CHAPTER -1
INTRODUCTION

The Constitution of India which is the fundamental law of the land has laid down the provisions for the establishment of Supreme Court and High Courts as watchdog institutions with the sole objective to not only deliver justice in the society but to make it sure that the other two organs of State i.e. Legislature and Executive do not cross their authority and that they discharge their functions strictly in accordance with the powers conferred upon them by the various provisions of the Constitution. In this manner, the judiciary had played a very significant role in the interpretations of the various provisions of the Constitution as well as the other enactments passed by the legislature from time to time. It had struck down the executive order, if it violated the fundamental rights of the citizens or if they infringe any other law or constitution in any manner. From the “Basic Structure Doctrine" to the “Natural Justice Principle", from Golak Nath to Keshvananda Bharti, our judiciary had trodden a long way to act as a custodian of the constitution rather than acting as a mere adjudicating institution. It is clear from a catena of cases that our judiciary has saved the democracy due to its absolute independence within the framework of the constitution. With the passage of time, judicial activism and judicial review have also been brought within the ambit of basic structure doctrine. The judiciary became so powerful that it also assumed the powers of making appointments to the Supreme Court and High Courts themselves by creating collegiums systems in Supreme Court and High Courts through judicial verdicts given from time to time and thus it can be said that now it is self-perpetrating oligarchy. There does not exist any effective mechanism for making appointments of judges to the higher judiciary. There is no transparency in the appointment process and thus there is an urgent need to enact some effective enactment to make it accountability without touching its independence in any manner.

The judiciary plays a vital role in protecting the constitution. It attempts to mend the damages done by the government and the executive and endeavor to give citizen their right pledged by the Constitution and take into consideration the Directive Principles of State Policy. The law

1 Keshanandan Bharti V. State of Kerala A.I.R 1973 S.C 1461
2 Propounded in Maneka Gandhi V. Union of India (1978)1S.C.C 248
3 Golak Nath V. State of Punjab A.I.R 1967 S.C 1461
is the base of the democratic system, and the execution of the law lies with the judiciary. This is the fundamental component of the constitution, which cannot be changed even after the improvisation of new laws by the parliament. As Edmund Burke stated: "all persons in positions of power ought to be strongly and lawfully impressed with an idea that they act in trust, and must account for their conduct to one great master, to those in whom the political sovereignty rests, the people." India has a parliamentary government, where each department is engaged in strategy making. In this comprehensive democracy, the judiciary has a vital role to play. The concept of accountability in a republican state, is recollected by everyone whoever exercising public power.

The judiciary is accountable for its presence in human rights, infringement, defamation, corruption, and breaks in moral ethics. The standards of transparency and accountability is weak on the grounds that the judiciary has addressed transparency and accountability, in public interest. Despite the tremendous power of the court there is no internal accountability in the courts. (Routh, 2014). Accountability brings separation of powers, uphold dignity, security, and shield the interests of the people. The government secures that power does not get concentrated in specific institutions. The regulations of democratic system must bring objectivity. Montesquieu said, “Constant experience has shown us that every man invested with power is apt to abuse it, and to carry his authority until he is confronted with limits”.

Hence power is clubbed with accountability to maintain a strategic distance from defilement. (Das & Chandra, 2002). Judges require protection from being sued for their judicial decision so that they can perform their duty without fear and with complete independence. The suggestion of judicial accountability was introduced in the year 1966 by Justice

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6Edmund Burke was an Irish Politician, author, orator, political theorist, and philosopher.
Hidayatullah in his judgment in the case of “Naresh Shridhar Mirajkar And Ors v State of Maharashtra” where Article 32 affirms that a writ could lie against the judgment.

The judiciary manages the law within legal jurisdiction. They act as the guardians to protect the fundamental rights of the people. The Chief Justice who brought to notice that the courts are not receiving enough funds for their functioning incited a friction against the judiciary and the government. In the 80s, the devastated infrastructure of the court made their functioning difficult. The judiciary is not a part of central developmental activity and they run mostly on state fund. The “Report of the Task Force on Judicial Impact Assessment” asked for a judicial office in Delhi, and in every state capital to estimate the extra load of cases and expenditure on the judiciary incurred by the Central and State government respectively. It is on this ground that the government began funding e-courts projects. The re-engineering, re-imagination, wide use of technology and reforms in substantive law brought the achievement. But the sudden resignation of Justice Jayant Patel, brought an emergency in the judicial system. The resignation of a senior Judge was considered a protest over injustice. The independence of the judiciary is entrusted to the executive pawns in pursuit of a “vindictive agenda”. Presently, there are 2,81,25,066 cases, pending in the courts, both civil and criminal. People are losing their faith from law and court because of their lengthy and complex procedure. Recently, the verdict on ban of “triple talaq” and convicting self-proclaimed spiritual guru Ram Rahim, helped the judiciary to find a way to recover peoples trust on justice. But then again judiciary has not escaped from the pains of corruption. Judicial corruption is like a cancer beginning from lower courts and spanning to higher courts. According to the Secretary General of the United Nations, Mr. Kofi Annan “corruption is an insidious plague that can be corrosive to society in very many ways.” He also added, “corruption undermines democracy and governance, and thus culminating into

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9Mohammad Hidayatullah OBE was the 11th Chief Justice of India and the 6th Vice President in India.
10 1967 AIR, 11966 SCR (3) 744
11127th Law Commission, 1980
12The current expenditure on judiciary is Rs. 12,000 crores which is 0.01% of the GDP.
13Available at: http://www.livemint.com
14Justice Patel was the active judge who probe CBI investigation against Ishrat Jahan fake encounter case when he was the Chief Justice of Gujrat High Court. The CBI probe led to a charge sheet of many senior Gujrat police officers. He was transferred to the Allahabad High Court, where he was third senior most Judge against his current position as No. 2 in Karnataka High Court. Justice Patel resigned to relieve himself from the institution and made no other comments.
15The better India, 2017, Available at: https://www.thebetterindia.com/
anti-social manifestation such as violations of human rights, crime, terrorism, and other evils to human society.” (BHUSHAN)\textsuperscript{16}

Certain corruption cases have received immense publicity and exasperating individuals' confidence on the virtue of the judiciary. The conspicuous cases of Justice Soumitra Sen and Justice P D Dinakaran\textsuperscript{17} sets an example of corruption in judiciary. However, such maladies in the system have existed since time immemorial but recently coming to attention because of media. This problem posed the question as to “who will judge the accused judges?” A principle like separation of power and the principle of checks and balances proposes to adjust the power to check undesirable power\textsuperscript{( Anand V. )}The executive is responsible to the legislature, both individually and collectively. But due to anti-defection law, the accountability as an administration is disqualified on the grounds of defection and that is a loss in representation of constituencies. In the words of Gupta, (2004), “the decisions of party leaders are mere rubber-stamped by Parliament”. According to Jain (2003), “the laws passed by the legislature are vetted by the judiciary, and if they find the laws, not in accordance with the Constitution, they declare them invalid”.

The government is accountable to the people who bring them to power through free and fair elections every five years. Hence, in perspective, judiciary emerges as the guardian of laws and constitution and the protector of fundamental rights. With a powerful and revered position in the society, the judiciary is infected with corruption and malicious behavior. It is a self-regulatory system that lacks accountability, which lies in the space of the judiciary. According to Kashyap, (2002), any power or authority must go hand in hand with duty and accountability. Then the power remains true to the democracy and protects its sanctity, just as the rights of citizens are enshrined in the Constitution as duties. According to Lord Woolf\textsuperscript{18}, “The independence of the judiciary is not the property of the judiciary, but a commodity to be

\textsuperscript{16}According to Prashant Bhusan only one or two percent of the citizens who gets justice from the judiciary. Firstly, it is difficult for an average person to enter court due to financial difficulty and complicated and lengthy procedures of law. If any innocent person gets framed in some wrong case like terrorism, they are helpless and majority of them spend days in jail under trial but not convicted. He also pointed that there are delayed justice and wrong judgement in many cases. The main function of higher judiciary is to keep executive and legislature under control. For this reason and many other reason, the higher judiciary is kept independent. There is no role of government in appointment of Judges. There should be judicial appointment commission for the appointment of Judges.

\textsuperscript{17}The Collegium decided to transfer Justice Dinakaran to Sikkim High Court from Karnataka High court, on impeachment motion. He had charges of corruption, land grabbing, unclaimed wealth, and unlawfully securing five housing boards plots in the name of his wife and children and entering into “benami transaction”. Though Justice Dinakaran refused those allegations and was removed by the Collegium decision to Sikkim. He was also charged of holding agricultural land beyond limits.

\textsuperscript{18}Harry Kenneth Woolf, Baron Woolf, was a barrister and judge and the Chief Justice of England and Wales
According to Justice V. R. Krishna Iyer, "Judges as persons or courts as institutes are entitled to no greater immunity from criticism than other persons or institution. "Oxford dictionary, defines accountability as “responsible for your own decisions or actions and expected to explain them when you are asked". The accountability incorporates politicians, bureaucrats, judges, and everybody capitalized with supremacy. Judges are the human being who controls the courts. They are not just mere representative of the courts, but they are the living identity themselves [2]. The Judges’ duties, creates an impression in the court and the reliability on law. Judges have high respect in the society. However the recent case in Bihar delineated that when people are unable to get justice, gradually lose confidence on law and often take law in their own hands. The accountability of law rules out ridiculing the law which is much more hazardous than any other wing, as law is the protector of the constitution. Therefore, many nations across the world are promising accountability of judges. The concentration of power in the hands of a single body is interfered by legal activism which do not spare the other organs of the state. Meanwhile, Judicial independence is pre-imperative to judges which promises to act with compassion, does not fear wrong judgment and maintain the law set by the constitution. (Judicial Accountability in India, 2011)

Dato Param Cumarasamy stated that:“Accountability and transparency are the very essence of democracy. Not a single public institution, or a private institution dealing with the public, is exempt from accountability. Hence, the Judicial arm of the government too is accountable” . In the book “Judges and Judicial Accountability”, Justice Tun Mohd Dzaiddin Abdullah said:“To be faithful to his oath is the test of his integrity as a Judge. Implicit in this is that he must resist any influence or temptation. Indeed, independence is a vital component of a judge’s accountability, since a judiciary which is not truly independent, competent or possessed of integrity would not be able to give any account of itself. Thus, judicial accountability is an indispensable counterbalance to the judicial independence, for an

19Justice V. R. Krishna Iyer, was known as “conscience keeper of justice in India”. He was the judge of Kerala High Court. Later promoted as the chief Justice of Supreme Court.
21The present CJI of India remarked that the judiciary is not untouched by corruption. As the guardians of the Constitution, Judges protect the democracy of the country but the question remains “who will guard the guards?”
22Vice-President of the International Commission of Jurists and as Former UN Special Rapporteur on Independence of the Judiciary, in his speech in Nov. 2004 at Chennai” on Judicial Accountability
23Edited by Cyrus Das (2004)
24Tun Mohamed Dzaiddin bin Haji Abdullah was the Chief Justice of Malaysia.
unaccountable judge would be free to disregard the ends that independence is supposed to serve.”

1.2 Judges Code of conduct

Justice S.H. Kapadia, said: “When we talk of ethics, the judges normally comment upon ethics among politicians, students and professors and others. But I would say that for a judge too, ethics, not only constitutional morality but even ethical morality, should be the base…” The famous legal personalities like Justice E.S. Venkataramaiah, Justice D.A. Desai and Justice Chinnappa Reddy stated that if all the public are responsible for their activities, there won’t be any motivation for the Judges to left behind. Justice Verma perceived the legitimacy of this supplication and commented, “These days we (Judges) are telling everyone what they should do but who is to tell us? We have the task of enforcing the rule of law, but does not exempt and even exonerate from following it”. For legitimate usage of legal accountability, it is essential that the Judges follow a code of conduct known as the ethics for Judges.

1. Legal verdict is truthful- The Judges in their judicial decision must be honest and sensible. The legal verdict is not honest, unless the judge’s lattice of law and reality decide on it. Though, the impression of a judge is not completely right. However, a wrong verdict does not make him false. A verdict is dishonest if it ends up being unequal, dishonest, and on non-partisanship.

2. Judges decide one’s action- The fundamental code of morals expresses that one is not the judge of his own activity. The decision limits that a Judge is not just a decision maker of a case, but also a benefactor. A Judge cannot compromise with a circumstance where he has a special interest. Judges must maintain their level of separation and objectivity in legal matters. Judges should be reasonable and non-partisan.

25Sarosh Homi Kapadia was the 38th Chief Justice of India. The Vodafone judgement was the most high-profile judiciary of Justice Kapadia’s tenure.
26Engalaguppe Seetharamiah Venkata Ramiah, was appointed as a Judge in Karnataka High Court and the 19th Chief Justice of India.
27Dhirajlal Ambelal Desai, enrolled as Advocate in Gujrat High Court. In 1977, appointed as the Honorable Judge of Supreme Court of India.
28Ontethupalli Chinnappa Reddy, was a judge in Supreme court of India
29Jagdish Sharan Verma, who served as the 27th Chief Justice of India. He was also the Chairman of National Human Rights Commission, and amended the Criminal law after the 2012 Delhi Gang rape case.
30After the Provident Fund scam broke out in UP, the Chief Justice of India has set a “12-point model Code of Conduct” for subordinate officers and High Courts. The Bombay High Court with a full house meeting of Judges adopted the disciplinary codes.
3. **Regulates impartiality**- Judges regulate impartially. “Fiat justitia, ruat caelum” that is “let justice be done, though the heavens fall” is the motto of a Judge.

4. **Equal prospect**- Judges treat the litigants equally as per the standards of law and equality. A judge does not belong to any individual, segment, class, community, division or group. There are no double standards in the court of law as one for the high class and another for the lower or middle class. A Judge is not bothered by the identity of the parties’ other than the merits of the case. He treats the disputed parties equally, giving them equal rights during the prosecution. Lord Hewart of Bury\(^3\), Lord Chief Justice of England, said that it is “essential to the proper administration of justice that every party should have an opportunity of being heard, so that he may put forward his own views and support them by argument and answer the views put forward by his opponents”. The Supreme Court in the case said, “No man’s right should be affected without an opportunity to ventilate his views”. Metaphorically, “the God of Justice sits on a golden throne, but at his feet sit two lions-law and equity”. A Judge fails to discharge his duties when he disregards their presence and involvement.

5. **Maintains distance from families**- Judges keep separate themselves from the parties under trial and the lawyers during the conduct of legal proceedings. Now a days in the legal profession “one thrives not by intellectual or professional capabilities, but by utilizing their close linking with the judges”\(^3\). The lawyers and Judges avoid meeting with contending parties in private. High profile people maintain distance from those who are close to them to avoid exploitation of their familiarity. [Legal services, 2010].

6. **Judges avoid excessive social activity** - Too much of social activity, makes them famous, where litigants fear injustice. To resist that feeling, Judges avoid social activity. They are very selective in attending social functions. Whereas Judges in England and USA refuse such involvement. Even if they attend a private function, they request the guest list. The judiciary in case of “Ram Pratap Sharma vs Daya Nand”\(^3\) issued a notice that Judges should not accept any private invitation and hospitality from business, commercial

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\(^3\)Gordon Hewart, 1st Viscount Hewart, was politician and Judge in UK.
\(^3\)http://www.legalservicesindia.com
\(^3\)1977 AIR 809, 1977 SCR (1) 242
organization, political parties, clubs, religious institutions, communal or parochial pursuit.\textsuperscript{34}

7. \textbf{Media Advertisements avoided}: Judges prefer to refrain from media publicity on pending cases or which may be filed before them in future in due course for adjudication. The Indian media often twist facts which is one of their major defects. All the news is paid news and they follow vicious practices. Media also portrays non-issues as a real issue. Lord Widgery\textsuperscript{35}, Lord Chief Justice of England since 1971 to 1980, said that “the best judge is the man who do not indulge in court publicity and should work in such a way that they don’t catch the eyes of the newsmen”. Lord Hailsham\textsuperscript{36} said “the best judges are those who do not find their names in the The Daily Mail and still, who abhor it”. (Judicial Accountability in India, 2011).

\subsection*{1.3 Lack of Judicial Accountability in India}

The Courts act as an ombudsman, independent of the executive and the parliament, to dispense justice, and safeguard the executive and the government. The Judiciary is powerful to construe the laws, and give away official activity which disregarded law or the rights of the citizens. The judiciary examines laws composed by the Parliament for ensuring that they conform to the Constitution and declare them void if they violate it. There are provisions which authorizes the parliament to modify the Constitution. In 1973, the judiciary knocked down the constitutional amendments made by the parliament for disregarding the constitution. During that phase, the judiciary had struck down many laws and constitutional amendments.\textsuperscript{[3]} The lower judiciary is accountable to high courts, whereas Supreme Court judges do not hold the same. Apart from impeachment on the grounds of misbehaviour there are other harmful functioning of the judiciary, which sometimes affects the society at large. The judiciary is an independent body with its own rights. It is beyond accountability. The Constitution protects the Judges from the will of the citizens, Parliament, and government. It promotes three discrete values: law, public confidence in the law, and official responsibility.

\textsuperscript{34}The Chief Justice of India has regulated that no official servant should accept gifts and offers from HC Judge or chief Justice. No private trips, excursion, visits to religious places for visiting HC or CJ, or they will not arrange for accommodation, transport, food, for visiting such HC judges.

\textsuperscript{35}John Passmore Widgery, Baron Widgery, was an English judge who served as Lord Chief Justice of England and Wales.

\textsuperscript{36}Quintin McGarel Hogg, Baron Hailsham of St Marylebone, won the title “2\textsuperscript{nd} Viscount Hailsham” was a British politician.
The Judges of the Supreme Court and High Court are appointed by the “Collegium system”. The law is a self-propagating theocracy. There is no protocol followed in their appointment process and there is no clarity in the framework. The records or certifications are not verified for their ideological adherence to the constitutional standards of a secular, socialist, democratic, republic, or feeling towards the citizen who are deprived, downgraded and weak to fight for justice. The judiciary enjoys the absolute and unrestrained power. Therefore, there is no accountability of their performance and behaviour irrespective of corruption, disrespect for the constitution, or the rights of the people. Unfortunately, the Constitution, has no establishment or system to scrutinize their performance or grievances against them. The Constitution does allow removal of the High Court and Supreme Court judges on the ground of impeachment. The procedure requires one hundred MPs signatures for its initiation. If a motion has grounds of sincere misbehaviour with the required number of signatures, submitted for acceptance by the Speaker of the Parliament, an “inquiry Committee of 3 judges” hold a trial for the accused Judge [4]. In case he is found guilty, the motion moves to the Parliament where it needs 2/3 of the voters. A Judge cannot be removed on the grounds of impeachment despite valid documented proof of grave offence. An impeachment off the ground is difficult unless the issue is a major public scandal. The only impeachment, which has gone far was that of Justice V. Ramaswami in the mid 90’s. On presentation of the motion, “Judges Inquiry Committee” found him guilty of various allegations and the issue was escalated to Parliament for voting. The governing Congress Party guided all the MPs to stay away from casting their votes and thus it failed to get the required majority from the House. However, he continued to be Judge till the day he retired, but the then Chief Justice did not allot him with any serious judicial work.

Another motion against Justice Soumitra Sen was signed and presented to the Chairperson of the Council of States. Documented charges against a Judge with full proof, never gets any media coverage due to fear of “Contempt of Court”. The Contempt law permits judges of the higher court to accuse anyone with criminal contempt and send him for imprisonment, because the person has “scandalized the Court or lowered the authority of the Court”. What scandalizes or underestimates the power of a Court is the independent verdict of the Judges. In the case of Arundhati Roy, a bench of 2 judges accused her for contempt and sent her to

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37V. Ramaswami was the first judge of Supreme Court against whom removal proceedings were initiated.
38Suzanna Arundhati Roy, writer of “The God of small Things” which won her “Man Booker Prize” for Fiction in 1997.
imprisonment only because she condemned the Court of law in her document. Previously, the judiciary did not allow a man scandalizing the Court to demonstrate the reality of his charges. Recently the “Contempt of Courts Act\(^{39}\) has been changed to permit truth as a protection, and not to avert judges against whom claims produced accusing the individual. The criminal contempt authority and its inconsiderate means, is an instance of the massive and unrestricted power of the judiciary. The Judicial Accountability has long been demanding that the judges’ authority to penalize for scandalizing the Court has to be removed by the government. The judge rejected this demand claiming that removing this authority would encourage groundless accusations of the judges by discontented petitioners and it would destroy public confidence on them.

There are laws to protect the judges against attack. Moreover, public trust on judiciary as an individual or establishment, produced or dissolved by the activities of the Judges, is not an untrue claim made by dissatisfied litigant. With this furious disapproval by the judiciary, the legislature did not remove this provision from the “Contempt of Courts Act”. In 1991, Justice Veeraswami\(^{40}\), who was seized with inappropriate assets unequal to his earning, imposed that judges of the higher court cannot be exposed for a criminal enquiry without the on-paper authorization of the Chief Justice of India. This verdict prohibited the enquiry and trial of many judges against whom documented proof of corruption, scam, misappropriation, etc. was there. This expanded the exemption of judges who cannot escape with any unfortunate behaviour or criminal conduct, from legal trial or action for removal. With the authority of contempt, they barely fear public exposure. This produces a disturbing picture of the absence of accountability of the judges. The judiciary cannot commit any disciplinary or criminal action on the grounds of misconduct. If media expose them, they are at risk of contempt. This absence of accountability combined with massive, unrestricted authorities of the judiciary made the Court a very hazardous place and a genuine threat to the government. The current report of the Times of India, on corruption perception index demonstrates that the judiciary is the second largest corrupted place after the police department. [4]

1.4 Judicial accountability and discipline

The judges are independent regardless of external impact, especially of political and monetary elements. Thus, judicial independence binds them and the court from frivolous act.

\(^{40}\) The father-in-law of Justice Ramaswami and “Chief Justice of the Tamil Nadu High Court”
Judicial independence establishes trust and maintain the highest standards of integrity and responsibility. If judiciary and associates violate public trust, suitable measures are identified, investigated, and unethical behavior registered (Judicial Accountability in India, 2011)

1. **Systemic Accountability to whom and to what authority**
   Accountability is the capacity to consider an individual or establishment in charge of its activities. The question arises as who is accountable for enquiry of the judges and for what? They are accountable to the court, and so the verdicts made are in conformity with the law. They are also accountable to the public like other government department.

2. **In what way to achieve judicial accountability**
   A culture of freedom, neutrality and accountability is a crucial factor for the overall honesty of the judges. This is evident where there is a lack of accountability among different divisions of administration. “Codes of conduct” provide judicial accountability, since they serve as a guide and a measure of legal conduct. Robust and autonomous judicial organizations, provides a reliable direction for the judiciary, enabling them to communicate with the state in an accountable and independent way. However, they are responsible to the subjects of a nation, common society, broadcasting, and NGOs, and assume an improved role in demanding judicial accountability.

3. **Perceiving corruption in legal systems**
   Judges take decisions on breaches of law made by the people, administrations, and organizations. Judicial independence has restricted measure of protection which shield from unimportant or annoying grievances. Legal systems ensure that corruption of judges is distinguished, inspected, and legitimately held. Anti-corruption phone hotlines are a component of law which helps in recognition of corruption amongst them. The brave public or honest people within the law often revolt against corruption. This activity is supported by building a classified and difficult official grievance process so that attorneys, court clients, prosecutors, police department, mass media and civil society associations can inform “alleged or real” corruption in the judicial system.

4. **Confirming viable legal discipline**
   There are various models for legal conduct, However, all models work at two levels: first, a disciplinary framework that advise, charge fine or suspend judiciary for
misbehaviors; and, second, expulsion of them for genuine misconduct, including corruption. A disciplinary system is autonomous, reasonable, and difficult. The judiciary has the privilege of reasonable hearing, legitimate statement, and a plea for any disciplinary issue. The High Court penalizes lower court judges, and Supreme Court Collegium transfers high court judges. The procedures are in balance and the legal independence protected, but they are accountable to direct public trust.

5. Right to Information

Without a law to check the power and extent of “judicial activism” or setting down sets of accepted rules which is need based accountability of the judges, the Right to Information Act, is the best available tool for managing some features of the accountability of judges. The Judges of the Supreme Court, on the planned modifications in the RTI Act have seen: “Transparency or openness is an accepted principle of democracy and good governance.” Louis Brandeis had said “Sunlight is the best disinfectant and electricity is the best police officer”. The “Seven Principles of Public Life indicated in Lord Nolan Committee’s report on standards in public life include objectivity, accountability, and openness.” [4] “Public power is derived from we the people of India…” Its activity is liable to inspection by the population who are the wellspring of that power. The general population has a participatory part in a republic system as they are “the keepers of the Constitution”. In such conditions, there is no support for any such modification to the RTI Act proposed “tried to limit the people absurdly and illegally right to know what their public servants are doing for their benefit”. (Judicial Accountability in India, 2011). In the utilization of the Act, judges left out of its realm, which was quite absurd. The Parliament introduce corrections recommended by apex judiciary strikes at the base of the defend contained in the Act: “all public authorities, including the courts, are subject to the jurisdiction of an independent appellate body”. This Act is a step forward in “enforcing the accountability of the Judiciary” specifically to the general population, until an exact and more comprehensive act is in order.

6. Key suggestions: Judicial duties have limited immunity. This enables judges to make the free verdict without the fear of civil suit; However, corruption or other criminal misconduct should not have immunity Disciplinary principles ensure that they

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41Louis Dembitz Brandaes, an American lawyer and associate justice in supreme court of United States.
42Th first report of “Seven Principles of Public Life” also known as “Nolan’s principles” had: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
examine all initial investigations of charges. An autonomous organization examines grievances made and give reasons with the purposes behind its verdict. Firm and demanding standards have to be there-for their elimination. Their removal systems have to be strong, clear, and reasonable, and with proper reasons behind it. In the event of corruption, they are should be subject to trial. They must have the privilege of a reasonable hearing, legitimate representation, and an appeal in disciplinary issue.

A code of conduct which serves as a guide to measure judicial conduct is required to be applied. Violation of the code leads to investigation sanctioned by the judiciary. A classified and official grievance procedure is conducted so that attorneys, court clients, lawyers, police department, mass media and public society organizations reports alleged or actual violation of the code of conduct, corruption, by the court administrators, lawyers and the judges. An independent judicial association, made by the judges, should represent them in their interactions with the state and other organs. It has to be accessible; support judges on ethical issues; and provide a safe point of reference to them if they fear compromising in some or the other way (Judicial Accountability in India, 2011).

1.5 Judging the Judges - Case Laws

1.5.1 Some important non-impeachment

1. Case of Justice V. Ramaswami:

Justice V. Ramaswami was the Chief Justice of Punjab and Haryana High Court at Chandigarh who was promoted as the Judge of the Supreme court. In a report, it was found that Justice Ramaswmi made huge expenditure in buying furniture and carpets in his Chandigarh based official residence. The furniture and carpets were overpriced and the quality was inferior and old. He provided a quotation from a dealer which was forged and the materials were never delivered.

May 11, 1993 is recognized as the “black day” for Parliament and for the judiciary. For on that day, 205 Lok Sabha MPs belonging to Congress(I) party and its partners disrupted the impeachment movement against Justice V. Ramaswami by abandoning their constitutional duty of voting in favor of or against and hence defeating the movement by ensuring that it did not get the support of majority members of the Parliament. All the 196 MPs, who all voted in favor of the removal of the judge, belonged to the opposition parties. Despite the movement
for the removal was passed by the voted members, it failed the impeachment procedure. A powerful inquiry committee of three successive judges concluded that Ramaswami was guilty of few misconducts which justified his removal. However after the impeachment failed, Ramaswami was persuaded to quit by the Congress Party who slowly understood that it would have to pay a hefty amount for shielding a corrupt judge. The disappointment of the movement, particularly after the complex course it experienced, raised grave issues on the fate of justice and, for the integrity of judges.

Despite a written report submitted by the powerful committee of judges finding Ramaswami guilty duly approved by the speaker, still the motion failed in Parliament. This, however, undoubtedly raised legal debasement. Not just this, it was realized that it would send a wrong message to all the other judges. If this sort of misconduct in the office is condonable for a judge who is expected to follow the principle of higher standards of judiciary, will definitely set a wrong example for others.

The lessons for the judiciary and others were clear from this incident. The present laws in the Constitution for removal of judges have completely failed which appeared to be obsolete and inadequate. A new technique is urgently required to reestablish the accountability of the judiciary and to check the falling norms of judicial integrity and honesty. There must be a perpetual legal body which should be allowed to investigate grievances against judges and discipline them after the enquiry, if they are found guilty.

2. The Case of Justice Ashok Kumar:

In the case of Justice Ashok Kumar, the Collegium of senior judges collectively chose not to retain him as a permanent judge considering the negative reports with respect to his honesty. Despite this, he was given extensions as an additional judge, and was confirmed on February 2007 on the Chief Justice's suggestion, which was made without consulting other members of the Collegium, It was an infringement act of the higher judiciary. These had unmistakably set out that in the matter of appointment of judges, the Chief Justice cannot act alone and must take the consent of other judges in the Collegium. A bench of nine Judges justified that an appointment made without the consent of Collegium was challengeable and could be struck down in a legal proceeding. The memorandum of procedure set by the law ministers made it obvious that in such issues the Chief Justice must refer the Collegium of senior judges, and other judges who have originated from a similar High Court. Therefore, Justice Ashok

43www.outlookindia.com
Kumar's appointment was in opposition to the law set by the court. Even though Justice Ashok Kumar's confirmation as a permanent judge was affirmed by senior judges, but the court withheld his confirmation on the ground of questionable reasoning. The judiciary castigated the past Chief Justices for granting extension to Justice Ashok Kumar for political reasons, but it did not find anything incorrect with the confirmation, in spite of the fact that it was made without consulting the Collegium and his honesty was on doubt. In this way the judiciary, missed the chance to amend the authoritative illegitimacy in confirming a judge whose honesty had been observed to be dicey, and that too without referring the Collegium of senior judges. Such judicial conduct of the higher judiciary affirms that the existing validity and uprightness of the law is a consequence of inappropriate appointment because of unessential reasons which are encouraged by the non-transparent way in which judges are chosen and selected.

3. **Arundhati Roy’s Case**

After the verdict of the higher judiciary in the Narmada Dam case, there was an open challenge made by Medha Patkar and Arundhati Roy against the judiciary. Two or three advocates, lodged a contempt petition against Patkar, Roy and Mr. Prashant Bhushan asserting that they had raised harsh catchphrases against the judiciary. The prosecutors’ contempt petition, which was in curious language, contained silly affirmations that Roy and Patkar, who are not unruly, mistreated the legal advisors. Roy, in her answer stated: "For the Court to have issued notice on such a ridiculous petition to three persons who have been vocal in their criticism of the Court shows a disquieting inclination on the part of the Court to muzzle dissent and stifle criticism ". Justice G.B. Patnaik, who had issued the main notice, issued another contempt notice, that Ms. Roy dared to reprimand the court. They in the end held her responsible of contempt and sent her to imprisonment with Justice Patnaik sitting as a Judge in his own case.

44The High issued contempt notice for her critical expression of views. Her plea to remain on proceedings before the High court was listed but she had to attend court. The judiciary wanted her to apologize for her critical views so that the case could be disposed of. But her advocate told the judiciary that the case was based on freedom of expression, and the Court cannot over power to freedom of criticisms. Therefore, she did not apologize as the Court’s order restrained such criticism. After 3 years of trial, on March 2002, Supreme Court convicted Arundhati Roy for “Contempt of Court” for her critical views against Supreme Court and judiciary in Narmada Bachao Andolan.

45Led the Narmada Bachao andolan (NBA)

46Gopal Ballav Pattanaik, 32nd Chief Justice of India
4. The case of Justice Soumitra Sen

Justice Soumitra Sen was agreed to be removed by the procedure of impeachment, for the offence of misappropriation of funds accepted by him as a court collector and thereby giving false clarifications on the matter to the Court. The Chief Justice made this proposal after a report from the committee of Judges, who, after precisely looking at the facts reached the conclusion that he had conducted serious misbehavior. Even though these acts of offense were the subject of legal procedures pending against him in the court, yet he came to be appointed, because of the absence of transparency in the appointment procedure. Although the report of the judges’ committee was presented a year back, and the Chief Justice's proposal for the removal by impeachment was made five months prior, the administration has not made any endeavor to continue with his impeachment. Even though the legislature has proposed a bill to correct the Judges Enquiry Act by which the impeachment procedures was given statutory status. The inaction of the government on the issue shows the total absence of sincerity in implementing judicial accountability. The impeachment motion was however passed by the Rajya Sabha, but when it came up for consideration before the Lok Sabha, the erring judge submitted his resignation to the President of India who accepted the resignation making the impeachment motion infructous which was dropped.

5. Case of Justice Ashwini Kumar Mata

The absence of transparency and uprightness in the appointment of judges was further demonstrated by the appointment of Justice Ashwini Kumar Mata who was nominated for appointment as Delhi High Court Judge. Mr. Mata acquired one story of a house in Safdarjang Enclave from a contractor who had an agreement with the proprietor of the plot Mr. Joshi that he would construct the building after which he would hand over more than three stories to him. The contractor in breach of the agreement purposely entered into another agreement with Mr. Mata and agreed to sell the second floor of the building to Mr. Mata at the time when the building was under construction. This sale agreement was without the knowledge and consent of the proprietor. Moreover, his signature was forged on the Sale agreement.

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47Justice Soumitra Sen was receiver of large amount of money from SAIL which was stuck in dispute since 1983. Justice had to receive those funds in respect of some goods sold. Justice Sen did not file his income and opened an account. The Inquiry Committee found, two separate accounts were opened with ANZ Grind lays bank and Allahabad Bank. A total amount of Rs. 33 lacs were transferred to the account on the sale of goods which was not accounted for. Justice Sen claimed that he has invested those money in a company called Lynx India Ltd. to earn interest. But the Inquiry Committee found that to be false. Justice Sen opened an account in his own name and transferred money to Lynx India Ltd. The Committee found that there was huge diversion of fund and it violated the orders of the Court.
Deed. It was noted that no such registration occurred on November 23rd, 2000 mentioned in the Sale Deed. Therefore, Mr. Mata acquired possession of the second floor of the building based on forged signature and sale agreement. Mr. Mata in conspiracy with the Municipal Corporation of Delhi completed mutation of the property despite the absence of Sale deed. To bring this to an end, Mr. Mata filed a false Affidavit and Indemnity bond case attached with the forged sale deed and affidavit. The affidavit and sale deed submitted to the court was different from the one submitted to MCD at the time of mutation. The sale agreement had no signature of Mr. Joshi and the name of the witnesses were different which was evident that the document was forged. Eventually, an FIR was lodged and an investigation started against the fraudulent deed. These realities had come to light after the recommendation of Justice Mata had been sent to the Law Minister by the Collegium. From that point, a representation was sent to the collegiums and Justice Mata reacted to the representation and said that the investigation by the police had exonerated him. The police report was filed too fast after the representation without making any forensic examination of the forged signatures. Another representation was sent to the collegiums of judges about the detailed misbehavior of Justice Mata. In the representation it was stated, irrespective of whether Justice Mata partook in the falsification of his agreement with the contractor, it is better to err on the side of caution by not appointing him instead of facing a situation as that with regard to Justice Soumitra Sen of the Calcutta High Court (Judicial Accountability in India.2011.

1.6 Rationale for selection of theme: who will judge the judges

The rationale of the study is to examine the good governance in the country through the existing judicial system with its unfettered powers. Our judicial system is enjoying more of independence, discretionary powers, privileges along with judicial activism resulting into unpredictability in its decisions in the absence of effective mechanism to check increasing corruption, misuse of power, and so on.

Therefore, the law and the judicial system is answerable to general public so as to explain as to “Who is responsible for the sorry state of affairs of the High Courts and Supreme Court Judges in India?” They often blame the state, the legislator, and the executives for lack of interest to uplift the judicial system of the country. This is evident from the views expressed by the Solicitor General of India, T.R. Andhyarujina “firstly there is no method of appointment of Judges to the Higher Judiciary, second, there is absence of disciplinary control including removal of a Judge of Higher Judiciary.”. and thus, it has increased the problems of judicial accountability in India.
1.7 Statement of the problem

The problem of accountability in higher judiciary without sacrificing judicial independence. Judicial Accountability has been underscored in the name of judicial independence.

It is a known fact that the higher judiciary is not free from the cancer of corruption like other organs of State.

The high hopes of public at large that judges must give and account for their conduct being trustees has miserably failed in our country.

Judicial Accountability has not been enforced in true spirits to check the cancer of corruption within judiciary despite the existence of constitutional provisions to discipline the erring judges and, therefore, what should be done in such like situations particularly when impeachment procedure and other in house mechanism have not yielded good results

1.8 Objectives of the study

The problem of corruption and misuse of power has become a universal practice and every institution is infested by it. Therefore, the question of how to deal with the present situation of “quis custodiet Ipsos custodes” means “who will guard the guards themselves”. Same is the condition with judiciary\textsuperscript{48} system, as judges are not exception and they have charges of corruption and misuse of power against them. Moreover, the Indian Judicial system is slow and laborious, and the civil and criminal cases takes years to proceed and reach the final decision. However, Higher Judiciary acts like “Imperium in Imperio” i.e. functioning as a superior body to the general body politic, which under the disguise of judicial process interferes with the powers of the state which is not framed under the Constitution of India. Therefore, this exercise of excessive power by higher judiciary is now a matter of concern against judges and their accountability.

The main primary objectives for conducting research on this burning topic are as under:

1. To study and analyse the existing scheme of judicial accountability of higher judiciary.

2. To study and analyse the impeachment process for removal of judges of higher judiciary.

3. To examine the interface between judicial accountability and judicial independence.

4. To critically analyse the laws relating to corruption in higher judiciary.

5. To study some important past controversies regarding the removal of errant judges.

6. To suggest remedial measure for effective judicial accountability in higher judiciary

Lately, a list of legal outrages broke out, beginning with Chief Justice Sabharwal’s\(^{49}\) case, and going ahead to the “Ghaziabad district court Provident fund scam, the 15-lakh cash-at-judges-door scam of Chandigarh, and the Justice Soumitra Sen case of Calcutta”. Some of these have emerged because of the absence of transparency in the selection and appointment of judges. Sometimes, judges are appointed with uncertain background, secretive, ad hoc, illogical, and non-transparent method by the Collegium. Unfortunately, these “rotten eggs” are never removed by the Collegium. A judge's committee found them guilty of criminal acts and breach of trust, the Chief Justice of India recommends their “impeachment selection, appointment and removal of judges”. (Judicial Accountability in India, 2011)

1.8 Research Questions

The following research questions have been taken into consideration for the purposes of conducting the instant research and every effort has been made to find out the possible answers to these important questions:

1. Does the existing scheme of removal of Judges of High Courts and Supreme Court regarding serious misconduct is unsatisfactory.

2. Does the lack of accountability of Judges in higher judiciary leads to corruption in judiciary.

3. Does the judicial accountability is an integral part of judicial independence.

4. Whether there is no existing system to evaluate the performance/conduct of judges in higher judiciary.

5. Whether there is lack of effective institution to take cognizance of complaints/grievances of people against judges of higher judiciary.

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\(^{49}\)Yogesh Kumar Sabharwal, was the 36th Chief Justice of India.
6. Whether there should be some disciplinary control over High Court & Supreme Court Judges. If so, how and in what manner.

1.9 Hypothesis

Hypothesis is a tentative generalization whose validity is required to be tested in any research and thus this study has been conducted so as to test the following hypothesis regarding judicial accountability:

1. The existing statutory provisions of removal of Judges of High Courts and Supreme Court regarding serious misconduct is unsatisfactory which require major changes.

2. Lack of accountability of judges in higher judiciary leads to corruption in judiciary.

3. Judicial accountability is an integral part of judicial independence.

4. There is no existing system to evaluate the performance/conduct of judges in higher judiciary.

5. There is lack of effective institution to take cognizance of complaints/grievances of people against judges of higher judiciary.

1.10 Universe for the research

The various attempts made by stakeholders by way of writings, holding seminars and conferences on the subject shows the importance and universalities in this area.

The present study is based on the materials to be collected from various books, journals and secondary sources of data. The scope of the study is to examine various constitutional provisions and suggest remedial measures.

The present study is focusing on the various issues of higher judiciary to make it more accountable. Lack of investigation against judges, lack of accountability of their powers has left the judicial system cry on the mercy of judges. So, this study is an attempt to find out the problems of higher judiciary and provide suitable solutions to it so that authenticity of the judicial system is maintained. Various studies at the international level have been conducted and compared with Indian legal system and their loopholes followed by some suggestions.

1.11 Research Methodology

This is a qualitative study rather than empirical study. So, the case study methods of various cases have been considered in the study. The data is collected from various secondary sources.
like books, journals, newspaper, e-journals, internet sources etc. The latest reviews of government taken from newspaper, international conventions, extant literature forum debates etc.

1.12 Chapter Scheme

The chapters are strictly in its order starting with Introduction. It will comprise of rationale of the theme, objectives, research question, hypothesis, universe of study, research methodology and chapter scheme.

Chapter 2 would be the over view of judicial accountability – its introduction, meaning, nature and concept of judicial accountability, principles and standards of judicial accountability, Factors for demand of judicial accountability& transparency, Constitutional provisions making judiciary accountable, Different types of accountability i.e Legal Accountability, Political Accountability, Institutional Accountability, Professional Accountability, Managerial or Administrative Accountability, Social Accountability l and Conclusion.

Chapter 3 would be the review of literature. It would comprise all the study conducted at national and international level on this topic.

Chapter 4 would be Judicial Accountability and Statutory Provisions, Judges Inquiry Act 1968, Judges Inquiry Bill 2006, Judges (Declaration of Assets &liabilities) Bill 2009, Judicial Standards &Accountability Bill 2012—A fresh attempt (Important points of the bill, Mechanism under the bill, Key issues under the bill, Main loopholes &shortcomings under the bill.

Chapter 6 has 3 parts. First part would be on Judicial accountability & Judicial independence: Touchstone Of Indian Democracy. The study will focus on Necessity, Concept and objective of judicial independence: A critical study of case law, First Judges Case, Second Judges Case, Third Judges Case, Effect of 2nd & 3rd Judges Case.

The second part will be on separation of power and doctrines of checks and balances. The third part would be on National Judicial Appointments Commission Act 2014; Judicial Response: A Critical Study of “Supreme Court Advocates on Record & others Vs Union of India50” decided On 16/10/2015.


Judicial Accountability in other countries at International Level - United Kingdom, U.S.A, Russia, Sweden, Germany, Australia, France, Canada, Japan,

The final chapter 8 deals with the Conclusion arrived at by the researcher from the entire study. Based on the conclusions, suggestions have been given for future research work on this topic. The accountability of judges has not achieved its zenith though the government is trying to put various restrictions on them. The Supreme Court is not willing to digest the restrictions put on them by National Judicial Appointments Commission Act 2014 on the ground that it interferes with the independence. This thesis is intended to fill the gaps in judiciary which could be an extra –ordinary contribution in the field of law. Judicial misconduct and incapacity amongst judges led the conclusion to hold them accountable.

50WRIT PETITION (CIVIL) NO. 13 OF 2015
CHAPTER -2

JUDICIAL ACCOUNTABILITY: AN OVERVIEW