CHAPTER -2

JUDICIAL ACCOUNTABILITY: AN OVERVIEW

“Judges roles are treated as an equalizer whose duty is to do justice with the suffering people. Their duty is to take right decision on the basis of facts and evidences presented in the court. They have full right to investigate the case either case levied on government, or to any religion. Their final judgement should be based on full discloser and transparency which does not signifies any kind of partiality towards any party of the case.”

Justice Michael Kirby, Australian High Court

2.1 Introduction

The structure of democracy is based on the three pillars - Legislature, Executive and Judiciary. Constitution of India decided to set up these institutions for the better regulation of law and justice. These three independent institutions do not interfere with each other. They do not restrict the functioning of other institutions. The whole judicial system regulates based on these institutions. It is the judiciary which controls the organ system of the states within the prescribed limit of the power allotted to them by the constitution. Democratic and law related affairs are also controlled by the judiciary. It protects the fundamental rights of the citizens which helps in providing equal and fair justice. It plays a vital role by acting as a guarantor of rights for the society and governor of differences. Legislature and executive are controlled by judiciary through the ‘REVIEW POWER’. The judiciary is the trustee of the citizens of India. In the federal states, the ruling power conferred between the central and state government. If any dispute arises between the central and state government then judiciary is the one who can resolve that dispute. The judiciary is the only hope for all those people who fails to recover his grievance redressed. Judges have trained themselves for acting without any fear or favor so that they can uphold the highest standards of integrity along with honesty. They are also liable for all the acts and decisions which they have taken for spreading transparency in the entire system of judiciary.

Judicial accountability is the outcome of the independence of the judiciary. In simple terms, accountability confronts in taking responsibilities for their actions and decisions. The responsibility of external body is also covered under the judicial accountability’s
responsibility. Article 235\textsuperscript{51} signifies the provision of an effective mechanism to enforce accountability, which indicates the higher judiciary’s controlling power over the sub-ordinate judiciary. It also protects the judicial independence of entrustment of power over the subordinate judiciary. The powers of the Government are distributed to the three functions, to maintain a balance of authority/power, keep responsibility under check with complete accountability, protecting the values of democracy and the interests of the people of the country. Politically, this principle of "separation of power" did find place in India, it dates to the period of Renaissance. It was then, noted French lawyer, thinker and political philosopher, Baron de Montesquieu\textsuperscript{52}, popularly called Montesquieu, gave us the theory of "separation of powers" that finds its place in several constitutions in the world. This theory is referred to as "\textit{trispolitica}\textsuperscript{52}\textsuperscript{52}", and as a model was first executed by Greece in ancient times. It has subdivided the power of the state into three branches or estates, with distinct and independent powers and responsibilities. The principle of "separation of powers" makes sure that all power does not get vested in the same set of power. On the other hands, such a division of responsibility brings in objectivity quite naturally in the system. Each institution can appreciate the other for the value they bring in. Also, this division of power negates corruption in the system.

\subsection*{2.2 The Accountability of The Judiciary}

The Constitution declared India as a democratic country which signifies that the government is responsible or accountable for all such acts which they have taken for whom it exists. It also means that the people makes government, for the people and of the people. The judiciary is one branch of the government easily approached by any of the citizen of India who has any grievance. Out of the three pillars of governments, there is no need to express that the judiciary plays a significant role which is the basic necessity of a person with whom injustice has been done by any one. Some of the provisions which shall include the provision related to appeal, revision and review of order protect the accountability of the judiciary along with its judicial functions.

\textsuperscript{51}Article 235 in The Constitution Of India 1949, “Control over subordinate courts The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law”

\textsuperscript{52}“Charles-Louis de Secondat, Baron de La Brède et de Montesquieu”, was a French Lawyer.
2.3. Judicial accountability: Judging the judges

By observing the importance of the judiciary, there are two provisions made under the Constitution of India for the possibility for misuse of power conferred to the judiciary. Those two provisions are related to the appointment and removal of judges. In case Collegium observes any fraudulent feature amongst the judges who are working in the judicial system, then they can sue them in front of constitution-maker for the misuse of their power. These two provisions are also conferred that legislative and executive government is also responsible either directly or indirectly, for their act or decisions related to the people. Thus, these two branches are also having control over the judiciary. One case study, namely “the case of Justice J.B. Pardiwala” which is related to the judicial accountability may be summarized as under:

2.3.1 The Case of Justice J.B. Pardiwala

A more recent case is that of Justice J.B. Pardiwala of the Gujarat High Court. He had made some objectionable remarks on reservation of Scheduled Castes and Tribes in a ruling case. On this, a group of 58 Rajya Sabha MPs moved an impeachment notice against him. Only a few hours after the impeachment notice had been sent, the judge removed the objectionable wordings from the judgment.

In 2017, the Supreme Court made the landmark judgments of "Triple Talaq" and "Right to Privacy" declared as a fundamental right. A loosening up of the judiciary to embrace a culture that empowers them, but also puts enough checks in the right places so that the current erosion of values within the judiciary are stopped. The report, based on public opinion, was led by Chief Justice of India J S Khehar said that the law of contempt will not extend to people or organizations carrying on surveys and interviews with people to collect their views whether they think corruption is prevalent in the judiciary and to what extent.

53 Judge J B Pardiwala remarked reservation system as “unconstitutional”.
54 Triple talaq is a verbal divorce amongst Muslims in India, which according to Supreme Court is violating fundamental rights of Muslim women as it is irrevocable and ends marriage without any chance of reconciliation. Triple Talaq is invalid and unconstitutional by the apex court.
55 Justice Jagdish Singh Khehar is the 44th Chief Justice of India. He led the 5 judges Constitution bench in Supreme court on Record Association vs. Union of India.
2.4. Independence of judiciary

The judiciary has an independent and powerful status. The Judiciary as an integrated structure - with the Supreme Court at the top of the hierarchy, followed by High Courts in the middle and District Courts at the grass root level. The Judiciary in the country has the responsibility to protect the Constitution of India and the fundamental rights of the citizens of India. Through the power of "Judicial Review", the judiciary can declare any law unconstitutional. Even any High Court judge has the power to check on the constitutional validity on the law of the country. The Constitution is the law of land in the country and the Judiciary exercises its power and role in protecting the Constitution. It is, therefore, our Constitution that lends the Indian judiciary an incomparable powerful status vis a vis the executive or the legislature. How does the Constitution of India make Judiciary so powerful? It is with the following privileges:

i. The President makes all the appointments of judges
ii. A very high level of qualification kept for the appointment of a judge,
iii. Removal of judges made complex through the method of impeachment,
iv. Steep salaries, pension system and other rewards for judges,
v. Powers and special functional autonomy for the Judiciary

The above-mentioned privileges make the Judiciary an independent and powerful organ of State. Other than the above privileges discussed, the following are the points that bolster the judge’s powers in the country:

a) Judiciary safeguards the rights of people and the violation of their rights, the higher court judiciary have the power to issue a writ in this case.

b) Separation of powers between the Judiciary and executive make Judiciary independent and allowed to run as per the orders of the apex court.

c) The judiciary allow an accused to defend himself. Through the "open trial” the judiciary help the financially challenged to fight his case with the help from the Government.
d) The system of Public Interest Litigation (PIL) System empowers the judiciary to initiate and order an action to protect any significant public or general interest which is under threat. Under this system, a lawyer, a citizen or even a group can file a PIL to bring to judge’s notice any case demanding action of guarding a public/general interest.

2.5 Nature and concept of judicial accountability

“Power corrupts, and absolute power corrupts absolutely.” – John Emerich Edward Dalberg Acton\(^56\).

“Corruption is like a hidden tiger in the bushes, waiting to pounce on the deer (rule of law), catch it by the neck and finally strangulate it to death. Unless the tiger is caged it will continue to wreak havoc. "Heralded as the strongest pillar of democracy, the Supreme Court is one of the most powerful organizations in the world, second to USA. They are vested with supreme powers and thus there is no way they are directly accountable for any of its action. It enjoys unabashed an unparalleled moral high ground in the society. A pious temple of justice, that has gone unchecked for decades after independence, has identified traces of low human morals in the system over the last few years. A falling of standards has happened in a matter of seconds for a person holding a high office in the judiciary (for example, it might just take a second for a judge to accept bribes), but the blame must be passed on to the years of neglect in checks and not putting a mechanism in place in obtaining rightful accountability from the system. The extreme independence is enjoyed by the judiciary for a long time, it became a reason for some of them to start misusing the power. Greed sets in and many high-profile judges gave in the way to corruption. But our country is moving fast towards development and awareness. The VIP age is fast disappearing just as the VIP beacon. And now the spotlight is on the Judiciary system, to evangelize it for the future as well as expedite all such measures stuck in the pipeline that are meant to make it more meaningful and accountable in a proper way. Accountability means that one expected to explain to an authority on why he/she carried out services or conduct in the place of work or during his/her charge. Accountability, is a critical condition, a necessary condition for democracy to breathe. It is referred as "the sine qua non" of democracy. For instance, U.S. has a system of Administrative Oversight (AO)\(^57\). This is a system that checks on the conduct of judges and

\(^{56}\)John Emerich Edward Dalberg-Acton, 1st Baron Acton, was a historian, politician and writer. Queen Victoria raised Acton to peerage as Baron Acton.

\(^{57}\)The Administrative Office of the United States Courts (AO) is the administrative agency of the United States federal court system.
judicial staff just the way government officials are examined for their management of public resources. The AO carries out extensive audits of judiciary funds. Most of these audits are carried out by third party CPA\textsuperscript{58} firms. These agencies scan all district and bankruptcy courts, including all courts of appeal, regularly every two to four years. These specialist accounting firms also audit a whole gamut of other offices such as the federal public defender organizations, probation and pretrial services offices, and bankruptcy trustees. Additionally, audits are also conducted for judiciary’s appropriation accounts, and related activities and funds. The AO even takes care of the implementation part - it sees whether all the auditor recommendations finally implemented. The AO is also responsible for examining court and defender services operations to give management advice and check compliance with Judicial Conference policies. Overall the AO reviews cover operations, property management, staff, budget and finance, judicial administration; court reporting; court interpreting, information technology management and security.

If anybody suspects fraud, then reporting a complaint is easy and simple. One can file a complaint to a judicial clerk, or a judge. Alternatively, the complaint sent to circuit judicial council or to the AO. This is followed by a detailed investigation of the complaint by the court or by the AO on behalf of the court. In the U.S., this overview responsibility is carried out by regional circuits. So, accountability is nationwide pervasive as far as the judiciary is concerned. In a democratic country, nobody gets away with accountability, no public institution, no public functionary, no public office. Then why is judiciary still absolved of all accountability, even when the system is getting infected with corruption day by day. Things are accountable in a system by way of facilitating transparency. But in India, things are different. The Right to Information Act, 2005\textsuperscript{59}, enables citizen the right to information from any public office, is the best instrument to bring about transparency and accountability in the legal system. But some experts point, that in the country even RTI has not been able to crack success with the judiciary. [4]

\textsuperscript{58}CPA means Certified Public Accountants. To become a CPA in United states one must clear the exams of Uniform Certified Public Accountant Examination administered by National Association of State Boards of Accountancy (NASBA).

\textsuperscript{59}Right to information ACT, 2005 set by the Parliament of India, for setting regime to right to information for citizens and replaced the Freedom of Information Act, 2002.under this Act, Indians can request for information from public agencies which has to reply within 30days.
2.6 Judicial Accountability has been manifested in many ways

- Activities and decision stated by the judiciary are taken in public except in case of extra ordinary circumstances. Resolving dispute is the duty of judges and they are under the obligation to publish full disclosure and impartial statement while taking any decision regarding to dispute. Media attend the hearings in which they are interested. The judiciary also authorizes the media to attend the hearings related to the closure of the court.

- Judicial branch’s accountability is legal, public, and informal accountability (professional). Most important accountability is informal accountability, which is referred as the obligation in which judicial branch must discharge their functions in front of legal practitioners and colleagues whose confidence is maintained and judged by their performance to the standards who considered them as professionally high. [5]

2.7 Meaning of Judicial Accountability

In simple terms, judicial accountability refers to the answerability and responsibility. Its conceptions and methodology varies from one country to another. It depends upon the prevailing situation. According to the Oxford Advanced Learner’s Dictionary (sixth edition, 2000) which states the meaning of accountability as “you are responsible for your decisions or actions and it is expected to get clear explanation (in case anyone demands any explanation related to your decision).” In Webster’s dictionary, accountability is defined “as the quality of being accountable, liable, or responsible for the action obtained by them. In simple terms, accountability demands a justification of one’s past conduct, behavior, or action.” Thus, the word 'Accountability' means “responsibility with respect to the powers, functions and duties in any system, Judicial accountability is a philosophy, a concept with wide separate wings.” At the end, the overall meaning of accountability refers to the responsibility with respect to the powers, functions, and duties in any system. Judicial accountability is a kind of philosophy which comprises of wide separate wings. Former President of USA—Barack Obama states the principles which sums up the concept of independence and accountability:

(i) The judges should have the awareness of their limits and power. He/she must obtain legal language instead of any abusive language and they should also have a perception that they cannot obtain everything according to their desires.
(ii) Judges are suggested to admit their mistakes, if any, which will signify the professional integrity among the judges.

(iii) While expressing and implying their decision the judges are suggested to obtain arrogance free statements and display modesty.

(iv) Judges should be honest, while acting their role because based on their activities and decisions, one hope of grievance along with trust arises towards the judicial accountability.

2.8 Need for judicial accountability

In the previous section, the researcher had just discussed the Right to Information, Act (RTI Act, 2005). But this Act or right is toothless when it comes to exploring the hidden matters of the Judiciary. The supremacy, or autocracy, of Judiciary becomes even stark as it stands above all other equal citizens of the country.

- Why can't the quality of a certain judgment be questioned?
- Why can't the judiciary be probed?
- Why should Judiciary continue with its moral high ground when several of its jury members already stands impeached?
- Why is the active media (symbol of democracy) scared of criticizing the judiciary because of "fear of contempt of Supreme Court/Judiciary"?
- Why someone cannot register an FIR against a judge for being corrupt, without the prior consent and permission of the Chief Justice of India?

There needs to be accountability with regards to the judiciary because everybody in the country is accountable. The lawyers and judges too are from the society, a human society, and it cannot be absolved from being questioned. If statistics are to go by, the problem of judicial corruption is a global problem. Even the U.S. and Canada are not free from it. A Transparency International Survey indicates that 2% of North Americans (U.S. and Canada puts together) who had been in contact with judiciary the previous year, agreed to have paid a bribe to a judge. The Survey extrapolated national figures of 220 million bribes per year from

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60 First Information Report (FIR) is a written document prepared by the police in India, when they file complaint against cognizable offence. This is a complaint lodged by the victim or anyone itemized by cognizable offence or on behalf of victim, either orally or written to police station.

61 Transparency International Organization is a company which researches on corruption globally. They work with government, businesses, and citizens to end misuse of power, bribery and secret deals.
their sample results. A point to note is that this survey study bribes paid to judges, prosecutors, police, and jurors. In India, citizens are fast losing their faith and confidence on the judiciary. In 2010, according to a former Law Minister - "eight of sixteen former Chief Justices of India (CJI) were corrupt." Later, in 2014, a former Supreme Court judge accused three former CJIs of making “improper compromises” to let a corrupt High Court judge carry on in office.

2.9 Principles and Standards of Judicial Accountability

Judges should be aware about the principles and standards of judicial accountability while getting into any illegal practices. The various judicial process which ensures the accountability of the judges and declare that the court proceeding will be held in front of the public so that judges can clarify their final decision by illustrating the reason behind it. Judgments are appealed against and corrected by the appellate court judges. It is open to the public to criticize judgments and contend that they are wrongly decided. Appellate court judges have an authority to correct the mistakes of judgments. It also supports the public to criticize the judgment if it is presenting the full faith and justice among the parties. Litigants are having full right to demand recusal of judges if they find any suspect biased on opposite sides constantly oversee judicial conduct and oppose improprieties. All these are made only for the security of the judicial accountability in term of fairness and impartiality in administering justice. The independence of judiciary allows the unique procedure applied in appointments, guarantee tenure along with service benefits to judges. The law allows certain privileges and immunities to judges while they are acting their role in office or court.

A. Firstly, the Chief Justice of India should devise an in-house procedure against the judges who violate judicial norms as mentioned in the sixteen point "Restatement of Values of Judicial Life". Accordingly, a Committee of Judges along with Chief Justice of India evolved an acceptable in-house procedure. The Committee felt that it would serve a dual purpose. In the first place, the charges against a Judge would be scrutinized by his peers and not by an external agency to maintain the independence of the judiciary. Secondly, the awareness of examination against a judge would preserve the faith of the people.

B. The second resolution relates to declaration of assets by judges. Every judge should declare their assets which could be in the form of property or investments, held in the name of his/her spouse and children within a judicious time after assuming office and

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62 Restatement of values of judicial life (as adopted by full bench of Supreme Court on 7th May 1997)
adoption of this Resolution. Whenever any acquisition of a large amount is made, has
to be declared within a reasonable time. The declaration should be made to the Chief
Justice's Court. The Chief Justice also makes a similar declaration for the record.

2.10 Factors for demand of judicial accountability

There is some major factor due to which there is a high demand of judicial accountability and
transparency with the support of social accountability of higher judiciary. Factors for demand
of judicial accountability are listed as follows:

(i) **Changing demands in the Modern Welfare State:**
Due to the increase in the literacy rate, many citizens got to know about their fundamental
rights, and they are appealing to the judiciary for redressing their grievances because judicial
accountability is the only hope for speedy justice. Though, judiciary takes too much of time
for resolving the dispute.

(ii) **No Remedy Against Misbehavior**
Judges of superior courts commit mistakes and sometime misbehaved due to the indiscipline
in their court proceeding. Hence, that misbehavior cannot get corrected and it may hurt the
feeling of someone. That is why, collegians of senior judges or jury have the full right to
obtain action against such misbehaving activity only if it is not the necessity of the situation.
Superior court’s judges only support their own men in these types of complaints or cases.

(iii) **Demand of Accountability**
According to the research, every institution dealing with the public welfare functions ensures
them the justice, such that, the judicial arm of government is also accountable.

(iv) **Legitimacy of Judicial Process**
For bringing the legitimacy to the law-making function, superior judges who are considered
as the maker of law, are required to held accountable for their decisions and activities.

(v) **Question about Standard of the Judges**
The standard of judges is almost corrupted due to the political pressure. There are several
personalities in the dress of judges who has doubtful integrity along with political affiliation
appointed. Nowadays, it is not a big task of acquiring judgeship or getting a promotion from
one high court to the other because political heavy weights are supporting them to do all such
corrupted activities.
(vi) **Demand of Reservation in Judiciary**
If the instrument of the law proceeded in the hand of higher class then the weaker section of the society begins their argument and starts treating law as their enemy. By this statement, the demand for reservation in the appointment in higher judiciary by considering judicial service as the single cadre on the line makes judiciary socially accountable.

(vii) **Demand for Efficiency**
Nowadays, people are professing quality over quantity. While the implementation of law, supreme court started with seven or ten judges whose quantity increased to the 31 judges. Quantity of judges has been an increase but what about the qualitative judgement? People prefer illegal measuresto resolve their dispute because the judiciary is not assuring the redressal of grievance within the specific span of time. So, they need to work for the efficiency of declaring quick justice, which signifies full disclosure and transparency. Furthermore, if the institution fails to resolve the dispute of the public then such institution will lead to the deep moral crises.

(viii) **No Provision for the review of the Supreme Court Decisions**
There is no other supreme body or higher council above who can judge the decision taken by the Supreme Court. Only judiciary of apex court can do an investigation of their own decision. The loyalty lying in the judiciary’s decision is one statement which states the half of the public committed to the judiciary prospers on the wrong decisions for years.

Perhaps, after perusal about the demand of accountability it can be concluded in few words which are stated as follows: “justice systems are having complex inter-relationships among the three organs of the government which is mentioned in the first paragraph of the introduction of the judicial accountability. Judiciary promotes the demand for scrutiny, accountability, disclosure, and transparency.” In short, this is not the only the problem of a speedy justice but due to the emergence of a new era, public is desirable to get some rights such as good governance, consumerism or right to information. One more question about the justice, honesty, integrated, consistent, efficient, and accountable judiciary is the only hope for the redressal of grievances.

2.11 Relation between Judicial Accountability and Judicial Independence
It is accepted that the judiciary has a factor of independency, impartiality and disclosure feature which lead it to enjoy some degree of immunity. The concept of judicial immunity is
stated in the American judgment “Judges should be permitted the law without any fear or favor and should act independently with the protection of law while expressing their final decision. Furthermore, the provision of law is not for the protection of the corrupted judges, it is for the benefit of the public whose interest should be at liberty to exercise the functions of law independently, without fear or favor.” The principal of judicial independence is not made for the benefit of judges but it was made for the guarantee of fair and impartial hearings with the help of the rules and regulations provisioned under law. Such guarantee is awarded to the judges by the Constitution for the security purpose of judicial independence. It is necessary to protect judges from any political pressure or from the governing body for obtaining an impartial decision in places of the huge amount of consideration. The judges must uphold neither the interest of the ruling party, nor of the persons, their role is to declare the deserving party to be winner on the basis of evidences and investigation proceeded by police or secretive agents. They are obligated to serve the justice to the suffering party. So, this is the concept of judicial independence which is very like the concept of judicial accountability so that is why both of these are complimentary to each other.

Judicial activism has the common feature with respect to all the branches of law which includes public law, civil law, criminal law, labour legislations, the human rights, civil liberties, policy decisions, disputes relating to the constitutional functionaries and realism of contractual field. The concept of judicial accountability became more popular in the 1970’s. After the 1980’s, the growth of liberalization the concept of locus standi along with the expansion of public interest litigation led to promote judicial activism in the public law field and so many citizens got to know about the concept of judicial activism.

2.12 Judicial accountability in India

A Judge like every other public servant and political administrator is expected to exhibit good moral character and maintain purity of judicial administration. All the eyes of the citizen are, therefore, focused on the judges’ who is judged not only through his performance but also through his actions. His conduct in and out of the Court is liable for accountability by way of explaining to the citizens at large. In fine, the principle that justice should not only be done but also it should appear to have been done prevailed all through the ages which explains fairness as a part of accountability. Hindrances to speedier and informal access to justice is considered as ‘un-Indian’. The king in the ancient period ensured complainer with his protection with the help of every applicable law and restored the status quo ante qua the
violation. The administrative process was informal and quick. It was regarded as a duty of the king to enforce law strictly and impartially. It was his duty to protect the people at any cost. The king was to be punished a thousand times more than the average person for any violation of law. Rank imposed heavier obligations to inflict heavier punishments for failure of duty. It was the duty of the State to ensure compliance with every law. The subject had to inform the king about the injury or wrong and, thereafter, it was the duty of the king to render speedy justice strictly in accordance with law. It’s a matter of history how these native ingenuities and devices for speedy delivery of justice were lost in the quagmire of power and the state became less and less concerned about approximating the ‘is’ to the ‘ought’. Judicial accountability is the process by which judiciary is responsible for their acts and decisions, in legal terms for the judicial powers given under the Constitution of India.

2.13 TYPES OF ACCOUNTABILITY

2.13.1 Legal Accountability

India is a democratic country where general public is considered as the strongest pillar of the democracy. Hence this country is vested with the highest power by the people. The Constitution of India had enacted some elaborated provisions for promoting independence of judiciary. According to the research, experience of Constitution was not that much of well-structured and there was also discrimination between gender, race, or socialism so that’s why, Constitution of India’s experience was filled with darkness. If any case occurs in the state and unfortunately wrong decision is taken by judiciary then the whole public blames to the judicial system of the country or State. The judiciary and executive does not follow their duties cordially with honesty. There was lack of consistency in resolving the cases which leads to the inefficiency in the quality of the judgment. According to the scrutiny, after independence, performance of the judiciary fell due to the unbalanced economic situation during that time. After observing too much of criticism in term of lack of transparency, controversial judgments, impartiality, backlog of cases, the idea of judicial activism gave an idea to the Constitution of India that highlight all the flaws and crises occurring in the judicial system which vanished one by one for the improvement and strengthened public’s expectations towards the judicial accountability. While executing and implementing all the rules of law, there were also some rules which limits the power of the judiciary to some extent and with the help of debates which occurred in the parliament, judicial system came with strict rules along with some restrictions on the powers of the judges. While examining
the reviews about judicial accountability of judges there were so many different views from which majority of the views recognized the lack of transparency while appointing judges. Senior most judges of Supreme Court and High Courts only make appointments leaving aside executive.

There are so many examples that judicial appointments were made for the advantages of the executives. The dazzling examples of executive exercising influence over judiciary were highlighted in the 1973 & 1977 when Justice Shelat63 and Justice H.R. Khanna64 were superseded by their juniors. With a view to several major corruption cases along with variety of fraud cases which sometimes disclose the support of political parties, every citizen expects justice only from judiciary with full disclosure and transparency. It can only be possible when judicial authority starts functioning independently with judicious mind which will help them to administer justice within the reasonable time. Appointment of judges, delay in delivering justice and judicial activism are the three basic areas which need proper debate with well defined and framed rules in this regard.

2.13.2 Political Accountability

A study of history reveals that ancient India was having strict judicial system which administers the law. In the king ruling period, kings were considered as the Justice fountain. While discharging any function, kings were helped by the “Amatya who were Brahmin but in every ruling king was having their one amatya”, who were the expert in Dharma Shastra. Even now this analogy can be drawn perfectly in Indian legal parlance. There are several visible factors that show that decisions of the courts in India have political impact and repercussions in the country. There are primarily visible factors due to which the judicial law making has political implications and are determinants of political forces operating at a time. It is pointed out that Supreme Court is a politically important institution as it is involved in national affairs and plays a key role in the politics, since, there is no distinct legal province headed by the Supreme Court which separates a distinct political province headed by the Executive and Parliament. So, higher judiciary and its judges do affect politics and political life, and their accountability matters. The power of judicial review places the court at the center of political process. Another dimension of court’s political power is that of stigmatizing or legitimizing the behavior of political elite and their activities. The decision of

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63Jayanti Manilal Shelat, was a Supreme court judge in 1973.
64Justice Hansraj Khanna, was a Supreme Court judge from 1971-1977
higher judiciary not only affects the national political situation, but government's international stature too.

2.13.3 Institutional Accountability

Institutional accountability and judicial behavior drew the attention in 1997-1998 for the former judges of the supreme court who perceive that Indian judiciary is almost dissipated due to the rise in the corruption, bribery, and misuse of judicial office along with constitutional values signifying very raspiest reality. At present, there are only one removal procedure for judges which is regulated and prescribed in Article 124(4)\textsuperscript{65} of the Constitution. There is no other established mechanism to examine the fraudulent activities of judges.

According to the Judges Inquiry Bill (2006), if there is any convincing evidence against the judges of Supreme Court, then the complaint can be filed against the judges of Supreme Court before the council. Contrary to the case of Chief Justice of India (CJI), no complaint can be filed against the Chief justice of India. There is only one way for proposing complaint against CJI which demands support of 100 MPs from Lok Sabha and 50 members of Rajya Sabha for the charges against CJI. Former Chief Justice of India namely J.S. Verma suggested in his statement that CJI should be included in the judicial council. He expressed in his words that when the CJI and all other judges finds some dissimilarity or involved in any fraudulent activity then CJI should not be exempted from the complaint procedure. the Judicial Standard and Accountability Bill, 2010 was already passed by the Lok Sabha and was pending action of approving such bill by the Rajya Sabha. There is one provision on which judges did debate and observed to the debar judges from revealing oral comments in the courts and the government of India disregarded their request and refused to delete this provision.

The Government of India has wrongly interpreted the decision of Supreme Court judgment, who responded to the reference of president in 2G\textsuperscript{66} spectrum which orders that policy

\textsuperscript{65}Article 124: "Establishment and constitution of Supreme Court: (1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges; (2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty five years: Provided that in the case of appointment of a Judge other than the chief Justice, the chief Justice of India shall always be consulted:(a) a Judge may, by writing under his hand addressed to the President, resign his office;(b) a Judge may be removed from his office in the manner provided in clause ( 4 )".

\textsuperscript{66}2G spectrum was a scam in Indian telecommunication sector, in which many politicians and government officials were involved. In 2012, Supreme Court declared it as "unconstitutional and arbitrary".
decision making should remain in the executive domain so that it can affect the theory of separation of power whose right will not be taken away by anyone instead of Supreme Court who is discharging its duty in protecting and strengthening the Constitution. The Constitution also authorizes conferring equal rights to each citizen of choosing the name of the policy decision which they want to have allocation of 2G spectrum.

In 2009, there was a verdict directed to Supreme Court judges to disclose their assets publicly. It attracted widespread approbation and Supreme Court also attempted to reverse the verdict of CIC (Central Information Commission) by filing a writ petition before Delhi High Court. Justice K. Kannan of Punjab and Haryana High Court was the first one to venture his voice. He expressed his opinion of no objection in disclosing his assets publicly, but at the same time, he also mentioned that making this public disclosure compulsory would harm their privacy and independence. There was no such law that Supreme Court judges would have to declare their assets since 1997 to CJI. A resolution passed by the Apex Court on May 7, 1997 mandated to do that. It was thought that this procedure would be setting an example of transparency and institutional accountability in the country.

2.13.4 Professional Accountability

Judges discharge a divine function. They adjudicate disputes between ordinary human beings. There is thus a legitimate concern that the quality of the men who take control of the Indian judicial system must be of high quality. The process of judicial appointments, the ability of judges to discharge their functions without fear or favor, ethics and scholarship are all important criteria which ensure a fair and powerful judiciary. Besides, the selection of judges the way judicial ethics are enforced is also a subject matter of public debate. The functioning of courts, the role of lawyers, litigants and witnesses require to be continuously debated so that the best system could be evolved. The evolution of laws particularly those relating to women are of prime concern to the society. The question of judicial independence and transparency in judicial appointment has reminded a subject matter of public debate as well as a cause of concern over the past few years. The Constitution has been amended several times to ensure a committed judiciary and even sometimes subjugating the judicial institution to function at the will of the executive. The other way the judicial independence was to strike at the independent and impartial judges by transfer of sixteen judges of the High Court.

Justice K Kannan was appointed as chairman of Railway claims tribunal, mandated to provide compensation to all the victims of railway accident. Justice Kannan was a retired judge of Punjab and Haryana court, for five years.
during emergency and super-cession of senior most judges in appointment as Chief Justice of India during 1971 and 1973. Today there is an urgent need of an independent judiciary, free from any pressure which can uphold the rule of law and restore public confidence in the institution of judiciary. But the concept of independence of judiciary and judicial activism has opened a new controversy. The power of struggle between the judiciary and executive has been tense these days. The impeachment procedure for removal of corrupt judges as enshrined in the Constitution has really failed. The present study emphasizes on appointment of judges, inordinate delay in disposal of cases and judicial activism prevalent in the higher judiciary. The study has also examined the other aspects, i.e. appointment of judicial commission and retired judges in government bodies. There is always the need for study on the judicial system which has been tarnished by incidents of increasing corruption in the government as well as in judiciary. It has been extremely painful and distressing to note the fall of Indian judiciary in the estimation of all during last few years and thus it requires introspection by every member of judiciary, executive, legislature, and common people so as to make it more accountable.

2.13.5 Managerial or Administrative Accountability

Judges occupy the public bench of justice. They implement the public's sense of justice. If the courts are the fulcrum of the judicial system, there is a strong case for the reforms of court methodology and bestowal of attention on efficient management of judicial administration. Otherwise, the courts will be overloaded or mismanaged and that they would stop slowly and the exercise of citizens' rights is discouraged or frustrated. A vital aspect of judicial remedies is speeding the pace of litigation “from the cradle to the grave”. These are self-made critical observations towards putting house in order, but when the consumers of justice, such as workers, lose interest in the judicial process, legislative unawareness of the research and development of the courts and a simplification and acceleration of the judicative apparatus become matters of national concern. Law's delays are, in some measure, caused by legislative inaction towards making competent, radical changes in the procedural laws and sufficient financing and modernizing of the justice system a high-priority program. Through this course of modernization, "docket management system" and "case management system" prevailed at the right time.
Docket Control is a legal specific term that refers “to entering, organizing, and controlling the appointments and deadlines for a legal organization”. Docket control is referred as tickler system because it "tickles" the memory for upcoming events.

Case Management (or sometimes called Practice Management) is also a legal specific term, tracking appointments and schedules. The breadth of features in current case management programs seem to grow every day. Some of the features found in Case Management programs include docket control (scheduling/ appointments), things to do, a contact information database (name, address, email, phone) organized by case (parties, co-counsel, opposing counsel, judges), case notes, document assembly, integrated billing, email and more. In case management programs, all data are tied to cases. This is very helpful for legal organizations that view and organize most of their data according to what case a piece of information is tied to. This is a different approach than general calendaring/ PIM (Personal Information Management) applications.

As the legal software market has matured, more legal software manufacturers have entered it. In addition, all the current legal products available in this market are significantly more sophisticated and targeted at meeting the needs of attorneys, paralegals, and legal organizations. The products today do far more than just docket control. The result is that currently, legal organizations only use three kinds of products to handle docket control functions:

1. Generic calendaring/ PIM application programs such as Microsoft Outlook.
2. Microsoft Office suite program (bundled together with word processing, spreadsheet, email management and database programs)
   3. Full case management programs synchronize-able with handheld computers/ PDAs

2.13.6 Social Accountability

Opposed to the traditional industrial culture of open competition or laissez faire, the present structure of industrial law is an outcome of long term agitation and struggle by the working class for participation in industries for their growth and profits on an equal footing with the employers. Therefore, in interpreting the industrial law, which aims at promoting social justice, the interests of employers, employees and in a democratic society, the people, who are the ultimate beneficiaries of the industrial activities, should be kept in view.
Several critical questions arose about the interpretation of various aspects of the Industrial Disputes Act, 194768 and other related labour legislations immediately after the commencement of the Constitution. On all these questions, courts have accepted the principles prevailing by way of precedents and the interpretation of the statutes, considering the socio-economic background from which these laws have emanated. The decisions rendered by his lordship Justice V.R. Krishna Iyer, including those wherein his co-ordination in delivering the dominant view was involved in labour law, are central to this work. In every decision, his lordship referred to the previous ratio prevailing on the point and has analysed and applied the ratio of social consensus while deciding similar issues with authority. Where the law was silent on the issue and where there was no prevailing ratio on the issue, Justice Krishna Iyer with precision and the application of interpretative skills decided the cases unambiguously considering social consensus as the vital deciding criteria.

Of late, the Supreme Court has rendered certain judgements pertaining to the primary aspects of labor rights and industrial relations recognized over the years, leading to certain concerns. No one speaks of judges' accountability for their judgments in labour matters. The present scenario is that many state governments have either declared some regions “exclusive economic zones” excluding them from the purview of the labour laws, or have provided exemptions to many sectors from the application of vital labour laws. The strength of organized sector workforce is receding every day. The workers of the unorganized sector constitute 93% of the total working population in the country and they are working in exploitative conditions without any protective coverage under various labour legislations. It is equally painful to note that the Central Trade Union Movement in India has fallen behind in addressing these issues. Labour jurisprudence in India has a history of more than five decades, emanating from the Directive Principles of State Policy in the Constitution. This is what the Supreme Court prior to the regime of Justice Krishna Iyer and during his regime insisted upon and incorporated while delivering its decisions. Today this soundness in the judgments relating to labour matters may be spoken or felt but no remedy is provided.

68The Industrial Disputes Act, 1947, extends to entire India to regulate labour laws concerning trade unions
2.14 Corruption in Higher Judiciary

The public pressure and principles assumed by judges has compelled public disclosure of assets and liabilities. But this is not certainly the end of all the judicial problem and accountability. The issue lies in the absence of an independent reliable establishment which entertains complaints against judiciary, investigate them and take action against the erring judges. The Government has recently come up with the Judges (Inquiry) Bill 2006 to address the problems of unaccountability by the judiciary for the misconduct committed by them.

For ensuring judicial accountable people have the right to file a complaint against the judges of higher judiciary. The Judges (Inquiry) Bill, 2006 was presented in Lok Sabha. It proposed some amendments in the existing Judges (Inquiry) Act, 1968. The provisions of the Act, 1968 were inadequate as seen in the case of Justice V. Ramaswami's case who was a sitting judge in the higher court. The Bill of 2006 consist of National Judicial Council with judges as the members to conduct:

- Preliminary inquiry against charges of misbehaviour/ incapacity against a judge.
- Control the procedure of investigation, with inquiry, and proof.
- Imposing minor measures.
- Presenting an address and praying for the removal of judge to the President.

The National Council consists of the following members:
1. Chairperson - Chief Justice of India
2. Two senior most judges of Supreme Court as members
3. Two Chief Justices of High Courts as members (all members are nominated by Chief Justice of India)

In case of a complaint against a judge of apex court, the National Council consists of:
1. Chairperson - Chief Justice of India
2. Members - Four senior most Supreme Court judges nominated by Chief Justice of India

69 Judges inquiry Bill, 2006, was introduced in Lok Sabha. The Standing Committee presented the report to Rajya Sabha.
70 Judges (Inquiry) Act, 1968 stated, “An Act to regulate the procedure for the investigation and proof of the misbehavior or incapacity of a Judge of the Supreme Court or of the presentation of an address by Parliament to the President and for matters connected therewith.”
The Bill provides that any person can file complaint of misbehaviour or incapacity against a judge to the Council. Such complaint is not welcomed or inquired into with respect to any act constituting misbehaviour which occurred before the commencement of the Act and any act which occurred two years prior to the date of filing the complaint. It also provides that complaints are not entertained against a person who has demitted the office of the judge. After the inquiry, if the council thinks that the charges are proved, it could impose all or any one of the minor penalties, if the charges do not warrant removal of the judge:
- “Issuing advisories
- Warnings
- Withdrawal of judicial work for limited time
- Request the judge to take voluntary retirement
- Censure or abomination” (Lalasaheb, 2015)

If the Council concludes that serious charge warrants the removal of judge, they advise the judge consequently. While enacting the bill upholds the same features construed in the Act of 1968. The Act of 1968 states that in case a motion is placed in the Parliament praying for the removal of Judge to the President on the ground of misbehaviour or incapacity such a notice is to be given to Lok Sabha members signed by not less than 100 members of Lok Sabha and 50 members in case of Rajya Sabha, then the Speaker/Chairperson after considering the matter admit or reject the motion. If the motion is accepted then the Speaker/ the Chairperson keeps the motion pending and refer the charges to the Council. The council holds inquiry and forward its report to the Speaker/Chairperson. If the charges are proved and warrants removal, then the motion along with the Council's report are considered in the Parliament where the matter is pending.

If the motion is adopted in conformity with the provisions of Article 124 of the Constitution, then the misbehaviour or incapacity of the judges would be considered proved and express prayer for removal of judge shall be made to the President.

The bill has provisions for filing an appeal by the guilty judge to the Supreme Court, if the President orders removal of the judge or against a final order passed by the Council imposing minor measures. The bill has provisions for “code of conduct” and behaviour of judges authorizing the council to issue guidelines occasionally. The bill has also provisions for disclosure of assets and liabilities at the time of the appointment of the judges and thereafter
for any violation of the “code of conduct” would cause misbehaviour and it will revoke the Judges (Inquiry) Act, 1968.

2.15 Conclusion of Judicial Accountability

The judiciary with unfettered and uncannalized powers, if made unaccountable for its actions in a democratic set up, in that situation, it is not only an anathema to the Constitution of India but it will become a recipe for disaster for the democracy. More-over, where the shining lamp of justice goes out and travels in darkness, we can ponder how great is that darkness for us and thus the situation requires rectification on top priority because judicial independence and judicial accountability are like those two poles of the magnet which are required to be kept at some distance so as not to deter one from the other in the same magnetic flux. The former CJI Justice A.M. Ahmedi\(^1\) once described Supreme Court as the world's most powerful court because it has diverse jurisdiction apart from its unique, appellate, and advisory authority. It has the power to accept petitions from ordinary people who cannot approach the court due to their financial crisis.

It would be wrong to assume that judicial activism results in judicial oligarchy, but the doctrine of “separation of power” has to be followed in the democratic system. Even after 70 years of independence, we have miles to go and promises to keep that we cannot sleep till we are able to wipe out the tears from the eyes of poor persons in the country. This is an attempt of judicial activism.

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\(^1\)Aziz Mushabber Ahmadi was the 26\(^{th}\) Chief Justice of India. He was Chief Justice served from 1994-1997.