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Is Judicial Accountability the Price for Judicial Independence?: The Search for Balance in the Indian Context

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ABSTRACT

The behest for a more transparent and rigid State mechanism in order to ensure their accountability has gained immense momentum in recent years. If we talk about Judiciary, The Judicial Independence and Accountability are the two pre-requisites which are required for a transparent judiciary; and if they strike the right balance it enables the judiciary to enjoy both the public confidence as well as be embodied with sufficient power in order to ensure its functioning the way our Constitutions founding fathers intended it to.

Our legal system suffers from endemic delays and while is widely perceived to be an expensive affairs, coupled with recent scandals with regards to judges has ended in loss of public confidence. There is a dire need for judicial accountability to arise from within, to ensure a system of operative checks and balances to prevent any unwarranted usurping of power. However, this has been met with resistance from within the judiciary, afraid of encroachment into the realm of its independence. This paper debates the ills which are affecting the Indian judiciary and then makes certain recommendations which can be adopted to ensure greater judicial accountability.

“Judges are the essential equalisers. They serve no majority or any minority either. Their duty is to the law and to justice. They do not bend the knee to the governments, to particular religions, to the military, to money, to tabloid media or the screaming mob. In upholding law and justice, judges have a vital function in a pluralist society to make sure that diversity is respected and the rights of all protected.”

-Justice Michael Kirby

Keywords: *Judicial, Accountability, Independence.*

Throughout the years, the Indian Judiciary has played a significant role in shaping the Indian Polity to a great extent, while ensuring fairness in governance and protecting individuals against the misuse of the powers of the State while functioning as the custodian of their rights

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and the final arbiter and enforcer of the constitutional limitations on government. Being a cornerstone of our Democracy, presence of a strong, independent, effective and efficient judiciary is more of a necessity than a mere want in both letter and spirit. However, Rampant corruption coupled with lack of accountability have diluted the trust so much that now *mere legality* is not legitimacy anymore for the Indian people.

In India, while the Higher Judiciary has powers of control over every organ under the Constitution, yet there lies no effective method of disciplining its own members. Founding fathers at the time of framing of Constitution of India were of belief that the misconduct by the judges belonging to the Higher Judiciary would be an extremely rare phenomenon and hence prescribed impeachment as the only way of removal of a judge, that too on the basis of proven misbehaviour.² However with time this “Belief” has been proven wrong as there have been various cases where there has been apparent misconduct of the judges of the higher court. One such example is the case of Justice V. Ramaswami who was a Supreme court judge who was found “*guilty of wilful and gross misuses of office...*” yet survived his impeachment.³

Also in the case of *K. Veeraswami v. Union of India*⁴ the Supreme Court violated the provisions of Criminal Code of Procedure, 1973 in its judgement by stating that no First Information Report can be registered against any judge without the permission of the Chief Justice of India. What is extremely wrong with this judgement is that given the no police officer would even dare to approach the Chief Justice of India without a solid and fool proof evidence, to obtain which investigation needs to be done, which ultimately cannot be done without investigation. Also by doing so the Judiciary has given itself partial immunity which neither the Constitution nor the framers of it intended to. Also the Supreme Court is powerless to take any action against an errant judge and at best can disallow him from hearing cases. Till now, there have been only three instances of investigation against the judges of the higher judiciary under the Judges (Inquiry) Act, 1968.⁵ Another such example is that of Justice Dinakaran who is a former Chief Justice of High Court of Karnataka, who even while facing impeachment proceedings in the Rajya Sabha over grave charges of corruption, was allowed to take over as Chief Justice of the Sikkim High Court.

Therefore one cannot ignore delinquency exists in Judiciary and it is rather the need of the hour

² Article 124(4), 124(2)(b) and 217(1)(b) of *The Constitution of India, 1950*.

³ *Dubious First, TEHELKA, Dec. 30, 2006, (Justice Ramaswami of the Supreme Court was sought to be impeached on grounds of brazen financial irregularities committed by him. Despite the Inquiry Committee holding him “guilty of wilful and gross misuses of office”, the motion was defeated in Parliament. This was done by unscrupulous politicians involved in the false rivalry between North and South)*

⁴ 1991 S.C.C. (3) 655

⁵ *Shoma Chaudhury, Half of the Last 16 Chief Justices were Corrupt, TEHELKA, Sept.5, 2009*

to curb it. The legislature has tried to curb it in the past through The Judges (Inquiry) Bill, 2006 however while generally “Accountability” is sought through an external regulatory authority, the bill involved an in house procedure which comprised of sitting judges who investigated into alleged charges on judges. This negates the very purpose of seeking accountability as it violates the principle of natural justice that no man shall be the judge in his own cause.

However, the founding fathers of our constitution did indeed aimed to make the judiciary as Independent as they could as Dr. Rajendra Prasad said “*We have provided in the Constitution for a judiciary which will be independent. It is difficult to suggest anything more to make the Supreme Court and the High Court’s independent of the influence of the executive.*”⁶ Further Dr. B. R. Ambedkar also said “*There can be no difference of opinion in the House that our judiciary must both be independent of the executive and must also be competent in itself And the question is how these two objects could be secured.*”⁷ There have also been a surfeit of rulings by the Supreme Court which have focused on the importance of Judicial Independence. The court even said in the case of *State of Bihar v. Balmukund Shah*⁸ that judicial independence is a constituent element of the basic structure doctrine, which was born in the case of *Keshavnanda Bharti v. State of Kerala*.

Since an independent judiciary is necessary for a free society and a constitutional democracy. It ensures the rule of law and realization of human rights and also the prosperity and stability of a society.⁹ However the true meaning of Independence of Judiciary doesn’t merely mean to create an autonomous institution which is free from the executive and legislature rather the underlying purpose of it is that the judges must be able to decide a dispute before them “Uninfluenced” by any other factor which doesn’t exactly seem to be the case in India.¹⁰ The various scandals and allegations have reduced the trust of public in our justice system that sometimes they don’t even bother coming to the court for justice due the preconceptions in their mind with regards to two paralegal systems working simultaneously, one for the poor and other for the rich and also because of extremely stretched and expensive justice system.

While the greatest strength of the judiciary is the faith people repose in it,¹¹ However in India

⁶ Dr. Rajendra Prasad, *President of the Constituent Assembly and later President of India in II CONSTITUENT ASSEMBLY Debates* 498.

⁷ Dr. B. R. Ambedkar, *Chairman of the Drafting Committee of the Constituent Assembly and later Law Minister of India Reply to the debate on the draft provisions of the Constitution on the Supreme Court, (May 24, 1949), in CONSTITUENT ASSEMBLY DEBATES, vol. VIII, 258.*

⁸ A.I.R. 2000 S.C. 1296

⁹ G. N. Rosenberg, *Judicial Independence and the Reality of Political Power*, 54 REV. OF POL. 369, 398 (1992).

¹⁰ *Siracusa Draft Principles on the Independence of the Judiciary, CIJL Bulletin No. 25-26, at 59 (Apr.-Oct. 1990),*

¹¹ *Supreme Court v. Subhash Chandra Agarwal, A.I.R. 2010 Delhi 159*

this faith is continuously diminishing and the only way this faith can come back is through a more accountable justice system. Is the judicial independence continues to have an isolated existence this faith will so not much improvement, therefore now the balance between Independence and the accountability is the need of the hour reinforce independence and to ensure an effective judiciary whom public trusts. While it is clear that the propounding forefathers of the constitution did not explicitly provide for any mechanism to make the judiciary accountable¹², it is time to recognize that the times have changed and now while this “Independence” might be free from Executive and Legislature but since it is evident that certain other factors are indeed affecting the judiciary, this Independence should not be free from accountability since accountability is an integral part of democratic polity.¹³

While certain regulations such as Voluntary public disclosure of assets by judges do exists but In my opinion a constitutional code of conduct and behaviour is needed for the judges. Further a commission which is comprised of people other than judges but at the same time extension of judiciary following the principle of *Nemo judex in causa sua* and this commission should deal with allegations against judges and this commission be prompt to investigate into charges and if found guilty, they should be removed without impeachment as the whole constitutionally prescribed procedure of impeachment gives a passive immunity to the judges because of procedure and scope of outside influence and administrative machinery. Also the constitution needs to be amended in order to alter the convention of seniority for elevation as Chief Justice of India as mere seniority doesn't necessarily reflect required pre requisites for holding office of such high importance and power which can be exploited. Further instead of solely replying on a ad-hoc complaints mechanism to understand the instances of judicial misconduct, a regular performance evaluation system even for the judges of the higher order will be extremely useful.

¹² *Constituent Assembly Debates, Vol. VIII, 218.*

¹³ *Smt. Indira Nehru Gandhi v. Shri Raj Narain and Anr., A.I.R. 1975 S.C. 2299.*