



## Judicial accountability

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**Abstract:** *In a democratic state there are three instrumentalities constituting the state and its executing functions. These are the executive, the legislature and the Judiciary. Though the Judiciary has neither the power of purse nor the sword, yet in recent years its role has assumed considerable importance because it seeks to prevent the excessive of the executive and the legislature and acts for protection and enforcement of their rights and as a keeper of their liberties. The trend of judicial scrutiny of governmental action and the readiness even of the executive to seek Judicial determination of debatable or controversial issues have resulted in enhancing the significance of the role of Judiciary in India. Judiciary has intervened in certain areas because of the people's perception that Judicial intervention is perhaps the only feasible correctional remedy available.*

**Key words:** *Judicial intervention, Judicial accountability, subordinate Judiciary*

### Introduction

In a democratic state there are three instrumentalities constituting the state and its executing functions. These are the executive, the legislature and the Judiciary. Though the Judiciary has neither the power of purse nor the sword, yet in recent years its role has assumed considerable importance because it seeks to prevent the excessive of the executive and the legislature and acts for protection and enforcement of their rights and as a keeper of their liberties. Judicial accountability is a phrase which sounds incongruous and can convey conflicting messages. It has assumed importance in the wake of the improper, irregular, incorrect manner of functioning of judicial officers. In the true sense of the phrase "Judicial accountability" an order passed on the judicial side can be made accountable only before a higher appellate forum. Judges of the subordinate Judiciary – which is Judiciary upto the level of district courts in a state – are all made accountable in respect of their acts as they are

amendable to the disciplinary control enforced and supervised by the respective high courts of the states. In so far as the Judges of the superior courts are concerned the only way of disciplining an errant judge of a High Court or the Supreme Court is by way of impeachment by Parliament as provided in Article 124 of the Constitution of India, particularly, Clauses 4 and 5 of Article 124, which read as under.

### Article 124 : Establishment and Constitution of Supreme Court:

*Clause (4) :* A judge of the Supreme Court shall not be removed from his office except by an order of the President of India passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the grounds of proved misbehaviour or incapacity.



*Clause(5):* Parliament may by law regular the procedure for the presentation of an address and for the investigation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under Clause(4)

In respect of the Judges of the High Courts, the provisions of Article 217 of the Constitution of India, particularly, as indicated in Clause(b) of Sub-Article (1) of Article 217, is the procedure envisaged for the removal of a Judge of a High Court.

Art.217 – Appointment and conditions of the office of a Judge of a High Court – Clause (1) Every judge of a High Court... shall hold office, in the case of an additional or acting Judge, as provided in Article 224, and in any other case, until he attains the age of 62 years; provided that – (a) a Judge may, by writing under his hand addressed to the President, resign his office, (b) a Judge may be removed from his office by the President in the manner provided in clause (4) of article 124 for the removal of a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.

**Suit against to Public Officials :-** In India, the President and the State Governors enjoy personal immunity from legal liability for their official acts. During their term of Office, they are immune from any criminal proceedings, even in respect of their personal acts. They cannot be arrested or imprisoned. However, after giving two months' notice, civil proceedings can be instituted against them during their term of office

in respect of their personal acts. The Ministers do not enjoy such immunities and hence they can be sued in ordinary courts like common citizens for crimes as well as torts.

For the present, there is no other mechanism or procedure to discipline an errant Judge of a superior court and if the past experience is any indication, the impeachment procedure does not work in reality and in practice. More so in the present political system in our country where motions and debates in Parliament are based only on political considerations, impeachment mechanism may never be a practical methodology of disciplining an errant Judge of superior court, unless there is consensus amongst the political parties. That virtually leaves the Judges of the superior courts immune from any accountability and that is why the phrase 'Judicial accountability assumes importance and significance.'

Every Judge of this country is a public servant and every public servant is, without any second opinion, accountable to the people of this country. The conduct of Judge outside his office should also be one which can pass muster in the eyes of the people.

The Judges of the Supreme Court did not take long to make their presence felt and began to actively pursue their functions assigned to them by the constitution. The role of the Judiciary is extremely delicate in such cases because it must not appear to be playing to the gallery or playing a role which may be described partisan. Great care must be taken to ensure that the Judge or Judges play a participatory role.



With the constitutional mechanism and the inside mechanism failing to usher in any measure of Judicial accountability, the only alternative is by taking the issue to the people who are the master in our polity, and alert judicious public opinion. In moulding such public opinion, legal fraternity has the most important role to play. Our courts are open courts and the functioning of Judges is in the glare of members of the public. That is the greatest safety and assurance of an upright judiciary. Public opinion should be motivated and guided in this direction and our lawyers have a definite and great role to play in this regard.

If a citizen is aggrieved with any action or inaction of the administration, he may seek redress through a court of law, so Judicial processes are also here to make the administration accountable. But the Courts are already flooded with cases, and we have to add to this the enormous increase in work due to new and emerging subjects such as legal aid to the poor, and also due to the courts taking up cases suo moto on the basis of a mere petition from a citizen if it is in the public interest to do so. (Public interest litigation cases).

The Judiciary is not the 'least dangerous branch' of government – Judges are not mere lions under the throne. They send people to prison and decide the scope and application of all manner of rights and duties with important consequences for individuals and for society. Because the Judiciary has such a central role in the government of society, we should 'wash..... with cynical acid...' this aspect of public life. Unless and until we treat Judges as fallible human beings whose official conduct is

subject to the same critical analysis as that of other organs of government, Judges will remain members of a Priesthood who have great powers over the rest of the community, but who are otherwise isolated from them and misunderstood by them, to their mutual disadvantage.

**The court as an advisor (Art.143)** : The role of Judiciary as advisor to the executive or legislative department of the government was unknown to India until the inauguration of the Govt. of India Act of 1935. Judicial circles in India were by and large convinced of the usefulness of conferring a Jurisdiction of this nature on the highest court of the land. A Judge in the modern age, like a physician who is not only concerned with curative but also preventive medicine, ought to be interested not only in settling conflicts but also in preventing their occurrence. Advisory opinions are a help to preventing litigation or reducing it to a considerable extent. That alone should justify the role of the Supreme Court as an advisor to the executive. The trend of Judicial scrutiny of governmental action and the readiness even of the executive to seek Judicial determination of debatable or controversial issues have resulted in enhancing the significance of the role of Judiciary in India. Judiciary has intervened in certain areas because of the people's perception that Judicial intervention is perhaps the only feasible correctional remedy available.

### **Conclusion**

Judiciary cannot be an imperium in imperio. That is why its accountability is important. The performance and discipline of Judges and the audit and enquiry in this behalf cannot be ruled out altogether but may be reasonably



restrained by carefully drawn up procedures. No democratic institution including the Judiciary can be above the rule of accountability in the absence of which there is the possible danger of developing absolutism. The people of India look upon the supreme court as an instrument of social justice and a guarantor of the great ideals enshrined in the preamble of our Constitution.

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