



7-1-1995

Judicial Accountability

C. Khalid

Follow this and additional works at: <https://repository.nls.ac.in/nlsj>

Recommended Citation

Khalid, C. (1995) "Judicial Accountability," *National Law School Journal*: Vol. 7: Iss. 1, Article 8.
Available at: <https://repository.nls.ac.in/nlsj/vol7/iss1/8>

This Legislative or Case Note is brought to you for free and open access by Scholarship Repository. It has been accepted for inclusion in National Law School Journal by an authorized editor of Scholarship Repository. For more information, please contact library@nls.ac.in.

JUDICIAL ACCOUNTABILITY**

C. Khalid*

I am on the horns of a dilemma. The Judicial Accountability is indeed, a favourite past time of Hon'ble Retired Judges and zealous practising lawyers. I felt in fact, rather amused at, if not amazed by the decision of the organisers of the seminar to drag me to this rostrum of controversy. I doubt if it is wise or otherwise.

I humbly submit that the subject is too subtle and too delicate for me, though it is of great seminal public interest in the present state of affairs of the Bar and the Bench. The field is so slippery that I am mortally afraid to tread in, where others may rush in. We, the humble members of Subordinate Judiciary find little time, nor deem to deserve, to ponder over such imponderables, nor do we have any inclination to Philosophise on it. I am reminded of the satirical comment, which contains a good deal of grains of truth, that a philosopher is a blind man, who searches in a dark room, for a black cat which is not there. I do not for a moment mean that Judicial Accountability is a black cat, mewing in a dark room, and that the lawyers are blind men groping inside, without a torch of enlightenment. What I mean is that we the poor 'Judicial Employees' were only ordained or expected to listen to the exhortations of retired Judges or expostulations of leading lights of the bar. To be candid, we belong to a miserable lot, despised by litigants, disparaged by lawyers and disappointed by the law makers, especially the finance department. From morn to dusk we hear the lawyers and from dusk to morn, we burn night oil, chewing what we mouthed from the court, ruminating over what we were fed and delivering what little we conceived. To be more candid we have become chronic masochists, the symptom of which is inarticulate delight in getting inflicted with pain from all quarters. We are accountable not only to our 'Superiors', to the lawyers, but even to the authors of anonymous letters who were never kind to us. I remind myself of the immortal words of Lord Asquith, who said "It is the function of a trial Judge to be slow, courteous, and wrong. This is however not to say, that it is the duty of the court of appeal to be quick, rude and right, for that would be to usurp the function of House of Lords".

In a sense, these words compel me not to say what I mean or to mean what I say before you on this solemn occasion.

Incidentally, I feel that I would be insincere to myself, to my conscience, to my sense of duty, if I suppress my regret, withhold my disappointment, in the manner in which this function has been treated by the leading lights of the Bar,

* District & Sessions Judge, Kozhikode.

** Paper read on 19.3.1994 at the Seminar in connection with Enrolment of New Lawyers held in Kozhikode.

the doyens of the profession. Their indifference to this seminar is illustrated by their absence, despite the early invitation extended to them, despite their promise to attend the function and enlighten the audience, who gathered here, whether the lawman and layman, with their erudite discourse on the subject.

I wish for a moment, that the subject chosen for the function, could have been modified as Judicial Accountability and Forensic Responsibility. The absence of eminent members of the Bar, including the Advocate General, who promised to present their valuable papers, is nothing but an affront to the dignity of the profession. I am afraid, I am transgressing my own constraints. The business of a Judge is to hold his tongue until the last possible moment and try to be wise as he is paid to look.

Before venturing on Judicial Accountability, I would like to draw a portrait or profile of an ideal Judge. Half a century back, Harold Laski, the great political scientist, portrayed the ideal Judge of his dream. He wrote,

A great judge must be a great man. He must have a full sense of the seamless web of life, a grasp of endless tradition from which we cannot escape. He must be capable of stern logic and must refuse to sacrifice to logic, the hopes and fears and wants of men. He must be able to catch the glimpse of the ultimate in the immediate, of the universal in the particulars. He must be a statesman as well as jurist, thinker as well as lawyer. What he is doing is to shape the categories through which life must flow and he must have a constant sense of the task. He must know the hearts of men, and yet ask to be judged from the conscience of their mind. He must have a constant sense of essential power and yet be capable of humility in its exercise.

He must be the servant of justice, and not its master, the conscience of the community and not its dominant interest. He has to put aside the ambition, which drives the politician to search for power, and the thinker to the construction of abstract systems. Not one must be more aware of the limitation of his material, none more hesitant about his personal conviction. The great judge is perhaps the rarest of human types, for, being supremely himself, he must yet be supremely selfless. He must strive towards results, he cannot control through materials, he has not chosen. He has to be in the great world and yet aloof from it, to observe and examine without seeking to influence. At the same time, he seeks to make the infinitely small, illumine infinitely great.

Chief Justice Colletre wrote:-

What people look for in a judge is a sublime and elevated sense of justice, detached and dispassionate frame of mind, a patient hearing and absence of ebullition, irritable and unrestrained temper; a cool and calculated

thinking and a satisfactory solution of their problems.

His Lordship Chinnappa Reddy remarked once:-

Judges are always seeking good reasons to explain wrong conduct. They know that there are always two sides of a coin. They neither give, nor take offence, because they deal with persons and situations impersonally, though with understanding. Judges, more than others, realise the foibles, frustrations, undercurrents, the tensions of the litigants and litigation. But as elsewhere, lines have to be drawn. The strains and mortifications of litigation cannot be allowed to lead litigants to tarnish, terrorise and destroy the system of administration of justice, by vilification of judges. It is not that judges need to be protected. Judges may well take care of themselves. It is the right and interest of the public in the due administration of justice, that has to be protected.

Justice Nazurulla Beg, Chief Justice of Allahabad High Court commented:

No doubt, the brotherhood of judges carries great honour and glory with it, but the very nobility and greatness of this honour and glory cast a heavy and onerous responsibility on the shoulders of every one who have the privilege of belonging to it. Be it however remembered that honour in brotherhood is indivisible, so is dishonour. Any deflection from the path of rectitude by a single member casts a serious slur on the honour of the brotherhood. Any culpable conduct on the part of a single member constitutes betrayal of brotherhood as a whole.

Eminent jurist Palkhivala spoke once:-

In olden days, God was more palpably present in a court of law than in a monastery. Whether a court is a casino or a cathedral depends on the personality of the judge who adorns it.

Sidney Smith, revealed in one of his essays, the secret behind the wonderful survival of England despite endless calamities and catastrophics. He said,

England did not fall, because the country is the country of the law, because a judge is a judge for the peasants as well as palaces, because every man's happiness is safeguarded, by fixed rules from tyranny and caprice.

Let us perceive the contrast from the proud pronouncement of Sidney Smith with the sad fulmination of a great jurist of India, Upendra Bakshi. He cried:

India today, bristles with a sense of injustice. I think, future historians, will think of us as heroic in our endeavour, to preserve, protect and promote injustice and the country will burn tomorrow and day after,

when our callous insistence on such injustice meets with the desperate daring of the victims.

We read almost every day so many similar colleges that depict the dimensions of growing lawlessness around us, as well as in the domain of judiciary. We try to condone ourselves and console the credulous, remarking that such injustice, in myriad forms is a global phenomenon. The monster of corruption and its brother, devil of lethargy, have started to stalk the corridors of our Judiciary.

This sad state of affairs makes the subject, Judicial Accountability, the most relevant and expedient and demands the attention of all patriots and public men.

In this context, I remember the immortal words of a great Gandhian, Martin Luther King. "To cure injustice, you should expose them before the light of human conscience and the bar of public opinion, regardless of what tension that exposure generates. They must be brought into the open where they cannot be evaded."

Now, I am constrained to make an innocuous passing reference to the darkest chapter of Indian Judiciary, "*La affair Justice Ramaswami*" of Hon'ble Supreme Court. Three eminent Judges of Supreme Court, appointed by the Honourable Chief Justice of India, to enquire into the conduct of Justice Ramaswami while he was Chief Justice of Punjab and Haryana, unanimously reported that his conduct disclosed wilful and gross misuse of office, purposeful and persistent negligence in the discharge of duties moral turpitude by using public funds for private purposes in diverse ways and reckless disregard for statutory rules and for the judiciary. The Hon'ble Judges declared that the conduct of the judge undermined the faith and confidence that the public reposed in the administration of justice, and concluded,

"The judge's continuance in office will be prejudicial to the administration of justice and to the public interest."

On the basis of this report, a number of senior Advocates represented to the Chief Justice of India, not to allot any judicial function to Justice Ramaswami. They made such a representation, because, under our Constitution a Judge of Supreme Court cannot be removed at all, unless the politicians of both houses of Parliament decide to do so in a motion for impeachment. Unfortunately Justice Ramaswami refused to evince a spontaneous sense of propriety and judicial decorum, to desist from functioning as Judge, during the interregnum. The Hon'ble Chief Justice helplessly declined to issue a direction against him. His Lordship simply appealed to the self respect of the judge and gave him a reluctant advice, which was promptly turned down. Then the Chief Justice of India passed an unprecedented order to the registry, that if any lawyer wanted his cases not to be posted before Justice Ramaswami, he could so inform the registry, which would transfer the case to another judge. This episode would

indicate that in India, Judicial Accountability is a myth, a mirage, and an eyewash.

Shamefully, we saw the fate of the Impeachment Motion voted against by our illustrious members of the Parliament and the consequent conduct of delinquent Judge. History would definitely record that the entire episode is the deadliest blow on the prestige and pride of Indian Judiciary.

The great author David Pannick, in his celebrated Book "Judges" described the experience of two Iranian Judges, the members of "U.S. - Iran - Claims Tribunal in Hague, who assaulted a Swedish Judge, Mangard, and threatened him that his body would roll down the step of the court if he tried to enter the Tribunal again. The Hon'ble Judges of our Supreme Court were too remarkably polite, and continued to be as patriotic in their reaches unlike Iranian Judges.

Another murky chapter of judicial history of India in this context, is the upheaval of corruption centered round a multicrore property case, known as *Mehta v Mehta* in Bombay. On a fine morning Justice Kenia of Bombay High court, sitting along with Chief Justice Desai announced that he was undertaking a fast to protest against the Chief Justice who favoured the litigant. A large sum of cash was recovered subsequently from the Chamber of Justice Kenia. The Bar Association of Bombay High Court and other organisations passed resolutions to boycott all the four delinquent judges who were accused of the most heinous felony of corruption. Chief Justice Desai, finding the charges *prima facie* true refused to assign cases to their Benches. But those Judges smugly drew their salaries remaining idle in their chambers. One has now retired, another transferred and remaining two still continue to draw salary sitting idle in their honoured chamber. This has impelled Manek Davar, the editor of *Lex et Juris* to write:

Public interest dictates that both the Government and judiciary must urgently consider and effect changes, develop procedures and machinery, which, while preserving the independence of judiciary will ensure that complaints of lack of integrity and misconduct on the part of judges, are effectively and adequately dealt with.

His Lordship Justice Krishna Iyer was prompted to remark in his inimitable style:

"The crisis of judicial process is too deep a disease, the diagnosis so complex, the prognosis so murky, the infirmities so controversial, the proffered solutions so polemical. Friends, you the accademic lawyers have to be in the forefront to fight the evil of judicial dishonesty with your reasoned and decent criticism of the judiciary. The hot light of legal criticism alone can keep the judges on the correct course.

There is an American saying, that a judge is a lawyer who knows only the governor. Great lawyer Jethmalani modified it in the Indian context and said that a judge is a lawyer who knows only the Law Minister. He pointed out the

defective system of selecting judges to Higher Judiciary as the prime cause of the judicial malady. Gratitude is ofcourse, a laudable human virtue. The ten million dollar worth question before us is whether a judge should be grateful to his political mentor, who helped him to the Bench or be accountable to the interest of justice and to one's own good conscience. If every judge prefers the latter, Rule of Law will definitely prevail and survive. Otherwise, the nation is doomed.