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## Insulation of Judicial Accountability

Asmi Thakur<sup>a</sup>

<sup>a</sup>Symbiosis International University, Pune, India

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*‘Historical experience has shown us that every individual invested with power is likely to misuse it and to carry his authority until he is met with limits’ wrote Montesquieu. In the context of evolving political theories and State practises, civilised society has developed many methods to restrict the authority of the State and assure sufficient protection for individual liberties. The intra-organ test, i.e., regulation of the powers of one organ of the State by the other, is one such instrument used by all the states to regulate sovereign power.*

**Keywords:** *politics, judicial accountability, insulation.*

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### INTRODUCTION

One of the most significant pieces of legislation for establishing Resolution Applicants' eligibility The Judiciary, as a core organ of the State, is a vital aspect of this intra-organ theory of governance power. This principle requires the Judiciary to supervise the other branches of the State in order to articulate the individual's liberty, freedom, and fundamental rights. Sovereignty, defined as limitless power over people, has the potential to significantly impair individual liberty<sup>1</sup>. It necessarily necessitates a legitimate constitutional check on its operation.

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<sup>1</sup> Helen Stacy, 'Relational Sovereignty' (2003) 55(5) Stanford Law Review 2029-2059

In its thick and thin perspective, the court is bound by the constitution to safeguard the individual against the absolutism of the government and to uphold the rule of law.

Unlimited power without accountability breeds corruption. Accountability is the sine qua for democracy. No public institution is immune from responsibility, albeit the method in which accountability is enforced may differ based on the nature of the institution and the tasks performed by the officeholder. Furthermore, according to our constitutional framework, the political administration is answerable to the legislature, and the legislature is democratically accountable to the people. When it comes to the Judiciary, however, it is neither democratically accountable to the citizens nor to any institution. Judges cannot be held responsible to the voters in the same way that politicians are: 'The obligations of the Judiciary are owed to the law, which is there for the administration of the entire community.'

As a result, there is an intrinsic need for a comprehensive view of the complexities that influence the effectiveness of the country's legal system. Various difficulties, such as bias, exclusivism, corrupt practices, inefficacy, and lack of confidence in the Judiciary, have shaken the people's conscience. These issues impacting the Judiciary's dynamism must be resolved to retain the Judiciary's image and nurture the system's constitutional culture. Accountability is the hallmark of effective administration and the foundation of judicial independence. As a result, it is thought that "judicial independence could not stand alone; there was an aspect of judicial accountability that had to be kept in mind." <sup>2</sup>

Recent trends in the Indian Judiciary have heightened public concern about the country's judicial accountability. The ruling BJP government's nomination of Ranjan Gogoi to the Rajya Sabha on March 16, 2020, has sparked a debate about judicial accountability. The claim fell apart in the backdrop of Ranjan Gogoi's decisions in the Ayodhya Ramamandir Case, Kashmir Habeas Corpus Case, Bank Employees Case, and NRC Case. Critics claimed that the political regime strategy was purposefully used to decide these cases and that these decisions protected the central government's goal. The involvement of a sitting judge of the Allahabad High Court and

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<sup>2</sup> *Supreme Court Advocates on Record Association v Union of India* Writ Petition (Civ) 1303 of 1987

a retired judge of Orissa High Court in a bribery case to obtain favourable decisions and to overturn the Supreme Court's decision reveals the ugly side of the Judiciary.<sup>3</sup>

The first section of the study depicts judicial accountability in this context, taking into account several dimensions and key features of judicial accountability. The second section of this article discusses theoretical elements of the interconnectedness of judicial accountability and independence. The study's objectives are as follows: first, to analyse the practicality of existing constitutional and legal regimes in accomplishing the inherent goals of judicial accountability. Second, it analyses the legislative shortcomings in resolving judicial accountability in India. Finally, the study will make potential proposals to address the issues impeding judicial accountability in India.

## **JUDICIAL INDEPENDENCE AND ACCOUNTABILITY**

The concepts of judicial independence, defined as a set of protective protections, are inextricably linked to judicial impartiality. Both judicial independence and judicial accountability are essential and complementary. "Judicial independence emphasizes the effective isolation of the judge from society, whereas judicial accountability emphasizes the direct relationship between judges and the democratically governed". Inherently, judicial independence represents the rule of the court itself, and accountability mechanisms for the Judiciary could jeopardize the fundamental structure of judicial independence. As a result, there is a need to balance these essential judicial concepts. Though judicial independence is unavoidable, it should not be used to convert the legal system into a system of judges protecting themselves from their wrongdoings.

The value of judicial independence is that it shields the judge from sanctions imposed by the State or anyone who disagrees with the contents of his judgements. However, judicial independence was not intended to be a barrier to evaluating complaints about injudicious conduct based on apolitical criteria. This provision of the legislation is not for the profit of corrupt Judges but for the sake of the general public, who wants judges to be free to conduct their functions independently and without fear of repercussions.

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<sup>3</sup> *Ibid*

## ISSUES AND RECOMMENDATIONS

- *Impeachment Process*

### Justice Ramaswamy's case

This was the very first time a Supreme Court justice had been impeached. In 1989, he was appointed to the Supreme Court, and shortly after a year; there were allegations about him misusing a large amount of office money. In 1991, 108 members of the BJP (opposition party) signed and filed a notice of motion to the Speaker of the Lok Sabha requesting Justice Ramaswamy's dismissal. However, Ramaswamy avoided impeachment due to overwhelming backing from MPs from the Southern area. The motion received 196 votes, fewer than the two-thirds majority required.

Despite the two-year-long proceedings and unanimous votes from the opposition, the motion failed. Thus, the failure of this process teaches us a hard fact: the method of removing judges is ineffectual and antiquated. There is an urgent need for an entirely new structure to restore judicial accountability. This case also reveals how corruption in the Judiciary was eventually tolerated. Ramaswamy was permitted to serve as a judge on the country's highest court despite losing public integrity. As a result, the question arises whether the decisions made by a judge of such nature be trusted. Another issue is that the judges in the investigating committee are also working like a Union to protect their colleagues, which questions the impartiality of the committee. The solution to this dilemma could be the formation of a National Judicial Commission, an independent entity with its investigative system.<sup>4</sup> As witnessed in this case, there are better solutions than a two-thirds majority when dealing with such a significant regulatory institution of the government. A simple majority would be more helpful in making speedier decisions.<sup>5</sup>

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<sup>4</sup> Sumanta Banerjee, 'Judging the Judges' (2002) 37(5) Economic and Political Weekly 4983-4984

<sup>5</sup> *Ibid*

- *In-house Mechanism*

In the public interest litigation case of *C. Ravichandran Iyer v Justice A.M. Bhattacharjee*<sup>6</sup>, the Supreme Court held in 1995 that an in-house "peer review" procedure could be established for correcting deviancy and that where the claims do not warrant impeachment, in-house mechanism could impose "minor measures."<sup>7</sup> Under Justice J.S. Verma, the 'Restatement of Values of Judicial Life' was issued as a model for the ideal values for judges, with the goal of maintaining independence and impartiality. In 1999, the court declared that an "in-house mechanism" would be implemented to take measures against judges who violate established judicial principles.

The argument behind an in-house system was straightforward: the impeachment procedure was time-consuming and required political interference to succeed; it could only be used in a limited set of circumstances. More minor offences, on the other hand, necessitated disciplinary action. The in-house mechanism has several flaws. The most serious of these is that the procedure lacks a formal foundation and, more importantly, constitutional authorisation. More crucially, it appears to have limited legitimacy inside the Judiciary itself: no judge has decided to quit as a result of the committee's negative evaluation. Soumitra Sen is an example of a judge who defied the report and its recommendations.

Several incidents involving judges have been extensively addressed in the public realm throughout the past two decades of the in-house mechanism's operation. However, no in-house proceedings have been initiated against these judges. Respectable organisations, and even the president of a respected bar society like the Supreme Court Bar Association, have filed detailed complaints against judges. However, there needed to be recognition of this. Nobody knows how many complaints this internal mechanism received or entertained. No revelation of any type has made it difficult to assess its value as a disciplinary tool.

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<sup>6</sup> *C Ravichandran Iyer v Justice AM Bhattacharjee* 1995 SCC (5) 457

<sup>7</sup> *Ibid*

## **JUDICIAL STANDARDS AND ACCOUNTABILITY BILL**

The Judicial Standards and Accountability Bill was introduced in 2010 but lapsed. That draught bill had numerous faults, not the least of which was the inclusion of the attorney general on the oversight committee. If judicial independence is to be preserved, accountability procedures must be limited to peer judgement. Surprisingly, the proposed law delegated to parliament the job of developing a code of conduct for judges. The entire system could have been more convenient and satisfactory.

A new bill on judicial standards is required, but it must avoid the traps that the last draught did, particularly giving the legislature or considerable government influence. Any committee formed under this provision must consist solely of judiciary members. A permanent disciplinary committee should ideally be established at the central level to handle complaints against judges. This committee should not include any members of the executive. This permanent structure must consist of a secretariat chosen from the courts. If the committee discovers a minor incidence of misbehaviour, it may issue a warning, rebuke, or advisory. These punishments established on the doctrine of proportionality could resolve this problem. If it finds substantial misconduct, it may request the appointment of a judicial inquiry committee. If the committee's report is critical, it should be enough to move against the judge by going to parliament.

## **JUDICIAL EVALUATION**

When there are Supreme Court appointments, the performance of potential candidates is never considered because there is insufficient information to make an informed assessment. Elevation decisions are frequently arbitrary; names are frequently bartered amongst collegium members. Judicial evaluations are used to oppose calls for severe measures to punish a judge who has made an unfavourable ruling or made a mistake.

Demanding respect for an independent judiciary will only work if there is some give and take that reflects where we are as a country now. A judicial examination procedure can protect critics on both sides of the aisle. A regular performance review system for judges will also be tremendously valuable, rather than relying simply on an ad hoc complaints method to understand cases of judicial misconduct. Lower court judges already have a crude, if flawed,

performance review system in the form of annual confidential reports that track individual judges over a year. However, there is no comparison for higher court judges. It's almost as though they're immune to any criticism. Likely, a judge will deliberately strive to improve if they receive regular constructive criticism on their performance. A continuous performance evaluation process is one in which flaws in standards or questionable behaviour by individual judges are promptly exposed.

### **APPEAL AND ACCOUNTABILITY**

The appellate jurisdiction of the Courts protects the judges' decisional responsibility in the administration of the justice system. Decisional accountability refers to how judges are held accountable for their rulings. It includes appellate review and intellectual judgement criticism. This system needs to be developed more to consider appeals originating from improper conduct by judges, which results in judicial accountability. Under the Danish Code of Civil Procedure, a combination of decisional and behavioural accountability regimes could be provided. The judges' freedom of speech and expression should not be restricted only because of their position as judges. However, the judges should be aware of the potential consequences of such freedom. Hence, There is a need for an appearance of a propriety clause' of the judicial conduct.

### **CONCLUSION**

The people look towards the Judiciary as their final hope. But, recently, even here, things have become increasingly unsettling, and one can no longer assume that the Judiciary is a flawless institution. People's trust in government institutions' quality, integrity, and efficiency has deteriorated significantly. The key results include judicial standards, the proportionality concept, statistical difficulties, individual engagement, ineffective intra-organ control system, judicial evaluation, and accountability through appeals; all of these features, while not opposed, highlight various aspects of judicial accountability.

Judicial accountability is more than just a counterpoint for or a reaction to judicial independence. Indeed, the author feels that such a mindset stems from an initial misunderstanding of the principles and their aims. The goal of judicial independence should never be an end in itself. Its sole goal is to ensure judicial impartiality. Nothing else matters if a judge cannot execute the law

fairly and openly. Impartiality is a requirement for judicial independence. Thus, the actual end goal is judicial neutrality. The actual challenge is to strike a balance between accountability and independence. Indeed, the method of accountability used can influence the level of independence afforded to the Judiciary.