

Need of Judicial Accountability in Globalized India

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For the successful functioning of democracy, people are provided with the fundamental rights and also a written constitution so that to check the autocratic actions of the government. Judiciary has been made the guardian of the Constitution as well as fundamental rights of the citizens. In the absence of an independent judiciary, there would be no guarantee of the fundamental rights of the people and even no utility of the Constitution.

Being the world's largest democracy, India deserves 'democratic policing' as well as Justice. In this era of globalization, the foreign investors in India must be truly assured by the government that the Indian courts are as fast as the courts in the most developed countries of the world; and that there would be no more long delays in the judicial process.

On the occasion of the Constitution day, i.e. on 26th November, 2017, Prime Minister Narendra Modi waded into the controversy over judicial activism and said the government and judiciary must set their differences aside and work towards serving the people. The Prime Minister said that at this juncture, India's constitutional bodies are faced with a crucial question..... He said that every decision taken by the country's judiciary, legislature and the executive arm affects millions of people and all institutions need to work in tandem for the welfare of the populace.....both the judiciary and the executive need to work together to achieve the vision of New India by 2022.¹

The then Prime Minister, Dr. Manmohan Singh stated² that the judiciary in India is dynamic and completely independent and we take pride in this. Amazingly innovative legal doctrines and precepts have been the gift of the Indian legal system to the world. The 'basic structure doctrine' and 'public interest litigation' are two examples..... The elimination of vast number of pending cases in the Indian courts is the biggest challenge before the judiciary. He called upon the judiciary and the executive to work together to make the Indian Judicial System an arrear free. He emphasized that in this war on arrears, the entire legal system and each part of it has to function as a seamless web and an indivisible whole.

Globalization is the most dominant and driving force in this 21st century. It is shaping a new era of interaction and interdependence among nations, economies and people. "The attractive mantras of globalization and liberalization are fast becoming the *raison d'être* of the judicial process and impression has been created that the constitutional courts are no longer sympathetic to the plight of industrial and unorganized workers³ - says Prakash Singh.

"In this era of globalization, cooperation between the judiciary of countries becomes important. Issues such as terrorism, international trade, corporate corruption and crime are not restricted to a particular geographical boundary."⁴

Need of Judicial Reforms

This is beyond doubt that the Indian Judicial System, despite its glorious past, is today suffering from serious ailments, in the form of huge arrears of pending cases, long delays, costly procedures and

processes, the tentacles of corruption etc. We all know the famous saying 'Justice delayed is Justice denied, but at the same time, one must also remember that, 'Justice hurried is Justice buried'.

The Law Commission of India⁵ headed by Justice H.R. Khanna observed, "The problem of delay in the disposal of cases is not a recent phenomenon". Innumerable litigations have over-crowded the court's docket for a period of five or more years.⁶ "The parties adopt delaying tactics."⁷ Corruption in jurisprudence is also responsible for the delay in the judicial process.⁸ One can enumerate several reasons for this delay in justice viz. the biggest problem- the inadequate number of judges, lengthy arguments, voluminous thesis like judgments, poor infrastructure in courts, lack of proper training institutions for the judiciary.

The Supreme Court is the protector of rights, the only institution that balances other organs of state, the final arbiter of the Constitution, the protector of the rights of our citizens against the might of the state, where the highest profile, most controversial and most political cases are decided.

Corruption in Judiciary is perhaps the gravest problem which has negatively affected its efficiency. One can easily identify the reasons for corruption in judiciary such as low pay scales, frequent transfers, increased cost of living, dissatisfactory service conditions etc. former Chief Justice of India R.C. Lahoti had warned⁹.

Need of Judicial Accountability

Judicial independence is essential for the smooth running of any democracy and with it judicial accountability too is needed. To begin with a very famous quote of Bryce, "There is no better test of the excellence of a government than the efficiency of its judicial system, for, nothing more nearly touches the welfare and security of the average citizen than his knowledge that he can rely on the certain and prompt administration of justice". In India, independence and impartiality have always been considered to be the fundamental qualities of a judge. This is the spirit why the founding fathers of the Constitution have intended to uphold the principle of accountability of courts in India which is evident from the Third Schedule which imposes in the judge a duty to preserve the sovereignty and national integrity. The Constitution of India has brilliantly adopted the via media between the American system of Judicial Supremacy and the British theory of Parliamentary Supremacy.

To define Accountability, it is the obligation of an individual or organization to account for its activities, accept responsibility for them, and to disclose the results in a transparent manner. It also includes the responsibility for money or other entrusted property. The word 'accountable' as defined in the Oxford Dictionary, means responsible for your own decisions or actions and expected to explain them when you are asked. No public institution or public functionary is exempt from accountability although the manner of enforcing accountability may vary depending upon the nature of the office and the functions discharged by the office holder. Accountability is the sine qua non of democracy. Transparency facilitates accountability. The judiciary, an essential wing of the State, is also accountable. Judicial accountability lies in scrutiny of judgments by the appellate courts. Judgments can also be subject to critical analysis and constructive informed criticism by the legal profession, academicians, media and the members of the public including parliamentarians.

Judicial Accountability includes the issues of quality of judgments, consequent delay in judicial proceedings which results in pendency of cases, inequalities in accessing justice and the ineffectiveness of mechanisms to deal with the grave problem of judicial corruption. Though people do not elect the judges, ultimately in a democracy, they are inevitably answerable and accountable to the public.

"No doubt, there is a need to introduce urgent reforms in the judicial system to save it from judges who

show tendencies of committing judicial suicide. The first step in this regard is to put in place an accountability system as proposed in the bill introduced in the Parliament a few years ago.....However, no measure of judicial reforms will succeed unless a similar reform of the bar is attempted.....The mechanism for ensuring competence, professionalism and accountability of legal practitioners must be strengthened without impairing the autonomy of the profession.¹⁰

The question for the judiciary is accountability to whom and for what. Broadly speaking, the judiciary must be accountable to the law, in the sense that the decisions made are in accordance with the law and are not arbitrary.

Significance: The concept of judicial accountability refers to make the judges answerable, responsible and accountable for their functions. Justice imparted by the judiciary should not only be done, but also seem to be done to the individuals and the community as well. The Constitution makers entrusted the judiciary with the very significant task of imparting justice to the people; and this is the reason that the judges have gained a dignified place in the society and the nation. This respectful position demands a high degree of responsibility and accountability on the part of the judiciary so that they proceed on the right path while performing their functions. As everything in this world is subject to analysis and evaluation; judiciary is also no exception to this fact. Judiciary is expected to be accountable, in particular to the law; and in general to the public it serves. The judiciary is enjoying enormous public confidence and trust, and hence advocates and judges must conduct themselves in a befitting manner. As the courts in India enjoy great powers, it is vital that judges of the judiciary be accountable for their performance and their conduct – whether for corruption or for disrespect of the constitutional values and the citizens' rights. The conduct of the judges determines the image of the courts and creditability of the whole judicial system.

The Constitutional provisions provide that there should be an impartial and independent judicial body to adjudicate upon the issues and to operate as the interpreter and guardian of the Constitution. It is also a well settled principle of modern day governance that an authority deriving its existence from same source cannot claim to be absolute and unaccountable. It must be accountable either to the source of its origin, to the institution and more importantly to the people. Several countries in their constitutions have already provided for ensuring accountability of judiciary. This is to prevent the 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. 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 and to uphold the Constitution and laws of the country. Thus, here arises a tension between Judicial Independence and Judicial Accountability.

Another facet of judicial accountability is that judges, if they misconduct themselves, are subject to strict discipline by the mechanisms provided under the Constitution and the law. The mechanisms should be transparent and effective whose primary aim should be to enforce accountability without impairing judicial independence. These are the basic parameters of judicial accountability.

Tension between Judicial Accountability and Independence of Judiciary

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 behave as they please. Indeed, judicial independence is founded on public trust and, to maintain it, judges must uphold the highest standards of integrity and be

held accountable to them. Where judges or court personnel are suspected of breaching the public's trust, fair measures must be in place to detect, investigate and sanction corrupt practices.

Need of judicial independence is not for the judges, but for the people. However, independence of judiciary is not absolute, it should not be construed in the manner to confer immunity from the demands of justice for misdeeds or to protect a judge from investigation for a valid charge. The advocates of independence observe the judges should not be held accountable for following the rule of law. This canvasses a picture of conflict between judicial independence and judicial accountability but they are inseparable and in fact, they nourish each other.

In the past, there have been examples of Impeachment proceedings on a Supreme Court Judge Justice V. Ramaswami, Judge of Calcutta High court Soumitra Sen and in the recent times, serious allegations on a few High Court Judges on the grounds of inefficiency or corruption. Most recently, on January 12, 2018, the four senior-most judges of the nation- Justices JastiChelameswar, Ranjan Gogoi, Madan B. Lokur and Kurian Joseph- in a press conference, charged the Chief Justice of India Dipak Misra, with abuse of power and court traditions. Further they, in an open letter, wrote that India's highest court was 'not in order' and it could be a danger to our democracy. With a number of Commissions and Committees appointed for the purpose including the Law Commission 230th Report (2009), it is the National Mission on Delivery of Justice and Legal Reforms (2009-12) which has laid down a time-bound blueprint for strategic action. It recognized that the two goals of judicial reforms are:

- (a) Increasing access by reducing delay and arrears in the judicial system.
- (b) Enhancing accountability through structural changes and by setting performance standards and capacities.

Suggestions

1. To undertake a thorough study of the Constitution of India, that what are the provisions that speak about the Judicial Accountability and how the goal of Judicial Accountability can be achieved without disturbing the basic structure of the Constitution and its spirit.
2. To understand the concept of judicial independence and the principle of judicial accountability.
3. There should be serious effort from the government's end to ensure judicial accountability by taking judiciary into confidence that the principle of judicial independence is taken care of.
4. It is to recognize that for implementing Judicial Accountability, it is necessary that there should be a code of conduct engulfing both the levels, the Higher Judiciary and the Subordinate Judiciary.

To conclude, one can say that today, judicial accountability is an increasingly global issue, being one critical to the attainment of international human rights and to the maintenance of the global economy. A code of judicial conduct serves as a guide to and measure of judicial conduct, and should be developed and implemented by the judiciary. Breaches of the code must be investigated and sanctioned by a judicial body; this code may include that the judges must be honest; disciplined; fair; must not fear to administer justice, come what may; should avoid too much of activity and participation in the social functions and gatherings.

Ultimately, our political system has to find a way out where both the judicial independence and the judicial accountability are ensured in a constitutional manner. The policy makers should keep in mind Winston Churchill's statement, "The judges are at the same time 'privileged' and 'restricted'. We can afford to lose a war but we can't afford to lose a Judiciary."

To repair the odds, one of the ways could be administrative improvements. The Supreme Court which has a sanctioned strength of 31 judges (as on January, 2018), is working with just 25 judges. 24 High Courts are presently functioning with the 672 judges while there are still 407 vacancies (As on January, 2018).

On October 16, 2015; after a marathon 31-day hearing, five judges of the Supreme Court- Justices J.S. Khehar, J. Chelameshwar, Madan B. Lokur, Kurian Joseph and A.K. Goel- had declared unconstitutional and void The Constitution (99th Amendment) Act, 2014 and The National Judicial Appointments Commission, 2014. It is worth mentioning here that The 99th Constitutional Amendment Act, 2014 which established the National Judicial Appointments Commission, was held to be unconstitutional by the Supreme Court of India on 16th October, 2015. The Collegium System will thus be continued to be followed for the appointment of Supreme Court and High Court judges.. The basic structure must be preserved, and no act of the Constitution can amend, nor nullify this basic structure. The Court has interpreted that the appointment of judges by the Collegium system, preserves the independence of the judiciary, and is a part of the basic structure.

The said Act appoints a Commission consisting of members from the judiciary, executive and the public. Since it changes the structure of appointment of judges, has thus violated the basic structure of the Constitution, thus it is unconstitutional. The power of Appointment of judges is inherently connected with the independence of the judiciary. The framers of the Constitution thus excluded this power to appoint, from the Executive.

To conclude, "this is a time for well-meaning judicial reform- whether administrative, procedure or power."¹¹

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