

## **NOTE: Re: Mechanism for Judicial Accountability**

In a 'democratic republic' power with accountability of the individual enjoying it, is essential to avert disaster for any democratic system. The accountability must be comprehensive to include not only the politicians, but also the bureaucrats, judges and everyone invested with public power. Power and position in a democracy come attendant with responsibility, and every incumbent of a public office must remain constantly accountable to the people, who are the repository of political sovereignty. Lord Woolf, the Chief Justice of England and Wales, in a recent article on the subject after referring to one of my lectures, said: "The independence of the judiciary is therefore not the property of the judiciary, but a commodity to be held by the judiciary in trust for the public." Judicial accountability being a facet or corollary of independence of the judiciary, it is logical, therefore, that there must exist an effective mechanism for enforcing accountability of every holder of a public office. The only difference can be in the nature of the mechanism, depending on the kind of office and the level at which it exists in the hierarchy of public offices.

Accountability of the judiciary at every level, in a democracy cannot be doubted. The need of an effective mechanism for the enforcement of judicial accountability, when needed, is a felt need and must be accepted. Since judicial accountability is a facet of independence of the judiciary, article 235 of the Constitution of India provides for 'control' of the High Court over the subordinate judiciary clearly indicating that the provision of an effective mechanism to enforce judicial accountability is a part of our constitutional philosophy. Entrustment of the power over the subordinate judiciary to the High Court preserves the independence of judiciary, and respects the directive principle of separation of judiciary from executive (article 50). It cannot be doubted that the independence of a subordinate judge is as important as that of a judge in a High Court or in the Supreme Court.

Absence of any mechanism for enforcement of judicial accountability at the higher levels, other than by the process of impeachment [articles 124(4) and 217(1) Proviso (b)] in extreme cases, is because no such need was visualized when the Constitution was framed. At that level, it was expected that settled norms and peer pressure were sufficient checks. However, there is now a felt need for an effective mechanism even for the higher levels of judiciary, though it may be for rare aberrations only. Public opinion is veering in that direction because of several recent instances, some of which have led even to criminal prosecutions and an infructuous impeachment proceeding. Public memory of such instances being fresh, details thereof do not require mention.

Inadequacy of the existing mechanism was witnessed in the K.Veeraswami case, 1991(3) SCC 655; and the infructuous impeachment proceedings in the case of V.Ramaswami even after the adverse finding of the Judge's Committee under the Judges Inquiry Act, 1968, affirmed that impression. Several subsequent incidents involving judges at the higher levels, which are well known, have led to a clamour for an effective mechanism

for use when needed. Absence of an effective means to ensure accountability of all public men portends danger for democracy.

The judiciary being alive to its responsibility has voiced its concern judicially as well as extra-judicially on several occasions; and it has also taken steps within its means to develop an in-house mechanism to fulfill this need. However, time has come when an effective enforceable mechanism with legal sanction should be available.

In furtherance of the earlier resolutions of the Chief Justice's Conferences, on May 7, 1997, the Supreme Court of India in its Full Court Meeting unanimously adopted a Charter called the '**Restatement of Values of Judicial Life**', generally known as the Code of Conduct for judges. Simultaneously, two other resolutions were adopted, which require declaration of assets by every High Court and Supreme Court Judge/Chief Justice, and the formulation of an in-house procedure to inquire into any allegation of misbehavior or misconduct against them, which is considered fit for inquiry by the Chief Justice of India and some of his senior colleagues. Conscious of the fact that this mechanism lacked legal sanction for its enforcement, the then Chief Justice of India, J.S.Verma wrote a letter dated December 1, 1997 to the Prime Minister informing him of these resolutions and the need to provide legal support to this effort. That need remains unfulfilled.

The judiciary has continued its efforts in that direction because that belief persists. The above unanimous resolutions dated May 7, 1997 were adopted by the Chief Justice's Conference in 1999, and were followed by the Bangalore Principles of Judicial Conduct, 2002. These documents together provide the basic framework for enacting the law in this behalf to provide the requisite legal sanction for enforcement of judicial accountability at all levels, whenever needed.

However, care must be taken to preserve the independence of judiciary and to ensure separation of judiciary from executive. The adjudicative power must, necessarily, vest in a committee of senior judges, and the consequential action should be taken by the President of India on the advice of the Chief Justice of India in accordance with the judicial finding. This can be a mode in addition to, and as an alternative to impeachment.

The mechanism must also provide stringent punishment against its misuse on false and scurrilous allegations made against honest judges who constitute the overwhelming majority. It will help provide a means to an honest judge to have his name cleared when false and scurrilous allegations are made maliciously or recklessly, for which no effective remedy exists at present. The only means available to sue for defamation is neither practical nor feasible. The mechanism should cater to all needs and cover all aspects of judicial accountability as a facet of independence of judiciary.

A related issue assuming significance in recent years must also be addressed. There is public disquiet, voiced often in private, about some post-retirement engagements of the Supreme Court Judges/Chief Justices. Chamber practice in the form of written opinions under signature given for use in any court, tribunal or authority; and paid arbitration work

done while heading a Commission availing the benefit of the perquisites and/or salary of a sitting Judge are some of the disturbing trends. In an article published in the Indian Express of March 14, 2004, Soli Sorabjee, a former Attorney General expressed grave concern at former Chief Justices of India filing affidavits on behalf of private litigants in the US courts. These are some of the instances impinging on the credibility of the institution on which lies the greatest responsibility for preservation of the Constitution.

The relevant provision in the Constitution of India for this purpose is clause (7) of article 124, which is as under:

“No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.”

It is a serious issue relating to judicial accountability requiring clarification without further delay. It is time that article 124(7) is made more specific to remove any ambiguities or grey areas amenable to differing individual interpretations in respect of prohibited activities after retirement from the Supreme Court.

May be, the provision can expressly prohibit all opinion and arbitration work, except that done on request from the President/Prime Minister or Governor/Chief Minister in a matter of national or public interest; and the whole salary of the office can continue as the lifelong pension with no additional payment to be made for giving such opinion or doing the arbitration work? Why cannot this be a necessary incident of the office of a Judge/Chief Justice of the Supreme Court? The distinctive nature of the office justifies its separate treatment. Such a course is for the nation’s benefit. This is the demand of the nature of the office and the prestige attaching to it. One must take the office with all its incidents. Winston Churchill had rightly said, that the Judges are at the same time ‘privileged’ and ‘restricted’. After all acceptance of this office is by choice.

The matter is urgent and does not brook any further delay.

J. S. Verma  
Former Chief Justice of India

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