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INDIAN DEMOCRACY ON TRIAL: THE CONSTITUTIONAL QUESTION

-Joy Puri[1]

"In a democracy, every institution is conferred with powers, every power is circumscribed within a reasonable restriction, every reasonable restriction is subject to a reasonable exception and every reasonable exception is backed by a cogent rationale."

AN OVERVIEW OF JUDICIAL EVOLUTION

Indian law began like a seed in the Vedas (1500 BCE), developing through pieces similar to Manusmriti and Arthashastra (300 BCE). The Fatawa-e-Alamgiri, during the Mughal period, included Islamic and original laws for the administration of law. The 1774 Letters Patent established the first Supreme Court in Bengal. The same courts were established in Madras in 1800 (now Chennai) and Bombay in 1823 (now Mumbai). The British Crown assumed control after 1857, and the High Courts Act of 1861 substituted Supreme Courts with High Courts in major businesses. British-Indian appellate courts went up to the Privy Council. The 1937 Federal Court, which was formed under the 1935 Act, did not alter that. In 1950, the Supreme Court enthralled space as India's highest constitutional court. The Supreme Court started with eight judges in 1950. Its strength was increased through amendments to the Supreme Court (Number of Judges) Act, 1956. It now consists of 34 judges, including the Chief Justice.

However, how are judges appointed? The procedure? The selection? The judges' appointment in the advanced courts had no hard and fast rules. Nonetheless, as a celebrated practice, the position of Chief Justice is typically given to the seniormost judge, a respected but unwritten practice. However, this practice frequently tends to brew debate like a storm beneath a calm sea. The story of appointment can be recited through three landmark judgements. In S.P. Gupta v. President of India, the court decrypted that discussion with the CJI did not indicate 'concurrence.' However, in Supreme Court Advocates-on-Record Association v. Union of India overruled the

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previous one by holding that it implied 'concurrence.' Again, in Re: Under Article 143(1) of the Constitution of India the idea of extended collegium to the CJI along with four senior-most judges emerged. Attempts to abrogate it through NJAC and the 99th Amendment failed; Supreme Court struck it down in Supreme Court Advocates-on-Record Association v. Union of India as violating the basic structure, offending the basic structure, though the collegium faces flak and is criticized for nepotism, secrecy, and lack of diversity. Reformers who sermonize the philosophy of 'salus populi' and 'audi alteram partem' now have the ball.

INDIA'S SILENT CRISIS & JUDICIAL ACCOUNTABILITY

"It is a generic term used to denote certain professions such as umpire, arbiter, and arbitrator." Judges are philologists of the highest order, not mere administrators but representatives of the State to deliver justice. They judge causes by legal norms, not personal will, judex debet judicare secundum allegata et probata. Indian judicial accountability is seriously flawed despite several high-profile misconduct cases. In 1993, Justice V. Ramaswami was convicted of financial misconduct, but political parties looked the other way, and the impeachment in Lok Sabha collapsed. Justice Soumitra Sen, charged with misappropriating ₹33 lakh, resigned before the Lok Sabha was scheduled to vote. Justice P. D. Dinakaran, charged with land grabbing, also resigned as soon as proceedings opened both jumped the ship before facing consequences.

In 2017, Justice C. S. Karnan was jailed for contempt the first sitting High Court judge to be jailed after accusing his fellow brother judges of corruption. Most recently, in 2025, Justice Yashwant Varma is in line for impeachment after charred currency is found at his Delhi residence. He challenged the in-house investigation in the Supreme Court, hiding his name even in the first place, raising new questions of transparency. Despite these incidents, accountability is as rare as a blue moon. Loopholes, resignation shields, and political hesitation have hollowed out the system.

INSTITUTIONAL CRISIS & EXPLORING REMEDIES FOR THE JUDICIAL STRUCTURE

In the global sphere, In America, the President throws his hat in the ring, and the Senate gives the nod. In England, judges are selected after dotting the i's and crossing the t's via the Judicial

Appointments Commission. Canada follows a merit-based process with advisory committees, the and final picks rest with the Prime Minister. In Russia, appointments are made by the President, who is often seen as pulling the strings behind the curtain. Germany uses a balanced model in which judges are chosen jointly by the executive and legislature, ensuring that no one can call all the shots.

The Indian judiciary crisis is a fallout of delays in appointments, vacancies in the judiciary, executive intervention, and lack of transparency in the collegium system. This undermines judicial independence and leads to case arrears and erosion of public trust in the justice delivery system in India. The collegium system is still criticized on the basis of absence of transparency and absence of diversity as more than 52% of High Court vacancies have no state collegium recommendations.

To achieve this and remain independent, reforms should be scalpel-like and not hammer-like; they should be accurate and cautious. With the Supreme Court's permission, the government can establish a diverse, judge-headed Judicial Council that guarantees open, merit-based appointments. Simultaneously, a watchdog-like Judicial Audit Wing can look into integrity, making justice not a shot in the dark but a mirror reflecting fairness, diversity, and public confidence.

Additionally, the following steps can be taken to restore the dignity of the judicial fabric. First, the establishment of a Judicial Oversight Commission for independent misconduct inquiries and the passing of the Judicial Standards and Accountability Bill are necessary. Second, rework the impeachment process to enable action after resignation and ensure time-bound public hearings. Third, a National Judicial Conduct Code should be formed, tied to performance reviews, and judicial metrics should be made public. Fourth, ensuring transparent appointments based on merit, diversity, and demographic representation through a revised body similar to the NJAC. Fifth, whistleblower protection and a cooling-off period after retirement should be effectively implemented while keeping an eye on ground reality.

When it comes to the public's trust in the judiciary, the upcoming Chief Justice of India conveyed through his strong yet subtle speech in San Francisco by stating that "Judges do not derive legitimacy from power, but from public confidence. Trust must be preserved, not manipulated; we are entering an age where digital narratives can distort legal realities. Judgments are not meant to

be used as hashtags. Transparency, without judicial literacy, becomes a tool of misjudgement rather than empowerment for the public. Our constitutional architecture is based on the principle of equilibrium. When any institution steps beyond its remit, it destabilizes that balance."

CLOSE CALL: IS THERE ANY PARTIALITY OR BIAS?

In a democracy, courts should speak when others are silent. However, what is the true threat to the Indian judiciary today? The answer can be the perception that people might build based on the conduct and actions of the concerned people.

The celebration of an event by the Chief Justice D.Y. Chandrachud with Prime Minister Modi and exchanging friendly repartees left critics with a dilemma about a perceived close proximity of the judiciary to the executive. Even in 2020, a comment by a sitting Supreme Court Justice Arun Mishra of Prime Minister Modi, calling him "visionary" raised pertinent questions about judicial independence and separation of powers. When an individual occupying a constitutionally independent office dines with executive functionaries or rules on sensitive cases, the action erodes public trust in the judicial architecture. This issue was also noted by the Bar Association of India, which was not happy and displeased with the aforesaid event. Again, in the same year, Justice Ranjan Gogoi, within months of having served as Chief Justice of India, was nominated to the Rajya Sabha, despite his claim that "there was no quid pro quo".

We must realize that the largest litigant in the nation is the government, that is, the 'Union' or the 'State' which we see in the case titles. Litigations are mostly between citizens and the government. When judges meet with governmental heads or praise them, such acts prompt the populace to raise an eyebrow and wonder: Is the judiciary still independent? The issue is not that they 'do not act' but when they 'choose to act.' Selective silence may prove as dangerous as wrong decisions.

Judges must be people of impeccable integrity and unimpeachable independence. He must be honest to the core and have high moral values. When a litigant enters the courtroom, he must feel secure that the judge before whom his matter has come would deliver justice impartially and uninfluenced by any consideration. The standard of conduct expected of a Judge is much higher than an ordinary man.

Public trust in the judiciary is established by the perception of neutrality and not merely by judgments. As Indian democracy ages and political polarization increases, the judiciary must speak tenaciously and courageously.

DOCTRINES: BALANCE OF 'REASONABILITY'

The Doctrine of Separation of Powers, as the divisions inside the rooms of a house, separates the Legislature, Executive, and Judiciary. Therefore, none treads on the toes of the other. This is to prevent any one of them from being a jack of all trades. The Judiciary must be independent as an island, as prescribed in Indira Nehru Gandhi v. Raj Narain, where the Court held that no other organ can don the judge's robe.

The Doctrine of Judicial Independence protects judicial opinions from gusts of political, financial, or personal winds, as described in Articles 50 and 124-147 of the Indian Constitution. Judges have fixed tenures and independence; they cannot mimic their judgements to anyone's tune. But that does not mean they can run amok, judges are not above the law, and that's where the Doctrine of Judicial Accountability enters. It keeps the judiciary on the straight path, teetering between ethical and moral behaviour. However, through impeachment enshrined in Article 124(4), the Judges (Inquiry) Act, and in-house measures, black sheep are dealt with. Efforts were made through the Judicial Standards and Accountability Bill to place tighter controls, which are still in limbo. However, judicial accountability coexists with judicial independence. The Judiciary may review laws under Articles 13, 32, and 226, but the legislature may repeal them through set procedures. The Doctrine of Judicial Review enables courts to determine the validity of legislative and executive actions but risks overreaching their mandate.

The Doctrine of Public Confidence believes that trust is a prerequisite for justice. The judiciary must be open, deliver judgments in a timely manner, declare assets, and have open courts. Secrecy in appointments is a setback to legitimacy. The Doctrine of Natural Justice is about " justice, audi alteram partem being the important part. The Doctrine of Contempt of Court, based on Articles 215 and 129, provides judicial authority. However, in the wrong hands, it hurts more than it helps, suppresses dissent, and muzzles constructive criticism.

CONCLUSION

India's judiciary is at a crossroads, with one foot in the temple of justice and the other teetering towards public distrust. Like a sword that has lost its cutting edge due to rust, courage must be tempered. Sealed covers, delays, and selective silence have made justice a ship in turbulent waters, losing its path from its constitutional moorings.

However, the cracks that we see since independence are not the collapse of the governmental organ; they are calls for repairs and reforms. With courageous reforms and unyielding candour, courts can once again be the lighthouse that leads democracy through its darkest hours.

Just as sunlight finds its way through a cloudy sky, hope for betterment is still present. If the judiciary reaffirms its vigour, stamina, and commitment to public service, it will not only fight this trial; it will emerge stronger, wiser, and holding greater faith than ever before.