Judicial accountability change in present system

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Abstract
The constitution envisages significant role for judiciary to uphold constitution, project fundamental right and to restore rule of law. The Indian judiciary has played a very crucial role in interpreting the constitution, to ensure legality of action of executive and legislature, settling disputes between centre and states. Unfortunately, the judiciary’s image has taken a beating in recent times because of increasing cases of corruption and misconduct on the part of judges. The present system of enforcing accountability of judge is weak time and ineffective .The present paper attempts to analyze the role of judiciary, provision made for its independence and smooth functioning and also the inherent weaknesses in the existing system of enforcing accountability of judges. It also present a study of judicial standard and accountability bill introduced in parliament to enforce accountability and to check corruption in judicial system.

Key Words: Accountability, Judicially, Executive, Parliament, Government

1 Introduction

Democracy is a system of governance based on the concept of ‘Rule of law’ under which law is supreme and Justice is ideal to be achieved\(^1\). In other words the maxim that “The king can do no wrong” is no more an acceptable theory in democratic polity. The law giver also has to subject himself to the supremacy of law\(^2\). Rule of law is the cardinal principal of democracy. Rule of law in a system of governance can be ensured by the proper system of accountability of institution entrusted with requisite powers and authority for discharging the responsibilities of governance.

The executive is constitutionally accountable to legislature and the legislature is democratically accountable to the people in the precept of constitutional scheme of governance. However judiciary is accountable neither to people nor to any other institution\(^3\). It has been intentionally kept independent to deliver effectively the responsibilities assigned to it by the constitution. Besides, it has been entrusted with enormous power. It is arbiter of disputes among citizens, between citizens and state and between the states and union\(^4\). However, the Supreme Court through a number of judgments has encroached upon the power of executive branch of government. In has ordered the constitution of roads or bridges, directing the beautification of railway stations, decision on environment law, directed executive action even where budgetary reallocation was required so on and so forth. This is radical enough to alter the very character of constitution as against the originally conceived by the constituent assembly\(^5\). In addition to these, the judicial, mainly the Supreme Court, has discovered the “basic feature”, doctrine or structure of the constitution which is beyond the amending power of parliament. The introduction of “due process” clause in its substantive

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and procedural aspect in the reading of Article 21 and 14 and the generation of numerous rights and types of freedom not expressly given in part –III of constitution are some of the example where the supreme court emphasized the implementation of rule of law by directing the institution entrusted with fulfilling the statutory policy promises and responsibilities.

Judicial has been assigned important role note only enforce fundamental rights, endure the legality of action of executive and legislature, and interpret the constitution, but also to project nascent democracy of India is a unique federation having integrated judicial system. It has been assigned with the job of settling, disputes among the states and also between the union and federalism. Therefore an independent and impartial judicial is also one of the basic prerequisites of good government. This independence has been ensured by inserting certain provision in the constitution itself, such as by prescribing the qualification of judges of Supreme Court and High Courts, security of their tenure, prohibition from practicing law before any court and after retirement. Providing immunity to all the action and decision of judges in official capacity from criticism etc, were made to endure independence and impartiality of judicial system.

The independence judicial system is the pillar on which democracy rests, but the issue of judicial corruption in the recent past and the reluctance of judiciary to declare the assets of judges have raised the question of accountability of judiciary. Beside the functioning of judiciary is surrounded by veil of secrecy rather than transparency which is hallmark of democratic and accountable government.

### 2 Present System of Enforcing Accountability

The present system of enforcing accountability of a judge committing a judicial misconduct is through impeachment by parliament. According to article 124(4) of Constitution of India, initiative to the impeachment process needs the signature of 100Loksabha or 50Rajyasabha members of parliament. The motion is then investigated by a committee of two judges. If the committee finds the judge guilty of misbehavior or incapacity, the motion together with report of the committee is taken up for consideration in the house where the motion is pending. Then the motion is passed in each house by majority of total membership of house and a majority of not less than two third member of the house present and voting. Then the president gives order for the removal of said judge. For this to happen two conditions need to be satisfied. First, “there must have been published such that it has assumed proportion of a public scandal”. However, the media is afraid of publicizing such a case as it may invite the wrath of judiciary as per the provisions of Contempt of court Act, 1971. The Members of parliament did not build up a healthy convention to initiate and pass the impeachment process. Impeachment motion against former Supreme Court judge, justice V. Ramasway could not be passed due to political reasons in 1993. That event set a bad precedent and has encouraged some judges to take a very right stand even when serious allegations are made against them by responsible persons. Therefore, the impeachment procedure becomes difficult and doubtful. The second case belongs to impeachment of Justice Soumitra Sen, a judge of the Calcutta High Court who was charged with misappropriating money and misrepresenting facts about the misuse of money. Impeachment proceedings were launched against him. Justice Sen became the first judge to be made to resign under the ensuing impeachment in 2011.

### 3 Issue of Corruption
The judicial system is seen as the resort for justice in a milieu where other institutions do not work effectively. But sadly judiciary is victim of rampant corruption. Confession made by the then Chief justice of India (CJI), Shi S.P. Barucha in December 2002 that 20 percent of the judges in the higher judiciary are corrupt brings to light the gravity of problem. According to a report in India Today, the Supreme Court has uncovered a list of inquiries against judicial officer in 2010: 305 judges are under scrutiny, 38 have been made to pay major penalties, 17 discharged and 75 prematurely retired. Former Chief Justice of India J.S. Verma had pointed out “transparency and accountability must attach to the functioning of judicial. But the higher judiciary is unwilling either to provide information under Right to Information (RTI) or declaration of wealth. But worldwide the trend is different. For example judges in the United States of America make public details of their wealth while information about judges in United Kingdom can be obtained through the freedom of information act there. It is evident from the fact that FIR cannot be registered against a judge under the prevention of Corruption Act because of 1991 judgment of Supreme Court where it held that no judge can be subjected to criminal investigation without prior written consent of the Chief justice of India. After this judgment not even a single FIR has been registered against a sitting judge. The Bar council of India is deeply concerned about rampant corruption and nepotism in judiciary manner of appointment of judge and their unwillingness to declare assets. Parliamentary committee has also suggested that judges alone should not appoint judges rather the executive should be involved and the whole process should be made public.

4 Function of Judiciary

Independent and efficient judiciary is the greatest guarantee of well being of society. Through Indian judiciary has been independent in its functioning and it has played a very crucial role in checking the arbitrariness of Executive and Legislature, yet it had been slow and inefficient in the dispensation of justice. In is demonstrated by considerable delay in disposal of cases. Tortuous and protracted legal procedure relating to trial of criminal offences often obstructs the process of speedy justice. As the saying goes justice delayed is justice denied. In Indian legal system, adjournments are more common than ever before. In an ordinary trial, an adjournment means postponements of hearing for another six months to start with. There may be number of adjournment for different reasons. These have obstructed the time bound delivery of justice. Consequently Indian justice system is inundated with huge backlog of cases. There were 2,52,55,982 pending cases in subordinate courts and 3,700,223 cases in high court and 46,926 pending cases in Supreme Court on September 30, 2007. One of the reasons for this mountain of pending cases is the shortage of judges. A sanctioned strength of 26 judges for judge for India’s is 1.2 billion populations. According to the 120th Law Commission report, India’s population to judge ratio is one of the lowest in the world. While United States and United Kingdom have about 100 to 150 judges for every million of its population, India has 10 judges for one million people. Complex legal procedure shortage of judges and infrastructural constraints has crippled the efficiency of judiciary to provide speedy justice to people.

5 Judicial Standards and Accountability Bill

Judicial Standards and Accountability Bill was introduced in the Loksabha on December 01, 2010. It proposes to lay down judicial standards, provide for accountability of judges and declare their assets and liabilities and their family members. Thus it incorporates some good ideas to stem the rot of corruption and make the judiciary accountable, but it is sadly lacking in the provision to address the problem.
main problem facing the judiciary. It does not propose any change in the collegium system of selecting the judges. The collegium system where judiciary has primacy in the appointment to higher judiciary, is neither transparent nor accountable. Unless it is made broad based by including besides the judges the member of executive, eminent jurists and distinguishes academicians, it will not be able to get good judge under this secretive system. It proposes to establish National Judicial Oversight Committee and Scrutiny Panel to investigate the complaints against judges, but does not suggest any change in the impeachment process which is very cumbersome and difficult. Similarly the bill does not have any concern proposal to prevent the judges from taking up post retirement jobs which serve as temptation to judges to influence retirement0eve judgments. Through the judges are required to declare their assets, yet no mechanism has been suggested to monitor and verify it. Also, the bill does not address specifically the issue of uncle judges which has dented the judiciary’s image of its impartial judgments. The Law Commission of India too had disapproved of the existence of “Uncle Judges” in its report on Judicial Reforms submitted in August 200912.

6 Conclusion

In order to ensure Independent, accountable and efficient judiciary, it is essential to streamline the judiciary system. Impeachment process incorporated in the constitution to enforce the accountability of Supreme Court and High court has proved ineffective. Therefore, it is essential to amend the constitution to incorporate a provision permitting the immediate removal of a judge who, in the opinion of collegium of Supreme Court, is a person of doubtful integrity and does not deserve to remain in office. Judicial Standard and Accountability Bill does not have adequate teach to deal with this problem effectively. There should be provision for the suspension of a judge when complaints against him are being investigated. It should also provide for making the process of appointment of judge transparent and broad based. Besides it should address the issue of uncle judge and prohibit the judge from taking up post-retirement jobs. Problem of manpower shortages and infrastructural constraints can be best resolved through effective cooperation between judiciary and executive. The executive should accept the demand of judiciary by providing for allocation through planned expenditure in this respect. There should be greater decentralization of judicial system so that most of the matters are disposed of at levels where they arise. Also there is urgent need for special courts for trying corruption cases. The functioning of judiciary should be more transparent by providing information under Right to Information (RTI) and declaration of assets. It is also essential to address the problem of excessive delays, unfair procedure and unreasonable costs. Otherwise people’s right would remain mere theoretical matter. There is also an urgent need to amend criminal procedure code (CrPC) introducing a provision to fix a time limit for various stages of trial and to evolve guidelines to prevent unwarranted adjournment and delays. Independent, accountable, transparent and efficient judicial system is essential for speedy and impartial justice but also to restore the faith of people in judiciary and Indian democratic system.

7 Reference


[4] I, bid P 43
[6] I, bid P16