

**SPEECH BY JUSTICE D. MURUGESAN, MEMBER, NHRC ON THE CONFERENCE ON INDEPENDENCE OF JUDICIARY AND JUDICIAL ACCOUNTABILITY, INDIA HABITAT CENTRE, NEW DELHI ON 25<sup>TH</sup> MARCH, 2017.**

I am extremely privileged to be amongst you to be the Chief Guest for one day conference on “INDEPENDENCE OF JUDICIARY AND JUDICIAL ACCOUNTABILITY” organized by VIT University through its faculty members of law. Let me first congratulate Professor (Dr.) Gandhi and his team of professors for having taken this formidable step to organize a seminar on an issue of great importance.

The one day conference has three technical sessions on three topics namely, “Independence of Judiciary under the Constitution”, “Judicial Accountability and Democracy” and “Judicial Accountability without Compromising Independence of Judiciary”. We will be hearing the presentations on each topic by number of legal luminaries, most of whom I know personally. At the outset, I must tell you that all of us will be benefitted over a day long deliberations.

Without taking much of your time on the above, let me now share some of my thoughts and experiences on the issues to be deliberated.

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 of the judges and the pressure doctrine was applied. In 17<sup>th</sup> century, the Parliament passed a Settlement Act which stipulated that the tenure of the judges would be subject to good behaviour and their removal could be only 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.

Constitution of India was resolved by the people of India to secure justice to all its citizens apart from securing liberty, equality and promoting fraternity. Our Constitution recognizes separation of powers between major organs like Legislature, Executive and Judiciary. One of the primary requirements in democracy is to ensure and respect demarcation of powers by the respective organs. Primary function of the legislature is to enact law, to be formulated and enforced by the executive. Judiciary also has the primary role to ensure that the laws are enforced and implemented. The higher judiciary has also the power to test the validity of the laws keeping in mind the mandate of the Constitution. In the process of interpretation the higher courts may also legislate sometime to permissible extent. Such powers of higher courts are exercised as they are within the domain as mandated by the Constitution.

In this context “Independence of Judiciary” assumes significance. Independence of judiciary is most vital and indispensable for keeping alive the rights as enshrined in our Constitution. Independence of

judiciary constitutes basic structure inbuilt in our Constitution and hence it cannot be either taken away or fettered in any manner by tinkering our Constitution. For this reason only right from the appointment of judges of the higher Courts till their retirement, number of safeguards are made for their service conditions including removal.

The Constitution of India insulates the Supreme Court and the High Court 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 as 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.”

Judicial independence is vital and important and at the same time judicial accountability is paramount. Judicial independence cannot be best understood unless accountability is put in place. 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 enhance 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.

Accountability and independence of judiciary are interlinked. Accountability and transparency are the very essence of democracy. Like every other institution dealing with the public, the judicial arm also is accountable to the citizens. 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. Nevertheless, 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 accepted 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.

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 Indian Judiciary in every polity has been

provided with several immunities under Constitution to ensure its smooth and impartial functioning. It is well understood that if the judiciary by its performance and conduct does not meet the expectations for which such Constitutional protection has been provided, it will be reduced to any other organ of the State which have come to distrust in recent times. It is, therefore, of utmost importance that judiciary should be perceived as independent, as well as impartial in the performance of its duties, and subject itself to be accountable.

In reality, it must also be 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.

The judiciary is the sentinel of the *qui vive* and *sans fearless*, accessible and impartial judicial process which operates remedially with promptitude and early finality, justice. A mechanism should be made for making the right balance between independence and accountability. Judicial independence and judicial accountability must sufficiently

balance so as to strengthen judicial integrity for effective judicial impartiality. Judicial independence and judicial accountability are like those two poles of magnet which must be kept at such a sufficient distance so as not to deter one another in the same magnetic flux.

The judicial accountability and transparency is the need of the hour to maintain the faith and trust in judiciary and their juisse. We should endeavour to make them a reality in our home territories without hindering to the independence of the judiciary.

Now a few words on Accountability and Democracy. The term judiciary and justice are always associated with higher cause. They are always looked with distinctiveness and as ultimate mainspring of justice. Indian Constitution makes it clear that, there should be an impartial and independent judicial body to adjudicate upon the matters and to act as the interpreter and guardian of the constitution. In a democratic setup, power and accountability should work together as it is essential for the appropriate working of the democratic system. Thus the need of Judicial accountability can be well ensured if the function of the courts on administrative side are transparent. The concept of accountability, permeates public life. In a democracy, based on the rule of law, it is now

the expectation of every citizen that all aspects of government ought to be likely accountable and judiciary can be no exception. In this context, I may refer to “Right to Information Act, 2005”. This Act was enacted as a tool to effectively ensure transparency and check corruption in our democratic system. The other wings of our system, namely legislature and executive have been duly brought under the ambit of this act for all the purposes. Informations can be obtained from the departments of both of these organs. On the other hand, it is not so in the case of judiciary. In my view, keeping itself outside the purview of RTI undermines the confidence of the public in judiciary, vis-a-vis the system of justice in the biggest democratic country. Judiciary, it is clear should not be completely unaccountable to the people of India.

I am confident that the respected speakers will address core issues on the subject and offer their valuable views on Judicial Independence and Accountability of Judiciary keeping in mind the longest democracy in the world. I invite them to address on applicability of RTI, transparency in appointment of judges particularly for higher judiciary and the accountability to the citizens.

I do hope that at the end of this one day national conference, you all will be enlightened and taking yourself to further study on the issue. I hope VIT University will organize such conferences to offer wider understanding of various legal issues to the students in the years to come.

Thank you and Best wishes.