

**ACCOUNTABILITY: WITH SPECIAL REFERENCE TO INDIAN
JUDICIARY**

**SUB THEME: ACCOUNTABILITY OF THE GOVERNMENT TO
CITIZENS**

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ABSTRACT

Indian government is based on three basic pillars i.e. legislature, executive and the judiciary. Legislature is responsible for making law, executive for the rule application and Indian judiciary is for the adjudication of rule. In the democratic scenario all the institutions works on the principle of the separation of powers. The three pillars of the Indian government works in the entire separate manner to bring the accountability. Although the accountability of legislature, executive and judiciary should be discussed on the same plane but it is more often observed that the major discussions are on the legislature and executive or any other public institution. Because of the independency and supreme power of the country the judicial accountability is not discussed at high level. It is not only the legislature and executive that can misuse their powers but also the third wing of the government i.e. judiciary. The corruption is like a plague which has wide range. Checks and balance are necessary to hold accountability in every institution.

In the light of this the present paper will discuss the accountability with special reference to the Indian judiciary. The paper will reflect the problem with the proper accountability in Indian judiciary and its solution in the background of judicial accountability bill 2010 and solutions to make the Indian judiciary more accountable.

Keywords: Government, Indian judiciary, democracy, judicial accountability bill

Introduction:

The role of Indian judiciary is very crucial in our democracy. The judiciary is a faithful keeper of the constitutional assurances. If the judiciary is independent and it can make the legal system vibrant. In India we have parliamentary democracy, legislature and executive play their crucial role in the formulation of laws, but once a law is passed it is the judiciary which safeguard the interests of the citizens to operate within the adopted laws. So Indian judiciary acts as a check on the arbitrariness and unconstitutionality of the legislature and the executive. Judiciary is the custodian and the final arbitrator in interpreting any constitutional arrangements. The nature of the democracy and development both depend greatly on how the legal system conducts itself to sustain the overall socio-economic and political environment. In the words of Justice K. Subba Rao, there are many essential role and functions of our judiciary. One of its important functions is to balance the federation structure of our country and it maintains equilibrium between fundamental rights and the social justice in the country. The Administrative Tribunals are controlled by Indian judiciary and the legal system derives its authority from the Constitution of India which is deeply embedded in the political system of the country. The democratic framework of the country is based on three pillars and Judiciary is the third pillar of Indian democracy, alongside the legislature and the executive branches. Indian judiciary is an independent body and in our country there is separation of powers between judiciary and legislative or Executive bodies of the Indian Government. The credibility of judicial process ultimately depends on the manner of doing administration of justice. The judicial system of the country is based on the British Legal System that was prevalent in the country during pre-independence era. Indian judiciary is one of the powerful judiciary in the world and it is also the most superior over all institutions in India. Indian judiciary is independent institution which sometimes results in non accountability of the judiciary.

Due to the independency and non accountability of the judges there are so many instances of the misuse of powers by the judges which are hidden somewhere. Corruption is existed in every institution and judiciary is also one of them but it is not discussed openly due to many factors. Although there are many seminars and conferences or debate on the topic of

accountability of the public institutions but there are lack of attention on the issue of judiciary accountability. Judicial Standard and Accountability Bill, 2010 was a landmark in the history of judicial reform in the country which set up many standards or measures to improve standard of judicial accountability in India.

Accountability in general:

Accountability is the answerability, blameworthiness and liability in the terms of governance or we can say it is the expectation of account-giving. For any government the accountability is very important aspect whether it is a public organisation or private. In leadership roles the accountability is the acknowledgment and assumption of responsibility for actions or decisions, and policies which include the administration and governance 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'. Accountability is the sine qua non of democracy.

Types of Accountability:

According to Bruce Stone, O.P. Dwivedi and Joseph G. Jabbra there are eight types of accountability. It can be administrative, managerial, political, market, constituency relation, professional, leadership and legal/judiciary accountability.

Judicial Accountability: Why there is a need?

Judiciary is the custodian of all the rights given by constitution and it cannot be above public accountability and in a democratic framework it should be accountable so that it can ensure justice in a effective manner. Ethical morality is very needed along with the judicial accountability. The judiciary and judges have provided a distinct position in the country by the constitution. The judiciary is independent in India which shield it from the accountability but it is also needed that judiciary ensure itself accountable to the people and to the institution. In a democratic framework every institution is accountable and responsible to the common citizens so the judiciary cannot remain unaccountable. The concentration of powers should not remain in a single institution so there should be some checks to make it more responsive and accountable to the citizens of the country.

Constitutional provisions for making the Judiciary Accountable

One of the main important constitutional limitations on the judiciary is the provision under article 124(2) and (4), under which there is provision for the removal of judges of the Supreme Court and high court and the ground of this provision is proved misbehaviour or incapacity. The article 217 is also put some limitations on the high court in the view of removal of judges. The Judges (Inquiry) Act, 1968 and provisions of Article 124(5) of the

Constitution was framed for the investigation and proof of the “misbehaviour” or incapacity of a Judge of the Supreme Court or of a High Court and for the presentation of an address by Parliament to the President and for matters connected therewith.

Causes of non accountability of Indian judiciary:

1. **Ineffective process of removal:** For the removal of judges of Supreme Court and high court, our constitution has provided the process of impeachment which is a way to remove erring judges. In the process of impeachment the consent i.e. signature of 100 MPs of Lok Sabha or 50 MPs of Rajya Sabha is required. The enquiry committee of three judges is constituted if the motion is admitted by the speaker of Lok Sabha or chairperson of the upper house. If the judges found guilty by the inquiry committee then motion must be passed by 2/3 majority of each house. This process seems very impractical because of many reasons .It is almost impossible to remove the judges of Supreme Court and high courts because of the royal status of the honourable judges and the resistance from the political parties because they might be fearful of the judges regarding any case against them at present or in the future also. So it is virtually impossible to remove the judges by the process of impeachment unless any scandal which become a big issue among public. For the first time in independent India the proceedings of impeachment were initiated against V. Ramaswami . He was the Justice of the Supreme Court. But due to some political considerations, he was survived of impeachment and the process was failed. After him the impeachment proceedings was faced by Justice Soumitra Sen of Calcutta High Court. The proceedings of impeachment were initiated in Rajya Sabha on 17 August 2011 and the motion was passed in upper house.
2. **Contempt of court:** Instead of having any documentary evidence it is rarely discussed in the media and among public because of the fear of contempt of court. The contempt law of judiciary empowers the judges of the high court and Supreme Court to charge any with the criminal contempt, so it is one of the powerful weapons in the hand of judges because of which no one dare to speak or any criticism against the judiciary of the country. Arundhati Roy was charged with contempt because she criticised the court in an affidavit so merely this criticism was the ground of her punishment in the jail. This is the one of the main reason for the non accountability of the Indian judiciary.
3. **Arbitrary Appointments:** Arbitrary appointments also some time reflect the attitude of non accountability of the Indian judiciary (ex. Justice Ashok Kumar in Apr.2003).

4. **Lack of judicial reform:** In India the lack of judicial reform is also one of the reasons for the non accountability of judiciary. There are many loop holes in the existing law of the country which needs to be updated so that any outdated point can be replace by the present focus in the country.
5. **Pending cases:** there are piles of pending cases in the country which reflect inadequacy at some part from the judiciary. People are afraid of approaching the courts in any case of dispute and only consider the courts as a last option of the settlement because of the hashing and time consuming process in the court. The pending case poses a great challenge in front of our government which decrease the faith of common man in the justice. The backlog of more than 31.3 million cases is pending in the country. In the year of May 2014, there were 63,843 pending cases (civil and criminal) .This was an increase of 9 percent from the year of 2011. And the number of pending cases was 61848 as on 01.02.2015. There were 4.4 million cases pending in high courts on Dec.2013.
6. **Problem of under trials:** The problem of under trials is a big hurdle in Indian judiciary system. The under trails spend more time in the jail during the proceedings of trial and this time increase the term of punishment that can be imposed on him or her.
7. **Lack of participation from public and academia world:** In India the role of common citizens and people from the academia world is not considered while the scenario of some countries is different from us where the judiciary ensure the involvement of common citizens in decision making. Although our constitution ensures us a superior and independent judiciary but it is an integral part of the society and its interaction with the local populace can make it healthier. The academia brains also participate with the judiciary in many European countries with democratic framework judges are also human being and any human being can make error which is quite obvious. Who goes to judge the judges? It is an important question. The participation of common man with potential can make judiciary more effective with their feedback.
8. **Corruption as a big hurdle:** Corruption is spreaded in a vast area and Indian judiciary is not an exception .The problem of bribery is a main problem in getting justice for a common man. According to the global anti corruption group Transparency International, the bribery of judges is widespread around the world. According to a survey of Transparency International (TI), as many as 77% of Indians

believe the country's judiciary is corrupt, and 36% paid bribes to the judiciary last year. The report of Global Corruption 2007 (corruption in judicial system) said that it was estimated Rs. 2630 crore was given as bribes to the judiciary which was higher than other sectors and the average amount of bribe was Rs. 3817 per household in India. According to the study by TI, a Germany-based global coalition against corruption quoted a 2005 study by the Centre for Media Studies (CMS), Delhi, on public perceptions and experiences of corruption in the lower judiciary, which estimated the amount paid by Indians as bribes to the judiciary at around Rs 2,630 crore. According to the study 61 percent money of bribe was given to the lawyers and 29 to the court officials and five percent of goes to the middle man in the lower rungs of Indian judiciary. The report claimed the shortage of judges and complex legal procedures for the existence of corruption in judiciary.

Solutions to the problem of non accountability of the Indian judiciary:

1. **Concern to the under trials:** it is the violation of Article 21 of the constitution if the person is in custody for an indefinite period. There should be speedy process of disposal of the pending cases in the judiciary.
2. **Increasing the strength of judges:** for the speedy justice the strength of the judges should be increased. As compared to other developed country the number of judges in the ration with population is very less so it is the need of the time to enhance the number of judges in the country. The number of judges in India is 10.5 for one million, as compared to 12, 41.6, 70, 75.2,107 in Bangladesh, Australia, hungry, Canada, U.S.A respectively.
3. **Need of more judicial reform:** the Indian government should be more attentive to the judicial reform in the country. There should be more public and academia debate on the topic so that more valuable input can be imparted.
4. **The Judicial Standards and Accountability Bill, 2010:** The bill aims to improve the accountability of the Indian judiciary which set many judicial standards to make the judges more accountable for their lapses. This Bill replaces the Judges Inquiry Act but it retaining its basic features. The bill also proposes to form a panel to incorporate a provision to have in-camera proceedings of the committee which will scrutinize complaints against judges and also the setting up of a national oversight committee for the investigation. The proper implementation of the all provision of this bill will make the Indian judiciary more accountable as compared to before.

5. The proper following of all the code of conducts by the judges also makes judiciary more accountable to the common citizens.
6. The society alertness is also needed to make judiciary more accountable. It should raise its voice in case of any injustice. The role of non government agencies is also important one to spread the awareness in this direction.
7. Judgements should be free from any partiality or any pressure from any external agent so that justice can be done with common man.
8. Independent national judicial commission set up in the country is also a good judicial reform to make Indian judiciary more responsive and accountable.

Conclusions: Indian judiciary is the powerful, superior and independent body in the country to give the justice. The independency of the court is also very necessary in taking the impartial, uninfluenced decisions without any interference. Power can be misused also, so there is a need of some check and balance for the judiciary so that it can be also accountable like any other public or private institution in the country. Accountability should be on the priority of every institution so that every institution can be liable for its actions and decisions and by so it can ensure that there will be no common man victim for any actions or decisions by any institution. The judges are human being who can also misuse their authority or can be involved in any malpractices which goes against the justice. To gain the confidence from the public in the rule of law, it is necessary to reinforce the accountability in the judiciary. The accountability of the Indian judiciary undoubtedly will promote the rule of law and institutional responsibility and will strengthen the Indian democracy further.

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