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(I.S.S.N 2321- 6417 (Online))

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LAW AND GOVERNANCE*

INTRODUCTION

The three organs of the Indian Government which constitutes executive, legislative and judiciary perform the quintessential functions without which a welfare state can't be established involving rule making, rule interpreting and rule implementing. These rules are those laws which are a part of our constitution, enacted in order to maintain smooth functioning of the welfare state by protecting our rights and liberties. The basic principle behind this formation is separation of powers or functions as followed by India. This separation of power enables the government to not to interfere in each other's periphery and be accountable at the same time in order to avoid misuse or overuse of the given power. This separation of power leads us to the principle of checks and balances but this principle wasn't applied on Judiciary which led to enormous corruption in that organ. Judiciary checked the laws made by the Legislature and legislature is accountable to the people who elected them as their representatives. Executives are also accountable to the public but judiciary is not. Judges are immune from being criticized by the Public using the weapon of Contempt of court which visibly is misuse of power. The power of one organ can be checked only with the power of another organ. Judges were there to judge people who committed any offence but no judge was there to judge the offences of the judges, most of which never came out of the walls of the judiciary. As perfectly quoted by Montesquieu, "Constant experience has shown us that every man invested with power is apt to abuse it and to carry his authority until he is confronted with limits". Judiciary can be said as one of the most prominent organ of the government as it maintains balance between the two organs and all the departments. Judiciary is responsible for interpreting the statutes and maintaining the decorum of constitution and balance between law and its citizens which needs to be done in accordance with other organs in just, fair manner. The judgments of the judges were considered unquestionable and flawless. Moreover, judiciary is that organ which is accessible to public easily and affects them directly. Not all the judges have a spot on their white collar but some of them are corrupt who are demeaning the

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priesthood and integrity of the entire Judiciary. This is harming public trust on the judiciary. Thus, the need for judicial accountability arises by involving members from all the organs of the government by giving equal status and consideration to them in order to control the over-independence of the judiciary in a way which doesn't affect the decisional and structural independence of judiciary. Thus, accountability and independence of judiciary must go hand in hand in order to protect democracy and public trust on government.

INDEPENDENCE OF JUDICIARY AND ITS NEED

“Independence” literally means the absence of dependence, which is to say complete autonomy and insusceptibility to external guidance, influence or control.¹ Before independence, judges in India were appointed by the Crown which gave full independence to them. After independence, this principle was given due consideration and it became a part of the Basic Structure of the Constitution, which cannot be amended. The independence is guaranteed by the Constitution which holds that the judges of the Supreme Court and the High Court hold office till he attains 65² and 62³ years of age. The directive principle of State policy in Article 50 mandates separation of judiciary from the executive to uphold its independence, as crucial for its function as the supervisor under the Constitution. The power of independence is misunderstood as independence from Accountability and not from executive and legislature. To protect the judiciary from dangers within, the framers of Indian Constitution considered it sufficient to provide for removal of a judge of a High Court or the Supreme Court in the extreme case of proved misbehavior or incapacity under Articles 217 and 124 respectively; and to vest the control over the subordinate judiciary in the respective High Court under Article 235. In this manner the Constitution provides for enforcing judicial accountability preserving the independence of the judiciary.⁴ The

¹ See, Charles Gardner Geyh, *The Elastic Nature of Judicial Independence and Judicial Accountability*, in *The Improvement of the Administration of Justice*, 167 (7th Edition, 2001).

² Article 124 (2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty five years: Provided that in the case of appointment of a Judge other than the chief Justice, the chief Justice of India shall always be consulted:

(a) a Judge may, by writing under his hand addressed to the President, resign his office;
(b) a Judge may be removed from his office in the manner provided in clause (4).

³ Art 217(1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the chief Justice, the chief Justice of the High court, and shall hold office, in the case of an additional or acting Judge, as provided in Article 224, and in any other case, until he attains the age of sixty two years Provided that

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office by the President in the manner provided in clause (4) of Article 124 for the removal of a Judge of the Supreme Court;

(c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.

⁴ Hon'ble.Mr. Justice J.S.Verma, *Judicial Independence: Is It Threatened*, pg 1

constitution of India protects the judiciary from political criticisms regarding their interpretation of law, judgments, functioning, discharge of duties etc. The independence of judiciary is also protected by considering the superior courts (SC and HC both) as the *court of record*. Supreme Court said “The concept of independence of the judiciary is a noble concept which inspires the constitutional scheme and constitutes the foundation on which rests the edifice of our democratic polity. If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the rule of law under the Constitution; it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law thereby making the rule of law meaningful and effective.”⁵ Every country struggles to maintain balance between independence and proper, accountable, fair justice system.

In UK, from where the Indian judiciary system was borrowed stipulates the tenure of the judges on the basis of their good behavior and their removal after an address to both the houses of the parliament. In America, Article III of the American Constitution says that the Judges, of the Supreme and inferior courts shall hold their offices during good behavior and, a compensation shall not be diminished during their continuance in office.

ACCOUNTABILITY OF JUDICIARY

Whenever the question of judicial independence arises, question of judicial accountability also arises. In simple words, accountability will make the judiciary answerable for its acts to some authority which will keep a check on its discourse of power. Transparency is facilitated through the process of accountability. It is best achieved when one is accountable to law. Judiciary in many countries no longer uses judicial independence as a defense for providing judicial accountability. The main task of judiciary is to dispense speedy justice and bring relief to the litigant. It is through this way that public trust can be maintained but judicial accounting requires strong institutional structure as any loophole may invite the political forces to reduce integrity of the judiciary. Accountability should be in such a way which will invite criticisms but will not lead to disparagement of the judges as it will directly affect public confidence and trust over judiciary. The existing institutional systems have failed in making judiciary accountable, removal of corruption, accusing and punishing the corrupt judge. Articles 121 and 211 provide immunity to the members of Higher Judiciary, with respect to the conduct of the Judges in the discharge of their duties. Article 211 amounts to an absolute constitutional prohibition against any decision in the Legislature of a State in respect of the judicial conduct of the Supreme Court or of the High Court. Article 121 on the other hand provides for a general rule that no discussion shall take place

⁵ S.P. Gupta v. Union of India, AIR 1981 SC 149

in the Parliament with respect to the conduct of any judge of the Supreme Court or of the High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the judge under the circumstances stated in the Constitution. Thus, reading Article 121 and 211 together, it is clear that the judicial conduct of a judge cannot be discussed in the State Legislature. It can be in Parliament only, upon a motion for presenting an address to the President praying for the removal of the Judge. The Constitutional makers were so much concerned about the independence of judiciary that they unavoidably placed them beyond any controversy other than the provisions provided in Article 121 which talks about the restriction on discussion in Parliament with respect to the duties and conduct of the judges. Finally, the concept of judicial accountability, criticism, public scrutiny and judicial independence has been nicely stated by the Supreme Court in the *Re D.C.Saxena*'s case: ⁶

"...administration of justice and Judges are open to public criticism and public scrutiny. Judges have their accountability to the society and their accountability must be judged by the conscience and oath to their office, i.e., to defend and uphold the Constitution and the laws without fear and favor. Thus the judges must do, in the light given to them to determine, what is right. Any criticism about judicial system or the Judges which hampers the administration of justice or which erodes the faith in the objective approach of the Judges and brings administration of justice to ridicule must be prevented. The contempt of court proceedings arise out of that attempt. Judgments can be criticized. Motives to the judges need not be attributed. Faith in the administration of justice is one of the pillars on which democratic institution functions and sustains. In the free marketplace of ideas criticism about the judicial system or judges should be welcome so long as such criticism does not impair or hamper the administration of justice. This is how the courts should exercise the powers vested in them and the Judges to punish a person for alleged contempt by taking notice of the contempt suo motu or at the behest of the litigant or the lawyer... Law is not in any doubt that in a free democracy everybody is entitled to express his honest opinion about the correctness or legality of a judgment or sentence or an order of a court but he should not overstep the bounds. Through he is entitled to express that criticism objectively and with detachment in a language dignified and respectful tone with moderation, the liberty of expression should not be a license to violently make a personal attack on a judge. Subject to that, an honest criticism of the administration of the justice is welcome since justice is not a cloistered virtue and is entitled to respectful scrutiny. Any citizen is entitled to express his honest opinion about the correctness of the judgment, order or sentence with the dignified and moderate language pointing out the error or defect or illegality in the judgment order or sentence. That is after the event as post-mortem".

DIFFICULTIES IN ACHIEVING JUDICIAL ACCOUNTABILITY

Unelected judiciary, being unanswerable to anybody except people from its own division has led to a long conflict between legislature and executive. Courts have gone far beyond implementation of

⁶ In *Re D.C.Saxena*, AIR 1996 SC 2481

laws like Habeas corpus case and many more, threatened officers with a weapon of contempt of court if they don't follow court's instructions, etc undermining democracy, public trust, rule of law, and powers given through separation of powers. The other reasons for its failure are-

- 1. Impeachment** - The motion of removal of judges commences in the Parliament after the investigations of the charges are proved true. When Article 217 is read with Article 124(4), it says that the impeachment process can only be initiated on the grounds of misbehavior or incapacity in both the houses and with a majority of 2/3rd of the members, the judge is then impeached from his office after president's assent on it. In pursuance of the provisions of Article 124(5) of the Constitution the Judges (Inquiry) Act, 1968 was enacted to regulate the procedure for investigation and proof of the misbehavior or incapacity of a judge of supreme court/high court and for the presentation of an address by Parliament to the President and for matters connected there with. This method of impeachment is an utter failure and need for a different method of impeachment of judges arises. The importance of affording protection to judges was recognized by the constitution makers who while giving full freedom of speech to the members of parliament provided an Article 121 of the constitution that there should be no discussion in Parliament with reference to the conduct of any judge of high Court or Supreme court in the discharge of his duties except during his impeachment motion⁷. None of the accused judges have been impeached from their office due to this method of impeachment. For e.g. During J. Bhalla's impeachment BJP declined to sign because L.K. Advani was acquitted by him in the case of Babri Masjid demolition case⁸. Also, in the impeachment motion of J. Ramaswamy, congress refused to cast a vote against him despite of proven misbehavior and misusing of courts fund.
- 2. Judicial activism-** Judicial activism is born out of the doctrine of judicial Independence with a motive of placing the law before the ruler. This brings justice to the doorstep of people particularly in areas in which laws are not formed by the Legislature by taking up the matter with suo moto especially in the fields of Social and Economic problem. This makes the judges creative in solving disputes by making laws through natural justice and on the principle that no one can be a judge of himself. This judicial activism sometimes crosses the paths of Legislature. Article 142 of the constitution was invoked by the Judiciary⁹, *Epuru Sudhakar v. Government of Andhra Pradesh*¹⁰ by forbidding the

⁷ O.Chinappa reddy, *Conscience keepers of the law: Judges and Courts*, The court and the constitution of India, Oxford India Paperbacks, pg.209

⁸ Shoma Chaudhury, 'Half of the last 16 Chief Justices were corrupt' (last visited 7 January 2016, 6:01pm) <http://www.judicialreforms.org/files/Tehelka%20interview%20with%20Prashant%20Bhushan.pdf>

⁹ *Keshub Mahindra Case AIR 2011 SC 2037*

president to exercise the power of clemency without reference to the Court showing that Judiciary has become self consciously over assertive and appear occasionally to encroach upon the parliamentary field. Thus, the need for accountability arises in judicial activism.

3. Judicial appointment-

Chief justice of India and other judges of SC are appointed by the President in consultation with some other judges of HC and SC. The CJ of HC is appointed by the President in consultation with CJI and governor of the respective states. Though appearing to be plain, these modes of appointment have led to a lot of controversies in the past few years. Now transparency has been one aspect of the collegiums' functioning which made the government to explore alternative mechanism to carry out appointment and transfer of judges. Three cases which were decided to unwind the problems related to appointment of judges further entangled the problem. These cases were opinions and not judgments. In the First Judges case¹¹, the SC appeared virtually to surrender itself to executive power exercised through the President which meant that executive government, and the opinion of executive was to prevail over the views expressed by the Chief Justice of India¹² which was reduced to nullity later on. In the second judge case¹³, the SC realized its mistake and virtually reversed its judgment. The Chief Justice was opinion was to be accepted but with a collegiums of three judges including two next senior colleagues which can be drawn from Article 124(2). In the Third judges case¹⁴, four judges were substituted instead of two next senior judges in the collegiums but non transparency has been one aspect of the collegiums' functioning which made the government to make an alternative mechanism to carry out appointment and transfer of judges. The National Judicial Appointments Commission Act, 2014 was on the floor to seek board area for greater transparency of appointment process and objectivity in the appointments to higher judiciary which will doubtlessly dilute the primacy of the CJI and the collegiums¹⁵ which failed and was scrapped by the SC itself stating that it's unconstitutional. J. Ruma Pal viewed NJAC as the "best kept secret in the country". The NJAC led to the problem where incompetent judges were upgraded to the SC by simply corrupting, favoring or buttering up the senior judges. These activities were not only compromising the best interest of the country but were also being unfair to the competent and deserving judges.

¹⁰ AIR 2006 SC 3385

¹¹ S.P. Gupta v. Union of India, AIR 1982 SC 149

¹² O.Chinappa reddy, *Conscience keepers of the law: Judges and Courts*, The court and the constitution of India, Oxford India Paperbacks, pg 305

¹³ Supreme Court Advocates-on Record Association v. Union of India AIR 1993,SC

¹⁴ In re Special Reference 1 ,AIR 1998 SC 1

¹⁵ V. Venkatesan, *Appointment and Accountability*, Constitutional Conundrums, Lexis Nexis, pg. 229

The best examples can be up gradation of J. Dinakaran.¹⁶ In paragraph 106 of his dissenting judgment in the NJAC case, Justice Chelameshwar said:

“As Bentham has observed, ‘In the darkness of secrecy sinister interest, and evil in every shape, have full swing.’

Transparency is an aspect of rationality. The need for transparency is more in the case of the appointment process. Proceedings of the collegium were absolutely opaque and inaccessible both to public and history, barring occasional leaks. Ruma Pal, J. is on record – “Consensus within the collegium is sometimes resolved through a trade-off, resulting in dubious appointments with disastrous consequences for the litigants and the credibility of the judicial system. Besides, institutional independence has also been compromised by growing sycophancy and ‘lobbying’ within the system.”¹⁷

In the United States, persons being considered for elevation to the US Supreme Court have to appear before the Senate, where they are questioned by the members not only about their judicial views and performance but also about their personal life, and these proceedings are televised. The persons being considered should be asked to appear before the collegium, and questioned by its members in televised proceedings, so that there is public transparency both about what the collegium is looking for in a judge and what the judge herself or himself has to offer.¹⁸

4. Contempt of court –

Contempt of court is one of the most controversial powers of the court which was a defense, now being used as a weapon by the judiciary against the public or other authorities for protecting itself from any kind of criticism. This power was given to uphold the dignity of judges and protecting them from insult. This power is given by the people themselves to the court by Article 129 and Article 215 which the courts keep to be properly sheathed to be sued rarely but only when public demands it. ¹⁹ This power was given with a good reason to protect the judges from litigations and it is necessary for a judge to be known by all the people being impartial and non-litigious; it is likely to cause embarrassment in the minds of the judge himself while discharging his judicial duties.²⁰ The court has extended its purview of contempt of court far beyond it should be as there is no

¹⁶ J. Markandey Katju, One Way to Fix the Collegium is to Televisе its Proceedings <http://thewire.in/2015/11/05/one-way-to-fix-the-collegium-is-to-televisе-its-proceedings-14863>

¹⁷ *Ibid*

¹⁸ *Ibid*

¹⁹ O.Chinappa reddy, *The Sword of Damocles: Contempt of court*, The court and the constitution of India, Oxford India Paperbacks, pg 202

²⁰ *Brahma Prakash Sharma v. U.P.*, 1953, SCR,1169

definite definition of contempt of court in the constitution. For this purpose, even the contempt of court Act of 1952 has been criticized as it violates freedom of speech and expression of an individual like in the famous case of *In Re Arundhati Roy*²¹ where she criticized the judgment of *Narmada Bachao Andolan v. UOI*²² as an activist and was charged for contempt of court. She was given imprisonment for one day and a fine of 2000 Rs was levied on her.²³ Another case was of *Mid –Day Journalists* in which he was charged for contempt of court because he screeched the acts of J. Sabharwal. Even wrongly assuming the exposition of a philosophy in the case of *E.M.S Namboodiripad V. T. Narayan Nambiar*²⁴ can constitute contempt of court which is difficult to understand. On the brighter side, SC considered many criticisms as ‘opinions of the gentlemen’ rather than contempt of court like in the case of *Shamlal and Mulgaokar*²⁵, SC appeared to hold the criticism, however sharp and stinging, should not be the subject matter of contempt proceedings.

5. **Immunity from RTI filing** –The researcher sought to file an online RTI against MP HC principal bench in Jabalpur city, MP. While filing the option for the institution against which the researcher wanted to file RTI, Judiciary or any department of judiciary was absent Ministry of Justice was the only department which was in existence related to this area. Bringing judiciary under RTI is one of the best methods to bring transparency and reduce corruption in this organ. In the famous case in which the foundation of RTI was laid by SC²⁶. It stated “the people of the country have the right to know about every public act ... this is derived from the concept of freedom of speech... To cover it with the veil of secrecy the common routine business is not in the interest of the public.”²⁷ Subhash Agarwal filed for RTI against judges after whom The Central Information Commission had directed the information officer of the court to obtain the information from the CJI’s office and provide it to the applicant. This prompted the SC to file a writ petition in the Delhi HC, claiming that asset disclosure was exempted under RTI act on the basis that this information was disclosed by the judges to the Chief Justice under “fiduciary relationship”.²⁸ The Delhi HC said that they are exempted from Sec. 8 (1) (j) of RTI Act.²⁹

²¹ AIR 2002

²² AIR 1999 SC 3345

²³ S.P. Sathe. “Accountability of Supreme Court”, p.1384, Economic and Political Weekly, 13th April, 2002 in <http://www.judicialreforms.org/files/Accountability%20SC%20EPW.pdf>

²⁴ AIR 1970 SC 2015

²⁵ AIR 1978 SC 727

²⁶ *Raj Narain v. Indira Gandhi* 1975 AIR 865, SCR (3) 333

²⁷ Prashant Bhushan, “judicial accountability”, p.1

²⁸ Prashant Bhushan, “Judicial Accountability”, Economic and Political Weekly, vol. XLIV No.37, 12th September, 2009, p. 9 in

The then CJI K G Balkrishnan, maintained that the RTI Act doesn't apply on him, that he wasn't bound to answer queries whether there had been compliance with the 1997 *Code of Conduct* resolution requiring the judges to disclose their assets to him.³⁰ This Act was brought in order to control corruption in various organs of our democracy; executive and legislature come under the ambit of RTI but not judiciary seems unfair and fishy which undermines public confidence on Judiciary.

SUGGESTIONS FOR ATTAINING JUDICIAL ACCOUNTABILITY

1. Corruption & Institutional Failings-

Judges have an obligation to avoid corruption which invites greed in any manner and less obvious forms of partiality, or even the appearance of it. So, they must avoid membership of organizations when the fact of membership is inconsistent with judicial impartiality. There is a need, here, to balance the rights of judges as individuals, to pursue causes in which they believe, on the one hand, with the need for public confidence on the other.³¹ The real strength of the judiciary is the trust and confidence of the people in it and that such trust and confidence will continue only when judiciary is seen as a noble, virtuous, incorruptible institution.³² Prompt and firm action needs to be taken against corrupt judges and constant vigil is to be maintained against the erring ones. Constant refresher courses for judges were to be arranged to improve their conduct and ethical behavior. In-house proceedings do not have legal sanction as such and should be avoided. The contempt of court power is often used, rather abused to silence legitimate criticism of the judiciary.³³ There is a need to have a proper accountable institution involving members from all the organs other than completely being accountable to one organ which might lead to a system of loot and shares. Judges of HC and SC are immune from any kind of investigations without CJI'S Prior Permission³⁴ as leading to secrecy and enhancement of corruption in judiciary which needs to be amended as everybody should be answerable for their acts. The amendment is required in filing of FIR too where a citizen can't file an FIR against a judge without CJI's permission. However, the court has been taking Central Vigilance Commission's help by establishing vigilance cells in the HC in critical cases because of their standardized performance in eradicating corruption from public authorities

<http://www.judicialreforms.org/files/EPW%20judicial%20accountability%20asset%20disclosure%20and%20beyond.pdf>

²⁹ See Sec 8 1(j) information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

³⁰ V. Venkatesan, *Appointment and Accountability*, Constitutional Conundrums, Lexis Nexis, p 235

³¹ Sumantra Sinha, *Autonomy Vis-à-vis Accountability: 'Are the Scales of Justice really balanced?'*, Vol. 69,pg. 91
<http://www.jstor.org/stable/41856394>

³² *Ibid*

³³ *Ibid*

³⁴ K.Veerawami case, AIR 1991 (3) SCC 655

and their functions enumerated in the Central Vigilance Commission Act 2003 and the guidelines laid down by them for transparency, internal control, fair play etc .Revolution by consumers of justice is also required to eradicate corruption from grass level.

2. Appointment and retirement of judges-

Appointments of judges, unless carefully screened by the collective wisdom of a panel with versatile experience, may result in distorted selections, and the products – the appointees-may turn out to be bad choices. Leaving this process to the chief justices or the first ministers is no assurance that this secret process will eliminate favoritism, political pollution and other unprintable adulterations.³⁵ Inclusion of Executive and Legislature both in the selection of process will increase transparency and equal opportunities to minorities and women which will give fair reflection of the society. As Dr. Ambedkar inculcated in Article 217 and 124 that President shall appoint the judges in **consultation** (*not concurrent as modified by the Judiciary*) with CJI should be followed rather than appointment of judges by judges themselves exclusively. Judges have an important role but their exclusive role in appointment shouldn't exist same principle applies on Executive also otherwise "History of the 80ies when a lot of undeserving appointments were done under the dominion of the then Law Ministers Mr. Hansraj Bharadgwej and Mr. Shivshankar will repeat itself and judiciary went back foot" as quoted by J. Rajeev Dhawan. The government has been appointing the *eminent independent positions* like Judiciary though different in profession Chief Vigilance Commissioner ,Comptroller and Auditor General and chief election commissioner which is going uncorrupted hence inculcation of other organs will help the judiciary in fair appointments. NJAC which has been scrapped by the SC itself and there is a need of an effective and efficient replacement. The Judicial Appointments Commission Bill, 2013 (JAC Bill) was on the floor to seek board area for greater transparency of appointment process and objectivity in the appointments to higher judiciary which will doubtlessly dilute the primacy of the CJI and the collegiums.³⁶ The appointments after finalization should be publicized or put under RTI for ensuring transparency.

We can also adopt the methods followed in UK and USA. In UK, the Constitutional Reform Act, 2005 established a judicial appointment commission for appointment of judges and conduct ombudsman. In USA, President appoints the judges with Senate's consent with no retirement age of the judges. This system doesn't affect the Judicial Independence and helps in maintaining Judicial Accountability in the Judicial System.

³⁵ V R Krishna Iyer, *Judicial Accountability to the Community- A Democratic Necessity*, Economic and Political Weekly, Vol. 26, No. 30 (July 27, 1991), pp 1809 <http://www.jstor.org/stable/41498506>

³⁶ V Venkatesan, *Appointment and Accountability*, Constitutional Conundrums, Lexis Nexis, p 229

3. Enactment of laws for Judicial accountability – Credibility of the judiciary is more important than its independence in a democracy which also involves fairness and respecting other institutions. Credibility means transparency and involvement of checks and balances. Judicial Standards and Accountability Bill ,2012 was passed by the Lok Sabha to prevent corruption in Judiciary in which all the judges will be obligated to display their and their family's financial and income statements. It will also lay down procedure of removal of judges and judicial standards. The complaints will be confidential and penalty will be imposed in its breach. This bill will have Oversight Committee consisting of non-judicial members who may issue warnings to the judges and recommendations for their removal on proven incapacity or misbehavior upon which one Scrutiny Panel may be formed and on the basis of Scrutiny Panel's report, impeachment will initiate. However, the judge against whom the impeachment has been initiated can appeal or ask for 'Judicial Review' in the SC but once the decision has been given by the President, it cannot be challenged. Another threat to accountability is the post-retirement benefits. Pre-retirement benefits are luring judges leading to increase in vacancies when already there is a lot of vacancy and no appointment process has been framed.

4. Amendment in contempt of court- There is a need to define what all acts leads to contempt of court so that judges can't misinterpret it or misuse it against the criticism done by the public or some public authority. If possible, a different committee should take up these cases and see what falls under the purview of contempt of court. Truth should be considered as a defense by the courts under all circumstances other than just public interest and bona fide intention as amended in Sec. 13 (b) of contempt of courts Act of 1971 regarding kinds of contempt which aren't punishable. J. Chinappa Reddy suggested that 'contempt of court' should be replaced with 'obstructing justice' and the definition of criminal contempt too should be amended in the Act.³⁷

PUBLIC ATTITUDE TOWARDS JUDICIAL ACCOUNTABILITY AND INDEPENDENCE

Advantages of accountability are widely accepted leading to enhancement of credibility of that institution. Judiciary is not democratically accountable to public or any other authority also with increase in corruption, be it at ground level or at higher level, public is losing its faith from judiciary. Layman generally has no or less knowledge of what judicial independence, judicial accountability means, all that matters to them is that widespread corruption is making them to suffer and they want fair judgments when they visit courts with their grievances. Public information campaigns are increasing their knowledge and they are demanding better governance

³⁷ V Venkatesan, *Contempt of Court*, Constitutional Conundrums, Lexis Nexis, pg. 265

from the judiciary with all vested rights. Aware citizens want judges to be accountable and sought remedies against their corrupt activities, misbehavior, mal-treatment of witnesses or litigants. Some of them feel that judges will save their men and no action will be taken against them so there is no sense in seeking relief against the ill conduct of the judges. Common man is the ultimate consumer of justice and along with NGO's they are coming forward for judicial accountability. Like every other organ, judiciary must be accountable too until it affects its independence.

CONCLUSION

The fact that accountability is demanded shows that credibility is more important than independence of this institution and this cannot be taken as a defense to avoid accountability considering the fact that judicial independence is unquestionable. Accountability and Independence are not at war but are complementary in nature which being together enhances credibility and quality of largest democracy of the world. There is corruption which is increasing and the checks and balances is essential considering the fact that judiciary's accountability should be done in a different manner than of legislature and executive organ of the government. All the three organs must work together to eradicate corruption and bring in quick, proper appointment and retirement commission as already the courts are in the need of speedy trail due to excessive work and pending of humongous number of cases along with increase in the number of vacancies which is affecting judicial work and fast delivery of justice to the public. The strike between independence and accountability seems possible to the researcher with involvement and importance of other organs in the committees looking after the accountability of the judiciary considering the necessity of Independence of the judiciary. If accountability will not be considered as important now, the judiciary will completely lose its credibility, public trust and confidence, making Indian democracy vulnerable. People also need to be aware and awake. They should ask for accountability and judicial reforms instead of bribing the judiciary. It's not completely a task of government to look after the accountability of all the organs of the government. Private individuals and NGO's must also assist them in achieving these goals.

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