

Confederation of Indian Bar
International Seminar on
“Judicial Independence”

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Raisina Hall, Le Meridien Hotel, New Delhi

I express my congratulations to the Confederation of Indian Bar for having organized an International Seminar on Judicial Independence. Throughout the world, the theme ‘judicial independence’ assumes large importance and is a matter of deep concern in many countries.

Legal institutions play a key role in the distribution of power and rights and in the over all development of the country. They also underpin the forms and functions of other institutions that deliver public services and regulate market practices. But inequitable justice system may perpetuate inequality traps. Therefore, building a more equitable justice system is very important.

In every country, there had been a struggle for judicial independence and a proper justice system. In the United Kingdom,

from where we borrowed our system, had a long history of struggle between the Parliament and the Monarchy as both of them wanted to control the judiciary. In early period, there was no security of tenure and the pressure doctrine was applied. In the 17th century, the Parliament passed a Settlement Act which stipulated that the tenure of the judges would be subject to good behaviour and their removal after an address to both Houses of Parliament. The independence of the judiciary in America is enshrined in Article III of the American Constitution which says that *“The Judges, of the Supreme and inferior courts shall hold their offices during good behaviour and shall, at stated times, receive for their services, a compensation which shall not be diminished during their continuance in office.”*

In India, in so many provincial States, there was independent and well-knitted judicial system. Though the judges were appointed by the Crown in many States, the judges were allowed to act independently free from any interference from the Crown. When the people of India adopted the Constitution, all these principles were expressly taken into consideration and the judicial independence is protected by various provisions of the Constitution.

The independence of the judiciary is guaranteed by the Constitution of India which enacts that every Judge of the Supreme Court will hold office until he attains the age of 65 years and that every Judge of the High Court until the age of 62 years. The Parliament is authorized to prescribe the privileges, allowance, leave and pension of the Judges of the Supreme Court, subject to the safeguard that these cannot be varied during the course of tenure of the judges to their disadvantages. No Judge shall be removed from his office by the President except upon the presentation to him of an address by each House of Parliament for such removal on the ground of proved misbehaviour or incapacity. A Judge of the Supreme Court or the High Courts is appointed by the President of India in consultation with the Chief Justice of India and such of the Judges of the Supreme Court and the High Courts as he may deem necessary. The Constitution of India insulates the Supreme Court and the High Courts from political criticism, and thus ensures their independence from political pressures and influence, by laying down that neither in Parliament nor in a State Legislature the conduct of a Supreme Court or the High Court Judge in the discharge of his duties can be discussed. The independence of judiciary is further protected by

treating the superior courts are the 'court of record'. The members of the subordinate judiciary are also protected by the provisions of the Judicial Protection Act.

In **S.P. Gupta** vs. **Union of India**, 1981 Suppl. 87, this Court has held that :-

“The concept of independence of the judiciary is a noble concept which inspires the constitutional scheme and constitutes the foundation on which rests the edifice of our democratic polity. If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the rule of law under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law thereby making the rule of law meaningful and effective.”

However, one must appreciate that the immunities provided to ensure judicial independence are intended for the benefit of the litigants in particular and the citizens in general. Misuse of these privileges by some, has also led to a call for common standards of

conduct and better accountability from the judiciary. The size and complexities of the judiciary has increased so many times in a modern welfare State. Public information campaigns and enhances the independence and accountability of the courts, by increasing public confidence in and commitment to the system. The society has got a right to demand better governance from the judiciary. Many citizens now want judges to be accountable as they feel that there are no avenues for them to remedy the minor mis-behaviour and mal-treatment of witnesses or litigants at the hands of the judges. They sometimes feel that these minor mis-behaviour and mal-treatment are not corrected by superior courts and that the superior courts would protect their own men and it is useless to make complaints. Therefore, accountability and transparency are the very essence of democracy. Like every other institution dealing with the public, the judicial arm of the government also is accountable. But the accountability of the judiciary is different from the form of accountability that is expected from the executive or any other public institutions. Expectation of independence and impartiality is much higher from the judiciary than any other organ. Deciding the cases before them in expeditious and fair manner and giving reasoned

orders is another aspect of such accountability. Judiciary should not feel that adhering to the standards of accountability is inimical to its independence. The strength of any judicial institution must depend on the standards of accountability that it sets. Higher the standard, the more respect it will draw from the citizens as well as the international community.

The **Bangalore Principles of Judicial Conduct** were approved and finalized in November 2002 by the Judicial Group on Strengthening Judicial Integrity in collaboration with the Consultative Council of European Judges of the Council of Europe and the American Bar Association. These principles were presented to the United Nations Commission on Human Rights in April 2003 and they were unanimously supported by the member States. In a resolution the Commission noted these Principles and called upon member States, the relevant UN organs, intergovernmental organizations and non-governmental organizations to take them into consideration. In many commonwealth countries judicial accountability has assumed importance and the judiciary in many countries can no longer use judicial independence as a defence for providing accountability. It is also held that one method of ensuring judicial accountability is to

ensure speedy and relatively transparent method of dealing with complaints against the judiciary.

One must realize that while in countries like India where the judiciary is relied upon by the citizenry to solve many of their difficulties, it is the consistent standards of accountability that give the Indian judiciary this strength. The moment this judicial accountability wavers, political forces and vested interests would not hesitate to use it as a tool to reduce the credibility of the judiciary. Whereas, a strong judicial institution can often lead to a stable political atmosphere as well as better governance by the State.

We must also recognize that maintaining the highest standards in terms of judicial work and justice delivery is also inherent to the idea of judicial accountability. This essentially requires that the judiciary at all levels is not only highly skilled but is also kept abreast with the latest development in the law and practice. Thus constant training and upgradation of skills must be part of any judicial officer's schedule. Such training modules must necessarily include a study of the international legal scenario, including subjects, such as,

international human rights, humanitarian, refugee law, intellectual property law and environment law. A judicial officer must also be in constant know of the social and economic reality of his country to ensure that his judgments are practical as well as acceptable to the public. It is only when a judicial officer is equipped with such knowledge that he can match the high standards of expectations that most countries have from the judiciary, as opposed to other arms of the State. As has been evident, a mis-match of expectations and delivery from all organs of the State is sometimes the recipe for large-scale human suffering.

At the same time, we need to remind ourselves that perhaps the worst form of injustice in any civilized society is injustice perpetrated through the judicial process. The judiciary in every polity has been provided with several immunities under their respective Constitutions to ensure their smooth and impartial functioning. However, it is well understood that if the judiciary by their performance and conduct does not meet the expectations for which such Constitutional protection has been provided, the judiciary will be

reduced to any other organ of the State which we have come to distrust in recent times.

It is, therefore, of utmost importance that a Court or a Tribunal should be perceived as independent, as well as impartial in the performance of its duties, and the perception of the public in general is as important a test as that of experts.

However, it is also acknowledged that judicial accountability if stretched too far can seriously harm judicial independence and thus it is essential that we strike the right balance between the two. Relying on the strong tradition of sharing of ideas and experiences amongst the judiciary across the commonwealth is perhaps one of the optimum methods of arriving at such a balance.

But, at the same time, it is appropriate to quote Prof. H.P. Lee of Monash University :-

“Scurrilous abuse of particular members of the judiciary or attacks which question the integrity of judicial institutions undermine public

confidence in the courts and acceptance of their decisions. This is not to suggest that court should be immune from criticism. On the contrary, the judgment of the courts should be scrutinized and critically evaluated. But those who hold positions of power and influence in the country have a responsibility to ensure that the line between measured criticism of judgments and denigration of judges is not traversed. Constitutionalism in Australia is not enhanced by hostility directed against the judiciary which plays such a pivotal role in maintaining the rule of law”.
