

## JUDICIAL ACCOUNTABILITY AND INDIAN JUDICIARY\*

“We must never forget that this court is not a court of limited jurisdiction of only dispute settling. Almost from the beginning this court has been a lawmaker....Indeed the courts role today is much more. It is expanding beyond dispute settling and inter stitial law making. It is a problem solver in nebulous area. In this case, we consider no more its opportunity, it is a duty....”<sup>1</sup>

The traditional function assigned to the judiciary that was much in place in the 19<sup>th</sup> century of being an arbiter of disputes between citizens *inter se* has radically changed in 20<sup>th</sup> century. The lines quoted above very well illustrate the expanded role that judiciary is assuming to itself. The process of judicial review often pitted the judiciary against the executive leading to charges of government by the judiciary. In developing colonies this function exacerbated the fault lines of tension between the two branches of government opening the judiciary to the charges of overreaching itself.<sup>2</sup>

The independence of judiciary is the sine qua non for the very existence of democracy. By Independence of judiciary we mean that the judges are totally free to adjudicate the matters before him in accordance with the perception of the facts and the comprehension of law without any influence or pressure whether directly or indirectly from any angle. There are basically two types of independence that judges can exercise one is decisional independence and the other is financial independence.

If we talk about India, Indian constitution has taken enough measure to provide complete independence to the Indian judiciary. If we talk about Judicial Independence in decisional matters, there are enough provisions to take care of that like Article 13,32, 226 etc. There is no legislative or executive influence in the matter of appointment of judges and the judiciary is also free in their financial matters as per the Constitution. Though the judiciary in India does not have its own budget and source of income. It depends upon the union government and state governments as the case may be for funds, salaries, perks and other developmental issues.<sup>3</sup>

The Indian judiciary seem to have made complete use of the independence provided to it by the constitution. Infact, there is general perception that the Indian judiciary has been most active in expansion of the field of judicial review into non traditional areas which were earlier considered beyond judicial purview for want of judicially manageable standards.<sup>4</sup> Keeping in

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<sup>1</sup> K. Veeraswami v. Union of India, (1991 SCR (3) 189)

<sup>2</sup> Das Cyrus, Chandra K, Judges and Judicial Accountability, Dr. Cyrus Das, Judge and Judicial Accountability, Universal Law Publishing Co. Ltd., 2003, P.201.

<sup>3</sup> Dr. Kashyap C Subhash, The Citizens and Judicial Reforms under Indian polity, Pinki Anand, Independence of Judiciary, Appointment of Judges and Rights of Citizens, Universal Law Publishing Co. Pvt. Ltd., 2003,P/185

<sup>4</sup> <http://www.ebc-india.com/lawyer/articles/95v6a1.htm>

mind the peculiar status of India where the gap between have and have-nots is large and their is general need for acceptance of social justice this expanding role of judiciary is easily acceptable. The logical corollary of this acceptance of the expanded role of the judiciary is that the exercise of the power of judicial review must only be for achievement of public interest keeping in mind the fact the country should be governed by Rule of Law.

The judicial accountability in India is considered in two ways. First is the accountability of the higher judiciary in India for their judgements. Have the judges in India been responsive to Constitutional goals and felt the necessities of past and present? Secondly, the institutional methods of making judges accountable in India viz., the method of their appointment, removal and inhibitions to criticism of their work by the law of contempt.<sup>5</sup>

As regards to the first issue, during the first two decades of its establishment Supreme Court did face certain problems but after 1973 there has been no such problem as judiciary's concerns was more towards the human rights and civil rights of the citizens and community rights. We find hardly any discussions about judges being accountable for their judgements on property and economic matters today.<sup>6</sup> Infact some of the decisions given by our judiciary are highly lauded. The development of the concept basic structure of constitution, or giving wonderful judgements like Maneka Gandhi, our judges have made the utmost use of powers and functions assigned to them. The acceptance in decisional matters exist even inspite of knowledge of some inherent dangers from uncontrolled judicial activism, which is also voiced at times. The only solution to this is self restraint by the judiciary with constant awareness of the limitations they have while adjudicating matters that come up before them.

If we discuss about second issue, the method of appointment of higher judiciary and the absence of any disciplinary control including the removal of judges of the superior court raise the question of accountability in India.<sup>7</sup> The failure of removal of Justice V. Ramaswami of the Supreme Court is one such example that shows the practible unworkability of the system created by the Constitution as the only method for dealing judicial misconduct. Here was case of proven misconduct proven by a committee of three judges appointed under the Judges Enquiry Act, yet the motion for removal failed because of a political decision of the Congress party and the issuance of whip to its members asking them to abstain from voting.<sup>8</sup> There have been other cases also which raised relating to Justice Ashok Kumar Mata, Justice Soumitra Sen where the question of accountability of judges have been asked.

Though, here I would like to recognise the fact that Indian judges have always been cautious to use their powers wisely and this forethought was clearly visibly in many decisions. In the Second Judges Case,<sup>9</sup> it was observed :

“o! It is excellent to have a giant's strength, but it is tyrannous to use it like a giant”

In another case P.K Ghosh v J.G Rajput<sup>10</sup>, it was observed:

“Credibility in the functioning of the justice delivery system and the reasonable Perception of the affected parties are relevant considerations to ensure the continuance of public confidence

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<sup>5</sup> Das Cyrus, Chandra K, Judges and Judicial Accountability, T.R. Andhyarujina, Judicial Accountability: India's Method and Experience, Universal Law Publishing Co. Ltd., 2003, P.101

<sup>6</sup> id

<sup>7</sup> id

<sup>8</sup> Dr. Kashyap C Subhash, The Citizens and Judicial Reforms under Indian polity, Prashant Bhushan, Judicial Accountability-Removal of Judges and Contempt of Court, Universal Law Publishing Co. Pvt. Ltd., 2003, P. 259

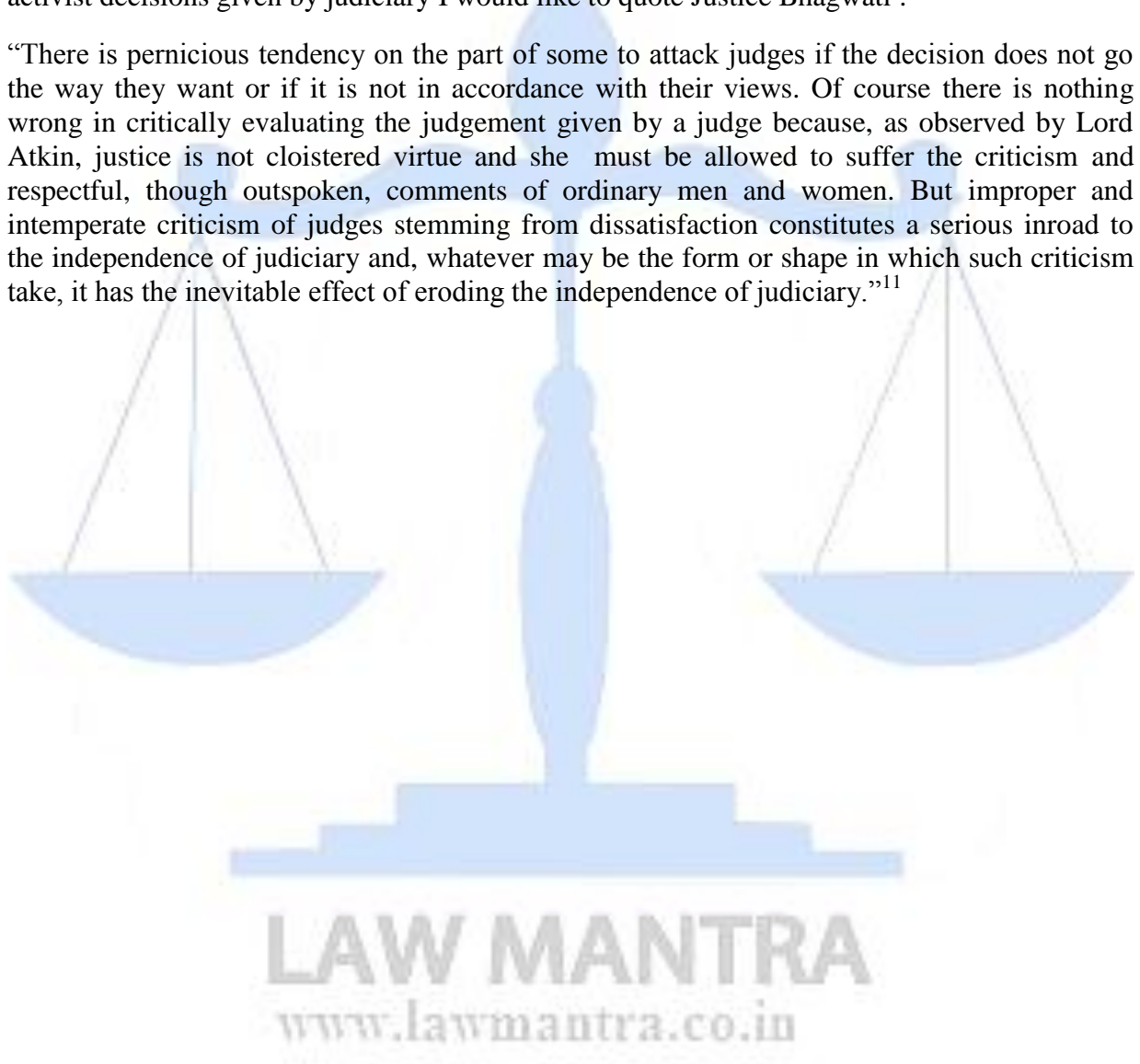
<sup>9</sup> AIR 1994 SC 268

<sup>10</sup> AIR 1996 SC 513

in the credibility and impartiality of the judiciary. This is necessary not only for doing justice but also for ensuring that justice is seen to be done.”

After all this discussion, it can be concluded that there is need of accountability of Indian judiciary in certain matters but this fact can't also be ignored that Indian judiciary enjoy more public trust and confidence than any other organ of the state. Accountability is important to develop a transparent system of working and to ensure that the authority is working within the lines of power assigned to it. The fact that Indian Judiciary has assigned to itself large amount of powers, which did not traditionally belonged to it cannot be ignored but most of the times it has been for the betterment of the citizens of India. As regards to criticism on account of activist decisions given by judiciary I would like to quote Justice Bhagwati :

“There is pernicious tendency on the part of some to attack judges if the decision does not go the way they want or if it is not in accordance with their views. Of course there is nothing wrong in critically evaluating the judgement given by a judge because, as observed by Lord Atkin, justice is not cloistered virtue and she must be allowed to suffer the criticism and respectful, though outspoken, comments of ordinary men and women. But improper and intemperate criticism of judges stemming from dissatisfaction constitutes a serious inroad to the independence of judiciary and, whatever may be the form or shape in which such criticism take, it has the inevitable effect of eroding the independence of judiciary.”<sup>11</sup>



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<sup>11</sup> Das Cyrus, Chandra K, Judges and Judicial Accountability, Dr. Cyrus Das, Judge and Judicial Accountability, Universal Law Publishing Co. Ltd., 2003, P.207Pg.