

JUDICIAL ACCOUNTABILITY AND GOOD GOVERNANCE IN A DEMOCRACY

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Abstract

An integrated, long-term strategy which built upon cooperation between government and citizens leads to improved governance. It involves both *participation* and *institutions*. Judicial accountability has traditionally been the primary mode of holding judiciaries accountable. It is imposed by the judiciary itself, and may consequently be seen as a way of avoiding the risk of external influence whilst still holding judges accountable. The Rule of Law, Accountability, and Transparency are technical and legal issues at some levels, but also interactive to produce government that is legitimate, effective, and widely supported by citizens, as well as a civil society that is strong, open, and capable of playing a positive role in politics and government. Accountability of the judiciary may be to the law, to the Executive, the Legislature, or to the public at large. Judicial criticism by the Executive, Legislature, the public and the press are a recognition that the independence of judicial officers is not absolute but is subject to certain limitations. In modern environment, the concept of accountability, permeates public life. In a democracy, based on the rule of law, it is now the expectation of every citizen that all aspects of government ought to be highly accountable. The concept of judicial accountability can broadly be said to refer to the notion that Judges or those who sit in Judgment over others need to account for their judicious and injudicious conduct. The emerging right to democratic governance has come with a call for accountability of all public institutions.

Keywords: Democracy, Judiciary, accountability, transparency, good governance.

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Introduction

“In order to achieve good result, a pious-objective is determined first and then followed by good Karma for its accomplishment.”

-Rig Ved

Accountability is one of the cornerstones of good governance. The notion of accountability is an amorphous concept that is difficult to define in precise terms. However, broadly speaking, *accountability* exists when there is a relationship where an individual or body, and the performance of tasks or functions by that individual or body, are subject to another's oversight, direction or request that they provide information or justification for their actions. The concept of accountability involves two distinct stages: *answerability* and *enforcement*. Answerability refers to the obligation of the government, its agencies and public officials to provide information about their decisions and actions and to justify them to the public and those institutions of accountability tasked with providing oversight. Enforcement suggests that the public or the institution responsible for accountability can sanction the offending party or remedy the contravening behavior.¹

The concept of good governance could be used to invite judgment about how the country concerned was being governed: it enables the raising of evaluative question about proper procedures, transparency, the quality and process of decision making, and other such matters. Good governance means accountability, security of human rights and civil liberties, devolution of powers and respect for local autonomy which all constitute a challenge to democratic regimes. Moreover, good governance has been closely linked to ‘the extent to which a government is perceived and accepted as legitimate, committed to improving the public welfare and responsive to the needs of its citizens.’²

While the concept of Good Governance is relatively new and has been in limelight since 1990s, its core principle is not new to the Indian Society. In ancient India, the king or the ruler was bounded by the Wheel of Dharma where code of conduct or the rule of law was considered

¹ *Accountability in Governance*

<http://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Resources/AccountabilityGovernance.pdf>

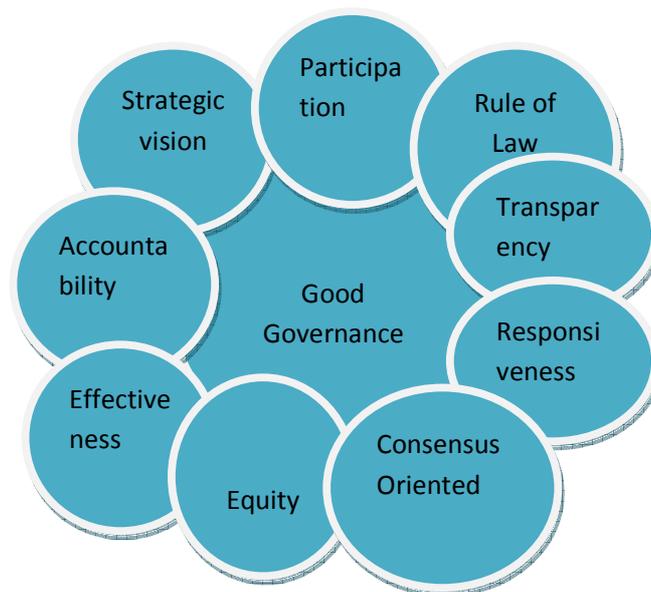
² John Emmanuel Gyong, Good Governance and Accountability in a Democracy, *European Scientific Journal*, December edition vol. 7, No.26, p. 74.

superior to the will of the ruler. The “*Arthashastra*” of Kautilya broadly deal with the state policies and welfare administration which holds its relevancy till today.³

Worldwide Governance Indicators, since 1996 till date, captured six key dimensions of governance:

- i. Voice & Accountability
- ii. Political Stability and Lack of Violence
- iii. Government effectiveness
- iv. Regulatory Quality
- v. Rule of law
- vi. Control of Corruption

The United Nations Development Organization (UNDP) has recognized nine indicators of good governance:



Governance can be seen as the exercise of economic, political and administrative authority to manage a country's affairs at all levels. It comprises the mechanisms, processes and

³ Ritika Semwal, *Good Governance : Avenue to a fair Legal System*
<http://ujala.uk.gov.in/files/ch18.pdf>

institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences.⁴

Independence of the Judiciary and Judicial Accountability are huge themes that should ordinarily be tackled independently. It is now generally accepted that the Judiciary, like its counterparts in the executive and the legislature, must be held accountable to the discharge of its constitutional mandate of judicial function. Indeed, accountability has been called the other side of the coin of the independence of the Judiciary. The only question that arises is as to who it is to be accountable to and the method or mechanism of accountability. The executive is accountable to Parliament by the vote of no confidence and to the Court by the judicial review mechanism.⁵

Meaning of Judicial Accountability

In India people respects the judiciary in a highest level. The judicial system of India is considered as one of the best system in the world. In a democracy judiciary plays a very active role to maintain the peace and order in the society. Judiciary in India is vested with highest power by the people and it is considered as the one of the strongest pillar of the democracy.

Judiciary in India has been given Supreme powers by the Legislature which has lead to the non-accountability of the judiciary to anyone. Judiciary in India enjoys judicial independence but this independence sometimes results in misuse of the powers and privileges by the Judges. Thus, the concept of Judicial Accountability is nowadays is in question. The word 'accountable' has been defined as 'responsible for your own decisions or actions and expected to explain them when you are asked'. Accountability is the sine qua non of democracy.⁶

The higher cause of truth and justice, judiciary and the judges have been accorded a distinct position. What the Constitutional provisions provide for is that "there should be an impartial and independent judicial body to adjudicate upon the matters and to act as the interpreter and guardian of the Constitution." It is also a well settled principle of modern day

⁴ *Issues Report Card Good Governance*, The Urban Governance Initiative (TUGI)
<http://www.gdrc.org/heritage/tugi-culturalheritage.pdf>

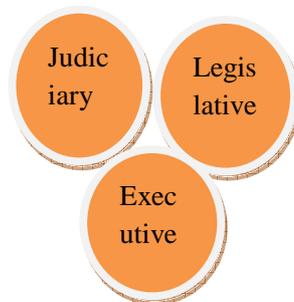
⁵ Hon. Mr. Justice J. E. Gicheru, *Independence of the Judiciary: Accountability and Contempt of Court*, *Kenya Law Review*, Vol 1: 1, [2007], p. 1 & 6.

⁶ According to Oxford Dictionary

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.

Every organ of the government is belong to the people. In a democracy when legislature and the executive is accountable, it is justifiable to expect that the accountability of judiciary. The judiciary cannot remain unaccountable and absolute. No person, howsoever high is above the law similarly, no institution howsoever sanctified can claim to be unaccountable. Ultimately, every institution is accountable to the people in every democratic polity.⁷

Concept of Separation of Powers⁸



The principle of separation of powers states that the executive, legislative, and judiciary powers of government should be divided into different branches and not concentrated in one. These departments should be separate and distinct because of the corrupting nature of power. The three organs of the government—Legislature, Executive and Judiciary— perform the three essential functions of law-making, law-application and law- adjudication. This threefold division of governmental functions is universally accepted as the best way of organizing the government. These three functions are inter-related and inter-dependent. But these are performed by three different organs.

⁷ Suman Meena, *Judicial Accountability*, Legal India Legal News Law Resource Portal <http://www.legalindia.com/%E2%80%9Cjudicial-accountability%E2%80%9D/>

⁸ The theory of Separation of Powers advocates that the three powers of the government should be used by three separate organs. Legislature should use only law making powers, Executive should undertake only law enforcement functions, and Judiciary should perform only adjudication/Judicial functions. Their powers and responsibilities should be clearly defined and kept separate. This is essential for securing the liberty of the people.

The Theory of Separation of Powers holds that the three organs of government must be separate and independent from one another. Any combination of these three functions into a single or two organs is harmful and dangerous for individual liberty. Separation of powers of the three organs is essential for the efficiency of the government and the liberty of the people. Government can work systematically and efficiently only when each of its organs exercises its own powers and functions. Similarly, the liberty of the people can be protected only when there is no concentration or combination of the three governmental powers in the hands of one or two organs. The theory of Separation of Powers holds that for keeping the government limited, which is necessary for protecting the liberty of the people, the three functions of government should be separated and performed by three separate organs.⁹

In a democracy the theory of separation of powers holds good if there is checks and balances. For effective use of theory of separation of powers there is a need of checks and balance theory. The theory of checks and balance controls the misuse of the powers vested with the each organs of the government. In the process a system of checks and balances governs the inter-organ relations. The insightful principle of checks and balances should be restrained and checked with the power of the other two organs. In this way a balance should be secured which should prevent any arbitrary use of power by any organ of the government.

Judicial Accountability and Constitutional Provisions

The fact that the powers of judges are very wide is in itself an indication that the powers may not be allowed to be absolute. Among the constitutional limitations on the judges, the most important one is the provision for 'removal' of judges of the High Courts /Supreme Court by address of the Houses of Parliament to the President on the ground of 'proved misbehavior or incapacity'. This is provided in Constitution of India, Article 124 (2) and (4) in respect of judges of the Supreme Court and in view of Article 217, that procedure is attracted to the 'removal' of judges of the High Court also.

⁹ K.K Ghai, *Separation of Powers: What is the Theory of Separation of Powers?*
<http://www.yourarticlelibrary.com>

In pursuance of the provisions of Article 124(5) of the Constitution the Judges (Inquiry) Act, 1968¹⁰ was enacted to regulate the procedure for investigation and proof of the “misbehavior” 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.

Functions of Judiciary

i) Judicial Review

Judicial Review basically is an aspect of judicial power of the state which is exercised by the courts to determine the validity of a rule of law or an action of any agency of the state. In the legal systems of modern democracies it has very wide connotations. In a true form of democracy, the rule of a fearless independent and impartial judiciary is indispensable and cannot be over-emphasized.

Judicial review of legislation is a result of two of the most fundamental features of Indian constitution.¹¹ The term ‘review’ means examining something with a view to correct or improve on something which has already done. The word review in the phrase of ‘judicial review’ means something which is done by a court to examine the validity or correctness of the action of some other agency. The power of the judiciary to review and determine the validity of a law or an order may be described as the power of “judicial review”.

Judicial Review concept which evolved in *Marbury v. Madison*¹² is an armour to check to check lawlessness – legislative as well as executive with a review to serve “legitimacy of power “and administrative efficiency. Judicial review is the power by which judiciary aims at activating herself in retaining her domain of judicial activity over the state inactivity.¹³

In *L. Chandra Kumar Vs Union of India*,¹⁴ the Supreme Court held that “Henry J. Abraham’s definition of judicial review in the American constitution is, subject to a few modifications, equally applicable to the concept as it is understood in Indian constitutional law.

¹⁰ (51 Of 1968)

¹¹ The first is the two-tier system of law with the constitution as the Supreme law and other legislation being the ordinary law which is valid only in so far as is consistent with the constitution. The Second is the separation of the legislative, the executive and the judicial powers of the state.

¹² 5 US(Cranch)137(1803)

¹³ Pradhan Rasmi, *Doctrine of Judicial Review in India: Relevancy of Defining Contours*
<http://www.legalservicesindia.com/>

¹⁴ (AIR 1997 SC 1125)

Broadly speaking judicial review in India comprises three aspects. Judicial review of legislative action, judicial review of judicial decisions and judicial review of administrative action.”

The Supreme Court in *State of Madras v. Row*¹⁵ stated that the constitution contains express provisions for judicial review of legislative on as to its conformity with the constitution. The court further observed “while the court naturally attaches great weight to the legislative judgments, it cannot desert its own duty to determine finally the constitutionality of an impugned statute”. In *A.K.Gopalan v. State of Madras*¹⁶ the court held that “ In India it is the constitution that is supreme and that a statue law to be valid, must in all cases be in conformity with the constitutional requirements and it is for the judiciary to decide whether any enactment is constitutional or not”. Justice Bhagwati in *Sampath Kumar v. Union of India*¹⁷ held that “Judicial Review is essential feature of the constitution and no law passed by Parliament in exercise of its constituent power can abrogate it or take it away. If the power of judicial review is abrogated or taken away the constitution will cease to be what it is”.

In post-independence India, the inclusion of explicit provisions for ‘ judicial review’ were necessary in order to give effect to the individual and group rights guaranteed in the text of the Constitution. Article 13(2) of the Constitution of India prescribes that the Union or the States shall not make any law that takes away or abridges any of the fundamental rights, and any law made in contravention of the aforementioned mandate shall, to the extent of the contravention, be void.

The higher courts are also approached to rule on questions of legislative competence, mostly in the context of Centre-State relations since Article 246 of the Constitution read with the 7th schedule, contemplates a clear demarcation as well as a zone of intersection between the law-making powers of the Union Parliament and the various State Legislatures. The power of the Supreme Court of India to enforce these fundamental rights is derived from Article 32 of the Constitution. It gives citizens the right to directly approach the Supreme Court for seeking remedies against the violation of these fundamental rights. Besides the Supreme Court, the High

¹⁵ AIR 1952 SC 196

¹⁶ AIR 1950 SC 27

¹⁷ AIR 1987 SC 386

Courts located in the various States are also designated as constitutional courts and Article 226 permits citizens to file similar writs before the High Courts. With the advent of Public Interest Litigation (PIL) and dilution of concept of locus standi in recent decades, Article 32 has been creatively interpreted to shape innovative remedies such as a ‘continuing mandamus’ for ensuring that executive agencies comply with judicial directions.

ii) **Judicial Restraint**

Judicial restraint is a theory of judicial interpretation that encourages judges to limit the exercise of their own power. It asserts that judges should hesitate to strike down laws unless they are obviously unconstitutional. Judicially-restrained judges respect stare-decisis, the principle of upholding established precedent handed down by past judges.

Judicial restraint, a procedural or substantive approach to the exercise of judicial review. As a procedural doctrine, the principle of restraint urges judges to refrain from deciding legal issues, and especially constitutional ones, unless the decision is necessary to the resolution of a concrete dispute between adverse parties. As a substantive one, it urges judges considering constitutional questions to grant substantial deference to the views of the elected branches and invalidate their actions only when constitutional limits have clearly been violated. Compare judicial activism.¹⁸ Judges should always try to decide the cases on certain basis.¹⁹ They “restrain” themselves from setting new policies with their decisions. They make decisions strictly based on what the Constitution says.

The grave problem, however, which Courts are often faced with is this: on the one hand there is no doubt that the Constitution is the supreme law of the land and prevails over statutes and executive decisions, and it is for the Courts to interpret the Constitution, on the other hand, in the garb of interpretation, the Court must not seek an unnecessary confrontation with the legislature, particularly since the legislature consists of representatives democratically elected by

¹⁸ *JUDICIAL RESTRAIN AND JUDICIAL ACTIVISM*

<http://www.grkarelawlibrary.yolasite.com/resources/FM-Jul14-LT-2-Jyoti.pdf>

¹⁹ 1. The original intent of those who wrote the constitution.

2. Precedent –past decisions in earlier cases.

3. The court should leave policy making to others.

the people. The Court certainly has power to decide Constitutional issues.²⁰ However, as pointed out by Justice Frankfurter in *West Virginia State Board of Education vs. Barnette*,²¹ since this great power can prevent the full play of the democratic process, it is vital that it should be exercised with rigorous self restraint.

In *Asif Hameed vs. The State of J&K*,²² the Indian Supreme Court observed: "Although the doctrine of separation of powers has not been recognized under the Constitution in its absolute rigidity, the Constitution makers have meticulously defined the functions of various organs of the State. The legislature, executive, and judiciary have to function within their own spheres demarcated in the Constitution. No organ can usurp the function of another.--While exercise of powers by the legislature and executive is subject to judicial restraint, the only check on our own exercise of power is the self imposed discipline of judicial restraint."

As observed by the Indian Supreme Court in *State of Bihar vs. Kameshwar Singh*,²³ "The legislature is the best judge of what is good for the community, by whose suffrage it comes into existence." In *Divisional Manager, Aravali Golf Course vs. Chander Haas*²⁴ the Indian Supreme Court observed, "Judges must know their limits and not try to run the government. They must have modesty and humility and not behave like Emperors. There is broad separation of powers under the Constitution, and each of the organs of the state must have respect for the others and must not encroach into each other's domain." A similar view was taken in *Government of Andhra Pradesh vs. P. Laxmi Devi*.²⁵

iii) Judicial Activism

The definition of "judicial activism" is an intense ongoing debate. According to Merriam-Webster's Dictionary of Law, judicial activism is,²⁶ it protects the rights of the citizens according

²⁰ Justice Markandeya Katju, *The Philosophy of Judicial Restraint*, Satyam Bruyat a Blogspt

²¹ 319 U.S. 624 (1943)

²² AIR 1989 S.C. 1899

²³ AIR1952 S.C. 252(274)

²⁴ (2008) 1 SCC 683

²⁵ 2008 (3) SCR 330 = (2008) 4 SCC 720

²⁶ "The practice in the judiciary of protecting or expanding individual rights through decisions that depart from established precedent or are independent of or in opposition to the supposed constitutional or legislative intent".

to Black's Law Dictionary judicial activism is,²⁷ judicial activism describes judicial ruling suspected of being based on personal or political considerations rather than on existing law.

In the Indian context, judicial activism is regarded as the active interpretation of an existing provision with the view of enhancing the utility of legislation for social betterment, in accordance with the constitution. The Supreme Court has itself urged judges to actively strive to achieve the constitutional aspirations of socio-economic justice.²⁸ In *S.P. Gupta v. Union of India*,²⁹ referring to the orthodox British view of judging—judge as a neutral and passive umpire.

In reference to its powers that may be exercised when it is moved by an appropriate proceeding for the enforcement of a fundamental right, in *Bandhua Mukti Morcha v. Union of India*,³⁰ the Supreme Court observed

“It is not only the high prerogative writs of mandamus, habeas corpus, prohibition, quo warranto and certiorari which can be issued by the Supreme Court but also writs in the nature of these high prerogative writs and therefore even if the conditions for issue of any of these high prerogative writs are not fulfilled, the Supreme Court would not be constrained to fold its hands in despair and plead its inability to help the citizen who has come before it for judicial redress, but would have power to issue any direction, order or writ including a writ in the nature of any high prerogative writ. This provision conferring on the Supreme Court power to enforce the fundamental rights in the widest possible terms shows the anxiety of the Constitution makers not to allow any procedural technicalities to stand in the way of enforcement of fundamental rights. The Constitution makers clearly intended that the Supreme Court should have the amplest power to issue whatever direction, order or writ may be appropriate in a given case for enforcement of a fundamental right.”

In a move to further eliminate barriers to access to justice, the Supreme Court has even held that a plaintiff can move the court by means of a simple letter, giving way to the

²⁷ "a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore precedent."

²⁸ Dr. Justice B.S. Chauhan, *The Legislative Aspect of Judiciary: Judicial Activism and Judicial Restraint*
<http://www.tnsja.tn.nic.in/Article/BS%20Chauhan%20Speech-%20Lucknow.pdf>

²⁹ AIR 1982 S C 149

³⁰ AIR 1984 SC 802

establishment of epistolary jurisdiction—jurisdiction invoked by writing epistles to the court. While being a relatively newly developed jurisdiction, its contours have been well defined by the court in *Miss Veena Sethi v. State of Bihar*,³¹ and in *Citizens for Democracy through its President v. State of Assam & Ors.*³²

As a result of this broadening of access to the justice system, a large number of Public Interest Litigation (PIL) cases have been coming to court. The judicial creation and practice of the institution of 'Public Interest Litigation' represents the most innovative way and process of achieving/securing the justice in its dynamic form. In *People's Union for Democratic Rights & Ors. v. Union of India & Ors.*³³ the Supreme Court defined 'Public Interest Litigation' as follows:

"Public interest litigation is a cooperative or collaborative effort by the petitioner, the State or public authority and the judiciary to secure observance of constitutional or basic human rights, benefits and privileges upon poor, downtrodden and vulnerable sections of the society."

Independence of Judiciary and Judicial Accountability

Judicial independence is the concept that the judiciary needs to be kept away from the other branches of government. That is, courts should not be subject to improper influence from the other branches of government, or from private or partisan interests.

Judicial independence represents a crucial element of the rule of law and can contribute positively to a process of stable, well-ordered economic, political, and social change.³⁴ Judicial independence concerns the judiciary's freedom from improper control, influence, or interference in the decision of cases—and in the governance and management of the judiciary's affairs. Sometimes we forget that judicial independence is not an end in itself but merely a means to an end. With respect to judicial decision making, the object of judicial independence is to ensure

³¹ AIR 1983 SC 339

³² AIR 1996 SC 2193

³³ (1982) 3 SCC 235

³⁴ Purna Man Shakya, *Judicial Independence And Accountability in Nepal: Conceptual Framework and Existing Discrepancies*, ADB project on Judicial Independence.

http://reliance.com.np/relian/wp-content/uploads/2013/07/Independence-and-Accountability-of-Judiciary-_Saarclaw-Bhutan_.pdf

judicial fairness—that judicial decisions are based solely on evidence and law and not influenced by any improper consideration. With respect to judicial decision making, judicial independence is the freedom to be fair. Judicial accountability refers to the accountability under democratic government of those who govern to those whom they govern—as well as to the rule of law.³⁵

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.³⁶

Before independence, judges were appointed by the Crown, yet they had independence from it. After independence, this principle was taken seriously and it became a part of the Basic

³⁵ Roger K. Warren, *Judicial Accountability, Fairness, and Independence*, presented the Justice Robert H. Jackson Lecture at the National Judicial College, California on July 21, 2005.
<http://aja.ncsc.dni.us/courtrv/cr42-1/CR%2042-1Warren.pdf>

³⁶ Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

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 65³⁷ and 62³⁸ years of age. The parliament is authorized to prescribe the privileges, allowance, leave and pension of the judges of the SC.³⁹ The Constitution prescribes for high qualifications for the judges.⁴⁰

Judicial accountability is in fact a corollary of the independence of the judiciary. Simply put, accountability refers to taking responsibilities for your actions and decisions. Since accountability is a facet of independence the Constitution has provided in Article 235, for the 'control' of the High Court over the Subordinate Judiciary clearly indicating the provision of an effective mechanism to enforce accountability. Thus entrustment of power over subordinate judiciary to the High Court preserves independence as it is neither accountable to the executive or the legislature. The provision of the difficult process of impeachment has also been directed towards this goal. The absence of any mechanism for the higher judiciary except for extreme cases is because the framers of the Constitution had thought that 'settled norms' and 'peer pressure' would act as adequate checks.

A campaign issued by the people's convention on Judicial Accountability and Reforms had mentioned "The judicial system of the country far from being an instrument for protecting the rights of the weak and the oppressed has become an instrument of harassment of the common people of the country. The system remains dysfunctional for the weak and the poor... (and has been) displaying their elitist bias."⁴¹

The three promotions done by Judicial Accountability:

1. It promotes the rule of law by deterring conduct that might compromise judicial independence, integrity and impartiality.
2. It promotes public confidence in judges and judiciary.

³⁷ Art 124(2) of the Indian Constitution

³⁸ Art 217(1) of the Indian Constitution

³⁹ Art. 125 of the Indian Constitution

⁴⁰ Art. 124(3) of the Indian Constitution

⁴¹ Mona Shukla, 'Judicial Accountability: an aspect of judicial independence' in *Judicial Accountability*, Regal Publications, New Delhi, 2010, p. 4

3. It promotes institutional responsibility by rendering the judiciary responsive to the needs of the public it serves as a separate branch of the government.

Transparency is facilitated through the process of accountability. It is best achieved when one is accountable to law. The existing systems of accountability have failed, and the growing corruption is eating away the vitals of this branch of democracy.⁴²

Conclusion

The legal system in India and the judiciary has reached a stage now where the public openly criticize the judiciary and the News Channels debate even the judgments delivered by the Constitutional Courts. Democratic government is designed with checks and balances, not only to protect ourselves from scoundrels, but also to protect ourselves from well-intentioned individuals who simply have erroneous conceptions of American constitutionalism or who have become intoxicated by their own alleged insight and brilliance. Absence of effective accountability prevents consent from legitimizing judicial practice.

Independence should be used only as a means to achieve particular end and not an end in itself. If accountability is not taken seriously we can witness a dangerous nexus between corrupt judges and politicians which will bring an end of democracy. It is also important to keep in mind that accountability in judiciary is different from the other two organs, the distinctive nature of the office demands separate treatment and this is in view of the nation's benefit. In a democratic set up if we except the good governance how the other two organs of the state is accountable in the same way the judiciary made accountable. Than only the common citizens faith in the judiciary will improves. The concept of accountability and good governance are considered as two faces of same coin. In the present system it is necessary to maintain the transparency in the judiciary.

⁴² ISHA TIRKEY, *Judicial Accountability in India: Understanding and Exploring the Failures and Solutions to Accountability*. CCS Working Paper No. 247, Summer Research Internship Programme 2011 Centre for Civil Society.
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