CHAPTER 5

PROBLEMS AND SOLUTIONS REGARDING MAKING JUDICIARY ACCOUNTABLE
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There are 900 seats available in various higher courts out of which 250 are almost vacant. There are only 15,000 courts functioning all over the country, whereas the sanctioned number is 18,000. In Tamil Nadu, 162 courts do not have sufficient lawyers and Judges. The pending cases in lower courts are 2.68 crores. The biggest problem faced by the judiciary is the burden of cases. The number of pending cases is more in higher courts as compared to district or session courts. The Former Prime Minister of India, Shri Atal Bihari Vajpayee, one lamented that inability of the judicial system to deliver speedy justice is an injustice. There are various procedural improvements require. The Code of Civil Procedure was amended in 2001 and 2002, but it still has scope of improvement for making provisions regarding filing of written statements, expenditure, investigation of the parties, framing of charges and issues, leading of evidence on affidavits and grant of ex-parte injunctions. Two thirds of the backlog consist of criminal cases. There are problems in pre-trial hearings as well as during trial hearings, delays in framing charges, repeated adjournments, unavailability of witnesses, lack of public prosecutor, and problems with police. Someone has rightly said that “an efficient guarantee of justice is easily the most basic human requirement and the most fundamental human right in a system which intend to provide equal legal rights. But who will judge our judges? Is there some mechanism to prosecute our judges in case of a judicial scandal?” Corruption in the judiciary has always been a part of the judicial working, but some recent judicial scandals have created a furore over the deteriorating state of courts. It raises the question of “Who are the judges accountable to?” Since the people do not elect the members of judiciary, it is not accountable to the people. They are also not responsible to other government bodies due to the complex equation of independence and separation of powers. So, have we created a system of democracy where the judiciary is the sole upholder of the constitution but no one holds power over the judiciary? In this chapter, we are going to

look over some problems in the matter of making the judiciary more accountable and provide some relevant solutions for it.\textsuperscript{113}

5.1. A. Problems

5.1.1. Difficult Impeachment Procedure

Article 124 of the Indian Constitution lays the groundwork to establish the Supreme Court of India and appoint the judges. Article 124(4) further enshrines the guidelines regarding the impeachment of judges. It can be argued relevantly that the conditions mandated to seek the impeachment are unnecessarily extreme and is more of a reminder for a bygone era which is losing its relevance today. This section will outline all the problems; both structural and application-wise, in the process regarding the impeachment procedure in the judiciary. Indian Constitution has mandated similar processes for the impeachment of judges for both the High Court and Supreme Court. From now on, the term judges will encompass the judges of both these courts. Our Constitution provides for the complete process of impeachment of judges’ due to the Judges (Inquiry) Act, 1968 and the Judges (Inquiry) Rules, 1969. The impeachment procedure can be initiated by presenting the motion for the impeachment in any one of the houses of the parliament, which is then taken into consideration by the speaker. The house then forms a three-member committee to probe and investigate the charges mounted against the judge(s). After all the investigations and findings of the committee, a report is then submitted to the parliament regarding the same. And in the case of the committee advocating the impeachment motion against the judge, the Parliament will then hold a vote on the matter. If a two-thirds majority of at least half of the total strength of the house favours it, the impeachment of the judges’ motion, then gets sent to the President of India for his sanction. The entire process involves the impeachment of the judge in both the houses of parliament.

Chief Justice Balakrishnan has openly acknowledged earlier, sometime that it was purposely made difficult and arduous by the constitution to impeach a judge to keep maintain the independence of judges from external pressures. Article 124(4) was discreetly framed by the lawmakers of the time to protect the power of the judiciary to resolve any case with complete freedom of expression and regardless of any external political pressure which was a noble activity at that time. The last couple of decades has, however, witnessed an increase in the murmurs of the rising irregularity of the judiciary. Three prominent cases which stand out

\textsuperscript{113}Commission on Judicial Performance http://www.courts.ca.gov/5360.htm
regarding the same are of Justices Soumitra Sen, P. Dinakaran and Justice Ramaswamy, the first such cases in independent India. Many retired justices have commented about a rising percentage of already high indecency in our system with accounts of even asking the judges to resign after in-house investigations not doing much for the reputation of the judiciary too.

The judiciary is finding itself bearing the heat of judicial accountability at present due to both the rise in the number of cases regarding judicial indecency and the new issue of the mandate of the Information Commission of India for the judges to disclose all their assets. The term “Judicial Accountability” has emerged as the latest buzz word on the Indian circuit. The judiciary is finding itself the victim of increased attacks for securing accountability, which the current burdens procedure for the impeachment of judges fails to guarantee or secure. The onerous method for judicial impeachment, although guaranteeing the judges the freedom required to do their work, also provides them with an escape route or failsafe to take liberties according to their wishes or encouragement for corruption without the fear of getting removed from their posts even after being the subject to an investigation or an in-house reporting. The onerous process of impeachment of judges has been just the crust of the deeper problem of judicial accountability.

5.1.2. Contempt of Court powers

Another serious reason for the low answerability of Indian judges is the power of the court to prosecute someone for their contempt. The Contempt of Court Act categorizes the contempt into civil and criminal. Civil contempt signifies the disobedience of any judgement, direction, writ, decree, and order etc. of a court. Criminal contempt on the other hand signifies the publication of any kind or performing any act at all which tends to or does wither lowers or scandalize the authority of any court along with prejudicing, or interfering within the matter of any judicial proceeding. What is surprising is that there is no definite term anywhere for “scandalizing” of the authority of the court which has been exploited many times by the judges to silence all kinds of criticism against them and the judiciary. This power provides the court with a heavy weapon at its disposal making them intolerant to be questioned the same public they are sworn to serve. The concept of judicial independence has been exploited by
some judges to use as a shield and justify the repressing of any questions directed at them by someone.\textsuperscript{114}

Contempt of Court was originally intended to provide the court with power to enforce its decisions and punish any obstruction in justice. But this power has been used freely by the court over the years according to their will. Many countries, including the UK and USA have liberalized the concept to many extents. But India has yet to do that and continues to follow the age-old law made during the British era. The case of Arundhati Roy can be considered as a sad example of how the courts can hold individuals in contempt for even legitimate criticism towards regarding the court’s function by a citizen, even when the action does not impede the dispensation of justice in a democracy like India where the freedom of speech is considered as a fundamental right. The Contempt of Court Act was again revoked in a similar incident named “Wah India Case\textsuperscript{115}” against the Editor-in-Chief of “Wah India\textsuperscript{116}”, Madhu Trehan\textsuperscript{117} along with its four staff members for publishing an article rating the High Court Judges for their various qualities and attributes. Even if this case is considered as bad journalism, the article does not obstruct or hinder the dispensation of justice in any way. It could have been easily handled more suitably by the defamation law. Any Judge who was put on the article could have easily filed a defamation case against the magazine for its actions rather than Contempt of Court case.\textsuperscript{118} Contempt of Court cannot and should not be invoked every time there is a legitimate critique directed towards the functioning of the judiciary. It is bogus and baseless to say that these actions seem to undermine the court’s honour and integrity if no action is taken against them. The courts eventually end up tarnishing their esteem themselves when they invoke the use the contempt power in such cases. Freedom of Expression and Speech\textsuperscript{119} has been granted as a fundamental right by the Constitution of

\textsuperscript{114}Bill to amend Contempt of Courts Act introduced, The Hindu;  
http://www.thehindu.com/2004/12/02/stories/2004120200931100.htm  
\textsuperscript{115}2001 CriLJ 3476, 2001 (59) DRJ 298  
\textsuperscript{116}The magazine Wah-India, was a magazine which published article on judiciary. The Delhi Bar council lawyer’s complaint that the article exposed the judges negatively, without any material evidence and proper verification of the statements. The petitioners opposed that the justice seekers will lose faith from the judiciary and erode the credibility of the institution. The magazine was charged with Contempt of Courts Act.  
\textsuperscript{117}Madhu Trehan was an Indian journalist and founding editor of India today magazine. Presently, she is the co-founder of digital media Newslaundry.  
\textsuperscript{118}https://www.legallyindia.com/the-bench-and-the-bar/opinion-why-it-is-high-time-for-a-reform-of-contempt-laws-20150223-5635  
\textsuperscript{119}Article 19(1) of the constitution enables the citizen with freedom of speech and expression. The law states, “all citizens shall have the right to freedom of speech and expression”. Under Article 19(2) “reasonable restrictions can be imposed on the exercise of this right for certain purposes. Any limitation on the exercise of the right under Article 19(1) (a) not falling within the four corners of Article 19(2) cannot be valid”. The freedom could be expressed in any form – spoken words, writing, printing, images, movie, etc. it is one of the
India. The same constitution, on the other hand, grants the High Courts and Supreme Courts with the power of punishing individuals or organizations for its contempt. These two conditions seem ironically contradictory at best in many cases. Judge passionately upholds the right to freedom of speech and expression in many cases, but has been known to show double-standards when it finds itself at the receiving end of the same. As no one can say for sure as to which law supersedes the other, one argument that is often presented is that the fundamental rights of the citizens is more important and supreme than the perceived independence of the judiciary. There is an urgent need to reconcile both laws somehow as soon as possible.

There is an urgent need for serious reforms for the concept of contempt of court. The Supreme Court along with other courts must realize now that freedom of citizens supersedes personal and individual egos should start invoking the Contempt of Courts Act in a more liberal manner. Discussions, debates, opinions, and awareness are some important components of a healthy and functioning democracy and are crucial for the progress of a nation. It is completely unacceptable in a democracy for jurists, media, and other citizens to remain silent due to the power of contempt granted to the judiciary. The judiciary needs to earn its respect through the justice it delivers, not the fear it entices.

5.1.3. Exemptions from RTI

One of the major hurdles in the way of judicial transparency in our country is the reluctance of the courts to come under the radar of Right to Information (RTI) Act, 2005. RTI Act grants any citizen of India the right to seek information from a government body about its functioning with some conditions and exceptions wherever and whenever required. The Act gives into the hands of citizens a special tool to identify and fight corruption in the system by granting them access to the public information making the entire system almost transparent. Some departments of the government have been granted exemptions from the Act under Section 8 of the Right to Information Act, 2005. and one such exception has been granted to the judiciary of the country, in part (b) of the point 1 under section 8120.

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fundamental rights. The phrase “speech and expression” used in Article 19(1) (a) has a broad meaning – “This right includes the right to communicate, print and advertise the information”.

Part 1 of RTI withholds certain sensitive information from public. If the information is likely to pose a threat or violate trade secrets, such information must not be declared by the public authority. These exceptions are found in section 8 & 9 of RTI 2005. Section 8 lays down certain exemptions which are subject to a public interest test. The public authority decides whether disclosing such information could increase public interest or withholding the information. In the RTI of 2005, there is no definition of the term public authority. Some exemptions laid down in Sec. 8 of RTI Act, 2005 are categorized into three classes:

a. **Class exemption** - Section 8 [1] (b), (e), (f), and (i) exempts the public authority to demonstrate any harm, but the information is exempted under the aforesaid clauses.

b. **Prejudice based exemption** - the prejudice is not defined and therefore argued. Less prejudices have higher chances of getting the higher public interest and disclosure of information in favour is questionable. Therefore, prejudices are to be decided on a case to case basis. Section 8 [1] (a), (c), (d), (g), (h), and (j) contains those exemptions.

c. **Time limit exemptions** – section 8[3] imposes time limit exemptions. Section 8 [1] (b), (d), (e), (f), (g), (h), and (j) have time limited exemptions, which are not over after 20 years from the date of record.\(^\text{121}\)

**5.1.3.a. Exemptions from Disclosure**

(1) Under Section 8 of this Act, no obligation is there to give any citizen:

a) “disclosure of information which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific, or economic interests of the State, relation with foreign State or lead to incitement of an offence;

b) Information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

c) Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

d) Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

\(^{121}\)Exemptions from disclosure of information under RTI by Deoul Pathak: http://www.legalserviceindia.com/article/l345-Exemptions-from-disclosure-of-information-under-RTI-.html
The Act puts a cap over the disclosure of any information which the court considers as its contempt, and repeatedly this provision has been invoked by the judiciary to exempt itself from the range of RTI all these years. It is quite ironical as the judiciary has been known to advocate the information disclosure system for a long time before even the concept of RTI was established in India. The judiciary, although welcoming the Act, has been known to try to dodge it every time someone demands an information from it under the Act. This kind of double-standard not only tarnishes the image of the judiciary, it also shakes the people’s confidence on the judicial system of the country. Bringing the judiciary of our country under the RTI Act does not hamper their functioning or delivery of justice in any way. Their reluctance to come under RTI despite being one of the most powerful elements of democracy,
not only hampers their transparency, but also raises questions over the attitudes of the judges handling and running the judiciary of our country.

Many voices have been raised in recent years over bringing the judiciary under the RTI Act as the citizens of the country has the right to know that the judgements given by our judiciary are completely just and unbiased. Exceptions and conditions are put wherever required. Revealing information does not hamper the process of delivering justice in any way, so there is no excuse of keeping the judiciary from one of the major rights granted to the citizens of the world’s largest democracy. It is an initiative that should be taken by the judiciary itself, which will lead to an increase in confidence of people over the judicial system of our country.


It is the Judges Inquiry Act of 1968 which lays down the full procedure to be followed for the impeachment of judges in our country. As mentioned earlier, the whole procedure is onerous and requires a long time, energy, and resources. The bill also grants many liberties along the way of the process which makes it more difficult to impeach a judge even after he is found guilty by the investigation committee. One such example can be taken of Justice V. Ramaswami in May 11, 1993. A motion for impeachment was established against the Supreme Court Judge, Justice V. Ramaswami. and despite the removal motion has passed unanimously by the members voting on it, the motion failed. So, in the end, despite the conclusion reached by the inquiry committee consisting of three distinguished judges that Justice Ramaswami was in fact accountable for several acts of dreadful misbehaviour warranting his removal, the judge could pass judgement and deliver so-called justice sitting in the highest court of the country. Although the judge was convinced by the Congress (I) party (the majority party at the time) to retire even after the failure of motion, it had borne the grunt of the public and several lawmakers for having supported a corrupt member of the judiciary. The motions failure highlights several critical issues for the justice administration system of the country, especially after the intricate course the entire process went through. It did a job of lowering the confidence of the public in both the parliament and the judicial system of the country.

In 2006, a new bill regarding the judicial accountability was introduced in the parliament. It was called as the Judges (Inquiry) Bill 2006 and was intended to replace the older Judges Inquiry Act 1968. The bill saw its introduction on 19th December 2006 in the Lok Sabha.
It can be called a shame only that such a major judicial reformation bill could not make it through the parliament and ultimately lapsed in both the houses of the parliament. It shows the willingness of our present law makers over such reformation which are badly needed in the current judicial scenario of our nation.

It is high time now that the obsolete Judges Inquiry Act of 1968 is replaced with a more robust and effective law for prosecuting the corrupt judges sitting in positions of power in our judiciary. Only then can true judicial reforms will be able to be achieved by our judiciary. The initiative must come from both the parliament as well as the the Supreme Court for such a change.

5.1.5. Judicial Activism

Judicial activism means that the judicial decisions that have been passed by a court has been passed based on personal preferences or opinion instead of based on law or general perception. The term can be called as an acronym to the term judicial restraint. The definition of the term judicial activism and the decisions which can be considered under it are highly controversial issues in politics. The whole matter of judicial activism is highly debatable, and is continuously pondered upon by various sections of the society. Judicial activism has done both good and bad for the judicial system and the country. Judicial activism is not something limited to or found especially in India only. It can be seen prominently in many other nations too, particularly in the US and Israel. On the one hand, it allows the judges to pass judgements by departing from the conventional standards in favour of more progressive and modern social policies. On the other hand, it also motivates judges to give preference to their subjective opinions while passing a judgement that may require an unbiased opinion on the matter. The “judicial activism should not lead to the dilution of separation of powers” as said by the Pranab Mukherjee, the former President of India. In the case of Ram Jethmalani, the Union Government filed a petition before the judiciary to investigate his case of black money. The judiciary appointed two former judges of the Supreme Court as the Chairperson of the Special Investigation Team (SIT) and another retired judge as the Vice Chairman. The investigation was done by police, but the report would be submitted by SIT to the judges. The inclusion of two or more retired judges does not mention anywhere how and why they will influence the investigation. The only justification given was that the judiciary does not have time to monitor the investigation, and so two former judges have been appointed. The judiciary castigated the neo-liberal economic policy which led to the growth of black money.
and invidious inequality. The judges are apolitical and they interpret the laws within the mandate of the constitution. In the case of black money, the judiciary has overstepped the ground to protect the fundamental right to equality (Article 14) and right to life and personal liberty (Article 21). The doctrine of the separation of power roots in our constitution. The judicial activism issue is a very complex and controversial one and is inter-mingled with constitutional interpretation, legal comprehension along with separation of powers. Though the term is completely opposite to what is called judicial restraint. It is often argued by some that judges should be bolder while deciding on cases. Some are of the view laws are better enforced when applied after interpreting it based on current changes in the conditions of societies along with its values. Some members of society are of the view that with the changes in the values and beliefs of the society, the courts should be making decisions and passing judgements reflecting those changes in the society. Judicial activism is based on the basic notion that judges ought to utilize their abilities for correcting injustices at a time when the rest of the government bodies are failing to do the same. To put it simply, the courts should be playing a more vigorous part in framing the social policies on issues like individual rights protection, civil rights, public morality, and unfairness in politics. But while such arguments hold weight, the problem arises when the judges start taking liberties of the concept and pass judgements as they seem correct even on matters which require complete impartiality on their side.

Judicial activism is listed as a problem or obstacle in the way of judiciary reforms in India only when the courts exploit them to pass judgements based on their opinions unnecessarily. There have been instances in the past where courts have passed decisions which interfere, sometimes unnecessarily, with the working of other branches of the government. This leads to confusion in public over the definite version of the decision and undermines the authority of the concerned government body. While it has been beneficial sometimes, it has been unnecessary and a little excessive some other. Framing a definite guideline regarding judicial activism can be a great initiative in tackling this problem and making judiciary more accountable. The judicial activism implies the “use of the court as an apparatus for intervention over the decisions of policymakers through precedent in case law.” In such cases the role of judges shifts from the traditional “interpretative” role to a model by which

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judges makes law encroaching the doctrine of separation of powers which forms the bedrock of the Constitution when judiciary strikes down a law as an “activist” it places the primacy upon the constitution putting aside the view of legislature and executive. Article 21 states: “No person shall be deprived of his life or personal liberty except according to procedure established by law.” In the case of “A.K. Gopalan v. State of Madras”\textsuperscript{124}, the judiciary rejected the plea that “to deprive a person of his life or liberty not only the procedure prescribed by law for doing so must be followed but also that such procedure must be fair, reasonable and just.” The due process clause in Article 21 was omitted from the constitution. However, in the case of “Maneka Gandhi v. Union of India”\textsuperscript{125}, the requirement of due process was introduced in Article 21 by judicial interpretation. Thus, the due process clause omitted by the constitution makers was introduced by judicial activism of judiciary. One more ground of judicial activism begun when it interpreted the word “life” in Article 21 which means “not mere survival but a life of dignity as a human being”. In the case of “Francis Coralie v. Union Territory of Delhi”\textsuperscript{126}, it was held that the right to live is not confined to mere survival. The judiciary held that:”….the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and comingling with fellow human beings. ”Thus, the judiciary held that there are right to food, right to fair trial, right against sexual harassment, right to health and medical care, right to legal aid, right to minimum wages etc. which has been ruled to include in Article 21. The plethora of rights emanated from Article 21 because of the judicial activism of Supreme Court Judges.

5.1.6. Others

While the above-mentioned factors present major obstacles in the way of making judiciary more accountable in our country, they are not the only ones. There are many other obstacles and hurdles, problems appearing in the way of increasing the accountability of the judicial system. The judicial system is always criticized for being very slow in making decisions, corruption in lower and upper orders, a complete lack of transparency and no interaction with the common public at all. Some of those problems are listed below -

\textsuperscript{124}AIR 1950 SC 27
\textsuperscript{125}AIR 1978 SC 597
\textsuperscript{126}1981 AIR 746, 1981 SCR (2) 516
• **A Logjam of cases pending for ages**: India has the distinction of having the largest number of accumulation of pending cases around the world with an astonishing 30 million cases pending in all the Courts. Over four million of such cases belong to the High Courts around the country and 65,000 of them belonging to the Supreme Court. The amount keeps on increasing even as this line is written. This demonstrates the gross insufficiency of our legal system. Demands have been raised to create more courts and increase the number of judges, but these recommendations rarely get implemented. This affects the poor and common people mostly as rich people have the ability for affording expensive lawyers and even get the whole judgement in their favour. This backlog of pending cases leaves many detainees who are awaiting their trials as prisoners in jails for years. It also discourages foreign investments and businesses to arrive in India. A report indicates that in Mumbai only, the courts are loaded with hoary land disputes hurting the industrial development of the financial hub of India.

• **Under trials sufferings**: Most of the prisoners in prisons are under trials, meaning they are awaiting for the conclusion of their trials while in prison, and in most such cases, those prisoners wind up spending more time in prisons than they would normally have if the decision turns out against them after the completion of the trials. The agony, pain, and expenses of going through the trials are far worse than serving the verdict. No one is considered guilty unless proven. Then there is also the issue of rich people getting the police on their sides and then harass and threaten the poor or underprivileged people into silence and thus often changing the decision in their favour.

• **Lack of interaction with the public**: In a democracy, it should be considered essential that the judiciary function as an integral part of the society. and thus, the members of the judiciary must interact with the members of the society on a relevant and regular basis. Involvement of common public can be observed in many nations in the working of the judiciary. In India, however, there is no such connection between the judiciary and the public. This has been inherited from the British-era judicial system in our present judicial framework. No initiative was taken by either the legislature or the judiciary to change this all these years. The judges have not come closer to the citizens of the country even today which is very unfortunate.
• **Corruption**: The judiciary of our country can be considered as equally corrupt as any other institution or department of the government. The huge number of scams in the country such as the Adarsh society scam, the 2G scam, the CWG scam along with rape cases and other crimes in our society has exposed the conduct and mentality of our politicians and other public personages, including our citizens, while also emphasizing on the downsides of Indian judicial functioning. There is a lack of accountability and our media do not help to present a clearer picture of the situation either fearing the power of contempt. In India, one cannot register an FIR against a judge without the consent of the Chief Justice of India. That shows the gravity of the situation.127

5.2. **B. Solutions**

The judicial accountability campaign had started to improve the efficiency of the judiciary which came up with suggestions to clear the backlog of cases. The judicial delays have shed light on the fact that the strength of judges should be increased to clear the pending cases. All the judicial stakeholders must work efficiently together to make the judicial system fast by cutting down vacation times and making provisions for video recording of the proceedings which will help to reduce time for the litigants in getting justice. The judiciary must be fast and active. The proceedings must dispose the case within a specified time. Adjournments of cases should be less and the judges’ performance must be judged based on their verdict and efficiency of working. Computerization of cases, maintaining digital records, and modern technical management has to be introduced in the judicial system. Criminal justice would be effective if the cases are disposed of quickly. The pending cases in the courts, including special courts and lower courts have been too high. The retired judges based on their reputation could be appointed on contract basis to reduce the pendency of cases. An alternative judiciary as administrative tribunal could be initiated. To increase efficiency of the judiciary some of the proposed solutions are mentioned below:

5.2.1. **Restatement of values of judicial life: Code of conduct**

A judiciary is considered as the guardian of the constitution and rights in a democracy. And so, it cannot be above public accountability. Justice S.H. Kapadia, Former Chief Justice of India once advocated that judges should adhere to ethical morality and code of ethics just like

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any other person too. Many eminent legal personalities of the country such as Former CJI S. Venkataramaiah and Justice D.A. Desai along with Justice Chinnappa Reddy\textsuperscript{128} have advocated the judiciary to be accountable just like any other sections of the society. It is important to remember that each of the advanced democratic countries has developed their own form of judicial accountability. And it is high time this is done in India too, either with the setting up of a National Judicial Council or a grievance redressal commission/forum. Judicial accountability does not hamper judicial independence if implemented properly. And judicial accountability helps to create more public confidence in the judicial system enhancing their workability. The concept of judicial accountability can be better implemented by laying down a code of ethics which must be adhered to by all the judges in our judiciary. Some of the general ethical standards required to be observed by the judges have been highlighted in chapter 1 under the heading 1.2

5.2.2. National Judicial Commission

Setting up a National Judicial Commission is a very urgently needed step towards judicial accountability in our country. One can say that the time has already come for a major reformation regarding making judiciary accountable to the citizens in our nation. There have been various calls regarding setting up an NJC in our country to consider the important judicial matters such as the appointment of judges, managing the code of conduct of the judges, taking and responding to any complaints regarding any judge or other member of the judiciary, investigating the reports of misconduct against a judge and recommending actions to the parliament against them if found guilty. A single commission can replace most of the obsolete system regarding the handling of the functioning of the judiciary in our country. Various calls and attempts have been made towards this, although nothing concrete has ever come out of it.

The striking of NJAC Act 2014 even after the passing by the parliament can be taken as an example of the seriousness with which such issues are taken up by our judiciary. The main reason for the failure of NJAC Act is the rejection of the bill by the Supreme Court on the grounds of their unwillingness to let political parties and personalities involve in the selection and appointment of judges. Their opinion is based on the grounds of a reduced judicial independence and an increased chance of favouritism if political parties can take part or interfere in the appointment of judges. While this argument holds weight, it does not provide

\textsuperscript{128} O. Chinappa Reddy was a judge in Supreme court.
any grounds for refusing to set up a judicial commission for handling the matters of the judiciary in our country. A judicial commission without involving any political personalities could be set up for ensuring judicial independence as well as judicial accountability. Many advanced democracies around the world have a well-established set-up handling the matters of the judiciary in their country while trying to bridge the gap between the judiciary and common public. Being the largest democracy in the world, India needs to have a system like that too. While the current older systems are inadequate for the judiciary, it does not reflect the changes in the society in all these past years and it is not framed to tackle the rising corruption in the system. A National Judicial Commission can perform all the following functions concerning the judiciary-

A. Appointment of Judges

The commission can consist of the Chief Justice of India along with some other higher-ranking judges of the Supreme Court and High Courts of the nation. The commission can handle the responsibility to appoint the judges on a regular basis whenever required.

B. Entertaining Complaints against Judges

People can contact directly to the commission in case they want to report a complaint against any judge or other member of the judiciary. In short, the commission can act as the grievance redressal forum for the judiciary.

C. Investigating the misconduct against Judges

The commission can investigate any reports of misconduct against any judge and recommend appropriate actions against him in case the judge is found guilty of the charges against him. The committee can also recommend the impeachment of the judge to the parliament if it is found to be necessary.

5.2.3. Judicial Standards and Accountability Bill, 2010

India has witnessed an extraordinary rise in the last two decades, but this rise has been marked by distrust into the major institutions of the country with a doubt about their future too. Even though the judiciary is considered the strongest component of the nation, but has found itself affected by many problems. The working of judges in recent times has come under intense scrutiny and doubt due to the conduct of some judges in recent times. The call for an increased accountability in our judicial system has been louder than ever at present.
and it was due to this that the parliament introduced Judicial Standards and Accountability Bill, 2010. Although the intention can be good, the bill at a first glance seems more like a retort to recent events and has been criticized to be undermining the independence of the judiciary in our country. The bill recommends setting up a new procedure for registering a complaint under which any person can file a complaint against a Supreme Court judge in writing. and after the filing of the complaint, a Judicial Oversight Committee holds the power for either dismissing the complaint or referring it to the parliament, advising them to remove the judge or issue other warnings, advisories, or recommending voluntary retirement.

Matters regarding judicial standards must be viewed in the setting of Article 124(4) which lay down the impeachment procedure for a judge if they are found to be guilty in any charge against them. Article 124(5) grants the parliament power for making laws only regarding regulating the presentation process for the discourse of the impeachment, investigation along with proof against the judge for incapacity. The Judicial Standards and Accountability Bill 2010 strive for laying down some enforceable code of conducts for the judges. The bill also asserted the judges to give the details of their and their family members assets along with liabilities. It also recommends for creating an efficient mechanism to let a person file a complaint against any judge regarding any case of misbehaviour or failure.\footnote{Judicial Standards & Accountability Bill, The Hindu: http://www.thehindu.com/opinion/lead/Judicial-Standards-amp-Accountability-Bill/article14966449.ece}

5.2.5. Key issues regarding the Bill

- A major issue over the bill is regarding the equation of judicial independence and judicial accountability. Arguments have been put forward regarding the independence of judiciary after the inclusion of non-judicial members into the committee.

- The bill has provisions for penalizing the persons who breach the privacy of the complainants. There is a debate whether penalizing frivolous complaints which remain secret is necessary or not.

- The bill appoints judges from the same High Courts into the Scrutiny panel. It differs from the in-house process of the Supreme Court.

- The bill has provisions for appointing non-judicial persons into the Oversight Committee while the Committees procedure is also different from the traditional in-
house procedure of the judicial system here. There is debate regarding the constitutional validity of some of the measures recommended in the Bill.130

5.2.6. Judicial restraint against Activism

The terms, “Judicial activism” and "judicial restraint" are utilized for describing the decisiveness of the judiciary. The usage of the terms indicates the comparative boldness of either courts or judges amongst two theoretic extremes. One extreme denotes judicial activism and refers to such an interfering and pervasive court which ends up dominating all the other government institutions. On the other extreme is a court which does not make any strong decision at all and strains to find reasons for its lack of jurisdiction. Such a court admits respect for the authority of other government departments for the interpretation of law while listing out limitless reasons for not examining the constitutionality of the law. It can be said that judicial activism and judicial restraints are opposite to each other in concept, motivation, and viewpoints towards judicial decisions. In a simple language, judicial activism denotes a decision-making process the essence of law and the changes in the society are considered while judicial restraint banks upon a precise explanation of the law and based upon legal patterns. Judicial Restraint in theory encourages the judges in a judiciary to regulate the employment of their own authority. This theory emphasizes that judges should refrain from striking down the laws, lest their unconstitutionality is assured of. Judges following this theory respect the principle of stare-decisis and maintain the conventional precedents passed down from previous judges.

As mentioned earlier, “Judicial Activism” is frequently sighted as the opposite of the term “judicial restraint”. It is a vibrant manner for judicial viewpoint in an ever-changing society. The term “Judicial Activism” was coined by Arthur Schlesinger Jr. in 1947 in his article in Fortune magazine titled as "The Supreme Court: 1947". Judicial activism, in the words of Black's Law Dictionary means a judicial philosophy inspiring the judges to let go of the established conventional patterns and adopting more liberal and modern social guidelines. The making of laws in recent years has taken on new extents due to the judicial activism of judges. A healthier trend has been adopted by the judiciary for the interpretation of law in newer social context. Judicial activism, on the other hand, also refers to decisions by judiciary alleged to be either biased or based on their own political or personal reflections.

rather than law. The Constitution of India has not mandated the judiciary as superior to the legislature or even a substitute to the other government bodies. There is a need, therefore, for the judiciary to apply some limitations in its functioning. The case of “State of Rajasthan v Union of India” can be taken particularly, for example, of judicial restraint where the court rejected a petition based on its involvement of a political angle and therefore, the court showed reluctance to indulge into the matter. In “S.R. Bommai v Union of India” case too, the judges make it clear that judicial review is not possible because of the dominance of the political element in the case. Exercise of power under Article 56 was considered a political dilemma and the judiciary refused to interfere. Ahmadi J. held that there was a difficulty in developing judicial norms for scrutinizing every political decision and the interference of the courts would denote them entering the political covert while also questioning the wisdom of the politicians.

In the case of “Almitra H. Patel Vs. Union of India” over the issue of providing directions to the Municipal Corporation for cleaning the city of Delhi, the Supreme Court held restraint and refused to direct the corporation over the execution of their basic functions and resolving their complications. The Court made it clear that it could provide directions to the establishments only for carrying out their duties according to the provisions mentioned in the Constitution of India or other laws.

5.2.7. Amendment of Contempt of Court Act

As mentioned earlier, the power of Contempt of Court has been invoked by the courts in some instances where the criticism directed against the court was not hampering the dispensation of justice in any way. Such instances have led to the rise of call for the amendment of the Contempt of Court Act. Even Supreme Court has recently joined these calls and has emphasized on the need to change the Act so that judges do not take much liberties or exploit the laws to dodge criticism against them.

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131 1977 AIR 1361, 1978 SCR (1) 1
132 1994 AIR 1918, 1994 SCC (3) 1
133 (1998) 2 SCC 416
Justice D.V. Shylendra Kumar\textsuperscript{135} of High Court of Karnataka mentioned that although there has been a sharp decline in the reputation of the judiciary in the country because of exposed corruption in the judicial system, the judges of the courts continue to abuse the power for the contempt of court in a bid to voice down criticism and provide cover up to their own misdemeanours rather than upholding the law. Constant endeavours by the Courts to remain out of RTI’s reach further downgrades the judiciary’s image in the minds of the society. RTI Act was introduced for ensuring greater transparency in the functioning of the components of the government. But such a notion would become completely successful only when all the organs of the democracy achieve this transparency; the three organs being legislature, the executive and the judiciary. Article 19(1a) states that Constitution gives the freedom of speech and expression to all the citizens. but Article 129 and 215 grants the higher judiciary with powers to punish under Contempt of Court Act. People have the right to criticize judges, but at the same time they should not make the functioning of the judiciary impossible.

Our bureaucracy has faced continuous criticism for being hallowed in secrecy most of the time (all the time) and the commissioning of the RTI Act proved to be of immense help in shining some light over the working of our judiciary and exposing the corruption in the system. Many eminent law personalis also agree that contempt of court and sub-judice are two of the biggest hurdles confronting the discussion of the bringing of the judiciary under the RTI Act. Both the above-mentioned terms are the spit-over creations of the British era judicial system which were put up to help the Britishers maintain control over the public and the judge was considered as the umpire between two parties. Many experts point that the arrival of Public Interest Litigations (PILs) would make the concepts such as the ones mentioned above more irrelevant in today’s judicial context. The power of Courts to punish individuals or organizations for the contempt of court is a draconian tool in the hands of the judges without appropriate protections in place for the individuals charged with such allegations of contempt of the court. It is really a high time such obsolete and draconian laws/powers to the judiciary are amended and brought in the terms of the modern society and conditions.

A recent example in this regard is the case where the Supreme Court of India sentenced Shri M.V. Jayarajan\textsuperscript{136} of CPI (M) for four weeks in prison over the contempt of court. Mr.\textsuperscript{135}Known as “rebellious and bold” Judge of Karnataka High court. He was the second High court judge to declare his assets public. \textsuperscript{136}Secretary to Chief Minister.
Jayarajan had criticized the judgement of the court during a public speech in 2010 by the Kerala High Court, which banned the meetings and gatherings on the public roads for ensuring smoother traffic flow. He was found guilty of contempt by the High Court and the decision was upheld by the Supreme Court, which just reduced the sentence from six months to four weeks. The judgment was controversial to say the least as it was an attempt by the judiciary to immunize itself from freedom of speech and fair criticism. The law of contempt has been continued in our country after independence despite the law being a British legacy in the country. This has caused resentment among citizens, media persons, authors, journalists and even politicians. The need to amend the law is greater now than ever as the extent of corruption was not so much earlier as it is today and the presence of such laws gives into the hands of those corrupt judges a tool to counter criticism and investigations.

5.2.8. Role of Media

Media is often termed as the fourth pillar of democracy. In the past, the media preferred to remain silent against judiciary most of the time due to the fear of power of Contempt of Court Act, but the amendment of the Act in 2004 instilled some vigour into the media and they got the sense that their freedom of speech and expression cannot be invaded even by the judiciary including the Supreme Court of India. While there is no argument that our media is not free from problems and an ideal institution, it must be given credit for its positive features too. One instance showing the positive might of media is the role it played in the investigations of the Jessica Lal murder case. It was incredible the way our media helped in bringing out the truth in the case and getting justice for the victim. The negative facets of media can be overcome by establishing and adherence to some code of ethics for media and media persons with them taking their missions for bringing out the truth more honestly and vigorously.

Despite its negative aspects, there have been many instances where the media have played a prominent role in instigating revolution in the society. Many journalists have laid down their lives for bringing out the truth and exposing the wrongdoings in the system. Media is one of the most powerful components in a democracy, especially in the modern world due to their reach and influence. The advent of social media has multiplied their reach to manifold. And thus, media can also play a prominent role in making the judiciary more accountable in our country. Media can help by performing their own investigations and bringing out the

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137Jessica Lal was a model and barmaid in Delhi when she was shot dead by Manu Sharma, son of an eminent Congress leader. Due to media and public pressure, the case was prosecuted on fast track with daily hearings. The trial found Manu Sharma guilty of murder and sentenced him to life imprisonment.
corruption in the judiciary forcing them to install more robust mechanisms or changing their way of functioning. Media can help in the cause by helping to form public opinion and create awareness over the issue by bringing out the wrongdoings in the judiciary. A media need to be bold in its approach in a democracy. Media holds the responsibility of maintaining the pillars of democracy and society. Media has already proved its worth in initiating social reforms and political revolutions during the emergency declared in 1970s. At that time, the media played a critical role in rallying the public against the tyrannical rule of the government and forcing the government to take necessary actions towards reinstalling the democracy back in our country’s system. If the media can do such thing in that era without the existence of any digital or social media, it can do the same in modern times too.

Judiciary is considered as the most important pillar of a democracy as it holds the responsibility to keep a check on all the other components of the government, maintain the law and order and the rule of law in the country and ensure the delivery of justice to each citizen of the nation and thus, it is critical that the judiciary is answerable to the citizens as it is them they serve and the media, along with NGOs can take it upon themselves to help ensure such accountability is instilled in the roots of the judiciary to curb the increasing corruption. Many former judges have advocated to increase transparency in the working of the Supreme Court to ensure people’s confidence in the judiciary. The first step towards it can be the introduction of RTI Act in the judiciary, but such step finds vigorous opposition from the Supreme Court itself and it would need a sort of revolution to make it a reality for the courts to come under the umbrella of RTI Act and who better to start a revolution for reformation than our media? It has done it in the past, it can do so in the present and future too.

5.2.9. Role of NGOs

Just like the media, NGOs can play a prominent role too for making judicial accountability a reality in our country. It wields considerable influence and power in a democracy. It is like pressure groups which either negotiate or put pressure on the government bodies to make the government listen to and act on some social problems concerning some section(s) of the society. They take up a wide variety of issues such as humanitarian, social, environmental, human rights, healthcare, political and much more to influence change or reforms needed in those areas. NGOs are non-governmental, non-profit, and voluntary group of individuals who are organized at local, national, or international level to bring social reforms and revolutions.
And like what they do in other fields, they can make it their mission to bring and effect changes in our judicial system and Courts too. A recent survey has revealed that people around the world consider judiciary as the second most corrupt institution after the police. While the validity of this can be argued upon, it is not wrong to say that the judicial system in our country has witnessed a rise in corruption and misbehaviours in recent years. Many people have started raising demands for bringing about some reforms in the obsolete judicial system of the country, but those voices have been irregular, disorganized, and fearful to say the least. Many people are scared to criticize the courts openly due to the fear of the power of contempt of courts as mentioned earlier. But the arrival of NGOs into the scene could provide organization to those voices and force the judiciary and our courts to listen to them and consider their demands seriously.

Till date not a single NGO is prosecuted since 90% of them belongs to politicians and bureaucrats. Recently, lakhs of NGO and voluntary organization’s accounts were scrutinized under the order of Supreme Court judges, which received crores of public funds and take civil and criminal actions if the grants are misused\(^ {138} \). NGOs pressurize government into taking concrete steps for making guidelines and laws regarding the accountability of judiciary making it easier to detect and punish any cases or corruption or incapacity. Similarly, it puts a pressure on the courts and judges to accept these reforms for the betterment of the judicial system and our society and democracy. Courts in India, including the Supreme Court, have been known to tackle or dodge any attempts of a serious reformation in the judiciary system in the past and are showing no change in its attitude in this matter. It becomes the responsibility of the citizens of the country to make the courts accept these changes. High Courts and Supreme Courts are established along with all the other courts to serve and provide justice to the citizens of India only. People put their complete faith and trust in the judicial system whenever they feel their rights are being violated. It becomes necessary, thus, that our courts become more responsive to the problems concerning their own department, which is considered as the most important pillar of any democracy.

NGOs in recent years have tried to point out the problems regarding the working of the judiciary and have even provided some solutions for that. Some issues regarding judicial reforms that are raised mentioned below -

\(^ {138} \) TOI, Decision in 4 weeks on new law to regulate NGOs, their funding: Govt2017: https://timesofindia.indiatimes.com/india/decision-in-4-weeks-on-new-law-to-regulate-ngos-their-funding-govt/articleshow/59569189.cms
(a) Corruption in the judicial system

(b) Weaker governance in judiciary

(c) Absence of laws for governing the judges and law officers

(c) Inadequacy in the number of judges and lawyers

(d) Lesser salaries of many judges and prosecutors

(e) Obsolete laws for the governance of the judicial system

None of these issues or problems is new and has been raised since time unmemorable. Yet the courts have found a way to dodge them on the grounds of judicial independence and constitutional validity. It will be better if the NGOs start organizing public and create awareness over the problem concerning judicial accountability and create an environment where our judges are forced to initiate and affect reforms in their system for the benefit of democracy and the people of India they are sworn to serve.

5.3. Law Commission report no 230, August 2009

The law commission of India in its 214th report recommended the reconsideration of the Supreme Court judgments of 1982, 1993 and 1998 which lent pre-eminence to the judiciary in judicial appointments for bringing consistency and lucidity in such appointments. The commission, under the chair of Justice A.R. Lakshmanan restated this recommendation in its 230th report for the judicial reforms. The report pointed out the fact that the Chief Justice in every High Courts is from another state in accordance with the Government of India’s policy. The judges forming the Collegium are also from the outside of the states regarding the selection of the Chief Justice. The result of all this is that the judges comprising the Collegium are not acquainted or well-versed with any of the candidates’ names or credentials and this leads to the appointments suffering from a dearth of relevant info about them most of the time. The report presented the government with two alternatives as per the 214th report of the law commission. The first one was to reconsider the three judges’ cases

139Proposal for Reconsideration of Judges cases I, II and III - S. P. Gupta Vs UOI reported in AIR 1982 SC 149, Supreme Court Advocates-onRecord Association Vs UOI reported in 1993 (4) SCC 441 and Special Reference 1 of 1998 reported in 1998 (7) SCC 739, Published on Nov 2008.
140Arunachalam Chettiar Lakshmanan, is a former Judge of Supreme court.
established by the Supreme Court. The second one was to pass some laws which re-establish the prevalence of the Chief Justice of India and the executive branch of the government in appointing the judges. The Commission presented its report after considering the parliamentary standing committee on Law and Justices opinions and stance. The recommendation for scrapping or amending the present Collegium system came after that only. The Commission put weight on the fact that the Chief Justice’s position is not transferable. The policy of transferring of the Chief Justices was recommended to be given up in the report for improving the functioning of the High Courts. The report emphasized that the Chief Justice will be in a better position for controlling the lower judiciary and elevating the High Court from Bar Council and Bench’s co-operation. The report mentioned that such a move would also help to curb excessive delays for filling up the High Court vacancies. The report also recommended avoiding the appointment of judges in a High Court having their family members practicing in the similar High Court. It said that the move will help to curb the concept of “Uncle Judges”.

The Commission in its report showed agreement with the suggestions put forward by the Supreme Court Judge Justice A.K. Ganguly142 in his article published in Halsbury’s Law Monthly of November 2008 on the topic of judicial reforms which recommended for considering the confounding debts and curtailing the number of vacations for the higher law, persons by at least 10 - 15 days while also increasing the working hours of courts by at least 30 minutes. Justice Ganguly in the same article emphasized on the need of a speedy judgement by the judges to save precious Court time and deliver on the concept of timely justice. There is a prevailing concept in the judiciary, “Justice Delayed is Justice Denied! The report puts another recommendation regarding providing opportunities to the judges of the High Courts and Supreme Courts for attending seminars and conferences over legal issues in foreign lands to shape their perceptions over legal issues and help them in adopting the idea of judicial liberalization. The report is famous in the legal society of India for recommending some sweeping reforms for making judiciary more accountable in India. Let’s go over the recommendations of the Law Commissions reports one by one with some details -

5.3.a) Increase in number of days

Keeping in view the number of pending cases and the amount of new cases reaching our courts every day, there is an urgent need in increasing the number of working days for all the

142 Justice Asok Kumar Ganguly, a Judge of the Supreme Court
courts in our country. If one looks at the Supreme Court's calendar, he would find that the Court has only around 176 working days. The number of holidays thus, 189 days in total, exceeds the number of working days for the court. So, the Court does no work for more than half of the year. The holidays comprise of around 105 Saturdays and Sundays only, then an almost two-and-a-half-month vacation for the summer, 15 days of vacation in the winter along with other holidays which range from days to weeks. All these despite an ever-increasing number of pending and backlog cases. Senior Advocate points out that the highest court in the US cannot have more than 3 or 4 months of holiday even the judges there does not have to resolve even 150 cases annually.

Our judicial system is following the British-era system of having a more-than-two-month long summer vacation even after all these years since independence. Such kinds of holidays can even bore a school-going child to death. That makes the calendar of the Supreme Court having more breaks than even a private school where the Dusshera holidays are normally a couple of days long only with their Diwali break consisting of a week or two weeks at maximum. The individual judges are entitled to their own holiday quotas even after such a staggering number of breaks, vacations, and holidays. The judges get these full-paid or half-paid numbers of holidays depending upon the number of years they have served in the court. The legacy of such lengthy vacations continues the Courts despite the increasing quantity of backlog and pending cases. A recent Department of Justice data revealed that while the number of backlog cases for the Supreme Court was shot down from a staggering 104,936 in 1991 to 19,806 in 1998, the numbers are on the rise again. The number of pending cases reached around 29,000 by the end of 2006 and the number increased again to a standing 45,290 by the end of October in 2007. While everyone agrees that the judges also have the habit of working on cases in their homes and cabins outside the court too (sometimes judges take times off their vacations for work), the Courts must take initiatives for putting a check on the rising number of backlog cases and reducing the number of off days for the judges keeping in mind the benefits of the common public expecting and waiting to be given justice by these Courts. While no one is raising doubts over the abilities of our honourable judges, some initiatives must be taken for increasing the efficiency of our judicial system and making it more accountable.
5.3.b) Speedy Justice

Justice delayed is justice denied! We have heard this quote many times. It is a common quotation in the field of law around the world including India, but despite this and the constitution guaranteeing speedy justice to its citizen, the delivery of speedy justice remains a distant dream in India. A staggering 20 million cases hold the status of pending in our Courts with the number increasing continuously. Justice Krishna Iyer remarked while presiding over “Babu Singh v. State of UP” case that the judicial system of our country remains slow in its approach even in grave cases affecting the concept of fair trial regardless of what the final decision is. The concept of speedy justice is crucial for justice in society as the whole community of our nation holds concern regarding the criminal being punished deservedly within a rational time and with the victim finding itself free from the crushing judicial trial as soon as possible. The court confirmed the speedy trial as a fundamental right in the case of “Sheela Barse v. Union of India”. The idea of right to speedy trial is achieving more importance and recognition every day.

While the legislature is concerned with making and establishing the law & Executive ensures the effective implementation of them, it is the judiciary which is tasked with implementing those laws in the real life. The question is whether anyone is serious and concerned about these problems? The rapid growth in population and society as a whole has increased the workload on the judiciary, which needs an effective overhaul in its functioning for settling the rising number of cases without hampering their effectiveness. Some of the major reasons for such a huge delay and a staggering number of pending/backlog cases in India are-

- **Lesser number of judges**- There is a huge dearth in the number of judges in our country presently keeping in mind the population of the nation and the number of cases reaching the doorsteps of the courts every day.

- **Low accountability of the Judiciary** -The judiciary in our country is free from any outside influence or interference, but that does not provide it an excuse for its low accountability. Such a low accountability of the judiciary is exploited sometimes by

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143 1978 AIR 527, 1978 SCR (2) 777
144 India needs more courts, judges to ensure speedy justice
145 JT 1986 136, 1986 SCALE (2)230
146 http://www.legalserviceindia.com/article/l297-Right-To-Speedy-Trial.html
the judges driving them more towards comfort and leisure which results in such a delay in the delivery of justice.

- **Provision for adjournment** - One of the major reasons for such delays in cases is the power of adjournment granted to the courts. The courts can adjourn or postpone the hearing of the case as per their perception as mentioned in the Sec 309 of Cr PC and Rule 1, Order XVII of CPC.¹⁴⁷

- **Vacation of the court** - Another major reason for such a pile of pending cases in our country is the huge amount of vacations and holidays granted to the Courts and judges. The validity and need for those vacations is a matter of debate in the country among the law persons.¹⁴⁸

- **Weak Legislations** - The crafting of hassled, ill-drafted and sometimes pressurized legislations and decrees over some burning or controversial topics also contribute to the inflow or an increase in the inflow of cases in the courts.

### 5.4. ADR

ADR, or Alternative Dispute Resolution, also known as External Dispute Resolution in our country, is a process for resolving disputes where the concerned parties conclude an agreement for ending their dispute outside of the litigation. ADR is a term collectively used for describing all the methods of settling disputes between two or more parties with or without the help of a third party. The process of ADR has gained prominence and widespread acceptance in the country in recent years among both the legal professionals and the public, despite shear resistance to it by many prominent parties and their supporters. The courts, including the Supreme Court, has even started asking parties in some cases to turn to ADR of some kind, such as mediation, before seeking or starting the process of trial. Increasingly, parties have started to seek some sort of ADR in their cases, especially in business or commerce related cases like acquisitions, mergers, and transactions, to solve their disputes outside of the lengthy court procedures.¹⁴⁹ The popularity of ADR has witnessed such a sudden boom in recent times due to the already logjam of pending cases in the courts along with the opinion that ADR costs less in comparison to litigation. A greater emphasis on

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¹⁴⁷Supreme Court has more breaks than working days: The Hindu http://indiatoday.intoday.in/story/Supreme+Court+has+more+breaks+than+working+days/1/1863.html ¹⁴⁸Vacations and working Hours in the Judiciary: http://www.livelaw.in/vacations-working-hours-judiciary/ ¹⁴⁹ADR in India: Legislations and Practices https://www.lawctopus.com/academike/arbitration adr in india/
confidentiality and the tendency of some parties to wield greater influence on the matter of selecting individual or group of individuals as third parties for solving the dispute is also turning people to ADR as a dispute solving method. Many senior judges and advocates in our country have come out openly in support of turning to ADR for solving basic or minor disputes and keeping the courts clear to concentrate on more pressing cases.

The concept of ADR is not new to India as it finds mention under the earlier Arbitration Act of 1940. The newer Arbitration and Conciliation Act of 1996 was then passed by the parliament for accommodating the mandates of UNCITRAL Model for synchronization. The Code of Civil Procedure (CPC) of 1908 was also amended for restructuring the Indian legal system where section 89 was introduced into it. The Section 89 (1) of CPC provides for a choice of settling the disputes outside of the court. The section mentions that the court can recommend the settlement of disputes through mediation or arbitration to the parties wherever it appears to the court that there is a scope of solving the case through reaching a settlement between both parties. ADR has witnessed a great thrust over its use in recent time due to the slow speed of the judiciary in India. Two approaches have prominently appeared for this, one being the Arbitration and Conciliation Act, 1996 which is a western style approach regarding the ADR, while the Lok Adalat system established through the National Legal Services Authority Act of 1987 is a completely Indian approach. A recent study in South India revealed that the Court-appropriated Mediation Centre in Bangalore enjoys a success rate of 64%, while its colleague in the state of Kerala boasts of a success rate of 27.7%. Over the three surveyed states of Kerala, Karnataka and Tamil Nadu, Tamil Nadu has emerged as the state with the highest adoption of ADR while Kerala has emerged as the state with least.

150 THE ARBITRATION ACT, 1940 1, ACT NO. 10 OF 1940 [11th March, 1940].- An Act to consolidate and amend the law relating to Arbitration whereas it is expedient to consolidate and amend the law relating to arbitration.
151 THE ARBITRATION AND CONCILIATION ACT, 1996 ACT NO. 26 OF 1996 [16th August, 1996.] BE it enacted by Parliament in the Forty-seventh Year of the Republic of India as follows:- An Act to ‘consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto.
5.5. Commission on Judicial Performance

In the state of California in USA, there is an independent body to investigate complaints received against the state judges for judicial misconduct or incapacity and keeping the judges in discipline formed by the Article VI, section 18 of the California state Constitution called the Commission on Judicial Performance\(^\text{154}\). The commission holds the authority for enforcing certain code of conduct for the serving and even former judges. It shares authority with the local courts in California over court representatives and arbitrators according to the article VI, section 18 of the California state Constitution. But, the commission has not been provided with any authority over temporary judges, known as pro term judges or over the private judges. After filing of the complaint, whole procedure following that is made public. The commission has been successful in curbing down the corruption in the local judiciary hand has received praise for the same. It has been granted following powers by the state constitution of California -

- Expelling or censuring a sitting or former judge for any actions showing signs of wilful misconduct while in office, incapacity to perform their duty effectively or showing incapacity, addiction to any kind of drugs, intoxication, or other addict ants, or showing biases or unfairness in delivering a decision;

- The power for rebuking a sitting or former judge both publicly or privately, for those who have been proven to be involved in inappropriate conduct or neglect of duty; and

- The commission holds the authority to even ask a judge to retire in case where the judge is suffering from a disability which interferes with his ability to perform his duties and is becoming or is likely to become permanent in the near future.

The commission has been provided with the power to block a former judge, who has received censure, from getting a reference of work, appointment, or assignment from any of the courts in the state of California, although all the decisions made by the commission against a judge are subject to be reviewed and scrutinized by the Supreme Court.

\(^{154}\) CJP was established in 1960, as an independent state agency responsible for investigating complaints against judges misbehaviour and incapacity. On receipt of the complaint the commission conducts investigation which includes interviewing witnesses, review court records and other documents and putting the judge under observation during trials. Unless evidence is proved, the judge comments on the charges. CJP is also present in countries like Colorado, Mississippi, Sri Lanka, Arizona, San Francisco, Kansas, Mexico and other many other countries.
The commission consists of 11 members; 3 judges whose commissioned by the Supreme Court of California, 2 attorneys and 2 non-attorney members commissioned by the Governor, 2 members from the state public commissioned by the Speaker of the state assembly and 2 members of public commissioned by the Senate Committee for Rules. Each member serves a four-year term on the commission. There is a need in India for a similar commission for judicial performance in the present time to curb the rising corruption and increase the accountability of the judiciary here in our country. Many steps have been initiated towards this many times in our country, but somehow, all efforts have remained fruitless. One of the major reasons for this has been the unwillingness by the courts themselves to initiate any major reform in the current judicial system of the country. A similar for evaluating the performance of judges can be established in each states of India for considering the complaints against the judges and investigating them. The commission must also be provided with the powers to remove or censure the judges found to be violating the code of conduct or indulge in corruption.

There are lots of problems with the judiciary in our country at all levels, but to each such problem, there is a definite set of solutions for them too. What is required is the willingness from the part of judiciary too. There is an urgent need to take reformatory measures for increasing the accountability of Indian judiciary for ensuring a fair, unbiased and speedy justice to the citizens.