

Doctrine of Independence of Judiciary vis-a-vis Judicial Standards and Accountability Bill, 2010: A Critical Analysis

M. R. Sreenivasa Murthy¹, K.Syamala²

^{1,2}Associate Professor, National University of Study and Research in Law, Ranchi

Corresponding Author: M. R. Sreenivasa Murthy

ABSTRACT

Doctrine of independence of judiciary is a struggle to maintain the impartiality and integrity of the institution to protect the constitutional values and perform the constitutional duties. Legislative and executive interference into the judicial independence is expected to affect the checks and balances. After a long-standing debate about appointment of judges and independence of judiciary, the next is about the codification of enforceable judicial standards through legislative framework i.e., the Judicial Standards and Accountability Bill, 2010. The effort of making judiciary liable to public directly by way of creating locus standi for any person to lodge complaint before the investigative mechanism involved non-judicial members is considered as a blow upon the independence of judiciary. Providing meagre penalties against frivolous complaints and divulging confidential information by the persons involved in the complaint process is raising doubts about the intention of the legislators. The recent incidence of Andhra Pradesh ruling party persons alleging the judges of High Court of Andhra Pradesh and Supreme Court of India for ruling against the State Government's decision against painting party colours on government buildings shows the intent of the political sympathizers about pressure building by attributing motives, caste and corruption through uncivilized comments on social media. This article attempts to inquire into the possible impact on the doctrine of independence of judiciary, if the legislature brings up the Judicial Standards and Accountability Bill, 2010 and then to explore the alternatives to enforce the judicial standards

to ensure the independence, impartiality and integrity within the system.

Keywords: Judicial Standards and Accountability Bill 2012, Doctrine of Independence of Judiciary, judicial independence, impartiality and integrity

1. INTRODUCTION

God of Justice sits on a Golden Throne, but at his feet sit two lions – 'law and equity'

On May 26, 2020, Andhra Pradesh High Court initiated contempt proceedings against 49 persons including MPs and MLAs of the ruling party (YSRCP) for public statements alleging the High Court and Supreme Court judges by attributing motives, caste and corruption against its verdict which ordered to remove the party colours painted on walls of the Government buildings. It is to be noted that on appeal, the Hon'ble Supreme Court of India also affirmed the judgment of the Andhra Pradesh High Court.

In one of the tweet, it was mentioned that '*total how many judges are there in the High Court, all those will be cut into pieces.... All judges shall be kept in a room and a Corona patient shall be left with them*'. In another Facebook post, it was mentioned that, '*All the High Court judges are Bastards, they are good for nothing, except sleeping with their wives. Let them arrest me and order for CBI enquiry*'.

The aforementioned incident is nothing but a blow upon the judicial integrity, dignity and respect. Though

Contempt Proceedings are initiated against 49 persons, there are thousands and lakhs who shared and posted the same on their social media accounts. Social media is the fastest mode of dissemination of information to the lakhs of people and whom to be made accountable for such huge and massive blow upon the judicial integrity with an ill intention to affect the judicial independence.

Judiciary always was engaged in professing, practising and promoting the doctrine of independence of judiciary to perform the constitutional duty, i.e., maintaining check and balance upon the legislature and executive. In that process, judiciary came out with two-step process:

- First, self-introspection and internal purification via disciplinary proceedings for enriching functionaries with the ethical values i.e., judicial independence, impartiality and integrity
- Second, initiating contempt proceedings against those who attempts to destroy the integrity, dignity and respect of the institution without any valid cause.

As part of the first step, the Indian judiciary underwent different phases with respect to the 'appointment of judges' in order to preserve, promote and protect the 'independence of judiciary' from the executive and legislative interference. The establishment of Collegium system, NJAC judgment and subsequent MoP for appointment of the judges of Supreme Court and High Court are the highlights of this introspection of the judiciary in promoting transparency and accountability in the process of appointment of judges.

With regard to the second step, i.e., initiating the contempt proceedings against those who intentionally affect the dignity of the institution is taken care by the Contempt of Courts Act, 1971.

Judiciary also introduced the code of judicial ethics for ensuring high standards of professionalism among its fraternity, to avoid any internal weaknesses resulting out of indiscipline, corruption and wrong practices by the fraternity members. The

Judges (Inquiry) Act, 1968 provided procedure to deal with complaints against the judicial indiscipline. According to the Act, only a Member of Parliament can raise complaint by introducing a motion in the Parliament against the judges of the High Court and Supreme Court.

The story line of 'Doctrine of independence of judiciary' and judicial accountability and transparency was going on well though with twists and turns in one direction. But the advent of Judicial Standards and Accountability Bill, 2010 which intended to introduce provision of filing of complaint against judge by any person, led to serious criticism. It was considered as opening up a Pandora box for the frivolous complaints which may halt the rotation of the wheels of justice.

With ill-motive and bad intention, anyone can lodge a complaint against a judge who do not favour his side in the judgment. The situation explained in the beginning of the article about the abusive language and trolling used against the judges of the High Court and Supreme Court by the sympathizers of the ruling party of Andhra Pradesh is the evidence of possible political pressure on the working of the judiciary with integrity and honesty.

The judiciary had to prove its independence, integrity and impartiality in adjudication on the principles of rule of law and constitutionalism against the allegation of biasness. No doubt, every adjudication is bound to be within the code of judicial ethics and judicial fraternity is accountable for their performance. But while adjudicating a case, the judge has to apply intellectual faculties in gauging the facts of the case and relevant legal principles. The judgment is an outcome of the understanding of the facts, evidences, arguments, legal principles by a reasonable prudent person i.e., judge. The party which lost the case cannot complain against judge for not delivering the judgment in favour. Rather, he can appeal against the judgment and attempt to impress the appellate court by presenting the strong points in his case.

Opening up a Pandora box by allowing any person to lodge complaint against judicial fraternity will block the rotation of wheels of justice as, even filing of frivolous complaints also will affect the professional performance of the judges. Though the Judicial Standards and Accountability Bill, 2010 provides penalties for the lodging of frivolous complaints and further provides for confidentiality and secrecy and complaint proceedings, still the feeling threat remains within the professionals, creating mental block in their performance by affecting their judicial independence, impartiality and integrity. The article attempts to deal with the following questions:

- Whether creating *locus standi* to any person to complain against judge as provided in the Judicial Standards and Accountability Bill, 2010, is the only way of ensuring the transparency and accountability in the judiciary? What would be impact of such provision upon the independence of judiciary? Whether providing penalties for frivolous complaints and maintaining confidentiality of the proceedings will regulate the abuse of the provision?
- If such provision is found to be a blow upon the independence of judiciary, is there any other mechanism within the judicial system to check the independence, impartiality and integrity of the judges?

The following is the scheme of the study adopted by the author to find out the answers to the aforementioned questions:

First, the article will analyse the Judicial Standards and Accountability Bill, 2010 and the strong and weak points of the criticism. Second, the article will explore the existing mechanisms to check the independence, impartiality and integrity of the judges and to maintain the independence of judiciary. Third, the article will explore the other ways adopted universally and in practice till date within the country for imparting judicial standards i.e., judicial independence,

impartiality and integrity and to incorporate judicial transparency and accountability.

2. JUDICIAL STANDARDS AND ACCOUNTABILITY BILL, 2010

The Constitution of India provides that judges of the High Courts and Supreme Court can be removed only by Parliament on the basis of a motion in either the Lok Sabha or the Rajya Sabha. The existing procedure for investigation into allegations of misbehaviour or incapacity of Supreme Court and High Court Judges is specified in the Judges (Inquiry) Act, 1968. Justice Ramaswamy, Justice Soumitra Sen of the Calcutta High Court, and Justice Dinakaran of the Sikkim High Court, Justice Karnan and recent controversy involving Justice Deepak Mishra & Justice Bobde and allegations of corruption against the members of higher judiciary are some of the instances where judges were found amidst the code of judicial ethics.

In 1997, the Supreme Court adopted resolutions on (a) Restatement of Values of Judicial Life, and (b) In-house procedure within the judiciary. A concept paper on a National Judicial Commission was prepared by the National Advisory Council in 2005. The Judges (Inquiry) Bill, 2005 was drafted by the government and examined by the Law Commission. The revised Judges (Inquiry) Bill, 2006 incorporated almost all the Law Commission's recommendations, and sought to establish a National Judicial Council (NJC), but the same lapsed.

The Judicial Standards and Accountability Bill, 2010 was introduced to lay down enforceable standards of conduct for judges. The bill requires judges to declare details of their and their family members' assets and liabilities. Importantly, it creates mechanisms to allow any person to complain against judges on grounds of misbehaviour or incapacity.

Key features of the Bill, 2010

The Statement of Objects and Reasons, appended to the Bill, 2010 provides that, the introduction of this law is to deal with the legislative gap left by the

Judges (Inquiry) Act, 1968 (which do not provide for statutory code of judicial standards) and the Restatement of Values of Judicial Life (in-built non-enforceable judicial mechanism to deal with the judicial standards). Further, the objectives of the Bill, 2010 is to fill the gap existing between the legislative and non-enforceable inbuilt judicial mechanism in dealing with the public grievances against judges directly.

The Bill, 2010 is to replace the Judges (Inquiry) Act, 1968. The key features of the Bill, 2020 are: (a) create enforceable standards for the conduct of judges of High Courts and the Supreme Court, (b) change the existing mechanism for investigation into allegations of misbehaviour or incapacity of judges of High Courts and the Supreme Court, (c) change the process of removal of judges, (d) enable minor disciplinary measures to be taken against judges, and (e) require the declaration of assets of judges.

The aforementioned key features of the Bill, 2010 were further elaborated in the following:

- The Bill provides that every judge shall continue to practice universally accepted values of judicial life such as punctuality and commitment to work, guidelines and conventions essential for the conduct and behaviour of Judges, being pre-requisite for an independent, strong and respected judiciary, having integrity and detachment and impartial administration of justice, conscious life style avoiding any such act which is unbecoming of the high office, practising a degree of aloofness consistent with the dignity of his life and delivering quality judgments which adheres to the constitutional values
- The Bill prohibits the following activities: (a) close association with individual members of the Bar who practise in the same court, (b) allowing family members who are members of the Bar to use the judge's residence for professional work, (c) hearing or deciding matters in which a member of

the judge's family or relative or friend is concerned, (d) entering into public debate on political matters or matters which the judge is likely to decide, and (e) engaging in trade or business and speculation in securities. The Bill narrowed down the scope of complaints to the specified standards of conduct and other activities such as corruption, wilful abuse of power or persistent failure to perform duties.

- The Bill proposes to establish three bodies to investigate complaints against Judges:
 - National Judicial Oversight Committee consisting of judicial and non-judicial members with supervisory powers regarding investigation into complaints against judges, and also the power to impose minor measures (measures by issuing internal advisories and warnings)
 - Scrutiny Panel consisting of judicial members of the same High Court for conducting an initial investigation into the merits of the complaint and to impose penalties against frivolous or vexatious complaints.
 - Investigation Committee composition is to be decided by the Oversight Committee which consists of judicial and non-judicial members. Investigation Committee to take up the matters recommended by the Scrutiny Panel.
 - Investigation Committee: will be set up by Oversight Committee to enquire into complaints. The investigation committee will be set up if the Scrutiny Panel recommends that an inquiry should be carried out to investigate a complaint.
- The Bill prescribes the separate process for initiating complaint by any person
- The bill provides for confidentiality clause with regard to the investigation or the complaint and fixed penal liability upon those who participates in the

proceedings and breaches confidentiality clause.

- The bill exempts the investigation or complaint related documents and records from the purview of the RTI Act, 2005, apart from the reports of the Investigation Committee and the order of the Oversight Committee.
- The bill prescribes penalties for frivolous or vexatious complaints
- The bill also states that a separate proceedings can also be initiated parallelly under the Contempt of Courts Act, 1971
- The bill requires the judges to disclose their assets and liabilities within thirty days of taking oath as judge and also annually.

3. CRITICAL EVALUATION OF THE JUDICIAL STANDARDS & ACCOUNTABILITY BILL, 2010

The Judicial Standards and Accountability Bill, 2010 could not take the shape of legislation even in the year 2020. The Bill was passed by Lok Sabha on 29th March, 2012 and could not be taken up for discussion in the Rajya Sabha as Parliament was adjourned. Later the Bill, 2010 lapsed due to the dissolution of the 15th Lok Sabha and after than no proposal to bring a fresh bill.

The Bill, 2010 was criticised to be a blow upon the independence of judiciary on the basis of the following points:

- The proposed Oversight Committee consists of two non-judicial members i.e., Attorney General and an eminent person to be appointed by the President. They both are the representatives of the executive. The Investigation Committee is to be set up by the Oversight Committee. The Bill does not specify the qualifications of members of the investigation committee, but leaves this to the discretion of the Oversight Committee. Hence, there is a strong argument about interference of executive into the independence of judiciary.

- In *Sarojini Ramaswamy v. UOI*, ^[1] the apex court upheld the right of a judge to appeal to Supreme Court against an order of the President removing him. The bill is silent upon right of a judge to appeal against his removal.

The mooted question here is about the provision in the Bill which imposes a penalty of imprisonment up to one year, and fine up to fifty thousand rupees for filing a frivolous and vexatious complaint and also provides for statutory right to appeal to Supreme Court against such sanction. In addition, if the complaint is found to be frivolous, even it is kept confidential, the person is subject to the penalties mentioned therein.

For breach of confidentiality by the complainant or other person, who participates in the scrutiny or investigation or inquiry as a witness or as a lawyer or in any other capacity, such person shall be liable for punishment with simple imprisonment for a term which may extend to one month or with fine which may extend to five hundred rupees or with both.

But in today's context of media freedom and investigative journalism, how far it is feasible to keep the matter confidential? Further, if the confidentiality is breached from other sources, not from the complainant or other persons who participated in the inquiry proceedings, whether complainant can still be held liable? Whether such low penalties deter persons from filing frivolous complaints? The person can sit back and enjoy the drama by simply appealing to the Supreme Court as there is no time frame for disposal of such cases.

Removal of democratic process of removal of judges through Parliament and assigning power to the Oversight Committee which consists of the representation of two non-judicial members to recommend the President for the removal of the judge is evident on its face to affect the feature of independence of judiciary.

4. EXISTING LEGISLATIVE & IN-HOUSE FRAMEWORK FOR ENSURING THE JUDICIAL CONDUCT

The following are the legislations which are existing within the Indian legal system to regulate the judicial conduct & maintain the independence of judiciary:

- The Judges (Inquiry) Act, 1968
 - It provides that only Members of Parliament can raise the complaint against the judge of the High Court or Supreme Court, that to, through motion presented in either House of Parliament to the Speaker or Chairman respectively. The Speaker or Chairman shall constitute a three member committee consisting of one judge from the Supreme Court and one from among the Chief Justices of High Courts and a distinguished jurist. The report of the committee to be laid before both the houses and if the motion is adopted by both Houses of Parliament by two-third's majority, the misbehaviour or incapacity of the judge is deemed to be proved.
- The Contempt of Court Act, 1971
 - It provides for the criminal contempt which includes any act or publication which (a) scandalizes the court; (b) prejudices any judicial proceedings (c) interferes with the administration of justice in any manner. Scandalizing the court includes any public statements which are in the nature of undermining the public confidence in the judiciary
 - Under this Act, High Courts under its supervisory powers can protect the subordinate courts which do not possess contempt power.
 - The 274th Law Commission Report on 'Review of Contempt of Courts Act, 1971' noted that there are several safeguards built within the Act to protect against the misuse and discussed about the successfulness

of the Act for withstanding judicial scrutiny till date.

The aforementioned statutes do not specify any enforceable code of judicial ethics. The Supreme Court of India came out with the Restatement of Values of Judicial Life in the year 1997 to enforce the code of judicial ethics through in-house mechanism. (Through Judicial Standards and Accountability Bill, 2010 which will override the Judges (Inquiry) Act, 1968, the Parliament is attempting to fill the gap)

a. The Restatement of Values of Judicial Life

In India on 7th May 1997, a 16-point code of conduct, for ensuring proper conduct among members of the higher judiciary was adopted by the Judges of the Supreme Court and the High Courts with the Gujarat High Court as the sole dissenter, reportedly. The 16-point code which the Judges prefer to describe as "The Restatement of Values of Judicial Life" is believed to have become effective since then.

It was drafted by a Committee of five Judges, headed by Justice Dr.A.S.Anand, as he then was. The other members were Justice S.P.Barucha, Justice K.S.Paripoornan, Justice M.Srinivasan and Justice D.P.Mohapatra. The 16-point code stipulates:

Justice must not merely be done but it must also be seen as done. The behaviour and conduct of members of the higher judiciary must reaffirm the people's faith in the impartiality of the judiciary. Accordingly, any act of a Judge of the Supreme Court or a High Court, weather in official or personal capacity, which erodes the credibility of the perception has to be avoided.

A Judge should not contest the election of any office of a Club, society or other association; further he shall not hold such elective office except in a society or association connected with the law.

Close association with individual members of the Bar, particularly those who

practice in the same court shall be eschewed.

A Judge shall not permit any member of his immediate family to, such as spouse, son, or daughter, son-in-law, or daughter-in-law, or any other close relative, if as member of the Bar, to appear before him or even be associated in any manner with a case to be dealt with by him.

No member of his family, who is a member of the Bar, shall be permitted to use the residence in which the judge actually resides or other facilities for professional work.

A Judge should practice a degree of aloofness consistent with the dignity of his office.

A Judge shall not hear and decide a matter in which a member of his family, a close relation or a friend is concerned.

A Judge shall not enter into a public debate or express his views in public on political matters or on matters that are pending or are likely to arise for judicial determination.

A Judge is expected to let his judgment speak for themselves. He shall not give interview to the media.

A Judge shall not accept gifts or hospitality except from his family, close relations and friends.

A Judge shall not hear and decide a matter in which a company in which he holds shares is concerned unless he has disclosed his interest and no objection to his hearing and deciding the matter is raised.

A Judge shall not speculate in shares, stocks or the like.

A Judge should not engage directly or indirectly in trade or business, either by himself or in association with any other person. (publication of a legal treaties or any activity in the mature of a hobby shall not be constructed as trade business).

A Judge should not ask for accept contribute or otherwise actively associate himself with the raising of any fund for any purpose.

A Judge should not seek any financial benefit in the form of a perquisite or privilege attached to his office unless it is clearly available. Any doubt in this behalf

must be got resolved and clarified through the Chief Justice.

Every Judge must at all times be conscious that he is under the public gaze and there should be no act or omission by him which is unbecoming of the high office he occupies and the public esteem in which the office is held.

These are only the “Restatement of the Values of Judicial Life” and are not meant to be exhaustive but illustrative of what is expected of a Judge.

In the year 2014, Justice Dipak Mishra, Judge, Supreme Court of India while addressing the gathering in the Judicial Colloquium on ‘Judicial Ethics & Conduct’ highlighted the following points:

- i. Judges often feel loneliness or melancholia in the present day context due to the eminent threat of polluting their independence, impartiality and integrity by any one through any means. The judges have to overcome the loneliness and derive strength from the knowledge of philosophy of law.
- ii. Maintain punctuality to command the respect
- iii. Avoid egotism and self-hypocrisy to develop intellectual integrity
- iv. Develop physical morality, intellectual objectivity and constitutional ethicality
- v. Institutional collegiality should be maintained
- vi. Abuse of discretion in imposing adequate sentence in criminal matters is sacrosanct duty of judicial officers and judges
- vii. Service to the institution is by upholding the independence, impartiality and integrity of the judiciary
- viii. Ambition should be mothered by honesty and not the vice-versa
- ix. Practicing sincerity and ethicality matters not preaching the same

- x. Love the law to understand it's nitty-gritties and to find out its finest implications
- xi. Procrastination in rendering of decision not only depicts laziness but unethicity

Further, in plethora of cases, the Supreme Court laid down guidelines for the judges on the judicial standards to be followed to keep the independence, impartiality and integrity in performing role as judge.

In *High Court of Judicature for Rajasthan v. Ramesh Chandra Paliwal*,^[2] the court described judges as hermits and held that they have to live with no desire and aspiration. According to the apex court, judges should shed the ambition of achieving something by compromising the divine judicial duty.^[3]

Referring to the importance of judicial discipline, the apex court held that public trust and confidence can be gained only by maintaining credible conduct, honesty, integrity and clean character.^[4]

Further the apex court in *High Court of Judicature at Bombay v. Shashikant S. Patil*,^[5] held that '*a dishonest judicial personage is an oxymoron.... Honesty and integrity are the hallmarks of judicial probity....*'.

The Apex court in *Tarak Singh v. Jyoti Basu*,^[3] addressed that "*Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary took utmost care to see that the temple of justice does not crack from inside, which will lead to a catastrophe in the judicial-delivery system resulting in the failure of public confidence in the system. It must be remembered that woodpeckers inside pose a larger threat than the storm outside*'.

5. CHOOSING THE EFFECTIVE WAY OF ENFORCEMENT OF JUDICIAL STANDARDS IN INDIA IN THE BEST INTEREST OF DOCTRINE OF INDEPENDENCE OF JUDICIARY

As the criticism cropped up against Judicial Standards and Accountability Bill, 2010 and the successful journey of Judges (Inquiry) Act, 1968, the dilemma has arose in the country about choosing the effective way of enforcement of judicial standards in India in the best interest of the doctrine of independence of judiciary.

To choose right path, one need to understand the jurisprudence behind codifying judicial ethics.

Judicial independence here is to be understood in two senses, first, individual independence and second, institutional independence. Both are the required essentials in a judge to perform an impartial adjudication. Judicial independence requires the judge to be apolitical, free from bias and influences. In India, judiciary is permanent and governments and legislations comes and goes. The laws passed by the legislations are filled with political agendas and manifestos. The role of the judge is to interpret the law and adjudicate the case from the concept of welfare state and public interest.

According to Ronald Dworkin, the success of the legal system is dependent upon two aspects, i.e., first, integrity in legislation and the second, integrity in adjudication. Dworkin argues that good judicial practice is based on the theory of adjudication involving relentless efforts of the judge to be novel and interpretative in producing justice.^[6]

Socrates said, four things belong to a Judge; to hear courteously, to answer wisely, to consider soberly and to decide impartially. Judicial pronouncement should be judicial in nature and should not normally depart from sobriety, moderation and reserve.

The conduct of the judge speaks about his independent and impartial behavior. Judge no doubt has to decide the law by understanding the political motives behind the drafting of the legislation but, according to Hart and Dworkin debate, as political viewpoints of the judges necessarily influences the outcome of the cases, judge should adopt the balanced

approach i.e., by adhering to the constitutional values such as rule of law and constitutionalism in the judgment.

According to Justice V.K.Bist, judicial ethics, morals and judicial behavior are the basic principles of right action for the judges to ensure fair trial. He further mentioned in his speech that, a judge should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public glamour, regardless of public praise and indifferent to private, political or partition influences; he should administer justice according to law, and deal with his appointment as a public trust, he should not allow other affairs of his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambition or increasing his popularity.

It is the duty of the Judge to see that the lawyer does not intentionally delay the proceedings of the court by seeking repeated adjournments. It is the duty of the court to gain the public trust and confidence by communicating its independence, impartiality and integrity through quality judgments. 'Justice must not only be done but be seen to be done'. That means that judges must not only be ethical but must be seen to be ethical. Educating the community about the role of judges is gaining recognition as a key element of maintaining the respect for the Judiciary. The judiciary shall communicate with public frequently to explain about the transparency and accountability standards practiced within the system to eradicate the misbeliefs created by the ill-intended people attacking the judiciary integrity.

Making judges accountable for their conduct is another vital aspect of maintaining public respect for judges. For that it is required to objectify the Standards of Conduct. This creates a standard of a reasonable observer and not the subjective standard of a particular judge. This standard is more likely to prevent situations where the public questions the impartiality of a

judge. This will increase the likelihood of public confidence in the Judiciary. Codes can provide a concrete measure of whether judges are achieving the high standards which we expect of them.

The existence of judicial codes provides a tremendous opportunity for educating the public about the ethical standards to which the judiciary holds itself. It can be argued that while justice has a face it should not have a personality. A Judicial Code of Ethics reassures the public that decisions are not the result of an individual judges preferences and biases. Justice must not only be blind but also appear to be blind. Judicial Codes can help reinforce this view.

Alexander Hamilton said, "The judiciary... has no influence either the sword or the purse; no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither force nor will but merely *judgment- a speaking impartial judgment*."

According to Winston Churchill, judicial ethics and judicial conduct is as follows: "*A form of life and conduct for more severe and restricted than that of ordinary people is required from judges and though unwritten has been most strictly observed. They are at once privileged and restrictive; they have to present a continuous aspect of dignity and conduct*". The words of Winston Churchill say that judges have to lead a restricted life. Austerity is a quality to be practiced by every judge – personally as also in the public functioning and possess the habits such as passion, perseverance and pain-taking.

The judge must enjoy the work by practicing independence, impartiality and integrity by keeping constitutional values and principles of natural justice in mind.

In the year 2017, Vidhi, Center for Legal Policy, submitted the research report on 'Development and Enforcement of Performance Standards to Enhance Accountability of the Higher Judiciary in India' to the Department of Justice as part of

Action Research on Judicial Reforms. The report emphasized upon the implementation of the Internal Judicial Performance Evaluation (JPE) system within the institution to ensure the transparency and accountability in the judicial system. According to the report, introducing JPE system will enhance the transparency and accountability, self-assessment and specialization; and improves the court performance and access to justice.

6. COMPARITIVE STUDY OF INTERNATIONAL AND CROSS-JURISDICTIONAL APPROACHES

The early code of conduct for common wealth judges laid down by the 1346 statute passed in the time of Edward III which is as follows:

“We have commanded all our justices that they shall from henceforth do equal law and execution of right to all our subjects, rich

and poor, without having regard to any person, and without omitting to do right for any letters or commandments which may come to them from us, or from any other, or by any other cause”.

The code of judicial ethics draw its inspiration from Magna Carta which set out that that judges well-versed in the law be appointed and from the Act of Settlement, of 1701 that prohibited the arbitrary removal of judges by the crown; thus paving the way for the establishment of an independent judiciary.

The entire exercise of maintaining judicial integrity with ethics and accountability is to reach to the stage of judicial neutrality and the virtues independence, integrity and impartiality are the tools to achieve judicial neutrality.

The Code of Judicial Ethics of the International Criminal Court ICC-BD/02-01-05 provides the following interpretation:

Article 3: Judicial Independence	Judges shall uphold the independence of their office and the authority of the Court and shall conduct themselves accordingly in carrying out their judicial functions Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence
Article 4: Impartiality	Judges shall be impartial and ensure the appearance of impartiality in the discharge of their judicial functions Judges shall avoid any conflict of interest, or being placed in a situation which might reasonably be perceived as giving rise to a conflict of interest
Article 5: Integrity	Judges shall conduct themselves with probity and integrity in accordance with their office, thereby enhancing public confidence in the judiciary. Judges shall not directly or indirectly accept any gift, advantage, privilege or reward that can reasonably be perceived as being intended to influence the performance of their judicial functions.

In addition, the judges of the International Criminal Court are expected to maintain confidentiality, diligence, maintenance of decorum and order during the conduction of the proceedings, and shall conduct the extra-judicial activity in an impartial, independent and apolitical manner.

The Bangalore Principles of Judicial Conduct (2002) adopted by the Judicial Group on Strengthening Judicial Integrity and revised at the Round Table Meeting of Chief Justices held at the Peace Palace, the Hague, provides that following value system to ensure code of judicial ethics:

Value 1: Independence	Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspect. Judge shall assess the facts and deliver judgment with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference; independent in relation to the society and parties to the litigation; free from inappropriate connections and influences of executive and legislative branches; independent of judicial colleagues; and exhibit and promote high standards of judicial conduct
Value 2: Impartiality	Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made. Judge shall perform duty free from favour, bias or prejudice, conduct duty with reasonability; ensure fair trial and should not conduct himself to a situation which may warrant a serious miscarriage of justice
Value 3: Integrity	Integrity is essential to the proper discharge of the judicial office. The conduct of a judge shall be above reproach and shall affirm the people’s faith in the integrity of judiciary. Justice must not merely be done but must also be seen to be done.

According to the Canadian Law Dictionary, ethics means the basic principles of right action. Ethics of a profession is further defined as the general body of rules, written or unwritten relative to the conduct of the members of the profession intended to guide them in maintaining certain basic standards of behaviour.

Code of judicial ethics is central to the role of judges in preserving and protecting institutional integrity by adhering to the constitutional virtues and values.

According to Peter Moser in his article on Judicial Ethics: *‘Justice in the courtroom cannot be attained solely by providing standards in a code of judicial conduct. Achieving justice depends significantly upon not only the discretion and abilities of each judge, but upon what that judge does to assure that every proceeding is fairly heard and decided and to assure that litigants and the public have confidence in the impartiality and independence of the judiciary’.*

In order to make a judicial decision fair, without any objective and without any bias, a Judge should follow certain code of ethics. The code of ethics which should guide a Judge in execution of the judicial functions may be summarized as follows: -

- The basic code of ethics is the principle that no man can be judge in his own cause.
- Judges must not fear to administer justice - *“Fiat justitia, ruat caelum”* that is “let justice be done though the heavens fall”
- Parties to the dispute be treated equally and in accordance with the principles of law and equity.
- Distances may be maintained from the relations and acquaintances, parties to the dispute and their lawyers.
- Too much of activity and participation in social functions be avoided.
- Media Publicity be avoided
- Need of restraint be not overlooked.
- Judges not to yield to procrastinative tactics of the lawyer

The following are the international and cross-jurisdictional efforts to develop universal code of judicial ethics to build the doctrine of independence of judiciary in all legal systems:

A. Beijing Statement of Principles of Independence of judiciary

Beijing Statement of Principles of Independence of Judiciary is one of the international effort to address the need of judicial integrity and code of judicial ethics. In the 4th Conference of Chief Justices’ of Asia and the Pacific (1991) it was decided to formulate the principles of independence of judiciary. Drawing inspiration from the Tokyo Principles, LAWISA Human Rights Standing Committee, the Beijing principles attempted to develop a universal code of judicial ethics.

B. Bangalore Principles of Judicial Conduct

The Bangalore Principles of Judicial Conduct were created by the contributions of judges of common law in the year 2001, which was later revised and adopted at the Round Table meeting of Chief Justices held at the Hague in 2002. These were drafted in line with the following international human rights instruments:

The Universal Declaration of Human Rights (UDHR) provides that *everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge.*

The International Covenant on Civil and Political Rights (ICCPR) guarantees that *all persons shall be equal before the courts, and in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law.* The Bangalore principles embody the essential principles of independence; impartiality; integrity; integrity; propriety; equality; and competence and diligence.

C. USA

In the year 1924, the American Bar Association formulated Canons of Judicial Ethics. As these are only guidelines and do

not enjoy the statutory force, the application was limited and they failed to address the complex ethical issues.

Canon 1	A judge should uphold the integrity and independence of the judiciary
Canon 2	A judge should avoid impropriety and the appearance of impropriety in all activities
Canon 3	A judge should perform the duties of the office impartially and 23 diligently
Canon 4	A judge may engage in extra-judicial activities to improve the law, the legal system, and the administration of justice
Canon 5	A judge should regulate extra-judicial activities to minimize the risk of conflict with judicial duties
Canon 6	A judge should regularly file reports of compensation received for law-related and extra-judicial activities
Canon 7	A judge should refrain from political activities

The Model Code of Judicial Conduct, 1972 was framed by the American Bar Association, which provided for judicial independence and integrity, avoiding impropriety. It provides that judges shall discharge their duties with impartiality and diligence. The ABA undertook a revision of the 1972 Code taking societal changes into account and the 21 new Model Code of Judicial Conduct was adopted by it in 1990.

D. Canada

The Canadian Judicial Council created the Canadian Judicial ethical Principles, 1971 to deal with the issue of discipline and education of judges. The Principles developed five core principles namely, (i) judicial independence; (ii) integrity; (iii) diligence; (iv) equality; and (v) impartiality.

The Canadian Judicial Council's "Ethical Principles for Judges" states in its foreword "The ability of Canada's legal system to function effectively and to deliver the kind of justice that Canadians need and deserve depends in large part on the ethical standards of our judges.... The adoption of a widely accepted ethical frame of reference helps the Council fulfil its responsibilities and ensures that judges and the public alike are aware of the principles by which judges should be guided in their personal and professional lives."

E. Australia

Australia came out with 'Guide to Judicial Conduct' to imbibe the judicial high standards of conduct, discipline and integrity among the functionaries of its

judicial system. The Australian principle provides following three core values:

- To uphold, public confidence in the administration of justice;
- To enhance public respect for the institution of the judiciary; and
- To protect the reputation of individual judicial officers and of the judiciary.

Upholding the sanctity of the judicial oath, the Australian guide makes judges accountable to the law and shall engage themselves with the community. It provides that "*a public perception of judges as remote from the community they serve has the potential to put at serious risk the public confidence in the judiciary that is the cornerstone of our democratic society*".

F. UK

The UK Supreme Court Guide to Judicial Conduct (2019) provides the following interpretation to the Independence, impartiality and integrity: Judicial interdependence is the cornerstone of system of government in a democratic society and a safeguard of the freedom and rights of the citizens under the rule of law. The justices shall take care that their conduct, official or private, does not undermine their institutional or individual independence or the public appearance of independence. In UK, the justices shall take the following oath, 'I will do right to all manner of people after the laws and usages of this Realm, without fear or favour, affection or ill-will'.

7. CONCLUSION

In India, the judges are worshipped as the visible gods of invisible divinity of

justice. Judges are personified as fairness, law, natural law and custom. In old days, physical power is used to obstruct the justice delivery system. Today, with the advent of technology, the social media platforms are used to influence or obstruct the justice delivery system. Mass bullying and trolling was till the common man prior, but now it reached to the judges also.

The role of the judge in today's context is to ensure the rotation of the wheels of justice despite of all obstacles by practicing, professing and propagating the three 'I's i.e., independence, integrity and impartiality. Judiciary by following the code of judicial ethics, communicate with the public for keeping up the public trust and confidence towards the integrity of the institution.

The judges are capacitated with the power to create positive influence on the lives of the people through the judgments penned in the light of the principles of natural justice and rule of law against the arbitrary power of the State. The moral reading of the legislations by adopting the purposive interpretation, for achieving the public interest is the duty of the judiciary.

This entire process of achieving the public trust and confidence, implementing rule of law and constitutionalism against arbitrary state interference can be achieved only when judiciary can maintain its institutional integrity and independence. Judiciary institution physically exists through the judges, in whose hands the wheels of justice lies. If the judge is not disciplined, the judicial process halts at certain stage facing the blockades.

A judge shall be tactful in making the court atmosphere apolitical and shall have the ability to keep the judicial process moving on. The disproportionate statistics between the number of judges and the litigation rate, no doubt is creating a stress upon the judges to perform, but still the to make judicial system live long with constitutional values, the judges are to live within the code of judicial ethics.

To put it in simple sense, the judge is expected to have twenty hands and ten heads with 180 degree vision to catch hold of ill motives of the court staff, advocates, parties to the litigation which can impact the integrity of the judicial system or his personal integrity. The possibility of throwing false allegations on the judge personally or professionally is huge and the judge shall be equipped to push back wrong allegations by proving their clean conduct.

The judiciary as institution has to take steps to protect institutional integrity by ensuring that the codes of ethics are imbibed within the functionaries of the judicial system. From top to the bottom, the entire functionaries of the judicial system are taught about the importance of three 'I's i.e., independence, integrity and impartiality; Code of judicial ethics, judicial transparency and accountability, rule of law and constitutionalism.

Judicial impartiality wins the public trust and confidence; hence judge to be cautious in his approach while carrying out judicial & extra-judicial activities. Such activities of the judges shall not hamper the fair and impartial justice administration and they should conduct themselves in an apolitical way. Judges are to recuse himself in sitting in a case where their personal or financial interest may be involved. Here to cite as an example, Judge N.V.Ramana recused himself Judge's In-house inquiry committee which was set up to probe sexual harassment complaint lodged against the then Chief Justice of India (CJI), S.A.Bobde on the ground of close friendship with him. The letter written by Judge N.V.Ramana in this context, states that *'there are personal attacks against the members of the judiciary seeking to cast aspersions on their ability to render impartial judgments. The conduct of the judges ought to be exemplary so as to protect the dignity of the judicial institution from these frequent attacks. Judges, therefore, ought not to be cowed down in upholding the dignity of the judiciary. The dignity of the judiciary, first and foremost, flows from the capacity of judges to render*

impartial justice.' He further mentioned that his decision to recuse from the proceedings is only based on an intent to avoid any suspicion that the judicial institution will not conduct itself in keeping with the highest standards of judicial propriety and wisdom.

Now coming to the findings to the questions raised in the beginning:

Question No.1

- Whether creating *locus standi* to any person to complain against judge as provided in the Judicial Standards and Accountability Bill, 2010, is the only way of ensuring the transparency and accountability in the judiciary? What would be impact of such provision upon the independence of judiciary? Whether providing penalties for frivolous complaints and maintaining confidentiality of the proceedings will regulate the abuse of the provision?

Findings

Citing the example of the experience faced by the Andhra Pradesh High Court Judges & Supreme Court judges about the reaction of the ill-minded people, who can go to any extent to put pressure through social media platforms by using their freedom of speech and expression, upon the judiciary expecting a constitutional institution to play according to their tunes, can go on to file frivolous complaints as on the vague grounds provided in the Judicial Standards and Accountability Bill, 2010, because it provides platform for anyone to file complaint.

Now coming to the question of confidentiality, expecting 100% fool proof system is not possible, hence maintaining 100% confidentiality without any leakage of information is a myth. By understanding handicaps and the loophole only, the Bill, 2010 further provides some meagre penalty for divulging the complaint details, that to against those only who are involved in the complaint proceedings as complainant or witness etc.,

It is a mooted question, whether meagre penalties can stop the persons from frivolous complaints. There may be an

argument that the Bill, 2010 further allows the Contempt of Courts Act, 1971 to play parallelly, hence, there is a double protection. It is nothing but increasing more number of frivolous cases to the already existing burden of judiciary.

One can say that there is sufficient mechanism within the Judicial Standards and Accountability Bill, 2010 to regulate the frivolous complaints by checking the *prima facie* maintainability of the complaint, still as explained earlier, the provision may impose negative stress upon the judicial members to be over cautious, than focusing on disciplining themselves. The major energy of the judge may be on focusing and introspecting each and every minor action of the personal and professional life as threat of being subjected to frivolous complaints is open-ended. The rest of the energy which is left with the judge may not be sufficient to carry out the judicial functions effectively, as the job is also demanding than the available resources.

As explained earlier, the presence of non-judicial members within the complaint processing system under the Judicial Standards and Accountability Bill, 2010 is also one of the threat to the independence of judiciary.

Question No.2

- If such provision is found to be a blow upon the independence of judiciary, is there any other mechanism within the judicial system to check the independence, impartiality and integrity of the judges?

Findings

The criticism against the Judges (Inquiry) Act, 1968 is that only the Member of Parliament can raise the question that to in Parliament by introducing the motion. According to the critiques, common man has no voice to raise against the judges who do not adhere to the judicial standards.

Who is Member of Parliament? They are the representatives of the public either directly (Member of Lok Sabha) or indirectly (Member of Rajya Sabha). On which platform he is going to raise the issue

is the Parliament which is again the institution filled with democratic representatives, who are considered to be the voices of the larger public. Further, the provision reads that the motion can be raised in any House of the Parliament. In Lok Sabha, discussion can be raised even in the interest of one single individual.

Considering the constitutional importance of the judicial institution and its work of acting as watchdog upon the executive and legislature in protecting constitutional values, if the institution is thrown into vulnerable position that anyone can raise complaint against the judges and walk away with meagre penalties, certainly is going to impact the independence of judiciary as well as its independence.

Suggestions

- Strengthen the Judges (Inquiry) Act, 1968 with necessary modifications
- Develop in-built complaint process within the judiciary to address the legislative gap in addressing the public grievances against judges [in compliance with the Doctrine of Independence of Judiciary]
- Providing regulatory enforceability status to the Restatement of Values of Judicial Life, that is, for instance 'Supreme Court Judicial Standards Rules'

FOOT NOTES

1. (1992) 4 SCC 506
2. (1998) 2 SCC 72
3. Tarak Singh v. Jyoti Basu (2005) 1 SCC 201
4. High Court of Judicature at Bombay v. Uday Singh (1997) 5 SCC 129
5. (2000) 1 SCC 416
6. (2005) 1 SCC 201.
7. According to the late Chief Justice Bora Laskin listed the following qualities a good judge possess: Industry, Diligence; Courtesy; Empathy; Patience; Knowledge of the law; Intelligence; Sense of fair play.

REFERENCES

1. Guide to Judicial Conduct, United Kingdom Supreme Court, 2019 available

at <https://www.supremecourt.uk/docs/guide-to-judicial-conduct.pdf>

2. A manifesto for Judicial Accountability in India, An edited version of the Rosalind Wilson Memorial Lecture delivered by Justice A.P.Shah in New Delhi on July 28, 2019, published by WIRE, available at <https://thewire.in/law/cji-ranjan-gogoi-supreme-court-judiciary>
3. Shirley S. Abrahamson, Commentary on Jeffrey M. Shaman's the Impartial Judge: Detachment or Passion?, 45 DePaul L. Rev 633 (1996) available at <https://via.library.depaul.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1789&context=law-review>
4. Commentary on the Bangalore Principles of Judicial Conduct, United Nations Office on Drugs and Crime, available at https://www.unodc.org/res/ji/import/international_standards/commentary_on_the_bangalore_principles_of_judicial_conduct/bangalore_principles_english.pdf
5. Justice V.K.Bist, Judicial Behaviour and Conduct in the Present Scenario, available at <https://ujala.uk.gov.in/files/ch1.pdf>
6. The Judicial Standards and Accountability Bill, 2010, PRS legislative Research, available at <https://www.prsindia.org/billtrack/the-judicial-standards-and-accountability-bill-2010-1399>
7. 47th Report on the Judicial Standards and Accountability Bill, 2010, Presented to the Rajya Sabha on 30th August 2011, Rajya Sabha Secretariat, available at https://www.prsindia.org/sites/default/files/bill_files/SCR_Judicial_Standards_%26_Accountability_Bill.pdf
8. 274th Law Commission Report on 'Review of Contempt of Courts Act, 1971' available at <http://lawcommissionofindia.nic.in/reports/Report274.pdf>
9. Wendel, W. Bradley, "Jurisprudence and Judicial Ethics" (2007). Cornell Law Faculty Publications. Paper 96. http://scholarship.law.cornell.edu/lrsp_papers/96

10. Full text of Justice N.V.Ramana's letter to recuse himself from the judges's committee to probe complaint against CJI, published by Hindu on April 25, 2019, available at <https://www.thehindu.com/news/resources/full-text-of-justice-nv-ramanas-letter-to-recuse-himself-from-the-judges-committee-to-probe-complaint-against-cji/article26945616.ece>
11. Judicial Ethics and Conduct of Judicial Officers, available at <http://hpsja.nic.in/ethics.pdf>
12. Wayne Mackay. A, Judicial Ethics: Exploring Misconduct and Accountability for Judges, June, 1995, available at <http://cjei.org/publications/mackay.html>

How to cite this article: Murthy MRS, Syamala K. Doctrine of independence of judiciary vis-à-vis judicial standards and accountability bill, 2010: a critical analysis. International Journal of Research and Review. 2020; 7(6): 414-429.
