

# **Judicial Accountability in India: Issues and Challenges**

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## **Abstract**

The proper administration of justice system being an intrinsic value of rule of law and constitutional governance fundamentally lies with judicial accountability. Though the Indian constitutional jurisprudence is considerably developed in line with international judicial standards, still Indian legal system lacks adequate standard relating to judicial accountability and Code of Ethics. The inadequacy and inefficiency of the system are evident from the very few cases reported against judges despite prevalence of suspicion of corrupt and unethical practices among the judges. This tendency of non-reporting of the cases is reasonably high and relatively complex on account of apparently proved unworkable and unfeasible constitutional mechanism against judges in India. Longstanding judicial reforms of the country and recent constitutional indiscipline of the judges of Supreme Court of India in expressing their anguish over the functioning of the highest apex Court of country by breaking down the constitutional culture has further aggravated the situation. This uncultured constitutional practice has intensified suspicion of efficiency of constitutional governance in infusing propriety and probity to the judicial system of the nation. In this context, this paper examines judicial

accountability system of the country and identifies legal deficiencies in judicial accountability. The researcher argues that the Indian legal system shall be further streamlined in line with the best practices of the other countries.

## **Introduction**

The role to be played by the judiciary for the articulation and augmentation of the constitutional values such as justice, equality and democratic principles is remarkable. The intricacy between liberty and sovereignty is a central issue of contemporary politics across the globe. A State being a sovereign has every authority possible to curtail and restrict the liberty of the individual by virtue of its sovereign power. Since the earliest period, it is the concern of the political philosophies and constitutional principles to balance these two extreme ends. In fact, man's human liberty is only found in a State capable of providing the necessary legal order (Lion, 1940, p.167). In the background of the growing political theories and State practices, various mechanisms have been created, proposed and adopted by the civilised society to limit the power of the State and to ensure proper protection for the liberties of the individual. One among such instrument adopted across the globe by States to organise and regularise the sovereign power is *intra-organ* test i.e., control of the power of one organ of the State by the other organ.

Judiciary being a core organ of the State is the fundamental feature of *intra-organ* theory of governmental power. This principle imposes obligation on the judiciary to discipline the other organs of the State in articulation of the liberty, freedom and fundamental rights of the individual. Sovereignty

being an unlimited rule over territory and people could substantially distort the liberties of the individual (Stacy, 2003, p.2032). It inherently requires proper constitutional watchdog against its operation. In its constitutional sense judiciary is bound to protect the individual against material tyranny of the government and maintain rule of law in its thick and thin perspective. In the context of rule of law and human rights jurisprudence, judiciary has assumed immense importance under the constitutional system.

Whereas, potential result of the judiciary lies with the well-accepted and structured judiciary, the structure of the judiciary interwoven with core principles of good governance such as transparency, accountability and responsibility which crucially shape the conducive environment that is required for fundamental freedom and liberty of the individual provided under Article 19 and Article 21 of the Constitution respectively. Basic principles such as independence, impartiality, integrity, propriety, equality, competence and diligence recognised by the international community vigorously demonstrate the strong claim of good governance in the judiciary.

Realising the magnitude of the importance of the vibrant judiciary, the framers of the Constitution are deeply concerned with these principles and substantially, incorporated them under the Constitution. The revolutionary provisions of the Constitution as to independent judiciary stood the time tested and arguably fulfilled the wishes of the framers of the Constitution in realising constitutional values and shrinking possible constitutional crisis. The larger amount of the constitutionality cases decided by the Supreme Court of India is conclusive proof of this. Despite the inspirational role played by the judiciary by virtue of its constitutional commitment, the Indian political practices and responses proved inadequacy of the system in

disciplining the judiciary *per se*. Intrinsically, therefore, there is a need of comprehensive understanding of intricacies affecting the quality of the judicial system of the country. Various complexities such as partiality, groupism, bias, corrupt practices, inefficacy and non-credibility of the judiciary have shocked the very conscience of the people. These challenges affecting the very dynamism of the judiciary are to be ironed out in order to maintain the majestic image of the Indian judiciary and to promote the constitutional culture of the system. In fact, accountability is the hallmark of good governance and bedrock of judicial independence. Accordingly, it is viewed that “Judicial independence could not stand by itself, there was something like judicial accountability also, which had to be kept in mind” (*Supreme Court Advocates on Record v. Union of India, 2015, p.99*).

However, the recent developments relating to Indian judiciary has intensified the magnitude of the concern over judicial accountability of the country. The nomination of Ranjan Gogoi as a member of Rajya Sabha on 16 March 2020 by the ruling BJP government has triggered a controversy relating to accountability of the judges. The allegation broke up in the context of the judgements of Ranjan Gogoi in Ayodhya Ramamandir Case, Rafale Review Case, Kashmir Habeas Corpus Case, Bank Employees Case and NRC Case. Critics alleged that political regime approach is strategically adopted to decide these cases and agenda of the central government is protected through these verdicts. The involvement of sitting judge of Allahabad High Court and retired judge of Orissa High Court in bribery case to get favourable orders and to surpass the order of the Supreme Court of India reveals the ugly facet of the Indian judiciary. The press conference conducted by the four judges of the Supreme Court of India on January 2018 is the spectacular instance of the crossroads of Indian judiciary. Though the

press meets of the judges of highest Court of the country pertaining to the order and malfunctioning of the Supreme Court of India, it shall not be ignored from the point of view of the accountability of the Indian judiciary. Notwithstanding, the letter was written by the four judges of Supreme Court of India to Chief Justice of India (CJI) which was vague and ambiguous in its content and substance, the historical move of the judges to write a letter to CJI and to conduct a press meet to disclose the unprecedented attitude of the Supreme Court of India has created a sense of mistrust on the judiciary. The disorder of the apex Court of the country as disclosed by the judges of the Supreme Court is not the only state of affair of the Supreme Court, the High Courts of the country witnessing the same situations.

In this context, the first part of the paper conceptualises judicial accountability considering different dimensions and core elements of judicial accountability. The second part of this article presents theoretical aspects of the interrelationship between judicial accountability and judicial independence highlighting their similarities and disparities. Focusing on current constitutional as well as the statutory status of judicial accountability and with the help of descriptive as well as analytical methodology later part of the paper explores the Indian legal system on judicial accountability followed by the critical analysis of the same. Over the past few decades, the Indian judiciary has remarkably contributed for the development of the constitutional governance and rule of law. Despite, some core issues and challenges are hindering the very integrity and image of the Indian judiciary. In this context the objectives of this study are; firstly, to examine the feasibility of existing constitutional as well as the legal regime in achieving the inherent objectives of judicial accountability. Secondly, to explore the legislative deficiencies in addressing the core issues and challenges in

addressing judicial accountability in India. Finally, the paper would propose possible recommendations so as to uproot the factors hindering the concept of judicial accountability in India.

## **Judicial Accountability and Independent Judiciary**

Governance remains a vital aspect for the society since the earliest period in accomplishing aspirations of the State. In its elaborative and practical sense, it indicates practices of the government to govern the territory and people through the established institutional mechanism and devised strategies. The very effort of the State to achieve its intended objectives based on strategies designed for good governance. It is an effective implementation of the combination of the various proposition of governance. Accountability is increasingly becoming a topic of concern in governance literature. In a constitutional system based on principal (Citizen) and agent (Government) relationship, accountability is fundamentally based on accountability of power holder (Government) to power addressee (Citizen).

In its plain meaning, in terms of *Normanton*, accountability is a liability to reveal, to explain, and to justify what one does, how responsibilities, financial or other, whose several origins may be political, hierarchical or contractual (Scott, 2011, p.41). It is duty bound justification and cogent explanation of a person/s entrusted with power for his past actions substantiating rationality of the extent of the acts to which they are judicious and wise. The line-up judicial accountability based on the traditional form of accountability theory i.e., command and control relationship theory which requires subordinate to submit an account for his actions or omissions to his superior by virtue of his subordinate position followed by the sanction if power is exercised without any connotation of law and capricious (Sueur,

2004, p.72). Though it is alternatively used for responsibility, it has its own implication quite contrary to concepts such as responsibility, responsiveness and control (Mulgan, 2000, p.561).

The inherent nature of judicial powers and functions laces judges with incumbent duties towards the State, rule of law, legal fraternity, prosecution, the officer of the courts, parties to the case and witnesses. Their role is indescribable in pulling the chariot of the administration of justice system. Judicial Accountability is a popular phrase to indicate sensitisation of these duties. The thrust of the judicial accountability regime is to promote a satisfactory administration of justice system and to set the standards required for such justice delivery system. It presumes that each impropriety and unprofessional conduct on the part of the judge constitutes a material setback for punctuality of the judiciary.

The extended scope of the judicial accountability under any matured legal system is not only applicable to the professional misconduct of the judges, but also to the evaluation of judicial performance, the relation of the judges with the staff of the judiciary, role of media and civility society in monitoring judicial process and academic role in nurturing the judicial accountability. It will not, therefore, simply regulate the personal trait of the judges in their performance, but will also apply to any instances of abuse of judicial authority which contradicts business of the Court, constitutional obligations and studious principles of law.

A very reliable authentication of the rule of law in the democratic form of the government is judicial independence. *It is sine qua non* of administration of justice system. It is an essential component of limited Constitution, the prerequisite for public confidence and cornerstone of the legal system (Holland & Gray, 2000, p.117). Considerable attention has been paid by

international and national entities to emphasize the judicial independence in concrete words.

There is a crucial link between judicial impartiality and the principles of judicial independence, understood as a set of protective safeguards. Both judicial independence and judicial accountability are supplementary and complementary to each other. Article 22 of the Delaware Declaration of Rights (1776) reveals close affinity between these two judicial principles in the following terms. The independency and uprightness of judges are essential to the impartial administration of justice, and great security to the rights and liberties of the people.

However, there are many literatures to distinguish the nexus between these two principles. “Judicial independence emphasizes the effective isolation and separation of the judge from society, while judicial accountability focuses on the intimate connection between the governors and the democratically governed” (Handberg, 1994, p.129). According to F.K.Zemans (1999) intrinsically judicial independence symbolises rule of judiciary itself and accountability mechanism for judiciary could danger very fabric of judicial independence. Therefore, there is a need of balancing these fundamental principles of the judiciary. Though judicial independence is inevitable, that should not convert the justice system in a systematic way of judges to protect themselves against their immorality and criminality. This inappropriate process could create miserable conditions for people who approaching courts for justice. It is highly illogical and irrational to espouse independence if the people who have been given it can't handle it (Haines, 2010, p.909).

The role of judicial independence which leads to the judicial accountability unconventionally can be understood as outlined by Griffith (1998) from the

following observations of Pannick, D. (1987) “The value of the principle of judicial independence is that it protects the judge from dismissal or other sanctions imposed by the Government or by others who disapprove of the contents of his decisions. But judicial independence was not designed as, and should not be allowed to become a shield for judicial misbehaviour or incompetence or a barrier to the examination of complaints about injudicious conduct on apolitical criteria that a man who has an arguable case that a judge has acted corruptly or maliciously to his detriment should have no cause of action against the judge is quite indefensible” (Pannick, 1987, p.99, as cited in Griffith,1998).

As stated by the Supreme Court of United States of America in *Bradley v. Fisher* (1871) “It is essential in all courts that the judges who are appointed to administer the law should be permitted to administer it under the protection of the law, independently and freely, without favour and without fear. *This provision of the law is not for the protection or benefit of malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence, and without fear of consequences*” (*Bradley v. Fisher, 1871*).

### **Current Mechanism of Judicial Accountability in India**

The Constitution of India 1950 makes more clear provisions relating to the maintenance of judicial accountability. These constitutional provisions authorise both the houses of parliament to initiate removal process supported by the majority of the total members of the house on the ground of proved misbehaviour or incapacity followed by an order of the president. This is the corresponding provision of the Government of India Act-1935 which authorised his majesty to remove judges on the grounds of

misbehaviour or infirmity of mind or body. Constituent power has authorised the parliament, not only for the initiation of the removal process but also for the enactment of the law to regulate the procedure for the presentation of an address by the president of India and investigation of the cases relating to misbehaviour and incapacity.

Accordingly, the Judges Enquiry Act, 1968 was enacted by the Parliament of India to articulate and rationalise judicial accountability of the country. This Act vocalises the procedural justice for the judges who are subjected to impeachment process and visualises the practicality of the accountability mechanism. The scheme of the Act mandates that impeachment motion should be supported by 100 Members of Parliament in case of Lok Sabha and 50 Members of Parliament in case of Rajya Sabha. It is pertinent to note that the constitutional scheme gives power only to the parliamentarian due to democratic value attached to this constitutional institution. This power is designed to operationalise checks and balances theory. The Act has indicated that the removal process should be hard in order to promote the arbitrary removal of the judges from their office. This idea of accountability scheme symbolises the following words. *“There is a legitimate reason that the removal of a judge is cumbersome and difficult. Judges should be immune from removal at the will of the electorate or anyone else simply because of a disagreement over a judge's philosophy or a particular ruling in a particular case”* (Haines, 2010, p.923).

According to the Act, once the motion is accepted, the speaker or chairman as the case may be ought to constitute an investigation committee to look in to the allegation of the parliamentarians made against judges. From the provisions of the Judges Enquiry Act, 1968, after the investigation it is evident that the findings of the investigating committee constituted by the

parliament as the case by communicating to the speaker or the chairman as the case may be and same is to be placed before each house of the Parliament.

### **Judicial Standard and Accountability Bill**

In the context of the emerging trends in the judicial process, many efforts are made by the government of India to remould the mechanism structured for judicial accountability in India. The initiative of the government of India to amend the existing mechanism is such a prudent attempt to infuse new blood to judicial accountability of the country. The Judicial Standards and Accountability Bill 2012 is almost 12 years old, since its initial version of Judge Enquiry Bill, 2006. The Judges Enquiry Act, 1968 can be termed as a response of the Parliament to lay down the procedure for investigation and presentation of the address to the president to remove of the judges. The Act had circumvented the key theme of the accountability mechanism. A need of reform of the accountability regime under the existing scheme attracted considerable attention in subsequent years. The Bill aims to rejuvenate the judicial accountability mechanism in Indian by focusing on the enforceable judicial standards and ethical codes. It is an ideal effort of the Indian Parliament to widen an extensive set of reforms that originated from the output of the Law Commission of India. It responds to international standards and gives voice to best practices.

The Judicial Standards and Accountability Bill, 2012 clarifies the definition of misbehaviour and incapacity which was uncovered under the 1968 Act. The Bill appears to give utmost regard to the individual to participate in the accountability regime by empowering him to make a complaint to the oversight committee. The Bill introduces the institutional mechanism to

articulate judicial accountability. In fact, institutions are the organizational arrangements for the performance of the functions assigned to them. For the accomplishment of the specific task assigned to it, the institution develops specific techniques or procedures commensurate to its specific function (Loewenstein, 1965, p.32). National Judicial Oversight Committee which forms the central part of the new scheme is to be constituted under the new Bill to translate the objectives of the new legal regime to action.

## **Methodology**

The methodology adopted for the present research paper is purely doctrinal in nature. The theoretical, analytical and comparative methodology is adopted for the purpose of analysis of the data. Various legal materials such as various Constitution reports as well as legislations have been reviewed. International instruments have been considered. The research work is also based on reports of Law Commission of India and the Parliamentary Standing Committee. Scholarly literatures have also been extensively utilised to strengthen the theoretical and conceptual aspects of the paper.

## **Analysis and Discussion**

Administration of justice is a core function of the State. Aspiring of justice is possible only through better administration of the justice system. The fair and accountable judiciary is the foundation for better constitutional governance and rule of law. The very purpose of this part of the paper is to strengthen judicial accountability and to ensure a conducive system for the administration of the justice system. Based on the analysis, the main issues of judicial deficiency will be highlighted and recommendations will be given in this part for the betterment of the system.

## **Judicial Standards**

Issue: The core defect of Indian judicial system with respect to the individual as well as institutional accountability of judges is judicial standard. The role to be played by judicial standards is remarkable. It could make judges more accountable to people, society, rule of law and fundamental precepts of the due process. In this background, across the globe, a considerable amount of states has devised these standards as part of their judicial reforms. There is no ideal effort made by the Indian judicial system of the country to codify and consolidate code of judicial conduct for judges. The strenuous effort was made by the Indian judiciary in the year 1999 by adopting "*the Restatement of Values of Judicial Life*" adopted in the Conference of Chief Justices. This effort intended to discipline the judges of apex courts of the country in line with professional ethics and standards. Realising the intimate relationship of these standards with judicial functions, the Parliamentary Standing Committee strongly supported for the statutory status of the judicial standards (PSCR, 2007, p.16). The Parliamentary Standing Committee Report insisted for the judicial standard in following terms. "Through experience, it has generally been accepted that the existing Parliamentary procedure of removal of a Judge is cumbersome, time-consuming and tends to get politicized. There has been one instance of impeachment proceedings being resorted to which failed due to considerations other than procedural difficulties" (PSCR, 2007, p.15).

The unfeasible and unrealistic approach of the constitutional scheme devised for the removal of the judges for their misbehaviour and incapacity, subject to due respect to the democratic value of the parliament is crystal clear from the number game of Article 124 of the Constitution. The constitution mandates that impeachment motion should be supported by 100 MPs in case

of Lok Sabha and 50 MPs in case of Rajya Sabha. Bring consensus among the parliamentarians to initiate the impeachment process has become highly hypothetical due to the domination of regional political parties in Parliament and lacking of the majority for the national parties.

The efficacy of the accountability mechanism for the removal of judges should be tested in the context of the shared power of judicial and political elements as provided under the Constitution. This constitutionally concentrated power is clear evidence of ultimate authority vested with parliament in accomplishing and operationalising constitutional mandates. It manifests proclaimed monopoly of the legislative in the sense that even if the investigating committee found the judge guilty of the misbehaviour or incapacity, it is up to the parliament either to present or not to present the motion to the address of the president.

Recommendation: The judicial standards contemplated under various legal systems and international instruments should be condensed and statutory status should be provided to such condensed principles. The long-standing Judicial Standard and Accountability Bill, 2012 should suitably be redrafted and expedited by the parliamentarians.

### **Poor Academic Scholarship**

Issue: Academic comment (Colbran, 2003, p.56) as a source to strengthen the intensity and gravity of the judicial accountability in the context of the rising issue of good governance is a crucial part of judicial reform. The academic critics and scholarship to sensitize and rationalise the judicial accountability and allied topics are so meagre in India. The research undertaking the judicial accountability and quality literature which could

lead to judicial reform of the country has handicapped the completeness of the judicial system of the country.

Recommendation: The subject titled 'Judicial Power and Judicial Process' which intensively deal with various principles of the judiciary should be made mandatory for the academia so that the students and teachers could take up research on the accountability issues.

### **Doctrine of Proportionality**

Issue: In the context of the background of the deficiencies of the Judges Enquiry Act, 1968, the inability of the government and incompleteness of the system was rightly pointed out by the government of India in the following words. "Allegations of deviant behaviour involving acts of corruption and moral turpitude, against some Judges of the High Courts have come to the notice of the Government in the past but the Government has no constitutional competence to set up any committee to look into allegations levelled against Judges of the High Courts. At best, the complaint in case a copy is not endorsed to the Chief Justice of India is referred to the Chief Justice of India for such action as he may deem fit" (PSCR, 2007, p.12). The distinctive feature of the punishment with which the judges subjected to the impeachment process can be punished under the present regime is only with removal from their office.

Recommendation: Alternative punishments such as advisories, warnings, demotion and non-assignment of the judicial work shall be adopted within the scope of the punishment for judges. These punishments based on the doctrine of proportionality could definitely resolve the crisis of the judicial accountability mechanism in India.

### **Statistical Issues**

Issue: It is the unfortunate the state of affair in the Indian judiciary that there is no statistics relating to the corrupt and unethical behaviours of the judges. The parliamentary standing committee opined that there is no data available to appraise the people or other institutions about the manner and numbers of such cases received and disposed of and the measures of accountability taken thereof. In fact, even an allied institution of judiciary *i.e.*, the Bar may not be aware of such a measure. Clearly, this system is lacking both in credibility and transparency.

Recommendation: This again calls for having a body which is credible and which follows the principle of reasonable transparency. Thus, there is a need of independent authority entrusted with disciplinary actions of the judges.

### **Role of Individual to Participate in the Removal Process**

Issue: Administration of justice is the active participation of the various stakeholders whose participation could act as a high-powered instrument for the betterment of judicial accountability. Public scrutiny of judges and judicial process is the inherent part of open governance. It is well stated that issues so fundamental and pervasive in our society must ultimately be resolved by the people (Hyman, 1952, p.221).

As outlined by Colbran (2003), Chief Justice of New South Wales Spigelman (2000) states that “the principle of open justice, in its various manifestations, is the basic mechanism of ensuring judicial accountability”. There has been growing emphasis on the fact that the individual should be allowed to participate in the removal process as he would be the ultimate beneficiary of both lawful or unlawful outcome of the judiciary. The need of participation of citizen is well put by great Attorney and former president of

Montana Bar Association, Wuerthner, (1951) in the following words. “General apathy and phlegmatism impede judicial improvement and must be shed by all for the steeled armour of aggressive endeavour and firm-hearted determination to accomplish needed reforms. In that program, every jurist, lawyer, and citizen should have his part” (Wuerthner, 1951, p.2).

Recommendation: It would be highly desirable to devise the system in such a way that there should be scope for the citizens to constantly monitor the functioning of the judges in order to bring progressive step in the judicial accountability. Greater improvement against grievous and scandalous situations of the judicial functions is possible through this public clamour.

### **Inefficient *Intra-Organ* Control Mechanism**

Issue: The desirability of the participation of the Bar is inevitable due to the organised and well-constructed activities of the Bar in recent days. Advocates have a decisive role in assessing the performance and setting standards for the judges. It seems highly doubtful that judicial accountability could operate outside the framework of co-operation of the advocates. They can have a direct impact on judicial performance by assisting judges in their adjudicatory process (Colbran, 2003, p.30). "The assistance provided by good appellate advocates to the definition of the law is hard to overestimate" (Colbran, 2003, p.64).

Despite the professional regulation of the advocacy under Advocates Act, 1961, the Act is a mute spectator with respect to the action which could be initiated against judges for their misbehaviour towards advocates barring filing of appeal against the decision of the judges before the appellate court and initiating contempt proceedings for their misbehaviour such as impropriety and dishonesty.

Recommendation: There is an immediate need to set up an independent and credible institutional mechanism to ensure participation of Bars in investigation and impeachment process of the judges in case of.

### **Judicial Evaluation**

Issue: Judicial evaluations counter calls for extreme measures to sanction a judge who has rendered an unpopular decision or even made a mistake (Haines, 2010, p.926). Judges cannot be expected to be flawless or to figure out the bounds of independence on their own. Demanding respect to an independent judiciary will not work in a vacuum or without some give and take reflective of where we are as a country today. A judicial evaluation process can provide a buffer to the critics on both sides of the aisle (Haines, 2010, p.927). It is evident from the Indian practice that the Indian judicial system lacks the standard method and mechanism for the evaluation of the judges.

Recommendation: The proper evaluation of the performance of the judges could stimulate the sense of accountability of judges and avoid possible malfunctioning of the judges. The apex court of the country should come out with a separate professional wing to collect and evaluate data relating to the performance of the judges of Supreme Court and High Courts.

### **Appeal and Accountability**

Issue: Appellate jurisdiction of the Courts in the hierarchical system ensures decisional accountability of the judges in the administration of justice system. Decisional accountability concerns the manner in which judges are held countable for rulings and decisions. It consists of appellate review and academic criticism of judgements (Griffen, 1998, p.75). Indian legal system has created hierarchical appellate jurisdiction to decide the cases both under

criminal and civil law system. However, the system is not matured enough to hear the appeals arising out of improper conduct of the judges which result in behavioural accountability of the judges. The mixture of the decisional as well as behaviour accountability regime could be provided under the Danish Code of Civil Procedure. The freedom of speech and expression of the judges should not be curtailed merely because of their judgeship. However, the prospective severity of such freedom should be foreseen by the judges as the very judicial functions are sensitive and delicacies in nature.

Recommendation: There is a need of ‘appearance of propriety clause’ of the judicial conduct of the American Bar Association (ABA). Of course, those judges conducted the press conference are propriety in their character, the aspersions on the working of the supreme court of India certainly shocked the conscience of the people of the country on the judiciary.

## **Conclusions**

The maintenance of judicial accountability is indispensable for the enrichment of the constitutional culture and constitutional morality. It could restrain and limit capricious tyranny and arbitrary despotism of the judiciary by interconnecting judges and judicial power with formal and informal scrutiny mechanisms. The framers of the Constitution being wholly conscious of the fact that the new constitutional regime oriented towards great ideological and constitutional values through which nation is to be governed requires vibrant and dynamic judiciary principled with responsibility, accountability and independence. Accordingly, the present chosen pattern of power control mechanism was institutionalised by the constituent power as shock observer of misuse of the judicial power. The

technique of the promotion of judicial accountability lies with fact that the legal system should demonstrate the integrity of the institution without diverting the organisational legitimacy.

The core findings, such as judicial standards, poor academic scholarship, the doctrine of proportionality, statistical issues, individual participation, inefficient *intra-organ* control mechanism, judicial evaluation, accountability through appeal; all these aspects though not diametric opposites, each of these values emphasizes different facets of the judicial accountability. The constitutional, as well as legislative scheme of the country, must resolve these issues on priority by adopting new provisions or amending existing provisions in line with judicial standards and code of ethics required for the judges. Such radical changes of the judicial administration reflect the view that ideal goals of the Constitution are intertwined with the fair and impartial judiciary.

Similarly, the Supreme Court of India has a mild approach relating to the temporary punishment on judges during the pendency of the enquiry before the house. The relief of a direction to restrain the Judge from discharging judicial functions is not permitted under the existing system. Dealing with the issue, the Supreme Court of India held that “it is difficult to accept that there can be any right in anyone running parallel with the Constitutional Scheme for this purpose contained in clauses (4) and (5) of Article 124 read with Article 121. No authority can do what the Constitution by necessary implication forbids” (Sub Committee on Judicial Accountability Case, 1991, para.11.2). Thus, it recommends for the materialisation of the Judicial Standard and Accountability Bill, 2012 to steer and compensate the unfinished agenda of judicial reform of the country. There is a dearth of research on the functioning and evaluation of the judges. Academic activism

would be the solution in order to evaluate the existing system in line with the best practices of the other countries and propose possible recommendations for the existing system. Such kind of academic vigour could rationalise and sensitize the current practices in order to structurize the system in line with judicial standards, accountability and code of conduct.

The moral fabric of the judges in realising the accountability in judicial functions should be comprehensive. Inner morals and self-proclaimed ethical norms are regarded as the most influential factors believed to be the best form of control mechanism. As Supreme Court of India observed in *M. Krishna Swami vs Union of India & Ors*, legitimacy and propriety of the judges in judicial functions are the foundation of the trustworthiness of the administration of justice system. They are the centrepiece of the constitutional governance and rule of law. Incompatibility and immodest of the judges may severely affect the image of the judiciary and whittle down the confidence of faith and confidence of the people on the judiciary. The density and depth of the judicial accountability, which cannot be achieved through the enactment of the laws and enforcement of the rules, could be achieved through the widely propagated and practised moral values by the judges.

The major limitation of the paper is the broad-based analysis of judicial accountability of Supreme Court and High Courts as contemplated under Constitution and allied laws. Microscopic research on judicial standards, evaluation of judicial performance, the infrastructure of the judiciary and vacancies in higher judiciary etc., which could enormously affect the judicial standards and accountability, should be taken care by further research. Judicial accountability of subordinate courts is also a matter of great importance. The level of research undertaken to review the mechanism

tunnelled for judicial accountability of lower courts is minimal. The thirst of this area of administration of justice system should be invigorated to maintain the overall efficiency of the system.

### **Acknowledgement**

I do hereby certify that this article titled “Judicial Accountability in India: Issues and Challenges,” an original article based on PhD Thesis and that I have also acknowledged all the material and sources such as books, articles, reports and judicial decisions.

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