

Judicial accountability: Theoretical and conceptual Understanding

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Abstract— The importance of justice in democratic political institutions like India is undeniable. An independent judiciary is essential for an egalitarian society governed by the rule of law, since the principle of judicial independence has received great attention and is being critically analyzed from different perspectives. The judicial independence implies non-interference of the executive and the legislature in judicial proceedings but does not mean that judges are empowered to act arbitrarily. Moreover, the recent studies on quality of judicial system in India suggest that judicial accountability is one of the most important components of judicial performance. But the precise parameter of judicial accountability is not defined and developed in India. Judicial accountability is inclusive concept consists various parameters. The quality assessments of justice takes into account at least five aspects of excellence at judicial workplace, such as accountability, independence, efficiency, accessibility, and effectiveness. The judicial accountability implies that those who perform their duties in court must obey the rule of law. Indian judiciary exercising democratic power enjoys independence of high order. But for keeping the faith of the people in judiciary, the independence of the judiciary should not become dangerous and undemocratic. The absence of constitutional discipline with rules of good conduct and accountability make the judiciary arrogant. Judicial accountability, however, is not on the same plane as the accountability of the executive or the legislative. Today, the judiciary cannot escape the scrutiny of its performance and the conduct of its members; it thus ensures transparency. Judicial accountability, as a concept, is much debated since it is challenging to define it in precise words. This research paper begins with the understanding of the concept of judicial accountability and analyses its core values such as Rule of law, public confidence in court, judicial efficiency, effectiveness and accessibility, transparency and constitutional guarantees of judicial independence. The research paper tries to highlight doctrine of judicial accountability conceptualized the need for competent, independent, transparent judiciary as an institution. Subsequently, this research paper also deals that the judicial independence does not mean the absence of accountability. Judicial accountability itself isn't against the idea of judicial independence: rather it is a significant method for fortifying judicial independence. It is so at the end of research paper an attempt has been made to establish relationship between judicial accountability and judicial independence.

Keywords— Judicial independence, Judicial accountability, Judicial efficiency, Accessibility, Transparency.

I. INTRODUCTION

A developed democracy requires the individuals who exercise remarkable open capacity to consider them accessible and answerable. The lawmaking body is straightforwardly responsible to the electorate. The official is, by implication accountable to the individuals through the chosen governing body. Accountability of open establishment is significant for the survival of democracy itself. The outright and boundless capacity to any large open organization, without accountability, is destructive to the general public on the loose. Expert is given in trust, and judicial specialist is no exemption. On a fundamental level, untouchable power is terrible and dangerous. Be that as it may, judiciary as a foundation and each Judge as an open functionary are responsible to the political sovereign-the individuals. The main distinction is in the structure or nature of the component expected to implement their accountability, to put it plainly, judicial accountability is an aspect of the independence of the judiciary; and the system to uphold judicial accountability should likewise safeguard the independence of the judiciary. The word 'accountable' signifies 'the quality or condition of being responsible, or mindful'; 'subject to, announcing, clarify or legitimize; dependable; liable'; 'in charge of your own choices or activities and expected to clarify them when you are asked.' Transparency encourages accountability; accountability is the sine qua non of democracy. It implies the commitment of open authorities to clarify the utilization of intensity in releasing public obligations. No open establishment or open functionary is excluded from accountability even though the way of upholding accountability may fluctuate contingent on the idea of the workplace

and the capacities released by the workplace holder. The concept of judicial accountability is as ancient as the independence of judiciary. In India, impartiality or independence must have considered to the important qualities of the judge from most basic time. In the modern era, the independence of the judiciary is recognized as a fundamental principle of the world and has a place in their constitution. It is with this essence in mind that the fathers of Indian Constitution have aimed to maintain the principle of accountability of courts in India. It is apparent from the reading of Schedule III that executes a duty to preserve the national integrity and sovereignty. Moreover, there is no doubt that the Constitution gives it the status of a law, but at the same time, the court must be accountable to the people and accountable to the people.

II. JUDICIAL ACCOUNTABILITY: MEANING

Accountability is a Latin word and this word didn't appear in English until 13th century. 'Accountability' has several meaning in ethics and governance. The word 'accountability' and the word 'judicial' should be read together to form a meaning of judicial accountability. Judicial accountability is an expression which defies definition. It is evolving concept, the precise parameter of which are undetermined. In the literature, wherever there is a reference to judicial accountability, mostly it is not defined but attempted to conceptualize. Simply it can be said that it consist of such values as belong to realm of judiciary in connection of both access to justice and delivery to justice. The word judicial accountability often implies that existence of an external authority to which one is accountable, it is clear that the word has a more general definition as well as synonymous with "responsibility". In former sense judge may deemed accountable to an authority with the power of punishment or correction, in latter sense, the judge may be deemed accountable to higher principles- Internal sense of responsibility. Judicial accountability in both senses is important for purpose of pursuing ultimate goals for the judiciary. It is important to remember that "accountability "is not Synonymous with the 'control of power'. Accountability is only a device used to justify, legitimate, explain and perhaps control the exercise of power. The goals of judicial accountability are to guarantee high norms of necessary leadership and open acknowledgment of judicial choices. The measures of necessary leadership rely upon the nature of judges and their independence in the necessary leadership process. It is a significant factor to make open regard for judicial choices, which immensely affects public trust in the judiciary. Open acknowledgment of judicial decisions, the second target of judicial accountability, relies upon free trust in the justice framework, especially on unprejudiced judicial nature. Hence, both the goals of judicial accountability are at last worried about open certainty, which induces public regard for the judiciary. Without public trust, in the judiciary the choices of the judges can't be regarded by the general population. Subsequently, judges are responsible to people in general for keeping up open trust in the judiciary. As J.S.Verma J. seen that "the accountability of the judges is to the individuals in whom a definitive power vests. It is, consequently, basic to hold rent certainty which is the genuine wellspring of solidarity of the judiciary". Judges are under a commitment to give full purposes behind their judicial choices and to state them openly. The commitment to give explanations behind judicial choices is a prerequisite of good basic leadership. It advances open acknowledgment of judicial choices. The custom of judicial conclusion composing is a created framework for giving records of the goals of contested inquiries. Giving of explanations behind judgment is important to fulfill the gatherings that bring their complaints. The act of giving explanations behind judicial choices can fundamentally improve open trust in the justice framework.

III. JUDICIAL ACCOUNTABILITY DIFFERENT WITH EXECUTIVE AND LEGISLATIVE ACCOUNTABILITY

There is a proceeding with strain between the ideas of judicial independence and accountability. How the strain between judicial accountability and Legislative Accountability can be accommodated involves

dialog. At an essential level, the point of judicial independence is to guarantee that the judges are free from a wide range of obstruction or impact in practicing judicial power while the point of judicial accountability is to make judges responsible for the utilization of judicial power. From this point of view Legislative Accountability and judicial accountability are viewed as two contending characteristics which are exchanged off in a quest for the right equalization. Regardless of this, the estimations of judicial independence and accountability are not restricted to one another: somewhat they move in the direction of a similar end. The primary object of both the ideas is the equivalent: to upgrade or keep up open trust in the judiciary. Along these lines, they ought to be understood as interrelated as opposed to opposite qualities. Morabito contends, "Judicial accountability and Legislative Accountability are not characteristically conflicting. The facts confirm that the more we investigate the conduct of judges, the more prominent the probability that endeavors will be made to apply inappropriate weight on them; regardless of whether judicial independence is, truth be told, impeded will rely upon the highlights of the arrangement of accountability which are set up. In the event that a given arrangement of accountability has adequate shields to guarantee that it can't be controlled to the burden of judges and is likewise ready to produce or improve open trust in the judiciary, through the open's information that examples of judicial wrongdoing and handicap will be properly managed, it will give judicial accountability and, simultaneously, upgrade judicial independence.

IV. JUSTIFICATION FOR SECURING JUDICIAL ACCOUNTABILITY

Judicial accountability and answerability of the judges is an old idea. A few nations give in their constitutions to guaranteeing accountability of judiciary. In a 'Democratic republic' control with accountability of the individual appreciating it, is fundamental to keep up any democratic framework. The accountability should be complete to incorporate the government officials, yet in addition the civil servants, judges and every single individual gave with power. Power and position in a democracy accompany obligation, and each open office must remain continually responsible to the individuals, who are the storehouse of political power.

Through the office of courts, the judicial framework manages the organization of justice. Judges are the people who manage the courts. They are not just unmistakable images of courts but rather they are really delegates in fragile living creature and blood. The habits where judges release their obligations, decide the picture of courts just as the validity of judicial framework. In India since prehistoric time judges have been held in high regard. Be that as it may, as of late because of some terrible occurrences individuals are gradually losing confidence in judiciary and are bringing law into their hands. It is highly woeful. Subsequently it is required to make judiciary responsible, as criticism of qualities in judiciary is excessively expensive than in some other wing of the administration as judiciary needs to go about as the watchman of our constitution. Hon'ble Chief Justice, Verma perceived the legitimacy of this request when he commented on one event, "Nowadays we (Judges) are telling everybody what they ought to do however who is to let us know? We have undertaking of authorizing the standard of law, yet does not absolved and even excuse us from tailing it". For appropriate execution of this idea of judicial accountability, it is normal that the judges ought to pursue a set of principles which might be comprehensively called as morals for judges.

V. JUDICIAL ACCOUNTABILITY BULWARK OF RULE OF LAW

Lord Wolf held the consciousness of independence very well: "Freedom of the judiciary is not a property of the judiciary, but a crop of public confidence in the judiciary". The independence of judiciary rather than that of the individual judges are reliant on the readiness of the well-known branches to avoid, utilizing their abundant established forces to encroach on judicial specialist. The points of confinement on the intensity of judicial survey are a common subject in the advancement of our Constitution. In a portion

of its recognized decisions, the Supreme Courts has characterized the layout of sovereign power as circulated among the three parts of Government to be specific, the council, the official and the judiciary. The courts ought not to venture out of the cutoff points of their genuine forces of judicial audit. It imperils proceeded with open enthusiasm for the un biasness of the judiciary, which is fundamental to the continuation of guideline of law, if judges, under appearance of elucidation, give their own favored alterations to status which experience of their activity has appeared to have had outcome that individuals from the court before whom the issues come consider to be damaging to open intrigue.

VI.LIMITATION OF JUDICIAL POWER

It is settled in India that the Supreme Court will practice the intensity of judicial surveys just if a real case or opposite is introduced Litigation including a genuine clash of rights and enthusiasm between fighting gatherings. The court, in this way, can't step up to the plate decking laws. 'Case or unlawful. It has no self-beginning limit and should anticipate the activity of some defendant so oppressed as to have a legitimate case.

The essential constraint is established on the way that a Court can just choose a case between unfavorable gatherings brought before it in the recommended way. It can't think in theory and issue judicial orders. It can't follow up on its own drive. The Constitutionality of a rule can't be controlled by the Court until some individual or people whose rights are influenced by it go to the Court to have their rights settled. It is therefore that regularly there is a striking time slack between the establishment or activity of a rule and an announcement of its shortcoming by the Court.

The essential restriction which the American Supreme Court has forced upon its capacity of judicial audit is that the Court won't practice this power with the exception of in 'adversary prosecution'. It has been derived from the 'case or debate provision in Art. Sick, s. 2 (1) of the Constitution, which has likewise been in this way emphasized in the articulation, 'genuine debate' in the Federal Declaratory Judgment Act, 1934. Be that as it may, this confinement pursues from the very idea of the judicial capacity and would, along these lines, be similarly appropriate under a Constitution like our own, despite the fact that it has no arrangement comparing to the Controversy' provision of the American Constitution. It is at this phase one can see a plausibility of a contention emerging between the intensity of judicial survey and the hypothesis of Separation of Powers It is important for the judiciary to attract a line to avoid a showdown with the other two wings. The Independence of the Judiciary commands that it is simply the Judiciary that draws this line.

VII. ACCESS TO JUSTICE AND DELIVERY OF JUSTICE

The access to justice is connected to destitution decrease for the reason that being poor and underestimated means being denied of decisions, openings, access to essential assets and a voice in basic leadership. The absence of access as far as possible the viability of neediness decrease and just administration programs by constraining cooperation, straightforwardness and accountability. The making of an economical domain with equivalent access to justice require! working with various kinds of foundations and with different on-screen characters, for example, the police, the Courts, examiners, social laborers, jail authorities, network pioneers, paralegals, conventional committees and other neighborhood mediators; and assessing the linkages between them. Casual and conventional instruments of justice are frequently increasingly accessible to poor and hindered individuals and may can possibly give rapid, moderate and significant solutions for poor people and impeded, however they are not constantly viable and don't really bring about justice The engaging of poor people and distraught to look for solutions for injustice, reinforcing linkages among formal and casual structures, and countering predispositions inalienable in the two frameworks can give access to justice to the individuals who might somehow or another be barred. It is focused on utilizing a human rights-based methodology in its programming, guided

by worldwide human rights guidelines and standards. The access to justice is an essential human ideal just as a basic way to battle destitution, forestall and resolve clashes.

VIII. JUDICIAL ACCOUNTABILITY FACILITATE JUDICIAL TRANSPARENCY

The accountability process facilitates transparency. This is best achieved when the law is blamed. The existing system of accountability has unsuccessful and rising exploitation is losing an important part of this branch of democracy. Criticize this lack of responsibility. In the words of one Nehru leader, "Supreme Court judges sit far away from ordinary men sitting in ivory towers and know nothing about them." The judges accepted the statue of God. Judges, above all, enable people to do bad things or to do bad things.

In India, citizens rely on the judiciary to solve many of their problems. Therefore, the importance of constant accountability that this power confers on the Indian judiciary is of great importance. The absence of judicial accountability reduces the judiciary's reliability when a responsible judicial agency can only provide an unchanging political environment and a more efficient administration. However, it has also been recognized that judicial accountability can severely hinder its independence if it is too broad. So it is important for us to have a good balance between the two. The final result of the discussion above is that the Constitution's draft readers understood the significance of the freedom of the judiciary, which the court recognized as one of the major features of the constitution.

There has been a ton of praise for the Right to Information Act, 2005 for introducing a 'fair and just system' over the different organs of administration in India. In any case, tragically, the Higher Judiciary in India has, on numerous occasions attempted to 'protect' itself against each conceivable 'infiltration' into its style of working.

IX. RELATIONSHIP BETWEEN JUDICIAL ACCOUNTABILITY AND JUDICIAL INDEPENDENCE

The judicial accountability and judicial independence are two appearances of a similar coin and can't be isolated. Straightforwardness in working and accountability regarding obligations are essential in a democracy and the judiciary is no special case. As Benjamin N. Cardozo stated, "the substance of sacred invulnerabilities isn't steady yet changes from forever. The requirements of progressive ages may make limitations basic today which ere vain and whimsical to the dreams of times past." This is the core of the issue. The desire from the judiciary is in reality exceptionally high in perspective on the idea of its job in the Constitution. The independence of the judiciary is intended to engage it as the watchman of the standard of law. It isn't simply for its respect, yet basically to serve the open intrigue and to safeguard the standard of law. Judicial accountability and judicial independence are complimentary to one another. Judicial accountability helps shield the independence and trustworthiness of the judges. Now and again judicial accountability can be misinterpreted as it is setting based. It is hard to characterize judicial accountability and it must be acknowledged from the perspective on its destinations. It very well may be said to have three primary capacities; right off the bat, to advance the standard of law by dissuading any lead that may obstruct judicial independence, furthermore, to propel open trust in the judiciary and in conclusion to advance institutional obligation of the judiciary, in general, towards the general population. Found in this point of view, judicial accountability appears if not progressively critical, at any rate, is as noteworthy as judicial independence. Judicial independence is a worth which underlines the presence of standard of law, rupture or encroachment of which offers ascend to a reason for activity though accountability is a feature of judicial independence. Benjamin Franklin's announcement applies similarly to the judiciary, "just a high minded people are equipped for opportunity. As a country winds up degenerate and horrible, they have more need of experts". Total resistance might be helpful for independence; however it might offer assurance to degenerate judges or to gross types of wrongdoing. Judges ought not to be considered responsible for maintaining the standard of law. This peddles an image of contention between judicial independence and judicial accountability, yet they are indistinguishable and

not conflicting with one another; in truth they sustain one another. As Subhash C. Kashyap says, "Judicial accountability is an aspect of judicial independence. In any case, in specific circumstances, they may struggle." Neither judicial independence nor judicial accountability is finished all by themselves. As Ronald Dworkin stated, "law isn't separate from ethical quality; law is a division of profound quality." Thus, there is far in accomplishing the objective of judicial accountability and straightforwardness due to the hindrances. To aggregate up, judicial accountability is an aspect of the independence of the judiciary; and the instrument to uphold judicial accountability ought to likewise save the independence of the judiciary. The standard of law is the base of democracy which will be antagonistically influenced if the independence of the judiciary is undermined by the disintegration of the honesty of the judiciary.

X. RECONCILING INDEPENDENCE AND ACCOUNTABILITY IN JUDICIAL SYSTEM

Since the mid-1990s, the compression of accessible assets and the spread of 'new open administration' approaches have introduced new difficulties to European judicial frameworks, anticipating that they should improve at the same time their effectiveness, nature of administration conveyance and accountability components, in accordance with the desires on different parts of the open segment. The advancement of these changes has been portrayed by pressures between expert gatherings originating from different disciplinary foundations, and maintaining unique standards. To start this examination of the topic of open segment accountability as it applies to judicial frameworks by assessing the manner in which pressures have been happened in discussions over judicial change. These have been considered as situated in the resistance among independence and accountability for a long time, however the difference in scene, there are presently seeing alters the manner in which the issues are confined in various ways. The judge is then never again esteemed solely as an autonomous leader, yet in addition as an entertainer with a task to carry out as a feature of an open association conveying administrations to people in general. In the event that judges as autonomous chiefs were to be assessed by the degree of their independence and the nature of their choices, the recently considered judiciary is liable to 'administrative' execution strategies that disregard major estimations of the judicial procedure. In such cases accountability comes to be seen solely from an administrative point of view. In the judicial change discussion, accountability and judicial independence are values that are commonly viewed as in pressure, if not really conflicting. As per a previous chief of the American Judicature Society, the judges' resistance of their own independence is basically founded on two contentions. The first is that independence speaks to an incentive in itself. The second is that it is harmed by the systems of accountability. The reactions of these administrative methodologies by judges and their affiliations comprise cases of the settled restriction of judicial independence and administrative accountability that have been examined previously. The judiciary has contended that these measures negatively affect independence and that they can't precisely gauge judicial movement in the entirety of its multifaceted nature. Notwithstanding whether these measures have been created by services or by judicial committees, the pressures among independence and accountability have jumped up in new structures because of these contentions. Much of the time the circumstance comes down to a back-and-forth between on-screen characters with hopeless interests: the recognizable lose-lose situation. In spite of the fact that the power relations offer prepared clarifications of the occasions in the three cases that have been accounted for, one ought not to let them darken other significant elements of the question. The first methodology ought to be reasonably, to demonstrate that judicial independence can be accommodated with accountability, as long as both are considered comprehensively enough and as a feature of a similar exertion of securing and improving the regard of the key qualities on which judicial frameworks are based.

XI. CONCLUSIONS

In India the judiciary is depended upon by the native to comprehend a large number of their challenges and thusly reliable gauges of accountability that give the Indian judiciary this quality are of most extreme significance. Absence of judicial accountability lessens the validity of the judiciary. A responsible judicial establishment can just prompt a stable political air just as an unquestionably progressively productive arrangement of administration. Nonetheless, it is additionally recognized that judicial accountability whenever extended too far can genuinely hamper judicial independence and consequently it is fundamental that we strike the correct harmony between the two. The ultimate result of the above exchanges is that the significance of the independence of the judiciary was some time in the past acknowledged by the designers of the constitution which has been acknowledged by the courts by stamping it as one of the fundamental highlights of the constitution. It is outstanding that law needs to change in order to meet to the desires for an evolving society. Likewise judicial independence also must be seen remembering the changing component of society. Judicial Accountability and Judicial Independence need to work inseparably cooperatively to guarantee that the genuine reason for setting up of the organization of judiciary is accomplished. Straightforwardness is encouraged through the procedure of accountability. It is best accomplished when one is responsible to law. The accountability mechanism should not only develop highly ethical and professional standards but also generate social legitimacy. The functioning of the judiciary is, at the end of the day, based on the doctrine of public trust. If judges are to acquire judicial authority, they need the people to believe in their integrity and capacity to deliver socially meaningful judgments.

So in order to conclude this chapter it can be said that the various concepts of Judicial accountability has been discussed in details and the comparison of accountability with other such ideas has led to the fact that Judicial Accountability is still and evolving concept in India and requires effort from the government to implement it in a much broader manner.

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