

underprivileged classes of people. The application of mind of Judges in granting bails where only on the seriousness of the nature of the offence committed by the accused but not on the economical status of the accused. The number of articles were published on bail system in India, number of suggestions were made by Law Commissions that bails are to be granted without observing economical status of accused.

There is no lacunae in the provisions of law laid down in the Cr.P.C. 1973 about bails. The only thing what is required in granting of bails is the nature of offence with which accused is charged. If such a offence is so heinous, will obviously be observed as per the facts and the circumstances of the case.

The following suggestions are forwarded to the policy makers to make the bail system operative in tune with the changing trends of Prison and Criminal Justice System:-

- (i) Bail procedure had to be simplified and be made understandable to even illiterate persons.

- (ii) The modes and forms of release on bail are to be rationalized and streamlined, so as to enable an accused to ask for a specific form of release commensurate with the nature of the offence and circumstances of the case.
- (iii) There is need to make statutory classification of offences for granting or refusing a bail.
- (iv) Procedure relating to insisting on furnishing monetary sureties be rationalized,
- (v) The Court should not reject the persons as sureties just because they are not owning the property within the jurisdiction of the Court concerned.
- (vi) A number of Court decisions have already crystallized the factors which are relevant to access risks involved in releasing arrested person on bail. These factors together with other necessary conditions may be cataloged to set up discernible criteria for use by the Courts while exercising their discretion.

JUDICIAL ACCOUNTABILITY — IMPACT OF ACCOUNTABILITY ON JUDICIAL SYSTEM - TAINTED JUDGES AND LAWYERS EFFECTED ON JUDICIAL SYSTEM — A CASE STUDY

By

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Introduction

Judiciary is one of the indispensable organs of democracy. It is through the Judiciary the law of a democratic state are enforced with the aid of the executive. Non-enforcement of law is anathema to a civilized society because it results in anarchy. The

sacred duty of enforcing the laws is placed in the hands of judiciary. This duty is entrusted to the judiciary because the society has reposed its confidence in it. Judicial duty discharged under a constraint is again anathema to impartial justice. Similarly on unrestrained duty may turn anathema to quality justice. Principle independence and

impartiality of judiciary is universally accepted and it is the hallmark of an organized civil society and its democratic existence. These are some of the important factors, which are found diluted, have given rise to the debate on judicial accountability.

“Accountability” simply means “Answerability”. To be “Answerable” means, one has to report and explain his actions to somebody who has authority over him. The answer is obvious, *viz.* it is answerable to the society for whose benefit it has come into existence. The society out of its experience has evolved mechanism to resolve the conflicts and conflicting interests among its members by surrendering its own independence to the Judiciary. An organized society in its evolution over centuries thus entrusted the duty of dispensing justice to an independent and impartial body in the hope that the conflicting interests among its members would be settled. Thus the judiciary should first be accountable to society.

But then judiciary cannot function in abstract. It should function through members from the society. The society has named those members as Judges and authorized them to administer law. It is from the stage the duty of a Judge commences. A Judge should administer law independently, fairly and without fear or favour, affection or ill-will. He should do so not according to his own whims and fancies but within the bounds Justice demands. Independent functioning is not for the protection or benefit of a malicious or corrupt Judge but for the benefit of the public, whose interest he is supposed to protect. This principle is fundamental to the rule of law and firmly founded in the roots of liberal democratic system of governance.

Thus on the one side there should be independence of judiciary and at the same time the independence should remain within bounds. In our country, which has a written constitution, independence of judiciary is

ensured to a great extent. No fetters are placed on its powers, save those reserved for the Legislature and the executive. It has ensured protection of tenure of Judges besides making them not answerable either to the Legislature or to the executive. Nonetheless, Judges are not completely independent. They are under many constraints, personal and societal.

It is stated by Justice *Krishna Iyer* that judicial independence is something expected from the Judge himself, who has the genuine desire to do justice; who understands human nature, having himself experienced the rough and tumble of life; and who understands the law, both “Human and Divine” and brings to the fore an unspoiled, austere and disciplined mind to bear upon the task of doing justice. In fact justice is what the Judge understands from his own point of view, based upon his own assessment and appreciation of facts and the law and freedom to do justice is freedom to make up his mind as to “Where the truth lies”.

This demands first, strong character, which would ensure that the Judge is a person responsible and responsive to no one, but “His God and his Conscience”. Thus independence, compassion and courage of conviction, freedom from prejudice and fearless justice depend upon the soul of the person and not the robes he wears. These words of Justice *Krishna Iyer*, speaks unequivocally the importance of Judicial independence and the soul searching exercise by a Judge in his quest to find out the truth.

Impact of Accountability on the Judicial System

Accountability and Independence are complementary. The purpose of judicial independence is not for the protection of the benefits of Judiciary, but for the benefit of public. No Person, howsoever high, is above the law. No institution is exempt from accountability and judiciary is not an

exception. It is well known to all of us that power tends to corrupt and absolute power corrupts absolutely but we have very often seen that great men are also bad men. Such men have brought some amount of bad reputation to the judiciary. Fortunately, all great men are not bad and all small men have contributed their might to the reputation of judiciary. It is an undeniable fact that there are black sheep in the great judicial institution but fortunately their number is insignificant but often this insignificant number has dented the otherwise clean image of judiciary. Let their number vanish once and for all.

At this juncture, it is worth remembering the words of Justice *J.S. Verma*, the former Chief Justice of India, that time has come for enforcing Judicial Accountability but it should be done by the judiciary itself. Any external effort would be dangerous for the judiciary's independence. Any situation which empowers or emboldens the critics to press with force the demand for introduction of the concept of judicial accountability preferably in the form of a legislation, would introduce an element of foreign control threatening the judicial independence.

It is curious to note that the founding fathers of our Constitution did not think it necessary to delve deeper into the finer details about the concept of the Judicial Accountability while framing the constitution, may be because the accountability is inherent and inbuilt in the working of this institution inasmuch as the fair, just and reasonable procedure is followed by all the Courts in their functioning. Hearing of cases is held in open Court and in an utmost transparent manner, after giving notice to the party affected and wherever necessary by providing the deserving and eligible person with free legal aid at the cost of the State. Cases are disposed of by reasoned orders or judgments. Hierarchy of fora is provided with rights of appeal or revision, thereby ensuring that the verdicts are accountable to the scrutiny by the appellate Courts. Erroneous findings, if

any of Higher Courts can be set aside when a Bigger Quorum scrutinizes the same. Wherever the statute is silent on any particular aspects of the procedure, the Judicial bodies would apply the principles of nature justice to reach the truth and render justice. This is the systemic guarantee for the accountability.

On this aspect, the observations of Hon'ble Supreme Court in *Sbri Sanjiv Datta, Deputy Secretary, Ministry of India's* case, (1995) 3 SCC 619.

"The responsibility to maintain the rule of law lies on all individuals and institutions. Much more so on the three organs of the State. Our Constitution has separated and demarcated the functions of the Legislature, the Executive and the Judiciary. Each has to perform the functions entrusted to it and respect the functioning of the others. None is free from errors, and the judiciary does not claim infallibility. It is truly said that a Judge who has not committed a mistake is yet to be born. Our legal system in fact acknowledges the fallibility of the Courts and provides for both internal and external checks to correct the errors. The law, the Jurisprudence and the precedents, the open public hearings, reasoned judgments, appeals, revisions, references and reviews constitute the internal checks while objective critiques, debates and discussions of judgments outside the Courts, and legislative correctives provide the external checks. Together, they go a long way to ensure judicial accountability. The law thus provides procedure to correct judicial errors. Abuses, attribution of motives, vituperative terrorism and defiance are no methods to correct the errors of the Courts. In the discharge of their functions the Courts have to be allowed to operate freely and fearlessly but for which impartial adjudication will be impossibility. Ours is a Constitutional Government based on the rule of law. The Constitution entrusts the task of interpreting and administering

the law to the judiciary whose view on the subject is made legally final and binding on all till it is changed by a Higher Court or by a permissible legislative measure. Those living and functioning under the Constitution have to accept and submit to this obligation of respecting the constitutional authority of the Courts. Under a Constitutional Government, such final authority has to vest in some institution. Otherwise, there will be a chaos. The Court's verdict has to be respected not necessarily by the authority of its reason but always by reason of its authority. "Any conduct designed to or suggestive of challenging this crucial balance of power devised by the Constitution is an attempt to subvert the rule of law and an invitation to anarchy."

Further in *Tarak Singh and another v. Jyoti Basu and others*, (2005) 1 SCC 201, the Supreme Court observed:

"It must be grasped that judicial discipline is self discipline the responsibility is self responsibility. Judicial discipline is an inbuilt mechanism inherent in the system itself. Because of the position that we occupied and the enormous power we wield, no other authority can impose a discipline on us. All the more reasons Judges exercise self discipline of high standards. The character of a Judge is being tested by the power he wields. *Abraham Lincoln* once said, "Nearly all men can stand adversity, but if you want to test a man's character give him power". Justice delivery system like any other system in every walk of life will fail and crumble down, in the absence of integrity.

Again, like any other organ of the State, judiciary is also manned by human beings but the function of judiciary is distinctly different from other organs of the State in the sense its function is divine. Today, judiciary is the repository of public faith. It is the trustee of the people. It is the last

hope of the people. After every knock at all the doors failed people approach the judiciary as the last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth. Because of the power he wields, a Judge is being judged with more stricter than others. Integrity is the hall-mark of judicial discipline, apart from others. It is high time the judiciary must take utmost care to see that temple of justice do not crack from inside, which will lead to catastrophe in the justice delivery system resulting in the failure of Public Confidence in the system. We must remember that woodpeckers inside pose a larger threat than the storm outside."

Tainted Judges and Lawyers Effect on Judicial System

The anti-corruption Bureau (ACB) arrested four tainted Judges in connection with the Cash-for-bail Scam involving Jailed mining baron *Gali Janardhan Reddy*. A probe was launched into the cash-for-bail scam on June 19, 2012 after the CBI lodged a complaint in relation to alleged criminal conspiracy and criminal misconduct in the matter of granting bail to *Gali Janardhan Reddy*, the prime accused in Obulapuram Mining Company Ltd. (OMC) Scam. The four tainted Judges *D. Prabhakar Rao*, *K. Lakshmi Narasimha Rao*, *T.V. Chalapathi Rao*, *T. Pattabhirama Rao* and one Advocate *Adithya* were arrested by CBI and registered case against them. In this connection one *Ravichandra S/o. Pattabhi Rama Rao*, Rowdy sheeter *Yadagiri*, *Gali Somasekhar Reddy*, *Suresh Babu* and *Dasarath Ramireddy*. They greed Rs.10 crores for granting bail to *Gali Janardhan Reddy*. Based on the information provided by *Pattabhi Rama Rao* ACB sleuths nabbed business man *Suryaprakash Babu* and following his confession, Zeroed in on Judges *Prabhakar Rao* and *Lakshminarasimha Rao*. The Judge in question, *Prabhakar Rao*, is currently working with the State Election Commission while *Chalapathi Rao* offer Rs.5 crore for

bail-for-cash to *Gali Janardhan Reddy*, *Prabhakar's* offer was staggering Rs.10 crore. But *Pattabhi Rama Rao*, the Judge of the CBI Court, choose to take the bail offered by his trusted friend *Chalapati Rao*. These details were reeled off by both *Chalapati Rao* and *Pattabhi* son *Ravichandra*, both of whom were arrested by ACB sleuths in the cash-for-bail case. Their confession statements, which came out. The bail was later cancelled by the A.P. High Court following a plea by the CBI, which had opened the cash-for-bail scam of worms and later handed over the case to the ACB for registering a case. The other reason for *Pattabhi* choosing *Chalapati Rao* was because he had delivered Rs.10 lakhs for granting bail to a Police Officer, *Sarveswar Rao*, who was accused in a dis-appropriate assets case, *P. Yadagiri Rao*, another middleman, had played a key role in both cases. With this four Judges have been arrested in the bail-for-cash-Judge *Pattabhi Rama Rao* who granted bail to *Gali Janardhan Reddy* for Rs.5 crore and former Judge *Chalapati Rao* who brokered the bribe for *Pattabhi*. Andhra Pradesh thus holds the record of sending four Judges to Jail on corruption charges while Judge for small causes Court *Lakshminarasimha Rao* was taken into custody. On July 9, 2012, the CBI had registered a separate case against *Prabhakar Rao* and others under Sections 8, 9 and 10 read with 7 and 13(1)(d) read with 13(20) of Prevention of Corruption Act 1988 read with 109 IPC and Sections 116 and 120-B IPC. This scam was Jolt in Indian Judiciary system.

Lawyer Accountability

It is not possible to ensure accountability in its wholesome form without a Lawyer being so. Bench and Bar are the integral and inseparable parts of judiciary. It would be difficult to speak of judicial accountability, unless we speak of the accountability of Bar also. When we talk of judicial accountability of a Judge among various tools available for ensuring accountability in Judiciary, Judicial

Ethics for Judges, Professional Ethics for Lawyers occupy paramount place. As the very concept of Justice and administering it is a sacrosanct trust and over which very foundations of civilizations are laid upon, conduct of a Lawyer occupies an equally important place. All the qualities *i.e.*, independence, integrity, competency and diligence as are important to a Judge, are equally important to a Lawyer. Therefore, institutional setting for the fair operation of the factors providing space for both Bench and Bar having an inter play is necessary.

Judicial accountability includes accountability of lawyer to his client, opposite party, Court, Bar association and to the Society at large. Lawyer being an officer of the Court symbolizes the standard role and function of judicial system, because of his intimate connection with Stake holders. Client sees the operation and function of the Court primarily through the eyes of a lawyer, as such lawyer with his ability and skill and conduct and confidence that is reposed upon him could induce a sense of accountable judicial institution. It axiomatically suggests that an incompetent and inefficient lawyer if fails to deliver goods it would undoubtedly be a source for an unaccountable institution. Therefore, it is very much necessary for a lawyer to be confidential in his actions, competent and honest in his duties.

The role of a Lawyer in India is unique who can guide the Court properly with his conduct, character, competence, integrity, impartiality, and diligence. It is the Advocate who is accountable not only to his client but also to the Court inasmuch as rendering assistance to the Court to separate relevant from irrelevant and in the timely rendering of the Justice and being fair to the other side. Apart from this, Lawyer has a role in enhancing the capacity of the judicial system on the whole. In this task, it is not possible to ignore the accountability of Lawyers to the system and society equally.

The instance and the incidents for the last quarter a century on the aspect of the accountability of Judiciary are disturbing and sometimes distressing. You are all aware that the Lawyers found themselves into sub-committee on Judicial accountability at the Supreme Court level and their words and deeds had given rise to the proceedings in *Rajiv K. Garg v. Shanti Bhushan*, AIR 1995 SC 573. It is very important to bear in mind the observation of the Hon'ble Supreme Court in the case. While stressing on the need of the hour and the delicate principles involved in the issue, the Supreme Court observed that:

“While the concern of the ‘Sub-Committee on Judicial Accountability’ for maintenance of purity in the administration of justice, probity and rectitude of conduct, both private and public, of the Judges is understandable, however, the means by which such objectives are achieved, should be consistent with and conform to permissible legal and constitutional means and limitations. It would be a great pity if the activities of such a body of persons, imbued with high and laudable motives, do things which incur the criticism that their actions have overstepped the limits of law and propriety or that they become selective. The point to emphasis is that the corrective measures should not themselves be incorrect and that such efforts at ensuring the maintenance of judicial standards must themselves conform to highest standards of dignity and propriety. Agitational stances, in the ultimate analysis, become counter-productive and detract from the main objectives. In the ultimate analysis nothing enduring can be achieved by measures which are uniformed by propriety, dignity and good grace. Justice is the most precious concern of mankind. Its achievement through judicial Institutions and processes is, at once, sensitive and fragile. The delicate balance is to be maintained by concerted and devoted efforts both by the Bench and

the Bar. However deep their commitment to the cause of purity in the administration of justice, members of the Bar cannot disregard propriety. The averments made in this petition indicate that, perhaps, at some stage, the rules of the game were forgotten. Respondents will, no doubt, realize that indignation, however righteous, should not be susceptible to the perception that it has become riotous indignation.

Nextly, the Accountability and responsibility of the Bench and the Bar in the recent times became more onerous in the light of the growing threats and challenges to undetermined the independence, the integrity and the dignity of this mighty wing.”

Section 30 of the Advocates Act, 1961, dealing with right of Advocates to practice, came into force recently, by virtue of which the right of appearance in a way had been enlarged and expanded. This is a right step taken at least now.

The Advocates Act, 1961 is an Act to amend and consolidate the laws relating to legal practitioners and to provide for the Constitution of Bar Councils and on All India Bar. The efficiency of the working of the Judicial system always would depend upon the efficiency of the Bar. The Bar Members may have to equip themselves well to suit the changing times.

Duty to client, Duty to Court principle can never be forgotten by the Advocates. Young members learn work from Senior Advocates and let them give respect to the Senior Members of the Bar. Let the Bar Associations make serious efforts to have good law libraries. The Advocates should be prompt in attending to the causes so that default orders can be avoided. The Advocates should not resort to boycotting of Courts and they may adopt other methods to express their displeasure over a particular issue. Advocates may have to protect professional nobility. Profession must

be treated as profession only, avoiding too much of commercialization.

In *R.K. Anand v. Delhi High Court*, 2009 (3) ALT (Cri.) 206 (SC) = (2009) 8 SCC 106, the Supreme Court observed:

“We express our concern on the falling professional norms among the lawyers with considerable pain because we strongly feel that unless the trend is immediately arrested and reversed, it will have very deleterious consequences for the Administration of Justice in the Country. No Judicial system in a democratic society can work satisfactorily unless it is supported by a Bar that enjoys the unqualified trust and confidence of the people, that shares the aspirations the hopes and the ideals of the people and whose members are monetarily accessible and affordable to the people.”

In *Haridas v. Usha Rami Babic*, (2007) 14 SCC 1, the Apex Court observed:

“Majesty of Law continues to hold its head high notwithstanding such scurrilous attacks made by persons who feel that the how Courts will absorb anything and everything including attacks on their honesty, integrity and impartiality. But it has to be borne in mind that such divinity and magnanimity is not its weakness but its strength.”

The Supreme Court recently in *Visram Singh Raghubanshi v. State of U.P.*, AIR 2011 SC 2275, held that no one is allowed to intimidate Judges and they are not expected to function like “Robots” while defining the law. In that case the Court sentenced a lawyer from U.P. for three months imprisonment for hurling abuses on a trial Court Judge when he questioned him for presenting a wrong person before him “impersonating the real accused 12 years ago. It is observed that the Bench and the Bar have to avoid unwarranted situations on trivial issues that hamper the cause of Justice

and are in the interest of none. A lawyer cannot be a mere mouth piece of his client and cannot associate himself with his client maligning the reputation of Judicial Officers merely because his client failed to secure the desired order from the said officer. The burden to maintain the dignity of the Judiciary lies on the Shoulders of the Bench and the Bar and it may be protected instead of watered down especially the independence of it.

“After the introduction of Article 39A to the Constitution of India, Chances of creating legal awareness and for encouraging conciliation and settlements have been increased. The participation of Public spirited lawyers, and voluntary social organizations will make this scheme a dynamic one to achieve social Justice and preventive litigation programme. Lawyers who are the custodians of law and order cannot remain as silent spectators. Time has come that they have to play very important role in the service of the people and in defense of freedom and democracy. They have to protect and guard human rights. Time and Country expect that lawyer community besides their professional role has to play another vital social role in order to secure to every individual his right to live in peace with liberty and dignity. Profession be molded into service institution.” “Failure to act when there is a duty to act and transgressing the assigned functions constitute breach of accountability. In relation to Judges, “accountability” has no precise connotation it is nebulous”.

When a litigant loses his case his disappointment and frustration imperceptibly make him a willing play to believe any rumor however baseless it may be. Not infrequently the Counsel throws the blame on the Judge generally attributing motives about integrity and impartiality of the Judge. The situation is much worse if the Judge happens to be an erstwhile rival to the Counsel in the profession Caste and communal feeling play a subtle role when Advocates collectively

denounce or defend a Judge. Sometimes the allegations leveled against Judges are not wholly unfounded but hardly are they pursued by the Bar. When credibility declines demand for accountability surfaces, credibility takes in both caliber of the Judge as well as integrity.

Accountability of the Judges comprehends in a good measure accountability of the Advocates. Without the active connivance and collaboration of an Advocate normally it is not possible for a Judge to depart from the principle of objectivity. When work is gathered and wealth acquired at a quick pace by Advocates not known for their professional caliber, legitimate suspicion sprouts about motives of the Judges before whom such type of Advocates succeed in their cases. The evil deeds of a few-both Judges and Advocates – tarnish the entire image of the Judiciary. The Bar and Bench are integral parts of the same continuum but not its opposing ends.

In *V. Venkat Rao v. Dy. Transport Commissioner*, 2000 (1) ALT 46, His Lordship Sri Justice B. Sudersan Reddy, observed under the heading “A word about the Role of Lawyers”.

“A lawyer is an integral part of Administration of Justice. Courts to a very large extent depend upon the learning, scholarship and wisdom of the Counsel appearing in the matter. The Courts lean heavily upon the Counsel for guidance. True, every advocates has right to give such advice to his client, which he *bona fide* believes to be true and correct. It may be part of his duty. But he has important responsibilities to the Court as well as to his client. A lawyer cannot be viewed as a hired gun.

No advocate has any right to withhold any material information and the relevant facts which may have bearing upon the result of the *lis* before the Court. There is no such privilege conferred upon any Counsel.

Advocates are not entitled to advise their clients to withhold or suppress material information and relevant facts from the Court. The duty of an advocate is on the other hand is to advise the litigants to state all relevant facts.

Conclusion

Lawyer must assist the Court in the administration of Justice and must not deceive or knowing or recklessly mislead the Court either on the facts or on the law.” It does not require any expertise for a lawyer to realize that his Role in Judiciary is not different from that of the other components and as a matter of fact, he is an integral part of the sentiment of the Judiciary. Judicial accountability reflexes the accountability of the Lawyers inasmuch as the Bench and the Bar are on the same continuum. Lawyers are the persons accountable to the conduct of Judiciary for the simple reasons that the Judges come from Bar. The role of subordinate judiciary in the hierarchy cannot be ignored. The constraints and controls the Subordinate Officers face are unimaginable. A negligible, routine human failure will cause them immense damage. Sometimes their credibility does not depend on their integrity, performance, but on the subjective satisfaction of higher judiciary which is more often personal. Though accountability is inherent as discussed above, though caution is echoed that there should be no external control, particularly by a legislation, soon we will have a legislation to governing the conduct of Judges

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A UNIQUE REMEDY TO CHILD ABUSE - POCSO ACT, 2012

By

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The Constitution of India guarantees several rights to children and enables the State to make provisions to ensure that the tender age of children is not abused. Even though India is a signatory to a host of International Covenants and Instruments focusing on Child Protection, these along with the existing domestic legal mechanisms have not been able to provide the necessary systems which could prevent child abuse. The 12th Five Year Plan (2012-2017) of the Ministry of Women & Child Development has unequivocally stated that “Strict measures are required to ensure that abuse of the child for sexual purposes is prevented¹”. The new National Policy for Children, 2013, recognizes that “childhood is an integral part of life with a value of its own”. One of the key priorities of the Policy mandates the State to “*create a caring, protective and safe environment for all children, to reduce their vulnerability in all situations and to keep them safe at all places, especially public spaces and protect all children from all forms of violence and abuse, harm, neglect, stigma, discrimination,*

*deprivation, exploitation including economic exploitation and sexual exploitation, abandonment, separation, abduction, sale or trafficking for any purpose or in any form, pornography, alcohol and substance abuse, or any other activity that takes undue advantage of them or harms their personhood or affects their development*²”.

Despite the best intentions and plans in place, for the better protection of children, The Protection of Children from Sexual Offences Act 2012 (POCSO Act), defines various instances of child abuse have been known to occur in schools, homes for children and other child care institutions as also in the child’s own residence. In spite of all these, children in India have not been able to take full advantage of their rights and opportunities in practice of various reasons. Therefore in this paper an attempt has been made to highlight the POCSO Act initiatives to protect and preserve future India.

Need for Protection of Children:

Child Abuse was and continues to be, one of the most heinous crimes designed and perpetuated by human beings against

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