Chapter-I

INTRODUCTION

"The place of justice could be a sacred place, and so not solely the Bench, however conjointly the foot-space and precincts and purpose therefrom, need to be preserved while not scandal and corruption"1.

--- "On Judicature"

by 1st Baron Verulam

There is an recent locution, “All power tends to corrupt and absolute power corrupts completely.”2 This spoken communication seems to be ably and squarely applicable to the judiciary in our country. More so, seeable of the recent media reports concerning the Ghaziabad Provident Fund Scam, wherever within the Vigilance choose of the Ghaziabad District Court had reported to the involved supreme court concerning however quite Rs. seven Crore had been siphoned of the Ghaziabad Treasury by sequential District Judges of Ghaziabad with the assistance of an body Officer of the Court, on the pretext of grant of Provident Fund advances to category III and IV workers. the executive Officer of the Ghaziabad Court,
ShriAshutoshAshanahad created a stall statement before the Court that cash was withdrawn from the Treasury on the directive of District Judiciary. Of the thirty six judges named by the defendant, one belongs to Supreme Court, eleven belong to supreme court of Uttarakhand and Allahabad and also the remaining twenty four belong to District Level Courts of Uttar Pradesh.

Now, however will the judiciary stay honest once the folks connexion it hail from the society, that exists on the muse of corruption. Judges measure citizenry and they have families. Their family too want to maneuver in luxury sedans, board palatial homes with sprawling lawns ahead and have all the comforts and luxuries, like others. What may well be supply for it ? It will solely be gained by humoring in corrupt practices.

Supreme Court judges take their families to Africa, violating all norms and robbed the state pecuniary resource. they are doing therefore as a result of they understand that nobody will raise a finger towards them. The fault not solely lies with the govt however additional therefore with the folks of this nation World Health Organization stay silent spectators while not rebellious. folks have created a habit to tolerate misdemeanors of bureaucrats, politicians, judges and police officers etc.

While there can't be any dialogue and argument that judicial independence needs to be achieved and maintained at each price, the question is whether or not this ‘Power’ needs to be created clear and responsible. within the
twenty first century wherever everything is moving at an exceptional speed, 
reform within the judicial establishment still move at a snail's pace. the 
upper judiciary initiated the adoption of a code of conduct for judges, 
referred to as the statement of Values of Judicial life, at the Chief Justices 
Conference of Republic of India in 1999. The urban center Principles of 
Judicial Conduct4 were adopted in 2002, however the system has however 
to supply legal support to them.

when serving concerning twelve years within the Court as Clerk, Interpreter 
and Sheristedar in town Civil and Sessions Court at Bombay, I joined bar 
in1983. In response to AN charm created by late Shri Rajiv Gandhi, the then 
Prime Minister of Republic of India, to show the corruption in supreme court 
and alternative sub-ordinate Courts in Bombay, I went on nonviolence on 
sixth Dec, 1984.5 I had then distributed concerning ten,000 pamphlets 
characteristic the names of corrupt judges and their agents. sadly, my 
honest and sincere effort wasn't supported by advocates within the Bar at 
city. Eventually, when seven days, I gave up my nonviolence at the request 
of Senior Lawyers from the Bar. I had then realised that majority of lawyers 
and judges weren't fascinated by edge the prevailing corrupt system in 
judiciary. amazingly folks at giant were conjointly not involved concerning the 
corruption in judiciary. I had conjointly reported of these developments to 
late shri Rajiv Gandhi.
Some time when my nonviolence, the Advocates’ Association of Western Republic of India (AAWI) and also the city Bar Association (BBA) had passed Resolutions expressing “No Confidence” in few of the then sitting Judges of city supreme court and had counseled boycott of their Courts, leveling varied allegations of corruption and misconduct against them. (Justice S.K.Desai, Justice M.P.Kenia, Justice SharadManohar, Justice G.H.Guttal and Justice V.S.Kotwal)6 No action was taken against advocates of AAWI and BBA either by city supreme court or byHon’ble Supreme Court of Republic of India. But, the Bar Council of geographic area and province had then initiated a suomotu enquiry within the matter of my hunger strike and had collected proof supporting the fees of corruption leveled in my pamphlets, however soon while not considering the proof collected by the Bar Council, a Division Bench of city supreme court ( Coram: mister. Pendse and mister. Tipnis JJ.), in a suomotu contempt continuing, condemned ME by passing AN ex-parte order and had sentenced ME to easy imprisonment for 3 month and punished Rs.2000/-, reasoning that truth cannot be a defence within the Contempt continuing.

Later on, the Disciplinary Committee of the Bar Council of Republic of India closed the enquiry against ME by their order dated 29/09/1998 when considering the proof and my tendering unconditional apology.
Thereafter, I used to be appointed as Assistant Government counsel and extra prosecutor by State of geographic area on proceedings aspect of city supreme court. Throughout this era conjointly, I chanced on several instances of corruption involving the supreme court Judges, and so as to show the corruption in judiciary, I registered throughout Dec, 1999, for the Ph.D. degree in Law in University of Bombay and my topic was “A study of corrupting influences within the administration of justice with special regard to India”. I couldn't complete analysis study as I failed to get guide for this subject.

Even to support the reality and expose the corruption by the then Deputy Chief Minister of State of geographic area Shri ChhaganBhujbal, in Criminal legal document Petition 7 No. 1305 of 2003, I used to be directed, to file testimony, by Smt. Justice Ranjana Desai of city High Court (currently sitting choose of Supreme Court of India), as I used to be prosecutor taking care of the interest of State of geographic area. Later on, I used to be forced by Shri ChhaganBhujbal to resign for filing the testimony. Smt. Ranjana Desai couldn't support ME against this powerful corrupt politician ANd my career as an advocate was utterly derailed.

The aim of scripting this paper i.e. “JUDICIAL answerableness AND TRANSPARENCY IN APPOINTMENT OF JUDGES IN INDIA” is to point out that the problem of selection and to remove judges in Republic of India has
been, long-standing a disputable issue and a matter of dialogue amongst the general assembly, government and judiciary. This paper conjointly makes an attempt to determine that the current method of appointment of judges is unconstitutional and is that the result are incorrect judicial interpretation ordered down in Judges cases, I, II and III- S. P. Gupta v. Union of Republic of India8, Supreme Court Advocates-on-Record Association v. Union of Republic of India9 and Special Reference No.110 By approach of this wrong interpretation, judiciary took over the facility of selection of the judges. Hence judges of the supreme court and Supreme Court square measure currently appointed by a collegium of senior judges of the Supreme Court. The judiciary has therefore become sort of a self perpetrating political system. there's no system followed within the selection of High Courts and Supreme Court judges and there's no transparency within the system. It is time that this unholy state of affairs may be remedied by reforms within the law and amendments within the constitution to make a constitutional body, that should be freelance of the chief moreover as of the judiciary like National Judicial Commission as recommended by the Law Commission of Republic of India in its 100 21st Report.11

This paper conjointly compares the processes of appointment and removal of judges in Republic of India and us of USA the paper conjointly discusses
briefly the method of appointment of judges in England and Wales, Canada, New York, France, Deutschland and South Africa.

1.1 Motivation

Unfortunately, neither the Constitution, nor the other law has created any establishment or system to look at the performance of judges or examine complaints against them. The Constitution provides that top Court and Supreme Court judges can't be removed except by impeachment. That method needs signatures of one hundred MPs of the House of individuals or fifty MPs of the Council of States for its initiation. If a motion containing charges of great misconduct with the requisite signatures is submitted, and admitted by the Speaker of the House of individuals or the chair of the Council of States, an inquiry Committee of three judges is constituted to carry an effort of the judge. given that he found guilty, the motion is placed before every House of Parliament wherever it's to be gone along a 2/3 majority of every House. Our expertise has shown that it's much not possible to get rid of a choose through legal instrument even though one is somehow in a position to urge documentary proof of great misconduct. this is often as a result of MPs and political parties to that they belong square measure terribly reluctant to battle a sitting choose as a result of nearly all of them have unfinished cases in courts. The judges often behave like a trade union and do not take kindly to brethren being accused of misconduct.
1.2 Analysis Objective and Scope

This paper discusses and offers details from the starting of the system in India and makes the comparative analysis of the method of Appointment and removal of Judges in India, the US, England and Wales, Canada, New York, France, Deutschland, and South Africa. The analysis work makes an in-depth study of the method of appointment of judges in Republic of India and also the US, each being federal in composition and having democratic set-up and written constitution, with a read to know the deserves and demerits within the gift system of appointment of judges in Republic of India.

1.3 Research Question.

This paper addresses the queries whether or not the provisions of the Indian Constitution on the method of appointment of judges square measure clear and unambiguous or this got to be supplemented by a judicial interpretation or a constitutional change. Secondly, the paper conjointly analyses the practicableness of alternative different technique of appointment and removal of judges in Republic of India that ensures judicial independence and public confidence in judiciary i.e. like creation of National Judicial Commission as recommended by the Law Commission of Republic of India in its 121st Report.
1.4 Analysis Methodology.

Primarily the “Doctrinal Method” of analysis has been utilized throughout the method of preparation of this paper and also the inputs have been drawn from the first sources like Statutes and Law Commission's Reports and secondary sources like books, periodicals, case laws and websites.

1.5 Research theme.

The paper is structured into seven chapters.

The first chapter deals with ‘Introduction’. During this chapter the researcher has given a short overview of the project topic including its objective and scope and also discussed, in brief, the analysis drawback to be self-addressed by the project.