

How the judiciary maintains accountability

All judicial powers have been vested in the Constitution, and judges are bound to work within that constitutional ambit. Once any of them go beyond it, they may be removed on the grounds of proved misbehaviour, which would include violation of the Constitution

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For representative purposes. | Photo Credit: Getty Images

The recent comments by the Vice-President of India on the role of judges has caused much anxiety and is a matter of serious concern that needs to be analysed properly. It is a well-known fact that with power comes responsibility.

The position of the Vice-President is second in the order of precedence in India and

therefore, anybody holding such a post needs to be extremely cautious before speaking, as his views might send wrong signals to the people. The current Vice-President, Jagdeep Dhankhar, in the context of the Supreme Court setting deadlines for Presidents and Governors to clear Bills approved by the Union/State legislatures, has stated that judges are working as a 'super parliament'; that judges cannot give directions to the President; and that judges are not accountable because the law of the land does not apply to them.

Dissecting the claims

The term 'super parliament' does not have any significance as Parliament is the supreme body constituted by the free will of the people reflecting the icon of popular sovereignty. No agency including the judiciary can go beyond it. It is to be noted that in order to prevent any arbitrary exercise of power by an independent judiciary, the framers of the Constitution had placed all judicial powers in the Constitution itself. This has been reiterated by the Supreme Court in *L. Chandra Kumar versus Union of India* (1997) in which the Court held that although all judicial powers are vested in the Constitution, the independence of the judiciary is fully secured because of the principle of separation of powers. If at any time judges try to exercise their powers arbitrarily, crossing the boundaries of the separation of powers, it shall be a gross violation of Article 50 and the government which holds majority in Parliament may initiate a process for a removal of the judge concerned.

On the second issue, that the judiciary cannot give directions to the President, a perusal of his position in India needs to be explained. The President is the head of the State (it is clear when Article 52 is read with Article 1). Hence, he or she is elected according to the provisions contained in Articles 54 and 55 establishing India as a Republic. The President is the head of the Executive, the head of the armed forces and also the head of Parliament under Articles 53(1), 53(2) and 79 respectively. Therefore, he is vested with powers according to his position. Giving assent to the Bills is the power of the President which is well within the limits of popular sovereignty. The President cannot and shall not go beyond this doctrine of popular sovereignty. In more simpler words, if the assent is delayed inordinately, it would undermine the people's power which in itself would be undemocratic. Hence, the judiciary setting a time frame for giving assent to Bills is consistent with the requirements of popular sovereignty. It in no way undermines the dignity of the head of the State. Since the people of India abide by the Constitution and

believe in its supremacy, all authorities including the President and Governor shall abide by the provisions of the Constitution.

On accountability

The statement given by the Vice-President that the law of the land does not apply to judges is not at all rational because he himself, as the second highest constitutional authority, questions the rule of law in India. The rule of law flows from the doctrine of the supremacy of the Constitution; questioning its efficacy and limitations would undermine the Constitutional mandate. As mentioned above, all judicial powers have been vested in the Constitution itself, and judges are bound to work within that constitutional ambit. Once any of them go beyond it, he may be removed on the grounds of proved misbehaviour, which would include violation of the Constitution. Moreover, Parliament is empowered to set aside a decision of the Court, if required, by making a new law. This provision also signifies the people's power and popular sovereignty.

Last but not the least, the Constitution of India has given powers to the judiciary to review the actions of the State and its instrumentalities for the purpose of establishing the rule of law to protect the rights of the people. The exercise of the inherent power of the Supreme Court to do complete justice under Article 142 is worth mentioning. When there is no express constitutional provision or parliamentary law on a particular subject or issue at hand, the Supreme Court has been vested with the power to become the custodian and sole interpreter of the Constitution.

Conclusively, whenever the country faces large-scale turbulence in almost all sectors, constitutional authorities and citizens both need to look at the events with a liberal mindset and should avoid doing or speaking anything which might ultimately prove detrimental to democratic and constitutional sentiments.

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