CHAPTER -3

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Aristotle in “Politics” contended that constitution has three main elements: deliberative, magisterial and judicial. The present review of literature contains the study done by various researchers on judicial accountability, judicial independence, separation of powers, judicial performance, judicial activism and judicial misconduct in India and globally. This is an eye opener for many scholars to compare the judiciary of India and judiciary of federal countries. The studies aim to collect various objectives, results and conclusion on judicial accountability which could help us to develop the current legal system and upgrade our laws as per international standards.

3.1 Mate, Manoj, (2015) studied “The Rise of Judicial Governance in the Supreme Court of India” where his article analysed how the Supreme Court of India, through its activism and confidence, has developed as the most capable court among fair legislative issues. Throughout the decades, the Court extended its part in the domain of rights and administration, affirming the ability to nullify established revisions under the essential structure convention, control legal arrangements, and represent in the ranges of natural strategy, observing, and researching government debasement, and advancing discretionary straightforwardness and responsibility. The Court's work day toward more noteworthy, yet, decisiveness in India's administration clarified by another hypothetical approach “elite institutionalism”. This hypothesis sets that the special institutional and scholarly environment of the Court moulded the institutional points of view and strategy perspectives that pushed politicking and confidence in administration. Elite institutionalism grows the extent of “regime politics and institutional theories” by arranging judicial basic leadership inside the bigger intellectual setting of Indian judging. The identities of judges on the Indian Supreme Court are a subset of their general scholarly personality and perspectives, which they share with expert and scholarly elites in India. The “elite-meta regimes” of view, the aggregate values, and streams of expert and scholarly elite opinion on sets of legitimate or political issues, formed judges' perspectives. The more extensive moves in the Court's activism and confidence mirrored a move from the meta-regime of social justice to one of liberal change.

72 Mason Hammond, “City-state and World State in Greek and Roman Political Theory Until Augustus Biblo and Taanen”, 1951, 22
3.2 Gagrani, Harsh (2009) studied, “Appointment or Disappointment: Historical Backdrop and Present Problems in the Appointment of Judges of Indian Judiciary” in which he stated that the method and technique of selection of judges to the higher judiciary has always been a topic of debate in India. Public has demonstrated disappointment, both during the stage of executive and judiciary hold in appointments. While the previous stage saw the legal fulfilling individual impulses of the official, opening and absence of responsibility portray the last stage. The author has explained the reason behind the first technique for appointments, offering supremacy to official, through the civil arguments, and how over passion secure freedom of legal incited the judges to decrypt the law in a strange way. The main driver behind this perplexity has been the ever-existing power battle between the official and the legal. The tussle should end through the foundation of National Judicial Commission, an autonomous body for appointment of judges which till date is a paper tiger. Only such a body ensures that the appointments are unbiased, and not corrupted or selfish.

3.3 Purushothaman, Purush, (2013) studied “Higher Judicial Appointments in India – The Dilemma and the Hope: Trusting the Wisdom of the Generations” he analysed that the in vocal conflict was observed between legal independence and democratic accountability in the Constituent Assembly. The Assembly fearing political interference do not protect the appointment process from legislative issues which interferes with its freedom. The constitution does not have proper guidelines of judicial appointment with defined roles of judges and lawyers is an issue in the development of constitutional provisions. The autonomy of judges provoked the Assembly to give legal consultation to remove official instability. The judicial accountability convinced the constitution framers to incorporate the review process for the official to found the system of check and balance. The individuals who “work the constitution have the capacity to make the ambiguous provisions workable” by creating sound constitutional pacts for future experience so that judicial autonomy and self-governing accountability are stable.

3.4 Purushothaman, Purush (2012) studied “The ‘Collegium Conundrum’: The Role of the Executive in Higher Judicial Appointments in India” where he mentioned that the political activities of constitutional amendment and the scholastic and prominent critique of the current collegium system are joined in their absence of acknowledgment and thorough examination concerning the natural role for officials in the judges’
appointment process. Academic debates are exceptionally uncommon on the subject and the constitutional role for the official in appointment process remained unknown.

In first chapter, the conflict between legal autonomy and self-governing accountability remained at the centre of the development of the constitutional provisions with respect to legal appointments. Recognizing the constitutional plans concerning the role of the official in the legal appointment procedure, against which the working of the constitutional provisions till the establishment of the collegium were analysed.

In the second chapter, the functions of the constitutional provisions till 1993 until the collegium for appointment founded in the Second Judge’s case. The important case law and different law commission studied the reports to assess the constitutional structure for legal appointment replicated in the functioning of the provisions till 1993.

In the third chapter, the foundation of the collegium system in the Second Judges case and it’s the functioning in the Third Judges case and consequent discussions with respect to legal appointments to comprehend the functioning follow the constitutional plan for official policymaking in the appointment procedure.

3.5 Acharya, Bhairav, (2017) studied “The Evolution of Judicial Accountability in India” in which he stated that “The Judicial Standards Bill of 2010” almost concluded the accountability for judicial misbehaviour and indiscipline. The growing number of reports of judicial misconduct includes admission from a sitting Chief Justice in 2001 of many corrupt judges. Previous endeavours to discipline judges removed because they interfere with judicial freedom. Lack of regulation in the Constituent Assembly did not consider judicial accountability in details. The Assembly concerned with the mechanics of removing judges, and not measures to discipline them. The Judges Act of 1968 was first statute to regulate the impeachment process. It invoked but failed to achieve its objectives. The judiciary has made an ad hoc internal mechanism to deal with the hiatus called the “minor measures” approach. The punishment behind “minor measures” approach is transfer. The only way to step forward from this deadlock is to introduce scalable responses to judicial misconduct, with strong warnings and punishments, a due process regime, which does not interfere with judicial independence.

3.6 Baruah, Rishi, Arora, Ronak (2012) studied “Judicial Accountability and Judicial Independence: The Touchstone of Indian Democracy” in which the researcher analysed that once the key issues of judiciary were subjects of “independence, tenure, the
appointment process, and of performance and integrity”. These matters obtained the sea change in importance that took place. The Indian judicial experience is unique. Judicial accountability was in question from 1950 to 1973 in the Supreme Court. There was conflict between Supreme Court and government on decisions of property, agricultural and economic reform where Supreme Court was sometimes unsympathetic and hostile to the legislation. However, after 1973 the judiciary changed its direction. In the first, second and third judges case, the judicial independence and accountability criticized and the concept of disciplining the judges discussed. The concept of judicial accountability and Independence and Bangalore principles and latimer house guidelines analysed.

3.7 Yellosa, Dr. Jetling (2017), studied “Judicial accountability in India: A myth or reality” in which he says that the judiciary is one of the three organs of the state. The article 12 of the Constitution provides the meaning of the state but does not contain the word judiciary. The Constituent Assembly left the word judiciary to give special and independent status to the judiciary. The Oxford Dictionary of English Language defines accountable as “responsible for own decisions or actions and expected to explain them when asked”. Accountability is the “sine qua non” of democracy. Transparency enables accountability. Public establishment or representative is not exempted from accountability. The Constitution ensures the special status to the judiciary and it has accountability. Judicial accountability, is not the same as the accountability of the executive or the legislature or any other public establishment. The people resort to the judiciary as the last provision to set their difficulties when elected authorities fail to do that. Well, some of the judicial officers’ sail in same directions as the elected authorities to neglect their official duties. The autonomy and neutrality of the judiciary is a symbol of the democratic system. The Constitution provides safeguards to maintain the autonomy of judiciary. There are laws to maintain judicial accountability but they are not sufficient. The governments is framing more laws to strengthen judicial accountability.

3.8 Chaudhuri, Sayak, (2006) studied “Impeachment of Judges: A Theoretical Stroke on Judicial Accountability” in which he concluded that where impeachment of judges in India is a complicated matter. Many motions in the Parliament and by the bar Council for removal of corrupt judges is a cropper. The Supreme Court set up for this mechanism and many other reasons against this framework. This study was conducted on judicial accountability and impeachment of disobedient judges.
3.9 Thripathi, Mani Avijit, (2010) studied “Acknowledging Accountability? A Comment on Secretary General, Supreme Court of India v. Subhash C. Agarwal” where “Higher judiciary in India has recently received a lot of condemnation when Supreme Court of India preferred to appeal against the judgment of Single Judge of High Court of Delhi in Secretary General, Supreme Court of India v. Subhash C. Agarwal. The impugned judgment upheld an earlier order of Chief Information Commissioner (CIC), whereby CIC directed Central Public Information Officer (CPIO) of the Supreme Court to furnish information sought by the respondent in the present case, under the Right to Information Act, 2005’. The information to disclosure of assets of judges of the Supreme Court and the high courts submitted to the Chief Justice of India (CJI) pursuant to the resolution passed by the full court of the Supreme Court on May 7, 1997. Amidst severe criticism by media and public at large, judges of the Supreme Court of India and of several high courts voluntarily ‘declared their assets to save their honour and dignity and the faith that the public repose in them. This comment analyses various issues relating to Declaration of Assets by the judges in India.”

3.10. Jayasurya, Gautam (2010) studied “Judicial Accountability and Judicial Transparency: Challenges to Indian Judiciary” where India is under serious stress. Confidence of the general population in the quality, honesty and efficacy on government has completely worn. They swing to the legal as the last support of expectation. But the things are more distressing and sadly one is unable to make everything well with the law. The autonomy and neutrality of the law is one of the trademarks of the democratic government. Only a neutral and autonomous law can secure the constitutional rights of the people and can give “equal justice” without dread and support. The constitution of India gives many benefits to keep up the freedom of law. The Preamble to the Constitution is the replication of the ambitions and soul of the average person, and a layman will take note of that among the different objectives the Constitution-producers proposed to secure for the residents, “JUSTICE- Social, Economic & Political” specified before all. Judge Jerome Frank73 wrote, “In a democracy, it can never be unwise to acquaint the public with the truth about the workings of any branch of government. It is undemocratic to treat the public as children who are unable to accept the inescapable shortcomings of manufactured institution. The best way to bring about those eliminations of judicial system is to have all citizens informed as to how that system now functions. It

73 Jerome New Frank, was an American legal philosopher.
is a mistake, therefore, to try to establish and maintain, through ignorance, public esteem for our courts.” Judicial independence confirms that effective individuals must fit in with law. Requirement of legal autonomy is not for the judges, however for the general population. Judges have different social role for the protection of the right. But, freedom of law is unconstrued to protect from the stress of justice for offences or to shield a judiciary from enquiry and criticism for a legitimate offence. Freedom underlines official independence, not rights to comparable self-governance by performing artists inside the institution. However, the supporters of autonomy perceive the judges are not accountable for pursuing the govern of law. This poses conflict between “judicial independence and judicial accountability” which are inseparable and consistent with each other. India has a solely unified, hierarchical legal structure which indebted its source to the British rule.

3.11. Sharma, Sooraj, Srivastava, Kumar Divyanshu, (2011) studied “A Review of the Impeachment of Judges in India and the United States: More Political than Judicial?” where Judiciary is one of the three pillars of a democratic state. The courts protect the power of the Constitution by interpreting and applying its laws. India and the United States have many things in common specially in political and judicial situation. Indian constitution copied many provisions from American Constitution which provides an inflexible process on the impeachment of judges to maintain a strong balance between “judicial autonomy and judicial accountability”.

3.12. Bhattacharjee, Maushumi, & Galaw, Prakhar, (2017) debated on “Judicial Independence and Judicial Accountability” in which the author discussed about the fast approaching requirement of the accountability in the Indian Judiciary. Lately, the activities and verdicts of the appointments, transfers, judgements, and orders calls for accountability because of the extensive corruption. The judiciary system which is the protector of the constitution has fallen into the catch of corruption and nepotism. As the saying “power corrupts and absolute power corrupts absolutely” goes well with the Indian judiciary. This is responsible due to lack of judicial accountability. Certain powers like contempt of court, the judges could scare anyone as they have many powers for which they are not accountable to anyone. Some provisions like judge’s enquiry which makes the aberrant judges accountable, but the investigations done by the judges’ advisory groups themselves and so biased results. The multifaceted impeachment process does not remove judges from his office. The problem of accountability is exhaustive considering the previous, existing and upcoming activities related to appointments, transfer, decisions
and misappropriation of the position for individual advantages and tries to examine different explanations of accountability like National Judicial Appointment Commission (NJAC).

3.13. Saha Arpita, (2008) studied “Judicial Activism in India: A Necessary Evil” where Judicial activism over the past few years with different dubious conversations, judges of the Supreme Court as well as High Courts have activated off various hot debate. But the term "judicial activism" is still a mystery. From the origin of legitimate history till date, different commentators have given different meanings of legal activism, which are distinctive as well as opposing. This investigation endeavoured to draw out the correct essence of "legal activism" and to discover its consequences for the present evolving society.

3.14. Galanter, Marc, & Robinson, Nick (2013), studied “India's Grand Advocates: A Legal Elite Flourishing in the Era of Globalization” where a spectator of the legitimate scene in modern India rapidly ends up with a layer of lawful megastars. Advocates based at the Supreme Court and High Courts are in high demand and extensively famous. These “Grand Advocates” are the most obvious and prestigious legal experts in present. Stories proliferate of their vital insight, their supernatural eloquence (talking for hours without proper notes), their exclusive eccentricities and extra-large earnings, and their commitments to the 'rule of law.' This top-class bunch of advocates are engaged with prestigious cases in the most dynamic and intense higher courts in the world. Their customers incorporate India's new rich, major multinational partnerships, and the nation's political groups. Grand Advocates (GAs) are thriving in the era of globalization, benefiting, and resisting captivation by, the rising law firms. Litigation and the law in India have dominated in perpetuating lawyers, and the way of life they live. Litigations are less about money as there are less deep pockets, judges hardly allow substantial financial payment. The backlog of courts drags cases for years and so it is important to secure “beneficial interim” orders for ownership of property, control over an institution, or the legitimacy of government direction. Therefore, to achieve this, Grand Advocates utilize the wide-ranging human capital they created inside the court and their nuanced information of both formal and informal legal technique. These benefits are positional goods, especially their reputational capital under certain judges that are tough to share with subordinates or associates. They are resources that can be utilized in extensive cases,
thus decreasing the strain to focus amongst this selective group of advocates, who are still
to a great extent generalists.

Ors: A Jurisprudential Perspective” in which “The divergence of majority and minority
opinion within the Supreme Court of India in the case of Minerva Mills Ltd. & Ors. v.
Union of India & Ors” poses interesting jurisprudential issues relating to balance of
interests, the decision-making process of judges in areas where no pre-ordained rules are
present and the peculiar place of Part IV (Directive Principles of State Policy), declared to
be unenforceable by the Constitution of India, in the Hohfeldian right-duty paradigm. The
object of this short paper is the identification and exposition of these jurisprudential
issues posed by the Minerva Mills' case.”

Court of India: Article 137” which states Article 137 of the Constitution provides that
“subject to provisions of any law and rules made under Article 145, the Supreme Court
has the power to review any judgment pronounced or order made by it. Under Supreme
Court Rules, 1966 such a petition is to be filed within thirty days from the date of
judgment or order and as far as practicable; it is to be circulated, without oral arguments,
to the same Bench of Judges who delivered the judgment or order sought to be reviewed.”
Under Article 145(e), “the Supreme Court is authorized to make rules as to the conditions
subject to which the court may review any judgement or order. The Order XL framed to
exercise this power.”

The word “Review” in legal parlance connotes “a judicial re-examination of the case.
Therefore, to rectify an error and prevent the gross injustice, a provision for review under
the Section 114 of the Code of Civil Procedure gives a substantive right of review and
Order XLVII there under provides the procedure.”

Review Petition with under Section 114 and Order 47 of the CPC states “Any party
aggrieved by an order or judgement may apply for reviewing the said order or judgement
to the same court. It can be filed where no appeal is preferred or in case there is no
provision for appeal. Review Petition is a discretionary right of court. The grounds for
review are limited. Review is filed in the same court.”

74 1980 AIR 1789, 1981 SCR (1) 206
3.17. Tiwari, Neeraj, (2009), studied “Appointment of Judges in Higher Judiciary: An Interpretational Riddle” where it states the original framework consists of a “consultative process” between the Administrative and the Judges. After the formation of the Constitution, this was a widespread practice. But in 1993, after the Second Judges Case, the Supreme Court has discarded the current consultative process and developed a new plan for appointment of judges in the higher Judiciary, specifically "Collegium". A board of Chief Justice of India accompanied by two seniors most Judges of the Supreme Court, commends the appointment of a judge. However, the current incidents are uncovering the inadequacy and inconsistency of the collegium. The Law Commission of India, in its 214th Report indicated profound worry on the working of the collegium framework and advised for re-evaluation.

3.18. Ghosh, Pritam (2013) studied “Judicial Activism and Public Interest Litigation in India” in which the judiciary is considered as activist. It bears the evidence of judicial decisions dealing with Public Interest Litigations. “After the conclusion of the first ever PIL regarding the “Ratlam Municipal Council in 1976”, PIL has become an effective remedy for all those who are advocates of social justice and believe in working for the general benefit of the masses including those deprived of their basic needs falling into the category of the underprivileged”.

In 1982 the Supreme Court delivered the “S.P. Gupta vs Union of India75” judgment and said that any person coming to the court should have appropriate locus standi, i.e., a lawful ground to look for legal solution from the court of law. The point of presenting the locus standi hypothesis directs the quantity of PILs recorded in the courts and alerted the normal individual that a judicial solution in not for about everything without exception.

3.19. Robinson, Nick (2014) studied “India's Judicial Architecture” where he wrote on “the Indian court which describes the architecture of the Indian judiciary. In other words, the several types of courts and judges in the Indian judicial system and the hierarchies and relations between them. It focuses on how the Indian judiciary coordinates its behaviour through both a system of stare decisis (i.e. judicial precedent) and internal administrative control.

The Indian judiciary is unusually top-heavy, with more cases, more judges, and more administrative power located in the upper judiciary, and especially the Supreme Court,

75AIR 1982 SC 149, 1981 Supp (1) SCC 87, 1982 2 SCR 365
than in other systems. This top-heaviness has a range of implications, including leading to a polyvocal jurisprudence and a unique set of inter-judge relations, while empowering the upper judiciary that weaken the court system's overall ability to perform core parts of its institutional mandate.”

3.20. Bhatia, Gautam (2016) studied “The Primacy of Judges” where the easy examined the perception of the “primacy of judges” in judicial appointments, as understood in “Supreme Court Advocates-on-Record Association v Union of India" (the NJAC Judgment). The NJAC judgment struck down the 99th Constitutional Amendment, which looked to substitute the "Collegium" system of legal appointments with a National Judicial Appointments Commission [NJAC], since it dishonoured the elementary constitution of judicial freedom. It made three claims: first, the 99th Constitutional Amendment did not decided by the Supreme Court without first deciding if the Second Judges Case had legal power to be part of the fundamental structure, or just an “interpretive gloss” on Article 124 of the Constitution; second, all five distinct ideas in the NJAC Judgment neglected to do as such; and third, opposed to the dispute by Arghya Sengupta, three juries in the NJAC judgment held that judicial primacy is part of the legal structure. Therefore, any future endeavour to change the way of legal appointments should remain consistent with the rule of legal primacy, despite the fact that its establishments in the NJAC judgment are instable.

3.21. Huchhanavar, S. Shivaraj & Kavita S.B. (2015) studied “The Legal System in India: Contemporary Problems” in which “Constitution of India reflects the quest and aspiration of the humankind for justice when its preamble speaks of justice in its all forms: social, economic and political. Those who have suffered politically, socially, or economically, approach the Courts, with great hope, for redressal of their grievances”. The judicial system must administer justice so that the confidence of nationalsremains unharmed. This refrain them from taking law into their own hands. Therefore, justice, must be delivered promptly and in an inexpensive manner to its followers, without compromising on the quality of justice, fairness, equality, and impartiality.

Indian judiciary has a “Single Stratified Judiciary headed by Supreme Courts followed by High Courts and other Subordinate Courts. India has one of the largest judicial system in

76Writ Petitions Nos. 1303 of 1987, Decided On: 06.10.1993, AIR1994SC268,
the world; there are 16,000 sanctioned Judges, 1,200,000 Advocates – with over 3.2 crores of pending cases”.

The judicial institution is embedded in the culture and the method of functioning is far from satisfaction. The delay and the accumulation of cases in the lower-courts, the High Courts, and the Supreme Court have taken a severe problem and invited a lot of criticism on the legal system. There are many other problems in judiciary which needs attention too so that immediate remedy can be devised to ease the load.

3.22. Verma, Pranav (2014), studied “Judicial Opinions as Literature - ADM Jabalpur v. Shivakant Shukla” where he mentioned “The Supreme Court of India, in Additional District Magistrate, Jabalpur v. Shivakant Shukla77 by a majority of 4:1, ruled that in a state of Emergency, no person has a right to move the High Court under Article 226 of the Constitution for a writ of habeas corpus and that the constitutional guarantees under Article 21 remain suspended during such period. Justice Hans Raj Khanna delivered the minority opinion which has gone down in history as an eloquent expression of the sanctity of the fundamental right to life and liberty, and, judicial independence. It seeks to analyse Justice Khanna's dissent in the light of seeing the judicial opinions as literature, to see how judges write and why do they write in a way. The approach is a literary cum legal analysis.”

“If India ever finds its way back to the freedom and democracy that were proud hallmarks of its first eighteen years as an independent nation, someone will surely erect a monument to Justice H R Khanna of the Supreme Court. It was Justice Khanna who spoke out fearlessly and eloquently for freedom this week in dissenting from the Court's decision upholding the right of Prime Minister Indira Gandhi's Government to imprison political opponents at will and without court hearings... The submission of an independent judiciary to absolutist government is virtually the last step in the destruction of a democratic society; and the Indian Supreme Court's decision appears close to utter surrender”. - The New York Times, April 30, 1976

3.23 Flanagan, Brian, (2011) studied “Judicial Decision-Making and Transnational Law: A Survey of Common Law Supreme Court Judges” where a survey was conducted of “43 judges from the British House of Lords, the Caribbean Court of Justice, the High Court of Australia, the Constitutional Court of South Africa, and the Supreme

771976 AIR 1207, 1976 SCR 172

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Courts of Ireland, India, Israel, Canada, New Zealand and the United States on the use of foreign law in constitutional rights cases. They found that the conception of apex judges citing foreign law as a source of persuasive authority—associated with Anne-Marie Slaughter, Vicki Jackson, and Chris McCrudden, is of limited application. Citational opportunism and the aspiration to membership of an emerging international ‘guild’ appear to be equally important strands in judicial attitudes towards foreign law. It was argued that their presence is at odds with Ronald Dworkin’s theory of legal objectivity, and is revealed in a manner meeting his own methodological standard for attitudinal research.”

3.24. Abeyratne, Rehan, (2017) studied “Upholding Judicial Supremacy in India: The NJAC Judgment in Comparative Perspective” which states “On October 16, 2015, the Supreme Court of India issued a landmark judgment holding the National Judicial Appointments Commission (NJAC) unconstitutional. The judgment flawed in two ways: First, it held that the Indian Constitution requires sitting judges to have the final word on judicial appointments. Neither the constitutional text nor the Constituent Assembly Debates provides any support for this conclusion. Second, the judgment does not explain how this judicial primacy promotes or secures judicial independence. A comparative analysis shows that no other major constitutional democracy gives judges the final word on judicial appointments. So why is India an outlier? The peculiar political and historical circumstances required the Indian judiciary to assume an outsized role. The NJAC Judgment is, therefore, best understood in institutional terms: it represents the judiciary’s reluctance to cede its supremacy to the political branches of government.”

3.25. Sharma, Girijesh Sharda (2009), studied “Constitutional Customs and the Appointment of Chief Justice of India” where “Custom is recognised as a source of law in international law and in India. Act. 13 of the Indian Constitution recognizes custom as a law. But the only condition for it is the binding nature which did not supersede any legislation. The question of customary law exists in the constitution of any country answered in the study.

78Anne-Marie Slaughter is an international lawyer, foreign policy analyst, political analyst, and public commentator.
79Vicki Jackson is a writer and teacher on U.S. constitutional law: http://hls.harvard.edu/faculty/directory/10425/Jackson
80Chris McCrudden is a professor of Law, human rights, and equality in Michigan Law School: https://www.law.umich.edu/FacultyBio/Pages/FacultyBio.aspx?FacID=mccrud
The issue of constitutional customs in the light of the appointment of Judges are dealt with. The recommendation for formation of National Judicial Commission. The article examined certain question like; whether there exists any constitutional custom; what are the conditions which are necessary for existence of a custom in the constitution; which provisions of the constitution developed as a custom; whether the President is bound by the custom of appointing Judges of Supreme Court on advice of the Chief Justice. The present appointment procedure of the Judges have referred to questions like has this system stood the test of time ‘; does it sub-serve the purpose for which it was devised ‘Is it result oriented’Does it meet with the requirements expected of it in the Constitution itself‘ Are there any short comings of this system’ Till now the Indian Judiciary has not decided any case on this theory. The theory of constitutional customs so, that the Indian Judiciary while interpreting the constitution can take note of this theory.”

3.25. Tigadi, Rohan (2012), studied “Judocracy v. Independence of the Judiciary” where the article is based on “the recent review petition filed in the Supreme Court in the matter of Supreme Court Advocates-On-Record Association v. Union of India which brought the present collegium system of appointments of judges into being. This system of appointing the Supreme Court and High Court judges has come under severe criticism due to the opaqueness of the system. The author is of the firm belief that this method of appointment was never envisioned by our Constitutional ancestors and suggested a suitable alternative to remedy the present situation.”

3.26. Lavrijssen, Saskia & Visser, De Maartje (2006) studied “Independent Administrative Authorities and the Standard of Judicial Review” where “Recent developments in European competition and electronic communications law have led to an increased focus on, and importance of, independent administrative authorities. The competences available to these authorities are often wide-ranging, at times encompassing elements of all three of Montesquieu's powers. These competences typically embody a considerable degree of discretion to allow the balancing of the: opposing, interests of various groups of stakeholders, such as consumers, competitors, and manufacturers. The independence of administrative authorities counterbalanced by a certain degree of accountability for their actions. To review how three Member States - the Netherlands, the United Kingdom and France have shaped the judicial accountability of the independent administrative authorities. Based on an analysis of some important cases the article assessed whether there are commonalities between the ways the national
courts in these Member States review the exercise of discretionary powers by independent administrative authorities. The article ascertained the influence of EC law and the European Convention on Human Rights, notably Articles 6 and 13 thereof, on the standard of review applied in the Member States.”

3.27. Sueur, Andrew, Le (2012) studied “Parliamentary Accountability and the Judicial System” where “Tensions between political and legal accountability are a backdrop to many debates about the character and future direction of the British constitution. This essay explored a juncture of these two modes of accountability by examining how the UK Parliament exercises accountability in relation to the judicial system of England and Wales. The first part defined ‘the judicial system’ and what is the meaning of parliamentary accountability in this context. It then takes an institutional and procedural approach for examining the opportunities Parliament has for engaging in accountability activities in relation to the judicial system, focusing on the evolving role of select committees. An inductive approach is used to map current accountability practices in Parliament in relation to particular aspects of the judicial system by drawing on examples from the parliamentary record to develop an explanation of what is and ought to be the reach of MPs’ and peers’ accountability functions relating to judges and courts.”

3.28. Craig, Paul, P., (2014) studied “Accountability and Judicial Review in the UK and the EU: Central Precepts” in which “Judicial review is one method of securing accountability in the modern state. It is not the only one, but then accountability is not in this respect a zero-sum game. This is so notwithstanding the fact that commentators might legitimately disagree on the ambit of judicial review, or on its relative importance as a mechanism to secure accountability when compared to other methods. The very fact that all developed legal systems have some regime of judicial review is indicative of its perceived importance in securing the values of the liberal state, using that phrase in broad terms for these purposes. This does not mean complacency in this regard. To the contrary, discussion of accountability entails not merely estimation of the relative efficacy of different mechanisms to secure this end, but also evaluation of the credentials underlying any accountability mechanism itself, the latter being the objective.

The judicial review as developed in the UK and in the EU, does not directly address the impact of the latter on the former. There is literature dealing with the effect of EU law on judicial review, more especially the way in which EU general principles of law have
affected domestic judicial review. This chapter does not replicate this discourse. The focus is on the cardinal features that define and shape judicial review in a legal system to see how the UK and the EU compare in this regard. To this end the subsequent analysis considers the two systems in terms of conceptual foundations, legitimacy, hierarchy of norms and rights. This exercise is not in relation to UK and EU models of review. It sheds interesting light on domestic debates in the UK and on the foundations of judicial review in the EU. The discussion addressed principally in relation to judicial review of executive action rather than primary legislation, although there is consideration of the latter, more especially because the divide between the two has not in the past been either clear or central to the application of judicial review in the EU. At the outset that the EU principles of judicial review bind not only the EU institutions, but also the Member States when they act in the scope of EU law.”

3.29. Schor, Miguel (2008) studied “Judicial Review and American Constitutional Exceptionalism” in which “The conventional view is that the American model of judicial review largely conquered the world's democracies after the Second World War. This study questioned that view by examining the following question: why do social movements contest constitutional meaning by fighting over judicial appointments in the United States and why would such a strategy make little sense in democracies that constitutionalized rights in the late twentieth century?

The short answer is that the United States has been both a model and an anti-model in the spread of judicial review around the globe. When the hope of Marbury (constitutionalized rights) travelled abroad in the second half of the twentieth century, joined with the fear of Lochner (courts run amok). Therefore, polities abroad adopted stronger mechanisms of judicial accountability that make it difficult for social movements to wrangle over appointments as a means of resolving disputes over constitutional meaning. The political court model of judicial review, adopted in Germany and the democracies it influenced, relies on ex ante mechanisms of accountability. When supermajority appointment provisions used to select members of a national high court, factions forced to negotiate over appointments. The politicized rights model of judicial review, on the other hand, adopted in Canada and the democracies it influenced, relies on post facto mechanisms of accountability. When courts have the first but not the final word in interpreting the constitution, citizens choose to overrule courts directly rather than fight over appointments. In short, popular constitutionalism, which originated in the United States,
or the notion that citizens should play a role in construing their constitution has thrived abroad better than at home.

Battles over appointments have decisively shaped the United States Supreme Court and inadvertently resolved a long-standing scholarly debate between law professors and political scientists. Law professors believe that the Court is a counter majoritarian institution checked by law whereas political scientists believe that it is an anomalous majoritarian institution checked by appointments. It turns out that the law professors were right but for the reasons given by political scientists. For the first time in our nation's history, factions have succeeded in fashioning a counter majoritarian Court but they have done so through the politics of appointments.”

3.30. Colquitt, Joseph, A., (2007) studied “Rethinking Judicial Nominating Commissions: Independence, Accountability, and Public Support” in which the author mentioned there is no best way to appoint judges. “Any judicial selection system has both strengths and weaknesses. State judges in the United States may take the bench via election or appointment, but most judges, even those in states utilizing judicial elections, originally take the bench through appointment. Appointment, obviously, is the quickest and most efficient way to fill a judicial vacancy. The pillars of the appointive process, the judicial nominating commission suggests that all jurisdictions should have judicial appointment commissions.

The task in a good judicial selection system is not simply to fill vacancies, but to select the best candidates for judicial positions. To accomplish this purpose using a nominating commission scheme, the ideal judicial nominating commission system developed. This system should possess (at least) three principal features: It should adhere to democratic ideals; it should maintain as much independence as reasonably possible; and it should enjoy public acceptance and support. Additionally, local conditions and requirements design commission scheme. These features and considerations conflict. Because of the tension between them, they complicate efforts to design an ideal commission. Despite these difficulties, one should not compromise on the principal features of an ideal scheme any more than necessary to reach the best balance.

A delicate balancing of democratic ideals and independence garner public support for a judicial nominating commission without the need to over compromise any of these core principles.
Political elites should not control judicial appointments, and proper use of a nominating commission approach reduce the concentration of power in political officeholders by spreading the nomination and appointing powers. The commission independence enhances both democratic ideals and judicial independence. Commission independence encompasses both external and internal independence, which includes external and internal capture. In sum, the spread of power among a more representative group not only is more democratic, but it can also create a significant degree of independence. Moreover, as noted, judicial appointment commissions must have the confidence and support of the public which it serves. Designing the appropriate appointments commission paradigm is not an easy task, but with proper attention to detail, such impediments as commission capture eliminated or reduced.

Judicial nominating commissions are the worthiest, critical, components of the judicial selection process even in jurisdictions that elect their judges. Nominating commissions, though, are only as good as their organization, members, and procedures permit. This raised, addressed, a number of the most challenging issues in developing an appropriate judicial nominating system.”

3.31. Lemennicier, Bertrand, Claude & Wenzel, Nikolai (2014) studied “The Judge and His Hangman: Judicial Selection and the Accountability of Judges” in which he asks questions like who determine rights and justice and which mechanism of judicial selection and accountability is optimal. But there is no answer for it. “If judges are independent experts, nominated and evaluated by their peers, they will be immune from the pressures of electoral rent-seeking, but unaccountable to the people. Elected judges will be democratically accountable, but subject to the redistributive pressures of the ballot box. If judges are nominated and controlled by politicians, they will face the temptations of bureaucratic self-interest and will not be democratically accountable, but they will be shielded from the Public Choice problems of elections. It used the death penalty in the United States, to measure and compare the impact of different methods of judicial selection. In the end, there is no optimal solution – at least not within a judicial monopoly that ignores the voices of the actual participants.”

3.32. Fohr, Anja-Seibert, (2010), studied “Constitutional Guarantees of Judicial Independence in Germany” in which “Judicial independence constitutes one of the fundamental principles of the German Constitution. As part of the German report to the
XVIIth International Congress on Comparative Law in Utrecht in 2006 elaborated on the specific elements of the constitutional guarantee in Germany. Outlining the interpretation by the German Constitutional Court it explains the meaning of this concept in the German context. While Italy and Spain understand judicial independence to be one of structural independence the German model with its primary concern for substantive and personal independence differs. Since structural independence applies to judicial functions only, the administration of the judiciary as a matter of democratic accountability is still within the competence of the Ministries of Justice of the federal states. The appointment process for judges, their tenure and scope of authority, the relevance of their independence in disciplinary proceedings and the limited scope for dismissals studied. It concluded with the observation that despite the lack of self-governance the constitutional guarantee of judicial independence has been elaborated substantially by the jurisprudence of German courts with the result that in terms of working conditions the German judiciary profits from privileges unknown in foreign countries.”

3.33. Bunjevac, Dr Tin, (2017) studied “From Individual Judge to Judicial Bureaucracy: The Emergence of Judicial Councils and the Changing Nature of Judicial Accountability in Court Administration” where his article analysed “the emergence of judicial councils and their role in facilitating greater judicial control of court administration in Australia and other countries. The article scrutinised the arguments in favour of greater judicial control of court administration, before moving on to examine the traditional policy challenges of judge-controlled court systems, such as to develop an effective system of administrative accountability that does not undermine judicial independence and to devise an institutional framework for a judicial council and courts that is effective, relevant, and accountable. The transfer of responsibility for court administration from the executive government to an independent judicial council has the potential not only to safeguard judicial independence, but also to improve court performance, achieve greater customer focus in the court system and bring about an institutional renewal of the judiciary. It argued that the introduction of formal and transparent administrative hierarchies within the judiciary is both justified and necessary to improve court performance, enhance the social legitimacy of the courts and reinforce judicial independence. The final part of the article outlined the basic institutional contours of a modern judicial council that can assist the courts achieve these goals and respond to the challenges of modern court environment.”
3.34. Henckels, Caroline, (2017) studied “Public-Private Arbitration in Australia: Public Law Concerns, Private Law Responses” where “Unlike investor-state arbitration, the phenomenon of commercial arbitration between governments and private actors has largely flown under the radar in Australia. By interpreting and applying domestic law to exercises of power by government, arbitrators contribute to governance, but without the hallmarks of the judicial process. There are no restrictions on federal or state governments’ ability to enter contracts providing for arbitration of disputes. Moreover, the law regulating arbitration in Australia does not distinguish between public-private arbitrations and purely private arbitrations; as such, it cannot account for the public law dimension of some public-private disputes or account for the involvement of arbitrators in controlling government action. Meanwhile, although the past two decades have seen a growing awareness of the implications of the contracting out of public functions to private bodies in terms of public law accountability, Australian courts have not subjected decisions made under or pursuant to contracts to constitutional or administrative law review. As such, the choice of arbitration as the dispute resolution mechanism can operate to insulate exercises of public power from the already limited prospect of judicial scrutiny even further. Although the time might not yet have come for Australian law to confront these issues, any appreciable increase in the uptake of contracts relying on arbitration by government and one or two more high profile arbitration cases might well raise the spectre of domestic legislative reform to better protect the public interest.”

3.35. Dodek, M. Adam, (2009), studied “Judicial Independence as a Public Policy Instrument” in which the contribution of judges in commissions of inquiry has been an important part of the public policy process in Canada and elsewhere. However, the use of judges for these and other extra-judicial functions is not positive and the other side of the balance also considered. It chronicled the dramatic rise of the use of judges by governments for such policy functions, arguing that it has resulted in a 'judicialization of politics' of a different sort from the standard conception of that term. The current political culture of independence and accountability has made judicial independence a highly valued political commodity that is frequently in demand by government officials. It argued that what public policy makers are seeking is not simply the expertise of judges but also the political capital of judicial independence which has become an increasingly valued political good in Canadian society (and in others as well). It analysed and
evaluated this trend from the perspective of judicial independence and argued that the
unreflective reliance on judges for various extra-judicial functions has the potential to
undermine the bedrock principle of judicial independence if not managed by the judiciary
in concert with the executive. It analysed two cautionary tales from the use of judicial
independence for public policy purposes: the Gomery Inquiry\textsuperscript{81} and the controversy over
the Chief Justice's involvement in the award of the Order of Canada to abortion activist
Dr. Henry Morgentaler. Finally, the argument that taking judicial independence seriously
necessitates that judges develop a framework for the consideration of extra-judicial
functions and begin to exercise greater discretion in refusing to take on executive
functions at times, lest the political currency of judicial independence become devalued
over time.”

Ad Hoc Committee to Review a Nominee for the Supreme Court of Canada held
unprecedented public hearings in advance of the appointment of Justice Marshall
Rothstein to the Court. The author assessed the work of the Committee using the
interdisciplinary literature on assorted institutional design models and their effects on
public trust and decision-maker trustworthiness. This literature informed efforts to ensure
that judicial selectors select, or aspire to select, new justices impartially. The Committee
adopted a comparatively ineffective and risky model of democratization that relies on
accountability tools such as political party dýtente. Past examples suggest that an
alternative approach is preferable: Reforms should focus not on increasing accountability
for selections but on building trust and trustworthiness in selections. The author offered
specific recommendations to enhance trust and trustworthiness in the selection process
using a permanent Supreme Court of Canada appointments body. The body proposed can
enable robust rather than token levels of public involvement while preserving or
broadening judicial independence.”

3.37. Ziegel, Jacob, (2009) studied “Promotion of Federally Appointed Judges and
Appointment of Chief Justices: The Unfinished Agenda” in which the author mentions
about “Canada over the appointment of judges by the federal government pursuant to its
power under Section 96 of the Constitution Act and other sources and the shortcomings of

\textsuperscript{81}The Gomery commission also known as Commission of Inquiry into the Sponsorship Program and
Advertising Activities was a Federal Canadian royal commission headed by Justice John Gomery for
investigating sponsorship scandal and corruption against Canadian government.
the existing procedures. Much less written about the promotion of judges from the trial level to provincial appellate courts and the Federal Court of Appeal, and the appointment of chief justices of provincial courts and the Federal Court. This study filled the gaps. The gaps are important because, for most purposes, the provincial appellate courts and the Federal Court of Appeal are the final courts of decision in litigated matters. Political connections appear to play a prominent role in the appointment of chief justices and a smaller role in the appointment of appellate judges. Nevertheless, the appointment of appellate judges raises important questions of transparency and accountability since judges promoted by the federal government from the trial bench to an appellate court are not subject to scrutiny by the provincially based judicial appointments advisory committees.”

3.38. Porter, Bruce, (2014), studied “Inclusive Interpretations: Social Rights and Judicial Accountability” in which “Using Canada as a case study, a reconceptualization of the role of the judiciary in interpreting human rights is suggested. The traditional paradigms of rights as originating outside of courts, by way of constitutional agreements or international human rights treaties, nuanced by a better understanding of human rights practice -- a process through which rights re-constituted through the historical act of claiming and re-interpreting rights. Social rights claims understood as claims to goods or entitlements but they should equally have understood as claims to meanings that speak to and address the experience of previously excluded claimants and evolving socio-historical struggles. Judiciaries must be independent of the political branches of government but the courts’ role not construed as independent of historical struggles or of the evolving social construction of the meaning of rights; if it were, judicial interpretation of rights starved of nourishment and disconnected from the broader human rights project that gives legitimacy to the judicial role within a democracy. Courts are accountable to the obligation to provide full and fair hearings of claims to more inclusive meanings.

Considering these issue in the context of the struggle for social rights in Canada, the political struggle seen intricately linked to a struggle for fair hearings of claims to inclusive interpretations of broadly framed rights in the Canadian Charter of Rights and Freedoms. Attempts to demarcate the role of courts from that of legislatures based on a negative rights paradigm have often denied marginalized groups in Canada effective participation in the interpretation of the meaning of Charter rights. Exclusive meanings of rights to life, security of the person and equality adopted not based on reasonable
interpretations but to exclude types of claims (and therefor types of claimants) from the courtroom. These types of decisions raised the question of whether courts are accountable to broader principles of democratic inclusion in the interpretation of rights.

Criticism by UN human rights bodies of Canadian courts when they have failed to adopt inclusive interpretations provides an opportunity for enhanced judicial accountability. Obligations of State parties to progressively realize social rights include important obligations of the judicial branch. International human rights bodies play a key role by engaging directly with domestic courts’ interpretive responsibilities and by promoting more coherent principles of rights interpretation. The role of international human rights bodies is not to dictate to domestic courts an authoritative interpretation but to ensure that courts do not become agents of social exclusion in the performance of their interpretive roles. The fact that there is no ultimate authority to provide definitive interpretations of rights is not the problem. It is the solution.”

3.39. Mackay, Wayne, A., (2017) studied “Judicial Free Speech and Accountability: Should Judges Be Seen but Not Heard?” in which “Before exploring the reasonable limits of judicial free speech, it is important to understand the role of the judge in Canadian society. An expansion of judicial freedom of expression enhanced the impartiality and independence of the judge, rather than detract from these traditional pillars of the judiciary. Judges do have views and perspectives and expressing them may engender more respect and confidence than maintaining a monastic silence. The traditional view of the objective judge modified by the human traits of subjectivity, that stop short of pre-judgment. It is the "out-of-court" judicial speech that gave greater reign, while the "in-court" speech of judges should be more restrained. While judges not preoccupied with "political correctness", they should ensure that their expressions do not violate the principles of the Charter, such as its guarantees of equality.

Judicial free speech accompanied by improved mechanisms of accountability at both the formal and informal levels. The performance of the Canadian Judicial Council, and explores in some depth the 1980s treatment of Justice Berger in contrast to the 1990s treatment of the Nova Scotia Court of Appeal Judges82 (Marshall Affair83). At the

82Court of Appeal for Nova Scotia (Nova Scotia Court of Appeal or NSCA) is the highest court in Nova Scotia, Canada. There are seven justices and one chief Justice.

informal level, the Ben, the Bar, academics, the media, and lobby groups assessed as checks upon judicial misconduct. The author calls for significant reforms of both the formal and informal mechanisms of accountability, including more formalized rules, increased lay input, improved remedies, canons of judicial speech and conduct, and opening the judicial process.

Judges are seen well as heard, held accountable for what they say both inside and outside the courtroom. The role of the judge in Canada has evolved to the point where judges have become significant policy-makers, and Canadians have a right to know their views on the issues of the day. It is not desirable that judges cloister themselves away from the real world of affairs from which their cases arise. by expressing their views and engaging in a form of dialogue (albeit one restrained by the judicial role) with various segments of society, judges can form a better basis for judgment. The expansion of judicial speech and accountability can produce better-quality judging and an increased public confidence.”

3.40. Lamer, Antonio, (1996), studied “Singapore Academy of Law Annual Lecture 1996: The Tension between Judicial Accountability and Judicial Independence: A Canadian Perspective” in which the author proposes to say the “the sources and the meaning of judicial independence as a core constitutional value in Canada and a few words about judicial accountability, and explain why judicial accountability is said to be in tension with judicial independence. Then the two of the issues discussed in the Friedland Report from the perspective of the way the tension between judicial independence and judicial accountability plays itself out in relation to them examined. The issues selected are judicial discipline and judicial education.”

3.41. Antharvedi, Usha, (2008), studied “Judicial Review of Administrative Actions and Principles” in which the author studied “Administrative law has a tremendous social function to perform. It is the body of reasonable limitations and affirmative action parameters, which developed, and operationalised by the legislature and the courts to maintain and sustain the rule of law. The courts, through writs of habeas corpus, mandamus, certiorari, prohibitio and quo warranto, control administrative action. The source of Administrative law is the statutes, statutory instruments, precedents, and customs. The doctrine of legitimate expectation, Public Accountability, and doctrine of proportionality discussed. The increased power of the administration judicial control has
become a key area of administrative law, because courts have proved more effective and useful than the legislative or the administrative powers.”

3.42. Law, David S., (2010), studied “Judicial Independence” in which “the International Encyclopaedia of Political Science, explains why the concept of "judicial independence" has demonstrated famously hard to characterize. It gaged the term employed, discussed about the factors to design a definition that is intelligible and familiar of contrasts between courts in various nations.

Judicial independence refers “to the ability of courts and judges to perform their duties free of influence or control by other actors.” But, the term is utilized as a part of a standardizing sense to allude the type of freedom considered necessary for courts and judges. So, there are two sources of perplexity over its significance. The first is theoretical, as an absence of lucidity with respect to the sorts of autonomy that courts and judges can have. The second is regularizing, as contradiction over what sort of autonomy courts and judges should have.

To be both extensive and sound, a meaning of legal autonomy must address a few inquiries. The first is the subject of autonomy for whom; the second is the topic of freedom from whom; and the third is the topic of autonomy from what. To answer these questions, depend on some regulating hypothesis, express or something else, of why legal autonomy is profitable and what expected to achieve. In short, it is important to address the subject of freedom for what reason.

3.43. Oldfather, Chad, M., (2010), studied “Judging and the Judicial Process” explained “a set of course materials for a seminar entitled Judging and the Judicial Process. The materials intended to be useful to both teachers and scholars. The focus of the course is on courts as institutions and on judges as the primary actors within those institutions. In their present incarnation, the materials open by outlining what one might call the standard model of judging, which calls for judge-umpires to apply determinate law via formalist analysis. The course then works through a series of critiques of that model, including the work of the legal realists, public law theorists, political scientists, cognitive scientists, and so on. Much of the remainder of the class devoted to considering the various procedural constraints that work to ensure judicial accountability. These
include judicial opinions, the doctrine of precedent, and the rest of Karl Llewellyn's major steadying factors. The materials also consider judicial activism and judicial independence, the relative merits of specialized versus generalist judges, the continued existence of non lawyer judges, judicial ethics, and judicial selection at both the federal and state levels. Future versions will include sections on discretion, deference, managerial/bureaucratic judging, and the inherent powers of courts.”

3.44. Burbank, Stephen B. (2006) studied “Judicial Independence, Judicial Accountability and Interbranch Relations” in which he explained “the main reason of the noxious condition of interbranch relations including the federal law, as of the continuous and strident outbreaks on courts, federal and public, are strategies figured to induce the general population that courts are a part of common politics and that judges are policy specialists to be considered responsible accordingly. Although breakdown in standards of interdependency is an important characteristic of modern politics, the present circumstance including the federal judiciary is perilous because of the likelihood that a slanting point of “no return to the conventional balance in inter branch relations reached.” That prospect recommends the understanding "tradition of judicial independence" depended on the people's help of the courts regardless of the results they influence "diffuse support", and research provides reason to expect that the qualification between diffuse help and support contingent upon those choices "specific support" will vanish, driving individuals to ask of the judiciary only "what have you done for me lately?" In the management of inter branch relations, the judges should reply to the instincts and motivations, both legal and illegal, that brought to this unfortunate point. Effective inter branch relations needs the institutional legal to keep away from the insolences and systems of modern politics, yet not to stay away from politics, and the fundamental task in such manner is to maintain a strategic distance from the observation that the federal law is one more interest group. Utilizing the works and occupation of the late Richard Arnold to represent the need in the politics of judging, for judges to provide direction to reach to standards of custom, discussion, and negotiation in inter branch relations. More federal judges should follow Arnold's case in perceiving that a presidential commission does not present good predominance, that legal responsibility appropriately considered, is fundamental for legal autonomy, and that both "posterity worship", the endeavour to

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84 Karl Nickerson Llewellyn was an American jurisprudential scholar.
85 Richard Sheppard Arnold was a judge of U.S.District court.
control the future and official glorification are antagonistic to the long-standing interests of the federal courts and the federal judges.

3.45. Peerenboom, Randall (2008) studied “Judicial Accountability and Judicial Independence: An Empirical Study of Individual Case Supervision” in which the article investigated the pressure between legal freedom and legal responsibility in China, by looking at the growth, benefits and drawbacks of management of ultimate court decisions by individuals' congresses, the procuracy and the courts themselves. With a systematic empirical study, significant changes required, wiping out individual case supervision (ICS) now would prevent justice from claiming many individuals consistently. The politics of whether to remove or improve ICS and if so how, represent the troubles of China's legitimate change project, why changes in developing nations often fail, and why changes in light of transplants of foreign models neglect to flourish.

3.46. Voigt, Stefan, (2005) studied “The Economic Effects of Judicial Accountability - Some Preliminary Insights” in which “Judicial independence is not only a necessary condition for the impartiality of judges, it can also endanger it: judges that are independent could have incentives to remain uninformed, become lazy or even corrupt. Judicial independence and judicial accountability are competing ends. It is, however, hypothesized that they are not necessarily competing ends but can be complementary means towards achieving impartiality and, in turn, the rule of law. Judicial accountability can increase per capita income through various channels one of which is the reduction of corruption. First tests concerning the economic effects of JA carried out drawing on the absence of corruption within the judiciary as well as data gathered by the U.S. State Department as proxies. Based on 75 countries, these proxies are highly significant for explaining differences in per capita income.”

3.47. Collett, Teresa, Stanton, (2009) studied “Judicial Independence and Accountability in an Age of Unconstitutional Constitutional Amendments” in which appointment of American judges is one of a war zone in the modern culture, mainly because of legal involvement in argumentative matters for example “abortion, pornography, the death penalty, racial discrimination, the role of religion in public life, and the definition of marriage”. Thus, the systematized bar and numerous legal leaders sternly advise that legal autonomy is “in jeopardy,” while social conformists alert that
judicial accountability lessened or absent and the “end of democracy” has reached or is quickly forthcoming.

There have been several arguments on relative value and relationship of legal autonomy and accountability since the commencement of this country. While this is a significantly interesting and important argument, reason to join that discussion directly. To investigate the effect of an inexorably legitimate contention, there can be an “unconstitutional constitutional amendment” on legal autonomy and accountability.

The first section gives a review of the distinctive procedures for revising a constitution. The second section discussed technical analysis of constitutional revisions, while substantive analysis studied in the third segment. The two segments investigated the issues identified with legal survey. Consequently, decided that judicial review of the procedural consistency of the revision procedure, while that functional analysis should be restricted to post-passage cases.

3.48. Geyh, Charles, G., (2006) studied “Judicial Independence, Judicial Accountability, and the Role of Constitutional Norms in Congressional Regulation of the Courts” in which the author seeks to explain “why some incursions on judicial autonomy are deemed acceptable and others are not. Part I defined judicial independence in a way that not only accommodates, but necessitates an approach that is political and developmental in its orientation: the contours of judicial independence delineated less by court made doctrine, than by informal norms or customs that Congress has gradually come to respect over time. Part II chronicled the development of customary independence through the cyclical attacks on the courts that punctuate phases in the relationship between the federal courts and the political branches in ways that justify their use. Part III discussed how fights to control the courts are easier for Congress to win in the appointments arena, where independence norms have not constrained Congressional behaviour as they have in other contexts. As the opportunities to control the courts via impeachment, defiance, court-packing, jurisdiction-stripping, and budget-slashing have diminished with the ascendance of customary independence, the appointments process has emerged as the one remaining avenue for Congress to exert control over judicial decision-making. The dawning realization that a politicized appointments process now stands alone as a viable device for promoting prospective judicial decision-making
accountability, ongoing efforts to de-politicize the appointments process are likely to be fruitless and actually undesirable.”

3.49. Spigelman, James, (2001) in the study “Judicial Accountability and Performance Indicators” author found that an extensive task for legal management confirms with modern anticipations of accountability and effectiveness stay steady with the necessities of legal autonomy and the support of the nature of justice. In this regard, the court proceedings are legal and, certainly desirable. Though, insights on courts' exercises are hard to assemble and translate, with estimations of cost and deferral inalienably difficult. Further, the utilization of performance indicators to decide if a court is giving “value for money” neglects to perceive that justice, for reasonable results arrived at by reasonable actions, is, in its fundamental nature, unequipped for measurement. There is no quantifiable performance indicator for the nature of legal basic leadership. Furthermore, the performance indicators are partial. They misrepresent the conduct of the organization measured. The utilization of performance measurement to courts represents a danger to legal autonomy and the rule of law. There is no employment performance indicators or perceptions of “productivity” from different scopes of action, for purposes like assigning resources or the assurance of legal compensation.

3.50. Salem, Jamil, & Botmeh, Reem Al., (2010) studied “Judicial Responsibility and Accountability” in which “Judicial responsibility is one of the sensitive issues to discuss. It is an institutional and individual matter related to the judiciary and its institutional function as well as judge’s exercise of these functions. The debate over the qualities that make a good judge seems intractable because there is no shared set of expectations about a judge’s role in society. Some accept as a political inevitability that judges are decision makers and de facto legislators, and accordingly evaluate judges by the political impact of their decisions. Others expect judges to fight to preserve their complete independency as if any form of accountability would pose a threat. It is thus fully appropriate to evaluate how they perform their duties, always bearing in mind that they are part of the judicial system, which considered.

A professional responsible judiciary reconciles the twin goals of democratic legitimacy and legal legitimacy. This requires much more than restating platitudes about independence and accountability. It elaborates on aspects such as the rational of judicial independence, the relation between judicial performance systems and promotion,
recruitment procedures, evaluation during initial and continuing education programs, codes of ethics, and the role of the judiciary towards other state branches and society in general.

The judicial responsibility at three levels, theoretical, comparative empirical and finally the Palestinian case studied. It is divided in to three parts; the first one is the conceptual framework of judicial responsibility whereby attempting to bring a clear understanding of the concept of judicial responsibility and its link with other concepts and doctrines, this part discussed the meaning of judicial responsibility, the tension between judicial accountability and judicial independence. It tackled into the link between judicial responsibility and immunity and judicial responsibility and accountability in the context of judicial education. The second part is mapping out models and kinds of judicial responsibility through examining the several types of accountability as well as the different models in various legal systems. There are many ways to classify types of judicial accountability; it can be individual and collective, formal or scrutiny by civil society, or content, process, and performance accountability. It takes as well different categorization which find literature classified accountability into, political accountability, societal accountability, legal accountability of the state and legal accountability of the judge. From these types of accountability emerge various models in different legal systems. The diverse types of judicial responsibility tackled by classifying it into three main categories; and finally, the third part examined the concept of judicial responsibility in the context of the Palestinian judicial system in order first to illustrate the elements of this responsibility, establish to which model does it fellow, and asses its efficiency.

3.51. Hakeem O. Yusuf, (2008) studied “Democratic Transition, Judicial Accountability and Judicialization of Politics in Africa: The Nigerian Experience” examined the occurrences of judicialization of politics in Nigeria's democratisation against the background of dubious judicial accountability. The legal, political,and comparative law studied. The judiciary faced a “daunting task in deepening democracy and re-instituting the rule of law”. The difficulties derived from “structural problems within the judiciary, deficient accountability credentials and the complexities of a troubled transition. Effective judicial mediation of political transition requires a transformed and accountable judiciary. The need for judicial accountability is a cardinal and integral part of political transitions.”
3.52. Kosar, David, (2010), studied “Judicial Accountability in the (Post)Transitional Context: A Story of the Czech Republic and Slovakia” in which “the notion of judicial accountability and argued that judicial accountability is as important as judicial independence for fostering the rule of law and effective judicial mediation of political transition. In the subsequent case studies, it focuses on the ‘large scale’ institutional design of administration of courts in the Czech Republic and Slovakia. The aim of this inquiry into the ‘large scale’ institutional design is two-fold: (1) to test whether Slovakia, a country with a strong judicial council, has performed better than the Czech Republic, a country without a judicial council, and (2) to explore how both states fare when it comes to judicial accountability in general.

Part 1 placed judicial accountability in the context of transitional justice, tentatively defined the notion of judicial accountability, and discussed its relationship with judicial independence with a focus on the period of transition to democracy. Part 2 focused on ‘large scale’ institutional design of the administration of justice in the Czech Republic and Slovakia. It started with a brief overview of institutional models adopted in the former Czechoslovakia, a predecessor of both states, and then proceeds to the contemporary institutional design of the administration of justice in the Czech Republic and Slovakia. Part 3 first identified the deficiencies and anomalies of the models of administration of justice in both countries. Subsequently, it provided assessment how both models fare when it comes to judicial accountability and draws tentative conclusions from the functioning of these models. Finally, Part 4 places the Czech and Slovak scenarios into the broader context of judicial reforms in the post-communist countries and identified issues for further research.”

3.53. Agrawal, Pankhuri, (2011) studied “Judicial Independence and Accountability: In View of the Case of J. Soumitra Sen” in which “Judiciary is deemed to be an image of blindfolded justice holding balanced scales embodying the idea of impartiality and fair setup in it. To understand the importance of “Judicial independence” to maintain the ‘image’ of judiciary and the rationality of judicial accountability has become an issue for debate today and further deliberate on formulation of various laws in this arena. The procedure of selection, appointment and transfer of judges many questions being raised about their honesty before, during and after their tenure. To find out the flaws in the impeachment procedure, appointment procedure and the much-awaited Judicial Standards and Accountability Bill 2010 and insights taken from the Constitution Review
Commission Report of 2002. Since judges are ‘Justice deliverers’, the level of trust reposed in them by the common citizens is quite high. It became a mandatory responsibility of them to maintain it. To answer the questions triggered by a recent case of J. Soumitra Sen: Is the judiciary holding the same value, as it had earlier? Is the judiciary abusing its privilege of judicial independence? Is the judiciary responsible and can it be held accountable? Hence, there is an urgent need for efficient laws to be formulated and effective complaint mechanism to be triggered to avoid the occurrence of these unfortunate cases.”

3.54. Alfini, James J., Brietzke, Shailey Gupta, et al. (2015) studied “Dealing with Judicial Misconduct in the States: Judicial Independence, Accountability and Reform” in which “Inherent in Roscoe Pound’s 1906 speech to the American Bar Association is the basic premise that American courts and judges, as public institutions, and officials in a representative democracy, must be responsive to the public and held accountable for their actions. Only in a democracy would concerns over the causes of popular dissatisfaction with the administration of justice gave a public airing. Pound’s speech premised on the notion that developments that compromised judicial independence, a basic tenet of American democracy, would similarly erode public confidence in the courts.

Maintaining confidence in the judiciary anticipates that judges are held to standards of conduct. However, at the time Roscoe Pound delivered his 1906 speech to the American Bar Association, published standards, rules, or guidelines establishing ethical norms for the state judiciaries were virtually non-existent. One hundred years later, all state judiciaries are not only subject to officially adopted codes of judicial conduct or canons of judicial ethics but are also subject to modern disciplinary mechanisms for enforcing these ethics standards. Although Pound might applaud this development as far as it promised greater accountability, he might also have expressed concerns over the possibility that it might intrude on judicial independence.

The article has two features: (1) to make preliminary observations concerning the tension between judicial independence and accountability in establishing and enforcing standards of conduct for the state judiciaries, and (2) to offer preliminary thoughts on the factors that gave rise to the development of the judicial conduct commission, the predominant disciplinary body for addressing misconduct in the state judiciaries. The literature on
factors gave rise to, or encouraged, judicial reform measures during the twentieth century is sparse. These thoughts and observations will encourage further inquiry. Part I described this reform measure and trace the history of its adoption in the states; Part II provided the structural details of this reform measure and examined its adoption and implementation in selected states; and Part III offered observations and conclusions about this reform in the broader context of representative democracy.”

3.55. IAALS, (2009) surveyed on “The Bench Speaks on Judicial Performance Evaluation: A Survey of Colorado Judges” in which “Colorado has maintained a state-operated judicial performance evaluation (JPE) program for appellate and trial court judges. The program serves four purposes: (1) providing voters in retention elections with information about the judges seeking retention; (2) educating the public about qualities and levels of performance expected of judges; (3) recognizing and highlighting the individual and collective strengths of judges; and (4) providing information to sitting judges to help them improve their performance on the bench. While there is widespread agreement that JPE advances these goals, that agreement is based primarily on anecdotal information and informal observation. By contrast, there has been very little empirical analysis of whether (and to what extent) JPE is informing and educating the public, or usefully demonstrating professional strengths and weaknesses to judges.

The survey was the first part of a multi-stage study concerning the effectiveness of JPE in Colorado. It was designed to elicit feedback from sitting Colorado judges regarding the extent to which JPE provides them with useful feedback that can be used for professional self-improvement, and to determine whether the existence of JPE has had any effect on judicial independence and accountability.”

3.56. Stephenson, Mathew, studied on “Court of Public Opinion: Government Accountability and Judicial Independence” in a model characterized by separation of powers and judicial dependence on government and information voters and government and political accountability. The voters force the government to cede powers over the legislative decisions of the judiciary. The public uses it ability “to hold the elected branches of government accountable to enforce a judicial veto when judicial opposition to legislation provides more reliable information to voters than government support for legislation does”. The model provides theoretical justification and suggest that judicial decision is costly for elected representatives. The model demonstrates the pattern of
judicial politics, rubber stamping the government decision and the government passing the buck back to court arises the equilibria in framework

From the above studies, it could be concluded that judiciary in India and all across the world has hairline difference. Accountability is the core of the system in federal countries with strict code of conduct, self-enforced legal and ethical rules, proper management of public funds and assets and effective use of resources. In India, judiciary has no accountability up till now. In India, the Court extended its part in the domain of rights and administration, affirming the ability to nullify established revisions under the essential structure convention, control legal arrangements, and represent in the ranges of natural strategy, observing, and researching government debasement, and advancing discretionary straightforwardness and responsibility. Public has demonstrated disappointment, both during the stage of executive and judiciary hold in appointments.