

Subject:

Political Science

LYCEUM INDIA

Title:

**Emphasising Judicial Accountability without
Compromising its Independence: An Indian Experiment**

Journal of **Social Sciences**

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Abstract:

The tussle between the judiciary and other organs of the state is no longer a new phenomenon in Indian politics. This paper is an attempt to understand the importance of judicial independence in the context of the overarching act of the executive wing. At the same time, it emphasises judges' accountability for their misconduct and immoral actions in light of the corruption charges against them. The paper begins with a brief introduction and overviews the constitutional measure of an integrated judicial system with an emphasis on judicial independence. It proceeds to analyse the overarching act of the executive and legislative over the past years, which threatens judicial autonomy. Subsequently, the judiciary reclaims it through its various significant judgements and reviews. It also elaborates on the constitutional and legal mechanism and its limitations to ensure judicial accountability, and eventually, it tries to strike a balance between the two that judicial independence is a constitutional morality; it can go a long way along with judicial accountability, which is the essence of democratic politics.

Keywords:

Judicial Independence, Judicial Accountability, Constitution, Democracy.

Introduction:

The supreme law of the land creates various organs of the state with their respective jurisdiction to ensure that democratic governance prevails. Article 50 of the Indian constitution dictates that 'the State shall take steps to separate the judiciary from the executive in the public services of the State.' In addition to that, the mechanism of checks and balances authorizes the judiciary to review the executive and legislative acts to examine their constitutionality. If any act is found arbitrary and incompatible with the law, it strikes down and declares unconstitutional. Similarly, parliament is empowered to impeach a judge on the grounds of his or her misbehavior and incapacity. For this reason, the direction of separation of power along with proper checks and balances underscores the fact that no organs of the state are powerful and authoritative enough to swallow the essence of democratic politics. However, in the course of time, the real picture has become quite different. The recent headline of the newspaper on the Supreme Court stay of the Lokpal ruling, accusing a High Court judge of corruption, bears a lot on the executive and judiciary face-off in the Indian political landscape. In fact, quite a number of such disagreements dwell in the history of Indian politics. The tussle between the judiciary on the one hand and the executive-led parliament on the other is, at the deeper level, a struggle for parliamentary supremacy, independence, and accountability. This paper focuses on the primary reason for conflict as the executive expansion of power to intervene in judicial appointments and transfers. It also highlights the court's attempt to counter such expansion through various significant judgements in order to secure its independence. The other reason for conflict that the paper deals with is the court's reluctance to confirm the principle of accountability. Hence, while it emphasizes judicial independence as a vital mechanism of the court to dispense constitutional justice impartially, judge's accountability is never sidelined and overlooked. In fact, it is taken care of that judicial accountability is the corollary of judicial independence. Moreover, when the corruption charges of judges come to the fore, it provides enough space to think that judges cannot always be sacrosanct, unbiased, and fair. Due regard is given, therefore, to the necessity of judicial accountability without compromising judicial independence.

overview of the Judiciary: The Constitution of India erects an integrated judicial system with the Supreme Court at the top to provide justice to the people. The high court and subordinate court are placed under it to constitute the lower strata. They are integrated to the extent that the apex court decisions are binding on others. Article 124 and 214 of the constitution lay down the provision for the establishment of the Supreme Court and High Court, respectively, to administer justice. Other than this, they are also entrusted to perform the function of safeguarding constitutional supremacy, interpreting the laws, resolving disputes, protecting fundamental rights, judicial review, and maintaining the balance of power. There are other provisions in the constitution as well, of Articles 233, 233(A), 234, and 235, which create the subordinate court under the supervision of the high court to uphold the rule of law.

Judicial Independence: The court being the bulwark of justice and of individual rights, establishing an impartial and independent judiciary was a significant challenge laid before the constituent assembly. They were convinced that any political influence upon it would ruin the system itself. Therefore, they envisioned an independent court shielded from political influence to ensure judges perform their duty without fear or favor. The independence of the court was secured through a constitutional mechanism where executive influence was restricted to a minimum. In other words, the salary, allowances, appointment, and impeachment process of judges are solidly built so that judicial autonomy is assured. In a nutshell, making an independent judiciary was the deliberate and conscious decision of the constituent assembly, which, later on, led the court to invoke it as one of the basic structures of the constitution.

However, executive impinging on judges appointments and transfers has become a significant threat to judicial independence. As a result, the court affirms its autonomy as a deliberate attempt of constitution makers and constitutes the basic structure of the constitution. The interference in matters of judicial transfer and appointment was routine work during the Indira Gandhi government. It began with a junior judge, A. N. Roy, superseding three senior judges and being appointed as chief justice of India in 1973. In consequence, the superseded judges resigned as this move was purely political. The Supreme Court Bar Association also condemned it as favoritism in the judiciary. Further, H. R. Khanna was superseded in 1977 for her regime. Subsequently, an effort was made for the mass transfer of the high court judges across the country. Later on, these superseding and mass transfer created a perception of threat to judicial independence among the judiciary, which resulted in evolving its present 'collegium system' through its second judges' case in 1993 and was reinforced in the third judges cases of 1998. Recently, the court struck down the National Judicial Appointment Council (NJAC) Act on the same grounds of undermining its independence on 16 Oct 2015.

The issue of corruption allegations, in which judges are involved in corrupt practices, is another dimension of the face-off between the judiciary and the executive. The ruling of Lokpal that alleges corruption charges against a high court judge and the subsequent Supreme Court stay on it is a recent case in point. The court found it disturbing as it perceives it as a threat to the judicial independence where judges are answerable to executives like Lokpal. Over the past years, numerous such cases were registered. Surprisingly, once it was proved, many of them were not made accountable for their own actions. Justice V. Ramaswami was accused of corruption, and impeachment proceedings were initiated in the parliament. Despite the three-judge inquiry committee's conclusion that he was guilty of gross misbehavior, he was allowed to perform the judicial functions. After the failure of impeachment, he was persuaded to resign, but it fragmented the issue for future administration of justice. The judge was freed from being responsible for his misbehavior. Similarly, Justice Ashok Kumar, an additional judge, was confirmed as a permanent judge, despite the collegium's initial decision not to confirm because of adverse reports of corruption against him. The Chief Justice of India, without consulting other members of the collegium, recommended him to be confirmed as a permanent judge,

and he was confirmed in 2007. The confirmation was challenged in the court on the basis that it was against the supreme court law and constitution. But the court, instead of making him accountable, upheld the confirmation. However, a judge of the Calcutta High Court, Soumitra Sen, was impeached in the Rajya Sabha in 2011. Justice Ashwini Kumar Mata was also accused of forgery and fraud. Such allegations and being irresponsible for one's own actions pose a serious question to the ethical conduct of judges and the sanctity of the judiciary being impartial and fair. Hence, judicial accountability is as important as judicial independence.

Judicial Accountability: Judicial accountability stipulates the ethical conduct of judges. In other words, judges are to be responsible for their own conduct and decisions. As judicial independence was a major concern for the constituent assembly, judicial accountability was not neglected. As judges are like all other humans, their incapacity and misbehavior cannot be ruled out. Therefore, an impeachment procedure of judges was placed in the constitution along with its autonomy features. Article 124(4) and 217 empower the parliament to impeach the supreme court and high court judges, respectively, on the grounds of proven misbehavior and incapacity. While the proved misbehavior refers to the misconduct or action of a judge that breaches the professional and ethical standard of a court, incapacity is the inability of a judge to perform their duty due to ill mental and physical health. It was a judicious blend of courts independence and accountability, as judicial experts involved in the inquiry. However, due to its complexity, it has not always been successful in making judges accountable. An example could be the above-cited Justice V. Ramaswami case. Despite the proof from the three judges' inquiry committee report, neither parliament could impeach nor did the court take any action to make him accountable.

In view of such irresponsibility of judges and numerous corruption charges against them, the judges' accountability is questioned. As a result, the executive and legislative intervention in the judicial affairs becomes obvious. Interestingly, the court has denied by quashing such a measure as a threat to its autonomy and integrity. The executive-led legislature has brought a significant measure of judicial standards and accountability, the Bill of 2010, which lays down enforceable standards of conduct for judges. It has not become an act yet as it remains to be passed in the Rajya Sabha. Another such attempt was the NJAC Act of 2015. The NJAC to appoint and transfer judges of the higher judiciary was proposed under the leadership of Prime Minister Narendra Modi and was passed in the parliament. It is a six-member body that includes two eminent persons. The court found that the two eminent persons are the area where politicians could influence and infiltrate. Hence, the court quashed the act and upheld that NJAC is unconstitutional and a threat to its independence.

Though the court has invalidated the executive and legislative interference, it has evolved its own way to address the issue largely through the mechanism of an in-house committee and the restatement of judicial values (1997). While the former allows the CJI to oversee the in-house procedure in investigating complaints against the judges, the latter underlines the code of conduct for higher judiciary members. The court has also put in place a central information system, compliant with affidavits, appeals, and reasoned orders.

Way forward: Judicial independence and accountability are correlated phenomena. Putting it differently, making the court more accountable will significantly impact its independence and vice versa. While the court has invalidated the executive and legislative interference to ensure accountability, considering its importance in the face of corruption charges evolved its own way. Though its own model seems insufficient and much needs to be done to ensure that the issue of corruption is addressed, any further encroachment by the executive to make the judiciary accountable would very likely be invalidated on the same ground. Now, the judicial accountability as a matter remains with the court itself to win the public trust and credibility.

Failing to do so will degrade the institution and disavow the vision of the constitution maker for which it was established. Therefore, the court has to take proactive steps to ensure that judges are not involved in corrupt practices. If any, they are not exempted from accountability.

The court, in order to strengthen its existing model of addressing the corruption issue, is expected to take the initiative to bring internal reforms by establishing a robust complaint mechanism to handle complaints against judges, ensuring impartiality and confidentiality. It should also take steps to internalize a mechanism to conduct regular audits and inspections to ensure compliance with judicial standards and procedures and to implement judicial performance evaluations to assess the judge's competence, impartiality, and integrity. In order to make itself more transparent to the public, it should live stream the court proceedings, publish the judicial decisions and orders, and develop a public education program to promote understanding of the judiciary and its role. Apart from this, it should also provide judicial education and training programs for judges on ethics, accountability, and transparency so that judges are not involved in immoral acts.

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Citation in APA Style:

Baishampayan Sunani. (2025). Emphasising Judicial Accountability without Compromising its Independence An Indian Experiment. *Lyceum India Journal of Social Sciences*, 1(6), 1–4.
<https://doi.org/10.5281/zenodo.15077357>