



**DEMOCRATIC OVERSIGHT
WITHOUT TEETH: A
CONSTITUTIONAL STUDY ON
POLITICAL ACCOUNTABILITY
MECHANISMS IN INDIA
(A COMPARATIVE ANALYSIS WITH
THE UNITED STATES AND
SOUTH AFRICA)**

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Abstract

At the centre of every constitutional democracy lies the idea that leaders must be answerable for their decisions. Without this accountability, power can easily be abused and citizens lose faith in the system. Although the Constitution lays down a detailed institutional framework, the accountability of elected representatives in India tends to surface only during elections, and not throughout their term in office. This paper argues that such periodic and election-based checks do not amount to genuine democratic oversight. To address this argument, the analysis will be conducted in comparison with two other democracies where constitutional arrangements have been structured differently and these include the United States and South Africa. Accountability in the US is not an issue that just comes in once every four years. The presence of midterm polls, scrutiny of the executive by congress, the threat of impeachment, and legislation permitting the people to have access to government information all present a few avenues to put representatives on the leash even when they are still in office. South Africa does more than many systems, by making its public representatives, as per

the Constitution, transparent and accountable throughout their term, not just on the polls. Comparing with this design, the shortcoming of the Indian structure is obvious in the fact that the Constitution lacks provision of the obligations that put the elected leaders accountable on a sustained basis, and it opens the possibility of them ruling without any tangible repercussions to misbehaviour. Consequently, the people have started to lose faith in representative government and the judiciary has become a burden, which should be shouldered by the executive and the legislature. It is only under such conditions that a more robust kind of democratic oversight in India can be achieved, if accountability is enshrined in the Constitution as a long standing obligation rather than as an experimented once in five years during elections.

Keywords: Political accountability; constitutional democracy; india; United States; South Africa.

Introduction

After the elections, the constitution does not have a mechanism that holds the representatives accountable to the people. This loophole has promoted impunity of those in office, a more attitude of scepticism to democratic institutions among the citizens, and compelled the judicial system to provide the accountability gap. Indeed, the severity of the situation is emphasized by current statistics. ADR has reported that a high percentage of the MPs who were elected to the Lok Sabha in 2024 are the defendants in crimes most of which are serious allegations. The same tendency can also be observed in the appraisal of ADR on the state level and its examination of the ministers, as the percentage here is quite significant and has many sitting legislators, who are accused of criminal activities. The audits conducted by ADR on state cabinets and legislatures indicate the same trend among ministers and MLAs.¹ On the state level,

¹ Association for Democratic Reforms (ADR), Lok Sabha Elections 2024: 46% of Newly Elected MPs Face Criminal Cases (June 6, 2024), <https://adrindia.org/content/lok-sabha-elections-2024-46-ofnewlyelectedmpsfacecriminalcase-report>;

see also Association for Democratic Reforms, Analysis of Current Ministers and the Union Council of Ministers (2025), https://adrindia.org/sites/default/files/Analysis_of_C



Kerala has been in the limelight on several occasions: several reports reveal that 19 out of the 20 Kerala MPs who have been re-elected recently are criminally charged and that courts all over the State have more than 390 cases pending against them, including the current and former MPs and MLAs, most of them several years old.² Through a series of recent rulings, the Kerala High Court has denounced the speed with which cases, including those involving incumbent and former legislators are investigated and prosecuted and has taken a hand in issues such as the alleged illegal tapping of phones and also evidence manipulation.³ Certain actions of the Enforcement Directorate in purported KFC loan irregularities, police First Information Reports against some MLAs over forced release or obstruction of officers, and so forth, indicate the overlap of claims of misuse of office and money with wanting in-term accountability.⁴ This kind of trends is observed in various other States. ADR's and media assessments record a high percentage of MPs and MLAs with criminal cases in Telangana, Odisha, Jharkhand, Uttar Pradesh, Maharashtra and Bihar, while ADR's ministerial review shows that many State cabinet members across the country are also facing pending criminal proceedings. This pattern highlights a major flaw in India's constitutional setup it does not require politicians to remain accountable while they are in office, which allows misconduct to continue until the next election and pushes the

judiciary to step in. Against this backdrop, the study pursues three objectives first, to identify the constitutional gaps that prevent continuous accountability of elected representatives in India; second, to compare India's framework with the systems in the United States and South Africa, where impeachment, legislative oversight, mid-term electoral review and transparency mandates operate as regular accountability mechanisms; and third, to propose a constitutional model capable of embedding ongoing accountability beyond the five-year electoral cycle. These concerns lead to three key questions for this study: What explains India's tendency to treat elections as the main form of accountability instead of requiring representatives to remain answerable throughout their term? How do the U.S. and South Africa make sure that elected leaders are answerable while they are still in office? And what kind of constitutional changes could help India establish a system of continuous accountability without depending excessively on the judiciary?

The paper argues that democratic oversight without teeth is not an inevitable feature of Indian democracy but the product of constitutional design. It needs to see whether a constitutional change of episodic to continuous accountability can be sought by India, when the elections fail to ensure accountability and a comparative experience suggests so.

urrent Ministers_and_the_Union_Council_of_Ministers_2025_FinalVer_English.pdf

² *Times of India*, 251 out of 543 Lok Sabha MPs face criminal cases, including 19 of 20 Kerala MPs, Feb. 11, 2025, <https://timesofindia.indiatimes.com/india/251-out-of-543-lok-sabha-mps-face-criminal-cases-including-19-of-20-kerala-mps/articleshow/118127132.cms>; New Indian Express, 391 cases against MPs, MLAs pending in Kerala courts, Sept. 25, 2025, <https://www.newindianexpress.com/states/kerala/2025/Sep/25/391-cases-against-mps-mlas-pending-in-kerala-courts-262>

³ *Times of India*, Tampering with evidence: Kerala HC restrains trial court from passing order in case against ex-minister, Oct. 24, 2025, <https://timesofindia.indiatimes.com/city/kochi/tampe>

ring-with-evidence-kerala-hc-restrains-trial-court-from-passing-order-in-case-against-ex-minister/articleshow/124788727.cms; *Times of India*, Kerala HC slams govt for failing to register phone-tapping case, Mar. 2025, <https://timesofindia.indiatimes.com> (report).

⁴ *Times of India*, ED raids P V Anvar, driver's home (KFC loan probe), Oct. 2025, <https://timesofindia.indiatimes.com/city/kozhikode/kfc-loan-ed-raids-p-v-anvar-drivers-home/articleshow/125493159.cms>; *Times of India*, Forcible release of man from custody: MLA Jenish booked, Apr. 2025, <https://timesofindia.indiatimes.com/city/kochi/forcible-release-of-man-from-custody-mla-jenish-booked/articleshow/121193399.cms>



1. Conceptual Foundations of Political Accountability

Constitutional democracy relies on political accountability as it helps in ensuring that the exercise of government power is based on publicity and consent of the people. It compels the persons in power to explain why they made certain decisions and how they can make good use of the power entrusted to them and should face the repercussions where the power is misused.⁵ The idea has its roots in the early popular sovereignty theories, in which rulers were not ruled, but rather delegated their authority by people. Accountability is not only considered a concept of ethics but it is also addressed as a required structural tool that enhances the functioning of the rule of law in the modern constitutional practice.⁶ Academics typically define two complementary types of accountability, which are electoral accountability and continuous accountability. Electoral accountability is backward as the representatives are praised or punished at elections according to their performance. Ongoing accountability, however, involves supervision throughout the period of office, in the form of legislative oversight, impeachment, disclosure, ethics, and transparency laws, recall and forums of public participation.⁷ Comparative constitutional law scholars tend to note that democracies achieve their optimal functioning when they include both election based and continuing forms of accountability. A loss of policy in elections results in the loss of control of the populace in power and usually the populace tends to exercise their power more carelessly and more recklessly, however, when the system maintains the control within the term,

power tends to become more responsible and mindful.⁸

Constant accountability is also crucial in the maintenance of the doctrine of separation of powers. Under this doctrine, there is distribution of power between the Legislature, Executive and Judiciary in order to avoid concentration of power. Checks and balances are the functional aspect of separation of powers, which makes sure that every organ checks and is checked by the others.⁹ As an example, the Executive is checked by the Legislature, the Executive administers the law within the constitutional framework and the Judiciary checks the lawfulness of the legislative and executive activity. Accountability in the system where elected branches lack adequate checks on themselves tends to shift to the courts, which adds to judicial encroachment in the political domain.¹⁰ The democracy relying on judicial checks and balances can stand before the law, but it is a weaker democracy as the political arms cease to be responsible to themselves. Separation of powers is therefore strengthened in mature constitutional democracies by mechanisms which institutionalise day-to-day accountability. These are parliamentary oversight committees, impeachment processes, mid-term electoral review, laws which allow the people access to information, requirements of disclose assets and expenditures, codes of ethics to which the public bears office holders.¹¹ In the regions where they are well functioning, they minimize political impunity, misuse of discretion, and offer better control with regard to the utilization of public funds and the increase in citizen trust. Comparative evidence shows that democratic stability correlates not merely with the

⁵ Understanding Accountability in Democratic Governance, OAPEN Library, <https://library.oapen.org/bitstream/handle/20.500.12657/91679/213946.pdf>

⁶ Id.

⁷ Democratic Oversight and Public Accountability, Northwestern University Law Review, <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1329&context=nulr>

⁸ Id.

⁹ "Checks and Balances," Encyclopedia Britannica, <https://www.britannica.com/topic/checks-and-balances>

¹⁰ Id.

¹¹ Mechanisms of Accountability in Constitutional States, OAPEN Library.



holding of elections, but with how accountability continues between elections.¹²

Elections decide who forms the government, but they do not automatically guarantee responsible conduct after a candidate takes office. This raises an important issue for constitutional analysis does the legal framework require those elected to remain answerable throughout the period they govern? The constitutional system of India then needs to be analysed on the electoral machine, as well as whether it instils perennial accountability or it fails to do so and then must constitutional amendment be implemented to bring back democratic checks and balances in the non-electoral times. Responsibility and whether it is constitutional to reform, are the questions as to whether there needs to be democratic accountability in times of non-election.

2. Political Accountability under the Indian Constitution

2.1 Elections as the Dominant Accountability Mechanism in India

The constitutional structure of India places elections as the major, and near the only, way in which political responsibility is expected to function. The constitutional provisions are concerned mostly with the manner of conducting the elections, the composition of the legislatures as well as the qualification and disqualification of the candidates based on the belief that democratic control must be achieved through periodic electoral choice.¹³ In practice, accountability is deferred until the next election, where voters are asked to evaluate an entire

term of governance through a single act of approval or disapproval. But this assumption does not pass the realities of modern day governance as it is because a decision made in the initial days of a term can have irreversible effects years before the next election is held. The victims of government abuses, failure to perform their mandate, or unethical behaviour by their representatives do not have an avenue that is clearly provided by the constitution to air their complaints when such people are in office. Consequently, elections are a delayed judgment instead of a form of perpetual checks and balances over the political power.¹⁴ Parliamentary practices have been mentioned as the additional accountability mechanisms but their effect is minimal. Questions hour, motions like Calling Attention and legislative debates are mainly meant to question the executive and not the individual legislators.¹⁵ These practices operate through internal legislative rules and are heavily shaped by political conditions. Their effectiveness is frequently weakened by disruptions, adjournments and the constraints of party discipline, and there is no constitutional sanction for evasion or non-participation by representatives. Consequently, such practices cannot substitute for a constitutional obligation requiring elected officials to remain answerable to the public on a continuing basis. The prevailing nature of elections as the only significant accountability process has also promoted a lone practice of democratic accountability. During off-election periods, the representatives are usually encouraged to focus more on electoral tactics, coalition politics, and party devotion than on long-term commitment to their constituencies. This reinforces a political culture in which accountability is treated as an occasional event rather than an ongoing

¹² *Constitutional Accountability and Democratic Legitimacy*, Oxford Constitutional Studies.

¹³ The Constitution of India, arts. 324–329; Representation of the People Act, 1951. Election Commission of India, Constitutional Provisions on Elections, <https://eci.gov.in/elections/constitutional-provisions/> Ministry of Law and Justice, Representation of the People Act, 1951, <https://legislative.gov.in/sites/default/files/A1951-43.pdf>

¹⁴ Pratap Bhanu Mehta, *The Burden of Democracy* (Penguin India, 2003); Adam Przeworski et al., *Democracy and the Market* (Cambridge University Press, 1991). Cambridge University Press overview: <https://www.cambridge.org/core/books/democracy-and-the-market>

¹⁵ Lok Sabha Secretariat, *Rules of Procedure and Conduct of Business in Lok Sabha*: <https://loksabha.nic.in/rules/rules.pdf>



democratic duty. The Constitution's silence on in-term accountability therefore creates a structural gap that allows significant discretion to be exercised without immediate democratic scrutiny, laying the groundwork for many of the governance failures examined in the sections that follow.¹⁶

2.2 Lack of Constitutionally Required In-Term Accountability in India

As much as the Indian Constitution provides a comprehensive framework for the functioning of electoral democracy, it remains largely silent on mechanisms that would keep elected representatives accountable throughout the period they hold office. Apart from provisions relating to elections, disqualifications, and legislative procedure, the constitutional text does not impose any affirmative obligation on Members of Parliament or State Legislatures to explain their conduct, justify policy decisions, or account for the exercise of public authority while their term continues.¹⁷

The limited sense of accountability that exists within the legislative process operates more through conventions and political practices than through binding constitutional mandates. Instruments such as Question Hour, Zero Hour, and parliamentary committee oversight are frequently cited as accountability tools; however, their effectiveness depends heavily on party discipline, political will, and the smooth functioning of the House.¹⁸ In practice, frequent adjournments, disruptions, and the executive's control over legislative time significantly

dilute their impact. More importantly, these mechanisms are designed to scrutinise government action collectively rather than to hold individual legislators personally answerable for misconduct, negligence, or misuse of public resources.

A further structural limitation lies in the absence of meaningful consequences for non-performance or unethical conduct during a representative's tenure. Elected officials are not subject to constitutional sanctions for persistent absenteeism, failure to represent constituents, or conduct that undermines public trust, unless such conduct results in disqualification or criminal conviction.¹⁹ Criminal cases against legislators often remain pending for years before trial or conclusion. This weakens the deterrent force of law and reinforces the perception that accountability is effectively deferred until the next election—regardless of the seriousness of conduct in the interim.

The constitutional emphasis on elections as the principal site of accountability has also shaped political behaviour. Electoral strategy, coalition management, and party loyalty frequently take precedence over sustained engagement with constituents between elections. Representatives often take decisions with long-term consequences such as allocation of public funds, administrative appointments, or policy priorities without providing meaningful explanations to the electorate.²⁰ The absence of an in-term accountability forum means that public grievances accumulate without resolution,

¹⁶ Upendra Baxi, *The Crisis of the Indian Legal System* (Oxford University Press, 1982); Nick Robinson, *Expanding Judiciaries: India and the Rise of the Good Governance Court*, 8 *Washington University Global Studies Law Review* 1 (2009): https://openscholarship.wustl.edu/law_globalstudies/vol8/iss1/2/

¹⁷ Constitution of India, Articles 79–122, 324–329. Ministry of Law and Justice, *Constitution of India*: <https://legislative.gov.in/constitution-of-india/>

¹⁸ P.D.T. Achary, *Parliamentary Accountability in India*, *Journal of the Indian Law Institute*, Vol. 45,

2003, pp. 1–10. <https://www.jstor.org/stable/43951842>

¹⁹ Law Commission of India, 244th Report on Electoral Disqualifications, 2014. <https://lawcommissionofindia.nic.in/reports/Report244.pdf>

²⁰ Milan Vaishnav, *When Crime Pays: Money and Muscle in Indian Politics*, Yale University Press, 2017, pp. 63–69. <https://yalebooks.yale.edu/book/9780300224725/when-crime-pays/>



contributing to growing distrust in representative institutions.

Consequently, gaps in political accountability have increasingly been filled through judicial intervention. Courts have stepped in to monitor investigations against legislators, direct expeditious trials, and regulate aspects of political conduct.²¹ While such interventions may preserve legality in individual cases, they also reveal a deeper institutional imbalance. When courts become the primary mechanism for enforcing political accountability, democratic responsibility shifts away from elected bodies themselves. This pattern suggests that the weakness lies not merely in political culture, but in constitutional design, which fails to embed accountability as a continuous obligation attached to public office.

2.3 Political Accountability Judicialisation and its Costs Democratic

Lack of strong, constitutionally entrenched systems of accountability of politicians in office has over a period seen the responsibility of scrutiny devolve to the judiciary. In India, there has been growing demand to resort to courts so that investigations against elected representatives are monitored, prosecutions are watched over and directions are given towards curbing misconduct in the office.²² This is not a sign of judicial ambition but institutional need: in which, when the political arms cannot discipline themselves, the judicial arm becomes the only possible avenue of maintaining legality.²³

The most obvious forms of judiciary expansion have been in cases relating to criminal prosecution against legislators. Repeated directives by the Supreme Court to have MPs and MLAs tried speedily, the creation of special courts, and periodic status reporting of cases pending courts have clearly increased the procedural discipline, but the system of checks and balances reveals a lack of internal mechanisms to deal with misconduct and has been demonstrated to require judicial stimulation.²⁴

There are high democratic costs associated with the dependence on courts to provide accountability. The courts are not meant to decide on the political judgment or performance of a representative, but only on the matter of legality. Accountability is reactive, slow, and case-oriented when it is supported by litigation, which makes litigation the best remedy, unlike representative institutions that are nearer to democratic engagement.²⁵ This alienates responsibility to the voters and makes what is supposed to be a political challenge a legal one.

Also, there is a danger of making the notion of political responsibility extrinsic to politics where it remains under the continued judicial participation. There is also a risk that legislatures and executives will end up considering accountability an external requirement, not an internal one, a culture of parliament and a reason to embrace ethical self-regulation.²⁶ It also, over time, plays into the accusations of judicial overreach which places courts in a politically sensitive position and this can lead to the undermining of their institutional legitimacy.

²¹ Ashwini Kumar Upadhyay v. Union of India, (2020) 13 SCC 216; Association for Democratic Reforms, Analysis of Pending Criminal Cases against MPs and MLAs. <https://adrindia.org/content/pending-criminal-cases-against-mps-mlas>

²² Nick Robinson, Expanding Judiciaries: India and the Rise of the Good Governance Court, 8 Washington University Global Studies Law Review 1 (2009). https://openscholarship.wustl.edu/law_globalstudies/vol8/iss1/2/

²³ Upendra Baxi, The Crisis of the Indian Legal System 137–145 (Vikas Publishing 1982)

²⁴ Public Interest Foundation v. Union of India, (2019) 3 SCC 224; Supreme Court of India directions on criminal cases against MPs and MLAs. https://main.sci.gov.in/supremecourt/2011/33042/33042_2018_Judgement_25-Sep-2018.pdf

²⁵ Mark Tushnet, Accountability and Constitutional Design, 14 International Journal of Constitutional Law 1 (2016). <https://academic.oup.com/icon/article/14/1/1/2576075>

²⁶ Pratap Bhanu Mehta, The Burden of Democracy 98–105 (Penguin India 2003)



Experience with comparative constitutionalism indicates that successful democracies reduce this tension as much as possible by institutionalising accountability in the political system. Where constitutions are of a kind to put clear responsibilities of transparency, accountability, and check in office of a representative, courts perform a complementary but not a corrective role.²⁷ It is necessary to tackle this imbalance by building a strong political accountability where this originated, instead of still depending on the courts to be the main custodians of democratic accountability.

3. Comparative Constitutional Models of Political Accountability

3.1 Political Accountability in the United States

The constitutional regime of the United States is premised on the premise that political accountability should be in place not just at the time of elections. Though elections continue to be a core element of democratic legitimacy, the U.S. Constitution and its institutional arrangements allow challenging the elected representatives at multiple points throughout their term in office by dispersing responsibility among institutions.²⁸

The organization of staggered and midterm elections can be considered one of the most important peculiarities of the U.S. system. Elections of the House of Representatives are conducted after every other two-year period, which guarantees that the legislative behaviour of members of congress is

subject to frequent scrutiny by the people who elect them.²⁹ The senators, too returned to a six-year term, are staggered in their term to make electoral responsibility unchanged through time in politics.³⁰

Another key tool of in-term accountability is legislative control of the executive. The congressional committees have immense powers in summoning, demanding, and investigating executive actions, which have been historically effective in highlighting lack of accountability in the use of public funds, misuse of power and failure of policies.³¹ Budgetary control also supports this system in that Congress has to pass appropriations thus providing legislators with the authority to either amend or deny funding based on executive behaviour.³²

Impeachment is a constitutional process that gives an opportunity to tackle an official with serious wrongdoings as they are still in power. Impeachment of the President, as well as federal judges and other civil officers, is sanctioned by the Constitution notwithstanding its inherently political nature since its existence serves as a deterrent and enforces the principle that even high-level offices cannot go beyond the law.³³

Openness and access to information by the general people are also very crucial in the accountability process of the U.S. Laws including the Freedom of Information Act allow citizens, journalists and civil society organisations to question the governmental decision-making process on an ongoing basis.³⁴ Compulsory financial reporting, ethical guidelines

²⁷ Tom Ginsburg & Rosalind Dixon, *Comparative Constitutional Law* 412–420 (Edward Elgar 2011).

²⁸ James Madison, *Federalist No. 51*. https://avalon.law.yale.edu/18th_century/fed51.asp

²⁹ U.S. Constitution, Article I, Section 2. <https://constitution.congress.gov/constitution/article-1/>

³⁰ U.S. Constitution, Article I, Section 3. <https://constitution.congress.gov/constitution/article-1/>

³¹ Louis Fisher, *Congressional Oversight: An Essential Element of Checks and Balances*, 20 *Boston*

University Public Interest Law Journal 1 (2010). <https://www.bu.edu/law/journals-archive/pi/wp-content/uploads/sites/8/2010/01/Fisher.pdf>

³² Kate Stith, *Congress' Power of the Purse*, 97 *Yale Law Journal* 1343 (1988).

<https://digitalcommons.law.yale.edu/ylj/vol97/iss7/3/>
³³ U.S. Constitution, Article II, Section 4. <https://constitution.congress.gov/constitution/article-2/>

³⁴ *Freedom of Information Act*, 5 U.S.C. 552. <https://www.justice.gov/oip/freedom-information-act-5-usc-552>



and lobbying laws further limit the abuse of the public office. These are measures that accountability should not be held by the institutional actors only but shared by the people.³⁵

All these mechanisms combine to establish a rich system of responsibility that runs during the time tenure of elected leaders. Although political dysfunction is not entirely absent in the U.S system, the constitutional system acknowledges that democratic checks and balances need to exist between elections. This is unlike in the Indian model whereby comparable in-term mechanisms do not exist or do not exist as a matter of constitutional force.

3.2 South Africa Political Accountability

The constitutional system of South Africa is more explicit and normative towards political accountability, as it regards answerability as a constitutional obligation and not as a political agreement. The republic of South Africa constitution, 1996, was written after the apartheid era with a definite aim of ensuring that no government power was concentrated and misused. Consequently, accountability, responsiveness and openness is not a given value attached to it but an articulation of constitutional values under which all the powers of the people elected are placed in the hands of the people.³⁶ The articulation of foundational values, stated in Section 1 of the South African Constitution, declaring accountability, responsiveness, and openness as the key principles of the state is a defining feature of the constitution, which not only serves as an ideal, but also guides the interpretation of all the provisions of the constitution, and creates a continuous obligation

on those who are in the public office.³⁷ Contrary to the systems in which accountability is implied through institutional practice, the Constitution in South Africa stipulates that the accountability of the public officials must be exercised by them in a way that can be explained, justified and defended until they are out of office.

South Africa The parliamentary oversight is constitutionally entrenched and is designed to provide sustained oversight of the executive. Articles 55 and 92 of the Constitution imply that the National Assembly must establish mechanisms that would ensure a check and balance on the exercise of executive power and will ensure accountability of the Cabinet members, both on an individual and collective basis, to respond and justify the policy decisions before Parliament.³⁸ Failure to accomplish this could attract political repercussions such as no confidence motion and expulsion of office.

This accountability framework has been enhanced by judicial interpretation. It has been repeatedly stressed by the Constitutional Court that the exercise of public power must be lawful, reasonable, and in good faith, and that the public officials are not free of responsibility in the instances when they failed to act within the scope of the norms, or when they were simply unwilling to adhere to them.³⁹ The Court has not been silent on the fact that accountability is a constant and continuous duty of the public office which is not to be transferred to other future elections. This jurisprudence strengthens the constitutional requirement that representatives should be held accountable to Parliament and the people.

³⁵ U.S. Office of Government Ethics, Financial Disclosure Guide. <https://www.oge.gov/web/oge.nsf/Resources/Public+Financial+Disclosure>

³⁶ Heinz Klug, Constitution Making, Maintenance and Change in South Africa, 8 International Journal of Constitutional Law 1 (2010). <https://academic.oup.com/icon/article/8/1/1/649655>

³⁷ Constitution of the Republic of South Africa, 1996, Section 1

<https://www.justice.gov.za/legislation/constitution/SAConstitution-web-eng.pdf>

³⁸ Constitution of the Republic of South Africa, 1996, Sections 55 and 92. <https://www.justice.gov.za/legislation/constitution/SAConstitution-web-eng.pdf>

³⁹ Economic Freedom Fighters v. Speaker of the National Assembly, 2016 (3) SA 580 (CC). <https://collections.concourt.org.za/handle/20.500.12144/3480>



The independent constitutional institutions also have a primary role in maintaining in-term accountability. The Chapter 9 of the Constitution provides in nature; establishment of the Bodies like the Public Protector, Auditor-General and the Human Rights Commission, which have the capacity to aid in constitutional democracy by having the investigative and reporting powers, enabling them to constantly examine the executive and legislative actions.⁴⁰ Although their findings are not necessarily in the punitive nature, they have political and legal repercussions that force the officials in the government to act and rectify wrongdoing.

The South African model is the way to show how the design of the constitution can shift the accountability in a periodical electoral event to a long-term, everyday democratic requirement. The system minimizes the use of courts as correctional institutions and enhances political accountability within the representative institutions themselves by incorporating answerability into constitutional text, institutional practice, and judicial interpretation. This method is a keen contrast to the Indian model and it gives us a useful comparative understanding of how the constitutional design can influence democratic behaviour between elective periods.

4. Comparative Analysis of Political Accountability: India, the United States, and South Africa

Comparative analysis of India, the United States and South African countries indicates that variations in political accountability concern not as much with democratic intent but rather with constitutional design. All the three systems deal with elections as a source of legitimacy but differ radically on whether

accountability is to be continued when the representative takes up office. United States and South Africa incorporate a series of, constitutionally entrenched systems, which are put to use during the term of a representative, whereas India is largely dependent on elections and informal parliamentary traditions, where one is granted length of time in office with minimal oversight.⁴¹

In the US, accountability is structurally unbroken. The existence of short electoral terms of the House of Representatives, the staggering of Senate terms, and the possibility of impeachment help keep elected officials in the presence of political punishment throughout their tenure.⁴² Legislative oversight in the form of committees, budgetary authority and investigatory power enable Congress to monitor executive behavior on a continuing basis.⁴³ Transparency legislation, especially that which allows the people to access the government records, further make the institutions accountable to the citizens in the same way.⁴⁴

South Africa is even more explicit in its approach to constitutionalism. The declared values of the state are accountability, responsiveness, and openness and apply and bind all the public office-holders during their service period, and the parliamentary oversight is not just a procedure but a constitutional requirement, the executive representatives are to explain their activities on a regular basis to the legislative body. This framework has been supplemented through judicial interpretation, which views accountability as an ongoing obligation that comes with holding a public office, and is not a political aspiration to be realised upon the end of the

⁴⁰ Constitution of the Republic of South Africa, 1996, Chapter 9. <https://www.justice.gov.za/legislation/constitution/SAConstitution-web-eng.pdf>

⁴¹ Mark Tushnet, Accountability and Constitutional Design, 14 International Journal of Constitutional Law 1 (2016). <https://academic.oup.com/icon/article/14/1/1/2576075>

⁴² U.S. Constitution, Articles I and II. <https://constitution.congress.gov/>

⁴³ Freedom of Information Act, 5 U.S.C. § 552. <https://www.justice.gov/oip/freedom-information-act-5-usc-552>

⁴⁴ Constitution of the Republic of South Africa, 1996, Section 1. <https://www.justice.gov.za/legislation/constitution/SAConstitution-web-eng.pdf>



term of office.⁴⁵ This framework is further institutionalised by independent constitutional institutions, like the Public Protector and Auditor-General, which imply that scrutiny cannot be avoided during the term of office.⁴⁶

India in contrast puts a disproportionate emphasis on electoral accountability. The Constitution carefully controls elections and legislative make up, but it does not set any personal, enforceable duty on representatives to be accountable in their term of office. The parliamentary institutions of Question Hour and committee scrutiny operate more by convention and political will than constitutional decree, and without sanctions against non-performance or misconduct by an in-term legislator, there is no sanction, and serious criminal charges, such as bringing criminal proceedings against sitting legislators has become possible without political penalty.⁴⁷

The comparative expression shows that those countries that provide democratic oversight are the most robust where accountability is a constitutional requirement that is ongoing. The systems where elections are the dominant factor allow the unmonitored periods of power and the risk of abuse and disconnection of the population. In comparison, those constitutions that spread responsibility in the institutions and time lessen dependency on judicial action and augment democratic duty in the representative organizations alone. As the experience

of India indicates, democratic oversight will not be a sustained phenomenon but will only be episodic and judicial mediation unless a constitutional reform is introduced to entrench in-term accountability.⁴⁸

5. Constitutional Reform Proposals for Embedding Continuous Accountability in India

The comparative analysis shows that the lack of accountability in India is not a necessary characteristic of representative democracy, but was the result of constitutional design.⁴⁹ To solve this shortfall, reforms must incorporate accountability as an ongoing responsibility of holding public office and not a periodically judged electoral or judicial corrective action.⁵⁰ Any reform proposal should uphold the constitutional framework, federalism and parliamentary system in India and enhance the mechanisms that should be in place when a representative is in power.⁵¹

The first reform is that it should be in the constitution that there is a duty of in-term accountability of elected representatives. The Constitution might explicitly demand that the Members of Parliament and Legislatures at the State level will be held responsible with regard to their actions, decision-making and consumption of the state resources during their tenure.⁵² Defining accountability as a constitutional responsibility would require Parliament and State Legislatures to come up with internal rules,

⁴⁵ *Economic Freedom Fighters v. Speaker of the National Assembly*, 2016 (3) SA 580 (CC). <https://collections.concourt.org.za/handle/20.500.12144/3480>

⁴⁶ Constitution of the Republic of South Africa, 1996, Chapter 9. <https://www.justice.gov.za/legislation/constitution/SAConstitution-web-eng.pdf>

⁴⁷ P.D.T. Achary, *Parliamentary Accountability in India*, Journal of the Indian Law Institute, Vol. 45 (2003).

⁴⁸ Association for Democratic Reforms, *Analysis of Criminal Cases against MPs and MLAs*. <https://adrindia.org/>

⁴⁹ Mark Tushnet, *Accountability and Constitutional Design*, 14 *International Journal of Constitutional Law* 1 (2016). <https://academic.oup.com/icon/article/14/1/1/2576075>

⁵⁰ Pratap Bhanu Mehta, *The Burden of Democracy* 90–105 (Penguin India 2003)

⁵¹ Granville Austin, *Working a Democratic Constitution: The Indian Experience* 102–115 (Oxford University Press 1999)

⁵² Constitution of the Republic of South Africa, 1996, Section 1 (comparative reference). <https://www.justice.gov.za/legislation/constitution/SAConstitution-web-eng.pdf>



procedures, and sanctions to implement this responsibility.⁵³

Second, the parliamentary oversight systems must be strengthened through the constitution. Although the devices like Question Hour and committee questioning are already established, they cannot work since they are politically disrupted and are not enforceable.⁵⁴ Constitutional protection of such major oversight functions as compulsory committee examination of government expenditure, attendance requirements and disclosure requirements would enhance legislative oversight without changing the parliamentary form of government.⁵⁵

Third, the norms of transparency and disclosure must be constitutional in nature. Elected authorities should be required to disclose their assets, liabilities, and conflicts of interest periodically and compulsorily during their term and this would improve this as well as discourage the erosion of these provisions by regular laws.⁵⁶ Open access to information pertaining to the legislative behaviour and state spending should be viewed as a democratic right as opposed to an administrative compromise.⁵⁷

Fourth, there should be more constitutional connection with political responsibility of independent accountability institutions. The existing role of bodies like the Comptroller and Auditor

General and Election Commission can be significant, but not directly politically significant, reports on audit and accountability need to be formally discussed by legislatures and responses and corrective action registered.⁵⁸ This would transform the findings of oversight into responsive political responsibility as opposed to mere record keeping.⁵⁹

Lastly, reform should also seek to minimize over rejection to judicial intervention. Courts must not take the place of political decisions but be protectors of legality.⁶⁰ The necessity to constantly oversee ordinary political malfeasance by the judiciary would be reduced by embedding this continuous accountability into constitutional text and institutional practice, and would empower both the judiciary and the democratic responsibility.⁶¹

These suggestions are not aimed at undermining the electoral accountability but to complement it. Political leadership would be still decided through elections and constitutional provisions would counterbalance the power between elections, which is liable to questions, clarification, and action.⁶² By introducing accountability as a continuous constitutional obligation, democratized oversight would be real and the structural inefficiencies that have always been the

⁵³ P.D.T. Achary, Parliamentary Accountability in India, Journal of the Indian Law Institute, Vol. 45 (2003)

⁵⁴ Lok Sabha Secretariat, Parliamentary Procedures and Practices in India. <https://loksabha.nic.in/>

⁵⁵ Louis Fisher, Congressional Oversight: An Essential Element of Checks and Balances, 20 Boston University Public Interest Law Journal 1 (2010). <https://www.bu.edu/law/journals-archive/pi/wp-content/uploads/sites/8/2010/01/Fisher.pdf>

⁵⁶ C. Raj Kumar, Corruption and Human Rights in India 85–92 (Oxford University Press 2011).

⁵⁷ Right to Information Act, 2005 (India). <https://rti.gov.in/>

⁵⁸ Comptroller and Auditor General of India, Duties, Powers and Conditions of Service Act, 1971. <https://cag.gov.in/>

⁵⁹ OECD, Parliamentary Oversight and Accountability Mechanisms (2014). <https://www.oecd.org/gov/ethics/parliamentary-oversight.htm>

⁶⁰ Upendra Baxi, The Crisis of the Indian Legal System 137–145 (Vikas Publishing 1982)

⁶¹ Nick Robinson, Expanding Judiciaries: India and the Rise of the Good Governance Court, 8 Washington University Global Studies Law Review 1 (2009). https://openscholarship.wustl.edu/law_globalstudies/vol8/iss1/2/

⁶² U.S. Constitution, Article I & II (comparative reference). <https://constitution.congress.gov/>



hallmark of the political system in India would be resolved.⁶³

Conclusion

This paper has suggested that the ineffectiveness of political accountability in India is not a by-product of the complexity of democracy in India but it is a direct product of constitutional style. The Constitution allows elected officials to abuse their power through long intervals of unquestioned access to office by viewing elections as the most, and nearly the only, means of accountability. Although elections certainly are the key to democratic legitimacy, they are inappropriate to be the only tool of managing the everyday use of power. When made subject to the next electoral, democratic responsibility is deprived of much of its corrective and preventive usefulness. The comparative analysis that has been conducted in this paper has shown us that with a stronger accountability, representative democracy is not necessarily abandoned and that there is no necessity to empower unelected institutions, at the cost of the popular choice. The two distinct approaches to the implementation of accountability in constitutional structures albeit in different ways but in a learning manner can be demonstrated in the United States and South Africa. Both systems embrace elections as the basis of legitimacy, yet they rebuff the idea that only electoral approval is effective in checking up on the representatives after they get the office. They instead share the blame over time and institutions so that we can have a contestability and accountability of the government over the term of the representative. The experience of India shows how expensive it can be not to do so. Lack of constitutionally required in-term accountability has promoted the political culture of responsibility deferring instead of exercising. Until voters can be voted out, representatives are usually not much punished when they are found being errant or performing poorly or with lapses in ethics. This obstacle has enabled critical accusations to remain

unaddressed over many years, weakening the trust of the citizenry on institutional representation structures and strengthening the beliefs on impunity in government. Increasing dependence of courts to supervise investigations and faster trials and curb political misconduct are not indicators of democratic power, but signs of institutional imbalance. This judicialization of accountability is in itself a threat on democracy. Courts are not meant to determine the politics or the performance of the representatives. Litigation as the main form of imposing accountability makes it reactive, disjointed and unavailable to the common citizen. More to the point, it shifts the accountability of the electoral institutions to the courts undermining the idea that the decision of democracy is to be carried out through politics. With time, such a dynamic poses a risk of making the concept of accountability an extrinsic burden that courts impose, instead of an intrinsic duty of public office. There is a need to critically review the Indian constitutional structure. The sustained stress on electoral accountability in the absence of similar mechanisms of consistent follow-up scrutiny cannot be sustained any longer in consideration of the realities of governance in the modern context. Elections have no way of repairing damages that have been caused, undo wrongful use of social resources and healing the trust once it is broken in the course of a tenure. A democracy that takes a span of five years before rectifying the wrong is a democracy that is tolerant of avoidable democratic degeneration. The viewpoint adopted by this paper is that meaningful reform does not consist in increasing judicial control or adding ad hoc statutory restraint, but in coming to appreciate accountability as an ongoing constitutional duty. The adoption in-term accountability in the text of the constitution would make legislatures and executives internalise democratic accountability instead of avoiding it. Greater parliamentary scrutiny, constitutional safeguarded transparency requirements and organized consultation with autonomous accountability organizations would enable the

⁶³ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 320–330 (Oxford University Press 1966).



political force to be contested throughout its nature but not examined exceptively. Reforms of this kind would not jeopardise the electoral democracy; they would perfect it. Elections would still be used to decide on who will be in charge but the constitutional accountability would be used to control the way the governing is done between the elections. In the absence of this change, the democratic control in India will be in a state of episodic control, judicially mediated and weak. Through it the accountability may be re-established in its proper place in representative institutions and this gives credence to the people and puts the constitutional practice in line with the main offering of the democracy that power is not wielded above, but that it is always answerable to the people.

