



Principles Of Good Governance And Its Impact On Judicial Independence

Author: Dr Avinash Bhagi

Abstract

Good Governance is the key to a nation's progress. The desirability of good governance is beyond dispute. The concept of good governance serves two-fold purposes. First, from people's point of view, it ensures their freedom in a society established on rule of law. Second, from government point of view, it regulates their functions and make the government disciplined and thereby makes a restricted or limited government. It's also undisputable that Judiciary has played an important role in ensuring good governance by making the other organs of the government to adhere to the principle of good governance. But it's equally important the Judiciary must equally adhere to the same standards of good governance. For an independent and impartial judiciary, it is important that the judiciary strictly follow the principles of good governance. In this paper the author has examines the principles of good governance and judicial independence. The author further explains that how accountability which is an essential component of good governance is must for an independent and impartial judiciary. At the end the paper concludes that good governance and judicial independence are complimentary and supplementary to each other.

Key Words: Good Governance, Judicial Independence, Accountability, Rule of Law, Transparency

1. Introduction

Good Governance is the key to a nation's progress. Good Governance is the foundation on which a society is built, and thus it is indispensable for the development of a country. Development and prosperity are not possible under conditions of legal insecurity, disregard for human rights, poorly functioning administration and corruption. If justice systems do not work, if public administration is inefficient and not transparent, or if a government disregards human rights, these are things that undermine the very foundations of a society.

The importance of good governance lies in the fact that people should accept, cooperate with, and recognise the legitimacy of the institutions of government – all of which are imperative to the existence of a peaceful, well-functioning, civilized, and productive society. Mechanisms must therefore exist that require, or at least encourage, those in power to adhere to the standards of good governance.¹ Good governance is integral to the legitimacy of the government. The notion of good governance is inseparable from that of democracy. Good governance ultimately ensures the idea of government being conducted in ways that are acceptable to the people.

2. Meaning of Good Governance

There is no definitive set of standards of good governance upon which everyone agrees.² The term has not yet been deeply articulated.³ Initially the definition is used mainly by international financial and development institutions to depict improper or unsatisfactory functioning of governmental machinery or the need for more efficient administration.⁴ But now the good governance has almost become a mantra the world over, in both developed and developing countries.⁵ Now its meaning is not restricted to international financial and development institutions but good governance becomes an acid test to judge the functioning of the government. The United Nations High Commissioner for Human Rights (UNHCHR) explains the meaning of good governance as follows:⁶

“There is no single and exhaustive definition of “good governance,” nor is there a delimitation of its scope, that commands universal acceptance. The term is used with great flexibility; this is an advantage, but also a source of some difficulty at the operational level. Depending on the context and the overriding objective sought, good governance has been said at various times to encompass: full respect of human rights, the rule of law, effective participation, multi-actor partnerships, political pluralism, transparent and accountable processes and institutions, an efficient and effective public sector, legitimacy, access to knowledge, information and education, political empowerment of people, equity, sustainability, and attitudes and values that foster responsibility, solidarity and tolerance.”

UNHCHR further observes:

“However, there is a significant degree of consensus that good governance relates to political and institutional processes and outcomes that are deemed necessary to achieve the goals of development. It has been said that good governance is the process whereby public institutions

¹ Mark Elliott and Robert Thomas, *Public Law* (2nd edn, Oxford University Press 2014) 347

² *ibid.*

³ Francis N Botchway, ‘Good Governance: The Old, The New, The Principle’ (2001) 13, *Florida Journal Of International Law* 159

⁴ For example, in explaining Africa's development problems, the World Bank stated that "Underlying the litany of Africa's development problems is a crisis of governance." See World Bank Washington, D.C., Sub-Saharan Africa From Crisis to Sustainable Growth: A Long-Term Perspective Study, 1989<
<http://documents.worldbank.org/curated/en/498241468742846138/pdf/multi0page.pdf>

⁵ Madhav Godbole, *Good Governance Never on India's Radar* (Rupa Publication 2014) 24

⁶ Office of the High Commissioner for Human Rights, *Good Governance and Human Rights*, online: <<http://www.ohchr.org/EN/Issues/Development/GoodGovernance/pages/GoodGovernanceIndex.aspx>>

conduct public affairs, manage public resources and guarantee the realization of human rights in a manner essentially free of abuse and corruption, and with due regard for the rule of law. The true test of "good" governance is the degree to which it delivers on the promise of human rights: civil, cultural, economic, political and social rights. The key question is: are the institutions of governance effectively guaranteeing the right to health, adequate housing, sufficient food, quality education, fair justice and personal security?"

The Human Development report 2002 recognizes that good governance is partly about effective institutions and rules but also about protecting human rights, wider participation in the institutions and rules that affect people's lives and achieving more equitable economic and social outcomes. Good governance is increasingly recognised as important for human rights.⁷ Human rights highlight the duties of the state and the limits of its power in relation to the freedom of its citizens. They define the individual's basic civil political, social, economic and cultural rights and provide a universal basis for a life of dignity, equality and freedom. Respecting, protecting and fulfilling human rights (the threefold obligation of the state) are key elements of good governance and a pre-condition for reducing poverty, promoting peace and encouraging sustainable development.⁸

Nonetheless, it could be said that there is a set of core principles that, together, are widely regarded as comprising good governance, although their precise details may vary and change over time.⁹

3. Principles of Good Governance

The following parameters of good governance have been identified on the basis of above definitions. The government should be participatory, consensus oriented, accountable, transparent, responsive, effective and efficient; as well as equitable and inclusive; at the same time, it follows the rule of law. More importantly, it gives assurance to its people that its governance would be free from corruption practices. The recent worldwide governance has articulated six indicators for promotion of good governance: • Accountability and Transparency • Free from violence and stability in political system • Effectiveness of governmental policy • Elimination of corruption • Quality of governance • Establish the rule of law.¹⁰

3.1 Transparency: Conceptual Understanding

Transparency is the provision, which makes it possible for the people to know about the decision making process of the government. Transparency is a fundamental value for modern democracies. It is also one of the significant elements of the good governance. The three organs of the government must have complete transparency with all its decision makings; as well as with its implementations of laws and policies that should be aligned to the rules and regulations of good governance. Additionally, all information must be easily

⁷ <http://www2.ohchr.org/english/issues/development/governance/compilation/forside_02.html>

⁸ Good Governance in Practice- Approaches and examples from development practice, Federal Ministry for Economic Cooperation.

⁹ Elliott & Thomas (n 1).

¹⁰ "Worldwide Governance" (2014). Available at: <http://info.worldbank.org/governance/wgi/index.aspx#home> (Access on August 7, 2018)

accessible by the ordinary citizens. By doing this, disseminating important information about the activities of the government would be easily monitored and understood by the entire citizenry. In practice, this should include requests for access to public information (in the strict sense), the state's obligation to generate information and make it available to citizens in manners that allow for broad access (proactive transparency), and the empowerment of citizens to demand that the state comply with its obligations. It's a condition precedent for making the judicial branch accountable.

3.2 Meaning of Accountability

Accountability is one of the cornerstones of good governance, which denotes responsibility of the government towards governed and also the mechanism through which people can exercise their influence over the government. The accountability is complex and multi-faceted concept that is difficult to define in precise terms. However, broadly speaking, accountability is the process via which a person or group can be held to account for their conduct. Normally, accountability is applied on political and civil executive who are responsible before the citizens. They exercise their powers and functions in the name and interest of the peoples. In the case of political accountability, peoples hold their representative accountable through the election. Social Accountability can be categorized in terms of horizontal, vertical, and political mechanisms. Horizontal accountability is a method or capacity towards structure accountability that relies on institutions such as legislature and the judiciary, or other autonomous institutions that can call into question, and ultimately punish to any public officer because of inappropriate ways of performing their assigned responsibilities. Horizontal accountability normally refers to internal mechanisms within government. It consists of formal relationship with in state and government itself. It focuses on internal check and oversight process. For instant executive must explain their decision to legislature. In other words, horizontal accountability is the ability of state institutions or government to check the abuses by branches of government, public agencies or other public officers. Vertical accountability/Social Accountability usually link citizen and state through formal mechanisms, most obviously through local and national elections. In vertical forms of accountability through which citizens, media, Non-Governmental Organizations (NGOs) and Civil Society Groups (CSG) play directly or indirectly roles in holding the powerful to account. In short Accountability is one of the foundations of good governance. Both types of accountabilities play significant role to achieve the goal of good governance.¹¹

4. Judicial Independence: Conceptual Understanding

¹¹ Governance and Good Governance: A Conceptual Perspective Muhammad Ali, https://www.qurtuba.edu.pk/thedialogue/The%20Dialogue/10_1/Dialogue_January_March2015_65-77.pdf

What is independence in the judicial sense?¹² It is important to understand what judicial independence is and what it is not. Judicial independence is meant to empower judges to be just. Judicial independence prevents the government to act in an arbitrary manner. It prevents the government from interfering with a judge's impartial decision-making process. It allows the judges to act in impartial ways to do justice for the people and businesses of a nation. But judicial independence is not permission for judges to act in an arbitrary or unaccountable manner. Judicial independence cannot be a defence to the requirement of making transparent decisions. Judicial independence is not permission to be unlawful, nor is it permission to engage in arbitrary decision-making behind the gloss of legal forms.

Judicial independence belongs to the people of a nation, not to the judges. It is an instrumental concept that guarantees justice and fair application of the law. Independence is the right of the people towards the government.¹³

The principle of judicial independence focuses on the creation of an environment in which the judiciary can perform its judicial function as the third branch of government without being subject to any form of duress, pressure or influence from any persons or other institutions, in the particular the other two branches of government.¹⁴

Impartiality as a judicial trait is often confused with independence. Impartiality is about fair-minded, neutral decision-making. Independence is created primarily by structural aspects of government to ensure that state actors are deterred from influencing impartial judicial decision-making. Independence is a subset of impartiality. Impartiality is the broader concept, an ability to resolve a dispute free of any inappropriate influence, including influence by state actors. Independence is only about influence or fear of influence by state actors.¹⁵

The principle of judicial independence connotes more than just the notion of impartiality: it requires that there exists an environment which ensures that the judiciary performs its "central, distinctive function which is independent and impartial adjudication."¹⁶ It primarily "denotes the underlying relationship between the judiciary and the other two branches of government which serves to ensure that the court will function and be perceived to function impartially".¹⁷

¹² See generally Irving R. Kaufman, *The Essence of Judicial Independence*, 80 COLUM. L. REV. 671 (1980); Stephen B. Burbank, *What Do We Mean By "Judicial Independence"?*, 64 OHIO ST. L.J. 323 (2003); Charles G. Geyh, *Judicial Independence, Judicial Accountability, and the Role of Constitutional Norms in Congressional Regulation of the Courts*, 78 IND. L.J. 153 (2003).

¹³ James E. Moliterno & Lucia Berdisova, *Independence Without Accountability: The Harmful Consequences of EU Policy Toward Central and Eastern European Entrants*, *Fortham International Law Journal*, Volume 42, Issue 2, 2018, Article 7

¹⁴ Lee and Campbell n 2, 50; J Debeljak "Judicial Independence: A Collection of Material for the Judicial Conference of Australia" *Judicial Conference of Australia Uluru*.

¹⁵ Moliterno & Lucia Berdisova (n 14)

¹⁶ Sir Anthony Mason "The Appointment and Removal of Judges" in H Cunningham (ed) *Fragile Bastion: Judicial Independence in the Nineties and Beyond* (1997) 1, 4.

¹⁷ *MacKeigan v Hickman* [1989] 2 SCR 796 per McLachlin J at 826.

Independence is necessary but not sufficient. An independent judiciary might itself be responsible or corrupt. If judges operate with inadequate checks, they may become slothful, arbitrary or venal. Thus, the state must insulate judicial institution from improper influence at the same time as it maintains checks for competence and honesty. Judges must be impartial as well as independent.¹⁸

It is universally accepted that the judiciary has to be independent and impartial and to be so it must also enjoy some degree of immunity.¹⁹ The objective of judicial immunity is stated in an American judgement in the following words:²⁰

“Judges should be permitted to administer the law under protection of the law, independently and freely, without favour and without fear. This provision of the law is not for the protection or benefit of a malicious or corrupt Judge, but for the benefit of the public, whose interest it is that the Judges should be at liberty to exercise their functions with independence, and without fear of consequences”.

Taking a conventional meaning of judicial independence, it may mean that the judges must have security of tenure and their service conditions and status cannot be altered to their disadvantage. Such guarantee is available to judges in the Constitution of India to secure Judicial Independence. To ensure judicial independence as a means of enforcing the Rule of Law, it is necessary to protect the judges from any pressure from the members of other branches of the government as also the parties, public or private, whose matters come before them for decision. The judges have to uphold neither the interest of the ruling party nor of persons; they are obligated to protect and serve the interests of justice. Yet it has to be clearly borne in mind that judicial independence cannot be equated with absolutism.

However, it is important to clarify that judicial independence should not be understood as a value of its own, preventing an adequate oversight of the judge's performance. Independence should not be equated to isolation or to the non-existence of the duty of accounting for the work a judge carries out. On the contrary, the notion of independence should be conceived as the pre-condition for impartiality in judicial behaviour and as a guarantee for better service to the public. Judges should not be exempt from the controls that are applied to other state institutions. Such independence entails a responsibility that demands adopting mechanisms for transparency and accountability in order to guarantee that judges are held accountable for their decisions and for the due use of the resources assigned to them. Thus, the starting point for accountability is responsibility on the part of officials based on information and justification of their decisions, but it further implies sanctioning public official's improper behaviour (enforcement).²¹

¹⁸ Susan Rose-Ackerman, 'Judicial independence and corruption' Global Corruption Report 2007: Corruption and Judicial Systems, Transparency International, Cambridge University 16 https://www.transparency.org/whatwedo/publication/global_corruption_report_2007_corruption_and_judicial_systems

¹⁹ Lahoti (n 44) 59

²⁰ *Bradley v Fisher* 13 Wall. 335 (1872)

²¹ *Herrero and López* (n 40) 10.

5. Philosophical Foundations of Judicial Accountability

To a large extent the call for greater judicial accountability can be seen in the context of a broader debate, in which those who exercise the enormous and increasing power of the State are called upon to be accountable to the community they serve.²²

The philosophical purpose of accountability, therefore, is to ensure that power must be responsive and responsible to the community, just as its pragmatic purpose is to ensure that institutional and individual functions are carried out in an efficient way.

The power of the courts in the modern State, particularly in a federal system operating under a written constitution, is very considerable. The same philosophical argument that relates to the executive government should apply, therefore, to the judiciary which, despite all that is said about independence, cannot be seen to operate free of any control. The question, obviously, is what form this control should take and what is it meant to achieve? Chief Justice Gleeson has said that, in pragmatic terms, ‘the ends to be served by accountability in judicial decision-making concern the quality of individual decisions, and community acceptance of the outcome of the judicial process’.²³

Judicial accountability is a philosophy, a concept with wide separate wings. In the very nature of the function performed by the Judge, the office held by him, the power and discretion vested in him and the independence enjoyed legally and traditionally by him, it will be more correct to say that the judicial accountability would mean the conduct and behaviour of a judge both inside and outside the court.²⁴

Judicial accountability imposes constraints on judges by holding them legally or politically responsible for their behaviour.²⁵ It is in fact a corollary of the independence of the judiciary. Simply put, accountability refers to taking responsibilities for your actions and decisions. It generally means being responsible to any external body; some may insist accountability to principles or to oneself rather than to any authority with the power of punishment or correction.²⁶

6. Types of Judicial Accountability

a) Decisional Accountability

²² I Thynne and J Goldring, *Accountability and Control: Government Officials and the Exercise of Power* (Law Book Company 1987)

²³ M Gleeson, ‘Judicial accountability’ (1995) 2 *The Judicial Review* 117

²⁴ Ibid.

²⁵ The three-fold division of judicial accountability corresponds with that used by Geyh, “Rescuing Judicial Accountability”, pp. 917-24. According to Ruth Gavison, accountability includes “anything from specific responses of the system concerning individual judges, with the aim of disciplining them from office, through official responses directed generally at the judicature and their working conditions, to critical responses by society or social groups which may affect, in a diffuse without fear of favour way, the status of the judicature, their decisions, and their conduct generally” See Gavison, “ Implications of Jurisprudential Theories,” pp. 1619-20 cited in G. Alan Tarr, *Judicial Independence and Judicial Accountability in the States* (2012 Stanford University Press)92

²⁶ David Pimentel, ‘Reframing the Independence Vs. Accountability Debate’ 15 <http://www.clevelandstatelawreview.org/57/issue1/Pimentel.pdf>

Judicial accountability focuses on three aspects. Individual judges may be held accountable for the decisions they render (decisional accountability). This extends not only to case outcomes but also to the grounds for judge's decisions because judges are obliged to justify their rulings on the basis of accepted standards for the interpretation and application of law.

b) Institutional Accountability

In addition, the judicial branch as a whole may be held accountable for its performance as a separate branch of government (institutional accountability). Among the matters subject to scrutiny under institutional accountability are the judicial branch's management of the funds appropriated to it and its use of its rule-making and disciplinary powers. Thus, these two forms of accountability correlate with the two aspects of judicial independence—decisional independence and institutional independence.

c) Behavioural Accountability

Finally, individual judges may be held accountable for behaviour, whether on or off the bench, unrelated to the merits of their decisions that “is prejudicial to the effective and expeditious administration of the business of the courts” (behavioural accountability).²⁷

7. Need for an Independent and Accountable Judiciary

In recent times the functions of the judiciary extend beyond the traditional role of “impartial third party” in the resolution of conflicts. Its intervention in the political system could be profound, influencing—sometimes in a very sophisticated manner—the link between the state and citizens, as well as the relationships between the various social actors.²⁸ There is a broad participation of the Judiciary in the process of public policy development, in the recognition and protection of rights, and in controlling other state powers.²⁹ Hence, it is essential that the judicial functions and its institutional setup must be based on the principles of good governance so that a proper balance between its independence and accountability could be maintained.

One of the major criticisms against higher judiciary is lack of accountability and transparency in its functioning. Such criticisms had been expressed in past as well as in present by the sitting and retired judges, advocates and jurists and from a general public at large. Anyone who has gone through Justice V M Tarkunde Memorial Lecture delivered by Justice Ruma Pal, former judge of the Supreme Court of India, on 10 November wherein she mentioned the seven sins of the judiciary, will readily appreciate the need for ensuring accountability of the judiciary at higher levels. The first sin she mentioned is ‘brushing under the carpet’ or turning a Nelsonian eye on injudicious conduct of a colleague. The second sin is that of ‘hypocrisy’ of judges who enforce the law for others, but often break the law with impunity. The third sin is that of secrecy. The normal response of

²⁷ G Alan Tarr, *Judicial Independence and Judicial Accountability in the States* (Stanford University Press 2012) 93

²⁸ Alvaro Herrero & Gaspar Lopez, Working Paper Access to Information and Transparency in the Judiciary: A Guide to Good Practice from Latin America, 2010, Access to Information Programme, Governance Working Paper Series, World Bank Institute, 3 <http://documents.worldbank.org/curated/en/563721467991021917/Access-to-information-and-transparency-in-the-judiciary-a-guide-to-good-practices-from-Latin-America>

²⁹ *ibid.*

Courts to any enquiry as to its functioning is to temporize, stone-wall, and prevaricate. Yet another sin, according to her, is judges misconstruing judicial independence as judicial and administrative indiscipline. One more sin is nepotism.³⁰

The Supreme Court Collegium has faced criticism for being a "closed-door system" where "judges appoint judges". The three-decades-old Collegium system has been criticised for not being transparent and accountable enough. There have been calls for a revamp of the Collegium system, with former Attorney General and senior advocate Mukul Rohatgi saying that the system for the appointment of judges in the Supreme Court and high courts is out of sync.³¹

Since the collegiums system is retained, after Supreme Court declare the 99th Constitution Amendment Act, 2014 unconstitutional, the need for transparency and accountability in the selection process is urgent. Till the Parliament come up with a new law, replacing the collegium system, the existing process of appointment has to be made more transparent. In fact, the judiciary from time to time (however in a very slower pace) is itself taking steps to make the appointment more transparent. The Chief Justice of India also said that the process of appointment of judges will become more transparent. Objective parameters will be laid down for the appointment of judges to the high courts and the Supreme Court. He said the centre for planning and research has begun working on a broad platform to assess the top judges of the country who are eligible for the appointments. He added that the assessment will be done on the basis of data available on the judges and judgments delivered by them. A dossier will be prepared with the objective criteria for appointments to the high courts and the Supreme Court, adding that top 50 judges of the country will be assessed for appointment to the top court.³²

Therefore, it's very important that to maintain the trust which the people have on Judiciary, the Judiciary should also follow the principles of good governance in its true spirit.

8. Principles of Good Governance and Judicial Independence: Complementary and Supplementary to Each Other

³⁰ ibid (n 42).

³¹<https://www.indiatoday.in/law/story/judges-appointment-process-to-be-more-transparent-chief-justice-dy-chandrachud-2436215-2023-09-15>

³² <https://www.indiatoday.in/law/story/judges-appointment-process-to-be-more-transparent-chief-justice-dy-chandrachud-2436215-2023-09-15>

Judiciary should not only be independent but it should be independent and accountable. Too much judicial independence without sufficient accountability goes against the doctrine of separation of powers destabilising the coordination among the organs of the government. The existence of judicial accountability in correct measures is no threat to judicial independence.³³

Independent and accountable judiciary ensures good governance. It ensures that the organs and instrumentalities of the government must adhere to the principles of good governance. Similarly, for the independence of judiciary, strict adherence to the principles of good governance is equally important. It means that the judiciary should not only ensure or strengthens the principles of good governance of the other two organs of the government but should strictly follow the same principles itself. Therefore, both these concepts are complimentary and supplementary to each other. Both are essential to establish rule of law in society. Whereas, the doctrine of separation of powers ensures judicial independence, the idea of good governance ensures and strengthens accountability and transparency within the judicial branch.

Judicial accountability and judicial independence are complementary and supplementary to each other. Accountability functions on the framework of seeking integrity which is essential for the efficient functioning of any authority entrusted with responsibility.³⁴ It primarily entails instilling a sense of transparency and subjecting the judicial regime to a strict public scrutiny so as to prevent any judicial delinquency. Judicial independence cannot have an isolated existence because the faith of the citizenry can be reposed only in an accountable judiciary. Only an increased public perception of judicial accountability which is directly dependent on personal accountability can determine the degree of acceptable judicial independence. Thus, judicial accountability is a necessary means to reinforce independence and to ensure an effective judiciary. It is, therefore, submitted that independence and accountability are two sides of the same coin and complement each other.³⁵

Independence and accountability are preconditions for trust from the population. When the judiciary is not independent, it can lead to an assumption that when legislative or executive power harms an individual, the judiciary does not have the power to save the individual from these interests. If there is too much independence without sufficient accountability, undesirable consequences could lead to mistrust in the judiciary because of lack of transparency and blindness of whose interest is fulfilled by judicial action. Unaccountable independence can have damaging consequences as serious as those resulting from a lack of independence from other powers or entities. Unaccountable independence fosters secrecy and lack of transparency within a judiciary. Secrecy and lack of transparency unsurprisingly cause public distrust of the judiciary. Properly understood, judicial independence gives people faith in justice and confidence in judges. It allows people to know that the

³³ Moliterno & Lucia Berdisova (n 14)

³⁴ Udai Singh and Apporva Tapas, 'Judicial Accountability'(2012) 1 Christ University Law Journal 77

³⁵ *ibid*

government will not decide disputes; the law will. It allows people and businesses to know that judges are not owned by anyone, that judges owe no higher duty than the duty they owe to justice.³⁶

9. Conclusion

The three institutions of the government, i.e., legislature, executive and judiciary are independent and equal and one cannot encroach or interfere with the functions of others. However, it is to be accepted that judiciary is first among the equals. It is the judiciary which keeps every organ of the state within the limits of the power conferred upon it by the Constitution. It controls the legislature and the executive through its "Review Power".³⁷ The judiciary is one of the institutions on which the noble edifice of democracy and rule of law rest. There is no doubt the judiciary has played an important role in recognising and strengthening the principles of good governance, for which the judiciary has also faced criticism of going beyond its jurisdiction and entering into the domain of legislative and executive branch. On the other side, it is equally true that judiciary itself has not followed the principles of good governance in its true sense.

The principles of good governance are must to establish rule of law and all the three organs of the government and state functionaries should adhere to these principles. Judiciary is not an exception to these principles. Lack of accountability and transparency is one of the major criticisms which the Indian judiciary is facing from time to time. Due to the general awareness and international recognition of good governance principles, the demand for transparency and accountability in judicial functioning is growing day by day. The unfortunate part is that the judiciary has not stood to itself as per the growing demand of the people to make it transparent and accountable. The in-house mechanisms are not effective and lack openness and transparency. They are not open to public scrutiny. Any legislative attempt to bring accountability and transparency has been considered as an attempt to undermine the judicial independence and an interference with the judiciary.

It is important that to maintain public trust in the judiciary it is necessary that the judiciary should be corruption free, errant judges should not go unpunished; there should be complete transparency in the matter of appointment and transfer of judges. This has to be ensured by the judiciary itself, till Parliament comes up with legislation to that effect, through effective and transparent in-house mechanism.

The fact that independence may need some interference shows that there are other ideals i.e. unbiased and fair trials, more important than the former and these ideals can be achieved only through an accountable judiciary. Independence should be used only as a means to achieve this end and not an end in itself. If accountability is not taken seriously, we can witness a dangerous nexus between corrupt judges and politicians which will bring an end of democracy. It is also important to keep in mind that accountability in judiciary is different from the other two organs, the distinctive nature of the office demands separate treatment and this is in view of the nation's benefit.

³⁶ Moliterno & Lucia Berdisova (n 14)

³⁷ K C Jena, 'Judicial Independence and Accountability: A Critique' (2012) 39 Indian Bar Review 9

In fact, maintaining the fine balance between the judicial independence and judicial accountability is the most challenging task. The judiciary has to remain alert and active to see that the other branches, in the name of making the judiciary accountable, attempts to undermine the independence of the judiciary. Former Chief Justice of India Justice S.H.Kapadia on the Independence Day celebrations organized by Supreme Court Bar Association, made it clear that the judiciary was not afraid of laws to make judges accountable and cautioned the government not to tinker with its independence.³⁸ Therefore, the need for the time is to find out the mechanism which makes the judiciary accountable without comprising its independence.



³⁸ 'We are not scared of accountability laws', says CJI, The Hindu, available at <http://www.thehindu.com/news/national/article3776546.ece?homepage=true>