**AMBIT AND SCOPE OF ACCOUNTABILITY/LIABILITY OF A PUBLIC OFFICER, IN INDIA, IN THE EVENT OF FAILURE TO PERFORM PUBLIC DUTIES OR TO PROTECT THE FUNDAMENTAL RIGHTS WHILE DISCHARGING PUBLIC DUTIES**

***Abstract***

*A famous tale of the past states ‘The saviour is greater than the killer’, but in this era wherein the threads of society are woven in such a complicated manner, any grey area in the legal framework absolves the carriers of the law, from their responsibility of carefully executing their duties without encroaching the clear demarcation between their powers and the rights of others, and thus the public officers who are entrusted to be the saviour of law and order, have become the ones to throttle the rights of the citizens in absence of accountability. We have heard innumerable instances of police brutality or public officials overstepping the powers conferred to them to enforce law and order, or even failing to perform their duties, but how often have we stopped and thought about the extent of legality of these actions. To analyse the constant tussle between overstepping the limit of power and non-performance of essential duties of a public officer, the author has penned his research in this essay, analysing the sphere and extent of accountability of public officers in the course of executing their duties, and what are, if any, the legal consequences of violating the fundamental rights of the citizens, against them. Further, the author has briefly marked the judicial intervention in determining the accountability of public officers in an event of unlawful breach of their power while proposing a way forward.*

**Keywords:** Rights, Duties, Public Officers, accountability.

**§I. Introduction**

When Confucius' disciple Zigong questioned him about governance over 2000 years ago, he responded that a government requires three things: weapons, food, and trust. If the ruler can't keep hold of all three, he should give up weapons first, then food, according to him. Trust, on the other hand, should be guarded till the end since *“without trust we cannot stand.”[[1]](#footnote-1)*

Unfortunately, in contemporary times, though there is too much talk about public accountability, too little coherent institutional response is available.[[2]](#footnote-2) It runs contrary to our system of government, wherein those in public offices, entrusted with all the powers and responsibilities of running this diverse nation are required to exercise them in the public interest fairly and according to law.

A public officer, by the virtue of his public office, is bound to foster this hallmark of a democratic governance as it naturally connects to almost every conceivable aspect of good governance.[[3]](#footnote-3)

The failure of a public officer in upholding the sanctity of his office is in sheer dereliction to his duty, and it is the public who bears the brunt. Their basic rights stand violated, and for this reason it becomes imperative to ensure that the public officers carry out their duties properly and are held responsible if they fail to do so.

**§II. The Concept of Accountability/Liability**

Accountability simply means that if a public official abuses his position, whether via omission or commission, and as a result causes injury to an individual or the general public, he must be held responsible for it.[[4]](#footnote-4)

It refers to a system of internal and external checks and balances designed to ensure that public officials carry out their duties to the highest quality and are held accountable if they fail to do so. Its goal is to restore public trust in legitimacy of public offices. Accountability indicates that public officials are welcoming towards being questioned about their decisions and actions, as well as the repercussions of being found guilty of misbehaviour, which may include sanctions and restitution to victims.[[5]](#footnote-5)

Furthermore, effective accountability demands the formation of a competent public complaints system capable of examining charges, suggesting disciplinary measures, or referring cases to criminal prosecution. It should also be able to provide suggestions that address the root causes of misconduct.[[6]](#footnote-6)

Numerous treaties establish legally binding responsibilities, such as the International Covenant on Civil and Political Rights[[7]](#footnote-7), which has been ratified by an absolute majority of States. The right to remedy is a fundamental concept in international legal framework, which stipulates that the states should develop a mechanism for people to seek redressal if there has been a violation of their rights.[[8]](#footnote-8)

**§III. The Indian Scenario**

One of the fundamental flaws of Indian administration, according to a top bureaucrat, is the lack of public accountability. This is a remark that no one could possibly disagree with. Unfortunately, today’s accountability systems are either non-existent or extremely flimsy and fragile, in addition to being dilatory, and anyone with enough money power or personal connections may bend them in any way he wants. When it comes to accountability, the system, as it currently exists at various levels, is so strong and powerful that it opposes any genuine attempt in this direction. That is to say, the politico-bureaucratic wall proves to be so strong that it thwarts any attempts aimed at enforcing liability.[[9]](#footnote-9)

Therefore, in the name of enforcing liability, what one sees is merely shadow-boxing.

* **Legal Framework**

The Indian Penal Code, 1860[[10]](#footnote-10) lays down certain substantive contours of action(s) that can be taken against the public officers in the event of failure in discharging their duties, resulting in miscarriage of justice and violation of rights.

If a public officer abuses his office either by commission or omission, resulting in an injury to any individual, an action may be brought for an offence under Section 166A, IPC[[11]](#footnote-11) against such an officer; when a duty is performed arbitrarily or capriciously, or the exercise of power results in harassment and agony then responsibility will be placed on erring officials and they be will be punished accordingly.[[12]](#footnote-12)

Section 220[[13]](#footnote-13) of the IPC deals with executive abuses involving the illegal confinement of innocent individuals. Its purpose is to prevent the abuse of power by officers vested with the authority to commit people to trial or detention. One such example, which is also relevant to the topic at hand, is the power of police under section 41[[14]](#footnote-14) of the Criminal Procedure Code to arrest a person without a warrant in certain circumstances, subject to the requirement of Article 22(2)[[15]](#footnote-15) of the Constitution, which requires the person arrested to be produced before a magistrate within 24 hours. The failure of the police to comply with the following requirement without justifiable cause would fall under the ambit of this section, rendering the officer responsible for the consequences.

Further, it is mainly the police force that acts as the first line of response in safeguarding the rights of the populace.  Hence, it becomes all-important for the police officers to be solicitous towards the grievances of each and every individual of the society. Liability can be imposed upon failure to realise and discharge this duty, and there exist certain internal police mechanisms in addition to the provisions of the IPC outlined above. The Police Act, 1861[[16]](#footnote-16) provides for such remedial actions which can be put into place to hold police officials accountable for violating laws and rules.  Provisions such as section 7[[17]](#footnote-17) and section 29[[18]](#footnote-18) act as safeguards against the callousness and negligence of police officials.

A welcoming step was the establishment of the National Human Rights Commission and State Human Rights Commissions under the Protection of Human Rights Act, 1993[[19]](#footnote-19). It vested the commissions with the power to inquire Suo motu into the human rights violence or negligence in prevention of violation of human rights or abatement by public servants. However, under section 18[[20]](#footnote-20), the commission may only *recommend* the concerned government or authority to pay compensation to the victims or to initiate proceedings against the concerned public servant, thereby diluting the purpose behind the enactment.

In its Fourteenth report[[21]](#footnote-21), the Law Commission stated that there is a broad domain of administrative action in India in which the bureaucracy can wield arbitrary authority without being held accountable to citizens in any way.

* **Judicial Intervention: A Silver Lining**

Judicial response in India can be traced back to the landmark decision of the Hon’ble Supreme Court in *Nilabati Behera v. State of Orissa[[22]](#footnote-22),* where the apex court held that the compensation for human rights violations and power abuses is a recognised claim under public law. It demonstrated the advent of Judicial activism in this field by stating that every administrative authority shall be held accountable for the effective and efficient fulfilment of its statutory duties.

In another pace-setting judgment, the hon’ble apex court in the case of *State of Bihar v. Subhash Singh[[23]](#footnote-23),* imposed liability on the head of the department in event of subordinate officers erring in discharge of their duties. The court further strengthened the accountability mechanism by holding the officers in contempt of court who defy the court orders on purpose. Most significantly, there was a paradigm shift with the apex court imposing costs personally against the erring officers for the delay in performing their duties.

Recently, in the year 2015, a city court in Delhi paved the way for holding public officials accountable if they fail to discharge their duties. Additional Sessions Judge, Kamini Lau, said,

“Failure to act is an actionable wrong as much as any malafide action by such public servant for which the aggrieved person can seek damages for all the physical, mental, emotional, psychological, social and financial loss and sufferings caused to him. For this, a public servant would be liable in his personal capacity.”[[24]](#footnote-24)

She concluded by stating,

“It is this malaise which ails public institutions. Today that needs to be taken care of. It is time that public servants, particularly officers of the government, police, corporations, municipal bodies, etc, are made to answer for the inconvenience, trauma and loss caused to the public due to their failure to act on time and to make them liable for such inaction.”[[25]](#footnote-25)

The recent developments demonstrate that there have been tireless and unending efforts by the judiciary to combat this trend, with some success. But how many matter will courts handle? The fundamental dilemma is how to jolt the polity into action, that has become sluggish and weak in its vitals. Is it for the courts alone to solve the problem? The Judicial interventions provide a glimmer of hope, but the judicial arm needs to be strengthened by the legislative institution.

**§IV. Conclusion and the Way Forward**

The Indian democracy is a sterling example of a vibrant modern democracy. Our founding fathers adopted the finest principles for our nation to bestow upon us the basic human rights and liberty.

In the words of former Prime Minister of India, Shri Atal Bihari Vajpayee,

*“Governments come, and governments go. Parties appear and disappear. But this country should remain, and its democracy should remain eternally.”*

The Public officials form the bulwark of our democracy. The responsibility to run the daily affairs, ranging across various milieus, is vested in them. The old and popular adage, *“with great power comes great responsibility”* invariably applies on their functioning and discharge of duties. Hence, without a doubt, their accountability to the people is both desirable and necessary. Ensuring this accountability is arguably one of the most prominent challenges that confronts the public servants, at the same time providing them with an opportunity to do justice with the unwavering faith and authority entrusted in them by the populace. They act as the guardians of the common man, having the responsibility to perform public duties with utmost sincerity and conviction, and safeguarding the fundamental rights of every citizen.

Few days ago, on December 3, 2021, the Home Minister of India, while interacting with the IPS Probationary officers, underlined the importance of selfless devotion and accountability and made an appeal to the young officers, *“I appeal to the Probationary Officers to discharge their duties by rising above the attitude of ‘what is there for me, why should I care’, if you rid yourself of this attitude you will be able to handle any situation with ease.”[[26]](#footnote-26)*

In the present-day context, strengthening of the public accountability system should be the topmost priority of the government.

To summarise in the beautiful words of the Third U.S. President Thomas Jefferson,

*“When a man assumes a public trust, he should consider himself as public property.”*

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9. Massey, *supra* note 2, at 2. [↑](#footnote-ref-9)
10. PEN. CODE. [↑](#footnote-ref-10)
11. PEN. CODE s. 166A. [↑](#footnote-ref-11)
12. 2014 S.C.R. (Guj.) 951. [↑](#footnote-ref-12)
13. PEN. CODE s. 220. [↑](#footnote-ref-13)
14. CODE CRIM. PROC. s. 41. [↑](#footnote-ref-14)
15. INDIA CONST. art. 22, cl. 2. [↑](#footnote-ref-15)
16. The Police Act, 1861, No. 5 of 1861, INDIA CODE (2019). [↑](#footnote-ref-16)
17. The Police Act, 1861, No. 5 of 1861, INDIA CODE (2019), s. 7. [↑](#footnote-ref-17)
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