

JUDICIAL ACCOUNTABILITY: NEED OF THE HOUR

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Abstract: -

This is a settle principle of life and government machinery that whatever you did in your personal capacity as well as by authority you suppose to reveal that to public. Accountability is not an abstract concept. It is actually extremely simple. Accountability means saying what you mean, meaning what you say, and doing what you say you're going to do. In short, accountability is taking responsibility for your words and actions. We having three organs of government i.e. Executive, legislature and third is of Judiciary. Judiciary should be accountable to public in form of judges' acts and their assets. We require this accountability because of huge cases of corruption and persons who are not eligible for the post of judges but they are able to get these posts in judiciary. There are shocking examples which require the judicial accountability.

In this paper I have made attempt to touch all these kinds of problems. Further I would suggest that all judges and judicial officers are not corrupt but one and two person who made this kind of perception for the remaining. I tried to collect all information in a set pattern like introduction, methodology, results and finally conclusion of this research paper.

Key Words: Judiciary, Accountability, Corruption, Government, Judges

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I- Introduction

There is no difference between the Judge and the Common Man except that one administers the law and the other endures it...We (Judges) have indeed a 50 percent chance of being right in any case we try, and of course, the usual chance of not being found out if we are wrong. The last chance is something else we share with the Common Man.

- McKenna J¹

Accountability is not an abstract concept. It is actually extremely simple. Accountability means saying what you mean, meaning what you say, and doing what you say you're going to do. In short, accountability is taking responsibility for your words and actions. This simply means you are bound by your action and you are denying accepting your action you will be estopped from the same. Like in company we make account why, what is the need of making these types of records, the simple answer is that to protect from doubts and puzzles and misuse of resources. Suppose a legal firm not maintaining their account of expenses what will happen the employee of that firm tell more expenses. So keeping the check upon the action of authorities we require the accountability. This accountability may be in various sectors but in this research paper I focused upon the judicial accountability. What is judicial accountability, why this accountability and how can it be implemented. These three questions will solve the position of judicial accountability in India comparing to the main countries of the world.

We seen the various burning issues that judges are corrupt and it is a famous saying that "*rich get bail, rest get jail*". This saying suggests that judiciary also covered from the corruption. Now a day's corruption is hiking from very speed and there is very least way to control it. The first in Indian judiciary in which a judge of Punjab and Haryana found corrupt and impeachment motion started against him and this motion was not successful because there was not majority in the parliament for that impeachment, I am talking about Justice Ramaswamy. Against justice Ramaswamy first time in Indian history impeachment motion started but unfortunately it was not get it target. The current issues in the news are that CJI and judges of Supreme Court and High Court should declare their assets and property to public. This is done because of judicial

¹ The Judge and the Common Man, 32 MOD L.R. 601 as cited in O.CHINNAPPA REDDY, THE COURT AND THE CONSTITUTION OF INDIA 310 (2008).

accountability. As the Supreme Court has said, "judicial office is essentially public trust. Society is, therefore, entitled to expect that a judge must be a man of high integrity, honesty and required to have moral vigor, ethical firmness and impervious to corrupt or venal influences. Article 124(4) of the Constitution provides for the removal of a judge only on the ground of proved misbehavior or incapacity.

Hundreds of years ago, Francis Bacon, in his essay on 'Judicature', emphasized that "the place of justice is a hallowed place; and therefore not only the Bench, but the foot pace and precincts and purpose thereof ought to be preserved without scandal and corruption." But such is the irony that Bacon disgraced himself by indulging in acts of bribery and favoritism at the fag end of his career. This highlights the complexities and the sensitivities in the matter of effective, implementation of judicial honesty. According to Francis Bacon the judiciary should act as impartial and without corruption. The reason behind is that a place where a disable person reach for justice and the body of providing justice facing with injustice who will take care of that fellow who reached for seeking justice.

Meaning of Judicial Accountability

According to Soli Sarabjee accountability is the sine qua non of democracy. Transparency facilitates accountability. No public institution or public functionary is exempt from accountability although the manner of enforcing accountability may vary depending upon the nature of the office and the functions discharged by the office holder. The judiciary, an essential wing of the State, is also accountable. Judicial accountability, however, is not on the same plane as the accountability of the executive or the legislature or any other public institution. The rationale for this difference is the essential requirement of judicial independence and the ability of the judges to discharge their functions without any hope of reward or fear of penalties. Judicial accountability lies in scrutiny of judgments by the appellate courts. Judgments can also be subject to critical analysis and constructive informed criticism by the legal profession, academics, the media and members of the public including parliamentarians. Criticism of a judgment even if it is robust and pungent does not tantamount to contempt of court provided it is not based on false factual statements and does not attribute extraneous considerations to the judges. There is a world of difference between criticizing a judgment as grossly erroneous and

attacking it as dishonest. Regrettably, a litigant who has lost fails to realize this vital distinction. More regrettably, some senior advocates who have lost a case promptly indulge in mudslinging in the media of the judges who have rendered an adverse decision. Judges need to be protected against this form of forensic terrorism.

Another facet of judicial accountability is that judges, if they misconduct themselves, are subject to strict discipline by the mechanisms provided under the Constitution and the law. The mechanisms should be transparent and effective whose primary aim should be to enforce accountability without impairing judicial independence. Much will depend upon the persons manning the disciplinary mechanisms which should be effective and not be perceived as an old boys club anxious to cover up lapses out of a feeling of judicial camaraderie. These are the basic parameters of judicial accountability.

Need of Judicial Accountability

Now the problem came that why we require accountability on judiciary. For this question we have to go through what are the problems in judiciary regarding accountability and if we get solution for these problems than we will say that this is requirement of accountability in judiciary. Basically there are problems regarding corruption in judiciary, there is no as such strict check upon the action of judges and main concept the constitution makers gave i.e. independent judiciary. I think that there should be independent judiciary but subject to some limitation, otherwise the existing problem we are seeing day by day. The real problem arose between the independent judiciary and judicial accountability. The literature on the subject of Judicial Independence and Accountability is voluminous. A large number of books and articles have been written by Judges, lawyers, jurists, social activists and public figures on the subject. *Professor Shimon Shetreet's* classical work on the subject 'Judges on Trial' and 'Judicial Independence' are considered among the best. It may, however, be said without any fear of any contradiction that none has supported the theory of absolute independence of the Judges and the Judiciary or that they are not accountable. Judges and the Judiciary are accountable to the people. Lack of accountability is bound to shake the confidence of the public in the Judiciary as an institution and that, in its turn, can lead to disastrous consequences to the rule of law and democracy.

Judiciary, as one understands, is the edifice of a strong democracy as it endeavours not merely to interpret the black letter of the law but also adopting an activist stance of creatively interpreting it to suit the needs of the society.² The office of the robed brethren is based on the great trust reposed by the citizens who seek recourse to judicial powers to defend their democratic rights.³ Hence, the need for accountability in Judiciary arises from within, to ensure a system of checks and balances operative to prevent any unwarranted usurpation of power. Of late however, as stated earlier, the integrity of this great institution has been called into question,⁴ more so since there has been a complete absence of a transparent mechanism in place to cure the malady. It is interesting to note that while the demand for greater accountability on such counts has been constantly pressed for; unanimous voices of dissent have also risen in a defence “to enforce silence in the disguise of preserving dignity.”⁵

Now the actual problem came before the parliament that how the judiciary is accountable to the public. It is accepted that the independence of the Judges in their individual capacity or of the

² In our opinion, in so far the facets of Article 21 of the Constitution is concerned, it has been often seen that Judges have *read into* the given law in an attempt to widen the scope and achieve the goals of social justice. The recent judgment of *Naz Foundation v. Government of NCT*, (2009) 160 DLT 277, too has been an indicator of the same where *sexual orientation* has been read into the grounds of “sex” under Article 15(1) of the Constitution. These are the instances where the interpretation has demonstrated judicial creativity and has realized the goals of the Constitution.

³ Nathubhai Bhat, *Accountability of Judiciary to Bar and Society at Large*, 28 INDIAN BAR REVIEW 163 (2001).

⁴ With respect to the Indian position, one of the landmark controversy regarding the same was of Justice Ramaswamy when he was sought to be impeached on grounds of brazen financial irregularities committed during his tenure as the Chief Justice of Punjab and Haryana High Court. (*See Sarojini Ramaswami v. Union of India AIR 1992 SC 2219*). In recent times, there were allegations against the former Chief Justice of India, Y.K.Sabharwal of having directly benefited his sons by ordering the demolition of the commercial outlets in New Delhi. In an interview with Tehelka, Prashant Bhushan, spear heading the movement of Campaign for Judicial Accountability Reform (CJAR) opined it to be a watershed in the movement for demanding judicial accountability. *See, Half of the Last 16 Chief Justices were Corrupt*, TEHELKA, available at, http://www.tehelka.com/story_main42.asp?filename=Ne050909half_of.asp, (Last visited on January 13, 2010).

⁵ Justice Black in *Bridges v. California* (314 U.S. 252) observed that “the assumption that respect for the judiciary can be won by shielding judges from published criticism wrongly appraises the character of American public opinion...An enforced silence, however limited, solely in the name of preserving the dignity of the Bench, would probably endanger resentment, suspicion and contempt much more than it would enhance respect.”

Judiciary as an institution is, however, not absolute. The fact that the powers of Judges are very wide is in itself an indication that the powers cannot be allowed to be absolute. Among the constitutional limitations on the Judges, the most important one is the provision for 'removal' of Judges of the High Courts/Supreme Court by address of the Houses of Parliament to the President on the ground of 'proved misbehavior or incapacity'. This is provided in Art. 124 (2) and (4) in respect of Judges of the Supreme Court and in view of Art. 217, that procedure is attracted to the 'removal' of Judges of the High Court also.

Dato Param Cumarasamy as Vice-President of the International Commission of Jurists and as Former UN Special Rapporteur on Independence of the Judiciary, in his speech in Nov. 2004 at Chennai on 'Judicial Accountability' stated that:

“Accountability and transparency are the very essence of democracy. No one single public institution or for that matter, even a private institution dealing with the public, is exempt from accountability. Hence, the judicial arm of the government too is accountable”.

The Judges (Inquiry) Act, 1968 was enacted to achieve laudable objectives one of which was to make the Judges accountable for their behavior as envisaged in the Constitution. That Act has been in the statute book for more than three decades. There are several instruments approved by the UN General Assembly which deal with independence of the judiciary as well as its accountability. There are also some other non-UN resolutions dealing with the same subject.

II- Methodology

For this research paper I have used various sources which are as follows:-

- a) Various articles written by eminent jurists as well as other authors like Upendra Baxi etc,
- b) Consulted with various books on Constitution of India like- D.D. Basu on constitution.
- c) Gone through various websites like- Wikipedia, Manupatra etc.
- d) I have gone through the Law commission of India report no. 195th which is on Judges Inquiry bill act 2006.
- e) In this paper I used various Supreme Court judgments like- Ramaswamy case.

- f) I consulted with various advocates on the matter of judicial accountability.
- g) I have putted my views on this topic.
- h) I have gone through the Judges Inquiry bill 2006.
- i) Latest judicial accountability bill 2010.

III-Results

A. Constitution of India and Judicial Accountability:-

The Constitution of India is very much clear regarding the judicial accountability that when a judge found guilty according to the provision of Constitution he may be removed from the office by the way of impeachment. Impeachment can be used against President as well as judges of Supreme Court as well as High Court. Article 124 and onwards of Constitution deals with the Union judiciary which includes Supreme Court and High Courts of each state. The real intention of Constitution makers was to accountable the judicial activities to the public which is now a day's increasing to the assets and property of the judges.

It may at the outset be stated that proviso (b) to Article 124(2) and Article 124(4) of the Constitution of India deal with the removal of a Judge of the Supreme Court and proviso (b) to Art.217(1) with removal of Judges of the High Court for 'proved misbehaviour or incapacity' by orders of the President 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 members of the House present and voting. Article 124(5) requires Parliament to make a law in this behalf. Such a law was made in 1968, by enactment of the Judges (Inquiry) Act, 1968 (Act 51 of 1968).

“Article 124 (5): Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).” As the Constitution suggests for the accountability that if you did misbehaviour or exceed your limit or violate the provision of the constitution than the judges will be removed.

As per the consultation there were few suggestion came from this are as follows⁶

i. System of appointments:-

The present system of appointing judges of the higher judiciary is not only mainly non-transparent and secretive but also suffers from arbitrariness, which allows free play to nepotistic considerations. No criterion has been laid down for selecting judges. No methodical or objective evaluation of proposed appointees is done on any criteria. The present system of appointment of judges by a collegiums of a few judges, not only allows nepotism to flourish but also dubious backgrounds to be overlooked, as is witnessed by the case of Justice Soumitra Sen of the Calcutta High Court. The present imperfect system replaced an earlier flawed one, of judicial appointments by the executive, which was largely misused and plagued with political consideration. CJAR⁷ is of the view that the time has perhaps come to put in place a permanent full time body which selects judges in an objective, scientific and transparent manner, independent of both the government and the judiciary. Perhaps, we also need a confirmation process similar to what takes place before the US senate subcommittee.

ii. Accountability of judges for misconduct

The present system of impeachment of judges is impracticable, it being virtually impossible to have an impeachment motion signed by 100 MPs who are apprehensive of the consequences of their signing the motion on cases pending against them and their parties in various courts. There has been increased debate for an alternative system. The attempt being made in the Judges Inquiry (Amendment) Bill to institutionalize what is called the in-house procedure to investigate complaints against judges has several serious problems. In the first place, an in-house committee of three senior sitting judges or Chief Justices, if and when constituted, would disrupt the functioning of at least three courts. That is why we need a full-time body to do this work. Moreover, sitting judges often find it embarrassing to investigate complaints against brother judges.

⁶ National Consultation on Judicial Accountability and the Gram Nyayalaya Act 2008, 19th September 2009, New Delhi

⁷ Campaign for Judicial Accountability Reforms.

Therefore, despite formal complaints by CJAR no enquiry was conducted against Justice Jagdish Bhalla and Justice Vijendra Jain. On top of it, the Judges Inquiry Amendment Bill requires every complainant to swear an affidavit in support of his complaint and disclose the source of every information in his complaint. Also the in-house committee can also send the complainant to jail if they find his complaint frivolous or vexatious. Such draconian provisions would deter even honest and bonafide complaints. Moreover even after this committee of judges finds a judge guilty, the most the Chief Justice of India can do is to recommend the judge's impeachment which will again have to be voted in Parliament. The bill also provides an appeal of the judge to the Supreme Court even after removal by Parliament. All of the above constitutes a long and cumbersome procedure. CJAR is of the view that the time has perhaps come to put in place an independent and full-time *National Judicial Commission* to receive complaints and investigate charges against Judges. Such a commission shall be independent of the government and the Judiciary and should have independent investigative machinery under their control.

iii. Declaration of Assets by Judges

The process of enacting the recent *Judges (declaration of Assets and Liabilities) Bill 2009* to ensure greater transparency about judges' assets, was triggered after an RTI query to the Supreme Court registry sought information on whether any judges had been filing declarations of their assets before the Chief Justice of India in terms of a resolution adopted by all the judges of the Supreme Court on May 7, 1997. As the Apex Court registry refused to divulge the information, making a distinction between the Supreme Court Registry and the office of the Chief Justice of India, the registry's decision was challenged before the Central Information Commission (CIC), which ruled in favour of the applicant.

The Supreme Court subsequently went in appeal before the Delhi High Court challenging the CIC ruling. The High Court stayed the order of the CIC in which the Commission had held that the office of Chief Justice of India comes within the ambit of the RTI Act and information given to CJI has to be revealed to the RTI applicant. All this led to an unseemly spectacle. The Supreme Court's non-transparent attitude on the disclosure of assets is in line with the judiciary's steadfast refusal to allow any transparency in the matter of appointment of judges, or for that matter, in the judiciary as a whole. The courts as well as the government have refused to disclose

any information about the manner of appointments and transfers of judges of the High Court and the Supreme Court. CJAR issued a statement signed by lawyers, activists and noted constitutional experts such as Fali S Nariman, Shanti Bhushan, Anil Divan and former Justice Rajinder Sachar demanding that the assets of Judges be made public under the proposed law asserting that only a public and annual declaration of assets as is done by all Federal Judges of the US, including the Judges of the US Supreme Court, would ensure that the objectives of transparency though this proposed Bill is achieved.

The government introduced the *Judges (declaration of Assets and Liabilities) Bill 2009* on August 3, 2009. However, Clause 6 (1) of the Bill provided:

Notwithstanding anything contained in any other law for the time being in force, the declarations made by a Judge to the competent authority shall not be made public or disclosed, and shall not be called for or put into question by an citizen, court or authority, and save as provided in subsection (2), no judge shall be subjected to any inquiry or query in relation to the contents of the declarations by any person.

B. Supreme Court of India on Judicial Accountability:-

Supreme Court of India decided various cases relating to the judicial accountability which are as follows-

➤ Justice Ramaswami Case-

May 11, 1993 will be remembered as a black day for Parliament and for the judiciary in this country. For on that day, 205 Lok Sabha members belonging to the Congress (I) and its allies sabotaged the impeachment motion against Justice V. Ramaswami of the Supreme Court by abdicating their constitutional duty of voting for or against and thus defeating the motion by ensuring that it did not receive the support of an absolute majority of the total membership of the House. Each one of the 196 MPs who voted, all belonging to the Opposition parties, voted for the removal of the judge. Thus, despite the motion for removal being passed unanimously by the members who voted, it failed, bringing to a close the more-than-two-year old proceedings for the removal of Ramaswami. The result, therefore, is that despite a high-power inquiry committee of

three eminent judges having come to the conclusion that Ramaswami was guilty of several acts of gross misbehaviour which warranted his removal, the judge is still entitled to discharge judicial functions from the highest court of the land. It is another matter that after the impeachment motion failed; Ramaswami was persuaded to resign by the Congress (I) which belatedly realised that it would have to pay a heavy price for being seen to have supported a corrupt judge. Ramaswami was appointed Chief Justice of the Punjab and Haryana High Court on November 12, 1987 and continued as such till October 8, 1989 when he was elevated to the Supreme Court. In April/May 1990, reports appeared in the press about the huge and extraordinary nature of the expenditure incurred by Ramaswami for his official residence when he was Chief Justice at Chandigarh and the audit objections thereto. This greatly disturbed members of the Bar and MPs, who voiced their concern to the then Chief Justice of India, Justice Sabyasachi Mukherjee. After deep consideration of the matter, on July 20, 1990, the Chief Justice announced in open court that he had advised Ramaswami to "desist from discharging judicial functions so long as the investigations continued and until his name was cleared in this aspect."⁸

This provoked a body of advocates of the Supreme Court, called the Committee on Judicial Accountability, to file a petition in the Supreme Court to direct the Government to issue the notification. In October 1991, the Supreme Court decided that the motion had not lapsed and that the inquiry committee was properly constituted. It was only thereafter that the inquiry committee could begin its work and by January 14, 1992, after examining all the audit reports and other documents, it formulated a charge sheet containing 14 charges and communicated them to the judge for his response. Ramaswami did not respond to the merits of the charges but proceeded to question the jurisdiction of the inquiry committee, hurled absurd accusations at its members and even held a threat of blackmail to his brother judges in the Supreme Court saying he knew about the lack of rectitude and integrity of others in the Court and that he could wash dirty linen in public if he was left beleaguered.

In this case according to the facts and circumstances Apex Court decided to inquire the matter and constituted the committee and according to the report of the committee justice Ramaswami was the found corrupt but impeachment cannot be completed because of the majority in the

⁸ Frontline, June 4, 1993

house. Supreme Court proved by this case that any judges of High Court or Supreme Court if they do not follow the judicial accountability the motion of impeachment can be invoked at any time.

➤ **Justice Dinakaran Case-**

“Process to impeach Karnataka chief justice PD Dinakaran begins.”⁹ Dinakaran has been accused of encroaching land and amassing wealth. The second judge impeachment proceeding in the country’s history is set to start soon. The judge in question is Karnataka high court chief justice PD Dinakaran. Rajya Sabha chairman Hamid Ansari is setting up a statutory three-member panel and the government is working on a notification to activate the Judges Inquiry Act. Supreme Court judge, justice VS Sirpurkar will head the panel that will have Andhra Pradesh high court chief justice AR Dave and noted constitutional lawyer PP Rao. “I hope the inquiry panel will take maximum three months to complete the inquiry and thereafter, submit its report to the Rajya Sabha chairman,” says a member of the panel on condition of anonymity. The panel will appoint its counsel too, just like any commission of inquiry set up under the Commission of Inquiry Act. “It’s also a fact-finding inquiry... the complainant and the person against whom allegations are to be investigated would have their lawyers appear before the inquiry panel,” says a top source

➤ **Supreme Court Advocates-on-Record Association and another vs. Union of India**

The role of the Chief Justice of India in the matter of appointments to the Judges of the Supreme Court is unique, singular and primal, but participatory vis -avis the Executive on a level of togetherness and mutuality, and neither he nor the Executive can push through an appointment in derogation of the wishes of the other. S.P. Gupta's case to that extent need be and is hereby explained away restoring the primacy of the Chief Justice. The roles of the Chief Justice of India and Chief Justice of the High Court in the matter of appointments of Judges of the High Court, is relative to this extent that should the Chief Justice of India be in disagreement with the proposal, the Executive cannot prefer the views of the Chief Justice of the High Court in making the appointment over and above those of the Chief Justice of India. In the matters of transfers of

⁹ Available At <http://www.dnaindia.com/india/report_process-to-impeach-karnataka-chief-justice-pd-dinakaran-begins_1336011>

Judges from one High Court to another, the role of the Chief Justice of India is primal in nature and the Executive has a minimal, if not, no say in the matter, for consultation envisaged under Article 222 of the Constitution is used in a shrunk form and more as a courtesy, the subject being one relating to the in-working of the judiciary.

C. Practical Questions:-

There are few questions which tense a lay man that what is judicial accountability, how it can be practically possible, those are as follows. There are as many as 7 questions¹⁰

Question-1:- How to tone-up Judicial Administration?

The first question regarding accountability is of to give independence to the officers of lower judiciary i.e. Munsif court magistrates etc. The practical judicial accountability starts from this stage.

Independence of lower judiciary was almost not bothered by any body including those in judiciary. The 'subordination' is some times even worse than that in departments like police and revenue. Judicial Independence continues to be a significant component of constitutional governance not confined only to echelons of higher judiciary. Apart from independence, the PIL like powers are technically not limited to appellate courts only but as a matter of law, fact and policy should work at each and every court of law whether at District or Taluq. Compared to higher judiciary, the district and lower judicial officers are more accountable and less independent. They are somewhat amenable to processes of disciplining and Anti Corruption Bureau has enough powers and opportunities to check, control and punish their corruption.

Cumaraswamy said in above referred lecture: Very often principles of judicial Independence are addressed to judges of the higher judiciary, namely in the high courts and the appellate courts. These principles are not often addressed at judicial officers like magistrates, session judges or district judges of the lower judiciary, though a very large proportion of cases—particularly criminal cases—are tried and disposed of before their courts. The Basic Principles do not make any distinction between these two categories.

¹⁰ SEVEN QUESTIONS ON JUDICIAL ACCOUNTABILITY, By Professor Madabhushi Sridhar

Question 2- What shall the civil society do to curb corruption in Judiciary?

Corruption is the key issue for the judicial accountability and we have seen various cases in which impeachment came into operation because of the corruption, mainly the case of justice Ramaswamy.

It is inevitable to refer to issue of 'corruption' to analyze the independence and accountability of judiciary. The person of questionable integrity started finding place in the judiciary reflecting the backdrop of mounting corruption in the state apparatus. If independence and accountability are separated, it would lead to disastrous consequences for the institution. Judiciary in India is assured of independence both constitutionally and politically, but the people of India were not assured of judicial accountability. Even if a citizen finds a higher judge taking bribes, he has to wait for permission of Chief Justice of India to register an FIR. Let there be a system to take judicial corruption into cognizance and let us all hope that such a system would never be invoked.

Factors responsible for corruption-

- i. *Scarcity of goods and services.*
- ii. *Red tape and delay.*
- iii. *Lack of transparency.*
- iv. *Cushions of safety, which have been created by the legal system on the principle that everybody is innocent till, proved guilty. The legal provisions and procedures are effectively exploited by the corrupt to escape punishment.*
- v. *Tribalism or the tendency of the corrupt to defend each other in organizations.*¹¹

Question 3- Is it possible to expedite filling vacancies, and ensure transparency in appointment?

¹¹ N Vittal, Central Vigilance Commissioner, Retd, Keynote address in the International Seminar on Judiciary in Asia, "Legal Prevention and Judicial control of corruption", 15th February 1999, New Delhi.

The manpower in manning the judicial system is still not adequate. In 1987, Law Commission has recommended appointment of 107 judges per million people, when it found that at that time the ratio was only 10.5 judges per million people and it wished the same to begin with appointment of 50 judges per million people.

At present the entry into judiciary is decided on person's political links and strong impressions were made with CJ and Law Minister. Thus, it is impossible for those who are unconnected and not resourceful though they are capable, honest and deserving, while it is easy for rich, well connected to ruling party and some how in the practice to impress the appointing authorities like CJ and Law Minister. Their background, honesty, or perception about them among the people is absolutely immaterial. Once they gain entry, the continuance is assured and unquestioned; what ever might be their quality of judgments or behavior. Exit is almost impossible, unless he wants to relinquish the office. The meaning of independence of judges should be transparent appointment, security of tenure, free from interference from executive. It was never meant that none could question the conduct, behavior, integrity and functioning of an individual judge. There is no possibility of questioning the conduct and functioning, effective disciplinary mechanism and thus the 'independence' bereft of 'answerability'.

Question 4- Will there be any restriction on excessive use of Contempt Powers?

As Attorney General, Soli Sorabjee stressed amending the law of contempt. "If as a journalist you publish such and such judge is corrupt, you will be hauled up for contempt, even if you are ready to prove it with evidence". "The law does not allow any justification in contempt. If there is a serious challenge (in the Supreme Court) this may be regarded as an unreasonable restraint on the freedom of expression. How can we not allow a person to justify what he says is not contempt? If he fails, we will come down heavily on him. Otherwise the law of contempt operates as a cover for a corrupt judge."

Questions 5- How to ensure efficiency in case management?

Ensuring Efficiency: Judicial inefficiency is as realistic as the too long cause list issued by courts every day. Judicial incapacity, Judicial in-activism, lethargy, disinclination to learn, lack of effective and strict law teaching mechanism to equip judges, lack of common sense and

common knowledge are equally worrying factors that block delivery of justice. Apathy of courts and problem of litigant is as real as the Ajay Ghosh who was in prison for 38 years as under-trial. Communication of judicial orders and record keeping in India is highly deficient and negligent as evidenced by the incidents such as Rudul Shah who served sentence of imprisonment for 14 years even after acquittal.

Question 6- How the judiciary can be made accountable?

The people are deprived of knowing the performance efficiency of judges and even the lawyers. Every activity now-a-days, has securing the feedback mechanism, which is totally absent in administration of justice. Besides the State judicial mechanism of internal evaluation for the purpose of service promotions and administration, there is a need for providing a regular and open assessment of performance of judges by an independent body of people from different walks of life as they are the real consumers of justice though that body might include former judges and representatives of present bar and judiciary.

The former Chief Justice of India, J.S. Verma, has called for legislation on judicial accountability, based on the resolutions passed by the Supreme Court, to check the erosion of people's trust in the judiciary and to effectively probe charges of judicial corruption. The Supreme Court passed the three resolutions on May 7, 1997 and they were sent to the Prime Minister on December 1, 1997 for making a law on judicial accountability. Unfortunately it has not happened so far, said Justice Verma.¹²

Justice Krishna Iyer wrote: Many "Lordships" hardly deserve the high office, since in their rulings they do not share basic values of their oath, being under the illusion of irremovable office and aristocratic class bias. Luckily, learned, humanist and morally exemplary judges maintain the majesty and high dignity of our courts, with the insolent, ignorant, corrupt and dubiously lazy, still being in minority.

Question 7- Whether the Judges Inquiry Bill, 2006 serves the avowed purpose of introducing Judicial Accountability? Is it Judges Inquiry Bill or Judges Immunity Bill?

¹² The Hindu Jan 25, 2005

The Judges Inquiry Bill, 2006 has a very serious deliberate bad provision. If the complaint is found to be frivolous or made in bad faith or with the intent to harass the Judge, he shall be punished with imprisonment which may extend up to one year and also to a fine. It is apparently meant for blocking frivolous complaints but it will totally stop and deter the people from making any complaint against any judge, because it will be impossible for him to establish good faith or absence of intention to harass the judge in judiciary. It will ensure that complainants would end up in jails while wrongdoers would enjoy the powerful office. It will further ensure the there would be no accountability at all. This provision is made ignoring the principles in law of evidence, which include proved, not proved and disproved. It is not justified to punish if the complaint is not proved because of lack of evidence. Only when the allegation is disproved and malicious intention is also established the complainant could be prosecuted and penalized.

The Judicial Accountability Bill, 2010-

Parliament recently passed the judicial accountability bill in the year 2010 because the Judges Inquiry bill, 2006 did not fulfill the requisite objects and there are plenty of situations where the said inquiry bill proved ineffective and to overcome from these kinds of situations the 2010 act passed. This is a latest enactment by the legislature and this will definitely cover the above mentioned questions. But still there are loopholes because it is next to impossible to forecast regarding these situation, because where there is law, it is not necessary that now we can relaxed, there will chances for new laws.

IV- Conclusion

The conclusion of this research can be drawn in a critical way, as in our judicial system we have shortcomings and due to this the proper law can not be implemented. No doubt the parliament did their best but, the positive point can be seen that, government without increasing the number of the judges and judicial officers wants to perform the judicial functions. There are some issues which should be solving for the purpose of judicial accountability which are as follows:

- Delay.
- Deficiency.

- Indiscipline & Irresponsibility.
- Lack of legal knowledge, No updating of the knowledge
- Not accessible to poor, No sympathy for poor, No regard for the time and energy of clients and their advocates.
- Misbehavior with colleagues.
- Bribery & Corruption.
- Nexus with Executive and power politics.
- Elitist and aristocratic approach,
- Least concern for code of ethics.
- Demanding subordination from lower judicial officers.
- Love for publicity and craze for praises.
- Intolerance to assessment of performance.
- Aversion for truth, opposition to media criticism, inflicting serious fear on people by excessive use of contempt powers, or veiled threats
- Disparaging remarks from the bench.
- Least regard for witnesses, much less for expert witnesses, Contempt towards party in person, Disrespect for clients, insulting the advocates.
- Discouraging the PIL, etc.

These are the core issues and if they are solved than it will be practically possible to give accountability to public in judicial affairs. The main motto of judiciary is to avail justice to indeed people and it should be continued.