
JUDICIAL INDEPENDENCE AND ACCOUNTABILITY IN INDIA: A COMPARATIVE CONSTITUTIONAL PERSPECTIVE

Lakshya Singh, LL.M., Hidayatullah National Law University

Garvita Singh, B.Com. LL.B., Institute of Law, Nirma University

ABSTRACT

Judicial independence and judicial accountability serve as two cornerstone principles in the legal system. These principles are often viewed as contradictory to each other. It is believed that something cannot be independent and accountable at the same time. This research paper suggests that independence of judiciary and judicial accountability are indispensable parts of the governing process; separating them from each other would be detrimental to democracy's proper functioning. If one maintains the position that accountability is discordant with independence, one risks overlooking the nuanced link between corruption and independence. Judicial independence is essential for fairness and justice when deciding matters in courts of law, while judicial accountability offers essential safeguards for maintaining public trust and legitimacy in our judicial system. This work will contribute to our theoretical understanding of these principles by investigating if and how accountability mechanisms may violate judges' independence. Using a comparative perspective, this research will examine certain hierarchies to identify successful strategies for implementing judicial accountability while maintaining judicial independence.

Keywords: Judicial Accountability, Judicial Independence, Judiciary, Indian Constitution.

INTRODUCTION

“Judicial accountability is a facet of the independence of the judiciary; and the mechanism to enforce judicial accountability must also preserve the independence of the judiciary”.¹

The constitution of India secures social, political, and economic justice for all its citizens. Inequitable justice threatens the interest of civil society and the foundations of the rule of law. Only a strong, independent, and efficient judiciary can provide a means to satisfy the objectives of the constitution. In a democratic framework, judiciary is important in administering and delivering justice. It has the obligation to protect the interest of citizens, along with the onus to apply the values of the constitution. In case of *‘Union of India v. Sankal Chand Himmatlal Seth’*², court stated “judiciary is the watching tower above all the big structures of the other limbs of the state from which it keeps a watch like a sentinel on the functions of the other limbs”. Hence, the judicial system needs to be independent from all external influence, as to work efficiently and impartially.

However, lately allegations and accusations, questioning the integrity of judges have increased. The accusation of massive corruption and unaccountability has called democracy into question, casting shame on the veracity of justice. This brings up the debate that why judicial accountability is necessary. Consequently, continuous public debates and criticism have subjected courts to accountability in order to restore public trust and transparency. But, some of the courts have resisted measures that would subject them to greater accountability, citing concerns about compromising their independence.

This research paper delves into intricacies of the relationship and balance between the two concepts; it suggests that judicial accountability and judicial independence are indispensable parts of the governing process and should not be studied in isolation to each other. Furthermore, it examines the existing legal framework and mechanisms for judicial accountability and judicial independence.

Review of literature

1. Shayonee Dasgupta & Sakshi Agarwal, “Judicial accountability and independence:

¹Justice J.S.Verma, “Judicial Independence: Is It Threatened?”, Lecture at the bar association of Madras High Court, Chennai, 29 January 2010

²Union of India v. Sankalchand Himmatlal Seth, AIR 1977 SC 2328.

Exploring the limits of judicial power”, NUJS Law Review, 2009

The authors of this article study the convoluted relation between judicial accountability and judicial independence in context of Indian legal framework. The authors discuss historical developments that underline the importance of transparency in legal processes, demonstrating the importance of citizen oversight. In addition, authors identify a normative role for civil society in ensuring accountability and transparency, to which they also argue that a responsible court cannot exist without a legislative framework like the Right to Information Act, 2005. Rather than being viewed as an impediment to judicial independence, they contend that calls for accountability is a significant start for maintaining the integrity of the judicial system.

2. Kunal Jha, “Judicial Accountability”, Manupatra, November 17, 2022

The author in this article discusses the principle of separation of power which is designed to avoid power concentration and tyranny, and the principle of checks and balances which prevents any branch of government to have uncontrolled power. The author argues that while judicial independence from any external power or authority is crucial, it has to be duly tempered with accountability so that abuse is avoided. The author further discusses the existing processes relating to impeachment and contempt of court, as also concerns on transparency under the Right to Information Act, highlighting independence having to supplement and not supplant accountability.

3. Sanya Kashyap, “Judicial Accountability in India”, Indian Journal of integrated research in law, 2021

The author in this article comprehensively deals with the concept of independence of judiciary and accountability, furthermore the author talks about the need for judicial accountability, and accountability in the light of Independence of judiciary. A special emphasis is placed on the landmark case of *SP Gupta vs. Union of India*, along with other case laws.

Research Objectives

1. To understand the concept of judicial independence and judicial accountability.
2. To analyze the relationship between judicial independence and judicial accountability.

3. To examine the legal framework and mechanisms.

Research Questions

1. What does judicial independence and judicial accountability mean?
2. How are judicial independence and judicial accountability related to each other?
3. What legal framework and mechanisms support judicial accountability and independence?

Research Methodology

The research methodology used in this research project is doctrinal, which is descriptive in nature. A comparative analysis is done of the two concepts. The author, while writing this paper has relied both on primary and secondary sources of data. The constitution of India along with books and articles are referred to and, online databases like Manupatra, Supreme Court Cases (SCC), law journals, etc., have also been used. A uniform citation style has been used in the project.

JUDICIAL ACCOUNTABILITY – MEANING AND CONCEPT

All the three pillars of Indian government- legislative, executive and judiciary are responsible to make law, enforce a law by executing it and adjudicate them. Said formulation is built on the concept of separation of powers, which guarantees responsibility of government and limits its power from being unchecked; this then secures our rights as well. This is, of course written in jest with inspiration taken from the old adage that "power corrupts men and absolute power corrupts absolutely."³ In addition to it, we have concept of checks and balances. This principle purports that organs of government ought not to have uncontrolled power. A balance must be achieved. Power, after all, "may be the antidote to power alone." As a result, we see parliament's control over executive by no confidence motion, while judiciary has power of reviewing, to examine the validity of laws, regulations etc. The citizens who elect their representatives to a five-year term hold them accountable. The constitution provides for the impeachment of a serving Supreme Court or High Court judge if he is found to have failed

³ Lord Acton, British politician.

in the discharge of his duty or to have committed misconduct in his tenure. Yet, there has been a significant increase in corruption within the judiciary, which is detrimental and demonstrates a lack of transparency and responsibility inside the system. For instance a while ago, corruption charges were brought against Judge Soumitra Sen of the Calcutta High Court; She was found liable of embezzlement of funds and making false statements.

Judicial accountability is an indispensable part of judicial independence. The word 'accountable' means taking responsibility for one's actions and conduct. Article 235 of the Indian constitution recognizes accountability as a key part of independence. It provides high court of a state control over subordinate courts including district court. Thus, judiciary can exercise its power independently without being answerable to either the executive or legislature. In fact, making the provision for impeachment of judges, which is an onerous procedure, also achieves this purpose. However, judicial accountability still seems a distant dream. Underlining the need of accountability in the judicial system, former Prime Minister Pandit Jawahar Lal Nehru has clearly stated, "Judges of supreme court sit on ivory towers, far removed and know nothing about them". Here comes the question, why do we need judicial accountability?

Need for judicial Accountability

The 'Democratic republic' is the government form in which each person's accountability plays a very important role. Individual accountability, in this respect, is attached with law makers administrators, judges and, in fact, everybody who has any kind of authority or power. Power and position in a democracy indeed have a price to pay in form of responsibility towards the public. The judiciary dispenses justice through the courts. Judges are those at the helm of affairs in the courts. They are not only symbolic manifestations of courts, but symbolic manifestations in physical form. How judges fulfill their roles determines both; the perception of public and the trustworthiness of the legal system. Judges have a long commanded respect in India. But, because of some contrempts people are gradually shedding their confidence in the judicial system. Making the legal system accountable is important, as it is responsible for safeguarding the constitution and it cannot afford to deviate from its values unlike other branches of government. Accountability and responsibility of judges are traditional concepts. Provisions for judicial accountability are included in constitution of many countries. Its rationale lies in not allowing consolidation

of power in one branch of the government, especially in a nation like India, where the judiciary is accused of judicial activism; encroaching upon and intruding into realm of other organs of government.

Means to achieve judicial accountability

Following are the ways in which judges can be made accountable-

- **Impeachment Motion-** Article 124 and Article 218 of the Indian constitution provides the provision for removal of a judge. A judge can be removed from his office by a motion adopted by both houses of parliament on the grounds of 'proven misbehavior or incapacity'. The procedure for impeachment of judges is given under Judges Inquiry Act, 1968. As per the Act, an impeachment process may begin in either house of parliament, and if the motion is admitted the speaker or chairman, whoever received it shall constitute a three-member committee consisting of a Judge of the supreme court, chief justice of High Court, and an eminent jurist to look into the matter. Once the committee has made its inquiry, it reports back to the speaker or chairman with its findings, whereafter the report is presented before both house of parliament. The motion then shall be passed by Rajya Sabha and Lok Sabha by total majority or at least two third majorities of members; once the motion is passed, an order for removal of judges shall be passed by the president.

The first judge against whom the impeachment motion was filed was J. Veeraswami. Ramaswami, Chief Justice of Punjab and Haryana High Court. Even though the committee after the inquiry found him liable, yet the motion was defeated. The first judge who was impeached was J. Soumitra. Although, he resigned before the taking up of impeachment motion for misbehavior against him.

- **Judicial Accountability Bill –**

It aims to formulate the criterion for the conduct of judges and to make them liable in case of misdemeanors. Similarly, in the interest of transparency, judges are made to announce their personal assets and liabilities. The proposed legislation of the bill was acceded by the Union Council of ministers in the year 2010, which bestow a provision for a five-member oversight council to deal with complaints in regard to

the higher judiciary. Therefore, the bill was meant primarily to enhance the legitimacy of the judiciary by resolving emerging problems and issues relating to judicial accountability. According to former minister of law Salman Kurshid, “the bill aimed at striking a balance between maximizing judicial independence and laying down accountability at the same time for the higher judicial members”. The proposed national oversight council, shall be presided by an Ex- CJI, that would enable the people to file their grievances against errant judicial officials, will include the CJI and Chief Justice of High Courts. Presently, India does not have any legal framework to handle complaints regarding the misconduct of judges. Furthermore, scrutiny panels are established under the bill to investigate the case. For the purpose of investigation, scrutiny panels shall be deemed to be a civil court.

Additionally, the bill refrain judges to have any kind of affinity with advocates of the bar association and even the close family members and friends of the judges shall not be allowed to present their case before them. They are not supposed to contest for office in clubs, societies, or other associations except relating to the law or the court. Furthermore, according to it, no bias shall be exhibited on the ground of religion, race, caste, gender, or place of birth, either in judicial activity or judgments.

JUDICIAL INDEPENDENCE – MEANING AND CONCEPT

“The bedrock of our democracy is the rule of law and that means we have to have an independent judiciary, judges who can make decisions independent of the political winds that are blowing.”⁴

Austin rightly stated, “The members of the constituent assembly envisaged the judiciary as a bastion of rights and of justice. The Assembly has been careful to keep judiciary out of politics.” An independent judiciary is a condition precedent for the functioning of democratic system. Only a just and independent judiciary can be a vallum for protection of the individual’s rights and deliver equitable justice without any external influence or disturbance. As the guardian of the Constitution, the judiciary may be expected to overturn the acts of legislature or executive. Thus, independence of judiciary is an essential component of rule of law. Ideally, the constitution guarantees the independence of judiciary but laws, conventions,

⁴ Caroline Kennedy

and other appropriate norms and ethical practices can also ensure it. The constitution is merely a stepping stone for ensuring independence of judiciary. Judicial independence has to be protected at all instances from acts of contingency and the ever-fluctuating political, economic, and social environments; being fragile, it cannot be left undefended. In India, the matter of judicial independence has been a stringent cause for public debates. Before discussing about the existing legal framework of judicial independence in India, it is important to know the meaning of independence of judiciary. Judicial independence simply means that working of judicial courts must not be obstructed by the other two organs of the government. The judges must have power to discharge their duties and functions without any extraneous influence, so that they can transmit justice without fear. As rightly stated in *SP Gupta vs Union of India*⁵, 'Judges should be fearless and should upheld on the principle of rule of law. This is the basic concept of Indian judicial independence.'

Furthermore, in a 1993 case of *Supreme Court Advocates on Record v. Union of India*⁶, it was stated - 'the independence of the judiciary is necessary for the functioning of democracy, and that powers and rights cannot be hampered as long as the judiciary is independent of the executive and legislative'.

Legal framework for judicial Independence in India

There is no mentioned provision for judicial independence in the Indian constitution, yet the principle is ingrained within several different Articles. The Hon'ble Supreme Court declared that "Independence of judiciary and rule of law is the basic structure of the Constitution and cannot be amended even by constitutional amendments" - *S.P. Gupta v Union of India*.

The constitution of India aims to protect the judicial independence by following methods –

- **Oath of judges** - Judges must take an oath to defend the constitution and to discharge their duties duly and faithfully without any fear, favor affection or ill-will and to uphold the principle of constitutional sovereignty.
- **Qualifications for the appointment of judges** - Independence of judiciary is also ensured by procedure provided for appointment of judges. The President appoints

⁵ SP Gupta vs Union of India, AIR 1981 SC 149.

⁶Supreme Court Advocates on Record v. Union of India ,1993 (4) SCC 441.

judges to the Supreme Court and High Courts. According to the constitution of India, the President, before such appointments, has to consult the higher judicial authorities. The constitution lays down high level of qualifications for appointments on the post of judges. Moreover, it attempts to keep the nominations unaffected from external political factors and influence.

- **Security of tenure** -The judges of apex court are entitled to many privileges, one of them is security of tenure. A judge can be removed from his office by an order of the President on the ground of 'proved misbehavior or incapacity'. Such an order has to be based on a resolution approved by a 2/3 majority of the total members of Rajya Sabha and Lok Sabha or by a majority of at least 2/3 of the members present and voting. Furthermore, as per Article 124(2) and 217(1) the retirement age for Supreme Court judges is 65 years and high court judges is 62 years respectively.
- **Remuneration and allowances** - Article 125 provides for salaries and allowances of judges are to be given out of 'the Consolidated Fund of India'. During their tenure, the remuneration payable to the judicial members of the SC and HC could not be adjusted except in the period of a financial emergency.
- **Immunities and privileges** - The judges shall not be criticized for their judicial acts and decisions. Though, it is possible that they go through earnest academic condemnation. With a view to preserve the integrity of the judicial system and saving it from malign criticism, Article 129 and 215 grant power to the courts to start proceedings of contempt of court against any person under The Contempt of Courts Act 1971, along with it imposes necessary punishment on any suspected offender. Furthermore, the court has powers to stop any action, which stands the risk of hindering it to render a fair and independent judgment.
- **Separation from executive**- Article 50 of the constitution provides that, "The State shall take steps to separate the judiciary from the executive in the public services of the State." The intention after this provision is to make judiciary independent from influence of executive.
- **Article 211 & Article 121** – The constitution Article 211 provides that, "No discussion shall take place in the legislature of a state with respect to the conduct of any Judge of

the Hon'ble Supreme Court or of a High Court in the discharge of his duties."⁷ Similarly Article 121 provides for, "No discussion shall take place in parliament with respect to the conduct of any Judge of the Hon'ble Supreme Court or of a 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."⁸ These provisions are an attempt to make judiciary and courts independent from malign external factors and influences.

THE BALANCE BETWEEN JUDICIAL INDEPENDENCE AND JUDICIAL ACCOUNTABILITY

The Judges should be independent and free from any political or economic pressure, such as legislature bodies or industry associations. However, judicial independence does not give an uncontested license to judges and court officials to do whatever they want. Rather the principle of independence of judiciary is built on the confidence of the people and in order to retain this courts should adhere to the topmost norms of honesty and be responsible towards them. When judges or court officials are mistrusted of violating the faith of the people, appropriate methods should be implemented to identify, inquire, and control dishonest behaviors.

Principle of independence of judiciary and judicial accountability are often viewed as contradictory to each other. It is believed that something cannot be independent and accountable at the same time. But in reality, both are indispensable parts of the governing process; separating them from each other would be detrimental to democracy's proper functioning. In the matter of '*Central Public Information Office, Supreme Court of India v. Subhash Chandra Agarwal*'⁹ SC stated, 'Judicial independence is the ability of the judges to decide objectively, without succumbing to pressure, or without any fear or favor, affection or ill will. One cannot destroy judiciary in the name of accountability.' The decision squarely brings the office of the Chief Justice within the scope of the Right to Information Act, 2005. An appeal was filed by the Chief Public Information Officer, Supreme Court against three orders of Central Information Commission issued under the RTI Act, 2005. The court directed the Central Public Information Officer of the Supreme Court to disclose information

⁷ INDIA CONST. art.211.

⁸ INDIA CONST. art 121.

⁹Central Public Information Office, Supreme Court of India v. Subhash Chandra Agarwal, (AIR 2010 Delhi 159).

relating to the Collegiums decisions, asked judges to declare their personal assets, and certain correspondence by the CJI relating to complaints of corruption in the Madras High Court. The pivotal issue before it, however was whether the Right to Information could chew into independence of the judicial system. To which court stated that “judicial independence does not stand in contradiction with the need for transparency, whether or not information is subject to public disclosure must be decided on a case-by-case basis, by weighing competing public interest claims.”

Judicial independence closely relates to accountability and responsibility. Given that the public place their trust in the judiciary, accountability is a vital aspect of establishing the institution's authority. This consequently strives to foster the notion of independent judiciary, creating a loop in which there is a possibility of overlooking the nuanced link between corruption and independence. The conflict between independence of judiciary and accountability is an imaginary one. After all, judicial independence depends on the perspective of the public towards the court as an unbiased institution taking the law as its guide. Judicial independence implies that decisions taken by judges must be impartial and fair. Judges are immune from any responsibility in respect of acts done while discharging their judicial functions. However, such immunity should not be misused and abused by judges in order to afford protection to their power; rather they must subsist to serve the cause of justice. This protection must be rational and judiciary should not be excused from liability and answerability for its actions and conduct. It has to be made accountable to the constitution, to the law and to the public.

CONCLUSION

Transparency and accountability in the judicial system aims to eliminate corruption. This would restore and preserve public trust in the system of delivering justice, which is crucial as judiciary is an important pillar of our democratic government. The void of judicial accountability erodes the legitimacy of the judicial system. However, an accountable and responsible judicial system alone can create the possibility of ensuring a stable political environment and a much better system of governance. Ensuring accountability in the judiciary is essential in guaranteeing its independence. Accountability should therefore be viewed as a supplement to the idea of independence rather than a burden.

Only a few countries have legislation on asset declaration or interest disclosure for members of the judiciary. However, there is a trend towards setting this requirement for public servants.

In case of '*Central Public Information Office, Supreme Court of India v. Subhash Chandra Agarwal*'¹⁰ court has made a good attempt to pave a path for addressing the issue of lack of judicial accountability. It will go a long way in bringing transparency in the decision-making process and lays the foundation for accountability of judges by including them within the bounds of RTI Act, 2005.

An attempt in the form of Judicial Accountability Bill is a lofty step towards giving more teeth to the already existing system of judicial accountability in India. The thing that is much required today in India is an effectively functional system for disclosure and transparency within the judiciary. This Bill would attempt to meet the felt need by being more open and accountable, thereby instilling public confidence in the judicial.

¹⁰Central Public Information Office, Supreme Court of India v. Subhash Chandra Agarwal, (AIR 2010 Delhi 159).