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Public Accountability an emerging concept in India *

INTRODUCTION

Accountability simply means that if a public officer abuses his office, either by an act of omission or commission, and in consequence of that there is an injury to an individual or the public at large, he must be held responsible for it.

Accountability is one of those golden concepts that no one can be against. It is increasingly used in political discourse and policy documents because it conveys an Image of Transparency and trustworthiness¹.

A government can't act in an arbitrary manner against the people, many scholars link the *magna carta's* concept of non - arbitrariness to the current Rule of Law concept to the western world of law, the great gift of the *magna carta*, signed in 1215, was the generation that no person shall be secure from the arbitrary exercise of the power of government, the *magna carta* is the spiritual and legal ancestor of the concept of the rule of law. Principle underlying the regulations of arbitrariness in administrative actions are: ²

1. Rationality
2. Accountability
3. Clarity
4. 6. Reviewability
5. Fairness
6. vagueness

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¹ Mark Bovens , "Analyzing and Assessing Accountability : A Conceptual Framework", 13(4) *Eur. L.J.*, 447-468 , at 448 (2007).

² Christine N. Cimine, "Principle of Non-Arbitrariness and lawlessness in the administration of welfare", *Rutgers Law Reviews* 57:2, 452-529, at 471 (2005).

7. Equality

Meaning of Term “office”

The word “office” is normally understood to mean “a position to which certain duties are attached, especially a place of trust, authority or service under constituted authority”³.

In *statesman (p) ltd. v. H.R. Deb*⁴ and *Mahadeo v. shantibhat*⁵ this court has adopted the meaning given by lord wright when it said⁶:

“An office means no more than a position to which certain duties are attached.”

Accountability became Public Accountability

The concept of accountability on its own does not necessarily imply Public Accountability. Here Public word relates to openness or accessible to citizens. For the purpose of this research public word is concentrated to the public sector only. Those public officials only who spending public money, exercising public authority under public law.

Another Expression “public duty”

It is defined under section 2(b): A duty in the discharge of which the state, the public or the community at large has an interest⁷:

Explanation – in this clause ‘state’ includes a corporation established by or under a central, provincial or state Act, or an authority or a body owned or controlled or aided by the government or a government company as defined in section 617 of the Companies Act, 1956(1 of 1956);”⁸

Section 7 of Prevention of Corruption Act, 1988 whoever being , or expected to be public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person , any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show⁹, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the central government or any state government or parliament government or legislature of any state or local authority, corporation or government company referred to in clause (c) of section 2, or with any public servant , shall be punished with imprisonment not less than 6

³*P.V Narasimha Rao v. State (CBI/SPE)*, (1998) 4 SCC 635.

⁴AIR 1495 SC 1968.

⁵ (1969) 2 SCR 422.

⁶*Id.*, at 684.

⁷*Supra* note 3, at 684.

⁸*Ibid.*

⁹ Public servant taking gratification other than legal remuneration in respect of an official act.

months but which may extend to 5 years and shall also be liable to fine¹⁰.

4.1.1 Types of Accountability¹¹

Accountability¹²

1. Political accountability
2. Legal accountability
3. Administrative accountability
4. Professional accountability
5. Social accountability
6. Public accountability

IMAGE 2

Public accountability is entirely new emerging issue in India. This kind of accountability come into picture after the judicial activism. Judiciary plays an important role, where all the public servants who performed public duties are personally liable for their actions. This kind of accountability wider in scope and covers all others types also. Accountability is a relationship between actor and a forum, in which the Actor has an obligation to explain and to justify his / her conduct, the forum can pose question and pass judgment, and the actor may face consequences¹³.

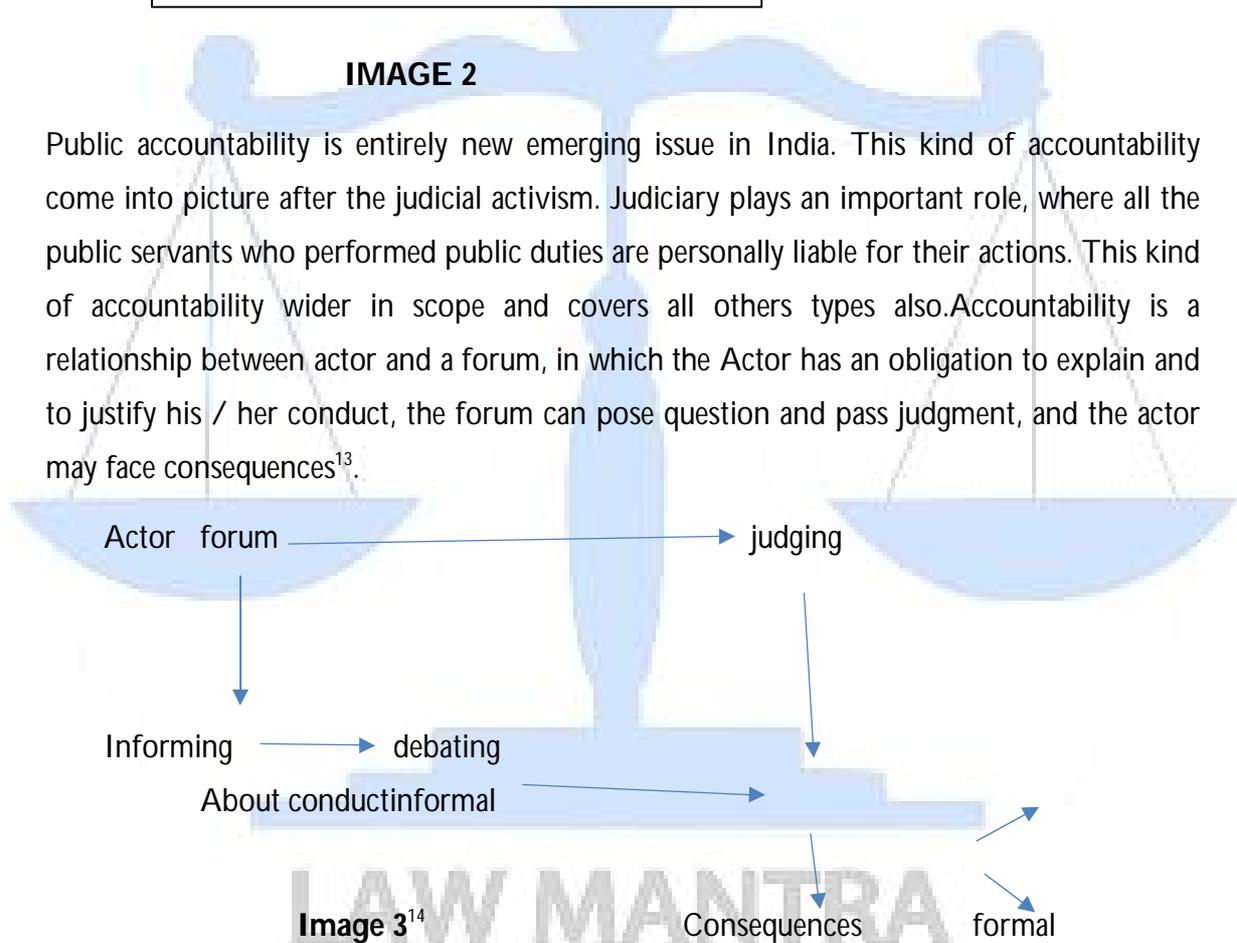


Image 3¹⁴

In this relation between accountability and public, we will find an actor who feels an obligation to explain and to justify his/her conduct to some significant other. Here this relation consist of three stages –

Stage¹⁵ 1

The actor must feel obliged to inform the forum about its conduct, to administrative fairness in case of legal accountability. In the wake of administrative deviance, policy failures, or disasters, public officials can be forced to appear in administrative or penal courts or to testify before parliamentary committees

¹⁰Supra 3, at 740.

¹¹ This distinction is ba

¹² supra note 1, at 461.

¹³ Id., at 450.

¹⁴ Mark, supra 1 at 454.

Stage¹⁶ 2

The information can prompt the forum to interrogate the actor and to question the adequacy of the information or legitimacy of the conduct.

Stage¹⁷ 3

Forum usually passes judgment on the conduct of the actor. In passing a negative judgment the forum frequently impose some sort of sanctions on the actor. These sanctions can be highly formalized , such as fines, disciplinary measures or even penal sanctions.

Doctrine of Public Accountability

If we considers the administrative problems in India, then we will find three major problems

–

1. Faulty planning
2. Corrupt execution
3. Absence of Public Accountability

Out of these three if we consider than Public Accountability is basic, in the sense that if the guilty are liable quickly and adequately, then they will take care of two other problems above mentioned.

Origin of doctrine

It is well settled law, that all the discretionary powers must be exercised reasonably and in larger public interest. C.J., Best, stated in a case- *Henly v. Lyme Corpn.*,¹⁸

“Now I take it to be perfectly clear, that if a public officer, abuses his office, either by an act of omission or commission, and the consequence of that is an injury to an individual, an action may be maintained against such public officer. The instance of this are so numerous that it would be a waste of time to refer.”¹⁹

Every holder of public office is with highest duty to the public of country. Here in this

¹⁵ Available at , ftp://ftp.cordis.europa.eu/pub/improving/docs/ser_citizen_joss.pdf, accessed on 04 July 2015.

¹⁶ Available at , http://bovens_05_publicaccountability08ferlie.pdf, accessed on 04July 2015.

¹⁷ *Ibid.*

¹⁸ (1858) 5 Bing 91: 130 ER 995.

¹⁹ Robert Desty, *The Lawyers Reporters Annotated*, 453(2008)

doctrine the basic emphasis is on the reviewability of every action of the state or its instrumentalities. The administrative law test of reasonableness is not by the standards of the 'reasonable man' of the torts law. Prof. Wade says²⁰:

'This is not therefore the standards of "the man on the Clapham Omnibus". It is the standard indicated by a true construction of the Act which distinguish between what the statutory authority may or may not be authorised to do. It distinguish between proper use and improper abuse of power. It is often expressed by saying that the decision is unlawful if it is one to which no reasonable authority could have come. This is the essence of what is now commonly called "Wednesbury unreasonableness", after the now famous case in which Lord Greene, M.R. expounded it.' ²¹

Nature and scope

Public Accountability is the Hall mark of Modern democratic governance. Democracy remains a paper procedure if those in power cannot be held accountable in public for their acts and omission, for their decisions, their policies and their expenditure²².

This doctrine of Public Accountability is most important emerging facets of administrative law in recent times. The basic aim of this Doctrine is –

1. To check the growing misuse of power by the administration and
2. To provide speedy relief to the victims of such exercise of power.

Doctrine is based on the premises that, authority given in the hands of Public Authority is on public trust which must be exercised in the best interest of the Public. In every democratic society, it is of utmost importance that the citizens get sufficient information and knowledge about the functioning of the government. Democracy cannot survive without accountability to public. The basic postulate of accountability is openness of the government. The very integrity of judicial system and public confidence depend on full disclosure of facts.²³

Such a discretionary power which is capable of being exercised arbitrarily is not permitted by article 14 of the constitution of India. While acting article 14 permits a reasonable classification having a rational nexus to the objective sought to be achieved, it does not permit the power to pick and choose arbitrary out of several persons falling under the same category. A transparent and objective criteria has to be evolved so that the choice among

²⁰ Tata cellular v. Union of India, 6 SCC 686, 651-720 (SC 1994).

²¹ *Ibid*

²² *Supra* note 1, at 182.

²³ (1981)87 SCC SUPP 273.

members belonging to the same class is based on the reason, fair play and non-arbitrariness²⁴.

The institution of judiciary in a democratic setup is perhaps one of the most important organs as it is entrusted with the great responsibility of Administration of Justice, which one is the core need of the citizenry. The preamble of the constitution enriches the ideals of securing social, economic and political justice to all its citizens. An independent judiciary can be stated to be the corner stone of a democracy.²⁵

Researcher observed that when judiciary don't limit themselves to only reasonable interest of existing laws, but put one step ahead and starts create law. Such step of judiciary called judicial activism. There are many instances in India where judiciary substitute their own political opinion for the existing practical applicable law.

Public accountability is result of when judges act like a legislator (who legislate from bench) rather than like a customary or traditional court. It is one of the example for self-assumption of power of legislature by judiciary. Unfettered discretion is always an issue of contradiction in practical life.

As we presume that every legal power must have its own legal limits, otherwise there is a dictatorship and there will no state of democracy. The Courts are the only one who gives protection to the liberty in executive functioning subject against administrative executive arbitrary action.

The judiciary has been vested with enormous power constitutionally. It is the arbiter of dispute between citizens, between the citizens and states and between the states and union. It is vested with the power of judicial review²⁶ is a court of record²⁷ and acts as a judicial activist under Article 21 & Article 226 of the constitution. It is also with the duty to declare a law²⁸.

Judicial quest in administrative matters is to strike the fair balance between the administrative discretion to decide matter as per government policy, and the need of fairness

²⁴ *Common Cause, A Regd. Society v. Union of India & others*, 6 SCC 530, 531-558 (SC 1996).

²⁵ It's a part of the basic structure of the Constitution of India, see also, *all India Judge's Association v. Union of India*, (2002)4SCC247; *Advocates on record v. Union of India*, AIR1994 SC 268,

²⁶ Article 137, *constitution of India*, it is most potent weapon in the hands of the judiciary for the maintenance of the rule of law. It is touch stone of the constitution and for this Supreme Court and High Court are the ultimate authority for interpretation of our constitution.

²⁷ Article 129; *Ibid*

²⁸ Article 141; *Ibid*

by the concept of personal accountability of public authority. Judiciary has been envisaged as an independent body and independence as a necessary corollary to the functioning of judiciary. The judiciary however faces innumerable problems both internally and externally in view of the allegations of encroachment, corruption and over activism among others.

Conclusion

Therefore, in the ultimate analysis, courts should have the power to control the administrative arbitrary action and any overt diminution of that power is to be criticized. The principle implicit in the rule of law that the executive must act under the law and not by its own fiat is still a cardinal principle of the common law system, which is being followed by India. In the common law system the executive is regarded as not having any inherent powers of its own, but all its powers flow and emanate from the law. It is one of the vital principles playing an important role in democratic countries like India. There is a thin line between judicial review and judicial activism. Rule of Law serves as the basis of Judicial Review of administrative action. The Judiciary sees to it that the executive keeps itself within the limits of law and does not overstep the same. Judicial Activism is also kept into check. Through the concept of rule of law however there are instances in India where Judiciary has tried to infringe upon the territory of the executive and the legislature.



There are many cases, in which Supreme Court has applied this Principle by granting appropriate relief to the aggrieved parties or by directing the defaulter to pay damages, compensation or costs to the persons who has suffered, here we are mentioning few of them –

*Arvind Dattatraya Dhande v. State of Maharashtra*²⁹, In this case it was held by the Supreme

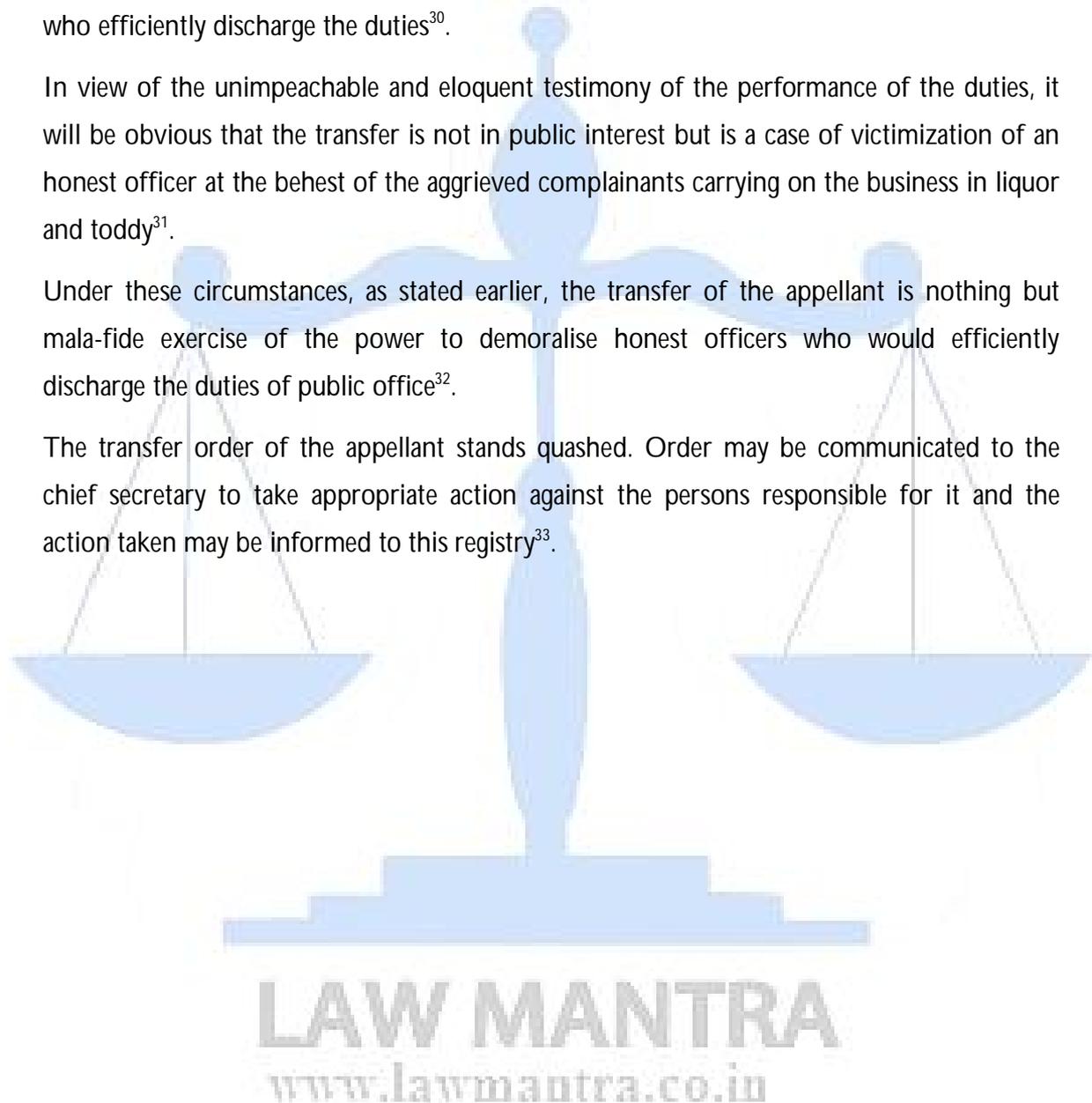
²⁹(1997) 6 SCC 169

Court that it is most unfortunate that the government demoralise the officers who discharge the duties honestly and diligently and bring to book the persons indulging in black marketing and contra banding the liquor. This is one of the eloquent cases where such a story state of affairs has come to light. The transfer in the present case is nothing but mala fide and arbitrary action at the behest of the persons interested to target the honest officers who efficiently discharge the duties³⁰.

In view of the unimpeachable and eloquent testimony of the performance of the duties, it will be obvious that the transfer is not in public interest but is a case of victimization of an honest officer at the behest of the aggrieved complainants carrying on the business in liquor and toddy³¹.

Under these circumstances, as stated earlier, the transfer of the appellant is nothing but mala-fide exercise of the power to demoralise honest officers who would efficiently discharge the duties of public office³².

The transfer order of the appellant stands quashed. Order may be communicated to the chief secretary to take appropriate action against the persons responsible for it and the action taken may be informed to this registry³³.



³⁰ *Ibid.*

³¹ *Ibid*

³² *Ibid*

³³ *Ibid.*