and by this belief of people in large remains in democracy. The paper somehow gives a negative impression but it doesn't mean that the judicial system is completely failed system though it have 3.5 crore pending case but despite of this circumstances fast track court, Lok Adalats are some of the parts which doing great and giving justice in the rural areas, to the illiterate people.

Frank A. Clark said *that criticism is like rain, gentle enough to nourish a man's growth without destroying his roots.*<sup>1</sup> Hence the criticism of judiciary makes it more accountable. This criticism ends with some ideas which if enforced according to the philosophy of constitution than it vanishes all the demerits in it. A famous quote of Andrew Jackson<sup>2</sup> that "*All the rights secured to the citizens under the Constitution are worth nothing, and a mere bubble, except guaranteed to them by an independent and virtuous Judiciary.*"<sup>3</sup> Hence to keep the essence of democracy and basic human rights we have to believe in judiciary and by our effort can make an accountable judiciary which ultimately gives us stronger democracy where all rights of individual is secured.

### References

#### Books

1. Module Administrative Law compiled by Ms. Mercy K. Khaute

#### Online Access

2. Brainy Quotes

#### Article

3. Judicial Accountability in India by Isha Tirkey, available on-
4. [https://ccsinternship.files.wordpress.com/2011/03/247\\_judicial-accountablity-in-india\\_isha-tirkey.pdf](https://ccsinternship.files.wordpress.com/2011/03/247_judicial-accountablity-in-india_isha-tirkey.pdf).



<sup>1</sup> Quotes available on <https://www.brainyquote.com/quotes/quotes/f/frankacla105689.html> last seen 02:32am date 13-2-17

<sup>2</sup> Andrew Jackson the seventh president of United States and founder of Democratic Part.

<sup>3</sup> Brainy Quotes available on <https://www.askideas.com/63-best-judiciary-quotes-and-sayings/> last seen 02:32am date 13-2-17