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### **Judicial Accountability: Need of Hour**

*by*  
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It is well known that there are three organs of the Government viz. Legislature, Executive and Judiciary. Each organ has its own function for example Legislature is to legislate the law, Executive to execute and Judiciary is to interpret the law and to decide the controversy. For well-functioning of any government it is required that all organs must be strong and accountable. Legislature is accountable to the public that is voters, executive is accountable to the legislature but there is no provision for the accountability of higher judiciary, though it enjoys immense power. "Lord Acton"<sup>1</sup> has rightly said that '*power corrupts and absolute power corrupts absolutely*'<sup>2</sup>. Higher judiciary is entrusted with the great power to do justice but there is no restriction in this regard and there is no accountability of higher judiciary. Therefore there are many incidents in which we find that the corruption is also prevalent in judiciary.

The question arises that where two organs i.e. Legislature and Executive are accountable, why not judiciary? Here I am not talking about the accountability of subordinate judiciary because it is accountable to the High Court, but what about the higher judiciary i.e. High Courts and Supreme Court. Thus it is the need of hour to make judiciary accountable.

#### **I. MEANING AND CONCEPT OF ACCOUNTABILITY**

Before writing anything on judicial accountability we must understand the meaning of these expressions. Accountability is the concept of ethics. It is often used synonymously with such concepts as responsibility, answerability, blameworthiness, liability and other terms associated with the expectation of account-giving<sup>3</sup>.



The word "accountable" as defined in the oxford Dictionary means responsible for your own decisions or actions and expected to explain them when you are asked. Accountability is *sine qua non* for the democracy. All public institutions are under the concept of accountability though the manner of enforcing accountability may vary depending upon the nature of the office and the functions discharged by the office holder. The judicial accountability is not on the same plane as the accountability of the executive or the legislature or any other public institution. In simple language it means answerability or responsibility. Its conception and methods vary from one nation to other depending on the situation prevailing. Traditionally most of the Constitutions provide process of impeachment of judges for insuring judicial accountability, but this process cannot be said as sole sufficient to deal the judicial accountability<sup>4</sup>.

#### **II. ACCOUNTABILITY, TO WHOM AND FOR WHAT**

In simple language we can say that accountability is the ability to hold an individual or institution responsible for its action. But very important question arises that the judiciary is accountable to whom and for what? The answer to this question may be

that the judiciary should be made accountable to the 'Law'. It means the decisions made must be in accordance with the law and should not be arbitrary. Like other organs of the Government<sup>5</sup>, it must be accountable to the general public as it serves.

### **III. NEED OF JUDICIAL ACCOUNTABILITY**

Today judiciary exercising immense powers in the name of judicial review, the existence of this power brings the question of accountability. This must be checked whether such overriding powers are properly exercised, in good faith and responsibility and judicial accountability would be the best one to do this task. The need of judicial accountability can be pointed out as following:

### **IV. ALL POWER IS A TRUST**

The power conferred on every authority with certain responsibility, it should always be exercised with care and caution because public has trust upon the authorities that the concerned authority will use the power for discharging the public duties. When we talk about the judiciary then we can say judiciary is also having immense power but this power must be checked



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and exercised according to the law because the power is trust and it should not be breached.

### **V. JUDGES ALSO COMMIT WRONG:**

It is well known fact that human commits wrong, judges are also human being so they may commit the wrong while exercising the power.

### **VI. JUDICIAL ACCOUNTABILITY (CASE LAWS):**

Though there is no any direct case in which highest court of the country has talked about the need of Judicial Accountability, but certain incidents took place where we realised that there is need of accountability in judiciary also. These cases are as following:

### **VII. CASE OF JUSTICE V. RAMASWAMI**

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. The failure of the motion raises several grave issues for the future of the administration of justice in this country and indeed for probity in public life in general<sup>6</sup>.



### **VIII. ARUNDHATI ROY CASE**

The facts were these: After the judgment of the Supreme Court in the *Narmada Dam case*, there was a public protest outside the Supreme Court in which Medha Patkar (the leader of the anti-Dam movement in India) and Arundhati Roy participated. A couple of lawyers (probably on the hint of the Court itself) filed a contempt petition against Patkar, Roy and Mr. Prashant Bhushan alleging that we had raised abusive slogans against the Court. The lawyers' contempt application, apart from being in grotesque language, also contained palpably absurd allegations that Roy and Patkar (who can hardly be considered rowdies) manhandled the burly lawyers. Roy, in her reply to the court notice said: "For the Court to have issued notice on such a ridiculous petition to three persons who have been vocal in their criticism of the Court shows a disquieting inclination on the part of the Court to muzzle dissent and stifle criticism". Though he discharged the first notice, the same judge (Justice G.B. Patnaik) who had issued the first notice, issued a second contempt notice, this time to Roy alone for daring to berate the court in this manner. They eventually held her guilty of contempt and sent her to jail with Justice Patnaik sitting as a Judge in his own cause which is clearly violation of principle of *N.J.*

### **IX. JUSTICE SAUMITRA SEN'S CASE**

Justice Sen was recommended to be removed by impeachment by the Chief Justice of India, for the offence of misappropriating funds received by him as a court receiver and thereafter for giving false explanations to the High Court. The Chief Justice made this recommendation after a report of a committee of three Judges, who after carefully examining the facts came to the conclusion that he had committed several acts of serious misconduct. Though these acts of misconduct were the subject matter of proceedings pending against him in the Calcutta High Court, yet he came to be appointed during that time, due to the lack of transparency in the matter of appointments. Though the report of the judges committee was submitted a year ago, and the Chief Justice's recommendation for the removal by impeachment of Justice Sen was made five months ago, the government has not made any attempt to proceed with his impeachment. This is despite the fact that the government has proposed a bill to amend the Judges Enquiry Act by which this very procedure for initiating impeachment proceedings is being sought to be given statutory status. The inaction of the government in Justice Sen's matter displays the complete lack of seriousness on the part of the government in enforcing judicial accountability. In these circumstances, the Campaign for Judicial Accountability and Reforms has prepared an



impeachment motion against Justice Sen and is sending it to all the political parties with the request that they should have it signed by their MPs so that it could be presented to the Chairman of Rajya Sabha for proceeding with his impeachment<sup>8</sup>. Thus there are many more incidents in which we find that there is need of accountability in judicial system in India.

Therefore it was felt that there should be a statute which can bring accountability in judiciary, consequently Government introduced one very important bill i.e. Judicial Standards and Accountability Bill, 2010. In this paper I have tried to point out certain



salient features of the Bill which are very relevant to bring judicial accountability. The salient features of the Judicial Standards and Accountability Bill, 2010 are given as below:

#### **X. JUDICIAL STANDARDS AND ACCOUNTABILITY BILL 2010**

In the year 2010 very good step was taken by the Parliament to make accountable the higher judiciary when it introduced the Judicial Standards and Accountability Bill, 2010. It contained very good provisions, for example it contained certain standards to be followed by the judges, it imposes the duty upon the judges to disclose the assets, it gives the right to common man to make complaint against any judge etc.

#### **XI. JUDICIAL STANDARDS<sup>9</sup>**

Judicial standards are certain principles or code of conduct of the judges, the said Bill contained eighteen standards. During debate in the Parliament, it was contended that imposing these standards upon judiciary by legislature, would violate the principle of judicial independence. But this contention is not sustainable because these standards are not being imposed by the legislature, rather self-adopted by the judiciary in the year 1997. In 1997 certain standards were adopted by the judiciary itself in the name of 'Restatement of Values of Judicial life'. Thus it can be said that these standards which are contained in this Bill does not violate the principle of judicial independence because legislature is giving only statutory recognition to the 'Restatement of Values of Judicial life'<sup>10</sup>.



#### **XII. DUTY TO DISCLOSE ASSETS<sup>11</sup>**

Another feature of this Bill was that it imposes the duty upon the judges to disclose their assets.

#### **XIII. ANY COMMON MAN CAN MAKE THE COMPLAINT<sup>12</sup>**

Very eminent feature of this bill was that any common man could make complaint any judge who has misbehaved. What is misbehavior? That is defined in the bill clearly. At present this aspect is being governed by the Judges Inquiry Act, 1968 which contains the provision for making complaint against the judges. It requires that the complaint must be supported by at least fifty members of the Parliament otherwise no man can file the complaint. Imagine the situation that when a common man cannot meet his M.P. then how can he get the support of fifty members of the Parliament? Thus it is impractical. But in this bill this requirement has been removed now any common man can make complaint against any judge of a High Court or Supreme Court.

#### **XIV. COMPLAINT RESOLUTION MECHANISM**

This bill talked about the establishment of complaint resolution mechanism at three levels namely, National Judicial Oversight Committee, the complaints scrutiny panel and investigating committee. Any person can make complaint against a judge to the National Judicial oversight committee on the ground of misbehaviour.

#### **XV. NATIONAL JUDICIAL OVERSIGHT COMMITTEE**

National Judicial Oversight Committee shall consist of — A retired chief justice of India-chairperson, a judge of Supreme Court nominated by Chief justice of India-member, chief justice of High Court nominated by Chief justice of India-member, the Attorney General of India-member and an eminent person as nominated by the President of India-member<sup>13</sup>. The complaint can directly be made to the National

Judicial Oversight Committee, after receiving the complaint it shall, within the three months of receipt of complaint, forward the complaint to the scrutiny panel of Supreme Court if the complaint is related to the misbehaviour of a judge of Supreme Court or chief justice of high court. If the complaint is related to the individual judge

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of High court then it shall be forwarded to the scrutiny panel at concern High Court.

#### **XVI. THE COMPLAINTS SCRUTINY PANEL**


There shall be two kinds of scrutiny panel one will be at Supreme Court another at each High court. **Scrutiny panel at Supreme Court**- shall consist of a former chief justice of India and two judges of Supreme Court as nominated by Chief Justice of India. **Scrutiny Panel at every High Court** shall consist of former chief justice of that High Court and two judges of that High Court as nominated by chief justice of the High Court<sup>14</sup>. After scrutinizing the complaint if scrutiny panel satisfies that there are sufficient grounds for proceeding against the judges, after recording the reasons it shall submit its report to the National Judicial Oversight Committee. But if it does not find any sufficient ground or complaint is frivolous or vexatious, it shall submit its report to the oversight committee not to proceed against the judge.

After receiving the report from scrutiny panel the judicial oversight committee shall constitute an investigating committee which shall conduct inquiry and in this regard the concerned judge shall be called upon to defend himself. After completion of the inquiry the committee shall submit its report to the National Judicial Oversight Committee. After receiving the report from investigating committee if Judicial oversight committee is satisfied that the charges against a particular judge are true and proved against him, it shall make a request to the erring judge for voluntarily retirement but if judge fails to do so than it will advise to president to initiate removal proceeding against judge<sup>15</sup>. After receiving the advice from Judicial Oversight Committee to initiate the removal process, the President shall lay before the Parliament all the materials accompanying with the report of investigating committee<sup>16</sup>.

#### **XVII. REMOVAL PROCEEDINGS**

This Bill does not contain any new provisions with regard to the removal of judges rather it borrows all the provisions from Judges Inquiry Act, 1968. The procedure is to be initiated by the President after laying the materials before the House. The speaker or chairman as the case may be, shall consult to such person as he thinks fit. After considering such materials available to him, he may either admit the motion or refuse to admit the same<sup>17</sup>.

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If it is admitted and adopted by each house of the Parliament in accordance with the provision of Article 124 clause 4 read with Article 218 of the Constitution then the misbehaviour or incapacity of the judge shall be deemed to have been proved<sup>18</sup>.

#### **XVIII. REQUIREMENT OF NOTICE**

If complaint is not filed by individual under clause 7 of the Bill rather notice is given to President for invoking the removal process then this notice must be signed by at least hundred members of House of People or fifty members of Council of States, as

the case may be. If motion is admitted then the matter shall be sent to the Judicial Oversight committee and it shall constitute an investigation committee and it shall conduct an inquiry and submit its report to Judicial Oversight Committee for being submitted to the Speaker or Chairman as the case may be. The incapacity of erring judge is to be examined by a medical board here judges has to go before the board for medical examination but if he refuses to undergo such process, the investigation committee may presume that judge suffers from such physical or mental incapacity as is alleged in the motion.

If the report submitted to the house contains that the judge is not guilty of the charges alleged to him then the motion will be stopped but if it is found that he is guilty then the discussion will be made before house and it is adopted in each house of the Parliament in accordance with the provisions of Clause 4 of Article 124 read with Article 218 of the Constitution then the incapacity of misbehaviour will be deemed to be proved and the address of removal shall be presented to the President.

### **XIX. CONCLUSION**

Thus we can say that this bill was very good to make judiciary accountable, though it contains certain loopholes which can be curved very easily. But unfortunately it could not be passed by the Parliament. Now there is no any mechanism by which the judges of higher judiciary can be made accountable. It is the need of hour to make higher judiciary accountable because in the democratic country like ours where from peon to prime minister all are accountable then why not higher judiciary. In our country people have much faith and confidence in judiciary but very soon it will not be longer if judiciary is not made accountable. The Government must take immediate initiative to make judiciary accountable.

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<sup>1</sup> Jhon Emerich Edward Dalberg-Acton, 1<sup>st</sup> Baron Acton, KCVO, DL (10 January 1834-19 June 1902).

<sup>2</sup> Letter to Bishop Mandell Creighton, April 5, 1887 published in historical essays and Studies, edited by justice N. Figish in R.V. Laurance (London Macmillan, 1907).

<sup>3</sup> A. Clarence, Dykstra, "The quest for responsibility" American Political Science Review 33(1) 1939.

<sup>4</sup> Harshwardhan, "Judicial Accountability" A.I.R., Vol. 95 April 2008, p. 49.

<sup>5</sup> Aruna Roy, "The Right to Transparent Governance" Combat Law, Vol. 6, Colin, Gonsalves, Issue 2 March - April 2007, p. 90.

<sup>6</sup> Justice V. Ramaswami-survives-impeachment motion due to abstention of Congress MPs taken from [www.indiatoday.intoday.in](http://www.indiatoday.intoday.in) accessed on 25 November 2016.

<sup>7</sup> 'Contempt of Court, Arundhati Roy case revisited', <http://lawandotherthings.blogspot.in> accessed on 25/11/2016.

<sup>8</sup> Judges impeachment procedure and Justice Saumitra Sen's case, <http://indiancurrentaffairs.wordpress.com>, accessed on 25 Nov 2016.

<sup>9</sup> Clause 3 of Judicial Standards and Accountability Bill, 2010.

<sup>10</sup> Posted in Judicial Reforms, Judiciary, Justice, by NNLRJ, India on Nov 12, 2009 @ [www.indianlayers.wordpress.com](http://www.indianlayers.wordpress.com) accessed on October 1, 2016.

<sup>11</sup> Clause 4 of Judicial Standards and Accountability Bill, 2010.

<sup>12</sup> Clause 7 of Judicial Standards and Accountability Bill, 2010.

<sup>13</sup> Clause 17 of the Judicial Standards and Accountability Bill, 2010.

<sup>14</sup> Clause 10 of the Judicial Standards and Accountability Bill, 2010.

- <sup>15</sup> Clause 35 of The Judicial Standards and Accountability Bill, 2010.
- <sup>16</sup> Clause 45 of The Judicial Standards and Accountability Bill, 2010.
- <sup>17</sup> Clause 47 of The Judicial Standards and Accountability Bill, 2010.
- <sup>18</sup> Clause 48(3) of The Judicial Standards and Accountability Bill, 2010.

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