JUDICIAL ACCOUNTABILITY AND CONSTITUTIONAL OBLIGATIONS OF JUDGES: ANALYTICAL STUDY IN INDIA

A Thesis

Submitted in partial fulfillment of the requirements for the

Award of the degree of

DOCTOR OF PHILOSOPHY

In

(Law)

By

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Supervised By

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2022

DECLARATION

I, the undersigned, hereby declare that the research work on the topic titled, "**Judicial Accountability and Constitutional Obligations of Judges: Analytical study in India"**, is done by me under the guidance of **Dr. Showkat Ahmad Wani**, Assistant Professor in the Department of Law, Lovely Professional University, Phagwada Punjab.

The findings and conclusions drawn in the thesis are based on data and other relevant information collected by the researcher during the period of the research study for the award of Ph.D. Degree in the Faculty of Law, Lovely Professional University, Phagwada Punjab.

I, further declare that the research submitted on this topic is my original research work. Neither the work published in any journal or anywhere else and has not formed the basis for the award of any degree, diploma, associate ship, fellowship, titles in this or any other University of Institution of higher learning. All the material and data obtained from all other sources have been properly acknowledged in the thesis.

Place:
Date: 17/04/2022

Mr. Bhongale Jaykumar Sukhdeo
Researcher

CERTIFICATE

This is to certify that the work contained in the thesis entitled **"Judicial Accountability & Constitutional Obligation Of Judges: An Analytical Study in India"**, submitted by **Mr. Bhongale Jaykumar Sukhdeo,** Registered Number 41900610 for the award of the degree of **Ph.D.** to the **Lovely Professional University Phagawada, Punjab** is a record of bonafide research works carried out by him under my direct supervision and guidance.

I considered that the thesis has reached the standards and fulfilled the requirements of the rules and regulations relating to the nature of the degree. The contents embodied in the thesis have not been submitted for the award of any other degree or diploma in this or any other university.

Date: 17/04/2022

Place:

Signature of Supervisor

(Dr. Showkat Ahmad Wani)

ABSTRACT

I, as a researcher on the present research study in the name of, '**Judicial Accountability and Judicial Obligations of Judges: Analytical Study inIndia',** carried out detailed research for the benefit to understand the present subject of research. The motivations to choose this topic were a peculiar phenomenon of the Indian judicial system, keen interest in Administrative and Constitutional law, attraction towards the judicial office, an unsolved mystery of judicial appointment and accountability. In India, judicial independence is the basic feature of the Constitution but accountability and responsibility of judges were not discussed in detail anywhere. I found some vacuum in that particular topic hence, I had decided to carry out and accomplish the research on that topic.

In each and every legal system judicial independence is not only a necessary condition for the impartiality of judges, it can also endanger it: judges that are independent could have the incentive to remain uninformed, become lazy, or even corrupt. It is therefore often argued that judicial independence and judicial accountability are contending ends; it can be complementary means towards achieving impartiality and, in turn, the rule of law. The issue of judicial accountability can be seen as offering a particular perspective on the wider subject of public confidence in the courts and the justice system, in which everything from access to justice to judicial activism is discussed. However, it should be emphasized at the outset that the accountability of the judiciary to the community is also a distinctive issue, concerned as it is with constitutional and ethical matters of a particular sort, in which a proper balance must be struck between judicial independence, on one side, and judicial accountability, on the other.

In a 'democratic republic' power with the accountability of the individual enjoying it, is essential to avert disaster for any democratic system. The accountability must be comprehensive to include not only the politicians but also the bureaucrats, judges, and everyone invested with public power.[1] Lord Woolf, the Chief Justice of England

[1] Sukant Vikram, *Judicial Accountability- An illusion or a reality; available at*, http://www.hairremovalproducts.info/judicial-accountability-an-illusion-or-a-reality.html, last visited at February 20, 2020.

and Wales, said: “The independence of the judiciary is therefore not the property of the judiciary, but a commodity to be held by the judiciary in trust for the public”.

In the words of Abraham Lincoln, “A community where the state power is deliberately used to modify the normal play of economic forces so as to obtain more equal distribution of income for every citizen, a basic minimum irrespective of the market value of his work and his property is known as the welfare state”.

In the strictest sense, a welfare state is a government that provides for the welfare, or the well-being, of its citizens completely. Such a government is involved in citizen’s lives at every level. It provides for physical, material, and social needs rather than the people providing for their own. Judiciary is a very essential part of any legal system and government, to enforce and protect the right of individuals, respect to constitutionalism and its mechanism directly protected by the Judiciary.

Indian judiciary is not free from corruption and discrimination made by lower and higher courts. The extortion of the litigants is the regular business of the judicial servants. The whole money extorted from the litigants is being collected with the Reader of the court. From this booty, lunch is being served for the Judiciary; their monthly household expenses are met. The remaining booty is being distributed among the staff of the judiciary. The litigants should be protected from exploitation.

Judicial accountability includes appointments, transfers of judges. It also includes topics like corruption of the judiciary, contempt of court and behavior of judges, right to information from judicial offices, delays in providing justice, pending trials, judicial attitude before litigants and lawyers, the concept of recusal, and irregular practices of recusal, post-retirement recruitments. Ultimately this topic has been connected with the numerous aspects of the judicial process.

Hence, I decided to pursue my research (Ph.D.) on this topic. In this research, I used doctrinal and non-doctrinal research methods to collect the data of the research. The Doctrinal approach would let the researcher concentrate solely on the analysis of the problem as it will not require the facets of various disciplines to be mixed with.

The present study has been carried out on legal propositions by way of analyzing the existing legal and constitutional provisions and cases by applying reasoning power. This particular method of research investigates matters in the light of legal certainty and the validity of incidences. The present study contains the critical analysis of various cases, authentic reports, and legal debates on Judicial Accountability.

In essence, the research aimed at analyzing a wide breadth of documents and reliable materials. The Supreme Court and High Court judgements, international documents, Law Commissions reports, various relevant governments appointed committee reports and books have remained the main study material of this part of the research.

In non-doctrinal methods of research, I circulated questionnaires in the nature of Google-forms among the lawyers, professors, legal experts, law students, and general people. The responses collected from these respondents were supportive for me to understand the nature and pasture of the present research topic. I also evaluate the data derived from the official sites of the government, like the Supreme Court of India website, Law Commission of India website, various High Courts website, and others.

The hypothesis testing has been completed in each and every chapter of my research topic. Every hypothesis was tested with the help of doctrinal and non-doctrinal data and observation counted on each chapter of this thesis. The conclusion of hypothesis testing was given in Chapter VII of the thesis. The statistical conclusion validity is mentioned in the VI chapter on the basis of non-doctrinal observation evaluated on the basis of the SSPS (Statistical Package for the Social Science) tool and Google forms tool.

After analyzing the doctrinal and non-doctrinal data, I laid down some suggestions and conclusions which is the part of VII chapter of my thesis. These suggestions and conclusions are based on my understanding after analyzing the data available before me. The Conclusions derived in my research are totally based on the data collected and perceptions created after conducting a long time of research on this present topic.This conclusion is created not to contradict any research available present or any institution of the government. It is totally for my academic and research purpose and if any gap is founded on my research that would be a salutation from my side.

Thank You.

Researcher

ACKNOWLEDGEMENT

To complete the work of this magnitude was not an easy task and could not be accomplished without the cooperation, help, support, and assistance of many people. In the span of the last three years due to the constant guidance and direction given by my research guide **Dr. Showkat Ahmad Wani**, I am able to complete this task without any obstacle.

I express my sincere gratitude to my research guide **Dr. Showkat Ahmad Wani** for his untiring support, advice, and supervision in the completion of this work. It is only because of his able guidance the present work is completed. He has been an inspiration for me and I am very grateful to him for giving me an opportunity to work under his guidance. I am also grateful to Lovely Professional University, Law department administrative, teaching and non-teaching staff, and Librarian of Lovely Professional University, Phagwada. I am also thankful to Bharati Vidyapeeth New Law College, Pune, for all the assistance and inspiration given to me till the completion of this work. I would also like to extend my gratitude to all the Judges, Advocates, Police Officers, Professors, Legal Scholars, and Students, in Maharashtra and all over India who took time to answer the questionnaire without which the present work would not have been enriched and completed within time. I am grateful and humbled to all concerned for their help and support tome.

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LIST OF ABBREVIATIONS

AIR	All India Reporter
All. MR-	All Maharashtra Reporter
BBC	British Broadcasting Corporation
CBI	Central Bureau of Investigation
CJI	Chief Justice of India
CPC	Civil Procedure Code
CRA	Constitutional Reform Act
CRPC	Criminal Procedural Code
DMK	The Dravida Munnetra Kazhagam
FIR	First Information Report
HC	The High Court
IA	Interim Application
IAS	Internal Or interim Applications
IB	Intelligence Bureau
ICADR	International Centre for Alternative Dispute Resolution
IPC	Indian Penal Code
JAC	Judicial Appointment Commission
JCCJCPA	Judicial Conduct Commissioner and Judicial Conduct Panel Act, 2004
NGO	Non-government Organizations
NJAC	The National Judicial Appointment Commission
PIOs	Public Information Officers
PPSC	Punjab Public Service Commission
PTI	Press Trust of India
RBI	Reserve Bank of India

RQ	Research question
RTI	Right to Information
SC	The Supreme Court of India
SCC	The Supreme Court Cases
UK	The United Kingdom
UNI	The Union of India
UPA	The United Progressive Alliance
USA	United States of America

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LIST OF BIBLIOGRAPHY

BOOKS, JOURNAL ARTICLES, CONFERENCES:

1. *'The people's convention on Judicial Accountability and reforms'*, held in New Delhi on 10th and 11th March 2007.
2. "India Corruption Study to improve governance, 2 (Corruption on Judiciary), as study conducted by the *Centre of Media Studies* (2005)".
3. "Parliamentary Commission of Inquiry re the Honourable Mr Justice Murphy," 2 *Australian Bar review* 221 (1986).
4. "R. Bigwood (ed.), *The Permanent New Zealand Court of Appeal: Essay on the first 50 years* (Oxford University Press, 2009)".
5. "Supreme Court holds CBI's ex-interim chief Nageswara Rao guilty of contempt", *The Hindu*, 12-2-2019,
6. "The Bangalore Principle of Judicial Conduct, 2002" (Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 2002)
7. "Towards Grater Judicial Accountability: The Draft Judges (Inquiry) Bill 2005" *lawyers Collective* (August- September 2005).
8. A. Mason, "Judicial Accountability, Judicial Conduct and Ethics" 111 (Dublin Ireland, 2000).
9. A. R. Blackshield, *The Appointment and Removal of Federal Judges* (Melbourne: Melbourne University Press, 2000).
10. Adv. Ram Jethmalani, "Too high A Horse" 6(33) *Tehlka Magazine.* August 22,2009.
11. Alok Prasanna Kumar, *Judicial Efficiency and Causes for Delay* (Social Science Research Network, Rochester, NY, 2016).
12. Anantha Krishnan G, "Medical college bribe case: CJI decides who hears a case even if facing allegation, Supreme Court underlines" *The Indian Express*,15 November 2017.
13. Apurv Umredkar, "Are Judges Bound by Professional Standards and Code of Conduct in Their unofficial Capacity?," 1 *Jus Corpus Law Journal* 48–54 (2020).

14. ArgyaSengupta and Ritwika Sharma, *Appointment of Judges to Supreme Court of India: Transparency, Accountability And Independence*, (OxfordUniversity Press, Delhi, 1st edn., 2018).

15. Aswar, Umesh, "Significance of Judicial Organ of State" *Bharati Law Review* 9-14 (2011).

16. *Australia Judicial System and the Role of Judges*, 3–20 (The Senate Legal and Constitutional Affairs References Committee, 2009).

17. Bernd Hayo and Stefan Voigt, "The Relevance of Judicial Procedure for Economic Growth" *CESIFO Economic Studies Advance Access* (February 7, 2013).

18. Bhushan Prashant, "Securing Judicial Accountability: Towards an Independent Commission" 42(43) *Economic and Political weekly* (27 Oct, 2007).

19. Bhushan Prashant, "The Lack of Judicial Accountability in India" *Speech was delivered at Princeton University at the Department of South Asian Studies* (March 10, 2009).

20. Chief Justice R. C. Lahoti, "First M. C. Setalvad Memorial Lecture on "Canons of Judicial Ethics "" 81

21. Cynthia Gray, *Handbook for Members of Judicial Conduct Commissions: How Judicial Conduct Commissions Work: Ethical Standards for Judges* (American Judicature Society ; State Justice Institute, Chicago : [Alexandria, Va.], 1999).

22. Cyrus Das and K Chandra, *Judges and Judicial Accountability* (Universal Law Publishing Co. Pvt. Ltd., 2004).

23. Deepankar Sharma, "Judicial Accountability: Need of the House"4(2) *International Journal of Research in Social Science* (2013).

24. DhananjayMahapatra, "Curb adjournments, speed up trials, SC tells trial courts" *The Times of India*, 15 May 2013.

25. Dr. K.C. Jena, "Judicial Independence and Accountability: A Critique," XXXIX *Indian Bar Review* (2012).Juan Carlos Batero et al., "Judicial Reform," 18 *The world Bank Research Observer* 61–88 (2003).

26. Eichelbaum and Elias, "The Next Revisit : Judicial Independence Seven years on" 217 (presented at The Inaugural Neil Williamson Memorial Lecture, Canterbury law Review, 2004), x.

27. Ernest J. Weinrib, “The Fiduciary Obligation,” 25 *The University of Toronto Law Journal* 1–22 (1975).

28. G. Taylor, *The Constitution of Victoria* (Sydney: Federation press, 2006), pp. 416-34.

29. GeorgeH Gadbois, “Judges of the Supreme Court of India- 1950-1989**”** *Oxford University Press* **(**2011).

30. Ghosh Yashomati, “Indian Judiciary: An Analysis of the Cynic Syndrome of Delay, Arrears and Pendency” 5(1) *Asian Journal of Legal Education* 21-39 (2017).

31. Gopal, Dr. P. Raja, "Independence of Judiciary - Need for Judicial Commission” *Bharati Law Review* 35-38 (2011).

32. H. P. Lee and V. Morabito, “Removal of Judges - The Australian Experience,” 1992 *Singapore Journal of Legal Studies* 40–55 (1992).

33. H. P. Lee, “Appointment, discipline and removal of judges in Australia” *Cambridge University Press* 66-95 (2006).

34. Hemant Kumar, “Uncle Judges: Sanctity of Justice in danger” *Lawyers update* (2011)..

35. Hon’ble. Justice Verma, “Aapki Baat BBC ke saath” *BBC Hindi Special Programme,* (BBC).

36. I. P. Massey, *Administrative Law* (Eastern Book Company, Lucknow, 2005).

37. J. Thomas, *Judicial Ethics in Australia,* 3rd ed. (Sydney: LexisNexis Butterworths, 2009).

38. J. Thomas, *Judicial Ethics in Australia,* 3rd ed. (Sydney: LexisNexis Butterworths, 2009).

39. Jaclyn L Neo, “A judicial code of ethics: regulating judges and restoringpublic confidence in Malaysia” *Regulating Judges* 279–92 (Edward Elgar Publishing, 2016).

40. John Varghese, “Belling the Cat - Pendency of Cases in Courts and Some Practical Solutions” *SSRN Electronic Journal* (2011).

41. Jonathan Remy Nash, “Prejudging Judges Essay,” 106 *Columbia Law Review* 2168–206 (2006).

42. Jonathan Remy Nash, “Prejudging Judges Essay,” 106 *Columbia Law Review* 2168–206 (2006).

43. Joseph Philip, *The Constitutional and Administrative Law in New Zealand*, 5th ed. (Thomson Reuters, New Zealand, 2021).
44. Juan Carlos Batero et al., "Judicial Reform," 18 *The world Bank Research Observer* 61–88 (2003).[1]
45. Juan Carlos Bateroothewrsot Rafael La Porta, florrencio Lopez-de-Silanes, "Judicial Reform," 18 *The world Bank Research Observer* 61–88 (2003).
46. Julian Caplan, *Appointment of Substitute for Recused Judges: Disqualification of Judges*, 2014, XXXVI.
47. Justice J.S. Khehar, the presiding judge on the five-judge Constitution Bench, explained in his individual judgment.
48. Justices K S Radhakrishnan and Dipak Misra, "Curb adjournments, speed up trials, SC tells trial courts" (The Times of India, 15 May 2013).
49. Justin D'Arms and Daniel Jacobson, "The Moralistic Fallacy: On the 'Appropriateness' of Emotions," 61 *Philosophy and Phenomenological Research* 65–90 (2000).
50. K.C. Kohling, "The Economic Consequences of A Weak Judiciary, Insights From India" *Center for Development Research, ZEF* (2000).
51. Kagesh Gautm, "Political Patrongae and judicial Appointments in India" 4(4) *Indonesian journal of International & Comparative Law* 653-724 (October2017).
52. Kate Malleson, *Appointment, Discipline and Removal of Judges: Fundamental Reforms in the United Kingdom* (Cambridge University Press, 2011).
53. Khanum, P. S., *Judicial Independence and Accountability* (P. S. Khanun, Ed. The Icfai Univarsity Press Hyderabad, India 2007-08).
54. Kharel, Rajendra. "Recusal and Disqualification of Judges: An Overview"4 *NJA Law Journal* 13-24 (2010).
55. Kosar David, "Judicial Accountability and Domestic Transition,Visegard Story"6(10) *VII World Congress of Constitutional Law, Mexico City Constitutional Principles and Democratic Transition* (December 2010).
56. Krishnaswamy, Sudhir, et al. "Legal and Judicial Reform in India: A Call for Systematic and Empirical Approaches"*Journal of National Law University Delhi* 1-25 (2014).

57. Law Commission of India, “117th Report on Training of Judicial officer, 1986” (November, 1986).
58. Law Commission of India, “121th Report on A new forum for Judicial Appointment, 1987” (July, 1987).
59. Law Commission of India, “88th Report on The method of appointments of Judges” (April, 1992).
60. Lee H.P., “Appointment, Discipline And Removal of Judges in Australia” *in Judiciaries in Comparatives Studies,* 28(“Cambridge University Press, 2011”); also see in “H. Gibbs, ‘*The Appointment and Removal of Judges’* 143-4 (Federal Law Review,1987”)
61. Lefkow Joan Humphrey, “Judicial Independence, Judicial Responsibility: A District Judge's Perspective”65 *Wash. & Lee Law Review* 361 (2008).
62. Lokendra Malik, “Chapter 5 Post-Retirement Assignments of the Supreme Court Judges in India: A Critical Analysis” *SSRN Electronic Journal* 39(2020).
63. Lord Denning, The Discipline of Law, (1982), 87.
64. Madanabhavi, Vijaylaxmi, "Impeachment and Judicial Accountability" XXXVII(3&4) *Indian Bar Review*191-200 (2010).
65. MadhavKosala and SudhirKrishnaswamy, “Inside Our Supreme Court” *Economic and Political Weekly* 7–8 (2015).
66. Malleson, K., “Appointment, discipline and removal of Judges: Fundamental reforms in the United Kingdom” *Cambridge University Press* 117–33 (2011).
67. Mark Tushnet, *Judiciaries in Comparatives Studies, Judicial Selection, Removal and Discipline in the United States* (Cambridge University Press, 2011).
68. Marshall William P., “Judicial Accountability in A Time of Legal Realism” 56(4) *Case Western Reserve Law Review* (2006).
69. Mathew Job Michael, “Judicial Appointments in India; towards developing a more holistic definition of judicial Independence” *NALSAR Student Law Review,* 108-120 (2019).
70. Michael Kirby, “Judicial Recusal: Differentiating Judicial Impartiality and Judicial Independence” 4 *Australian Bar Review* (2014).
71. Mona Shukla, *Judicial Accountability Welfare and Globalization* (Regal Publication, 2010).

72. Mriganka Shekhar Dutta and Amba Uttara Kak, "Contempt of Court: Finding the Limit," 2 *NUJS Law Review* 55–74 (2009).

73. N. Garoupa and T. Ginsburg, "The Comparative Law and Economics ofJudicial Councils" 53 *Berkeley Journal of International Law* 57 (2009).

74. NarimanFali S., "Accountable or not*" Posted online: Thursday, Aug 06, 2009 at 0311 hrs,*

75. NCRB, *Crime in India 2011* (National Crime Record Bureau, 1 January2011).

76. NDTV Correspondant, "Justice Soumitra Sen resigns after Rajya Sabha voted to impeach him" *available at*: https://www.ndtv.com/india-news/justice-soumitra-sen-resigns-after-rajya-sabha-voted-to-impeach-him-466326.

77. OberroiGeeta, "Role of Judicial education in India," 35 *Commonwealth Law Bulletin* 497–534 (2009).

78. P. Chandrasekhara Rao, *The Indian Constitution and International Law* (Brill Nijhoff, 1995).

79. P. J. Fitzgerald, *Salmond on Jurisprudence*, 12th ed. (Sweet and Maxwell, 2008).

80. Peter H. Jr. Solomon, "Putin's Judicial Reform: Making Judges Accountable as Well as Independent Feature: Reforming Russia's Courts," 11 *East European Constitutional Review* 117–24 (2002).

81. Prashant Bhushan, "Securing Judicial Accountability: Towards an Independent Commission" *Economic & Political Weekly* 14-17 (2007).

82. Prof. Dr. K.C. Jena, "Judicial Independence and Accountability: A Critique" Vol. XXXIX *Indian Bar Review* 4(2012). ; See also in 80 US (1wall) 355 (1871).

83. Prof. Jay S. Bhongale and Dr. U. S. Bendale, "Judicial Appointment, Accountability and Constitutional Obligation of Judges in India," 12 *Turkish Online Journal of Qualitative Inquiry* 573–92 (2021).

84. Professor Sridhar Madabhushi, "Seven Questions on Judicial Accountability" *Campaign for Judicial Reforms* (20th June 2007).

85. PTI, "Cash-for-bail: Chargesheet against suspended judge, others" *The Hindu* (Hyderabad, 13 August 2012).

86. Raj Prashar, "Judicial Accountability- re visioning the role of judiciary" *Lawyers Club India*, 2013.

87. Rajesh Punia, "Arrears on Judiciary demand for Judicial Reform*"* *legalserviceindia.com*, 2002.

88. Rajnish Jindal, "Delays and Pendency of Court's Cases in India – An Analysis," 18 *Palarch's Journal of Archaeology of Egypt / Egyptology* 1763–74 (2021).

89. Ram Jethmalani, "Judicially is fatally corrupt" *The Hindu,* 12 November1999.

90. Rethinking the State : World Bank say Effective State Helps people andMarket flourish,

91. Richard Say Keow Foo, "Delivering Justice, Renewing Trust': An Analysis of the 2008 Reforms to the Judicial Appointments and Accountability Systems in Malaysia" (Australia, 2017).

92. Robert B. McKay, "Judges, the Code of Judicial Conduct, and Nonjudicial Activities ABA Code of Judicial Conduct," 1972 *Utah Law Review* 391–401 (1972).

93. RohitParihar, "Rajasthan High Court deputy registrar suspended for asking sexual favours" *India today* (Rajasthan, 18 November 2002).

94. Samrridhi Kumar, "Judiciary and Right to Information act: To Disclose or Not Disclose**?"** *available at:*

95. Sandra Day O'connor, "Judicial Accountability Must Safeguard, Not Threaten, Judicial Independence: An Introduction" 86(1) *Denver University Law Review* 1-7 (2008).

96. Sanya Dhingra, "How Supreme Court has not upheld the spirit of RTI Act over the years," 2019*available at*: https://theprint.in/judiciary/how-supreme- court-has-not-upheld-the-spirit-of-rti-act-over-the-years/339204/ (last visited January 16, 2022).

97. Schauffler Richard Y., "Judicial accountability in the US state courts Measuring court performance" 3(1) *Utrecht Law Review, igitur,* (June 2007). Also *available at:*

98. Shanti Bhushan, "Appointment and Accountability of Judiciary" *Address in the People convention on Judicial Accountability and reforms (*10-11 March 2007, New Delhi).

99. Shivam Kaushik &Anushri Singh, "All India Judicial Services: Problems and Prospect" 11 *NUJS Law Review* 4 (2018).

100. Sridhar, M., "Seven Question on Judicial Accountability"*Judicial Independence And Accountability* 120-143 (2008).
101. Statute of The International Court of Justice, 1945, art.16.
102. Stephen David, “Three Karnataka High Court judges allegedly involved in sex scandal cleared by panel” *India today*, 17 February 2003.
103. Steven Lubet, “Participation by Judges in Civic and Charitable Activities: What Are the Limits,” 69 *Judicature* 68–76 (1985).
104. Suhel Seth, “Judge Dread” Vol. XII, Part 1 *lawyer Update* (Nov. 2006).
105. SurajNarain Prasad sinha, “Efficacy of Judicial Accountability,” 35 *Indian Bar Review* (2008).
106. *The 2011 Corruption Perceptions Index Measures The Perceived Levels Of Public Sector Corruption In 183 Countries And Territories Around The World*,.
107. V Madanabhavi, “Impeachment and Judicial Accountability,” 37 *Indian Bar Review* 191–200 (2010).
108. V Madanabhavi, “Impeachment and Judicial Accountability,” 37 *Indian Bar Review* 191–200 (2010).
109. Vernon V. Palmer, “The Recusal of American Judges in the Post-Caperton Era: An Empirical Assessment of the Risk of Actual Bias in Decisions Involving Campaign Contributors” (2010).
110. VIII, *Constituent Assembly* Debates1949.
111. W William Hodes, *Bias, the Appearances of Bias, and Judicial Disqualification in the United States* (Cambridge University Press, 2011).
112. W William Hodes, *Bias, the Appearances of Bias, and Judicial Disqualification in the United States* (Cambridge University Press, 2011).
113. Warren, Roger K., "Judicial Accountability, Fairness, and Independence"42(1)*The Journal of the American Judges Association Court Review* (2005).
114. Wendell L. Griffen, “Comment : Judicial Accountability and Discipline,” 61 *Law and Contemporary Problems* (1998).
115. Wendy Nelson Espeland and Berit Irene Vannebo, “Accountability, Quantification, and Law” 3 *Annual Review Law and Social Science* 21-43 (2007).

116. World Bank, *World Development Report 2002: Building Institutions for Markets* (Oxford University Press, New York, 2002).
117. Yousef Shandi, "Code of Conduct for Judges: An Analytical and Critical Review," 2016 *Journal Sharia and Law* (2021).

WEB SOURCES

1. *'Judicial Appointments: Office of District Court Judge-August 2012'*accessible through the Ministry of Justice New Zealand. *Available at*: www.justice.govt.nz/publications/global-publications/j/judicial-appointments-office-of-district-court-judge/judicial-appointments-office-of-district-court-judge-march-2010 . (Last visited on December 18, 2019).
2. "Court News, Supreme Court of India, *available at*: http: //supremecourtofindia.nic.in/courtnews.htm" (last visited on March, 2019).
3. "High Court looking into 500 petitions against judicial officers: Chief Justice,"*available at*: https://www.ndtv.com/south/high-court-looking-into-500-petitions-against-judicial-officers-chief-justice-501463.(last visited on December, 2020).
4. "http://www.maheshwariandco.com/repository/articles/downloads/delay_in_judicial_system.pdf" (last visited on April 2016).
5. "http://www.nchro.org/index.php?option=com_content&view=article&id=6761%3Acorruption-set-backs-in-indian-judiciary-bala-nikit&catid=45%3Alaw-and-judiciary&Itemid=40&showall= 1" (last visited on May 15, 2013).
6. "Interpretation: Freedom of Speech and the Press | The National Constitution Center," *available at*: https://constitutioncenter.org/interactive-constitution/interpretation/amendment-i/interps/266 (last visited January 15, 2022).
7. "Methods of Removing State Judges" 2006. *Available at*: www.ajs.org/ethics/ethics/eth_impeachment.asp.
8. "The Contempt of Courts (Amendment) Act, 2006,"*available at*: https://indiankanoon.org/doc/1068778/ (last visited January 15, 2022).
9. Alok Prasanna Kumar, "How many judges does India really need" 2016. *Available at*: https://www.livemint.com/Politics/3B97SMGhseobYhZ6qpAYoN/How-many-judges-does-India-really-need.html.
10. *Available at: "*https://www.lawyersclubindia.com/articles/judicial-accountability-re-visioning-the-role-of-judiciary--5533.asp" (last visited 22 December 2021).

11. *Available at:* "https://timesofindia.indiatimes.com/india/140-cases-pending-in-lower-courts-for-more-than-60-years/articleshow/67316284.cms" (last visited July, 2020).
12. *Available at*: http: //www.worldbankog/extrdr/extime/1380 (last visited January 2016).
13. *Available at: https://lawyerscollective.org/* (last visited on December, 2021).
14. *Available at*: https://main.sci.gov.in/statistics (last visited July 2020
15. *Available at:*express@expressindia.com (last visited on January 2020).
16. *Available at:* http://ebooks.cambridge.org (last visited on January 2019).
17. Available *at:* https://digitalcommons.unl.edu/ajacourtreview/41 (last visited on January 2020).
18. Bhima Koregaon case: Another Supreme Court Judge recuses himself from hearing GautamNavlakha's plea, *The Leaflet*, 1/10/2019, *available at* https://www.theleaflet.in/bhima-koregaon-case-another-supreme-court-judge-recuses-himself-from-hearing-gautam-navlakhas-plea/#; (last visited on 10 September 2020)
19. Bhushan P rashant, "Judicial Accountability: Asset Disclosures and Beyond" *available at:* http://bharatiyas.in/cjarold/files/EPW%20judicial%20accountability%20asset%20disclousure%20and%20beyond.pdf , (last visited March 9, 2020).
20. Details of the Scottish Appointment Board can be found. *Available at:*www.judicialappointmentsscotland.gov.uk/JUD_main.jsp, (last visited 22 January 2011).
21. Grant Hammond, *Judiciaries in Comparative Perspective* (Cambridge University Press, Cambridge, 2011). *Available at:* "http://www.justice.govt.nz/publications/publications-archived/1999/ministry-of-justice-post-election-briefing-for-incoming-ministers-1999/7.the-judiciary-and-the-courts". (last visited on December 16, 2021)
22. Hilbink Lisa, "Judges beyond Politics in Democracy and Dictatorship Lessons lesson from Chile" *Cambridge Books Online, available at:* http://ebooks.cambridge.org(last visited on December 2019).
23. http://lawsocsci.annualreviews.org (last visited on January 2020).
24. http://www.cmsindia.org/cms/events/corruption.pdf. (last visited on March, 2013).

25. http://www.utrechtlawreview.org (last visited on February 2020).
26. https://cic.gov.in/sites/default/files/Judiciary%20and%20Right%20to%20Information%20%28%20Ms.%20Samrridhi%20Kumar%29.pdf (last visited July 2020).
27. https://indiankanoon.org/doc/753943/ (last visited on December 2021).
28. https://www.livemint.com/politics/news/another-judge-recuses-himself-from-hearing-plea-against-cbi-s-rao-1548914117000.html; (last visited September 10, 2020).
29. India justice report, 2019, *available at*: https://www.tatatrusts.org/upload/pdf/overall-report-single.pdf (last visited on December, 2020).
30. Lord burnett of madon, Sir Ernest Ryder, "*Guide to judicial Conduct"*, March 2018, *available at:* https://www.judiciary.uk/wp-content/uploads/2018/03/Guide-to-Judicial-Conduct-March-2019.pdf. (last visited February 20, 2020, at 1 pm).
31. Maneesh Chhibber, "Recusal has become a selective call of morality for Supreme Court judges," 2019 *available at*: https://theprint.in/opinion/recusal-supreme-court-judges-gautam-navlakha-kashmir-cji-gogoi/303036/.
32. Omir Kumar and Shubham Dutt, "Understanding vacancies in the Indian judiciary," 2021*available at*: https://prsindia.org/theprsblog/understanding-vacancies-in-the-indian-judiciary (last visited November 21, 2021).
33. PTI, "Justice Sen can chair panel probing sexual harassment charges despite retirement: AG - The Economic Times," 2016*available at*: https://economictimes.indiatimes.com/news/politics-and-nation/justice-sen-can-chair-panel-probing-sexual-harassment-charges-despite-retirement-ag/articleshow/50611564.cms?from=mdr (last visited January 15, 2022).
34. PTI, "No work allocated to 3 judges named in PPSC scam Read more at: http://timesofindia.indiatimes.com/articleshow/14550693.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst" *The Times ofIndia* (Chandigarh, 30 June 2002).
35. PTI, *"Sting operation: SC issues notices to Zee News, reporter," 2007available at: https://www.rediff.com/news/2007/feb/07sc.htm.*
36. Sukant Vikram, *Judicial Accountability- An illusion or a reality, available at:* http://www.hairremovalproducts.info/judicial-accountability-an-illusion- or-a-reality.html (last visited at February 20, 2012).

37. The Commission started working in 2005. Details of the Northern Ireland Judicial Appointment Commission *available at*: www.nijac.org/default.htm, (last visited on 22 January 2011)

38. The Federal Constitution of Malaysia, 1957, art. 122 B, *available at*: http://www.commonlii.org/my/legis/const/1957/9.html. (last visited on February, 2016)

39. V.R. Krishna Iyer, "Politics and the performance of courts" *The Hindu,available at:*http://www.hinduonnet.com/thehindu/thscrip/print.pl?file=20100812516

40. Vikram Chaudhary, "CBI files chargesheet against Justice Nirmal Yadav", 2011 *available at*: https://www.ndtv.com/india-news/cbi-files-chargesheet-against-justice-nirmal-yadav-449022.

41. *Vital Stats Pendency of Cases in Indian Courts*, (National Human Rights Commission, June 2009). *available at:* http://nhrc.nic.in/ PRISON_STATS_JUN_09_FOR_NIC.xls (last visited December, 2020).

LIST OF PUBLICATIONS

Sr No.	Title of paper with author names	Name of journal/ conference	Published date	Issn no/ vol no, issue no
1.	Post-retirements Recruitments of Judges, Judicial Recusal and Judicial Accountability	Purana (UGC CARE I)	June 2022	0555-7860 Vol. LXV, Issue I, No.7
2.	Judicial Appointment, Accountability and Constitutional obligation of Judges in India Asst. Prof. Jaykumar S. Bhongale& Dr. U. S. Bendale	Turkish Online Journal of Qualitative Inquiry (TOJQI)	September 2021	Volume 12, Issue 7, Month 2021: 573-592 **e-ISSN** 1309-6591
3.	Judicial Appointment, Accountability and Constitutional obligation of Judges: Analytical Review In India Prof. JayKumar Bhongale	Indian Bar Review	June 2021	ISBN- 978-81-931981-0-0 Vol. 48(1&2)2021

LIST OF CONFERENCES

Sr. No.	Name of the Conference	Date	Organisation
1	**National conference on Independence of Judiciary and Judicial Accountability**	26th& 27th February	ILS Law college Pune
2	Seven Decade of Indian Constitution: Contemporary Issues and Challenges	22nd June 2021	MMM's ShankarraoChavan Law College, Pune
3	National Conference on Law and Privacy	30th& 31st July	KLE Society Law College, Bengaluru

CHAPTER-1

INTRODUCTION

1.1 Introduction:

Every democracy ruled on the basis of some cardinal principles and these principles are applicable to each and every organ of the government. There are three organs of the government namely the executive, legislature, and judiciary. These three organs have been woven through some mechanism known as the Constitutional mechanism. There shall not be any compromise for these constitutional principles. The independence of the judiciary and accountability of the judiciary is the same principle which is the part of Constitutional mechanism. Judicial selection, appointment, judicial accountability, and promotion are very important principles for maintaining judicial independence in any legal system. The selection of judges shall be based on the right attributes.[1]

Indian Judiciary is a reputed institution not only nationally but internationally and whenever there was arbitrary use of power by the government, the judiciary struck down it. Any kind of disaster in the system aroused, and the judiciary did rescue from it. Indian Judiciary is recognized as a champion of the rights of the citizens. At the same time, transformation is also a part of nature and it has to be applied to each and every institution including the judiciary. In the name of tradition, no one can dilute the transformation in every aspect of life.

Any kind of social discrimination shall be removed through the touchstone of Constitutional Morality and it has to create the effect and situation where society shall respect the individual rights and dignity of every individual.[2] Now this is also the opinion of Supreme Court of India in related with Subrimala

[1] Argya Sengupta and Ritwika Sharma, *Appointment of Judges to Supreme Court of India: Transparency, Accountability and Independence* 24 (Oxford University Press, Delhi, 1st edn., 2018).

[2] The challenge of Constitutional Morality before the Supreme Court, , The Leaflet 35, (2020), https://www.theleaflet.in/the-challenge-of-constitutional-morality-before-the-supreme-court/ (last visited Jul 15, 2021).

Judgement[3], Constitutional Morality in a secular polity would imply the harmonisation of the Fundamental Rights, which include the right of every individual, religious denomination, or sect, to practice their faith and belief in accordance with the tenets of their religion, irrespective of whether the practice is rational or logical.[4]

In *Joseph Shine* v. *Union of India* [5]

Adultery is not criminal offence because it is private matter in which the court will not interfere. A woman is not a puppet in the hands of men, we shall respect the sexual independence of every individual, and violation of this would violation of Constitutional principles. So, the judiciary of India has played a very significant role in the political, religious, and social life of the nation.

Even though, there should be some credible mechanism for holding the judiciary accountable for any possible misconduct or wrongdoing. Judicial accountability is the demand of justice; it is the confidence which is offered by the general public towards the judiciary.

In 2018, a press conference was held by the Supreme Court judges[6]on the issue of CJI's role in the allocation of cases by CJI, where Justice Chelameshwar said that, "We failed to persuade CJI that certain things are not in order and therefore you should take remedial measures. Unfortunately, our efforts failed. And all four of us are convinced that democracy is at stake. So, in India, a lot of effort has to be taken for improving judicial accountability".

1.1.1 Concept of the Judicial Accountability:

"A herd of wolves is quieter and more at one than so many men, unless they all had one reason in them, or has won power over them"- Jermy Taylor[7]

This quotation speaks that a herd of wolves are better than men, unless they have one partner in common or have one superior power over them. It shows that there cannot be any organized society without any law for the man at least

[3] *Indian Young Lawyers Association* v. *The State of Kerala*, decided by SC on 28 September, 2018.

[4] *Id.*

[5] SCC 1676 SC 2018.

[6]Kevin James, "A Year After Four SC Judges' Press Conference, Is Democracy Still in Danger?" *The Wire*, 2019 *available at*: https://thewire.in/law/supreme-court-judges-press-conference-one-year (last visited February 7, 2022).

[7]P. J. Fitzgerald, *Salmond on Jurisprudence*, 12th ed. (Sweet and Maxwell, 2008).

as those wolves, law is equally applicable to all, equally abiding to all, and equally accountable for the violation of law faculty including judges of Higher Courts.

The Judicial system is untouchable to the executive and the legislature, coupled with privileged immunities from legal action and the Contempt of Courts Act, 1971 to silence the critics, with no statutory process or system except impeachment, the judiciary is almost immune from any form of accountability.[8]It is proved and non-debatable, though, that the human mind is such that it finds ways to misused and abuse every power and privilege under the law.[9]

Sometimes Judicial Independence may cause judicial lethargy; Judges behind the wall of independence may become redundant and non-responsive to the efficacy in the administration of justice. Judicial Accountability may add benefits to the State economy by increasing the per capita income and reducing corruption in society. Present judges of the judiciary shall seek the prominent equilibrium between judicial independence and accountability. Interpretation of law is one thing and an actual social, political, religious sentiment is another thing. Every individual may possess that kind of attachment but it is very essential for judges to keep away that attachment from the court.

"The accountability must be comprehensive to include not only the politicians but also the bureaucrats, judges, and everyone invested with public owner".[10]

The judicial privilege is not the civil property of the judges; it is the belief and trust of the common man residing in the post of the judges. In the words of Abraham Lincoln, *"A community where the state power is deliberately used to modify the normal play of economic forces so as to obtain a more equal distribution of income for every citizen, a basic minimum irrespective of the market value of his work and his property is known as the welfare state."*[11]

[8]"Towards Grater Judicial Accountability: The Draft Judges (Inquiry) Bill 2005" *lawyers Collective* (August- September 2005).

[9]*Ibid.*

[10]Avinash Bhagi, "Judicial Accountability in India: An Illusion or Reality?" 8 *GNLU Journal of Law Development and Politics* 1–162 (2018).

[11]Saarth, "Judicial approach towards departmental bias" *www.legalservicesindia.com*, 2015*available at*: http://www.legalservicesindia.com/article/524/Judicial-approach-towards-departmental-bias.html (last visited February 7, 2022).

The wider interpretation of this quote may extend up to the courtroom. The economic aspect of society may decide in the courtroom also, parliament or executive not alone decide the economic future of a society, the judiciary also has a prominent share to decide economic justice for all. It is the duty of the judiciary that litigants should be protected from exploitation.

Judges are to be accountable because they are trustees of people. They are accountable in two ways –first by giving decisions with reasons and secondly by being free from corruption; corruption is another reason for making them accountable. World Bank mentioned the necessity of a fair and predictable judicial system. The World Bank said, *"We need to deal with the cancer of corruption. In country after country, people are demanding action on this issue. They know that corruption diverts resources from the poor to the rich increases the cost of running business, distorts public expenditures, and deters foreign investors."*[12]

1.1.2 Judicial Accountability in Ancient India:

Judges have to follow Rama who stood by his *"Swadharma"* even when wooed to return to the palace at Ayodhya after withdrawal of boon given to Kaikayi on the basis that *"Pran Jaye Par Vachan Na Jaye".* Even though that path is tough, the judges have to adopt it to bear out the oath or *'Pramana Vachana'* they have taken when entering office.[13]

In the second instance in Mahabharata, Dhuryodhan felt when his end was about to come that his wife Bhanumati may suffer at the hands of Pandavasas as did Draupadi at his hands. But later realization comes to him that so long a Yudhisther is at the helm there will be no injustice. Similarly, even an enemy or opponent must feel that he would get justice at the hands of a judge and that by itself is a true safeguard.

There is another instance of judicial accountability and impartiality followed in ancient India, where Shri Chatrapati Sambhaji Maharaj was kept in jail by his own father Shri Chatrapati Shivaji Maharaj due to charges of molestation

[12]Rethinking the State: World Bank say Effective State Helps people and Market flourish, *available at*: http: //www.worldbankog/extrdr/extime/1380 (last visited January 2016).

[13]Mona Shukla, *Judicial Accountability Welfare and Globalization* 65(RegalPublication, 2010).

and kidnapping of a woman by Sambhaji Maharaj but afterward that woman herself did suicide and then only Sambhaji Maharaj released from jail.

In sixteen century, Dadaji Kondadeo was prominently known for his judgeship and even kings like Aurangzeb preferred, acknowledged, and praised the decision pronounced by him.

1.1.3 'Judicial Independence and Judicial Accountability':

Judges shall be free from any kind of influence and responsible to their work. It is the responsibility of judges to maintain integrity and honesty. In *Bradley* v. *Fishers*[14], the US Supreme Court stated, "a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions without apprehension of personal consequences to himself". However, "independence of the judiciary is not absolute, it should not be interpreted in a manner to confer immunity from the demands of justice for misdeeds or protect a judge from investigation and censure for valid change."[15] Judges have a responsibility to demonstrate the utmost standard in their behaviour. The term judicial independence is used with impunity. It is apparent that the term inspires confusion, and may instead refer to a grab-bag of vague but salutary qualities.

1.1.4 Meaning and Interpretations of Judicial Accountability:

Much of the work of the courts and judiciary is directed towards quality control. It is very necessary to distinguish between the practices and methods that enable the legality and those regulated to managerial demands. C.G. Geyh in his article mentioned that accountability is a complex and amorphous notion, which, in turn, increases the danger that it "can be co-opted and

[14] Prof. Dr. K.C. Jena, "Judicial Independence and Accountability: A Critique" 39 *Indian Bar Review* 4 (2012). ; See also in 80 US (1wall) 355 (1871).

[15]Cyrus Das and K Chandra, *Judges and Judicial* Accountability 38 (Universal LawPublishing Co. Pvt. Ltd., 2004).

misused more easily".[16] Justice Bharuccha said that, "in India 20% higher judiciary is corrupted"[17], they protected because of the following grounds;

- There is no practical procedure to remove corrupt judges in India.
- There is no proper authority available to enquire about the charges if levelled against the judge.
- Power vested with the court/ judges to initiate contempt proceeding against those who level charges against judges. The provisions of the Contempt of Court Act, 1971 speak about the power of the court to impose penalties.

Judicial accountability is generally accepted as an important value of the judiciary, there are various views of authors who attempt to define judicial accountability. Some authors mentioned that, "judicial accountability requires that the judiciary as a whole maintain some level of responsiveness to society, as well as a high level of professionalism and quality on the part of its members."[18]

Others go further and distinguish between substantive and procedural judicial accountability or adopt nuanced categorization.[19] Some focus on what should be measured (substantive/procedural performance) on judicial accountability while some other emphasis on the means to judicial accountability in relation to individual judges (judicial performance evaluations, disciplinary and criminal sanctions).[20] In the Broader definition of judicial accountability that includes checks and balances (institutional/societal/ political accountability).

[16]Charles Gardner Geyh, "Rescuing Judicial Accountability from the Realm of Political Rhetoric Symposium: Judicial Independence and Judicial Accountability: Searching for the Right Balance" 56 *Case Western Reserve Law Review* 911–36 (2005).

[17]V, Venkatesan, "Here's What the AG Wanted to Say About the Judiciary, Before Justice Arun Mishra Stopped Him" *The Wire*, 2020*available at*: https://thewire.in/law/attorney-general-kk-venugopal-arun-mishra-prashant-bhushan (last visited February 7, 2022).

[18] N. Garoupa and T. Ginsburg, "The Comparative Law and Economics of Judicial Councils" 53 *Berkeley Journal of International Law* 57 (2009).

[19]David Kosar, *Judicial Accountability in the (Post)Transitional Context: A Story of the Czech Republic and Slovakia* 1–30 (Social Science Research Network, Rochester, NY, 7 October 2010).

[20]Edgardo Buscaglia, "An analysis of judicial corruption and its causes: An objective governing-based approach" 21 *International Review of Law and Economics* 233–49 (2001).

Prof. David Kosar[21] proposed that judicial accountability consist of nouns (accountability) and an adjective (judicial).[22]The term, 'accountability' shall consider (1) is the term "accountability" reserved to ex-past mechanism? (2) Must an accountability mechanism entail a power of the principal to impose sanctions? And (3) does accountability encompass only negative sanction? Answers of these questions he gave yes, yes, and negative. His intention to invoking the term accountability is to refer to ex post mechanism that allows the principal to impose positive and negative sanctions.

In order to define the concept of Judicial Accountability he raised six questions:

(1) Who is a "judge" (i.e., who is accountable?);

(2) To whom are judges accountable?

(3) What for judges are accountable?

(4) Through what processes are judges accountable?

(5) By what standards are judges accountable; and

(6) With what effects are judges accountable? While he has given answers to each question, for the first "judges" means exclusively the full time professional judge of the ordinary courts. Answering the second question he stated that judges are accountable to four different groups;

a) to the executive;

b) to the legislature;

c) to the public;

d) to their fellow judges.

The "decisional accountability" to mean that holding judges answerable for their judicial decision. It mentioned by the author that, "answerability for judicial decisions should be considered broadly so as to encompass not only the substantive content of a decision but also its form, layout, and legibility". "Behavioural Accountability" includes holding judges answerable both for

[21] LLM(CEU), Ph.D. , J.S.D. Candidate at NYU School of Law, Clark for Judge of the Supreme Administrative Court of Court of the Czech Republic.

[22]Kosar David, "Judicial Accountability and Domestic Transition, Visegard Story"6(10) *VII World Congress of Constitutional Law, Mexico City Constitutional Principles and Democratic Transition* 9 (December 2010).

their "on-the-bench" and "off-the bench" behaviour. Finally, he concluded that, "Judicial Accountability is the costs that a judge expects to incur or the profits he expects to gain in case his behaviour and /or his decisions deviate too much from a generally recognized standard, in this case referring to the letter of law". Judicial accountability can be advanced by various mechanisms of judicial accountability that may result in sanctions ranging from a negative sanction of dismissal to a positive sanction of a pay rise. While explaining judicial accountability David Kosar said that, "different authors mean different things when we speak of judicial accountability. Some focus on what should be measured (substantive/procedural performance) on judicial accountability while some give emphasis on means to achieve judicial accountability in relation to individual judges (judicial performance evaluations, disciplinary and criminal sanctions. Others speak about broader judicial accountability that included checks and balances institutional/societal/political accountability)".[23]Wendell L. Griffen[24] views that, issue of judicial independence and accountability on three interdependent levels: political accountability, decisional accountability, and behaviour accountability.

Political accountability includes selection, tenure, and the extent to which judges are accountable to the other branches of government for appropriations, definition of jurisdiction, and other issues related to the terms and conditions of our service in the judiciary.[25]

Decisional accountability concerns the manners in which judges are held accountable for their judgments and rulings; it also includes academic criticism of judicial actions. It occurred at the time when the media made criticism of judicial decisions and rulings by politicians at the grass root level. Behaviour accountability involves when judicial conduct is the subject of judicial proceedings. Judicial criticism on judicial behaviour is made on rare occasions, imposition of sanction such as reassignment of a case to another judge due to misbehaviour, bias, or prejudice.

[23]Kosar David, *Op. cit*, at page 12.

[24] Judge, Arkansas Court of Appeals.

[25]Wendell L. Griffen, "Comment : Judicial Accountability and Discipline," 61 *Law and Contemporary Problems* (1998).*Available at*: http://www.law.duke.edu/journals/61LCPGriffen (last visited on July 2021).

Need For Making Judicial Accountability:

Judges are definitely accountable because they are the trustees of people and as a trustee, they must be given an account for their conduct. Corruption is another reason for making judicially accountable. World Bank has specifically cited the need for a 'fair and predictable judicial system'.[26] "The judicial system is created for protecting the individual's rights and justice; the courts are increasingly displaying their elitist bias and it appears they have seeded from the principles of the Constitution which set up a republic of the people who were guaranteed Justice-social, economic and political".[27]

"*Time has come for enforcing Judicial Accountability, but it should be done by the judiciary itself any external effort would be dangerous for the judiciary's independence*."[28] According to David Kosar[29], it is generally acknowledged that power and accountability go hand in hand and thus there is no power without accountability and the stronger the former, the greater the latter. The formula, 'the stronger the power given to an institution, the greater the need for its accountability' applies to the court also. There are various examples where the power of the court has emerged; they not only find constitutional amendments unconstitutional, they are also deciding the election, electoral process as unconstitutional or destroying prerogative royal powers. Courts nowadays enter into social, economic, and political rights of individuals. They did not hesitate to claim these rights against the economic and social policy of the executive.

Judges are not being *la bouche de la loi* ("the mouthpiece of law") but also, they seriously involve not only in adjudication but in codification. Judicial Accountability requires objectives like rule of law, faith, institutional responsibility, well-functioning judiciary, broader social responsiveness. Instead of this for the achievement of practical goals like 1) to create principals which will monitor and evaluate the performance of judges; 2) to safeguard against the misuse of power by judges and take out good from bad judges; 3) improve the development of judges.

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[26] Ghosh Yashomati, "Indian Judiciary: An Analysis of the Cynic Syndrome of Delay, Arrears and Pendency" 5(1) *Asian Journal of Legal Education* 21-39 (2017).

[27] *'The people's convention on Judicial Accountability and reforms'*, held in New Delhi on 10th and 11th March 2007.

[28] Hon'ble Justice Verma, "Aapki Baat BBC kesaath" *BBC Hindi Special Programme,* (BBC).

[29] Kosar David, *Op. cit*, at page 14.

In particular, the judicial accountability is requiring for:

- **The protection of Human Rights:**

  The rights of every individual and every minority group cannot be left in the hands of the executive and legislature, in that time the role of the judiciary in a democracy definitely arises .

- **Threat of terrorism:**

  The threat of terrorism is the second reason in present society to invoke the stringent need for judicial accountability.

  Passive democracy turned into defensive democracy; it shouldn't become uncontrolled democracy. When there is confusion or tension between the need to protect the State and the rights of the individuals, the role of the judge and their accountability would be in question.

  Instead of these reasons, there are also compelling reasons for judicial accountability in India;

- **Impracticable and unworkable impeachment process:**

  Under Article 124 judges can be removed but this is used to appease the party politics which has been seen in Justice Ramaswamy's Case. It is time-consuming and very difficult to impeach a judge.

  If parliament fails to impeach the judge, then contempt of law cases can be filed against the complainant.

- **Faulty method of appointment of judges:**

  Appointment and accountability are closely related because if you will not appoint the judges who carry integrity, honesty, responsibility then the proceeding will not be fair, free from corruption. So, the appointment of judges shall be based on merit, not on a political basis. Due to faulty method of appointment in India, a judge appointed can be protected from the same laws of the removal procedure.

- **Common Man's fear of Contempt of Court:**

  The punishment provided for a contemptuous act is a good bargaining tool in the hands of the judiciary. The common man hesitates to comment on the judiciary, especially against individual judges.

- No registration of FIR against the judges of the higher judiciary without the permission of CJI:

If a person finds that particular judge of higher judiciary taking a bribe or doing corrupt practices, he is not allowed to file FIR without the permission of CJI.

- **Veil of Judicial Independence:**

  Judicial independence means the judiciary is independent from other organs of the government not from judicial accountability. In India, the judiciary has maintained a safe distance from judicial accountability under the veil of judicial independence. If anyone raises the questions on the authority of court or accountability of court it is avoided easily by taking the defense of judicial Independence.

- **Not determining the arena of judicial independence:**

  The executive and legislature are both subject to criticism by the media and people but the judiciary is away from it. In the present situation, rather than judicial independence the very existence of constitutional values, rule of law and constitutional morality is important. So, this is time to decide and demarcate the arena of judicial independence.

- **Safeguard against Prevention and Corruption Act, 1988:**

  In the *Veeraswami Case*[30], it is held that written permission of the CJI is mandatory to file FIR against Judge. "This has resulted in a situation whereby no sitting judge has been subjected to even investigation in the last 20-30 years since that judgment despite public knowledge and complaints of widespread corruption in the judiciary". So, the operation of the Prevention and Corruption Act, 1988 was not effectuated against the judiciary due to procedural hurdles.

- **Reluctance for public Disclosure of Assets by judges under RTI Act:**

  The right to information Act passed in 2005 with an objective of promoting transparency in governance. The Act speaks that every government authority shall provide access to its document and proceedings.[31] Definition of 'public authority' given in the said Act is that "any and everybody constituted under the constitution or any law of the government".[32] So, the judiciary comes under the purview of this act but the Supreme Court of India said that, the Chief information commissioner cannot direct it to disclose any information on the grounds of Judicial Independence.

[30] *K. Veeraswami* v. *Union of India and Others* (1991) 3 SCC 655.

[31] Right to Information Act, 2005 s. 4.

[32] Right to Information Act, 2005 s. 2.

Delhi High Court adopted the office of the Supreme Court of India falls under the jurisdiction of the Right to Information Act, 2005. According to this judgement and the 1997 court resolution, judges shall declare their asset to their respective chief justices.

- **Syndrome of Uncle Judges:**

  In court practices, judges are passing a favourable judgment for lawyers actually relatives to judges. A two bench judge of Supreme Court Markendey Katju and Gyan Sudha Mishra stated, "The wards or other relatives of a judge(s) who used to practice in the same court become multi-millionaires, have huge bank balances, luxurious cars, huge houses and are enjoying luxurious life". The generation of 60% present SC judges are the relatives of the past SC Judges.

  Rule 6 of Bar Council of India Rules, 1975 stipulate that "An Advocate shall not enter appearances, act, plead or practice in any way before a court, Tribunal or authority mention in section 30 of the Advocates Act, if the sole or any member thereof is related to the advocate as father, grandfather, son grandson, uncle, brother, nephew, first cousin, husband, wife, mother, daughter, sister aunt, niece, father-in-law or sister-in-law". "Even though this rule prohibits advocates who are wards or kith and kin of serving judges from appearing before them but the point is that such advocates who are relatives of judges are normally accused of getting favours from other companion judges in the same court".[33]

- **Ineffectiveness of judges (Inquiry)Act, 1968:**

  This Act provides for the impeachment process for judges, which has proved impracticable procedure. The Act is insufficient to conduct the proper inquiry and to remove the judge's, especially higher courts. It has to be amended properly to satisfy the purpose of the Act or this should be replaced by a new legislation.

1.1.5 "230th Law Commission Report":

This law commission report was given by the law commission of India in 2009 in the name of 'Reform in the Judiciary: Some Suggestion', submitted by Justice Lakshamanan. It was about to make reformation in the judicial system and legal system. The main important suggestions are following;

- "Maximum work in-service hours.

[33]Hemant Kumar, "Uncle Judges: Sanctity of Justice in danger," 3 *Lawyers update* 25 (2011).

Every officer of the court shall complete his duty according to the working hour basis.

- Similar cases shall club together and resolved with the help of technology.
- Delivery of judgments within time.
- Curtailment of vacations of higher judiciary.
- Curtailment of oral arguments presented by lawyers
- Clear judgments shall be passed."[34]
- No strike and smack of advocacy work.[35]

Instead of this 'law commission of India' has discussed the reality of the legal system in following points;

- Lack of transparency in the judicial process,
- Under trails prisoners issues,
- Constitutional obligations of Judges,
- Judicial responsibility after the retirement of Judges.

The 'law commission of India' introduced important suggestions for the judiciary where it mentioned that the judiciary is one of the main constituents of democracy to uphold the rule of law. All the democratic countries acknowledge judicial independence as playing a crucial role in democracy. But these 'law commission report' suggestions were not implemented properly by the government of India. If this was accepted by the government then the situation of the judicial system might be in a different condition.

❖ **"Judicial Standard Accountability Bill, 2010"**

The Judicial Standard Accountability Bill, 2010, introduced before the parliament in 2010 but it could not be succeeded in Parliament and lapsed in there. The important feature of this bill could not implement even though that was necessary to improve the judicial system.

❖ **"National Judicial Appointment Commission Bill 2014"**

Again in 2015 NJAC judgment neutralised every chance of improve judicial system through declaring the act as unconstitutional.[36]

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[34]Rajnish Jindal, "Delays and Pendency of Court's Cases in India – An Analysis" 18 *Palarch's Journal of Archaeology of Egypt / Egyptology* 1763–74 (2021).

[35]*Harish Uppal (Ex-Capt.)* v. *Union of India* (2003) 2 SCC 4.

[36]*Supreme Court Advocates-on-Record - Association and Another* v. *Union of India* (2016) 5 SCC 1.

So, accountability in the judiciary remains an unsettled issue, again havoc not distorted till 2022. After this judgment of the Supreme Court, this issue is still not been resolved and it's again open for improvement in India. So, there is an urgency to understand and to define this issue properly.

All these issues will be discussed thoroughly by the researcher in the forthcoming chapters.

1.2 Importance of the Research:

Judicial accountability and responsibility have a significant aspect that strikes in favour of concluding the proper decision. It is very necessary that the continuing faith of subjects over the judiciary shall remain attached for the smooth running of the administration of Justice. As per Lord Hewart CJ, in *R.* v. *Sussex*[37], "justice should not only be done but also manifestly and undoubtedly seen to be done." So, in today's epoch, it has become pertinent to have translucent and transparent judiciary and quasi judiciary systems to provide impartial justice to ordinary peoples. So, it is significant to study the real arising problems in the legal system. The reason and scope of corruption in the judicial system have to be analysed in the proper sense due to which we may be able to curtail evil like corruption in the judicial system.

1.3 Objectives of Research:

a. Broad Objectives:

- To evaluate the necessity of judicial accountability in India.
- To understand relations between judicial process, judicial accountability and judicial obligations.

b. Specific Objectives

- To understand the concept of judicial accountability and the constitutional obligation of judges in India.
- To analyse the rights of the litigants in the new legal system more particularly in the light of judicial inefficiency.
- To analyse the judicial interpretation of judicial accountability and obligation of judges.

[37][1923] All ER Rep 233.

- To study judicial accountability in Malaysia, New Zealand, the USA, Australia, and the UK comparatively.
- To study judicial accountability and the development of the nation.

All aims and objectives of the research are achieved at the end of the research. The first broad objective is achieved in the first chapter. The second broad objective is achieved in the second, third, and fifth chapters. The first specific objective is discussed in the second and third chapters. The second specific objective is discussed in the first chapter. The third specific objective is discussed in the fifth chapter. The fourth specific objective is discussed in the second, third, and sixth chapters. The fifth specific objective is discussed in the second and fifth chapters. The sixth specific objective is achieved in the fourth chapter.

1.4 Scope of the Research:

i) Absence of statutory law.

The absence of legal provisions and principles is the prime motivation for the researchers to choose this topic.

ii) Less research has been done.

Before the judgment of the Supreme Court in 2016, there is less research has been carried out on this research topic. Several issues have not been sorted out till now by the Indian legal system.

iii) Judicial accountability and development of the nation.

The Researcher has chosen this topic to explore this research topic on the basis that an effective judiciary may create an effective system and the judiciary may influence the social, political, and economic development of the nation. On this premise, this area of research is not explored.

iv) It is very important for the researcher to understand the genuine knowledge of the present research topic because the researcher himself is an assistant professor in Law College.

The Researcher had a keen interest in Constitutional law and Administrative law.

v) The scope of the research topic includes the aspects of judicial code of conduct rules, Jurisprudence, Constitutional law, research methods, statutory enactments, delegated legislation, and recent development in

the international perception to improve the judicial system. It will also cover The Supreme Court and High Courts judgements, foreign judgements, research papers, acts, statutes, and Constitutional laws of various countries and law commission reports.

1.5 Statement of Research:

Judicial accountability and responsibility are part of the judicial process and Independence. Judicial accountability and independence are both important for the judicial process. Judicial accountability and obligations of judges are not prescribed in accurate form through legislation.

In India, judges are responsible for the failure of the judicial system as they are constitutionally appointed officers of the state.

1.6 Hypothesis:

- The lack of judicial accountability in India is a serious predicament in justice delivery system.
- Judicial awareness and constitutional morality are necessary to implement especially in the present Indian judicial system.
- The existing constitutional scheme of appointing judges and holding them accountable is compromising with the 'fairness' aspect of justice delivery system.
- Implied interference by external factors in the judicial process is a threat to judicial impartiality.

  All hypothesises are tested and found proved throughout the research. The first hypothesis is tested in the fifth chapter. The second hypothesis is tested in the second chapter. The third hypothesis is tested in the third chapter. The fourth hypothesis is tested in the sixth and seventh chapter.

1.7 Research Methodology:

The researcher has adopted the Doctrinal and non-doctrinal methods of research for the completion of this thesis. The Doctrinal approach would let the concentrate solely on the analysis of the problem as it will not require the facets of various disciplines to mix with. The non-doctrinal approach would concentrate on a pragmatic analysis of the problem.

The Doctrinal study has been carried out on legal propositions by way of analyzing the existing statutory provisions and cases by applying reasoning power.

Proposed methodology for the achievement of the objectives:

These are the methods used by the researcher to achieve the objectives.

a) **Analytical method:**

The researcher has made a thorough analysis of the data (doctrinal and non-doctrinal) in question and correlated it with the facts on the ground before making a final conclusion.

b) **Historical:**

The researcher inquired into the subject from its starting point to the contemporary stage, its different stages, and its developments.

c) **Statistical:**

The researcher used statistical data from empirical data collected by administering questionnaires (through Google forms) to various respondents including Advocates, Professors, Assistant Professors, students, legal experts, and professionals. Same was analysed by the researcher with SPSS software and with researcher deep observation to calculate the percentage of the various responses to show the present state of affairs.

Research Design:

Research design is very important to conduct research study smoothly. In the present study "Descriptive Research Design" and "Quantitative Survey Design" was used by the researcher. Present research study and issues are not solved till now so, researchers felt an urgency to address this issue.

Doctrinal Research:

Recent development in judicial attitude and behavior is concerned with accountability mechanisms has been understood through judgments, Law Commission Reports. Developments in the foreign judicial system are learned through various articles and publications.

The present study contains the critical analysis of various cases, authentic reports, and legal debates on judicial accountability.

Judicial obligation and accountability are an unaware phenomenon for the people who mostly reside in rural areas of India. People believe in the judiciary with the utmost respect but internal lacunas may not understand them. Detailed understanding of this present topic is possible only there will be awareness among the general people of India.

The Doctrinal part of a study includes all relevant case laws, law reports, research articles, magazines, publications, newspapers, and legal debates judicial obligation and accountability were taken into consideration.

For the purpose of detail analysis and a comparative study, data has been taken from various sources including;

- The Supreme Court and High Courts judgements,
- Foreign courts judgments,
- Various research papers,
- Law Commission Reports,
- Commentaries, digests, and other law-related books.

Quantitative research:

By this tool, data was collected by questionnaire of utmost important persons, particularly related to this study and we did cover:

- Academicians
- Lawyers
- Social activists
- Legal experts

Data was collected through questionnaires for the purpose of Quantitative research.

Sample size:

Questionnaire – As much as possible through personal interaction and wherever possible through email or any other mode (Minimum 300–400), the target population was chosen randomly from practicing advocates, academicians, legislations experts, and experts in Constitutional law and present research topic.

Variables:

The sample size chosen is 390 respondents from different categories i.e., Lawyers, Assistant Professors, Associate Professors, advocates doing practice in the trial court and High courts, and general people.

Sampling Procedure:

A Stratified sampling procedure was used in order to obtain a representative sample. In the present study stratified random sampling was adopted by the researcher as the data is required to collect from various strata including Lawyers, Assistant Professors, Associate Professors, Law student, advocate doing practice in the trial court and High courts, and general peoples.

Population:

As the study related to it was not sufficient to consider the sample from a local or regional area. Samples from urban and metropolitan cities of India were beneficial for this research. Sample from local or regional area populations might not have a correct legal opinion about the present subject. Samples of legal luminaries and experts were very beneficial for the genuine result of the research.

1.8 Sources of Data Collection:

As the researcher has discussed above, in the present context various tools both primary and secondary have been used to collect the data for research. The following are the sources of data collection:

1.8.1 Text Books and Reference books:

There are several books and Reference books that were referred to understand the present topic of research.

1.8.2 International and National Law Journal:

Law journals are the secondary source of research. It often deals with the current legal issues that help the researcher to do a detailed analysis.

1.8.3 Judgements:

Judiciary is one of the important authorities which keep control by imposing punishment. Thus, various cases were studied about judicial approaches.

1.8.4 Research papers:

The various research papers studied and produced by the various authors on the Present research topic were analyzed by the researcher to get the conclusion.

1.8.5 Law Commission Reports:

Law Commission Reports are a great source of knowledge. The reports on judicial delay and judiciary given by the Law Commission of India and other agencies were taken into consideration by the researcher.

1.8.6 Media:

Media which plays an important role in our life, keeps us updated. Various news articles were taken into consideration and studied. Media also plays an important part in creating awareness in society.

1.8.7 E-sources:

Collection of data from e-sources including websites containing interpretation about research subjects.

1.9 Literature Review:

1. **"Appointment of Judges to Supreme Court of India: Transparency, Accountability, and Independence."**[38]

   In this book, the authors discussed the main issue of the Indian Legal system is judicial appointments, transfer, and removal of judges' specifically higher judiciary. After the judgement of the Supreme Court in the *Advocates on Record Association and others* v. *Union of India case*[39], tremendous changes were expected through this case, several issues arose that were all discussed by the authors in this book. There are III parts included in this book, the first part dealt with by Suchindran B.N. It is the critical explanation of judicial appointment and transfers up to 1973. In this span, 14 chief justices and 53 appointments were made to the Supreme

[38] Argya Sengupta and Ritwika Sharma, *Appointment of Judges to Supreme Court of India: Transparency, Accountability and Independence* 120 (Oxford University Press, Delhi, 1st edn., 2018).

[39] (2016) 5 SCC 1.

Court of India. It provides close and until then unknown facts, politics, favouritism, executive interference, about the factors that promoted the appointment of certain Justices to the Court.

Part II contains a critical analysis of the various threads of Judgment in the NJAC case. Part II of this volume offers a close critique of the opinion in the NJAC case – where the judges were right and where their reasoning is susceptible to criticism. It starts with an essay by Justice K.T. Thomas, who offers some preliminary thoughts on the judgment in the NJAC case. He argues that the mere apprehension of abuse of power by the eminent persons or the Union Minister in charge of Law and Justice ought not to have been deemed sufficient to invalidate the constitutional amendment.

In examining the *NJAC case* Senior Counsel Mukul Rohatgi led to the view that invalidation of the law on minister presence on *NJAC case* based on conjectures and surmises, and not so much on principled constitutional ground invalidate the judgment.

Adv. Madvi Divan observed that the Superior courts in India, recently have assumed an activist role. The author observes that, "Part III proceeds to examine the judicial appointments processes in select jurisdictions across the world. These essays are an exercise in analyzing the relationship between appointment processes in various jurisdictions and the independence of their judiciaries. The selection of jurisdiction is reflective of the currently active state of debates and developments around judicial appointments in each of them together with their relevance for India."

2. **"Legal and Judicial Reform in India: A Call for Systematic and Empirical Approaches."**[40]

In this article, the authors mostly focused on judicial delays and high pendency of the cases in Indian Courts and for that what kind of legal reform is necessary. This article argues for re-orientating law and judicial reform by engaging in empirical methods. The Authors mentioned that symptomatic, piecemeal reforms will not work unless we pay attention to the incentive and motivations of all participants in the litigation system.

[40]Krishnaswamy, Sudhir, et al. "Legal and Judicial Reform in India: A Call for Systematic and Empirical Approaches" 2 *Journal of National Law University Delhi* 1-25 (2014).

This article is divided into three parts; firstly, discusses the civil litigation system reform: aligning incentives, the second part is access to legal system information and the third is the shadowy figure of criminal justice. So, the authors discussed the existing position of the Indian legal system in three aspects and respective reforms. In civil litigation, reform shall be introduced like an incentive system, optimum use of dispute resolution system, cost sanction, and continuous trial. In Access to legal information accurate publicly available data shall be available on e-court websites; the government publishes periodic reports on judicial productivity and congestion rates. Irregular reporting and unavailability of court decisions eroded the controlling power precedent that shall be removed. The third part is a shadowy figure of criminal justice where the author discussed the status of pending cases in India, police system reforms and prisoner's reform, under trial prisoner situation, the prison system, and management, prison lacunas, why the Indian prison system failed, dysfunctional system of bail. The Authors also has given suggestions and reforms like 'Bail funds', under-trial incarceration, police accountability, and data functioning.

3. **"Role of Judicial Education in India."**[41]

In this paper author talked about the importance of judicial education and a better understanding of judicial education is necessary. Judicial education forms in two parts, first assuming moral and professional qualities. The author gives the various reasons why the state shall invest in judicial education and these reasons are necessary to maintain the constitutional obligation given to judges. The author reasons like;

i. Each branch of government shall follow the Constitutional path and constitutional morality. Judiciary shall be very clear about the role and responsibility under the constitution.
ii. To clarify the role of judges.
iii. To adopt changing realities of society.
iv. To adopt the changes in the law through science and technology

[41]Oberroi Geeta, "Role of Judicial education in India" 35 *Commonwealth Law Bulletin* 497–534 (2009).

v. To overcome the paucity of judicial processes.

vi. To improve the court operation in rural areas.

vii. Problems of bureaucracy.

viii. Enhance the efficiency of judges.

ix. To identify the biases.

x. To remove gender bias.

xi. To avoid defective judgments.

So finally, the author gives the justification of providing these reasons to develop the judicial system in India.

4. **"Indian Judiciary: An Analysis of the Cynic Syndrome of Delay, Arrears and Pendency."**[42]

   In the present article, the author mentioned that, more than 22 million cases are pending in various courts across the country. In this paper comprehensive analysis of the state judiciary has been made, various factors which have attributed to docket explosion and arrears have been discussed by looking into various government and judicial reports, starting from the Arrears Committee Report[43] of 1949 to the Supreme Court Report on Access to Justice[44], 2016. The authors also critically analyse the various procedural, legal, and infrastructural reforms introduced in the recent past to bring substantial judicial reforms.

5. **"Sandra Day O'connor, Judicial Accountability Must Safeguard, Not Threaten, Judicial Independence: An Introduction."**[45]

   Judicial Accountability is a fundamental democratic value in the legal system. Judges must be accountable to the public for their constitutional

[42] Ghosh Yashomati, "Indian Judiciary: An Analysis of the Cynic Syndrome of Delay, Arrears and Pendency" 5(1) *Asian Journal of Legal Education* 21-39 (2017).

[43]"Arrears Committee of 1949, the Code of Criminal Procedure, 1973, Law Commission of India Reports, Law Library, Advocate Khoj". *Available at*: https://www.advocatekhoj.com/library/lawreports/codeofcriminalprocedure/30.php?Title=The%20Code%20of%20Criminal%20Procedure,%201973&STitle=Arrears%20Committee%20of%201949 (last visited February 13, 2022).

[44] Centre for Research & Planning, Supreme Court of India "Subordinate Court of India.pdf." available at: https://main.sci.gov.in/pdf/AccesstoJustice/Subordinate%20Court%20of%20India.pdf (last visited January, 2020).

[45]Sandra Day O'connor, "Judicial Accountability Must Safeguard, Not Threaten, Judicial Independence: An Introduction" 86(1) *Denver University Law Review* 1-7 (2008).

role of applying the law fairly and impartially. The authors highlight that judicial Accountability is frequently misunderstood and abused at best. First, judges must be protected from the threat of reprisal, so that feardoes not direct their decision-making. Second, the method by which judgesare selected, and the ethical principles imposed upon them, mustbe constructed to minimize the risk of corruption and outside influence. Itis also to ensure that judicial authority is not abused, and it is the core concern of the endeavour of judicial accountability.

Author mentioned Professor David C. Brody who analyses the methods by which states assess the effectiveness of their judicial performance evaluation programs. Brody surveys the conventions of judicial performance evaluations, and examines the impact that evaluations have on judicial accountability. Brody concludes that maintaining effective and trustworthy judicial performance evaluation programs will result in a desirable balance of judicial independence and judicial accountability. The author has also given the example of Colorado administrative law judge Edwin L. Felter, who evaluates several forms of accountability in the administrative law judiciary, and compares them with prevalent forms of accountability in the judicial branch. Felter argues that codes of judicial conduct, as well as formal enforcement mechanisms, work together to maintain a balance of independence and accountability in the administrative law judiciary. Finally, the author argues that these proposals will help to understand judicial accountability and judicial independence better together.

6. **"Judicial Appointments in India; towards developing a more holistic definition of judicial independence."**[46]

   In this article, the authors discussed the development of judicial appointments in India, constitutional support, the birth of the Collegium system, three cases on judicial appointment, and in the last, authors have

[46] Mathew Job Michael, "Judicial Appointments in India; towards developing a more holistic definition of judicial Independence" 9 *NALSAR Student Law Review* 107-122 (2019).

critically analyzed the 99th amendment to the Constitution and the *Supreme Court Advocate on Record* v. *Union of India* case.[47]

The authors also discuss the exact understanding of Judicial Accountability and the problem of understanding it. Exclusivist definition has two problems; firstly, it makes the judiciary accountable to none and capable of much abuse, secondly, such a scheme will not create homogeneity in the judicial system of India. The author further discussed suggestions to improve the Collegium system where he borrowed the lessons from the United Kingdom, where the author pointed out that in the UK the system of judicial or judicial appointment where an Independent Judicial Commission makes judicial appointments to all judicial posts except senior post. The authors mentioned that improvement in judicial appointments may be carried out in three levels. One, vacancies should be advertised widely so that individuals satisfying constitutional eligibility will have opportunities. Two, it is important to develop a simple definition of what constitutes merit and to make it known to the candidate's base. Third, it is equally important to devise measures that will ensure transparency from the applicant's side as well. Finally, the author also discussed the importance of bringing a homogenous body in judicial appointments with very little representation from women, minorities, and SC/ST.

7. **Kagesh Gautam, "Political Patrongae and judicial Appointments in India."**[48]

In this article, the author pointed out the patronage rationale provided in the *fourth Judges Appointment case*. In the present article authors discuss the evolution of Judges Cases from first to fourth and their reason for evolution in detail. This article argues that the Supreme Court correctly struck down the 99th Amendment (and consequently the NJAC Act) as unconstitutional.

The second part of this article basically discussed the constitutional history of the appointment clause which is given under articles 124 and 217 of the

[47]*Supreme Court Advocates-on-Record-Association and another* v. *Union of India*, (2016) 5 SCC 1.

[48]Kagesh Gautam, "Political Patronage and Judicial Appointments in India" 4(4) *Indonesian journal of International & Comparative Law* 653-724 (October2017).

constitution. Evidence from the drafting era, other historical evidence as well as comparative evidence was supported to prove that the Indian judicial appointments procedure given in the hands of the executive will result in the practice of political patronage.

8. **David Kosar, "Judicial Accountability and Domestic Transition, Visegard Story, VII World Congress of Constitutional Law, Mexico City."**[49]

   The aim of this paper is to define the role of judicial accountability in democratic transition and discuss the relationship between judicial accountability and judicial independence and explore the link between judicial independence and rule of law. This paper primarily draws an experience from the Viseguard Countries. Viseguard countries mean the Czech Republic, Poland, Hungary, and Slovakia.

9. **Wendy Nelson Espeland and Berit Irene Vannebo, "Accountability, Quantification, and Law."**[50]

   Law creates the infrastructure for political accountability and representation in government. The article suggests fruitful questions and strategies for analysing more broadly the effects of quantification in law.

10. **H. P. Lee, "Appointment, discipline and removal of judges in Australia, Cambridge Books online."**[51]

    In this paper mentioned judicial appointments are concerned, there has been no great interest on the part of governments at both federal and state-level to alter the current process by transferring the power of appointing judges from the executive to another entity, such as a judicial appointments commission.

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[49]Kosar David, "Judicial Accountability and Domestic Transition,Visegard Story"6(10) *VII World Congress of Constitutional Law, Mexico City Constitutional Principles and Democratic Transition* (December 2010).

[50]Wendy Nelson Espeland and Berit Irene Vannebo, "Accountability, Quantification, and Law" 3 *Annual Review Law and Social Science* 21-43 (2007). Also *available at:* http://lawsocsci.annualreviews.org (last visited on January 2020).

[51]H. P. Lee, *Appointment, discipline and removal of judges in Australia* 66-95 (Cambridge University Press 2006). Also *available at:*http://ebooks.cambridge.org (last visited on January 2019).

Neither has there been established a standing judicial commission with the power to make recommendations regarding appointments to the federal and state courts.

11. **Lisa Hilbink, "Judges beyond Politics in Democracy and Dictatorship Lessons lesson from Chile."**[52]

    This paper examines appointment as the basis of rule of law and judicial reform may strengthen to build rule of law in countries like Chile.

12. **Prashant Bhushan, "The Lack of Judicial Accountability in India."**[53]

    In the present article, author gave a brief introduction of the development of powerful judiciary, the phases from 1973 to 1990 where judiciary became the most powerful judiciary around the world. At the same time, the judiciary of India became more autocratic and inaccessible for any kind of development. In a critical sense, Judges of the Supreme Court in India become rules in their jurisdiction, especially in the appointment of Supreme Court & High Court Judges through the collegium system. Accountability for the judges' conduct is important whether it be for corruption or for disregard of constitutional values and the rights of citizens. If anyone tries to expose the judiciary publicly, there is a risk of contempt. In a survey of Times of India, the Indian Judiciary ranks second in corruption after the Police force in India.

13. **Fali S. Nariman, "Accountable or not?"**[54]

    The author proposed, if the credibility of the higher judiciary is to be restored, and it must. Without the higher judiciary our Constitution simply cannot work. It is essential that every judge of the Supreme Court set an example and voluntarily make public disclosure of his (or her) assets on the website of the Supreme Court, law or no law. Paper discussed whether judges of the higher judiciary shall declare their assets or not, the

[52]Hilbink Lisa, "Judges beyond Politics in Democracy and Dictatorship Lessons lesson from Chile" *Cambridge Books Online, available at:* http://ebooks.cambridge.org(last visited on December 2019).

[53]Prashant Bhushan, "The Lack of Judicial Accountability in India" *Speech was delivered at Princeton University at the Department of South Asian Studies* (March 10, 2009).

[54]Nariman Fali S., "Accountable or not*" Posted online: Thursday, Aug 06, 2009 at 0311 hrs, available at:*express@expressindia.com (last visited on January 2020).

development of the case against the Supreme Court of India, and due to this, the prestige of the higher judiciary has been adversely affected.

14. **V.R. Krishna Iyer, "Politics and the performance of courts."**[55]

    In this article, the author mentioned that politics and judges are closely related to each other and where any case class issue is involved, it is not necessary that a judge will possess the same kind of general confidence. The habits you are trained in, the people whom you mix with, lead to you having a certain class of ideas of such nature that, when you deal with other ideas, you do not give as sound and accurate judgments as you would wish. This article does not refer to any particular judge or to any particular observation made in a lighter vein. However, one judge observed recently with some passion that judges have neither politics nor philosophy, and act without politics.

15. **Professor Madabhushi Sridhar, "Seven Questions on Judicial Accountability."**[56]

    The author of this article raises seven questions about the accountability of the judiciary for initiating a debate, discussion, and campaign for judicial reforms with an intention to increase the credibility of the judiciary and improve the quality of life of people and democracy. Some common questions and common demands of a common man were raised by the author and some important solutions were given.

16. **Richard Y. Schauffler, "Judicial Accountability in the US State Courts Measuring Court Performance."**[57]

    This paper is based on an examination of the performance of judges and their assessment of their accountability and performance. Modern courts may have modern complexity of proceedings including court officers. This

[55] V.R. Krishna Iyer, "Politics and the performance of courts" *The Hindu, available at:*http://www.hinduonnet.com/thehindu/thscrip/print.pl?file=20100812516 (last visited 9 March, 2020).

[56]Madabhushi Sridhar, "Seven Questions on Judicial Accountability" 1–16 (presented at the Campaign for Judicial Reforms, Hyderabad, 2007).

[57]Schauffler Richard Y., "Judicial accountability in the US state courts Measuring court performance" 3(1) *Utrecht Law Review, igitur* 24 (June 2007). Also *availableat:*
http://www.utrechtlawreview.org (last visited on February 2020).

paper mainly concentrates on the subject to evaluate the judge's performance and its impact on the judicial process.

17. **"The Relevance of Judicial Procedure for Economic Growth."**[58]

    Procedural formalism undermines economic efficiency by fostering rent-seeking and corruption. The author challenges this view by arguing that a number of judicial procedures foster economic growth by increasing the predictability of court decisions,

    According to the author, this leads to more transactions and higher investment levels. The author investigates the effects on the economic growth of 15 judicial procedures. Employing a standard growth model, he finds in a cross-section of 67 countries that timeliness, written—as opposed to oral—procedures, and the rights to counsel have a positive effect on growth, whereas the numbers of independent procedural actions as well as the presumption of innocence have negative effects. The author's results partially contradict the results of former studies based on the Lex Mundi dataset.

18. **Adv. Ram Jethmalani, "Too High a Horse."**[59]

    In this article, the author discussed the report of Transparency International and the Center for Media Studies, a Delhi-based research firm that says that Indians pay more than 20,000 Crore as bribes every year. This report also contained sarcastic observations about corruption in the Judiciary. It stated that our legal system suffers from endemic delays, making it difficult for ordinary people to get justice.

    The author gave an example of Justice Ramaswami being found to be corrupt but the ruling party blocked his impeachment in Parliament. The author has said that there is a need of an hour to decide the responsibility of the Supreme Court to take action against these kinds of judges. It also stated how judicial decisions are immune from a criminal investigation by the police. The report said that the National Judicial Commission should be created with the power to punish the judges. The author discussed that

[58] Bernd Hayo and Stefan Voigt, "The Relevance of Judicial Procedure for Economic Growth" *CESIFO Economic Studies Advance Access*1-31 (February 7, 2013).

[59]Adv. Ram Jethmalani, "Too high A Horse" 6 (33) *Tehlka Magazine* August 22,2009.

there is an urgency to declare judges as public servants and their office shall come under the right to information. The author talks about the power of judges have like complete control over the life, liberty, and property of all citizens, they have the power to declare illegal and void the public acts of all bureaucrats, they can declare any law null and void; while because of the parliament reflects the will of the people but judicial power as an insult to the people sovereignty. Finally, the author discusses that the Supreme Court of India will make a legal rule that all judges shall declare their assets.

19. **Prashant Bhushan, "Securing Judicial Accountability: Towards an Independent Commission."**[60]

    The author emphasizes for the national judicial commission is important to reduce the lethargy of the judiciary. The author also talks about the exact combination of the National Judicial Commission.

20. **Roger K. Warren, "Judicial Accountability, Fairness, and Independence."**[61]

    Judicial independence does not excuse the courts from compliance with appropriate standards of accountability: it merely helps define the standards. The author proposed that judicial accountability refers to the accountability under the democratic government of those who govern to those whom they govern—as well as to the rule of law. Unfortunately, unfair attacks on the courts—and other inappropriate acts undertaken in the name of judicial accountability—have tended to give the concept of judicial accountability itself a bad name. But unlike the concept of judicial independence, accountability is an end in itself and applies to all three branches of government. The judiciary is not exempt from the requirement of accountability to the people it serves for the proper performance of its duties. The public has the right to expect that judges will be competent, knowledgeable about the law, and willing and able to behave in accord

[60]Prashant Bhushan, "Securing Judicial Accountability: Towards an Independent Commission" 42(43) *Economic and Political weekly* (27 Oct, 2007).

[61] Warren, Roger K., "Judicial Accountability, Fairness, and Independence"42(1) *The Journal of the American Judges Association Court Review*1-7 (2005). Also a*vailable at:* https://digitalcommons.unl.edu/ajacourtreview/41 (last visited on January 2020).

with the highest ethical standards. The opinion delivered by the present author was on the basis of the American Judiciary. Where the author discussed the concept of procedural fairness includes where the courts are 1) unbiased 2) treat people with respect 3) listen carefully to what people have to say and 4) are trustworthy. Finally, the author mentioned the surest path to true judicial independence is judicial accountability –wherein the courts define and communicate the standards to which they may properly be held accountable- and then continuously demonstrate to the satisfaction of the people. Most critically, the courts must honestly re-examine whether their day-to-day processes provide fair and equal treatment to all.

21. **Prashant Bhushan, "Judicial Accountability: Asset Disclosures and Beyond."**[62]

In this paper, the main issue discussed that, the principled position taken by certain judges and non-disclosure of assets. In one ruling given by the Delhi High Court, has compelled public disclosure of assets by judges. The author of this article expressed the foundation of the right to information in Indian case; In *Raj Narain*v. *Indira Gandhi case*[63] the Supreme Court has rejected the claim and privilege of the prime minister. In the judgement, SC said we all are agents of the public must be responsible fortheir conduct; the people of this country have the right to know every public act. So, the author said why this line is not applicable to the judiciary. The issue of asset declaration of the judges starts in 1997 when RTI application was filed by Subhash Agarwal.

Then in 1997, a "code of conduct" was adopted where it was decided that judges had to disclose their assets in confidence to their chief justice. But the public information officer of the Supreme Court responded that the information did not exist in the court registry. So finally, the decision went to the Delhi High Court where the Supreme Court of India filed a writ petition. Then Author discussed the development happening in the country in the context of asset declaration. Judges like the government introduced

[62]Prashant Bhushan, "Judicial Accountability: Asset Disclosures and Beyond" *available at:* http://bharatiyas.in/cjarold/files/EPW%20judicial%20accountability%20asset%20disclousure%20and%20beyond.pdf, (last visited March 9, 2020).

[63]AIR 1975 SC 865.

the bill named the Judges (Declaration of Assets and Liabilities) Bill 2009, soon after this various judges of the Supreme Court and High Courts gave their opinion on assets declaration before the media. Meanwhile, Delhi High Court delivered judgement where it made clear that the court would not withdraw writ petition despite the judge's decision to put their asset declaration on the court website and rejected the claim of the Supreme Court of India that CJI was not a public authority and the CJI's office was not amenable to the RTI Act. But the lacuna of this judgment was that unless it is a matter of public interest judges are not compelled to declare their assets and it will be decided by the information officer and CIC. The Author discussed in India there is an absence of an institution for investigation against judges. Judges' Inquiry Amendment Bill is not sufficient for this purpose. The author also discussed the serious problem in the method of appointing the judges to the higher judiciary. No transparency and no system or method followed for preparing shortlists or choosing among the eligible candidates. The author mentioned that this whole process is totally arbitrary which led to political favoritism when an appointment was in the hands of the executive and nepotism when appointments were with the judiciary. The author also mentioned that there is a necessity to get over from the Veeraswami judgment which restrains criminal investigation of judges without prior permission of CJI. It mentioned that there is a need to amend the Contempt of Court Act.

22. **Deepankar Sharma, "Judicial Accountability: Need of the Hour."**[64] Accountability is not an abstract concept. It is actually extremely simple. Accountability is taking responsibility for your words and actions. This simply means you are bound by your action and you are denying accepting your action you will be stopped from the same. Like in a company we make an account of why, what is the need of making these types of records, the simple answer is that to protect from doubts and puzzles and misuse of resources. Suppose a legal firm does not maintain its account of expenses. What will happen is that the employee of that firm will tell me more

[64]Deepankar Sharma, "Judicial Accountability: Need of the House"4(2) *International Journal of Research in Social Science* 177-185 (2013).

expenses. So, keeping the check upon the action of authorities we require accountability. This accountability may be in various sectors but in this research, authors focused upon judicial accountability. What is judicial accountability, why is this accountability and how can it be implemented? The author has put some practical questions on judicial accountability.

23. **William P. Marshall, "Judicial Accountability in a Time of Legal Realism Symposium: Judicial Independence and Judicial Accountability: Searching for the Right Balance".**[65]

    In this article, the author suggests disciplining the judges who pronounced frequent erroneous decisions. So, decisional accountability shall be also part of judicial accountability. The author discussed two heads where judges dilute the decision first, intentional violation of the law, and second is creating erroneous decisions. The author thoroughly discussed what an erroneous decision is and how judges create erroneous decisions.

24. **Joan Humphrey Lefkow, "Judicial Independence, Judicial Responsibility: A District Judge's Perspective."**[66]

    Every judge may have their own perspectives; every judge may understand the law differently, and the role of a lawyer is very important in the judicial process to gain exact opinion and interpretation of the law.

    The author discussed that judicial accountability at the ground level like the court is also very significant to understand.

25. **"The Recusal of American Judges in the Post-Caperton Era: An Empirical Assessment of the Risk of Actual Bias in Decisions Involving Campaign Contributors."**[67]

    This is an empirical investigation of the ability of the appointed judges to stay behind unbiased in their own judgement, practically judges being maintained in a court of law.

[65]William P. Marshall, "Judicial Accountability in a Time of Legal Realism Symposium: Judicial Independence and Judicial Accountability: Searching for the Right Balance" 56 *Case Western Reserve Law Review* 937–46 (2005).

[66]Lefkow Joan Humphrey, "Judicial Independence, Judicial Responsibility: A District Judge's Perspective"65 *Wash. & Lee Law Review* 361 (2008).

[67]Vernon V. Palmer, "The Recusal of American Judges in the Post-Caperton Era: An Empirical Assessment of the Risk of Actual Bias in Decisions Involving Campaign Contributors" 1-91 (2010).

How judges may contribute to the bar, authors conducted an empirical study and got findings. It is about the practice of recusal in the Supreme Court in the US and its impact on court proceedings and justice delivery.

26. **"Judges: Appointment of Substitute for Recused Judges: Disqualification of Judges."**[68]

    The issue of appointment of a substitute judge by the governor is unconstitutional in that it pertains to the everyday routine management of the courts and thus violates the separation of powers principle, which appears to be out of line with the course of decisions in this country. It is about the appointment of a substitute judge for recusal judge in a case.

27. **"Judicial Independence and Accountability."**[69]

    In this edited book, the author collected the various articles of several authors on the subject of judicial accountability and independence. Most of the authors originated from overseas countries. A total of 8 articles have been compiled by the author of this book. First article written by Lydia Brashear Tiede in the name of "Judicial Independence: Often Cited, Rarely Understood".

    In order to understand judicial independence three approaches are discussed, the institutional approach, the judicial ruling against the government, and the strategic interaction approach.

    Wim Voermans in his article "Judicial Transparency Furthering Public Accountability for New Judiciaries" discusses hard and soft accountability for the judges and also states that information policy will create legitimacy for the judiciary. "Seven Questions on Judicial Accountability" by Madabhushi Sridhar gave seven questions regarding judicial accountability. The author discussed judicial reforms to increase the credibility of the judiciary.

[68]Julian Caplan, "Judges: Appointment of Substitute for Recused Judges: Disqualification of Judges" 36 *Michigan Law Review* 985–96 (1938).
[69]P. Sabhiha Khanum, *Judicial Independence and Accountability*, 1st ed. (The IcfaiUniversity Press, Hyderabad, 2008).

28. **"Post-Retirement Assignments of the Supreme Court judges in India: A Critical Analysis."**[70]

    In this article, the author discussed the issue of post-retirement assignments of the Supreme Court of India. The author mentioned that due to future lucrative jobs the judges gave favourable judgement to the Central government. The author had given some important suggestions and conclusions for the development of the judiciary particularly post-retirement recruitments.

    The author gave recommendations to improve the age of retirement of the SC judges and contacts with executives shall be restricted. Articles 124 and 217 of the Constitution should be amended to restrict biased actions of the judges of the SC.

29. **"Judicial Independence and Judicial Accountability: An Empirical Study of Individual Case Supervision."**[71]

    In this article, the author mentioned that individual case supervision will benefit to the judicial accountability. He had given the classic example of The Chine judicial system. In Chine, he mentioned "adjudicative supervision". This can be introduced in any type of case to challenge the finality of the judgment. According to the author, this kind of system will improve judicial lethargy.

30. **"Judges and Judicial Accountability."**[72]

    This book is a compilation of the speeches, papers, and articles discussed and distributed at a workshop in the name of "judicial accountability" in Kuala Lumpur. Justice Clifford Wallace mentioned that judicial corruption is enough of a problem that some formal mechanism is necessary or at least inevitable. Dr. Nihal Jayawickrama mentioned that a "judicial code of conduct" is very necessary. Dr. Cyrus Das mentioned thatposting judicial decisions on the internet is compulsory, the appointment

[70]Lokendra Malik, "Chapter 5 Post-Retirement Assignments of the Supreme Court Judges in India: A Critical Analysis" *SSRN Electronic Journal* 39 (2020).
[71]Randall Peerenboom, "Judicial Independence and Judicial Accountability: An Empirical Study of Individual Case Supervision" 55 *The China Journal* 67–90 (2015).
[72]Cyrus Das and K Chandra, *Judges and Judicial Accountability* (Universal Law Publishing Co. Pvt. Ltd., 2004).

of public information officer for explaining the work of the judiciary through media.

31. **"Judicial Recusal: A Comparative Analysis Editorial."**[73]

In the present article, the authors have discussed the judicial recusal in India and its comparison with overseas countries. The recusal of the Supreme Court judges in India is continued without any legal framework becomes the failure of justice. In this article, the authors seriously give importance to tackling this issue as early as possible. They had given some suggestions at the end of this article. They had made a comparison between the UK and the USA system of recusal of judges with the Indian judicial system. The necessity of codification, right to appeal, an independent statutory committee for entertaining bias matters of judges, there is no contempt law shall involve which suggest if the matter being taken by the judge who has personal interest or indirectly involvement in the case. The judges shall provide reasons for recusals. These suggestions have been given by the authors. Finally, they stressed the need for codification for the recusal law.

32. **"Recusal and Disqualification of Judges: An Overview."**[74]

In this article, the author had given a comparison of five countries of recusal systems and grounds for the disqualification of judges on bias matters. Judicial impartiality is very pertinent in recusal matters as per the author's opinion. The UK, the USA, Nepal, Philippines, Canada, and Texas these countries' principles on judicial recusal and grounds for disqualification were tested by the author. The code of conduct is not useful for the judges or judiciary in the subject of recusal because these codes of conduct do not have any sanction and are mandatory for the judges. Finally, the author mentioned that in bias matters judges have to recuse themselves but legal provisions shall be available for this topic.

[73]Priyadarshini Barua, Sarthak Makkar and Vasanthi Hariharan "Judicial Recusal: A Comparative Analysis Editorial" 7 *GNLU Law Review* 1–16 (2020).

[74]Rajendra Kharel, "Recusal and Disqualification of Judges: An Overview" 4 *NJA Law Journal* 13–24 (2010).

33. **"Some aspects of corruption in India in 21st Century."**[75]

    In this article, the author has discussed the various aspects of corruption in India. The various kinds of corruption including political corruption and judicial corruption are responsible for the degradation of the Indian social system. The author mentioned that court procedures are very slow and lengthy for the common people of India. The judicial corruption is inclusive and it covers from the district court judges to the Supreme Court judges. The impact of this corruption laid to impact on the Indian economy and the Indian wealth turned into black money because of this kind of corruption. The author concluded in this article that the causes of corruption in India. Wherein he mentioned that when there is a conflict between public interest and law then corruption becomes inevitable. Hence, the law shall be very pervasive about the general interest of the people.

34. **"Administrative Powers, Roles and Responsibilities of the Chief Justice of India."**[76]

    In this report, the author published his report under Social Science Research Network. His report number is 3895799. In this report, the author has explained the role of the Chief Justice of India in the administrative affairs of the Supreme Court of India. In this report, the author discussed that the CJI has to follow the Constitutional law, conventions, precedents, and SC rules while doing the administrative responsibilities. The author said that there is a need to reconceptualise the role of the CJI.

    The balance between judicial independence, judicial integrity, transparency, and judicial objectivity is necessary.

Research Gap:

- Independence and accountability must go hand in hand to ensure the quality of the judiciary and the rule of law. In the Indian perspective, it is very necessary to understand as early as possible the judge's constitutional obligations and judicial

[75]Mousumi Kundu, "Some aspects of corruption in India in 21st Century" 5 *International Journal of Scientific and Research Publications*199–205 (2015).
[76]Chirag Balyan, *Administrative Powers, Roles and Responsibilities of the Chief Justice of India* 206-244 (Social Science Research Network, Rochester, NY, 29 July2021).

independence accompanying judicial accountability. So, there is an urgency to define concepts like judicial accountability and independence together with constitutional as well as procedural aspects.

Why did the *third Judge case*[77]did not refer the appointment of the judge's issue to a much larger bench, at least larger than the nine-judge bench in *the Second Judges case*[78]that created the collegium system.

While rendering its judgement in the *NJAC case*, the Supreme Court of India invited representations and suggestions on how the collegium system could be improved. Hundreds of suggestions were received and these were divided into recommendations but Supreme Court has not incorporated these suggestions till date and the finalization of a new memorandum of procedure to be followed by the collegium is awaited. The 99th amendment as well as NJAC Act was an opportunity lost to accompany reforms in the judicial appointments process. Lack of transparency and objective criteria for assessing merit, and allegations of favouritism are said to have vitiated the collegium system.

Appointments to the Supreme Court and High Courts were, in some instances, there was no reason why one judge was elevated to the Supreme Court and High Courts.

- In India, there is a necessity to improve judicial accountability mechanisms.
- Instead of this, the state-level court's system is not working as per the expectation of the Constitution and the people of India. Corruption, the pendency of cases, irregular execution of judgments, delay, favouritism, and expensive justice become common features of the Indian judiciary. The lack of accountability in the judiciary and it needs to improve in an immense area. So, there is a need for detailed study relating to accountability and constitutional obligation of judges and laws related in other countries. Through which deduce some general principles and values which will help to understand and implement in the Indian Judicial system.
- The practice of recusal is not clear in India and in the judicial system. The thin lines through proper legislation or judicial decisions of the Supreme Court of

[77]*In re* Special Reference 1 of 1998, AIR 1999 SC 1.
[78]*Supreme Court Advocates on Record Association* v. *Union of India* AIR 1994 SC 268.

India have to be stuffed. This area of the subject is untouched and unclear so, there is an urgency to look into it and there is scope for proper research.

- Political interference in the affairs of judiciary especially in the Supreme Court conceptualized in two methods,
  i) Positive impact
  ii) Negative impact

  The appointment and transfer of judges by the collegium system need to be improved and for that positive approach of political interference seems to be necessary for the development of the judicial process.

  The negative interference like affecting the judgement of the Supreme Court through indirect interference should be discarded from the higher judicial system in India. Judges shall be free from unconscious bias. In the American judicial system, there is a test like the 'Psychological Test' to detect unconscious bias.[79]

  Such a procedure may add to the Indian judicial system for better improvement of the judicial system in India.
- The lack of judicial accountability is because of the cultural dimension of society. Judicial impartiality is repressed by the cultural values of society. Judges went to the bench of the Supreme Court & High Court from the society and social values affected to each and every individual, judges may not be separate and influenced by society. A weak judiciary is the result of weak social values and social standards.
- The Supreme Court of India also accepts that there is an urgency for accountability in the court system in India.[80] If we look at the NJAC judgement[81], this case is leading to serious reform of the process of appointment of judges in India today. As vacancies increase and deserving candidates decrease, a fair, merit-based, transparent method of appointments that involves all key stakeholders is the need of the hour.

[79]Melissa L. Breger, "Making the Invisible Visible: Exploring Implicit Bias, Judicial Diversity, and the Bench Trial," 53 *University of Richmond Law Review* 1039–84 (2018).

[80]*Supreme Court Advocates-on-Record-Association and another* v. *Union of India*, (2016) 5 SCC 1.

[81]*Ibid.*

1.10 Scheme of Study:

The researcher has broadly categorized the entire scheme of the study into seven chapters including the chapters for introduction, conclusion, and suggestion. The overview of the chapterisation along with the division of study is given below:

1. **Introduction:**

   In this chapter, the researcher has written about the background of the present research topic. The researcher has mentioned his research methodology, objectives to carry this present research topic. The general idea about research as well the basic understanding of the subject has been mentioned in this chapter. The application of the questions of the present research topic has been discussed in historical and contemporary legal development in India. It also discussed contemporary reality relating to the research topic.

2. **Judicial Accountability in the Indian Legal System:**

   In this chapter, the researcher has focused on several issues of judicial accountability. The issues like appointment of the judges and constitutional provision for transfer of judges, removal of the judges, consultation procedure and its development, contempt of the court, right to information, and the explanation of these important concepts. The constitutional interpretation was applied through various judgements of the SC and HC and its relevance to the present time.

3. **Constitutional Obligation and Responsibilities of Judges**

   In this chapter, the researcher has discussed the various responsibilities and obligations of judges in India. It includes constitutional, statutory, fiduciary, administrative, economic, etc. The constitutional obligation of the judges has been written in the constitution, some of them impliedly applicable from the conventions and developments in the legal system.

4. **Judicial Accountability and Comparative Study with Other Nations:**

   In this chapter, the researcher has discussed the concept of judicial accountability and the mechanism of accountability of judges from various countries of the world. It includes Malaysia, New Zealand, the USA, Australia, and the United Kingdom. Researchers wrote the basis and

important features and principles of the foreign judiciary. Then it has to make comparisons between India and other nations to properly understand this research topic.

5. **Indolence in Indian Judiciary:**

   In India, several issues are related to judicial accountability, and these issues are not properly touched and controlled by the legal system, these are all issues discussed by the researcher in this chapter. There are several issues like corruption, abuse of judicial authority, delays in the judicial delivery system, vacancies in courts, under- trials prisoners, provisions of adjournments, and vacations of the judicial officers. It all amounts to the lack of judicial accountability in India. The researcher has shown and observed data available from 2010 to 2020 relating to all these issues and evaluated it.

6. **Recusal: Pre and Post-Retirement of the Judges:**

   In this chapter, the researcher has discussed the concept of recusal and issues relating to it. It also includes pre and post-retirement duties of the judges, recusal principles, when judges can recuse from the case, allegations on judges of the Supreme Court on the ground of recusals, and post-retirement recruitments. All these issues have been discussed by the researcher in a thorough manner.

7. **Empirical Study and Observations:**

   In the concluding chapter of the research, the researcher has tested the hypothesis to figure out the inference aiming toward the productive contribution and effective suggestions in the area of research. The researcher has tested the hypothesis with the help of the data interpreted by using SPSS.

8. **Conclusion and Suggestions:**

CHAPTER-2

JUDICIAL ACCOUNTABILITY IN INDIAN LEGAL SYSTEM

2.1 Introduction:

The terms like "judicial reforms" and "judicial accountability" have become familiar words to the common masses of the country in India. It has been said that, "The corruption in India is not the result of only political failure but it seems to be judicial failure also. Today all members of modern democracy think that there is an urgency to define the boundaries and legal framework of the judiciary which will have on account of demanding needs of the society like increasing population, societal norms, and technical advancement.

If we still follow the same traditional process or mechanism of judiciary then it will lose its honour and confidence of the people".[82]

Judicial Accountability may be classified into two categories; first, decisional accountability, which means accountability for their decisions, and second institutional methods of making judges accountable for example method of selection, removal, and their protection given under the law of contempt. Judicial accountability in the first type was questionable in the era of 1950 to 1973 where conflict between judiciary and government on the decision of the SC on property, agrarian and economic reform. But after 1973 there was no such problem. Today's main concern is about appointments of the superior judiciary, abuses of disciplinary control, removal, and corruption of the judiciary.

Judges has to discharge its function before the legal practitioners and fellow judges whose confidence has to be maintained by performance to the standards that are recognized by them as professionally high.[83]The Indian judiciary accountability measures are not translucent to the people of India. The kind of mechanism and system of accountability whether available and if available then whether feasible to cover present shortcomings of the judiciary is topic for development and study.

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[82]V Madanabhavi, "Impeachment and Judicial Accountability" 37 *Indian Bar Review* 191–200 (2010).

[83]*Ibid*.

In *Re Sanjiv Datta's Case*[84], J. Sawant noticed that there are internal and external checks to correct the errors of the courts. Court said, "Hence law shall provide the procedure to correct judicial errors".[85] Even, the court has acknowledged it that checks and balance in a democracy are very important for justice delivery system.

2.2 Judicial Appointments in India: A Historical Overview:

The Indian Judiciary is the product of the Indian Constitution and the Constitution declared it as an independent body that can create rules for themselves. So, the judiciary will not come under pressure and influence. According to Article 141 of the Constitution, SC may lay down the law of the land as like a legislature that will be binding each and every institution of the state.

Judicial independence was strictly maintained and perceived by the makers of the Constitution.[86]

Dr. B. R. Ambedkar explained in the Constituent Assembly debate[87], the scheme of the Constitution appointment of judges of the Constitutional Courts: "If appointment resides in the hands of the Executive chances to influence by political pressure and interferences, even though appointment through the hands of the President still President is not the supreme and absolute authority in the Judicial Appointments."[88]

An independent judiciary is very important for the democratic setup of any country. The Constitution of India deliberately inserted the separation of the judiciary from the executive, not only Constitutional framers have had a bias in their mind relating to the independence of the judiciary but because of that bias, several provisions for the appointment and removal of judges were framed.

Instead of *Keshwanda Bharati Case*[89], Supreme Court in *Shri Kumar Padma Prasad* v. *Union of India*[90], and *High Court of Bombay* v. *Sri Kumar*[91],the

[84]*In Re: Sanjiv Datta and Ors.* v. *Unknown* (1995) 3 SCC 619.
[85]*Ibid.*
[86]P. Chandrasekhara Rao, *The Indian Constitution and International Law* 25 (BrillNijhoff, 1995).
[87] VIII, *Constituent Assembly Debates*1949.
[88]*Ibid.*
[89]*Keshwanda Bharati* v. *State of Kerala,* AIR 1973 SC 1461.
[90]*Kumar Padma Prasad* v. *Union of India* (1992)2 SCC 428.
[91]*High Court of Bombay* v. *Sri Kumar,* (1997)2 SCC 399.

Supreme Court held that, "Judicial independence is part of basic structure and power of judicial review will be vest in the Supreme Court and High Courts which also been held to be a basic feature."[92]

The Constitution of India has made provisions to secure the judicial independence as follows;

1. Security of tenure,
2. "Fix salary and it cannot be changed by the legislature"[93] ,
3. "Parliament can extend, but can't curtail the power of SC"[94],
4. "No discussion in the legislature on the conducts of judges"[95],
5. Judges "power to punish for its contempt"[96],
6. "Separation of judiciary from the executive"[97],
7. Judges can practice after retirement.

Judicial Independence enables the Judges to follow the facts and law without any kind of fear or favour to uphold the rule of law, to preserve the suppression of governmental powers and also to promote the due process.[98]

The real purpose of judicial independence is to ensure the independent functioning of the judiciary free from influence or the control of executive, direct or indirect.[99]

It also includes judicial officers who devote their time entirely for judicial duties and accountancy towards the general public. Whether it is an individual, whether it is an institution being the part of public service may demand accountability, and as a public office judiciary may not be away from accountability mechanisms in India.

"Independence is a vital component of a judge's accountability."[100]

[92]*Ibid.*
[93]The Constitution of India, 1950, art.125.
[94]*Ibid.*
[95]The Constitution of India, 1950, art.121.
[96]The Constitution of India, 1950, art. 142(2).
[97]The Constitution of India, 1950, art.50.
[98]Suraj Narain Prasad sinha, "Efficacy of Judicial Accountability" 35 *Indian Bar Review*108 (2008).
[99]Aswar, Umesh, "Significance of Judicial Organ of State" 2 *Bharati Law Review* 9-14 (2011).
[100]Gopal, Dr. P. Raja, "Independence of Judiciary - Need for Judicial Commission" 2 *Bharati Law Review* 35-38 (2011).

The provision of Appointment and removal available under the Indian Constitution cultivated the concept of judicial Accountability. Judicial accountability is considered judicial power signifying both a legal duty and a public law duty. Judicial Independence is the vehicle to attain the destination of justice. It does not include irresponsible judicial actions or conducts apprehend to justice.

Appointment of Higher Judiciary provided under Indian Constitution under Article 124 and 217.[101]"The President has been given the power to appoint judges of the SC and HC but after compulsorily consulting with the Chief Justice of India. This arrangement was created for ignoring any kind of political motive in the appointments of judges."[102]

2.3 The Indian 'Consultation':

Any other country in the world except India is never having the provision of 'consultation' with the chief justice or any other member of the judiciary. Only the Constitution of India does so but it has very intended objectives to insert into it. Dr. B. R. Ambedkar, Alladi Krishnaswami Ayyar, K.M. Munshi, Jawaharlal Nehru, and Sardar Patel were important persons in the constituent assembly and all were worried and concerned sincerely for the independence of the judiciary. The nature of the executive is to control the other organs of government but independence and protection of the judiciary are much more important for protection of normal people's rights and therefore provision of consultation with the Chief Justice of SC and HC was inserted.

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[101] The Constitution of India, 1950, art. 124.

"Establishment and constitution of Supreme Court *(1) there shall be a Supreme Court of India constituting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.*

Article 124 (2):- Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty five years: Provided that in the case of appointment of a Judge other than the chief Justice, the chief Justice of India shall always be consulted:"

217(1) reads: 'Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court…'

[102] *Ibid.*

Dr. B. R. Ambedkar opinion, [103] in relating to 'consultation' with chief justice of SC is imperative in appointment of judges in higher judiciary. "Consultation" interpreted under articles relating to appointing judges shall be real and complete consultation. The rationale is that the superior judges were in a better situation to judge the capability and character of the probable contenders. So, their opinion shall have more preference in the matter of appointment, and the same policy is allowed in the matter of selection of subordinate judiciary because the High Court appoints lower judiciary judges, and consultation with senior-most judges of the High Court is becoming compulsory.

Hierarchy of Indian Courts[104], the Indian Judicial hierarchy is the product of Indian Constitution but due the concept of the State, changes were created in India.

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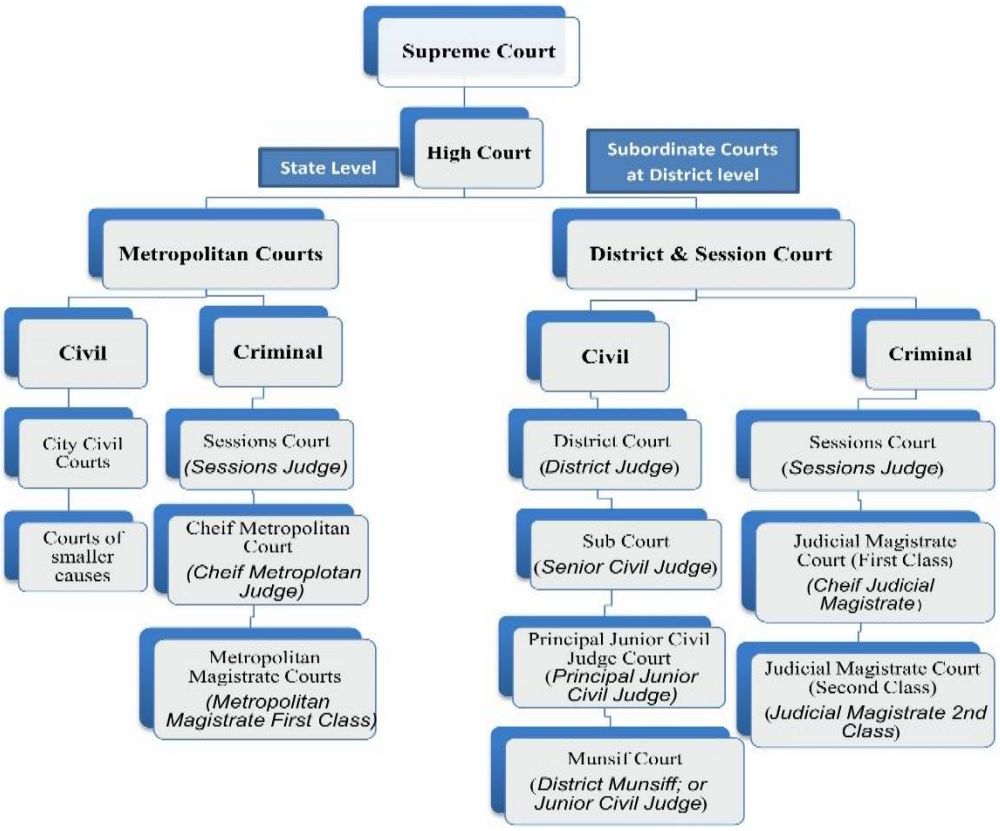
[103] V Madanabhavi, *Op. cit*, at page 38.

..... *Chief Justice practically a veto upon the appointment of Judges is really to transfer the authority to the Chief Justice whichwe are not prepared to vest in the President or the Government of the day. I therefore,think that that is also a dangerous proposition.*

104 Image



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'The Law Commission of India', 88th Report:

In 1977, Headed by Shri H. R. Khanna J. and The Law Commission of India[105], submitted its detailed report and gave the recommendations for appointment of judges of the High courts.

According to the report, the Chief Justice of the High Court should consult his two senior-most colleagues, and when he forwards this recommendation that time he has mentioned that he has consulted with the two most senior judges of the High Court. "The law Commission also recommends high-level panel in the 'Judges Appointment Commission' where in that panel consists of persons having integrity, independence and judicial background but these recommendations were not accepted by the Ministry."[106] Supreme Court in *Chief Justice of A.P*. v. *L.V. Deekshitulu* (AIR 1979 SC 193) mentioned that, article 74 of the Indian Constitution stated that the Council of ministers may give advice to the President, in case appointment of SC and HC judges Article74 will not be applicable. The President has to appoint judges with consultation with the Superior judiciary. In this case the Supreme Court held that, "Articles124 and 217 must be read consistent with the concept of independence of judiciary."

Appointment of judges in Lower Court:

In State level appointment of judges: the Constitutional provisions Articles 233, 235 and article 309 are applicable. Article 235: **Control over subordinate courts**, the control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

Article 309: Legislature (Central & State) May regulate recruitment and conditions of service of persons serving the union or a state by legislation.

High courts are empowered to create rules for the appointment and transfer of lower court judges.

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[105] Law Commission of India, "88th Report on The method of appointments of Judges" (April, 1992).

[106] *Ibid.*

It has become a universally accepted fact that there is no uniformity or resemblance in the rules and selection process followed by different States.[107]

The Supreme Court in *All India Judges Association* v. *Union of India*[108]Court said that, *"*presently, there are three points of provenance for recruitment. Sixty-five percent of all the posts are filled by regular promotions from the cadre of Civil Judge (Senior Division), ten percent by competitive departmental examination strictly on the basis of merit, and the remaining twenty-five percent by direct recruitment from the Bar Council of India."[109]

The judges of the lower judiciary are appointed through the 'public service commission' or through the 'High Court'. In the Indian, Constitution power is given to the Governor according to Article 233 of the Constitution.[110]

In the Public service Examination (PCSJ), there will be a written examination that includes an objective test and a main subjective test. Once a candidate cleared both tests he will have to face in the interview and if cleared, the candidate may become a judge in the lower judiciary, i.e., Judicial Magistrate of First Class.

Another examination conducted by the High Court for additional district judges is the higher judicial service examination. In practice, "the Judges of subordinate Courts are disciplined and removable by the High Court but there is no effective method for disciplining the judges of the superior courts."[111] While the Supreme Court and the High Courts have been praised for their independence, and the societal perception of the higher judiciary is higher than the other two branches of the government, there are undercurrents of criticism at the behaviour and conduct of the judges of the superior courts for whom there is no effective method of disciplining.

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[107]Shivam Kaushik and Anushri Singh, "All India Judicial Services: Problems and Prospect" 11*NUJS Law Review* 4 (2018).

[108]*All India Judges Association* v. *Union of India*, (2011) 12 SCC 677.

[109]Shivam Kaushik and Anushri Singh, *Op. cit*, at page 11.

[110] The Constitution of India, 1950, art.233.

Appointment of district judges.-

(1) *Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.*

(2) *A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.*

[111]*Ibid.*

Justice Ramaswamy's case[112], itself went through several rounds of litigation by, and at the instance of the judge himself in the Supreme Court of India, and from the initiation of the move for his removal to the vote in parliament it took the better part of three years. The expectation of the Supreme Court in one of these challenges by the judge was that: "Parliament would discharge its obligations in the Constitutional scheme with as much responsibility and seriousness, as was expected from any other organ of the State or authority involved in the process of removal of a Judge."[113]

Appointment in Supreme Court & High Courts:

The appointments of Supreme Court and High Court judges are being completed according to Article 124 (4) and Article 214 of the Constitution. In case *S. C. Advocates on record Association* v. *Union of India*[114]*;* laid down some following important propositions in relation to appointments in superior courts, these are following;

- Initiation of the proposal for the appointment of a Supreme Court Judge must be made by the Chief Justice of India.
- No appointment of any judge to SC can be made by the President unless it is in conformity with the final opinion of the Chief Justice of India.

Position before 1993:

The makers of the Constitution in 1950 had never contemplated a judiciary of such a magnitude and power that would become more than a coordinated branch of government and which at times attracts the description of government by the judiciary. The Indian Supreme Court has not subscribed to the theory of avoidance of a political question and has never declined to exercise its powers merely because a legal question has political overtones.[115]

A measure of the Court's relevance in the Indian public life is the ready invitation and resort to it by the other branches of government to find solutions for political and social questions which in other countries would be the concern of either the legislature or the executive, and the equally ready acceptance of that function by the court.

The order of the Supreme Court on 13 March 2002 on the burning issue of the demand for a Hindu temple at Ayodhya over the place where a mosque stood till it was

[112]*Sarojini Ramaswami* v. *Union of India,* AIR 1992 SC 320.
[113]*Ibid.*
[114]AIR 1994 SC 425.
[115]*Ibid.*

demolished, which threatened to divide the nation in fratricidal strife is an example. After the court ordered a status-quo on the ground, the problem abated with all parties and the government declaring their willingness to abide by the order of the court. Another instance is the Court's verdict in 1992 on reservations policy for backward castes and backward classes in services of the state, also a highly volatile political matter which was defused by the court's verdict.

In case *All India Judges Association and ...* v. *Union of India*[116], the Supreme Court has observed,

The indication is that in the choice of a candidate suitable for appointment, the opinion of the Chief Justice of India should have the greatest weight, the selection should be made as a result of a participatory consultative process in which the executive should have the power to act as a mere check on the exercise of power by the Chief Justice of India, to achieve the constitutional purpose.

Thus, the executive element in the appointment process is reduced to the minimum and any political influence is eliminated. It was for this reason that the word 'consultation' instead of 'concurrence' was used, but that was done merely to indicate that absolute discretion was not given to anyone, not even to the Chief Justice of India as an individual.

The court has observed this connection and said, "entrustment of the task of appointment of superior Judges to high constitutional functionaries; the greatest significance attached to the view of the Chief Justice of India, who is best equipped to assess the true worth of the candidates for adjudging their suitability; the opinion of the Chief Justice of India being the collective opinion formed after taking into account the views of some of his colleagues; and the executive being permitted to prevent an appointment considered to be unsuitable for strong reasons disclosed to the Chief Justice of India, provide the best method, in the constitutional scheme, to achieve the constitutional purpose without conferring absolute discretion or veto upon either the judiciary or the executive much less in any individual, be the Chief Justice of India or the Prime Minister."[117]

The vast and far-reaching judicial review jurisdiction exercised by the superior courts in India is the most conspicuous and distinguishing feature of the present-day Indian

[116]AIR 2002 SC 1752.
[117]*Ibid.*

Judiciary. It would be sluggish to deny that the Supreme Court with its vast judicial review jurisdiction to invalidate laws and executive actions and of late with its active intervention in public affairs by resorting to public interest litigations is not a political institution.

SP Gupta case[118], in this case, SC held that, "the executive may reject the name taken for consideration as judge of the SC but for a reason to reject shall be very strong." In this case, executive interference in the appointment of judges seems very strong. In case *S. C. Advocates on record Association* v. *Union of India*[119], the system of collegium is being started and the Chief Justice of India and members of the collegium system become independent from executive interference.

Position after 1993:

Then in 1998, the *Third Judges Appointments Case*[120]created more changes and enhancements in the same system of appointments.

In 2014, "the National Judicial Appointment Commission bill was introduced to the Lok Sabha and it was enacted on December 31, 2014 as The National Judicial Appointments Commission Act. Along with the NJAC Act, the parliament also passed the Constitution (121st) Amendment Bill, 2014 that inserted Article 124A into the Constitution".[121] The NJAC Act was enacted to replace the collegium system with a new NJAC system for the appointment of judges to the SC and HC. But suddenly it was challenged on October 16th 2015 before the Supreme Court, in the *Fourth Judges Appointment Case*[122], "five judges of the Supreme Court held that the NJAC Amendment unconstitutional as violating the basic structure of the Constitution. So, for Appointment and transfer of judges of Supreme Court and High Courts from 2015to till now we are following the same collegium system in judiciary."

SC observed, "This is the most complicated and absurd phenomenon of the legal system of India. The process of judicial appointment in India is the turning point of

[118]*S.P. Gupta* v. *President of India and Ors.* AIR 1982 SC 149.

[119]AIR 1994 SC 425.

[120]*In Re: Special Reference No. 1 of 1998*, (1998) 7SCC 739.

[121]Prof. Jay S. Bhongale and Dr. U. S. Bendale, "Judicial Appointment, Accountability and Constitutional Obligation of Judges in India" 12 *Turkish Online Journal of Qualitative Inquiry* 573–92 (2021).

[122]*Supreme Court Advocates-on-Records Association* v. *Union of India* (2016) 5 SCC 1.

major development and reform. The collegium system, formulated in the second, third and fourth judges cases, has been hindered in the controversy for multiple reasons."[123]

"Under Article 222 of the Constitution the Chief Justice of India has to be consulted on the question whether a particular Judge should be transferred and where he should be transferred while implementing the said policy. If the Government requests the Chief Justice of India to give his opinion on a transfer to implement the said policy which is really in the public interest he cannot decline to do so. Even though the Chief Justice was opposed to the 'wholesale transfers' of Judges there is no bar for the Government treating the recommendation for transfers made by the Chief Justice of India as a part of the implementation of its policy."[124]

In *Supreme Court Advocates-on Record Association* v. *Union of India*[125], in all SC and HC recruitments Chief Justice Approval becomes more prominent as well as two senior-most judges opinions of SC also become prominent.

"The uncertainty regarding judicial appointment was not cleared, the uncertainty arose with the then president K. R. Narayanan consigned this affair for Presidential reference. In 1998, *in Re Presidential Reference* which is also known as *the third judges case"*[126], in this case the Supreme Court held that, "in case of appointment and transfer HC Judges recommendation shall be consulted with two senior judges of SC." And at the time of appointment of SC Judge and Chief Justice of HC consultation with four senior judges of SC became compulsory.

So, in this way collegium system of appointment of judges starts where consultation with four senior judges becomes compulsory. Apex court cleverly declared the supremacy of the executive but kept the control underhand in appointing the judges.

Stages of Judicial appointments after Independence

- The formation of Articles 214 & 124 of The Constitution of India, 1950, then
- *S.P. Gupta* v. *President of India and Ors. case*
- *Supreme Court Advocates-on Record Association* v. *Union of India*[127]
- Then in 1998, the *Third Judges Appointments Case*[128]
- 'Judicial standard Accountability bill, 2010',

[123] *Ibid.*
[124] *Ibid.*
[125] (1993) 4 SCC441.
[126] *Ibid.*
[127] (1993) 4 SCC441.
[128] *In Re: Special Reference No. 1 of 1998*, (1998) 7SCC 739.

- 'National Judicial Appoint Commission Act, 2014'
- *Supreme Court Advocates-on-Record-Association and another* v. *Union of India*[129].

"The Constitution (Ninety-Ninth Amendment) Act, 2014 was passed by the Lok Sabha on 13th August, 2014 and the Rajya Sabha on 14thAugust, 2014. The President gave the assent to the Act on 31st December 2014 and it came into force from 13th April, 2015."[130]

The Constitution Ninety Ninth Amendment Act provides for the composition and the functions of the NJAC. The members of NJAC will be composed according to Article 124A[131]. Through this Act the Constitution of India was amended and Article 124A, 124B, 124C was added to Article 124.[132]

The National Judicial Appointment Commission Act was passed on 31 December 2014. The preamble[133]of the Act defines its purpose as relating to the appointment andtransfer of the judges.

Section 5 of the National Judicial Appointment Commission Act; specifies the procedure to select the Supreme Court judges whereas section 6 will specify the procedure to select High Court judges. The selection will be done by commission on the basis of seniority and on merit and ability-wise. Section 11 of the Act specifies the

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[129](2016) 5 SCC 1.

[130]*Ibid.*

[131] The Constitution of India Amendment Bill, art. 124A.

(1) There shall be a Commission to be known as the National Judicial Appointments Commission consisting of the following, namely:—

(a) the Chief Justice of India, Chairperson, *ex officio*;

(b) two other senior Judges of the Supreme Court next to the Chief Justice of India —Members, *ex officio*;

(c) the Union Minister in charge of Law and Justice—Member, *ex officio*;

(d) two eminent persons to be nominated by the committee consisting of the Prime Minister, the Chief Justice of India and the Leader of Opposition in the House of the People or where there is no such Leader of Opposition, then, the Leader of single largest Opposition Party in the House of the People — Members: Provided that one of the eminent person shall be nominated from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities or Women: Provided further that an eminent person shall be nominated for a period of three years and shall not be eligible for re-nomination.

[132]Prof. Jay S. Bhongale and Dr. U. S. Bendale, *Op. cit*, at page 583.

[133]*An Act to regulate the procedure to be followed by the National Judicial Appointments Commission for recommending persons for appointment as the Chief Justice of India and other Judges of the Supreme Court and Chief Justices and other Judges of High Courts and for their transfers and for matters connected therewith or incidental thereto.*

rule-making power of the Commission. So, that's why this Act is being criticized and challenged on the aspect that it violates the basic structure Doctrine which was evolved by the Supreme Court in *Kesavananda Bharti case*, and also the intervention of executive and political parties in the appointment of judges which is being seen as being against the independence of Judiciary.[134]

In 2014 the central government of India appointed the National Judicial Appointment Commission (NJAC) by amending the Constitution of India through the ninety-nine Amendment with the ninety-nine Amendment Act, 2014 which was passed by both the houses of the parliament. The NJAC would have replaced the Collegium system which was invoked through the result of Second and Third Judges' cases. But the Supreme Court of India on 16 October 2015 struck down the NJAC Act with a 4:1 Majority. The purpose of NJAC Act was to replace the appointment process which was going on for two decades for Supreme Court and High Court judicial appointments but this effort has vanished under the name of judicial Independence.[135]

On 3 November 2015 the Supreme Court upheld that it is open the bringing greater transparency in the collegium system under the four head;

- How can the collegium system be made more transparent?
- The fixing the eligibility criteria through which more eligible candidates will be appointed as a judge.
- A process can be created to receive and deal with the complaints against judges without diluting judicial Independence.
- Debate on whether a separate secretariat is required, and if so, what could be its functioning, composition, and powers.[136]

So, finally, the judicial system of India has become untouchable to improvement till now because of the NJAC judgement,[137] and from 2014 to up till now the process of judicial appointment has been stuck in the era of 1970 and 80. From the *first judge case* till today there is no room for any improvement happen for the judicial Accountability even though there is an urgency to improve the judicial system.[138]

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[134]Prof. Jay S. Bhongale and Dr. U. S. Bendale, *Op. cit*, at page 582.

[135]*Ibid.*

[136]*Ibid.*

[137]The majority on the NJAC bench held Article 124(1) (C) ultra-virus to the provision of the Constitution on the ground that the inclusion of the Law Minister, as an ex officio member of the NJAC impinged upon the independence of the judiciary as well as the separation of powers, and hence violation of the basic structure of the Constitution.

[138]Prof. Jay S. Bhongale and Dr. U. S. Bendale, *Op. cit*, at page 583.

Serious criticism rose among the judiciary that the Law Minister may interfere in the functioning of NJAC and he can send the details of the vacancies in the higher judiciary. This is against the Theory of separation of power and if the Law minister exercised both power like Executive and Judicial, then there will be chances of misusing the power because absolute power corrupts absolutely.[139]

Article 124 (1) (d) raise several issues relating to reservation in the Indian judiciary, seems to be complicated for the justice mechanism.

Section 13 National Judicial Appointment Commission Act[140]also objected on the basis that Article 145 and 229 of the Constitution of India empowered the rule making power to the judiciary. It means that Subordinate legislation drafted by judicial bodies shall lie before the parliament which is against the Constitution. Subordinate legislation framed by the judiciary under the Indian constitution are class-wise different, and are not subject to similar treatment.

It is difficult to hold that the wisdom of appointment of judges can be shared with the political executive. In India, the organic development of civil society has not as yet sufficiently evolved. The expectation from the judiciary, to safeguard the rights of the citizens of this country, can only be ensured, by keeping it absolutely insulated and independent, from the other organs of governance.[141]

Supreme Court rejected the NJAC Act and the 99th amendment to the Constitution also declared it unconstitutional and void and a collegium system would be an operative relating to the appointment of the higher judiciary. Learned Senior Counsel appearing before the Constitution bench under this case made the contention that the impugned

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[139]*Ibid*.

[140]National Judicial Appointment Commission Act, 2014, s. 13.

Rules and regulations to be laid before Parliament:

Every rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

[141]*Supreme Court Advocates-on-Record -Association and another* v. *Union of India,* (2016) 5 SCC 1. Justice J.S. Khehar, the presiding judge on the five-judge Constitution Bench, explained in his individual judgment.

act infringes the basic structure of the Constitution as the same demoralizes the independence of the judiciary as the very act itself challenges the role of the Hon'ble Chief Justice in the selection of the judges to the Higher Judiciary and therefore, the act must be declared as ultra-virus.

National Judicial Appointment Commission to be with the concept of independence the of judiciary;

- Directly or indirectly judicial independence cannot be diluted even through the changing method of appointment and transfer of judges of HC and SC.
- Even NJAC will be presided by SC Judges, and the constitution of NJAC shall be dominated by the SC judges because any method cannot dilute the basic structure of the Constitution.
- By introducing a proviso and an Explanation in Article 124(2), pointed out hereinabove, the role of the executive in the matter of appointment was substantially diluted. Not only was the President precluded from appointing any person not recommended by NJC, the President (Council of Ministers) had to record reasons in writing for not accepting a recommendation made by the NJC.[142]

Criticism on collegium system:

Study report said that, a study of social backgrounds of Supreme Court judges appointed between the period 1950-1990 reveal that over 40% of them were Brahmin at any point of time while close to 50% were from other forward castes and the percentage of Schedule Caste, Schedule Tribes and Other Backward Class barely crossed 10% at their highest.[143]

Not much changed during the period of the collegiums system as in the year 2011 the report brought out by the National Commission for Schedule Caste[144]noted that out of 850 judges of 21 High Courts of India, only 24 belonged to SC/STs. Even though courts have no obligation to appoint a particular group of people but continued absence of these groups of people can draw the implication that there is inbuilt bias against these

[142]Prof. Jay S. Bhongale and Dr. U. S. Bendale, *Op. cit*, at page 585.
[143]George H. Gadbois Jr, *Judges of the Supreme Court of India: (1950–1989)* 41(Oxford University Press, 2011).
[144] Law Commission of India, "121th Report on A new forum for Judicial Appointment, 1987" (July, 1987).

groups of people. This kind of implication is in itself attached to the credibility, public confidence and legitimacy of the court.[145]

The Court decoding the supply relating to appointment of judges by the government took over for itself the facility of appointment of judges. The judiciary has become a sort of self-perpetuating political system. There is no system followed within the choice of judges and there is no transparency with the system.[146]

2.4 Removal and Transfer of Judges:

Impeachment Process in India:

It has been said that the word 'impeachment' is a British invention. In India there are two processes to impeach a judge one is Judicial and second one is political and because of this it has become difficult to impeach the SC judges even though the Inquiry Commission has laid the Inquiry Commission Report before parliament several times.

As per the Judges Inquiry Act, 1968 judges of the SC or HC may be removed on the ground of "proven misbehaviour" or "incapacity". Under this Act there is detailed procedure to remove the judges, this starts from section 3 to section 6 of this Act.

Under section 3 of the Act[147], if a motion was passed according to section 3 (1) to remove a Judge, then an inquiry Committee of 3 (one from SC + one from HC +from the opinion of Speaker) members can be established by either House of the Parliament. The committees appointed under section 3 of this Act will prepare a report and will submit it to the Parliament of India. And if it is passed by the Parliament with majority then the judge can be removed.

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[145]Madhav Kosala and Sudhir Krishnaswamy, "Inside Our Supreme Court" 46 (31) *Economic and Political Weekly* 7–8 (2015).

[146]*Ibid.*

[147]Judges Inquiry Act, 1968, s.3.

Investigation into misbehaviour or incapacity of Judge by Committee:

If notice is given of a motion for presenting an address to the President praying for the removal of a Judge signed,

a) In the case of notice given in the House of the people, by not less than 100 members of that house;

b) In the case of a notice given in the Council of States, by not less than 50 members of that Council; then, the Speaker or as the case may be, the Chairman may, after consulting such person, if any, on such material, if any, as may be available to, either admit or refuse to admit the same.

Every institution of the state is accountable to the anti-corruption agencies and to the judiciary.

"The only recourse against a judge committing judicial misconduct is impeachment, which has been found to be a totally impractical remedy."[148]But because of this prolonged procedure established under his Act the very purpose could not become successful in India. There are several reasons responsible for non-implementation of this Act properly and one reason is a political reason. This Act remained a 'toothless tiger' due to consistent political interference. It is difficult to apply the Right to Information Act to the judiciary, even though judges of SC and HC had included the concept of 'public authority'. In a country, where Rule of Law is applicable cannot absolve any institution from liability.

In *K. Veeraswami* v. *Union of India & others*[149], Verraswami appealed against the decision of Madras HC where he pleaded that judge of the High Court is not be subject to the provisions of the 'Prevention of Corruption Act'.

In this case SC held that, "Judges of the higher judiciary are safe and secure; the executive is incompetent to remove them. Power to remove them is vested in Parliament under Article 124(4) and (5) to SC judges and by virtue of Article 218 clauses (4) & (5) will apply to the High Court. Section 6(1) (c) Prevention of Corruption Act, 1947 the expression 'the authority competent to remove' used is to be construed as the authority without whose order of affirmation the public servant cannot be removed. The only president can remove the Judges SC and HC."[150]

As per Sharma, J. (dissenting) said,

"The removal of a judge does not take automatically, it is dependent on certain steps as mentioned in the article 124 (4) & (5) through human agency, several people involved in this lengthen process."[151] In this case the question is not important who is the authority but is important is whether such authority exists or not and answer shall be in a positive manner.

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[148]Prashant Bhushan, "Securing Judicial Accountability:Towards an Independent Commission" 42(43) *Economic & Political Weekly* 14-17(2007).

[149] (1991) 3 SCC 655.

[150]*Ibid.*

[151]*Ibid.*

As per Shetty and Venkatachalliah, JJ. In the case[152],

SC judges said that genuine judges are the treasure of the judiciary and nation, be sheltered. It is important to lay down certain guidelines so that the Prevention of Corruption Act, 1988 may not misuse.

It is obvious that judiciary will protect the judges and if they are specially HC & SC Judges. Already they are immune from the section 154 of Criminal procedure code.

In Sub Committee on Judicial Accountability v. *Union of India and others,*[153] notice was given by 108 members of Lok Sabha to the president for the removal of a Judge of SC. The motion was admitted by the Speaker of Lok Sabha. However, UNI took the stand notice of the motion as well as an admission of Lok Sabha speaker but it had lapsed with the dissolution of the Ninth Lok Sabha. A writ petition was filed by the 'sub–committee on judicial Accountability' in SC.

SC held that, "under Article 124 the removal process was divided into two parts. First part, investigation according to the law passed by parliament under Article 124(5), and when this accusation is proved then before the parliament notion shall be passed with a special majority. Article 124(4) is really meaningful when the law is made under Article 124(5)."[154]

The question is not so important that Judges Inquiry Act, 1968 is sound, prolific, or effective but it is very necessary that whether it satisfies the purpose for the intention is created. There is doubt on parliamentary intention to remove the judges but it is more pertinent for the judiciary to understand that whether this Act is fruitful for the accountability mechanism.

There is a question on the side of the law that whether the law is a civilized piece of legislation trying to reconcile the concept of judicial accountability and judicial independence. Whether the provisions of the Judges Inquiry Act do not pollute the constitutional morality? The SC held that, "unless by using the procedure of Constitution any inquiry is not proved even parliament cannot

[152]*K. Veeraswami* v. *UOI & others* (1991) SCC 655.

[153](1991) 4 SCC 699. (Before B.C. Ray, L.M. Sharma, M.N. Venkatachaliah, J.S. Verma and S.C. Agrawal, JJ.).

[154]*Ibid.*

allowed doing and allowed to discuss anything about judges of High Courts & SC."

In case of *Mrs. Sarojini Ramaswami* v. *UNI and others*[155], the court held that, "The Judges Inquiry Act, 1968 and the Judge Inquiry rules, 1969 is to be read along with Article 124(4) for removal of HC & SC judges."[156]

The plea also made that a copy of the report will not be given to the judge is not violating any principle of natural justice. The plea of the respondent that judicial review will not be available to the concerned judge once the parliamentary process of removal commences the on finding of guilt of judge and report of the inquiry committee being made and the parliament make removal order against him is not acceptable. It means no one can stop a judge from pursuing a removal order made by parliament to invoke judicial review.

Other Instances of Removal of Superior Court Judge:

The first time in Indian judicial history, an impeachment proceeding was started against a judge on the grounds of allegations of sexual harassment. As of March 4, 2015, as many as 58 Rajya Sabha members[157] initiated a motion of impeachment under Article 124 of the Indian Constitution against Justice S. K. Gangele.

Sexual harassment of a woman additional district and sessions judge of Gwalior while being a sitting judge of the Gwalior Bench of the High Court of Madhya Pradesh ; It has said, "victimisation of the said additional district and sessions judge for not submitting to his illegal and immoral demands, including, but not limited to, transferring her from Gwalior to Sidhi and misusing his position as the Administrative Judge of the High Court of Madhya Pradesh to use the subordinate judiciary to victimise the said additional district and sessions judge."[158]

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[155] AIR 1992 SC 2219. (Before J.S. Verma, N.M. Kasliwal, K. Ramaswamy, K. Jaychandra Reddy and S.C. Agrawal,JJ.)

[156] *Ibid.*

[157] Including Communist Party of India-Marxist leader Sitaram Yechury, Congress leader Digvijay Singh, Trinamool Congress leader Derek O'Brien and Jaya Bachchan – filed petition to the Rajya Sabha Chairperson, Hamid Ansari.

[158] PTI, "Justice Sen can chair panel probing sexual harassment charges despite retirement: AG - The Economic Times," 2016 *available at*: https://economictimes.indiatimes.com/news/politics-and-nation/justice-sen-can-chair-panel-probing-sexual-harassment-charges-despite-retirement-ag/articleshow/50611564.cms?from=mdr (last visited January 15, 2022).

The case against the Madhya Pradesh High Court judge dates back to 2014, when a session judge filed a complaint before the Chief Justice of India (CJI) and several other High Court judges about the sexual harassment she faced at the hands of Justice S K Gangele. Justice S. K. Gangele had sent her a message through the district court registrar to perform a dance on an "item song" at the "ladies sangeet" on the occasion of his 25th wedding anniversary.

The sessions judge claimed prior commitments and skipped the event altogether. On a later occasion, Justice S. K. Gangele allegedly whispered in her ear that he "missed an opportunity of viewing a sexy and beautiful figure dancing on the floor.

The allegations also state that the Justice 'A' made several sexual remarks and comments on the woman judge's appearance, including a statement that while her work was very good, she was far more beautiful than her work.[159]

On July 15, she resigned, and the story came to light when she sent a letter to then-Chief Justice of India RM Lodha. On August 8, the Chief Justice of the Madhya Pradesh High Court set up jury to judge the allegations of sexual assault. On 18 December 2014, the Supreme Court bench quashed that inquiry saying that the state chief justice had not constituted the two-judge panel correctly.

Justice S K Gangele was then left of administrative and supervisory roles. The Madhya Pradesh Chief Justice was also told to not associate himself with the proceedings since he had "assumed a firm position" already. The Supreme Court benchthen requested H.L. Dattu, Chief Justice of India, to start a fresh probe. The KarnatakaHigh Court Chief Justice D. H. Waghela, who was appointed to conduct the probe, stated in his preliminary inquiry report that the allegations warranted a "deeper inquiry", which has resulted in the formation of a three-judge panel, including Chief Justices of two High Courts.[160]

Justice Soumitra Sen is an example who had given his resignation after an impeachment motion was passed in the Rajya Sabha infavour of 189 members of the parliament.

Inquiry committee has established the charges on the ground of 'misbehaviour' but already he had resigned from the post.

[159] *Ibid.*

[160] *Ibid.*

Transfer of Judges:

The transfer of judges is one of the important topics among the issues of judicial accountability. Under the collegium system, CJI is empowered to make transfers of High Court judges on the recommendation of the government. Recently Justice Murlidhar's transfer to Punjab and Haryana High court from Delhi High Court becomes a national issue; again, several questions and objections were imposed against the collegium system of appointment and transfer. There were allegations against CJI and the collegium system that they are exercising judicial power in an arbitrary manner. Hence, to understand this issue researcher has discussed the following points.

In *Union of India* v. *Sankal Chand Himatlal Sheth and others*[161]the question was under article 222 (1), whether a judge of High Court can be transferred to another High Court without his consent or not. [162]In the exercise of the power conferred by Article 222 (1) of the Constitution of India, the president transferred the respondent judge of the HC of Gujarat to be the HC of Andhra Pradesh. He filed a writ petition challenging the order on the following grounds[163]:

1. That the order was passed without his consent;
2. There was no communication with CJI as required by the article;
3. The order was passed in breach of the assurance that a judge would be transferred except with his consent and the appellant –
4. The order was not passed in the public interest;

The writ petition was heard by a special bench of three judges of the High Court and all three judges rejected the challenge on the ground of promissory estoppels. Two judges held that the order was not void for want of respondent consent. The third judge took the view that consent was necessary. A judge struck down the order on the ground of violation of the principle of natural justice. All the judges finally came to the conclusion that there was no effective consultation with the Chief Justice of India hence order shall be struck down.[164]

In the Supreme Court held that there was not any justification for the transfer of respondent, they proposed to transfer him back to the Gujarat High Court.

[161]*Union of India* v. *Sankal Chand Himatlal Sheth and others* (1977) 4 SCC 193.
[162]*Ibid.*
[163]*Ibid.*
[164]*Id.*

A Full Bench of the Gujarat High Court held in *S.H. Seth* v. *Union of India*[165] that no judge can be transferred without his consent. It was, however, reversed by the Supreme Court in *Union of India* v. *S.H. Seth.*[166]

This issue was prominently discussed and the principles governing the issue laid down in the 1993 decision of the Supreme Court in *Supreme Court Advocates on Records Association,* and supplemented in *Ashok Reddy* v. *Union of India*[167], settled the issue. So far as the transfer of the Chief Justice is concerned, it is an altogether different matter and governed by different considerations.

In the 14th Report on Reform of Judicial Administration, the 'Law Commission of India' had opposed the transfer of High Court Judges as a matter of policy. It said that Judges are recruited mainly from Bar and that the argument of local connections and prejudices has not much force.

As per justice Chandrachud in case[168]

Not necessary when the transfer is from one HC to another HC, the power to transfer a High Court judge is conferred by the Constitution in the public interest and not for the purpose of providing executive a weapon to punish a judge. The power which is given under Article 222(1) to the president cannot be exercised in a manner which will destroy the object of the provision which separates the judiciary from the influence and pressure of the executive.[169]

If the consent of a High Court judge was necessary then it may have been mentioned in the Constitution. The word "Consent" is clearly absent in article 222(1), and if supposed it was intended by the framers of the Constitution then the various provisions of the Constitution mentioned that word.

Article 222(1) specifically said consultation with chief Justice of India is required. The President may or may not transfer a High Court Judge from one court to another court but if he is supposed to do then consultation with the Chief Justice of India is required otherwise it would be unconstitutional. It means the Chief Justice of India

[165](1976) 17 GLR 1017.

[166]AIR 1977 SC 2328.

[167](1994) 2 SCC 303.

[168]*Union of India* v. *Sankal Chand Himatlal Sheth* (1977) 4 SCC 193.

[169]Khanum, P. S., *Judicial Independence and Accountability* 31-35(P. S. Khanun, Ed. TheIcfai Univarsity Press Hyderabad, India 2007-08).

whenever necessary has to extract and ascertain the facts either directly from the judge concerned or from any other source.[170]

Justice Chandrachud said that, "principles of natural justice are out of the purview of Article 222(1). The articles themselves have fair play action and contain reasonableness." According to this Article President may transfer after consultation with CJI

Following important proposition,

(a) 'The power of transfer of High Court Judges for the public good';

(b) It is necessary that approval of CJI is crucial; the president's office shall consult with CJI for the transfer of HC judges.

(c) CJI will look into every matter of transfer carefully.

In the context of Article 222 (1) transfer must be consensual, that was the real intention of the constitutional framers. The transfer shall not be carried away without the consent of the concerned judge; it is highly dangerous for the administration of Justice. Consent of the High Court judge who is being transferred is necessary for such transfer is also supported by the scheme and language of the relevant constitutional provisions. Article 217 of the Constitution of India mentioned the appointment and condition of the office of a judge of High Court, and then the condition will properly be fulfilled when transfer is consensual.[171]

Krishna Iyer and Fazal Ali, J.J. said:

"Article 222 is very clear and unambiguous that it is not possible to read the word 'consent' from it. The consent of the judge be taken is not mentioned as a Constitutional necessity but as a matter of courtesy towards a judge who holds the high position held by him. They said that transfer is not an appointment and since an appointment can only be by consent, transfer may be done with consent or without consent also. If the transfer of a judge is equivalent to appointment for a second time, then there should be consultation according to Article 222 but Article 222 does not envisage such consultation. If the founders of the Constitution had intended for this, then suitable provision would have been inserted in this Article."[172]

As per judges, following fallacies relating to transfer of judges:

[170] *Ibid.*

[171] *Ibid.*

[172] *Union of India* v. *Sankal Chand Himatlal Sheth* (1977) 4 SCC 193.

1) There is distinction between appointment and transfer, after a person appointed to service; he is bound by the conditions of service or by Constitution provisions. "A judge is not a government servant and still is a constitutional functionary and having accepted the service so, no choice may leave in the administrative action."[173]
2) When a judge of the High Court accepts an appointment under article 217 then he fully aware about article 222 that he may transfer any time and if he fully conscious of the letters of article 222 then he cannot say about that he cannot be relocated without his consent.
3) Article 217 (1) (c) clearly shows that the words "appointed" and "transferred" have separate meanings to each other.

On other hand in *T. Fenn Walter and others* v. *UNI and others*[174], the question was raised by the High Court Judge, a sitting judge appointed as chairman who was objected to. Supreme Court laid down guidelines relating to this subject:

These offices are non-objectionable,

1. "The Commission of Inquiry under the Commissions of Inquiry Act."
2. Judicial officer appointed under any statute or high character office. e. g. under article 262 of the Constitution of India which provides for adjudication of any dispute with respect to the use, distribution or control of water or any inter-state river or river-valley, read with Inter-State Water Disputes Act, 1956.[175]
3. Expert field or special knowledge required for Judge.

Applicable;

1. 'Quasi-Judicial officer or Judges'
2. Already rule or regulation prescribed, or legislation available for removal of judges or officers;

   If a judge is appointed for a post or on tribunal then he shall be open to disciplinary proceedings under Art.124 (4) & 217(1) Supreme Court Judge and High Court judge respectively.[176]

   When a sitting judge has a short period of service, he is ready to relinquish his remaining service then he may resume such service.

[173] *Ibid.*
[174] AIR 2002 SC 2679.
[175] *Ibid.*
[176] *Ibid.*

In the case of *Union of India* v. *Gopal Chandra Misra and others*[177], SC held, "the second appellant on May 7, 1977, dispatch a letter to President of India, leave his office from August 1, 1977, he however through the second letter revoked the resignation. Thereafter the respondent filed a writ petition for *quo warranto* against the second appellant; High Court allowed the petition, then in an appeal to the Supreme Court appellant contended that there is no provision available in the Constitution to stop his resignation."[178]

"The respondent raised the objection that first appellant Union of India had no *locus-standi* to file the appeal on following grounds"[179]:

a. The UNI is not treated as a party because no relief was available for UNI.
b. The UNI is not affected by any order.
c. The UNI has not any interest involved.
d. By filing an appeal in SC the UNI is not following any public policy instead of this incurred heavy expenditure in defending the individual action.

Rejecting the objections of the defendant the Supreme Court held that:

a. The provision of Article 217(1) indicates that a judge's tenure can be terminated before he attains 62 years and when he resigns from his office, manner laid down in clause (a). The judge must, (i) execute writing in his hand; (ii) it should be addressed to the President of India; (iii) by that writing he should resign his office.[180]
b. The complete meaning of resignation is the complete and effective act of resigning office.
c. The letter of May 7, 1977, is merely an intimation or notice of the writer's intention to resign his office on a future date, namely, August 1, 1977. So, the letter of 7th may do not constitute a complete and operative resignation within the purview of the expression resigns his office.[181]
d. In Article 217 or elsewhere in the constitution which expressly or impliedly restricts the withdrawal of a communication by a judge to resign his office before the arrival of the date on which it was in it was intended to take effect.[182]

[177] (1978) 2 SCC 301.
[178] *Ibid.*
[179] *Ibid.*
[180] *Union of India* v. *Gopal Chandra Misra and others* (1978) 2 SCC 301.
[181] *Ibid.*
[182] *Ibid.*

e. "No principle of public policy restricts the withdrawal of letter of resignation."[183]

2.5 Contempt of Court:

'Contempt of Court' in the Indian legal system is very attractive for the judges and at the same time, it is a distracting concept for the lawyers and litigants because it is not fixed to when it will originate in the dispute and when it will not. Even though the law is there but draws lines are always being enlarged by the judiciary. In the *B. R. Reddy* v. *State of Madras case*,[184]the contemnor made no attempt to establish the truth of what he stated or even to show that he had made a statement with due care. Justice Mukharjee said, "If the allegation were true, obviously it would be to the benefit of the public to bring these matters into the light. But if they were false, they cannot but undermine the people's faith in the judiciary and bring the judiciary into disrepute."[185]

This judgement was criticized on the basis of *per-incuriam* doctrine by the legal experts at that time so the government decided to find out a clear view on Contempt law. So, the Sanyal Committee was established.

Under our existing legal system, several complaints are received and charges are framed, based on which the prosecutions are initiated. It will be ridiculous and atrocious to prosecute the complaint if the prosecution failed to convict the accused. If a complaint is not supported by evidence, the accused will be naturally acquitted. If evidence is not sufficient to convict, but sufficient to impose damages under tortuous liability, he would be liable for it.

Under no system of law in any country, a complainant is prosecuted because of his acquittal of the accused. The only remedy available in tort is for malicious prosecution, that too, in payment of damages. If a person complains against Mr. X for theft in his house, which if not proved, will not result in prosecution of the complainant. This new bill does not make 'complaining' a liable wrong and leads to punishment of imprisonment for a year and fine. Even under malicious prosecution, one has to prove that complainant acted maliciously, whereas the

[183]*Ibid.*
[184] AIR 1952 SC 149.
[185]*Ibid.*

Judge Inquiry Bill, 2006 says if the complainant himself fails to prove that it is not malicious, he can be punished with imprisonment.

Report of the Sanyal Committee

In 1961, a government set-up committee headed by Shri H.N. Sanyal to make required changes into the Contempt of Court Act 1952. "The objective to establish the committee was following;

- To examine the law relating to contempt of Court generally and in particular the law relating to the procedure punishment thereof,
- To suggest amendments therein with a view to clarifying and reforming the law wherever necessary,
- To make recommendations for the codification of the law in the light of examining various judgments of SC and HC."[186]

After recommendations given by the committee, the government replaced 1952 Act, and the Contempt of Courts Act 1971 came into existence.[187]

National Commission View:

National Commission submitted its report to the government in 2002, which was mainly, was established to the introduction of 'truth' as defence in contempt proceedings.

So, the commission considered that an amendment of the new contempt law is not sufficient but also an amendment to the constitution is required because ultimately Constitution specifies the power of the court to punish under contempt law. Therefore, a proviso was recommended to add Art. 19(2) as under[188]:

Provided that, in matters of contempt it shall be open to the court to permit a defence of justification by truth on satisfaction as to the bona fides of the plea and it being in the public interest.[189]

[186]Prof. Jay S. Bhongale and Dr. U. S. Bendale, *Op. cit*, at page 591.
[187]*Ibid.*
[188]Mriganka Shekhar Dutta and Amba Uttara Kak, "Contempt of Court: Finding the Limit," 2 *NUJS Law Review* 55–74 (2009).
[189]*Ibid.*

'The Contempt of Courts (Amendment) Act, 2006':

The parliamentary committee submitted some suggestion as follow:

1. The opportunity of being heard shall be given to all**,** to respect the bona fides of the plea in course of natural justice;
2. A proviso shall be added to section 13 of Contempt of Court Act through which any critical, analytical, objective and fair comment on the court proceedings made by the media, based on the reasonable sources, the media person shall not attract contempt proceedings ;
3. Again a proviso to section 13 namely:
   any comments made by any person and published, regarding the conduct of a presiding judge of a court, which does not interfere with the official functioning of the Court and which is a true fact, found a reasonable ascertainment, shall not attract contempt proceeding;
4. Cases of contempt shall be tried by the independent commission, not by Courts;
5. The words 'bona fide' and 'in public interest' would be deleted from Sec. 13 of the Act;
6. Contempt of Court Act shall be amended to remove the words, 'scandalizing the court or lowering the authority of the court' from criminal contempt;
7. Contempt proceeding shall be heard by a different judge;
8. There shall be a code of conduct for the judges, so that the safeguards of contempt of court may exercise;
9. The law of contempt shall be subjected to freedom and rights guaranteed under the Constitution of India.
10. A proviso to Art. 19(2) of the Constitution shall be given effect;
11. The words from Sec. 13(b), 'the court may permit' shall be deleted;
12. No contempt proceeding shall be initiated against members & officers of Bar Association of respective Courts; unless the committee of a minimum 75 members, including two, sitting or retired judges, one public representative comes to the conclusion that contempt is made.[190]

The suggestions were given by the Sanyal Committee was never accepted but section 13, Contempt of Court Act minutely altered.[191]

[190] The Contempt of Courts (Amendment) Act, 2006, *available at*: https://indiankanoon.org/doc/1068778/ (last visited January 15, 2022).
[191] The Contempt of Court Act, 1978, s.13.

Under the first exception to Sec. 499 of the Indian Penal Code, it is not defamation to impute anything which is true concerning any person, if it is for the public good. In other words, the right to disclose the truth against anyone can be allowed for the public good. The only difference between the two words, 'public interest' and 'public good' under Sec. 499 of IPC, anyone can take defence without permission of the Court under Principal Act permission of the court is required for invoking truth as a defence. This is only to have a proper balance between to maintain the judicial functionary without unhampered and the publication of truth for a public cause.[192]

The Attorney General, Soli J. Sorabjiee mentioned the need for amending the law in these words, "If as a journalist you publish such and such judge is corrupt, you will be hauled for contempt, even if you are ready to prove with evidence. The law does not allow any justification in contempt, if there is a serious challenge in the Supreme Court of India this may be regarded as an unreasonable restraint on the freedom of expression. How can we not allow a person to justify what he says is not Contempt? If he fails, we will come down heavily on him. Otherwise, law of contempt operates as a cover for a corrupt judge."[193]

This is exactly true how does one uncover judicial corruption and misbehaviour? The procedure to make a complaint is under the Judges Inquiry Act, 1968 ending with impeachment a proceeding that is very tough in India. It is self-evident from examples like Justice *V. Ramaswamy* case in 1990-1994, the Bombay judicial crisis in 1994-95, *A. M. Battacharjee case* in 1995. The bar and public pushed into silence on edge of Contempt proceeding and non-cooperative judges could be disciplined by in house procedure.[194]

Notwithstanding anything contained in any law for the time being in force, (*a) No court shall impose a sentence under this Act for a contempt of Court unless it is satisfied that the contempt is of such nature that it substantially interferes, or tends substantially to interfere with due course of justice.*

(b) The Court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request invoking the said defence is bona fide.

[192]Mona Shukla, *Judicial Accountability Welfare and Globalization* 26 (Regal Publication, 2010).

[193]Madabhushi Sridhar, "Seven Questions on Judicial Accountability" 1–16 (presented at the Campaign for Judicial Reforms, Hyderabad, 2007).

[194]*Ibid.*

In the case of *Thushar Kanti Ghosh Editor*[195], the Court said, "there can be no justification of contempt of court. Even assuming that the writer believes all he states therein to be true, if anything mentioned amounts to contempt of Court, the writer is not permitted to lead existence to establish the truth of his allegation."[196]

The opinion of British Jury was that, "in small colonies consisting principally of colored populations, the enforcement in proper cases for committal of contempt of court for attacks on courts may be absolutely necessary to preserve in such a community, dignity and respect for the court."[197]

But we are in a modern democracy, where accountability and responsibility of government wings are the pre-condition for the existence of a democratic form of government. There were several examples even after the independence judiciary stick to the contempt law, i.e., In *prospective publication (P) Ltd.* v. *State of Maharashtra*[198], SC held that, "even if good faith can be held to be a defence at all in a proceeding for contempt show that the SC didn't lay down affirmatively that good faith can be set up as a defence in contempt proceedings."[199]

But H. M. Seervai[200], expressed the view that justification is a complete defence to an action for libel, it shall be complete defence in "contempt of court" proceeding. In *Advocate General* v. *Seshagini Rao*[201], court held that, "it is not permissible to a contemnor to establish the truth of the allegations as the arrangements of the justice of the judges excites in the minds of the people a general dissatisfaction with all judicial determinations and indisposes their mind to obey them and that is very dangerous obstruction to the course of justice. In our view, the contemnor does not occupy the position of a defendant in libel action who could plead justification."[202]

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[195]*Re: Tushar Kanti Ghosh (Editor), Amrit Bazar Patrika*v. *Unknown,* AIR 1935 CAL 419.

[196]*Ibid.*

[197]Prashant Bhushan, "Securing Judicial Accountability: Towards an Independent Commission" *Economic & Political Weekly* 14-17 (2007).

[198]AIR 1971 SC 221.

[199]*Ibid.*

[200]Celebrated authority on the Constitution of India.

[201]AIR 1966 AP 167.

[202]*Ibid.*

Also in *State* v. *Editors of Eastern Times and Projatantra*[203], court held that, "The place of justification which is a good defence in an ordinary action for libel cannot be applicable in an action for contempt."[204]

Although in 2006 amendment to the Contempt of Court Act, where truth is made a defence but that also laid as conditional and left to the discretion of the judges. The amendment under section 13(b) said, "The Court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and request for invoking the said defence is bona fide."[205]

According to amendment means (i) truth is defence (ii) it shall be for the public interest (iii) intention to invoke truth as a defence shall be bonafide. So, it means whatever you make allegations against the judge, it shall be true in the eyes of the judiciary and for that you should have evidence, and that allegation you can rise only for the public interest.

It is impossible to satisfy the court about 'public interest' in pleading truth of allegation and bona fide character of the request to invoke that defence. It means if you make a fair comment on the judiciary then there is no defence available. Former Chief justice Verma said that misuse of contempt power is the reason for the erosion of credibility of the judiciary.[206]

Instances of Contempt of Court:

In *Shri. C. K. Daphatary and others* v. *O. P. Gupta and others*[207], the court held that, the pamphlet contained insulting aspersions on Shah J., who was charged with having disobeyed the Constitution most directly and wanted only to feed fat his bias.

"The President of the Bar Association and some advocates made a motion under Article 129 for a contempt action against the respondents."[208]

In this case, the Supreme Court of India held the opinion about the contempt of Court and Constitution.

[203]AIR 1952 Orissa 318, p.34.

[204]*Ibid.*

[205]SurajNarain Prasad sinha, "Efficacy of Judicial Accountability" 35 *Indian Bar Review* 24 (2008).

[206]*Ibid.*

[207](1971) 1 SCC 626.

[208]*Ibid.*

i) The existing law relating to contempt of Court imposes reasonable restriction within the meaning of Article 19(2), it is not necessary to decide that Article 19(1) (a) and 19(2) do not apply to the law relating to contempt because of Article 129, and that law relating to contempt is a "law" or not within Article 13(3) (a),

ii) We are not bound to follow the American Constitution in giving effect to freedom of speech and expression because of certain differences between the American Constitution and conditions there and those in India,

iii) Articles 73, 246, List I, entry 77 and Article 142(2) do not throw any light on the question of whether the existing law relating to contempt imposes unreasonable restriction.[209]

Again, in this case, "argument of the first respondent was that we have now written the Constitution, like the U.S.A., and if in the United States, in order to give effect to the liberty of speech and freedom of expression we should also follow in their footsteps. The Court said that the American Constitution and the conditions in the United States are different from those in India. In the American Constitution, there is no provision like Article 19(2) of our Constitution."[210] The first amendment to the U. S. Constitution is as follows: "Congress shall make no law… abridging the freedom of speech or of the press."[211]

The difference between the First Amendment and Article 19(1) (a) was noted by Douglas, J. in *Kingsley Corporation* v. *Regent of the University of New York*[212], where he observed that, "If we had a provision in our Constitution for reasonable regulation of the press such as India has included in hers there would be room for argument that censorship in the interest of morality."[213]

In *R. L. Kapur* v. *State of Madras*[214], the appellant was held guilty of contempt of High Court and was sentenced to jail and fine in 1964. He served the sentence of imprisonment but failed to pay the fine of Rs. 500, which had to deposit in the High Court as security for the appellants' appearance before the court

[209]*Ibid.*
[210]*Ibid.*
[211]"Interpretation: Freedom of Speech and the Press | The National Constitution Center" *available at*: https://constitutioncenter.org/interactive-constitution/interpretation/amendment-i/interps/266 (last visited January 15, 2022).
[212] 360 U.S. 684 (1959).
[213]*Ibid.*
[214](1972) 1 SCC 651.

proceeding, remained unattached till 1971, when the court is allowed to the State application for payment of Rs. 500 towards the satisfaction of the unpaid fine. This order was challenged. The question before the Supreme Court was that, does the power of the High Court of Madras to punish to contempt of itself arise under the contempt of Court Act, 1952? So that under Section 25 of the General Clauses Act 1897, sec. 63 to 70 penal code and the relevant provisions of the code of criminal provision would apply?[215]

Supreme Court held that, "Article 215 declares the power of the High Court is a court of record, the jurisdiction of High Court is a special one, not arising or derived from the Contempt of Court Act, 1952 so it not come under the penal code or code of criminal procedure code."[216]

In *Case Pritam pal* v. *High Court of Madhya Pradesh, Jabalpur*[217], Court held that,

The power granted under Article 129 and 215 Supreme Court and High Court respectively by Constitution is an inherent power under which it can deal with contempt itself and it is not derived from any other statute. So, this right of the judiciary cannot be abridged, abrogated or deleted by any piece of legislation including the Contempt of Court Act. The submission of the contemnor that the impugned order is vitiated on the ground of procedural irregularities and Article 215 is to be read with Sections 15 & 17 of the Act 1971, cannot be tolerated. Power under Article 215 cannot be controlled by any statute or criminal procedure code.

In case of *Union of India* v. *S. S. Sandhawalia,*[218]it was found that under High Court Judges Condition of Service Act (28 of 1954), sec. 22B[219] , Staff car was not provided to judge, government has clearly violated express provision of the service condition under statute. So, the original petitioner entitled to compensation.

[215]*Ibid.*

[216]*Ibid.*

[217](1993) 1 SCC 529. (Before S. Ratnavel Pandian and K. Jayachandra Reddy, JJ.)

[218]AIR 1994 SC 1377. (Before A.N.Ahmadi and K. Ramaswamy, JJ.)

[219]The High Court Judges Condition of Service Act, 1954 (Act 28 of 1954), s. 22B.

Every judge shall be entitled to a staff car and one hundred and fifty litters of petrol per month or the actual compensation of petrol whichever is less.

In *State of Karnataka* v. *T.R. Dhananjaya and another*[220]through order dated 25th August 1995 found Mr. J. Vasudevan, principal secretary, Housing & Urban Development Department Government of Karnataka guilty of wilful disobedience order of this court and sentenced him for one-month simple imprisonment. Afterward, Vasudevan filed IAS Nos. 4 & 5 of 1995 praying for the remission of a sentence but it is rejected.

The State of Karnataka again filed this IA and stated that state is responsible to implement the court's order; But SC held that no other person has any right to file an appeal or application on his behalf as he alone is the person aggrieved. The officer is not personally liable for the violation of court order this contention is not maintainable. It would be open to the government to frame their rules fastening the accountability and responsibility for the implementation of the court order. Till then Vasudevan shall be responsible for disobedience of court order.

In *Re: Vinay Chandra Mishra Case*[221], the SC said that, "under Article 129, Supreme Court vest power to punish not only the contempt against itself but also of the High Courts and subordinate courts." Again SC said, "Criminal contempt of court undoubtedly amounts an offence hence for such offence summary procedure adopted, in such procedure there is no scope to examining the judge or judges of the court before whom the contempt is committed and procedure not offending any principal of natural justice, Contemnor hating the question asked by the judge, shouting at the judge, threatening him with transfer and impeachment, using insulting language and abuse him, dictate the order that he should pass, to create scenes in the court, to address him by losing temper are all calculated to interfere with and obstruct the course of justice."[222]In this case, court found guilty to the contemnor.

In the case of *Dinesh Trivedi* v. *Union of India*[223]the court held that, "under Article 129 and 142 Supreme Court have power to make appropriate order against the company who defrauding others in deliberately disobedience of the

[220](1995) 6 SCC 254. (Before K. Ramaswami and B.L. Hansaria, JJ.).

[221]*In Re: Vinay Chandra Mishra* v. *Unknown* (1995) 2 SCC 584. (Before Kuldip Sing, J.S. Verma and P.B. Sawant, JJ.).

[222]*Ibid.*

[223](1996) 4 SCC 622. (Before B.P.Jeevan Reddy and K.S. Paripooran, JJ.).

Supreme Court Orders. For this purpose, the SC can lift the veil of the Company under contempt proceeding, the direction can be issued against real contemnor and order of punishment for the contempt issued to restore the illegally derived benefit to the persons defrauded."[224]

The power under Article 142 is supplementary for the existing legal system to do complete justice between the parties. This power is only conferred on the Supreme Court, which means it will be used with control and caution, keeping in view that its ultimate object of it to do complete justice.[225]

In this case, proposition laid down by SC;

a) That the contemnor should not be allowed to enjoy the fruits of their contempt;
b) The interest of justice, SC will lift the corporate veil.
c) While acting under Article 142, the SC will do complete justice and will not allow to contemnor to enjoy the fruits from his fraud.

In the case of *Dr. D. C. Saxena* v. *Hon'ble the Chief Justice of India*[226]the petitioner, a professor of English language of Punjab University, had initiated a PIL in the SC under Article 32 seeking to recover expenditure from then Prime Minister and President. His petition was rejected without recording reason, make allegation against Chief Justice of India for deliberate and wilful failure to perform fundamental duties and humidifying their performance .[227] And he also remarked that son of CJI who is practicing in the Supreme Court to stay with him official residence, and presumably misusing the official facilities and prestige of the office of CJI.

Again, the SC dismissed his petition but allegations made by petitioner were declared reckless and scandalous therefore court issued contempt proceeding against him. The submission gave by petitioner in that Contempt of Proceeding Act was legacy of British Crown and imperialism it is contrary to the democratic set up of the country, people polity; it is lawless law fused the offices of the prosecutor and the judge. Petitioner also contended that the provisions of the Contempt Court Act are against the Article 19 (1) (a) of the constitution.[228]

[224]*Ibid.*
[225]*Ibid.*
[226](1996) 5 SCC 216. (Before K. Ramaswamy, N.P. Singh and S. P. Bharucha, JJ).
[227]*Ibid.*
[228]*Ibid.*

SC held that, "freedom of speech and expression is tolerated so long as it is not malicious or libellous and it subject to Articles 19(2), 129, and, 215 of the constitution. In free democracy everybody to express an honest opinion about correctness or legality of the judicial decision but he should not overstep the boundaries. Through Article 121 and 211 the conduct of a judge prohibited by the constitution therefore no one has power to accuse a Judge of his misbehavior or incapacity except procedure established under Constitution. The protection of Article 124(4), 121, 211 the Judicial officers Protection Act, 1850 and the Judges (Protection) Act, 1985 is to ensure the judicial independence."[229]

In *Mr. Justice Deoki Nandan Agrawal* v. *UNI and others*[230]the SC held that, the salary of a judge of a High Court & Supreme Court is income and taxable by Act of the parliament in same manner as other citizens. It is fact that Parliament could not legislate, on the subject of the salaries of the HC & SC judge's prior amendment of Articles 125, 221. It does not mean that judge's salary is not taxable under the Income Tax Act.

In *Arundhati Ray Case*[231]SC held that, "no person under the veil of freedom speech and expression scandalizes the judicial authority, maintaining the dignity of Courts is one of the cardinal principles of rule of law. The contention was raised by the contemnor that the criticism made on the conduct of a judge, the institution of the judiciary and its functioning may not amount to contempt if it is made in good faith and in public interest. The court held that all citizens cannot be permitted to comment upon the conduct of the courts in the name of fair criticism which, if not checked then it will destroy the institution itself."[232]

2.6 Right to Information and Judicial Accountability:

Before December 2019 judiciary had out of the purview of the Right to information Act. "It is the right to know about all institution of state including judiciary."[233] The question still arouses that since the 1950 from the adoption

[229]*Ibid.*

[230]AIR 1999 SC 1951.

[231]*Re: Arundhati Roy* v. *Unknown,* AIR 2002 SC 1375.

[232]*Ibid.*

[233]Samrridhi Kumar, "Judiciary and Right to Information act: To Disclose or Not Disclose**?"** *available at:*

of the Constitution of India judiciary was immune from the concept that, normal citizen does not expect to know the affairs of the judiciary still judges are the servant of the people. Since 1950 to 2005 indirectly judiciary was untouchable from people's right of information and from 2005 to 2019 directly even though other agencies of government come under the purview of the Right to Information Act.

People's Right to Know:

Appointment process must be transparent and people should have a chance to raise objections and seek details. The information about assets, liabilities, back ground, service and eminence of the proposed judges should be made available to the people. Every reasonable doubt has to be answered before a person is appointed to the high seat of justice, because getting him out of it is almost impossible. People have a right to know about those who are going to judge them, and should get a say in rejecting a person on grounds of ego or incompetence or misbehavior.

Three categories of information are relevant to judicial transparency. These are namely[234],

- All Records of the judicial proceedings.
- The second concerns with information of administrative nature – court budget, human and personnel resources, contracts between courts and third parties & organizational matters.[235]
- The third and most crucial type of information includes information about salaries, assets and liabilities, appointments, transfers and disciplinary actions pertaining to judges.[236]

  Without this information it is impossible to uphold the judicial accountability in Indian judicial process. So, right to information is more significant in the sense to arrive transparency, applicability and accountability in the Indian judicial system.

https://cic.gov.in/sites/default/files/Judiciary%20and%20Right%20to%20Information%20%28%20Ms.%20Samrridhi%20Kumar%29.pdf (last visited July 2020).

[234]*Ibid.*

[235]*Ibid.*

[236]*Ibid.*

Legal Opinion before 2019:

In Case of *Dinesh Trivedi* v. *Union of India*[237], Supreme Court said,

"In modern Constitutional democracies, it is axiomatic that the citizens have a right to know about the affairs of the government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognized limitations; it is, by no means, absolute."[238]

In *Vijay Prakash* v. *Union of India* [239]SC held that,

1. The Apex Court has violated the RTI Act and asked the petitioners to apply under Supreme Court Rules, 1966, instead of the information legislation.
2. Order XII, Rule 2 of the Supreme Court Rules, 1966[240] In comparison to the RTI Act, a) insists on the applicant to provide a 'reason', and makes the availability of such information contingent on such 'good cause shown'

   b) No time limits are prescribed within which such information is to be provided;

   c) It lists no penalties for delaying or failing to provide such information;

   d) It provides no mechanisms for appeals.
3. Section 22 of the Right to Information Act, 2005[241],

   In a prominent case,[242] the SC said that, "where the court held that only in case of inconsistency between the Supreme Court Rules and the RTI Act will the RTI Act prevail, further observing that the SCR would be applicable for the judicial functioning of the courts, whereas RTI Act will be applicable for the administrative functioning of the Supreme Court, where information needs to be disseminated under the same, stating that no query shall lie under this law pertaining to judicial function/decision."[243]

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[237] *Dinesh Trivedi* v. *Union of India* (1997) 4 SCC 306.

[238] *Ibid.*

[239] *Vijay Prakash* v. *Union of India* AIR 2010, Delhi 17.

[240] The Court, on the application of a person who is not a party to the case, appeal or matter, may on good cause shown, allow such person search, inspect or get copies of all pleadings and other documents or records in the case, on payment of the prescribed fees and charges.

[241] The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

[242] *The Registrar, Supreme Court of India* v. *R. S. Misra* (2012) 8 SCC 558.

[243] *Ibid.*

In *Girish Ramchandra Deshpande* v. *Central Information Commissioner*[244], SC said that*, "*the information on records of the Public servant cannot be disclosed unless a large public interest is not involved". The SC declared that, "they were not opposed to declaring their assets provided such declaration were in accordance with the due procedure laid down by the law that would prescribe (a) the authority to which the declaration would be made; (b) the form in which the declaration should be made; (c) proper safeguards, checks and balances to prevent the misuse of the information made. Then in 2009, the SC contended that the 1997 resolution was non-binding and therefore could not have been a source of the right to seek information."[245]

Legal Opinion after 2019:

IN *CPIO v. Subhash Chandra Agarwal* [246], where the Supreme Court office will come under the Right to information Act, the affirmative answer was given by the Supreme Court in December 2019. This is the judgment that brought CJI office under RTI.[247]

But recently the Chief Justice of India, S.A. Bobde mentioned that, "the extensive use of RTI Act has created 'a sense of paralysis and fear' in the government, precluding those in the government from taking decisions. Underscoring the 'abuse' of the Act, the CJI said there is a need to lay down guidelines on its use, since the RTI was not an 'unrivalled' right."[248]

Before that, in November, while the Supreme Court brought the Chief Justice's office under the ambit of the RTI Act, the judgment was denounced for "expanding the power, length and depth of exceptions under Section 8 of the Act."

In the same judgment, the court made observations that were viewed as "unfortunate" and "shocking" by RTI activists.

In a concurring judgment, Justice N.V. Ramana said the RTI Act, "cannot be allowed to run to its absolute, we may note that right to information should not be allowed to

[244]*Girish Ramchandra Deshpande* v. *Central Information Commissioner* (2013) 1 SCC 212.

[245]Madanabhavi, Vijaylaxmi, "Impeachment and Judicial Accountability" 37 (3&4) *Indian Bar Review*191-200 (2010).

[246]*CPIO* v. *Subhash Chandra Agarwal* AIR 2010 Delhi 159.

Civil Appeal No. 10044 OF 2010, decided on December 2019.

[247]*Ibid.*

[248]Sanya Dhingra, "How Supreme Court has not upheld the spirit of RTI Act over the years," 2019*available at*: https://theprint.in/judiciary/how-supreme-court-has-not-upheld-the-spirit-of-rti-act-over-the-years/339204/ (last visited January 16, 2022).

be used as a tool of surveillance to scuttle effective functioning of the judiciary..., here is a stark contrast between the top court's recent observation and its judgments and observations' declaring the right to information as a fundamental right in any democracy before the Act was even formulated."[249]

In 2015, Supreme Court told that, "the Reserve Bank of India (RBI) that it must release all information sought under the Right to Information Act, in the interest of transparency and accountability."[250]But in December 2019, the court seemingly diluted its own order; and asked the RBI to not make banks inspection reports, risk assessment reports and financial inspection reports in public. Before the law came, the SC played a critical role in the right to information by upholding it as a fundamental right," said Bharadwaj. But since the right has been enacted, the courts interpretations have become increasingly restrictive.

From all this discussion it cleared the idea that even the Supreme Court declared that they come under the RTI Act, still even doors are open for the citizens but the key of the door in the hands of Judiciary. Under the Section 8 of the RTI Act the information can hide by the judiciary and the name of transparency and accountability is far from reality.

When society has chosen to accept democracy as a form of government then citizens ought to know what the government is doing. Judiciary is the organ of the government then people also deserve to know about, what the judiciary is doing and how it is functioning. The court's "general pronouncements on right to information have been very liberal" but in practice, it is not in conformity with the declared right. e.g., reports of government and public authorities submitted in court in a sealed cover. These reports are often used by the judges but "it's not given to the opposite parties or their lawyers. The orders and judgements of courts are often based on their perception formed on the basis of these confidentiality reports. So, it is not only right to information of parties but also principles of natural justice."[251]

[249]*CPIO* v. *Subhash Chandra Agarwal* AIR 2010 Delhi 159.

Civil Appeal No. 10044 OF 2010, decided on December 2019.

[250]Sanya Dhingra, "How Supreme Court has not upheld the spirit of RTI Act over the years," 2019*available at*: https://theprint.in/judiciary/how-supreme-court-has-not-upheld-the-spirit-of-rti-act-over-the-years/339204/ (last visited January 16, 2022).

[251]"Judiciary and Right to Information (Ms.Samrridhi Kumar).pdf." available at: https://cic.gov.in/sites/default/files/Judiciary%20and%20Right%20to%20Information%20%28%20Ms.%20Samrridhi%20Kumar%29.pdf (last visited January, 2021).

The Right to Information Act clearly applies to courts, which is definitely included in the definition of public authorities, but most of the High Court did not appoint Public Information Officers (PIOs) up to the present date. Some have still not appointed them, some of them appointed but "have framed their own rules which effectively deny required information."

The Delhi High Court rules provide that, "exemption from disclosure of information: the information specified under S. 8 of the Right to Information Act"[252]"shall not be disclosed and made available and in particular, the following information shall not be disclosed, such information which is not in the public domain or doesn't relate to judicial functions and duties of the court and matters incidental and ancillary thereto."[253]

The information will be given about the expenditures incurred by the HC (from public funds) or about any appointments or transfers. This is a total violation of the RTI Act which allows exemption from disclosure only on certain grounds specified in section 8 of the Act and on no other ground. No public authority can refuse to disclose information that does not fall under exemptions permissible under section 8 of the Act. Rule 5 of Delhi HC rules clearly violates the Act and is thus liable to be struck down.[254] It shows that these are not the only occasions where the Supreme Court diluted the spirit of the RTI Act, there are in several times SC not respected the dignity of the RTI Act wherein it relates to the Judicial Institutions.

2.7 Suggestion & Conclusion:

The researcher has attempted to provide some positive points which need to be incorporated. These are following;

1. Judicial Accountability shall be extend up to the concept that poor people and their will be realized by Courts.
2. The process of appointment of the higher judiciary will be transparent and legal academicians need to be enrolled in SC & High Courts.

[252]The Right to Information Act, 2005, s. 8. Exemption from disclosure.

[253]*Kirti Azad* v. *Ministry of Youth Affairs & Sports,* decided by SC on 28 August, 2018.

[254]*Ibid.*

3. Higher judiciary should necessarily implement Right to information Act, 2005.
4. The Contempt of Court laws need to be amended, so the people will talk about judicial accountability.
5. The higher judiciary will probably overcome judicial imperialism, corruption, autocracy, and abrogating the power.
6. Once the transparency and accountability being addressed seriously, then citizens will get a fair chance of access to justice.

- Instead of invalidating the NJAC Act, the Supreme Court, one thing is clear that there has been a detrimental tradition followed under the collegium system of appointment. Some judges were not appointed only because they had issues with the Hon'ble chief justice of India. The collegium system was noted for its very essential characteristic that there was no role of the executive or there was no political interference in the composition of the Collegium as no one from the ruling party or the opposition was associated in any manner in the appointment of judges.[255]
- When there is any movement of political interference in the Judiciary and judicial appointments, the sufferer are the common litigants who seek justice from the Honourable Apex Court. But unfortunately, these areas have not been ordered properly to avoid any external interference in the judiciary. It is perceived that the Hon'ble Apex Court will pronounce the judgment keeping the essence of the basic structure of the Constitution into consideration as well as taking into accounts the flaws which the Collegium had in its functioning.[256]

  There is possible threat that judiciary may face lack of intellectual growth if such important issues not being fixed. Even though there are several intellectual people in legal fraternity but they are not going to appoint as a judge. There are several suggestions that appointment and transfer of judges shall be based on the IAS basis but it is not still accepted in India.

[255]Prof. Jay S. Bhongale and Dr. U. S. Bendale, *Op. cit*, at page 590.
[256]*Ibid.*

- Perception and expectation are also very high from the Indian Judiciary but the accountability mechanism is not parallel with the power and esteem attached to the judiciary. "In India, there is a mechanism for disciplining a judge of a superior court either for deviant behavior or to misbehavior. Present contempt law operating as a deterrent to criticize a judge for his conduct so clear reformation in contempt law is necessary." 'The judges are not Gods; they are human beings with all human instincts'.

Hypothesis testing on the basis of non-empirical data:

From the above discussion and observation made by the researcher through various judgements of the courts, recent law principles, and available data, hypothesis no. 3 stands as proved.

The hypothesis is – "The existing constitutional scheme of appointing judges and holding them accountable is compromising with the 'fairness' aspect of justice delivery system." The hypothesis is proved because if we read the judgements of Arundhati Roy, NJAC judgement, or other recent judgement and from the action of the judiciary. The judicial obligation, responsibility, and accountability are ignored by the Judiciary. Judiciary is more conservative relating to their traditional approach and attitude.

CHAPTER-3

CONSTITUTIONAL OBLIGATION AND RESPONSIBILITIES OF JUDGES

3.1 Introduction:

There are five vices which every judge should guard against to be impartial, according to Shukraneethi[257]. They are:

- Raaga (learning in favour of a party)
- Lobha (greed)
- Bhaya (fear)
- Dvesha (ill-will against anyone)
- VaadinoschaRahashruthi (the judge meeting and hearing a party to a case secretly, i.e. in the absence of the other party)

Socrates counseled judges to hear courteously, answer wisely, consider soberly, and decide impartially. Acting expeditiously should be added as another important factor. Four qualities are needed in a judge, which are symptomatic of functional excellence. They are:

(ii) Punctuality,

(iii) Probity,

(iv) Promptness,

(v) Patience.

Justice V.R. Krishna Iyer was very critical towards judges who did not pronounce judgment in time; he said that they would commit turpitude. He says, "It has become these days, for the highest to the lowest courts, judges, after the arguments are closed, take months and years to pronounce judgmentseven in interlocutory matters – a sin which cannot be forgiven, a practice whichmust be forbidden, a wrong which calls for censure or worse. Who will censuresuch open wrongs? And how are other wrongs dealt with? More than corruptionit is the incompetence that affects the final product of the judicial

[257]Shukra Neethi (IV-5-14-15), composed by Guru Shukracharya. Also available on: Shukra-Niti 31 (Hindi Edition), Adhyatm Evam Neetishastra, January 2010, Manoj Publication.

administration. We have to break the walls of ego around the most significant activity of dispensation of justice, which was revered as a divine obligation."[258] The Constitution of India laid down some express or implied limitation to each organ of the state so, the judiciary is not also immune from the constitutional morality. Indian judiciary especially superior courts need to explain the obligations available under Indian Constitution.[259]

Here the important principle is – the Judges shall bear in mind that justice shall be administered according to the law and chief law is a public good. Interpretation of law has to be according to the purpose of proper implementation of the rule of law. Law has to be interpreted according to current standards of society, for the purpose of finding a solution to the new problem.[260]

Complete justice possible only when it encompasses with morality and ethics, Judiciary shall keep everyone within the boundary indicated by theConstitution, that boundary also applicable to the judges, the contempt power which is given to the judges for checking the disobedient, to punish habitual and the adamant and not for their own personal majesty. The independence of judiciary does not mean merely independence from outside but also from withinthemselves. Law is the above all and rule of law applicable to all theseprinciples applicable to judges even, purpose of effective preservation ofjudicial independence, it is necessary that judges ought to have ensure proper judicial accountability, in judicial system remove inefficiency, delay, and lack of public confidence and loss of credibility. Main cause is reluctant to change the inherited pattern of working.[261]

'The Law Commission of India' expressed that, "The obligation which is covered under Articles 38 (1) and 39 A of the constitution of India[262], The legal

[258]"Art-of-Judgement-Writing-by-Justice-Shabbir-Ahmed.pdf."available at http://sja.gos.pk/assets/publication/JusticeShabbir/Art-of-Judgement-Writing-by-Justice-Shabbir-Ahmed.pdf (last visited January, 2020)

[259]Prof. Jay S. Bhongale and Dr. U. S. Bendale, *Op. cit*, at page 585.

[260]*Ibid.*

[261]*Ibid.*

[262]The Constitution of India, art. 38**.**

{State to secure a social order for the promotion of welfare of the people}

1} The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life

system was expected to adapt itself to facilitate the transformation of Indian society into a nation and become an effective instrument for carrying out the mandate of Art.38[263], the primary responsibility of judiciary is eliminating inequalities in status, facilities and opportunities among different groups, in criminal cases judgments shall not be decided only on facts and evidence but also on Laws and precedents."[264]

When judges spend their time worrying about the consequences of their decisions on their carrier, the court becomes just another department of the government.[265] When the route of appeal becomes a structure of management, the then system risks losing its independence,[266] to improve court operations in rural areas; Judges should understand the difference between law and Justice; the former chief justice of India JS Verma had devised a new equation: L+X= J. In this L stands for Law, J stands for Justice and X is the power of interpretation vested in judges. So, the law itself cannot give justice, when the judge interprets the law in a reasonable, rational manner then justice will be restored. Judges has to enhance the efficiency in their functions; in various time, courts take too long to issue decisions; judges write too many concurring and dissenting opinions, leaving no idea about what the law is. [267]

Judges shall avoid defective judgments. The judgements can be defective if;

i) it was decide on wrong principles of law,

ii) judgments is not based on sound and rational reasoning supported by relevant law,

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2} The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

The Constitution of India, art. 39A.

{Equal justice and free legal aid}

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

[263]Law Commission of India, "117th Report on Training of Judicial officer, 1986" (November, 1986).

[264]Prof. Jay S. Bhongale and Dr. U. S. Bendale, *Op. cit*, at page 585.

[265]Oberroi Geeta, "Role of Judicial education in India," 35 *Commonwealth LawBulletin* 497–534 (2009).

[266]*Ibid.*

[267]Prof. Jay S. Bhongale and Dr. U. S. Bendale, *Op. cit*, at page 585.

iii) not according to the constitutional standards,

iv) if it reflects the judge's personal ideology or emotion, one of the major reasons in Indian context to have defective judgment is judges read the law not the spirit of the Law. [268]

Some other important principles to be noted are as follows-

- To ensure justice for all; it is the duty of judges to create a platform for hearing the voices of those less fortunate who do not receive attention in the judicial system.
- Judicial involvement in society and social functions can add significance to the communities.[269], the following factors shall take into consideration;
- The involvement must not compromise judicial independence or put at risk the status or integrity of the judicial office.[270]
- Whenever judge goes for a function as a spokesperson careful involvement and consideration shall be provided. Participation in the organisation or any public function shall spare much more time for his official duty. It shall not interfere with the judge's performance of duty. Participation of judiciary shall be in nature to increase the quality and reputation of any organization. Judicial behaviour shall be consonant according to the Supreme Court Rules 2013 and the High Court rules and convention applicable to lower court .[271]

3.2 General Principles for the code of conduct of judges are:

- Maintain the independence and integrity of judiciary.
- Maintain judicial decency in all ways of behaviour and action.
- Action and approach shall create the public confidence and faith in the judiciary.
- Judge's approach shall not create for family or any association favoured situation through that they can influence the society.
- Taking the esteem of judicial office to any association of family or society shall prohibit.

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[268] *Ibid.*

[269] Lord burnett of madon, Sir Ernest Ryder, "*Guide to judicial Conduct"*, March 2018, *available at:* https://www.judiciary.uk/wp-content/uploads/2018/03/Guide-to-Judicial-Conduct-March-2019.pdf. (last visited February 20, 2020, at 1 pm).

[270] *Ibid.*

[271] Prof. Jay S. Bhongale and Dr. U. S. Bendale, *Op. cit*, at page 591.

- A judge shall not be a member of any organization, because it is against the Constitutional principles or morality.
- Impartiality is the prime principle while the judge is doing his duty**.**
- A Judge shall provide preference to his judicial duties over any other functions.
- The principles judges shall attach, like, professional aptitude towards Law;
- Maintain professional attitude in Court of law while deciding matters;
- Don't express emotionality in the proceeding for any subject of dispute or People;
- Endurance and liberal with the parties of Dispute, advocates, and court officials;
- Without partiality is the important core values of judges, his emotional, religious, social bias shall not be indicated in proceedings; This obligation also shall functionalise for other staff of the Court that should also not be bias on the ground of sex, culture, religion, nationality or social or economic status.

➢ There are others values mentioned by the authors likes, "Judges alsoproceed unbiased attitude towards lawyers and they shall not be bias for race, cast, religion or any other parameters, amiable relation in the court of law, prohibiting outside communication in front of the parties, and when such outside communication is required on ground of emergency or for administrative exigencies following principle shall follow;

a) No party or advocate shall benefit through this attitude of judges,
b) It shall be informed to all parties to the dispute for outside communication and opportunity to respond shall be given,
c) Judicial information shall not reveal or expose to any person, or unconnected with judicial duties,
d) The Judge also not allowed to make impossible promises to anyone with related dispute of the case or parties or issue of the case, which is difficult to perform any individuals,
e) Judge may seek the advice of proficiency professionals but opportunity to respond shall be given to the parties,

f) The matter can be resolved the dispute where with the agreement of the parties, judges have to see that no party under the influence or coercion to seek the matter harmoniously, consultation with court official members or associate or superior judges for any administrative or adjudicatory functions,

g) All matter shall be disposed within a reasonable time, he can pronounce any matter as ex parte as he allow to do by law,

h) While matter is in prejudice or prolonging before the court of law, he shall not make any comment on the matter or any comment before the media or any other medium of communication through which will disturb the fair hearing or administration of justice,

i) The code of conduct also abiding for the officers of the court of law,

j) Judges shall not criticise any judgement of any other judges in public or any other modes of the medium, they are allowed to criticise only while writing a judgement, but here also personal criticism is not allowed. [272]

k) While doing administrative duties they shall collaborate with other associate judges or superior judges, while doing administrative duties they shall perform it without any partiality and shall follow professional aptitude, Judges shall maintain the carefulness and such aptitude for the court officials also, they shall not follow any prejudice or partiality towards the litigants, their duty shall be carried out for the public interest, Judges shall not provide unnecessary remuneration to the official's staff or officials, while making any kind of appointments impartiality principles always shall follow, and needless recruitment shall be prohibited when government is not officially approved.[273]Again there are other administrative duties like, "while recruiting, advocate experience of the lawyer in the layering field shalltake into account urgency of the situation or experience and position."[274]

[272]Justin D'Arms and Daniel Jacobson, "The Moralistic Fallacy: On the 'Appropriateness' of Emotions," 61 *Philosophy and Phenomenological Research* 65–90 (2000).

[273]Peter H. Jr. Solomon, "Putin's Judicial Reform: Making Judges Accountable as Well as Independent Feature: Reforming Russia's Courts" 11 *East European Constitutional Review* 117–24 (2002).

[274]*Ibid.*

l) "*shall not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves"*[275], *and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.*

6.3 Various Duties of the Judges:

The duties discussed below plays very important role in the working of the judges. It forms core part of the constitutional morality. After the evolution of the doctrine of basic Structure, the most important concept dealing with the working of the Judiciary is The Constitutional Morality.

The researcher has developed hypothesis about the same as - Judicial awareness and constitutional morality is necessary to implement especially in the present Indian judicial system.

The judicial awareness and constitutional morality as discussed with the help of following duties plays very important role in implementing the judicial accountability in present Indian Judicial System.

Disciplinary Duty of Judges:

It is duty of the judge to maintain discipline court corridor and overall in administration of justice, it applicable in relation with own judicial conduct as well as court officials and other associate judges, these are following-

- If judges got knowledge that associate judge is violated the principles of natural justice or violated the code of conduct, it created the question of the holding of office or invoked the question of capability of holding the judicial office, it is necessary to communicate with superior authority,
- This action is applicable to lawyers also; judges can take relevant necessary action against the lawyer if he violated the code of conduct or any principle of natural justice or professional values.

  Ajay singh v. *State of Chhattisgarh* MANU/SC/0021/2017, in this case Supreme Court held that Performance of judicial duty in the manner prescribed by law is fundamental to the concept of rule of law in a democratic State. ……trial is to end in a judgment as required to be pronounced in accordance with law. And, that is how the stability of the creditability in the institution is maintained.

[275]Jonathan Remy Nash, "Prejudging Judges Essay" 106 *Columbia Law Review* 2168–2206 (2006).

'Vocational Activities of Judges':

A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, and the administration of justice and non-legal subjects, subject to the requirements of this Code.[276]

'Governmental, Civic or Charitable Activities':

(1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.[277]

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice.[278]

(3) A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.[279]

(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization

i) "Will be engaged in proceedings that would ordinarily come before the judge", or

ii) Will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(b) A judge as an officer, director, trustee or non-legal advisor or as a member or otherwise:

i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's

[276]*Ibid.*

[277]Steven Lubet, "Participation by Judges in Civic and Charitable Activities: What Are the Limits" 69 *Judicature* 68–76 (1985).

[278]*Ibid.*

[279]*Ibid.*

funds, but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

ii) May make recommendations to public and private fund-granting organizations on relating legal field;

iii) Shall not use the name or the honour of judicial office for fund-raising or membership solicitation.

Financial Obligations of Judges:

A Judge shall not accept,

- a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use[280] ,

  or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

- a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household[281], including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

  A gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship.

  A gift, bequest, favour or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification; a loan from a lending institution in its regular course of business; a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants.[282]

[280]Robert B. McKay, "Judges, the Code of Judicial Conduct, and Nonjudicial Activities ABA Code of Judicial Conduct" 1972 (3) *Utah Law Review* 391–401 (1972).

[281]*Ibid.*

[282]*Ibid.*

Fiduciary Activities of Judges:

- A judge shall not serve as executor, administrator or another personal representative, trustee, guardian, an attorney in fact or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.[283]
- "A judge shall not serve as a fiduciary", where proceeding of that institution will come before judge,
- The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.[284]

Arbitrator or Mediator role of judges:

A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

Practice in Law:

A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

Duty of Public Reports:

A judge shall report the date, place and nature of any activity for which the judge received compensation, and the name of the payer and the amount of compensation thus received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. The judge's report shall be made at least annually and shall be filed as a public document in the office of the clerk of the court on which the judge serves or other office designated by law. In *Vikram Singh and Ors*. v. *Union of India and Ors.* (21.08.2015 - SC) : MANU/SC/0901/2015, The Supreme Court held that, "the highest judicial duty is to recognise the limits on judicial power and to permit the democratic processes to deal with matters falling outside of those limits… all the Judges sitting cloistered in this Court and acting unanimously cannot assume the role of Parliamentarian."

[283]Robert B. McKay, "Judges, the Code of Judicial Conduct, and Non-judicial Activities ABA Code of Judicial Conduct" 1972 (3) *Utah Law Review* 391–401 (1972).

[284]Ernest J. Weinrib, "The Fiduciary Obligation" 25 *The University of Toronto Law Journal* 1–22 (1975).

Political Activities of Judges:

A. All judges and candidates

(1) A judge or a candidate for election or appointment to judicial office shall not:

(a) Act as a leader or hold an office in a political organization;

(b) Publicly endorse or publicly oppose another candidate for public office;

(c) Make speeches on behalf of a political organization;

(d) Attend political gatherings; or

(e) Solicit funds for, pay an assessment to or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions."

(2) A judge shall resign from judicial office upon becoming a candidate for a non-judicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.

(3) A candidate for a judicial office:

(a) Shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) Shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials

(c) Shall not:

(i) with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office; or

(ii) Knowingly misrepresent the identity, qualifications, present position, or another fact concerning the candidate or an opponent;

(e) May respond to personal attacks or attacks on the candidate's record as long as the response does not violate the Code of conduct.

'Judges as Candidates in Public Election':

(1) A judge or a candidate subject to public election may, except as prohibited by law:

(A) At any time;

- Purchase tickets for and attend political gatherings;
- Identify himself or herself as a member of a political party;
- Contribute to a political organization.[285]

(B) When a Candidate for Election

- speak to gatherings on his or her own behalf;
- appear in the newspaper, television, and other media advertisements supporting his or her candidacy;
- distribute pamphlets and other promotional campaign literature supporting his or her candidacy; and
- Publicly endorse or publicly oppose other candidates for the same judicial office in a public election in which the judge or judicial candidate is running.

(2) A candidate shall not personally solicit or accept campaign contributions or personally solicit publicly stated support. A candidate may, however, establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers.[286]

A candidate's committees may solicit contributions and public support for the candidate's campaign no earlier than [one year] before an election and no later than [90] Days after the last election in which the candidate participates during the election year. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.[287]

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[285]Jonathan Remy Nash, "Prejudging Judges Essay" 106 *Columbia Law Review* 2168–2206 (2006).

[286]*Ibid.*

[287]Yousef Shandi, "Code of Conduct for Judges: An Analytical and Critical Review" 21 *Journal Sharia and Law* (2021).

(3) A candidate shall instruct his or her campaign committee(s) at the start of the campaign not to accept campaign contributions.[288]

(4) Except as prohibited by law, a candidate for judicial office in a public election may permit the candidate's name: (a) to be listed on election materials along with the names of other candidates for elective public office, and (b) to appear in promotions of the ticket.

Disqualification for Presiding Judges:

(1) A judge shall recuse himself from the proceedings where his impartiality is questioned, these are following

(a) The judge has a bias; bias may be personal towards the party or the lawyer of the party or the subject matter of the dispute.

(b) Judge was represented as a lawyer in the previously, the matter was controversial or is in issue or served with a colleague who is now presenting lawyer before Judge or Judge was a material witness in the previous case;

(c) the judge knows that he or she, individually or as a fiduciary, or the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than the *de-minimis* interest that could be substantially affected by the proceeding.

(d) The judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person.

Like,

(i) "is a party to the proceeding, or an officer, director or trustee of a party";

(ii) "is acting as a lawyer in the proceeding";

(iii)"is known by the judge to have a more than *de-minimis* interest that could be substantially affected by the proceeding";

(iv) Judge is aware that he is a material witness or likely to known.

(e) The judge knows or learns by means of a timely motion that a party or a party's lawyer has within the previous year made aggregate contributions to the judge's campaign in an amount that is greater than spouse income.

[288]Jonathan Remy Nash, "Prejudging Judges Essay" 106 *Columbia Law Review* 2168–2206 (2006).

(f) The judge, while a judge or a candidate for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to,

(i) An issue in the proceeding; or

(ii) The controversy in the proceeding.

3.4 Conclusion:

Judge's jobs are too delicate to handle. There are several obligations and responsibilities available against the conduct of the judges, as compared to the normal civilians of the nation. They have secluded themselves from society sometimes because of the demand for justice. But in reality, these obligations and responsibilities are not seriously carried out by the judges and are intentionally diluted by the judges. Several responsibilities are diluted only because the judges are not comfortable with them. In India, the practice of recusal, post-retirement recruitments, hearing before the relatives, economic and political connection with the litigants, actual or distance bias in litigation, connotation, and pre -connotation about the concept of hearing all is working together and sometimes in separate in courtrooms. In *Noor Mohammed* v. *Jethanand and Ors*. (29.01.2013 - SC): MANU/SC/0073/2013, the Supreme Court held that, "Whatever may be the nature of litigation, speedy and appropriate delineation is fundamental to judicial duty. Commenting on the delay in the justice delivery system, although in respect of criminal trial."

In India, judges abided by the Supreme Court Rules and High Court rules prescribed by the superior courts respectively. These rules are mostly related to judicial affairs of the court and do not discuss the private code of conduct for the judges.

In this chapter, the researcher has discussed various duties which reflect the Constitutional morality necessary to implement judicial accountability. Hence, the second hypothesis stands proved.

CHAPTER-4

JUDICIAL ACCOUNTABILITY AND COMPARATIVE STUDY WITH OTHER NATIONS

4.1 Introduction:

Recent decades have witnessed a significant increase in the role of the judiciary all over the world. Apart from the role and part of the judiciary, procurement and methods of their functioning are also being changed. Changes and development go hand in hand. Comparison brings development and improvement in the system. Professor Tushnet wrote, "These trends are already shared by countries with different legal traditions and various systems of government. The increasing role which the judiciary has assumed warrants some re-examination of the conceptual framework and the theoretical rationales which define its position in relation to other branches of government."[289] Again he remarked that, "The law and practice regarding judges and judicial accountability on various countries reveal many common ideas and shared principles, but also have sharp differences and even conflicts."[290]

4.2 Judicial Accountability in Malaysia:

The accountability concept in Malaysian court system can be understood with the help of the hierarchy (fig. no. 4.1) of Malaysian Courts. Condition to improve the judicial Accountability in Malaysia; a) the Malaysian courts uphold the rule of law at emergency situations of nation, b) creativity and dealing with the matters where executives or legislature intrusion in human right cases c) judges are knowing their role and limitations d) duty to defend the rights of the peoples and ready to accept the changes according need of the society in justice delivery mechanism.

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[289]Mark Tushnet, *Judiciaries in Comparatives Studies, Judicial Selection, Removal and Discipline in the United States*134-150 (Cambridge University Press, 2011).
[290]*Ibid.*

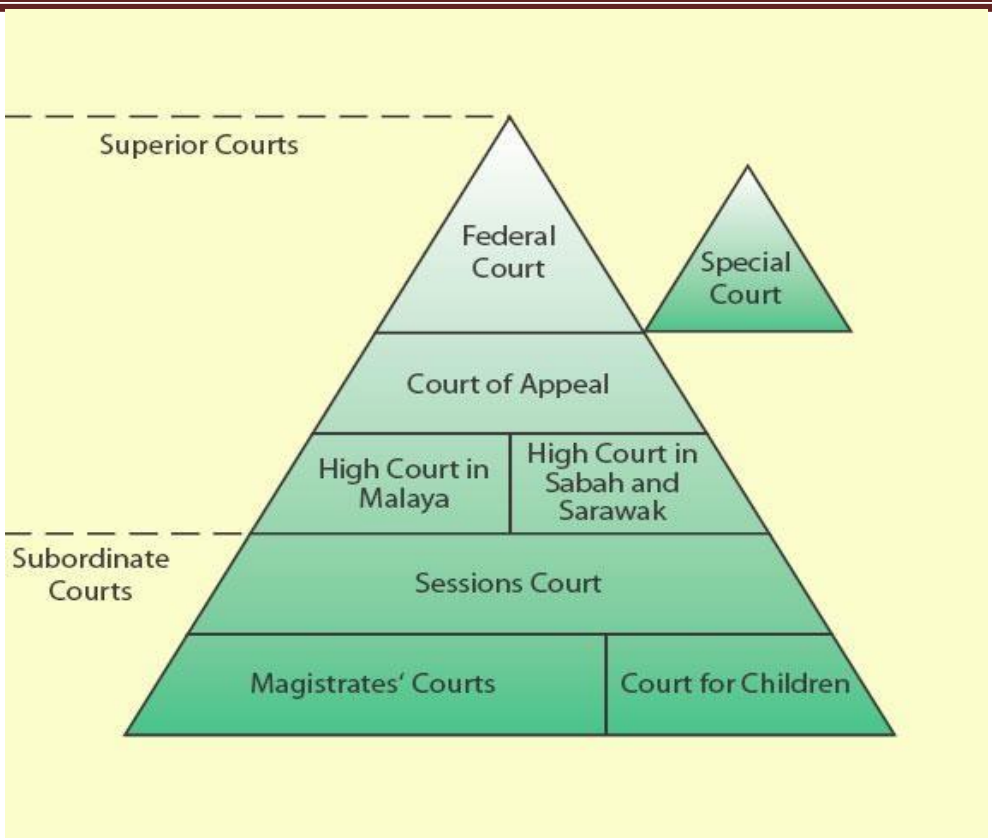

Fig. No. 4.1: Hierarchy of Malaysian Court System

The structure of the Malaysian court is linked to that of a pyramid, Professor Richard analyzed and said that, where the Apex Court, the federal court, stands at the pyramid. A Step down the hierarchy is the Court of Appeal, followed by the two HCs of coordinate jurisdiction and status, namely HC in Malaysia (for West Malaysia) and HC in Sabah and Sarawak (for east Malaysia). Immediately below are the subordinate courts, i.e., the session court and the Magistrate court.[291]

Professor Richard remarks again that, "In Malaysian Courts there are two types of judicial accountability. One relates to the requirement that judicial decisions must be accompanied by reasons and another is that it pertains to judicial tenure of office and removal of judges for judicial misconduct."[292]

[291]Richard Say Keow Foo, "Delivering Justice, Renewing Trust': An Analysis of the 2008 Reforms to the Judicial Appointments and Accountability Systems in Malaysia" 25 (Australia, 2017).
[292]*Ibid.*

The lord president of the Supreme Court, Chief justices of High Courts other judges from high court and supreme court appointed by Yang di PertuanAgong (Supreme Head of the Malaysia), on the advice of prime minister.

4.2.1 Appointment of Judges:

Under Article 122 B (1)[293]"The lord president of the Supreme Court, Chief justices of High Court's other judges from the High Court and the Supreme Court judges appointed by Yang di PertuanAgong" (Supreme Head of Malaysia), on the advice of prime minister.

While appointing the chief justice of the High Court, the Prime minister will consult with chief judges of High Courts and while appointing Chief Justice of HC in Sabah and Sarawak consultation with Chief Minister is respective states. The appointment of other judges the prime minister will consult with Chief Justice of Court of Appeal and if there will be the appointment of judges of High Courts then consultation with the chief justice of High court will be necessary.[294]

All appointments of session judges and first class magistrates are made from amongst officers of the judicial and legal services, who are legally qualified and in the service of the federal government.

4.2.2 Removal of Judges:

Malaysian judges are accountable for their misconduct or inability to perform the function of their office. They can be removed by the provision included in Article 125 of the Malaysian Federal Constitution.[295]

Article 125 prescribes that judges of the federal Court, Court of Appeal, and HC "may be removed from office on grounds of 'misbehaviour' or if they cannot 'properly discharge the functions of their office' because of their inability from infirmity of body or mind or any other cause.

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[293]The Federal Constitution of Malaysia, 1957, art. 122 B.
Available at: http://www.commonlii.org/my/legis/const/1957/9.html. (last visited on February, 2020)

[294]*Ibid.*

[295]The Federal Constitution of Malaysia, 1957, art. 125 (1)..., (2)..... ,
"Tenure of office and remuneration of judges of Federal Court"

Judges Code of Ethics 1994:

The judiciary introduced a code of ethics for judges to reinforce the aspect of judicial accountability. In exercise of the powers conferred by Clause (3A) of Article 125 of the Federal Constitution Yang di Pertin Agong (Supreme Head of the Malaysia) has consulted with the Prime Minister and Chief Justice of the Supreme Court and High Court. This code of ethics may be cited as the Judges Code of Ethics 1994.[296]

Any breach of this code is became the ground for removal of the judge.

3. (1) a judge shall not—

(a) Subordinate his judicial duties to his private interests;

(b) Conduct himself in such manner as is likely to bring his private interests into conflict with his judicial duties;

(c) Conduct himself in any manner likely to cause a reasonable suspicion that—

i) He has allowed his private interests to come into conflict with his judicial duties so as to impair his usefulness as a judge; or

ii) (ii) "He has used his judicial position for his personal advantage";

(d) Conduct himself dishonestly or in such manner as to bring the Judiciary into personal advantage;

(e) Lack efficiency or industry;

(f) Inordinately and without reasonable explanation delay in the disposal of cases, the delivery of decisions and the writing of grounds of judgments;

(g) Refuse to obey a proper administrative order or refuse to comply with any statutory direction;

(h) absent himself from his court during office hours without reasonable excuse or without prior permission of the Chief Justice, the President of the Court of Appeal or the Chief Judge, as the case may be; and

(i) Be a member of any political party or participate in any political activity.

(2) For the purpose of paragraph (1) (h) 'office hours' means "the normal office hours (which do not include staggered working hours) applicable to the Federal Government officers in the State or in Wilayah Persekutuan where the Judge is stationed.[297]

[296]Jaclyn L Neo, "A judicial code of ethics: regulating judges and restoring public confidence in Malaysia" *Regulating Judges* 279–92 (Edward Elgar Publishing, 2016).

[297]*Ibid.*

(3) Judges shall declare all the assets of their properties to the Chief Justice of SC and HC respectively.

4. The Judge shall not have any connection with the firm or company under which he was practicing as an advocate before his appointment to the Court as a judge. After his appointment the following steps shall take place;

[(a) "to make sure that his name has been removed by the firm in the list",

(b) To ensure that his name does not appear on the firm's letterheads"; and

(c) "To make sure that he is not dealing any matter with the firm or any individuals"][298]

4.2.3 Protection Given to Judges:

1. There is no civil liability or penalties for wrong decisions made bona fide by judges. Parliament also enacted s. 14 of the Court of Judicature Act 1964.[299]

   This protection has given to judges so that judges will act-

   a) "Fearlessly"
   b) "Properly"
   c) "Effectively"

2. The conduct of a judge cannot be discussed in any state legislative assembly as Art. 127 of the Federal Constitution of Malaysia states.[300]

Establishment of Judicial Commission in Malaysia:

The Judicial Commission Act 2009 was passed by the parliament of Malaysia with objectives relating to the appointment of the judges of the Superior Courts, power of judicial commission and to maintain judicial independence.

[298] Judges Code of Ethics Malaysia, 1994.

[299]The Court of Judicature Act of Malaysia, 1964, s.14.

(1) No Judge or other person acting judicially shall be liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction, nor shall any order for costs be made against him, provided that he at the time in good faith believed himself to have jurisdiction to do or order the act complained of.

[300]The Federal Constitution of Malaysia, 1957, art.127.

The conduct of a judge of the Supreme Court or a High Court shall not be discussed in either House of Parliament except on a substantive motion of which notice has been given by no less than one quarter of differences in the system of land tenure) in the same manner as they apply to other States.

Under this Act, Judicial Commission was established in relation to the appointment of the judge's superior court in addition to the constitutional methods and to maintain judicial accountability and independence in combined efforts with consultation with the Prime Minister.

'Composition of Judicial Commission'[301]:

1) "Chief Justice of Federal Court (Chairman)"
2) "President of the court of Appeal"
3) "Chief Justice of High court Malaya"
4) "Chief judge of High Court Sabah and Sarawak"
5) "Federal Court judge appointed by Prime Minister"
6) "Four eminent persons"

Selection standard (conditions) for members

Article 124 of the Federal Constitution alongside section 23 of Act specify the criteria for the appointment of judges, like[302]

1} "integrity, competency and experience";

2} "objective, impartial, fair and moral character";

3} "Decisiveness, ability to make timely judgements and good legal writing skills"

4} "industriousness and ability to manage cases well"

5} "Physical and mental health"

4.3 Judicial Accountability in New Zealand:

4.3.1 Judicial Appointments

In New Zealand there is recent but common public concern regarding judicial accountability. The Constitution Amendment Bill was introduced into the House in April 1999. It proposes minor alterations to the law relating to judicial appointments, removals, and immunities.[303]

New procedure adopted in 1999 conferred responsibility for judicial appointments on the Attorney-General. Under this procedure the appointments to the Supreme Court, High Courts, Court of Appeal, and all courts appointed

[301]Jaclyn L Neo, "A judicial code of ethics: regulating judges and restoring public confidence in Malaysia" *Regulating Judges* 279–292 (Edward Elgar Publishing, 2016).

[302] The Judicial Commission Act 2009 of Malaysia, s. 23.

[303]Joseph Philip (ed.), *The Constitutional and Administrative Law in New Zealand* 789 (Thomson Reuters, New Zealand, 2021).

by the Attorney General. The Attorney–General also recommends the appointments of up to nine Associate Judges of the High Court.[304]

The only exceptions are the Chief Justice who is recommended by the Prime Minister and Maori Land Court Judges (who are recommended by the Minister of Maori Affairs). Appointment processes for the District Court (including Judges of the Family Court, Youth Court, and Environment Court) and the director of the secretary of justice is the directory head of the Employment Court and the Solicitor-General will be the directory head of the Court of Appeal and High Court.[305]

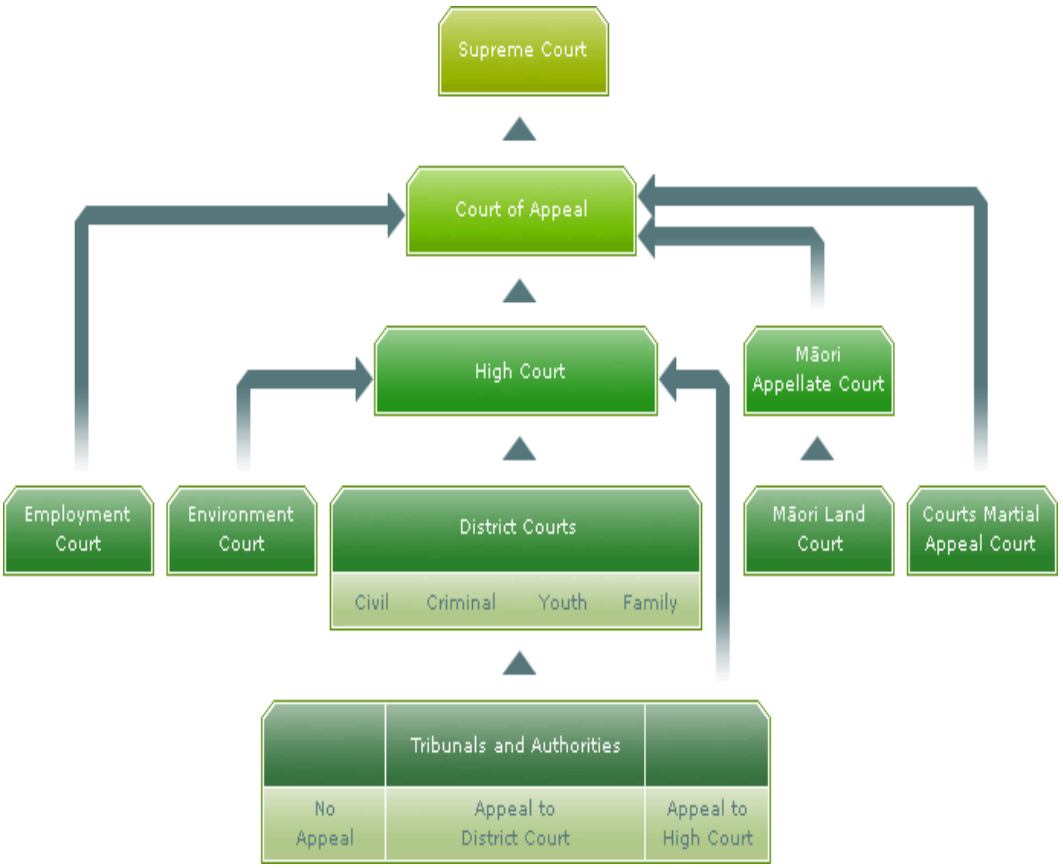

Fig. No. 4.2: Hierarchy of New Zealand Court System

The statute limits the number of permanent High Court Judges to 37. The statutory maximum for District Court Judges is 120.

[304]Judicature Act 1908 of New Zealand, s. 26 C.

[305]Grant Hammond, *Judiciaries in Comparative Perspective* 196-236 (Cambridge University Press, Cambridge, 2011).

Currently 118 positions are filled and one recommended new appointment is ready for consideration by the Attorney-General. The current District Court Judges, one is an Ombudsman, two are appointed to the Police Complaints Authority, one serves as a Law Commissioner, one deals with accident insurance appeals, one is temporarily appointed to the Employment Court and the bulk of another's time is committed to the Liquor Licensing Authority. Added to this, jury trials have grown in number and time taken. The demand is such that it has become difficult to cover for judges forced to take leave due to illness.[306]

In 1997, the Minister of Justice introduced a new system for making appointments to the District Court. The system introduced public advertising of judicial positions, required prospective candidates to formally express interest in appointments, and established a selection process involving panel interviews. Appointment criteria and the process to be followed were made public. The Judicial Appointment Unit was established within the Ministry of Justice to administer the process.[307]

4.3.2 Transparent and Standardized Procedures:

Earlier, the appointments criteria were not publicized, judicial vacancies were not advertised, expression of interest were not called for, candidates were not interviewed, and consultation procedure were ad hoc and uncertain.[308] Whenever there will be vacancies in the judiciary and judicial appointments unit of Ministry of Justice commences the appointment process. The Unit undertakes consultations to obtain suitable candidates and calls for expressions of interest from practitioners wishing to be considered for judicial office.[309] All names that meet the criteria are held on a confidential data-base. The Appointments of superior Court made by the Solitary General and appointment of judges will be under the direction of the Secretary of Justice. For High Court

[306] *available at:* "http://www.justice.govt.nz/publications/publications-archived/1999/ministry-of-justice-post-election-briefing-for-incoming-ministers-1999/7.the-judiciary-and-the-courts". (last visited on December 16, 2021).
[307] Joseph Philip (ed.), *The Constitutional and Administrative Law in New Zealand* 789 (Thomson Reuters, New Zealand, 2021).
[308] *Ibid.* also available in Lee, Judiciaries in Comparative Perspective, p. 68.
[309] *Ibid.*

appointments, the Attorney–General, and Solicitor-General each consult arange of person's representatives of the professional legal community. Appointments to the higher appellate courts occur through judicial promotion. Court of Appeal judges are typically recruited from the High Court Bench andappointed to the Supreme Court from the Court of Appeal Bench. Only five Court of Appeal judges have been appointed directly from the profession duringthe fifty years that the court has been permanently constituted.[310]

Prospective candidates either submit an 'expression of interest' or are invited to accept nominations. The 'expression of interest' form is a formal document for obtaining information about the candidate, including a description of the candidate's legal experience.[311]

The secretary for justice submits a proposed shortlist of candidates to the Attorney-General, who approves the nominations after such consultations as he or she considers appropriate. The shortlisted candidates are interviewed by a panel comprising the Chief District Court Judge, the Head of Bench (for appointments to the family Court, Youth Courts, Environment Court of Employment Court), Ministry of Justice, and the Executive Judge of the state. The panel then consults the Solicitor–General and the President of New Zealand Law Society before making its recommendation to the Attorney-General.[312]

4.3.3 Disciplinary Principles for judges:

All the common law countries have explored reforms that can moderate the demands for judicial accountability. In New Zealand also, these demands create the dilemma of how to dispense justice impartially through judicial independence and maintain Judicial Accountability. In the case[313], the judges of the High courts have observed that the statutory removal power of judges creates tension between accountability and judicial independence. Judges are sometimes an easy target of the media and there is no bright-line distinction between promoting judge's accountability and inviting unwarranted attacks on

[310]R. Bigwood (ed.), *The Permanent New Zealand Court of Appeal: Essay on the first 50 years* 39 (Oxford University Press, 2009).
[311]*Ibid.*
[312]*Ibid.*
[313]*Wilson* v. *Attorney General* (2011)1 NZLR 399 at (41).

the judiciary. There is one view mentioned in[314]that sometimes knowledge deficit, too, fuels demand for judicial accountability.

The authors express that, Judges believe that the greatest threat to judicial independence is lack of understanding of the judicial role and why a judge's independence is fundamental to it, the principle of judicial independence is not well understood, exciting greater judicial accountability poses an untoward threat to judge's independence which may have major implication for civil society and rule of law.[315]

So, this is an also very important observation that in the name of judicial accountability, judicial independence shall not be compromised.

In New Zealand, there are no formal procedures for disciplining judges. Each judge is independent of all other judges, including the judge's Head of Bench, "the chief justice, the President of the Court High Court Judge, etc. Head of bench might exercise leadership and a degree of oversight over their colleague, but they do not enjoy any powers to discipline them."[316] The only powers to discipline judges are those exercised under the "*Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004* (JCCJCPA)."

4.3.4 Judicial Complaints Process:

The JCCJCPA codified the procedure for investigating complaints of judicial misconduct. In 1999, the judiciary adopted its own internal complaint process; the process is essentially voluntary, based on a consensual jurisdiction.

The JCCJCPA established a Judicial Conduct Commissioner to process complaints.[317] This act set two goals: to provide an investigative process that might lead to a judge's removal; and to protect judicial independence and rights of natural justice.[318]Allegations of inappropriate conduct and serious misconduct are the two types of complaints that may initiate removal proceedings. All complaints must be directed through the commissioner, who

[314]Eichelbaum and Elias, "The Next Revisit : Judicial Independence Seven years on" 217 (presented at The Inaugural Neil Williamson Memorial Lecture, Canterbury law Review, 2004), x.

[315]*Ibid.*

[316]Joseph Philip, *The Constitutional and Administrative Law in New Zealand*, 5th ed. (Thomson Reuters, New Zealand, 2021).

[317]The Judicial Conduct Commissioner and Judicial Conduct Panel Act, 2004, ss.7, 8.

[318]The Judicial Conduct Commissioner and Judicial Conduct Panel Act, 2004, s.4.

conducts a preliminary investigation to ascertain whether complaints have substance. The commissioner must have given notice to the judge and invite judge respond.[319]

4.4 Judicial Accountability in USA:

4.4.1 'Judicial selection, removal and discipline in the United States':

The Prof. Mark Tushnet said that, "The United States has many systems of judicial selection, discipline and removal. The national court and the fifty states differ quite substantially along these dimensions."[320] There are two important characteristics in the USA judicial system.

1) Judicial selection in all the systems is, with minor exceptions, tightly connected to ordinary politics and judges individually or through their hierarchies play a relatively small role in judicial selection and removal;[321] and
2) Judges are initially appointed from the practicing bar at almost every level, with no strong expectation of promotion within the judiciary hierarchy.[322]

Article III of the American Constitution specified the all the principles and Conditions of the all American Judges including Supreme Court, Federal circuit and District Court. Article III states that these judges "hold their office during good behavior," which means they have a lifetime appointment, except under very limited circumstances. Article III judges can be removed from office only through impeachment by the House of Representatives and conviction by the Senate.

[319]The "Judicial Conduct Commissioner and Judicial Conduct Panel Act, 2004", ss. 14 (1) (3), 15(2) (4) Section 14 "Commissioner must acknowledge complaint and deal with it promptly"
[320]Mark Tushnet, *Judiciaries in Comparatives Studies, Judicial Selection, Removal and Discipline in the United States* 35(Cambridge University Press, 2011).
[321]*Ibid.*
[322]*Ibid.*

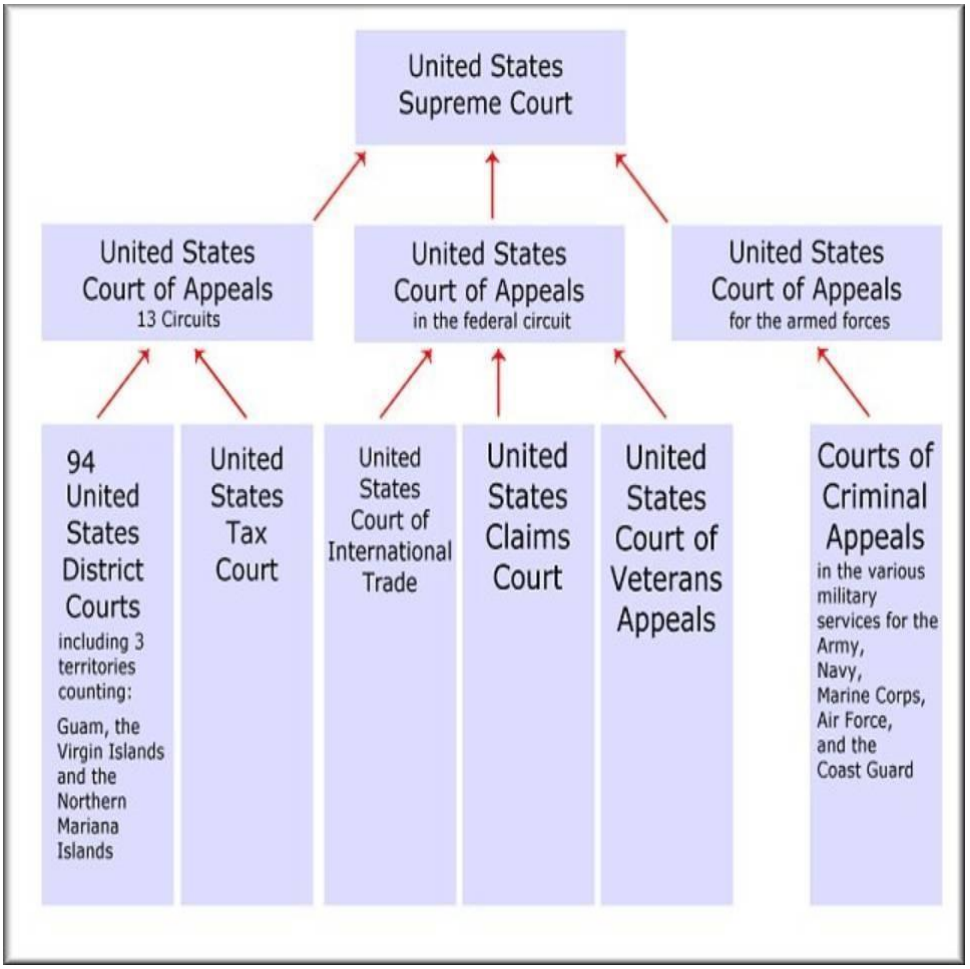

Fig. No. 4.3: Hierarchy of US Court System

4.4.2 The National Courts of the United States:

The national court system in the United States has four tiers. Initial decisions in many administrative matters, including immigration cases and disputed claims for payments to the disabled, are made by 'administrative law judges'. These judges are appointed through merit-based processes within the administrative agency or bureaucracy they serve, although political appointees sometimes intervened in those processes. Within the federal courts the lowest tier is occupied by 'magistrate judges', appointed within each district by the local judges and serving eight- year renewable terms. Magistrate judges make preliminary rulings in cases assigned to them by trial judges, make

recommendation to those judges on dispositive questions and may try criminal cases, mostly minor offences, with the defendant permission.[323]

The second tier consists of the federal district courts. Each state contains one or more districts, defined geographically, with one or more district judges. District judges are expected to serve within their districts. Above the district courts are the federal courts of appeals, called circuit courts. 13 circuit courts areorganized geographically, hearing appeals from the district courts. Aspecialized court of appeal for the Federal Circuit hears appeals in patent and international trade cases arising throughout the nation; it also has jurisdiction over appeals from decisions by the federal civil service system.

The expression given by Professor Tushnet that, "The courts of appeals sit in panels of three judges, although in extraordinary cases the entire court of appeals will hear or rehear a case en banc. Final authority court is Supreme Court, consisting of nine justices. It has jurisdiction over all cases decided by the federal courts of appeals and over cases involving national law, including constitutional law, decided by state courts."[324]

4.4.3 Appointments of Judges:

In the USA, the federal judges from the district court to the Supreme Court are nominated by the president and confirmed in their position by the Senate. Once confirmed, they serve "during good behaviour", which means that unless removed by impeachment, federal judges serve until they die or choose to retire. The involvement of the President and the Senate in the judicial appointments inevitably gives political loom. Political influence on judicial selection certainly affects judicial behavior after the appointment.

Appointments to the district and circuit courts were ordinary patronage appointments, with the senators for the states in which courts sat using whatever criteria they chose to reward political supporters with judicial position, and with the president deferring to the senator's choice.[325] Over the years, the Senate has

[323]W William Hodes, *Bias, the Appearances of Bias, and Judicial Disqualification in the United States* 65 (Cambridge University Press, 2011).

[324]Mark Tushnet, *Judiciaries in Comparatives Studies, Judicial Selection, Removal and Discipline in the United States* 38 (Cambridge University Press, 2011).

[325]Mark Tushnet, "Judicial Selection, Removal and Discipline in the United States" *in Judiciaries in Comparatives Studies,* 134-150 (Cambridge University Press, 2011).

become more assertive in confirming nominations. The overall effect of the Senate's assertiveness has been extending the length of time that nominations are pending before confirmation. There are no formal qualifications required for appointment to the federal court. District judges have varied backgrounds. Some have served as judges in state courts; others came from the private bar. Nomination and confirmation of Supreme Court justices is also political, but, of course, different because the stakes are higher and the President plays the dominant role. Professor Tushnet said that, "The President choose nominees to satisfy political demands on them, and senators vote to support or oppose confirmation to satisfy the different political demands they face."[326]

4.4.4 Removal and Discipline of Federal Court Judges:

The federal judges can be removed from office only by impeachment, a process initiated by the House of Representatives by majority vote and concluded and convicted by two-thirds majority in the Senate.

In the US History of impeachment process, *Justice Samual Chase case*[327], against whom charges of improper judicial behavior had been brought. One of the actions was he ran his courtroom when sitting as a trial judge, a large portion of the charges rested on Chase's legal ruling with which the House of Representatives disagreed. Impeachment process failed and the court ruled that federal judges cannot be removed from office merely because the House and Senate disagree with a judge's rulings on questions of law, including Constitutional Law.

Ordinarily the impeachment process follows a criminal prosecution; the Court ruled that "impeachment has occurred only when a federal judge has been charged with criminal misconduct, specifically corruption, such as bribe-taking.[328]

Federal judges are subject to ordinary criminal law, even for misconduct in connection with their office. In 1980, Congress created the first statute to conduct judicial discipline that is *The Judicial Conduct and Disability Act*

[326]*Ibid.*

[327]Available at: https://library.cqpress.com/scc/document.php?id=bioenc-427-18166-979144&v=e112788251758c1e (last visited December, 2021).

[328]W William Hodes, *Bias, the Appearances of Bias, and Judicial Disqualification in the United States* 46 (Cambridge University Press, 2011).

1980.[329]Under this act, anyone can file a complaint with the Circuit Court Clerk, alleging conduct "prejudicial to the effective and expeditious administration" of judicial functions. The Chief Judge of the Court of Appeals reviews the complaint and can appoint an investigation committee. The Circuit's Judicial Council, which consists of a mix of trial and appellate judges in the circuit, can impose discipline ranging from a private or public censure through removal of cases from the judge's docket to a request that the judge shall voluntarily retire. In extreme cases, which consist of judges from all the courts of appeals, where the chief justice presides, which can recommend impeachment. In this procedure 2001 to 2005, five thousand complaints were considered and thirty-two cases resulted in corrective action, forty-two were terminated with no action needed because of "intervening events", such as the retirement or death of the judge against whom complaints were filed. Special Committees investigated fifteen cases, imposed public censure twice, private censure once and other discipline once.

Federal judges rarely discipline because they are generally well qualified and temperate in their behaviour.

The State Courts:

Most adjudication in the United States occurs in state courts. State courts usually have five tiers. At the lowest level are municipal or police courts handling minor criminal and sometimes civil matters; they really deal with difficult legal issues but they are often the point of contact that most ordinary people have with the judicial system. Nearly every state has an intermediate appellate court and every state has a highest court of appeals.

4.4.5 Current Methods of Selection:

The selection of judges mostly happened by way of election in state court. Two most influential actors in the state courts at the local level: judicial officers (*i.e.*, justices, judges, commissioners, referees, magistrates, justices of the peace, by whatever names they are known) and court executive officers (*i.e.*, court administrators or clerks of court, by whatever names they are known). Judicial

[329] "The Judicial Conduct and Disability Act 1980"
Act created for process and procedure to file a case against the federal judge on the basis of misconduct.

officers at these various levels of state court arrive at their position in a variety of ways. For general jurisdiction trial courts, judges are elected in partisan or non-partisan elections in 27 states; appointed by the governor in 19 states; and appointed by the legislature or other means in the remaining states.[330]

The governor and the legislature both play a role in the authorization for and funding of new judgeships; in about 35 states, requests for new judgeships are made on the basis of a quantitative workload assessment methodology administered by the judiciary.

In many states, more than one method of selecting judges is used, with different selection methods for judges at different court levels or in different geographic areas. Even when the same selection method is used for all judges in a state, there are variations in how the process works in practice. The terms of office for judges and the procedures used to determine whether judges will retain their seats also differ from state to state.[331]

The general selection categories are described briefly below;

Legislative Appointment:

It is mentioned by Prof. Barksonthat, "Only two states have retained this method of judicial selection, in which the legislature has sole power for appointing judges. Today, only two states (South Carolina and Virginia) use legislative appointments to choose judges. In South Carolina, the state has established a ten-member Judicial Merit Selection Commission consisting of both legislators and citizens to screen applicants and make recommendations to the legislature."[332]

Executive Appointment:

Originally, many states adopted the federal model of judicial selection, whereby the executive would appoint judges, subject to legislative confirmation. In the early 19th century, however, states began to move away from executive appointment. Today, there are only three states (California, Maine, and New Jersey) in which the governor has sole discretion in naming judicial appointees. In Maine and New Jersey, the governor's nominee must be

[330]Grant Hammond, *Judiciaries in Comparative Perspective* 25 (Cambridge UniversityPress, Cambridge, 2011).
[331]*Ibid.*
[332]Larry C. Berkson, "Judicial Selection in the United States: A Special Report" 64 *Judicature* 176–93 (1980).

confirmed by the state Senate. In California, the nominee must be confirmed by a three-member Commission on Judicial Appointments. Among the states that use contested elections to choose judges, twenty-eight authorize the governor to appoint judges to fill mid-term vacancies. These appointments are often only for unexpired terms and are therefore outside the formal selection process, but they still provide opportunities for political control by the executive, with appointees attaining the advantages of incumbency described in greater detail below.[333]

Nonpartisan Election:

In an effort to lessen political influence, many reformers in the early 18th century advocated for nonpartisan contested elections, where voters select a candidate at the polls, but the names of judicial candidates appear on the ballot without party labels. There may be a primary election, followed by a general election. Conducting elections that are truly nonpartisan can be difficult. A few nonpartisan election states (Michigan and Ohio are the notable examples) require a judicial candidate to win a party primary or be nominated at a party convention before being placed on a nonpartisan ballot in the general election. In addition, recent federal court rulings have weakened states ability to limit judicial candidate's participation in or affiliation with a political party, a trend that will likely undermine nonpartisan elections over time.[334]

Partisan Election:

Judicial candidates usually run initially in a party primary to win nomination. Subsequently, partisan nominees stand in the general election, in which party affiliation is indicated on the ballot.[335]

Merit Selection:

This method is often also referred to as the 'Missouri Plan' or commission-based appointment. Although there are as many variations in the process as there are states that use this selection method, certain characteristics are fairly standard. A nominating commission screens applicants and selects the most

[333]*Ibid.*

[334]Nicholas P. Lovrich, John C. Pierce and Charles H. Sheldon, "Citizen Knowledge and Voting in Judicial Elections" 73 *Judicature* 28–33 (1989).

[335]"Picking Federal Judges: A Note on Policy and Partisan Selection Agendas - Micheal W Giles, Virginia A. Hettinger, Todd Peppers, 2001,"*available at*: https://journals.sagepub.com/doi/abs/10.1177/106591290105400307 (last visited February 12, 2022).

Highly-qualified candidates for a judicial vacancy. An elected official (usually the governor) appoints one of the recommended candidates.

There is significant variation in the composition of judicial nominating commissions. Most include lawyers selected by their peers, and non-lawyers selected by the Governor or other elected officials. In some states, a judge will serve as the ex-officio chair of the commission. In certain states, a specified number of representatives of each political party must be included to guarantee that the commission is bipartisan. The length of commissioner terms and limits on the number of terms any one individual may serve also differ from state to state. Some states have separate commissions for different courts or levels of courts. The rules and procedures that govern the work of nominating commissions, including the solicitation of applications and the investigation and review of applicants, vary by state.[336]

Other details governing the process, like the number of names to be submitted to the appointing authority, time limits for commission deliberation, and the extent to which the records and meetings of the commission are open to the public are all determined by statutory or constitutional provisions.

Legislative confirmation of gubernatorial appointees is required in some, but not all, merit selection states. Most merit selection plans include the use of a retention election after the selected judge has served for a specified period. The incumbent's name is placed on the ballot, and voters are asked to cast a 'yes' or 'no' vote as to whether that judge should remain on the bench. If voters choose not to retain a judge, that seat is declared vacant and a new judge is appointed using the same merit selection process.

[336]Thomas R. Phillips, "The Merits of Merit Selection the People & the Courts - The Twenty-Seventh Annual National Federalist Society Students Symposium on Law and Public Policy - 2008 II. The Merits of Selecting Our Judges" 32 *Harvard Journal of Law & Public Policy* 67–96 (2009).

Table No. 4.1: Provides overview of present judicial selection process among the States.[337]

Table 2. Judicial Selection in the United States:
Appellate and General Jurisdiction Courts

Merit selection through nominating commission*	Gubernatorial (G) or legislative (L) appointment without nominating commission	Partisan election	Nonpartisan election	Combined merit selection and other methods
Alaska	California (G)	Alabama	Arkansas	Arizona
Colorado	Maine (G)	Illinois	Georgia	Florida
Connecticut	New Jersey (G)	Louisiana	Idaho	Indiana
Delaware	New Hampshire (G)	Michigan	Kentucky	Kansas
District of Columbia	South Carolina (L)	Ohio	Minnesota	Missouri
Hawaii	Virginia (L)	Pennsylvania	Mississippi	New York
Iowa		Texas	Montana	Oklahoma
Maryland		West Virginia	Nevada	South Dakota
Massachusetts			North Carolina	Tennessee
Nebraska			North Dakota	
New Hampshire			Oregon	
New Mexico			Washington	
Rhode Island			Wisconsin	
Utah				
Vermont				
Wyoming				

* The following nine states use merit plans only to fill midterm vacancies on some or all levels of court: Alabama, Georgia, Idaho, Kentucky, Minnesota, Montana, Nevada, North Dakota, and Wisconsin.

Source: *American Judicature Society. Used with permission.*

4.4.6 Removal and Discipline:

State court judges can be removed from office if they lose retention or contested elections. In addition, some states allow "recall" elections in which voters can remove a judge from office during his or her term, but these provisions are not in practice. Nearly every state provides for judicial removal by means of impeachment and conviction, typically for one of a list of offences such as "malfeasance" or "gross misconduct".

[337] This chart belongs to American Judicial official's website.

The absence of removal by means of impeachment does not indicate that there are few problems of judicial performance in the states. The problem of judicial performance–from corruption to mistreatment of litigants and court personnel, including sexual harassment and racial insensitivity are dealt with by judicial conduct commission, composed by judges, lawyers, and non-lawyer public members. Judicial conduct commissions appear to have a high threshold for finding improper conduct. Even though many complaints against judges involve their conduct in courtrooms and in judicial chambers, the judicial commission still ignores it in the name of interfering with judicial interference. It also becomes difficult for the Judicial Conduct Commission to find out the improper conduct of the judges.

In 2006, the Study Report stated[338], State Judicial Commission invoked discipline proceeding where "12 judges were removed from office; 11 judges resigned or retired in absence of discipline", 1 judge was required to retire, and more than one hundred additional judges received some form of public discipline, including suspension without pay, public warning, and reprimands.

4.4.7 Performance Measurements of the State Courts in USA:

In the state courts, the momentum toward performance measurement was further encouraged by several other factors[339]

1) "The massive increase in cases prosecuted as part of the national 'war on drugs' that were overpowering the courts";
2) "Rehabilitated attention to court delay and expenses of litigation";
3) "The economic recession of the early 1990s, which put a serious budget clutch on state and local budgets and illustrated how unsuccessful courts were at justifying their use of public dollars with objective data";
4) "The low level of public trust and assurance in the courts, as reported in national and state surveys."

[338]"Methods of Removing State Judges" 2006 *available at*: www.ajs.org/ethics/ethics/eth_impeachment.asp. (last visited January, 2021)

[339]W William Hodes, *Bias, the Appearances of Bias, and Judicial Disqualification in the United States* 68-76 (Cambridge University Press, 2011).

4.5 Judicial Accountability in Australia:

The Australian legal system inherited from England common law, more than 200 years ago. At the end of the 19th century, the people of the self-governing British colonies in Australia united in a Federation, known as the Commonwealth of Australia. The Constitution of Australia 1901 established what it described as a federal Supreme Court, to be called the High Court of Australia, which now consists of a Chief Justice and six other Justices.[340]

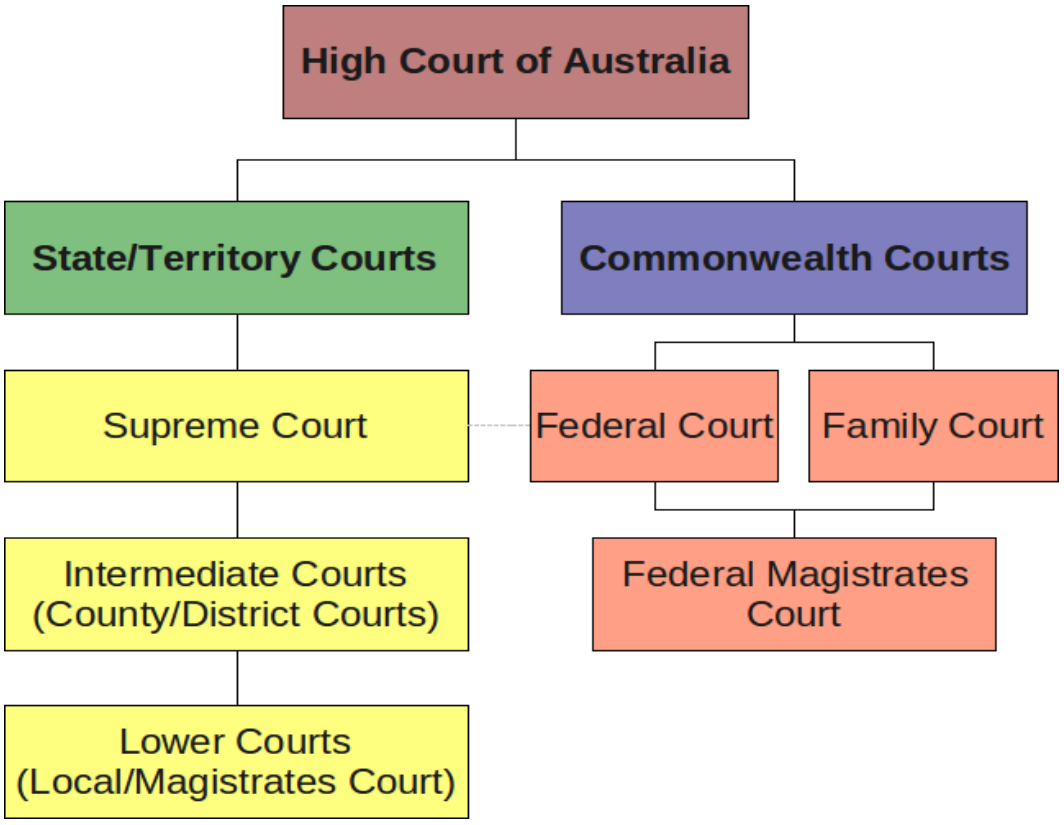

Fig. No. 4.4: Hierarchy of Australian Court System

Two important functions are given to the High Court. "One of them is to maintain the Constitution that involves deciding cases, between governments, or between citizens and governments, which raise issues as to the meaning and operation of the Constitution, including the division of governmental powers and functions made by the Constitution. It also involves enforcing the

[340]J. Thomas, *Judicial Ethics in Australia*, 3rd ed. 35 (Sydney: LexisNexis Butterworths,2009).

observance of the law and the Constitution by officers of the Commonwealth."[341]

The next function is to act as the final court of appeal from the courts of the States and Territories, in all civil and criminal matters. The position of the High Court at the Apex of the court system secures the uniformity of the common law in Australia.[342]

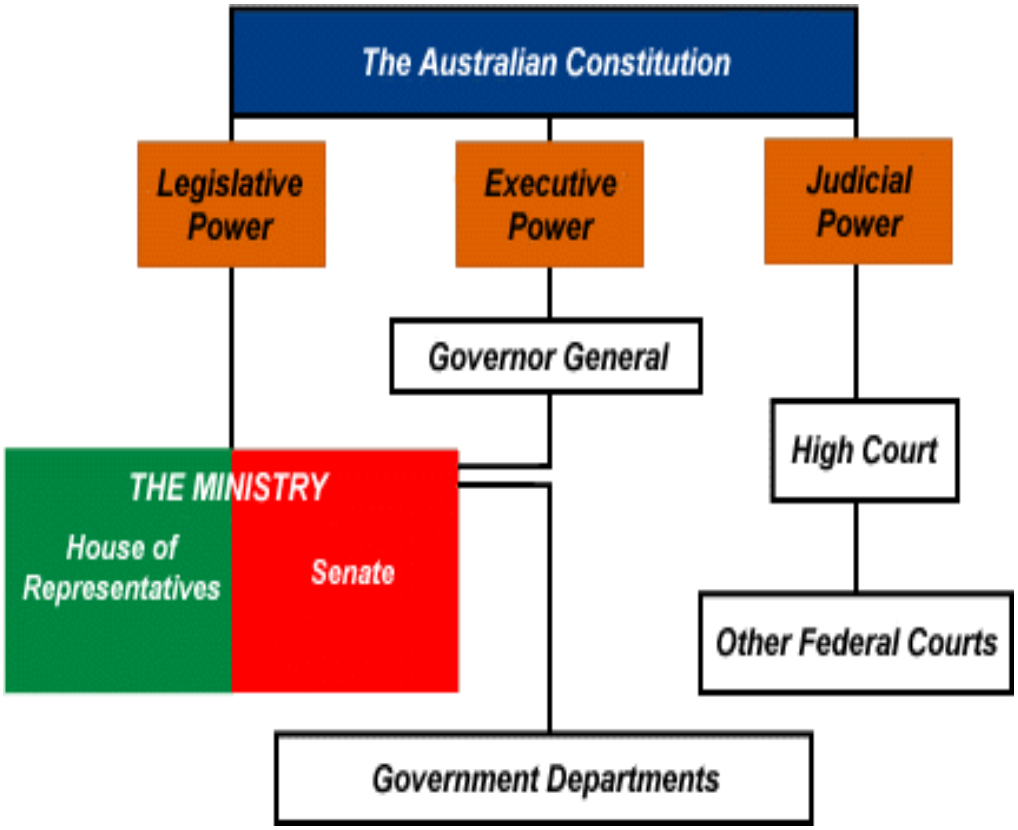

Fig. No. 4.5: The Australian Constitution Mechanism

4.5.1 Judicial Appointment:

Judges are appointed by the executive government, state or federal. They have security in service tenure, which, in the case of all federal, and some State, judges, is constitutionally protected. In Australia, most of the judicial appointment are made without much publicity.

Under the Constitution of Australia, appointment of federal judges is made by the Governor- General in Council, whereas the appointment of state judiciary

[341] *Ibid.*
[342] *Id.*

is made by the General in Council. Consultation between executive and judiciary is not statutorily prescribed except in relation to the appointment of High Court Judge.[343]

There are two opinions relating to *Consultation* of judges, a former Chief Justice of the High Court said in 1987 that it may not be an appointment, it may be made without consultation or sometimes advise may be seek but may rejected or overlooked.[344] A consultation according to section 6 of the High Court of Australia Act 1979 is required. There is yet to be a statute governing the judge selection procedure.

Now in Australia, a practice has been established in appointing a panel for judges of Federal Court (other than chief justice), family court and the Federal Magistrates Court. The role of panel is advisory. "In 2009 The Senate Legal and Constitutional Affairs References Committee was established, the committee report[345]said that, the appointment process by the Attorney-Generalconsidering the Advisory Panel's report and then appointing the person whom he thinks suitable is unfortunate."[346]The committee recommends also call for changes in judicial selection. The establishment of a judicial commission is oneof them. Sir Garfield Barwick[347]viewed that, a body should have the responsibility to advise the executive government of the names of the person who, by reason of their training, knowledge, experience, character and disposition will be suitable for the post of judges. He stressed for the appointment of National Judicial Commission but recently, no state government and federal government has shown interest to establish a judicial appointment commission because it may contradict with section 72 of the Australian Constitution. There are six foundational principles in Australian Constitution to acquire judicial accountability namely, rule of law, separation of power, federalism, democracy, nationhood and responsibilities.

[343]H.P. Lee, *Appointment, Discipline and Removal of Judges in Australia* 56-78 (CambridgeUniversity Press, 2011).

[344]*Ibid.*

[345]*Australia Judicial System and the Role of Judges*, 3–20 (The Senate Legal and Constitutional Affairs References Committee, 2009).

[346]*Ibid.*

[347]Chief Justice of the High Court of Australia1964- 81.

4.5.2 Removal of Judges:

Governor General can remove the federal judicial officer and Governor can remove state judicial officer giving an address in each House of the Parliament on the ground of 'proved misbehaviour' or incapacity'.[348] In Australia, by this process, no federal judge been removed up to now; but a different process was developed to remove and to control judicial incapacity in Australia. In New South Wales, the different process is adopted; whereas in Queensland, a different process has been accepted. There are several instances in Australia to remove the judges one of them is '*The Murphy affair*'[349]and this case highlighted a series of problems in the Australian judicial system.

This case started with the publication by a newspaper (*The Age*) of a series of articles based on telephone conversations (taped illegally by the New South Wales police) of Sydney solicitor Morgan Ryan which were claimed to connect Justice Murphy.

The discussion between Murphy and Ryan relating was illegal casinos, blackmail, and a real estate development in central Sydney, there was a possibility that J Murphy supporting the reappointment of a person to a State statutory authority and interfering with the police investigation.[350]

These articles generated political heat and therefore Attorney General (Senator Gareth Evans) sought an opinion from the Commonwealth Solicitor General on the meaning of 'proved misbehaviour'.

It was the first step to determine whether the judge shall be removed from his post. The Solicitor General gave a narrow opinion of 'misbehaviour' under section 72 of the Constitution,

1) Judicial office, including non-attendance, neglect or refusal to perform duties; and;

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[348]G. Taylor, *The Constitution of Victoria 416*-434 (Sydney: Federation press, 2006). The Victorian Constitution provides an investigation committee appointed by the Attorney-General to determine whether facts exist "could amount to prove misbehaviour or incapacity such as to warrant the removal of a judicial officer, prior to address of both Houses of Parliament. The three members comprising the investigation committee are taken from a panel of seven retired non-Victorian judges."

[349]A. R. Blackshield, *The Appointment and Removal of Federal Judges* 35(Melbourne: Melbourne University Press, 2000).

[350]H. P. Lee and V. Morabito, "Removal of Judges - The Australian Experience" 1992 *Singapore Journal of Legal Studies* 40–55 (1992).

> The commission of an offence against the general law of such a quality as to include that the serving is unfit to exercise the office.[351]

The senate appointed a committee to inquire about the allegation against Justice Murphy. A majority of the committee concluded that Justice Murphy had attempted to influence the course of justice in relation to the proceeding against Ryan and that the conduct of the judge fell within the scope of 'proved misbehaviour'. Justice Murphy was convicted by the New South Wales Supreme Court.

Thereafter, a wider meaning was provided to the phrase 'proved misbehaviour'. According to Sir Richard Blackburn, "proved misbehaviour refers to such misconduct 'whether criminal or not, and whether or not displayed in the actual exercise of judicial functions, as, being morally wrong, demonstrates the unfitness for office of the judge in question".[352]

Andrew Wells said that, "conduct of the judge in or beyond the execution of his judicial office, that represents so serious a departure from standards of proper behaviour by such a judge that it must be found to have destroyed public confidence that he will continue to do his duty under the pursuant to the Constitution."[353] These are the various views relating to the term 'proved misbehaviour' and through this definition, parliament of Australia removed the justice, Murphy because traditional parliament procedure was not satisfactory to decide whether misbehaviour occurred or not and if suppose occurred whether it would lead to removal of judges.

4.5.3 The removal of Justice Angelo Vasta:

In 1989, Justice Angelo Vasta of the Supreme Court of Queensland his removal by the Queensland Legislative Assembly due to publication of a report by a commission of inquiry[354] contained a number of adverse findings against judge like fraud dealing to receive income tax benefits and bogus claims in related to tax subtraction in respect of the lease of the library, maintaining conspiracy

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[351]*Ibid.*

[352]Richard Blackburn, "Parliamentary Commission of Inquiry re the Honourable Mr Justice Murphy" 2 *Australian Bar review* 221 (1986).

[353]*Ibid.*

[354]J. Thomas, *Judicial Ethics in Australia*, 3rd ed. 46 (Sydney: LexisNexis Butterworths, 2009).

allegations against Chief Justice; the Attorney- General and Mr. Fitzgerald QC; giving false evidence at defamation hearing. Justice Vista appeared before the parliament of Queensland to defend but motion regarding his removal passed by the parliament.

4.5.4 The Justice Vince Bruce affair[355]:

In this case, the 'incapacity' of a judge was in question for removal. The Judicial Commission of New South Wales and the report by its division commission issued show cause notice to judge why he should not be removed from the judicial office Attorney General. The Majority report stated that there had been a great number of instances of delay in delivery of judgement. On 16 June 1998, Justice Bruce addressed the Legislative Council and explained that delay was caused by medical depression. The Legislative Council voted 24-16 not to remove him from office. But on the ground 'incapacity' means not speedily disposing of the cases may remove them from the judicial office that makes the example for the efficient existence of accountability of judges in Australia.

Judicial complaints-handling process

Currently, in Australia on federal level and among the states there is no formal process to address complaints about judicial officers but in the State of New South is having the process to handle judicial complaints. In New South Wales, the state which has a statutory body which is empowered to inspect objections next to judicial officers. "The Judicial Commission of New South wale created by the Judicial Officers Act 1986 consist of 10 members"[356]; among the six are ex- official from the judiciary (including Chief Justice of the Supreme Court of New South Wales) and four members appointed by the Governor on the nomination of the minister.

Anyone may complain to the commission about a matter that concerns or may concern ability or behaviour of a judicial officer.[357] The State Attorney-General may establish a commission for investigation; if this will be minor then it can be dismissed. A serious complaint in the opinion of commission parliamentary

[355]Brian R. Opeskin, "Fresh Perspectives on Judicial Independence," 5, in H. Cunningham (ed.), *Agenda: A Journal of Policy Analysis and Reform* 518–520 (1998).

[356]*Australia Judicial System and the Role of Judges*, 3–20 (The Senate Legal and Constitutional Affairs References Committee, 2009).

[357] The Judicial Officer Act of Australia 1986, s. 15.

involvement is necessary to remove the judicial officer. All serious complaints are referred to the Conduct Division. The attorney-General will submit the report before both houses of parliament if the conduct division recommends. Misbehaviour is one of the grounds on which a judicial officer can be removed by Parliament.

Apart from examining complaints against judges the commission has two other important functions: 1) assisting the courts to achieve consistency in sentencing; and 2) organizing and supervising continuing education and training for judicial officers.[358]

After more than two decades, functioning of the Judicial Commission of New South Wales did well with veracity and effectively without endangering the independence of the judiciary, or the reputation of individual judges.[359] Now in Australia, views are emerging in federal level that there shall be a Judicial Commission. On June 2, 2010 the Premier of the State of Victoria (John Brumby) announced that his government would introduce a judicial commission to investigate allegations of misconduct against magistrate, judges and members of the Victorian Civil and Administrative Tribunal. So, this is the approach in the Australian legal system that accepts judicial commission, and their system is not hesitating to suspend the judges on account of protecting the integrity and reputation of the court system. The general statutory provision for removing the judges exists in New South Wales and also a variety of statutory provisions available relating suspension of magistrate in other states of Australia. Even federal Constitution does not expressly provide any provision to suspend the judge's still recent amendments like access to justice (Civil Litigation Reforms) Amendment Act 2009 (No.117, 2009), Schedule 3 to the family law Act 1975[360], the Federal Court of Australia Act 1976[361] and the Federal Magistrates Act 1999[362] have empowered the chief judge of Family Court, the Chief Justice of Federal Court and the Chief Federal Magistrate to

[358]J. Thomas, *Judicial Ethics in Australia*, 3rd ed. 45 (Sydney: LexisNexis Butterworths, 2009).
[359]A. Mason, "Judicial Accountability, Judicial Conduct and Ethics" 111 (Dublin Ireland, 2000).
[360]The family law Act of Australia, 1975, s. 21 B.
[361] The Federal Court of Australia Act, 1976, s.15 (1AA).
[362]The Federal Magistrates Act, 1999, s.12 (3).

'temporarily restrict a judge to non-sitting duties' in relation to their respective court.[363]

4.6 United Kingdom and Judicial Accountability:

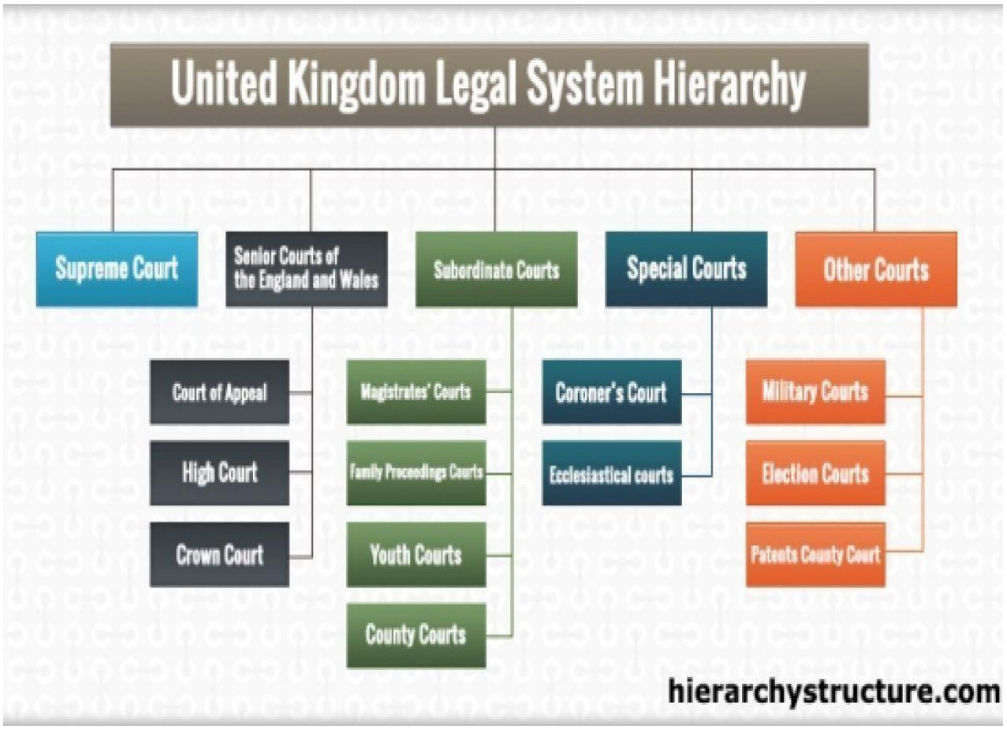

Fig. No. 4.6: Hierarchy of UK Court system[364]

4.6.1 Brief Information:

In the 2003 United Kingdom, the government announced that "the office of the Lord Chancellor was to be abolished. A new Supreme Court was established and the judicial appointment procedure was totally reformed. The Constitutional Reform Act, 2005 set up for the new changes relating for the removal or reform of the central role of the Lord Chancellor in the areas of judicial appointment, compliant, discipline and dismissal."[365] Prof. Malleson explained that, "The role of the head of judiciary transferred from the Lord Chancellor to the Lord Chief Justice and two offices were provided

[363] *Ibid.*

[364] *The image is downloaded from hierarch structure.com.*

[365] Malleson, K., *Appointment, discipline and removal of Judges: Fundamental reforms in the United Kingdom* 177-33 (Cambridge University Press2011).

responsibility and matters relating to judicial complaints, discipline and dismissal. The power to appoint judges also was transferred from the Lord Chancellor to two new judicial appointment commissions"[366];

a) "One for judges in England and Wales"
b) "And second for the new United Kingdom Supreme Court.

4.6.2 Background to Create NJAC:

There were arguments aroused for creating NJAC in England which were raised before 2003 by the academician and policymakers. A recent example was a Commission-based judicial appointment process that exists in the form Judicial Appointment Board[367]in Scotland created in 2002, and the framework was formulated in Northern Ireland relating Judicial Appointment Commission.[368] Therefore, the creation of the Judicial Appointment Commission for England and Wales was finalized for the most promising coherent and rational judicial system. Under the Constitutional Reform Act 2005, three regional appointment bodies provided membership in the new Supreme Court Appointment Commission.

Judicial Appointment Commission

The first feature of the JAC is that it is a combination of two commissions; one is for judges in England and Wales, and the second is for the new United Kingdom Supreme Court. The Supreme Court commission is the *ad-hoc* body, called only when vacancies arise, including President of the Supreme Court, Deputy President, and one of each of the three United Kingdom appointment commissions. The Judicial Appointment Commission for England and Wales is a larger body consisting of a permanent body responsible for appointing all the

[366]*Ibid.*

[367]Details of the Scottish Appointment Board can be found. *Availableat:*www.judicialappointmentsscotland.gov.uk/JUD_main.jsp, (last visited 22 January 2021).

[368]The Commission started working in 2005. Details of the Northern Ireland Judicial Appointment Commission *available at*: www.nijac.org/default.htm, (last visited on 22 January 2020).

permanent and fee-paid judges and tribunal members to court in England and Wales.[369]

Membership of JAC for England and Wales:

In Judicial Appointment Commission consists of six lay people, five judges, one solicitor, one barrister, one magistrate and one tribunal member."[370]

One important condition of JAC for England and Wales is that a lay person shall be chairman of the Commission. "No member of parliament can be appointed to the commission. The Lord Chancellor commissioners for Englandand Wales after consultation with an advisory body consisting of Lord Chief Justice, the chair of the commission and additional lay member appointed by the Lord Chancellor". The posts are advertised and selected through open competition. In England JAC is an independent body which is not under the control of the crown and also not part of the executive, JAC has the responsibility for advertising vacancies and evaluating the prospective candidate for the judiciary and appointments made on the basis of merit only. Since the beginning of JAC, the Lord Chancellor has been constrained, he has the power to accept, reject or seek review of the candidate nominated by JAC, only for trice for each position.

Appointments to the Supreme Court are being made on an ad-hoc basis which is assembled each time when a vacancy occurs. It consists of the President of Supreme Court, a senior judge who is nominated by the President of SC and one member from JAC for England and Wales, Northern Ireland, and Scotland.[371] The CRA requires one member of the Commission should be a lay person and when there is an appointment of the President of the Supreme Court then departing president shall not be member of JAC with addition that chairman should be lay person.[372]CRA gives the complete guarantee of Judicial Independence.[373]

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[369]It does not appoint the lay magistrate who number over 30000 and deal with the majority of criminal cases in England and Wales. "Magistrates are appointed by the Lord Chancellor on the advice of local Advisory Committees."

[370]*Ibid.*

[371]Constitutional Reforms Act, 2005 schedule 8, part 1.

[372]Constitutional Reforms Act, 2005 schedule 8, part 1.

[373] The Constitutional Reform Act of United Kingdom, 2005, s.3.

The primary duty of the minister of the Crown is not try to influence the judicial decision through admittance to the judiciary and second is the Chancellor always defends the continued independence of the judiciary, gives proper support through which the judiciary will function smoothly.

4.6.3 Removal of Judges:

In 2005, through the Constitution Reform Act, a Concordat system was created. It was like the constitutional partnership between "two branches of government share in decision making which affects the governance of judiciary and its process of judgement making."[374]

To understand the provisions of concordat on the power to remove judges in England then distinction needs to be made between senior judges and lower judiciary. The High Court judges will hold office 'during good behaviour' can be dismissed only by a motion of both houses of parliament on the ground of 'misbehaviour'. Below the High Court, the Lord Chancellor could remove the judges before 2005. He could dismiss a judge up to and including circuit judges on the ground of 'incapacity and misbehaviour'.[375] In Practice, the exercise of this power was similarly restricted to misconduct which amounted to criminal misbehaviour. Before 2005, the process to remove judges was not inscribed in statute; it was left on discretion of the Lord Chancellor.

4.6.4 Conclusion:

Experience from the UK tells us that the role of judiciary is not enhancing at the expense of the executive but splintering the process of judicial appointment from a range of roles including government, civil society and judges. So, this range of variety not giving extreme control to the judiciary alone in the appointment process but balancing procedure through control by various actors. The New Judicial system which is revolutionized by CRA promotes objectives not increasing the influence of the judiciary, protection from executive

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Provided that "the Lord Chancellor, other Ministers of the Crown and all with responsibility for matters relating to judiciary or otherwise to the administration of justice must uphold the continued independence of the judiciary".

[374]Kate Malleson, *Appointment, Discipline and Removal of Judges: Fundamental Reforms in the United Kingdom*117-33 (Cambridge University Press, 2011).

[375]The Courts Act of United Kingdom, 1971, s. 17(4).

interference, promoting transparency and accountability, and expanding the composition of judiciary from different levels. Appointment of the Judicial Appointment Commission through CRA is one step forward that has been taken in the UK legal system to improve the judicial mechanism. The CRA promoted objectives aside from increasing the influence of the judiciary including acquiring civil society participation, promoting transparency, and expanding the composition of the Judiciary at levels.

The Australian Court system is ready to make improvements for an effective judicial system. Some states like New South Wales took successful steps for efficient judicial accountability but still at the Australian Federal level no National Judicial Commission for accepting judicial complaints. But overall they are ahead of the Indian justice delivery system as far as accountancy of judicial officers.

In the Malaysian legal system, Judicial Appointment Commission was created in 2000. The system of appointment of judges, removal, and transfer is part of judicial independence in Malaysia. The judicial system in Malaysia is working on the contemporary requirements of the society and accountability expressly embodied in the provision of law.

So, a research question was, "Do you think that concept of judicial accountability is more transparent in foreign countries as compared to the Indian Judiciary?"

The answer to this question is proved here that accountability mechanisms in foreign countries are more transparent in comparison with the Indian legal system through non-empirical data and observation.

CHAPTER-5

INDOLENCE IN INDIAN JUDICIARY

5.1 Introduction:

"We can afford to lose a war but we can't afford to lose a judiciary."[376]

As compared to other organs of the government, the judiciary has always been given a distinct and dignified status. In history, we can find hundreds of examples "when the legislature and executive faced credibility crisis, it was the judiciary that came to the rescue of the people. If the lamp of justice goes out in the darkness, how great is that darkness? According to a scientific study of the possibility of corruption at different levels in the judiciary hierarchy, which rated that more than 33% of the people bribed the judiciary to the extent of Rs. 3718 Crore in just one year."[377]

There shall not be any justification or reason why the judges of the highest level should be exempt from openness and transparency. There are several instances in India which have not come in public of corruption, misconduct, and misbehaviour of judges. There are various instances also which show misuse of power by the judiciary.

5.2 Instances of Abuse of Judicial Authority:

- *The Justice* V. *Ramaswamy Case*[378]

  "In 1971, Justice V. Ramswamy was appointed the chief justice of the Madras High Court, later, in 1987 he was transferred to the Chief Justice of Punjab and Haryana High Court. Finally, in 1989 he was elevated to the Supreme Court."[379]The complaint was filed that he had misused public funds while holding the post of Chief Justice of Punjab and Haryana. There were 108 Parliamentarians of the 10thLok Sabha who passed a motion for

[376]Churchill, In 2nd World War. Also available; "Red Herrings: Famous Quotes Churchill Never Said," *International Churchill Society*, 2013*available at*: https://winstonchurchill.org/publications/finest-hour/finest-hour-141/red-herrings-famous-quotes-churchill-never-said/ (last visited March 6, 2022).

[377]Raj Prashar, "Judicial Accountability- re visioning the role of judiciary" *Lawyers Club India*, 2013.
available at: https://www.lawyersclubindia.com/articles/judicial-accountability-re-visioning-the-role-of-judiciary--5533.asp (last visited 22 December 2021).

[378]*Committee on Judicial Accountability* v. *Justice V. Ramaswami* (1995)1 SCC 5.

[379]*Ibid.*

his impeachment, which was presented to the speaker of the Lok Sabha, who accepted it. Consequently, Article 124(4) and (5) of the Constitution was invoked and under the Judges (Inquiry) Act, 1968 a judicial inquiry committee of 3 judges was constituted.

After the inquiry was initiated, the Lok Sabha was dissolved. Justice Ramaswamy objected to the inquiry on the ground that since the Lok Sabha which had passed the motion for his impeachment had been dissolved, the resolution of the Committee of Inquiry also stood dissolved. The Supreme Court in *Sub-Committee on Judicial Accountability* v. *Union of India,*[380] that despite the dissolution of the Lok Sabha, the resolution would remain valid under the inquiry.

The inquiry committee gave its report in December 1992, it found in the report that Justice Ramaswamy was guilty of deliberately misusing his office and of using government money for his private purpose. When the matter was placed before the Lok Sabha to decide if the judge was to be removed or not, 176 votes were cast in favour of impeachment but no one in the opposition voted in favour of impeachment because the Congress Party walked out. Therefore, Justice Ramaswamy could not be removed.

By observing *Justice Ramaswamy Case*, it wouldn't be wrong to say that the constitutional procedure for removal of judges is so rigid and complex that it ends up being uncertain whether a judge, despite proven misbehavior, would be removed from office or not.

- *Lily Thomas Advocate* v. *Speaker, Lok Sabha*[381]

  The petitioner attempted to give flexibility to the procedure for removal by alleging that, "the motion of impeachment against a sitting judge of the court moved in the Lok Sabha, should be deemed to have been carried by construing the expression, supported by a majority under Article 124(4) in such a manner that any member who obtains from voting should be deemed to have supported the motion."[382]"But the Supreme Court held that the right to vote includes the right to remain neutral." Therefore, nonparticipation

[380](1991) 4 SCC 699.

[381]*Lily Thomas Advocate* v. *Speaker, Lok Sabha* (1993) 4 SCC 234.

[382]*Ibid.*

from voting is legitimate and cannot be deemed to be a vote in support of the motion.

- *Justice K. Veeraswami Case* [383]

  Justice K. Veeraswami was elevated to the bench as a permanent judge of the Madras High Court in 1969 and in 1976 he was appointed as its chief justice. On February 24, 1976, the CBI registered a case against him by registering a first information report in New Delhi against him for possessing pecuniary resources and property in huge amounts, disproportionate to the known sources of income, which he could not satisfactorily account for, and he had thereby committed the offence of criminal misconduct under section 5(1) (e) of the Prevention of Corruption Act, 1947.

  A copy of the FIR was also filed before the Court of the Special Judge, Madras. On coming to know about FIR, Justice K. Veeraswami went on leave from 9, 1976, and subsequently retired on April 8, 1976. However, the investigation against him continued and finally, a charge sheet was filed before the special judge, Madras.[384]

  The Supreme Court while deciding this matter laid down strict guidelines to protect the independence of judiciary according to which no FIR can be registered against a judge or CJ of High Court or Judge of Supreme Court without sanction of CJI in the matter.[385]

  In this case, the Supreme Court observed that a judge of the High Court or the Supreme Court comes within the definition of 'public servant' given under section 21 of the Indian Penal Code, 1860, in view of the provision for "removal" of judge under Article 124 of the Constitution.

- *Delhi Sealing Problem case*[386]

  Y. K. Sabarwal passed a "detained order setting into motion the process of sealing of properties in designated areas of Delhi which being used for commercial purposes."[387]

[383] *K. Veeraswami* v. *Union of India and Others* **(**1991) 3 SCC 655.
[384] *Available at: https://lawyerscollective.org/* (last visited on December, 2021).
[385] *K. Veeraswami* v. *Union of India* (1991) 3 SCC 655.
[386] *M.C. Mehta* v. *Union of India & others,* (2006) 3 SCC 399.
[387] *Ibid.*

Two ways to implementing rule of law:

1. "Order sealing of residential premises put to commercial use"[388],
2. Order the authorities to present the master plan.

Government adopted a second approach: they could not be permitted to "violate" their underrating dispute the fact that the new master plan permitted them to use their premises for commercial purposes. Overnight the value of shops in the mall increased to double and triple.

Author of the article expressed that, these are buildings that come up in front of everyone's eyes. I am sure even some judges may have seen them on their way to some inauguration or the other. These came up perhaps in gross violation of the law. But then why should only one party pay for it? What happens to all those people responsible for creating a system, even today, engenders corruption and deception? So, the question comes to why the judiciary is above social security? Even Lord Denning has argued for a transparent and accountable justice system and it is further required that activism in the judiciary must be replaced with sagacity.[389]

In 2007, the paper revealed that Sabharwal's two sons Chetan and Nitin operated a real estate firm Pawan Impex, which after languishing for three years, suddenly attracted a 300-fold capitalization from the real-estate major around the same time that Sabharwal took over this case. As a result of the demolition of many well-established commercial offices across Delhi, the demand for mall spaces skyrocketed. In October 2005, Pawan Impex partnered with the promoters of Filatex India, and they went on to build the new luxury mall in Saket.[390]

- *The Case of Ashok Kumar of Madras*[391]

  He was formerly a session judge and has been given a permanent position in the Chennai High Court by the Chief Justice of India in February 2007 is horrifying. When the complaint was levelled against him of corruption, an inquiry report by the Intelligence Bureau (IB) gave a more dreadful report against him. All the reports were ignored and he was promoted to HC. This happened because of the political pressure from the Central government, as the

[388]*Ibid.*

[389]Suhel Seth, "Judge Dread" Vol. XII, Part 1 *lawyer Update* 1 (Nov. 2006).

[390]"2006 Delhi sealing drive," *Wikipedia*, 2022.available at: https://en.wikipedia.org/wiki/2006_Delhi_sealing_drive (last visited January, 2022).

[391]Decided by Madras High Court on September 25, 1997.

judge was close to the DMK government and threatened to withdraw support from the UPA government, because of that, the law minister asked the CJI to give extensions and finally Ashok Kumar made HC judge.[392]

❖ *P. D. Dinakaran Case*[393]

- Chief justice of Karnataka High Court P. D. Dinakaran (among five judges recommended for the Supreme Court by the chief justice of India) lastly resigned as chief justice of Sikkim. He was facing 16 charges framed against him including corruption, land grab and abuse.[394]
- Justice Nirmal Yadav alleged of corruption, destruction of evidence and fabrication of evidence of Justice of Punjab and Haryana High Court.[395]
- Justice Soumitra Sen of Calcutta High Court resigns after Rajya Sabha vote to impeach him. Justice Sen found guilty of misappropriating funds as a judge and misappropriating facts.[396]
- TV Journalist –Vijay Shekhar[397]

Sting operations to show the reckless and corrupt manner in which arrest warrant can be obtained from Gujarat courts only strengthen the public perception that the judiciary will try to use its powers of contempt to hide the riot within the judiciary.[398]

❖ T. Pattabhi Rama Rao Case[399]

Case of judicial corruption was exposed when the Andhra Pradesh High Court suspended additional special judge for CBI cases, T. Pattabhi Rama Rao following allegations of corruption. Charged on the basis of a complaint filed

[392]Shanti Bhushan, "Appointment and Accountability of Judiciary" *Address in the People convention on Judicial Accountability and reforms* (10-11 March 2007, New Delhi).

[393]*Justice P.D. Dinakaran* v. *Hon'Ble Judges Inquiry Committee, decided on* 26 August, 2011 by SC.

[394]*Ibid.*

[395]Vikram Chaudhary, "CBI files chargesheet against Justice NirmalYadav", 2011 *available at*: https://www.ndtv.com/india-news/cbi-files-chargesheet-against-justice-nirmal-yadav-449022. (last visited on February, 2021)

[396]NDTV Correspondent, "Justice Soumitra Sen resigns after Rajya Sabha voted to impeach him" *available at*: https://www.ndtv.com/india-news/justice-soumitra-sen-resigns-after-rajya-sabha-voted-to-impeach-him-466326. (last visited on February, 2021)

[397]PTI, "Sting operation: SC issues notices to Zee News, reporter," 2007*available at*: https://www.rediff.com/news/2007/feb/07sc.htm.(last visited January, 2020)

[398]*Ibid.*

[399]PTI, "Cash-for-bail: Charge sheet against suspended judge, others" *The Hindu* (Hyderabad, 13 August 2012).

by the CBI, the special judge had allegedly taken a bribe of Rs. 5 Crore to grant bail to former Karnataka minister Gali Janardhana Reddy in the illegal mining case. The vigilance wing of the High Court found the allegation to holdmerit.[400]

- *Mysore Sex Scandal*[401]

On Sunday, November 3, 2002, Author of the article wrote that, "three judges of the Karnataka High Court, along with two women advocates, allegedly got involved in a brawl with a woman guest at a resort. The police arrived but reportedly didn't take action."[402]

- N.S. Veerabhadraiah
- V. Gopala Gowda
- Chandrashekaraiah

The three-judge inquiry committee appointed by the CJI has filed its report. A high-level judicial inquiry committee on Sunday gave a clean chit to three Karnataka high court judges in the Mysore sex scandal after a thorough probe. The committee, which submitted its report to the Chief Justice of India, said it found 'no evidence' against the judges --Justice N S Vervadraiah, Justice Chandrasekhariah and Justice V. Gopala Gowda. The report of the committee, which comprised of Chief Justice of the Bombay High Court Justice C K Thakkar, Chief Justice of the Kerala High Court Justice J L Gupta and Senior Judge of the Orissa High Court Justice A K Patnaik, comes after an extensive probe lasting more than two months.[403]

During the probe, "the committee spoke to a wide cross section of people, including the owner of the resort in question at Mysore and a few journalists"[404], sources in New Delhi said.

The sources said that, "the committee gave extensive detail of its probe but concluded that it could not find any substantive evidence against the three judges to link them to the alleged activities. The enquiry committee was set up by the then Chief Justice G B Pattanaik on the basis of a report submitted by

[400]*Ibid.*

[401]Stephen David, "Three Karnataka High Court judges allegedly involved in sex scandal cleared by panel" *India today*, 17 February 2003.

[402]*Ibid.*

[403]*Ibid.*

[404]*Ibid.*

the Chief Justice of Karnataka high court on the allegations about the involvement of the judges in the scandal."[405]

- *Sex For Acquittal Case*[406]

  In November 2002, SunitaMalviya, a Jodhpur-based doctor, alleged that a deputy registrar of the Rajasthan High Court had sought sexual favours for himself and for Justice Arun Madan to 'fix' a case in her favour.

  STATUS: "A committee set up by former CJI G.B. Pattanaik found prima facie evidence against Madan, who does not attend court anymore."[407]

- *Cash For Job Case*

  Three judges of the Punjab and Haryana High Court sought the help of disgraced PPSC chief R.P. Sidhu to ensure that their daughters and other kin topped examinations conducted by the commission.[408]

  STATUS: "Two inquiry panels indicted the judges. Gill and Amarbir Singh have resigned M.L. Singh continues, though no work is allotted to him."[409]

5.3 Lethargy of Indian Judiciary:

The Indian Judicial system is recognized as a champion of protection of individual rights the same way also known for its inadequacy in several matters. In comparison to the world legal system, the Indian Legal system is still far behind in terms of development. Below charts will speak it[410];

[405]Stephen David, "Three Karnataka High Court judges allegedly involved in sex scandal cleared by panel" *India today*, 17 February 2003.
[406]Rohit Parihar, "Rajasthan High Court deputy registrar suspended for asking sexual favours" *India today* (Rajasthan, 18 November 2002).
[407]*Ibid.*
[408]PTI, "No work allocated to 3 judges named in PPSC scam" *The Times of India* (Chandigarh, 30 June 2002).
[409]*Ibid.*
[410]India justice report, 2019, *available at*: https://www.tatatrusts.org/upload/pdf/overall-report-single.pdf (last visited on December, 2020)

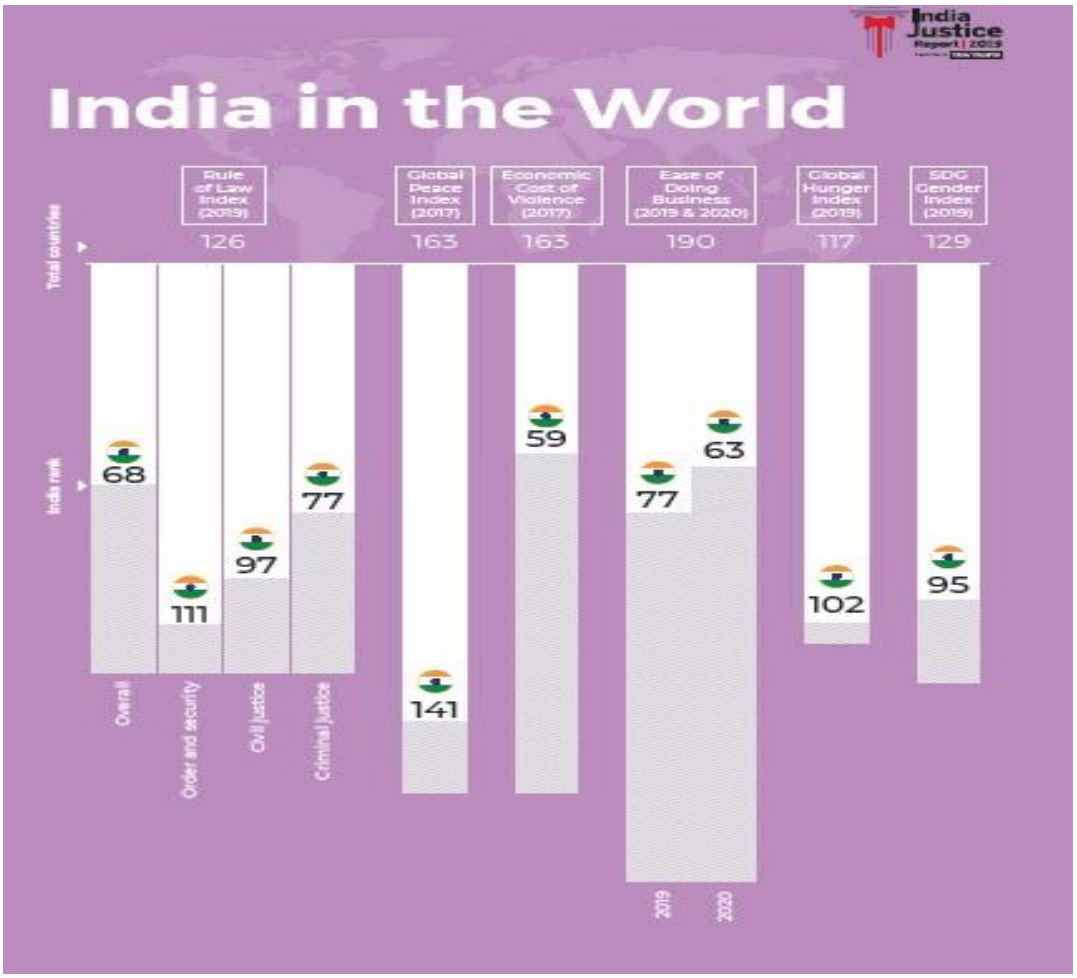


Fig. No. 5.1: India Justice Report 2019

India stands overall rank 68 in Rule of law index; order and security in India stand 111 as compared to the world. In civil Justice we stand 97 in criminal justice, India rank 77 in 2019. These Index shows us the reality of Indian justice system behind the world even though India is the largest democratic country in the world. This image itself indicates where we have to proceed.

Delay in Judicial System:

An observation made by the Supreme Court in the strong language about pendency that, inordinate delay in the disposal of cases has eroded faith in the judiciary and left the people simply disgusted is a reflection of the anguish about a problem that is getting worse by the day. The Supreme Court had directed the center government that the judge-population ratio shall be raised to 50 per million in a phased manner. Indefensibly, successive governments have not done enough to address this issue; in

the Tenth plan, the judiciary was allocated a mere 0.078 per cent of the total expenditure, a small crumb more than the 0.071 per cent assigned in the Ninth Plan.[411] According to the theory of separation of power it is very imperative that organs of the government shall function separately. In democracy ultimate power lies with the people so, they shall not forget this at the time of their functioning. If consideration that "judicial system is independent and unaccountable then generally it gives leisure and comfort to the judges that ultimately it leads to delay in deciding the matters."[412]

Causes of Judicial Delay:

There are various reason for the backlog of cases in India, these include;

- "Inadequate physical infrastructure"[413],
- The failure or inability to streamline procedures in the Civil and Criminal Procedure Codes ,
- "the tardiness in computerizing courtrooms"[414],
- The inadequate effort that has gone into developing alternative dispute resolution mechanisms such as the Lokadalats, arbitration and mediation.[415]

The chief justice M.N. Venkatchaliah rightly pointed out that, the disappointment in the judicial system would lead for increase in Jan Adalat or Kangaroo courts in many parts of India. The Union Law Minister recently launched the 'Mission Code Programme' for reduction of pendency of Arrears in Courts. According to media reports, the programme aims to dispose of 40 percent of the cases pending in subordinate courts across the country, in the coming six months.

As on 30th September, 2010, "a total of 2.8 Crore cases were pending in subordinate courts and 42 lakhs in High Courts. Approximately 9% of these cases have been pending for over 10 years and a further 24% cases have been pending for more than 5

[411] *available at:* "http://www.maheshwariandco.com/repository/articles/downloads/delay_in_judicial_system.pdf" (last visited on April 2020).

[412] A. Mason, "Judicial Accountability, Judicial Conduct and Ethics" 111 (Dublin Ireland, 2000).

[413] Alok Prasanna Kumar, *Judicial Efficiency and Causes for Delay* 35(Social ScienceResearch Network, Rochester, NY, 2020).

[414] *Ibid.*

[415] Alok Prasanna Kumar, "How many judges does India really need?" 2016 *available at*: https://www.livemint.com/Politics/3B97SMGhseobYhZ6qpAYoN/How-many-judges-does-India-really-need.html.

years. Pendency of cases across Indian Courts has increased by 38% in the last decade."[416]

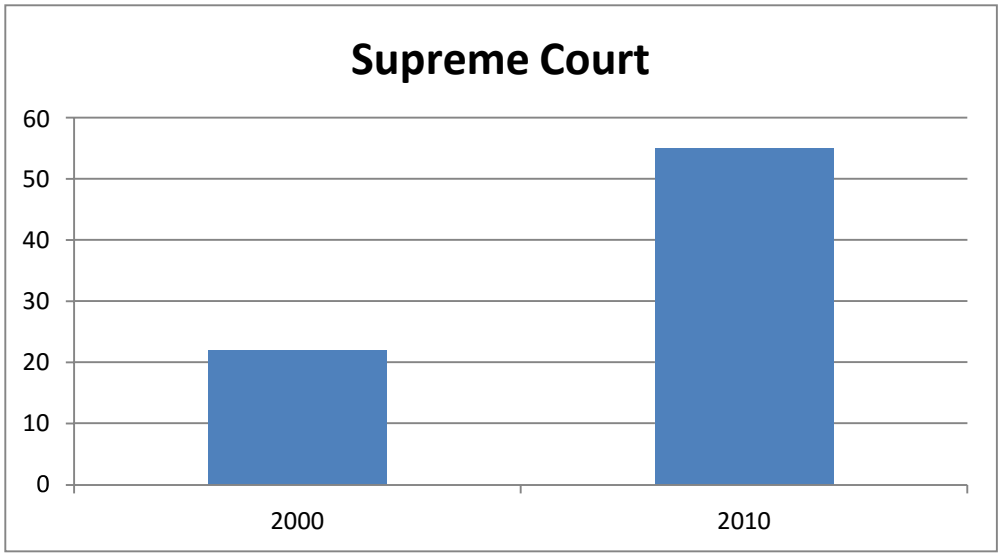


Fig. 5.2: Pending cases in SC 2000 & 2010

- About 55,000 cases are currently pending with the Supreme Court, 42 lakh with High Courts and 2.8 Crorewith subordinate courts.
- Pendency has increased by 148% in the Supreme Court, 53% in High Courts, and 36% in subordinate courts in 10 years.

[416] *Ibid.*

The analysis of pendency case in India in all courts[417]**Image No.2**

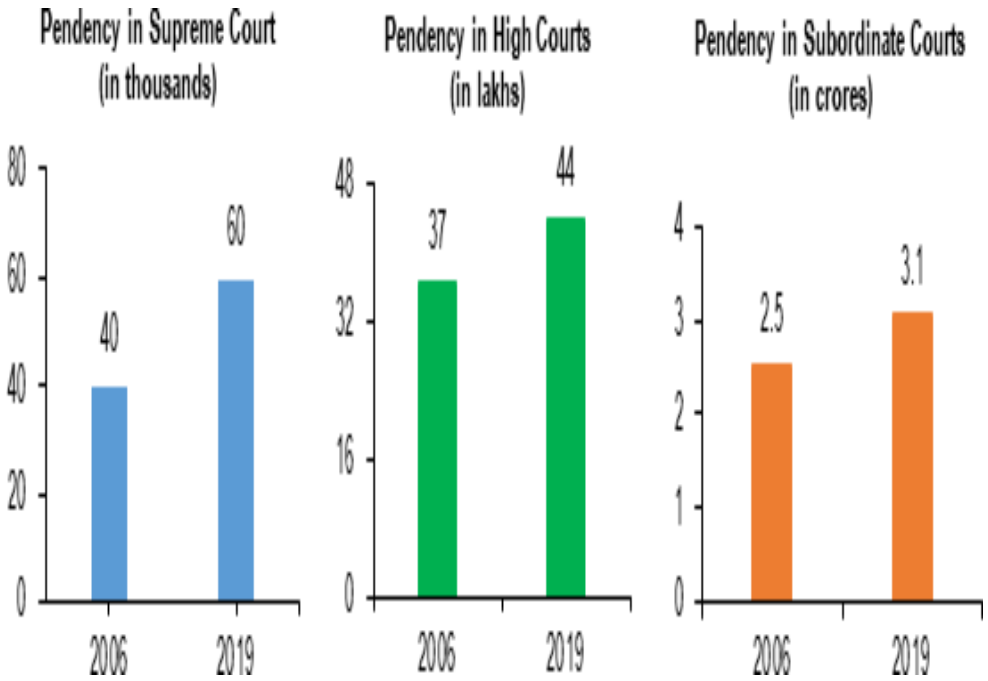


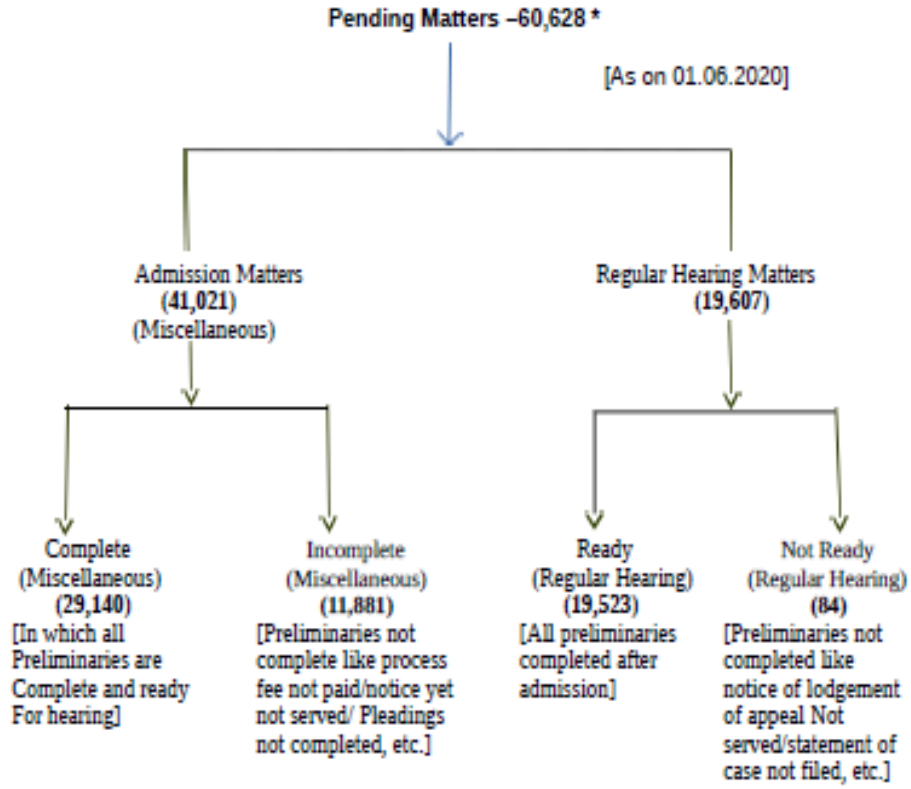
Fig. No. 5.3: All Pendency of cases in courts from 2006 to 2019

"Sources: Court News, 2006, Supreme Court of India; National Data Judicial Grid accessed on August 7, 2019; PRS". According to this report 3.5 Crore cases were pending in all courts in India. (Below data image downloaded from the Supreme Court of India official Website)

[417]https://www.prsindia.org/theprsblog/examining-pendency-cases-judiciary (last visited July 2020).

SUMMARY

TYPES OF MATTERS IN SUPREME COURT OF INDIA



* 19.74 % matters are Incomplete / Not Ready required preliminaries to be completed.

* Number of Constitution Bench matters : 437 (47 main matters + 390 connected matters)

	Total	**Main**	**Connected**
Five Judges Bench Matters	288	36	252
Seven Judges Bench Matters	13	5	8
Nine Judges Bench Matters	136	6	130
Total	**437**	**47**	**390**

* Out of 60,628 pending matters, 11,965 matters (11,881 incomplete Miscellaneous matters and 84 Not Ready Regular Hearing matters) are such matters which cannot be listed for 'hearing' before Hon'ble Court.

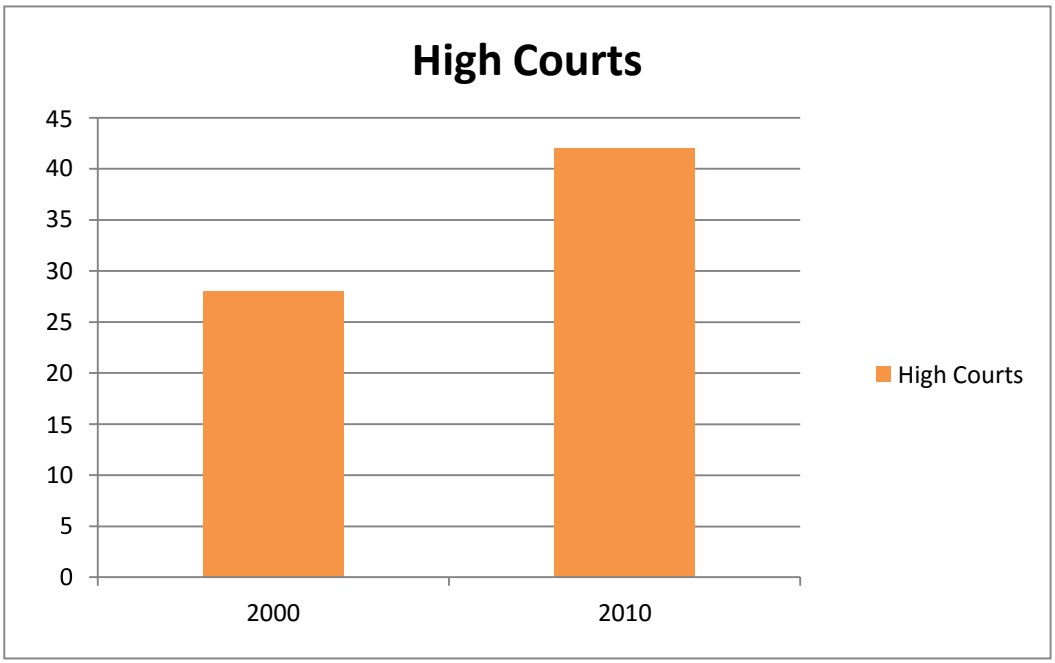


Fig. No. 5.4: Pendency of cases in HC 2000 to 2010

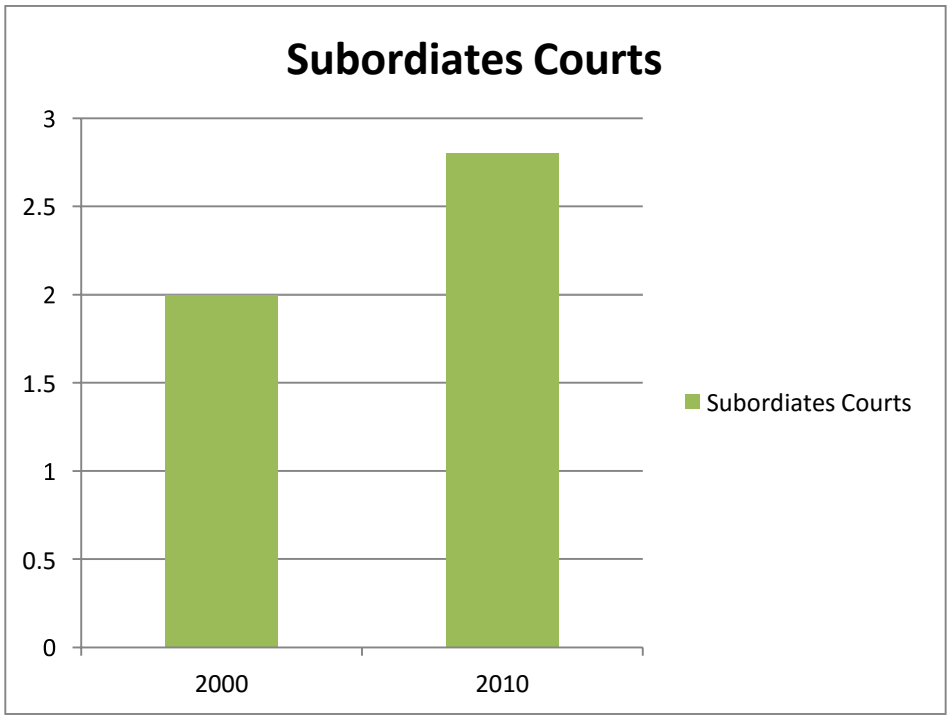


Fig. No. 5.5: Pendency of cases in Subordinate Courts from 2000 to 2010

- In 2020, Backlog cases are still increasing, below **image**[418] pending casesof district and subordinate courts.

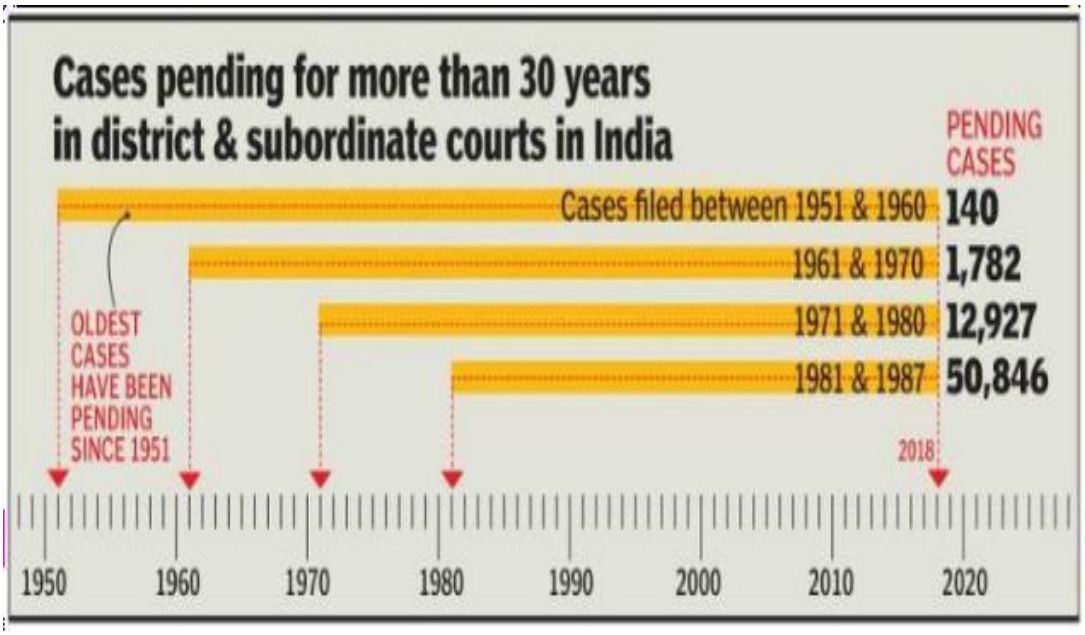


Fig. No. 5.6: Pendency of cases in Subordinate Courts from 1950 to 2020

Table No.5.1: Filing and Resolution of Cases in December 2010

Category	SC(in thousands)	HC(in Lakhs)	Subordinate Court (in Crore)
Pending (start of year)	56	40	2.7
Fresh cases filed	78	19	1.8
Cases resolved	79	17	1.7
Pending (end of year)	55	42	2.8

- Over the past few years, some measures have been taken by the government to facilitate expeditious disposal of cases.
- These include schemes for computerization, infrastructural augmentation, promotion of Alternative Dispute Resolution mechanism, Lokadalats etc.[419]

[418]*Available at:* "https://timesofindia.indiatimes.com/india/140-cases-pending-in-lower-courts-for-more-than-60-years/articleshow/67316284.cms" (last visited July, 2020).

[419]"Rajya Sabha unstarred question no. 1173" (March 07, 2011).

- Despite these initiatives, the rate of case disposal has not kept pace with the rate of case institutions. As a result, the total number of pending cases has increased.[420]
- Between October 2009 and October, subordinate courts settled 1.73 Crore cases as compared to 1.24 Crore in 1999, an increase of 49 lakh. During the same period the fresh cases filed increased by 52 lakhs.[421]

In 2020: from the above statistical data and information, it is observed that a total of 60,628 matters are pending in the Supreme Court of India (which is mentioned in the official website of the SC). Total of 41,021 admission matters were pending in SC and 19,607 regular matters were pending in 2020. Whereas in trial courts 2.68 Crore matters are pending, the average years to resolve the matter for civil cases is 15 years and the average years to resolve civil cases is 5 to 7 years. If we compare 2010 and 2020, there is no relief for cases pending before the courts. In High courts, more than 74000 cases are pending. In 2022, 70,101 cases are pending in the Supreme Court, and 44 million cases are pending in all the courts. This is all mentioned in the official website of the governments. So, reality has to be understood that the pendency of cases in India is a very severe concern for the Indian legal system.

Vacancies in the Indian Courts:

The leading cause of judicial delay in India, author said that, "it is understaffing. India has only 10 to 15 judges per million people, who are often burdened with a daily workload that exceeds their capacity by up to 500 percent."[422]

Unwillingness of the government to spend funds on the expansion of judges, the delay in the appointment of judges when vacancies arise is usual factors responsible for vacancies in the Courts. Instead of this following are,

- judges are difficult to recruit as remuneration is significantly lower than those of prominent attorneys;
- judges at the lower tiers of the judiciary are often under-trained;

[420] *Ibid.*

[421] "Court News, Supreme Court of India, *available at*: http: //supremecourtofindia.nic.in/courtnews.htm" (last visited on March, 2019).

[422] Alok Prasanna Kumar, "How many judges does India really need?" 2016 *availableat*: https://www.livemint.com/Politics/3B97SMGhseobYhZ6qpAYoN/How-many-judges-does-India-really-need.html.(last visited February 2022)

- unavailability of enough courtrooms, because of that it is impossible to accommodate the current backlog of cases;
- Prosecutors are likewise enormously understaffed, often resulting in adjournments as a single prosecutor is representing two separate cases at the same time. The most concern is the attrition of the independence of public prosecutors in many states of India. Because the impartiality of conduct is as much as important impartiality of the court itself[423];
- Lacuna in the Criminal procedure code, methods of the police investigation, general administrative disorganization and lack of modern technology.[424]

Fig. No. 5.7: Vacancies in the Larger High Court's 2009:

[423]AlokPrasanna Kumar, "How many judges does India really need?" 2016, *available at*: https://www.livemint.com/Politics/3B97SMGhseobYhZ6qpAYoN/How-many-judges-does-India-really-need.html.
[424]*Ibid.*

Vacancy in 2020 in HC and Subordinate Courts[425] available in Image

Fig. No. 5.8: Vacancies of judges in HC and Subordinate Courts (2010 to 2020)

[425]Omir Kumar and Shubham Dutt, "Understanding vacancies in the Indian judiciary" 2021*available at*: https://prsindia.org/theprsblog/understanding-vacancies-in-the-indian-judiciary (last visited November 21, 2021).

Comparison between two decades between 2010 and 2020 average is 35% vacancies in HC and Subordinate Courts. It has not been improved or corrected after 10 years. Also, it may seem to be a failure of the system.

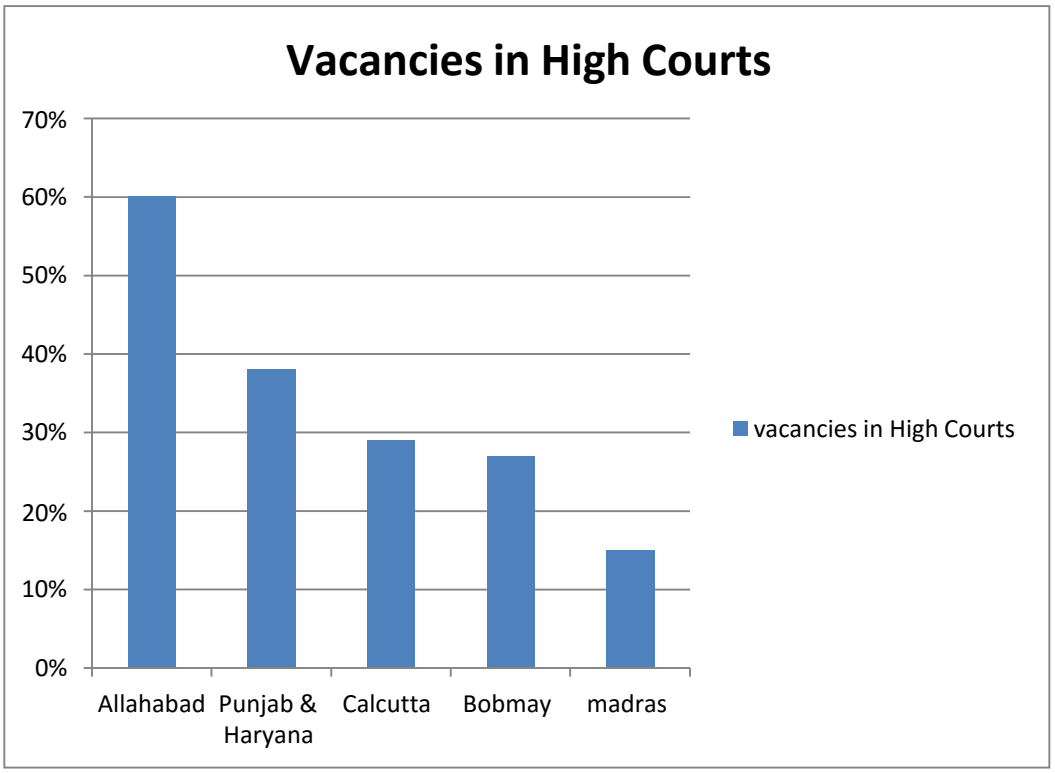


Fig. No. 5.9: Vacancies in High Courts

- The sanctioned strength of judges is 31 for the Supreme Court, 895 for the High Courts and 17,151 for the subordinate judges.[426]
- 33% of the sanctioned positions in High Courts are currently vacant. Among High courts, the highest number of vacancies are in the Allahabad High Court (60%), followed by Punjab & Haryana High Court (38%) and the Calcutta High Court (28%).
- Vacancies in subordinate courts equal 18% of the total sanctioned strength. The corresponding figure for the Supreme Court is 6%.

[426]John Varghese, "Belling the Cat - Pendency of Cases in Courts and Some Practical Solutions" *SSRN Electronic Journal* 1-17 (2011).

Table No. 5.2: Supreme Court of India (As on 01-07-2011)

Sanctioned strength	Working strength	Vacancies
31	29	02

In 2022 two vacancies is available in the Supreme Court of India.

Table No. 5.3: "HIGH COURTS" (As on 01-07-2011)

Sr. No.	Name of the High Court	Sanctioned Strength	Working Strength	Vacancies
1	Allahabad	160	63	97
2	Andhra Pradesh	49	33	16
3	Bombay	75	61	14
4	Calcutta	58	44	14
5	Chhattisgarh	18	13	05
6	Delhi	48	37	11
7	Delhi	24	18	06
8	Gujarat	42	24	18
9	Himachal Pradesh	11	11	00
10	Jammu & Kashmir	14	09	05
11	Jharkhand	20	13	07
12	Karnataka	50	41	09
13	Kerala	38	29	09
14	Madhya Pradesh	43	39	04
15	Madras	60	49	11
16	Orissa	22	17	05
17	Patna	43	39	04
18	Punjab & Haryana	68	43	25
19	Rajasthan	40	27	13
20	Sikkim	03	02	01
21	Uttarakhand	09	07	02
Total		895	619	276

Vacancies up to 2020: As per the reports[427], 42% of vacancies are available in Indian High Courts. The image shown below get a clear the picture of Indian judicial system.

Table No. 5.4: District & Subordinate Courts (As on 31-03-2011)

Sr. No.	Concerned State/Union Territory	Sanctioned Strength	Working Strength	Vacancies
1	Uttar Pradesh	2104	1907	197
2	Andhra Pradesh	930	813	117
3	a)Maharashtra	2012	1829	183
4	b)Goa	49	42	7
5	c) Diu Daman &Silvassa	5	5	0
6	West Bengal	933	776	157
7	Chhattisgarh	262	240	22
8	Delhi	623	472	151
9	Gujarat	1698	906	792
10	Assam	340	254	86
11	Meghalaya	36	6	30
12	Tripura	92	63	29
13	Manipur	33	26	7
14	Nagaland	65	31	34
15	Mizoram	65	31	34
16	Arunachal Pradesh	2	2	0
17	Himachal Pradesh	131	121	10
18	Jammu and Kashmir	207	156	51
19	Jharkhand	587	429	158
20	Karnataka	941	786	155
21	Kerala	434	402	32
22	Lakshadweep	3	3	0

[427]Omir Kumar and Shubham Dutt, "Understanding vacancies in the Indian judiciary" 2021*available at*: https://prsindia.org/theprsblog/understanding-vacancies-in-the-indian-judiciary (last visited November 21, 2021).

Sr. No.	Concerned State/Union Territory	Sanctioned Strength	Working Strength	Vacancies
23	Tamil Nadu	838	775	63
24	Puduncherry	20	13	7
25	Madhya Pradesh	1311	1165	146
26	Orissa	591	522	69
27	Bihar	1447	1007	440
28	Punjab	426	315	111
29	Haryana	411	288	123
30	Chandigarh	20	20	0
31	Rajasthan	796	689	107
32	Sikkim	13	9	4
33	Uttarakhand	278	149	129
	Total	17666	14244	3422

Note: from the above tables, it is clear that there are vacancies in all the presiding courts in India.

In 2002, the total strength of judges in High Courts was 669 out of which 163 vacancies were not filled, which approaches 25% of the total strength. Likewise in the Supreme Court out of total strength of 26 there were 2 vacancies. The condition at present is not better than the mentioned record data. It had also suggested in the 127th Law Commission Report, 1988 that the judge-population ratio should be increased from 10.5 judges per million populations (at that time) to 50 judges per million populations within a period of 5 year. It recommended that by the year 2000 the ratio should be increased to at least 107 judges per million populations. At present in India, the ratio is 12 or 13 judges per million populations, whereas, 12 years before it was about 41 judges in Australia, 75 in Canada, 51 in U.K. and 107 in United States. [428]

In Comparison with other nations in regarding strength of judges in per million populations "we are still backward."

[428] *Ibid.*

District Court vacancies in 2020:

As on February 20, 2020, in subordinate courts, 21% posts out of the sanctioned strength of judges were vacant (5,146 out of 24,018). Amongst states, having a sanctioned strength of at least 100 judges, subordinate courts in Bihar had the highest proportion of vacancies at 40% (776), followed by Haryana at 38% (297) and Jharkhand at 32% (219).[429]

Table No. 5.5: "Statement showing Sanctioned strength, Working Strength and Vacancies of Judges in the Supreme Court of India and the High Court's" [430](As on 01.02.2022)

A.	**Supreme Court**	**34**			**32**			**2**		
B.	**High Court**	**Pmt.**	**Addl**	**Total**	**Pmt.**	**Addl**	**Total**	**Pmt.**	**Addl**	**Total**
1	Allahabad	120	40	160	74	19	93	46	21	67
2	Andhra Pradesh	28	9	37	20	0	20	8	9	17
3	Bombay	71	23	94	52	8	60	19	15	34
4	Calcutta	54	18	72	31	8	39	23	10	33
5	Chhattisgarh	17	5	22	10	3	13	7	2	9
6	Delhi	45	15	60	30	0	30	15	15	30
7	Guwahati	18	6	24	17	6	23	1	0	1
8	Gujarat	39	13	52	32	0	32	7	13	20
9	Himachal Pradesh	10	3	13	8	1	9	2	2	4
10	J &K and Ladakh	13	4	17	13	0	13	0	4	4
11	Jharkhand	19	6	25	19	1	20	0	5	5
12	Karnataka	47	15	62	39	6	45	8	9	17
13	Kerala	35	12	47	27	12	39	8	0	8
14	Madhya Pradesh	40	13	53	29	0	29	11	13	24
15	Madras	56	19	75	45	15	60	11	4	15
16	Manipur	4	1	5	3	1	4	1	0	1

[429]"Vital Stats" *PRS Legislative Research*, 2021*available at*: https://prsindia.org/policy/vital-stats/pendency-and-vacancies-in-the-judiciary (last visited February 7, 2022).

[430]"Vacancy Positions | Department of Justice | Ministry of Law & Justice | GoI" *Department of Justice available at*: https://doj.gov.in/appointment-of-judges/vacancy-positions (last visited February 7, 2022).

A.	Supreme Court	34			32			2		
B.	**High Court**	**Pmt.**	**Addl**	**Total**	**Pmt.**	**Addl**	**Total**	**Pmt.**	**Addl**	**Total**
17	Meghalaya	3	1	4	3	0	3	0	1	1
18	Orissa	20	7	27	18	0	18	2	7	9
19	Patna	40	13	53	26	0	26	14	13	27
20	Punjab & Haryana	64	21	85	43	6	49	21	15	36
21	Rajasthan	38	12	50	28	0	28	10	12	22
22	Sikkim	3	0	3	3	0	3	0	0	0
23	Telangana	32	10	42	19	0	19	13	10	23
24	Tripura	4	1	5	5	0	5	-1	1	0
25	Uttarakhand	9	2	11	7	0	7	2	2	4
	Total	**829**	**269**	**1098**	**601**	**86**	**687**	**228**	**183**	**411**

On the basis of above data in Indian High Courts is having 37.43% vacancies. This number is very big as compared with other nations and considering geographical situation of our country.

Table No. 5.6: Ratio of judges per million population

Country	No of judges per million people population (2007)
USA	110
Brazil	77
Canada	75
Australia	58
UK	51
India	**13**

In 2007, there are about 50 vacancies for judges in the 21 High courts of India and about 3,000 vacancies for judges in the lower courts of India. In Maharashtra, 31% of judge's posts are vacant in lower courts. Judges in a High

Court are appointed by the President of India in consultation with the Chief Justice of India and the governor of the state.[431]

Judges Populations Ratio & Appointment of judges

In 2002, "the total strength of judges was 669 out of which 163 vacancies were not filled, which come out to 25% of the total strength."

According to the 127th Law commission report, 1988, the judge-population ratio should be increased from 10.5 judges per million populations (at that time) to 50 judges per million populations within a period of 5 years.

By the year 2000 ratio should be increased to at least 107 judges per million population. At present in India, the ratio is 12 or 13 judges per million population whereas 12 years before it was about 41 in Australia, 75 in Canada, 51 in U.K, and 107 in the United States. Because of this low judge population ratio, courts are lacking requisite strength of judges to decide the cases.[432]

In 2020, the number of judges per million people population ratio stood at 21.03 according to the Ministry of Justice. There is a disparity in the government records, even though we accept this is the correct figure still there is an issue of the concern in India about the number of judges and population ratio.

Leave of the judicial officers:

"Judges of other countries can take leave according to the convenience without affecting the smooth functioning of courts, in India only criminal courts run over the year but the Supreme Court, High Courts, and other subordinate civil courts are closed during the vacation period."[433] There is no reason to have such unnecessary leave to the courts where we have huge pendency of cases waiting for disposal.

Section 23 (a) of the High Court Judges Condition of Service Act 1954, which requires you to work for 210 days a year. Total period of vacation of each High Court varies from 48 to 63 days; there is a convention which enables the High Court judges to take 14 days to casual leave every year. There are more than two weeks of public holidays every year; in addition, High Court judges do not sit on Saturdays and Sundays;

[431]John Varghese, "Belling the Cat - Pendency of Cases in Courts and Some Practical Solutions" *SSRN Electronic Journal*1-17 (2011).

[432]Rajesh Punia, "Arrears on Judiciary demand for Judicial Reform" *legalserviceindia.com*, 2002.*available at:* https://www.legalserviceindia.com/articles/err222.htm (last visited December, 2021)

[433]*Ibid.*

Though the High Court is expected to work for 210 days, judges would be working a lesser number of days.

"The Supreme Court should work for 185 days a year. In summer, the Supreme Court goes for 8 weeks vacations, besides this, there are public holidays and all." These total vacations affect the court functioning.

Corruption Issue:

Corruption in India might still be widespread and continuing increasing day byday. The Indian economy continues to face the problem of an underground economy with a 2006 estimate by the Swiss Banking Association suggesting that Indiatopped the worldwide list for black money with almost $1,456 billion stashed in Swissbanks. This amounts to 13 times the country's total external debt.[434]

Corruption Perception Index, a survey released by Transparency International, an anti-corruption watchdog, in 2011, said corruption in India is ranked the country 95th among 183 nations. The survey is not just limited to the monetary value of petty corruption. It also includes public services and states.[435]

Corrupt Countries of the World (2011) Source: Transparency

Table 5.7: International's Corruption Perception Ranking among 183 countries

Country	Most Corrupt Countries rank	Score(out of 10)
Somalia	183	1
North Korea	182	1
Myanmar	181	1.5
Afghanistan	180	1.5
Russia	143	2.4
Pakistan	134	2.5
India	**95**	**3.1**
China	75	3.6
Brazil	72	3.8

[434]Mousumi Kundu, "Some Aspects of Corruption in India in 21st Century" 5 *International Journal of Scientific and Research Publications* 199–205 (2015).

[435]*The 2011 Corruption Perceptions Index Measures The Perceived Levels Of Public Sector Corruption In 183 Countries And Territories Around The World*. available at: https://www.transparency.org/en/cpi/2011 (last visited on April 2021).

Country	Least Corrupt Countries rank	Score (out of 10)
USA	24	7.1
UK	16	7.8
Canada	10	8.7
Switzerland	9	8.8
Australia	8	8.8
Netherlands	7	8.9
Norway	6	9
Singapore	5	9.2
Sweden	4	9.3
Finland	3	9.4
Denmark	2	9.4
New Zealand	1	9.5

India in 2021 stood 85th overall around the world in corruption index. In 2011 India rank was 95 whereas even though it was slightly down by the 10 number but after 10 years, no big changes arrived in the corruption ratein India. This report was published by Transparency International.[436]

Extent of Corruption in Judiciary:

In a strong indictment of the judiciary, Union Law Minister Ram Jethmalani said on incompetence and corruptions were corroding the countries justice system and there was an urgent need to stem the rot."[437]

Mr. Jethmalani said that, "The fatal combination of incompetence and corruption among police officers, prosecutors, witnesses and judges frustrated justice. The former Chief Justice of Supreme Court Sam Piroj Bharucha had suggested that up to 20 percent of judges in India were corrupt."[438]

[436]PTI, "India Ranks 85th Among 180 Countries in Global Corruption Index: Report" *NDTV.com*, 2022*available at*: https://www.ndtv.com/india-news/india-ranks-85th-among-180-countries-in-global-corruption-index-transparency-international-report-2730018 (last visited February 8, 2022).

[437]Ram Jethmalani, "Judicially is fatally corrupt" *The Hindu*, 12 November 1999.

[438]*Ibid.*

"Without the Judiciary, there can be no rule of law. Unless its house is in order, it cannot exercise effective control over the Executive and the Legislature. Judicial corruption not only knocks judges off perceived pedestals, but also erodes the respect for the law."[439] The people of India have a tremendous stake in the judiciary which is the only hope and last resort for all oppressed citizens.

In *C. Ravichandran Iyer* v. *Justice A.M. Bhattacharjee*[440], the Supreme Court suggested, "an in-house method which is non-transparent, time-consuming and uncertain. The need for an alternative method of getting rid of judges of doubtful integrity is being felt acutely, it is possible to root out corruption in the Judiciary if a provision is made in the Constitution for premature retirement of public servants in public interest on the ground of doubtful integrity regardless of the length of service put in. The power to retire will have to be in the hands of the judiciary itself to maintain its independence."[441]

Following some statistics show the result[442].

- 13.37 percent of total households in the country had interacted at least once with the judicial department in the last one year.[443] This means, nearly 2.73 Crore households had interacted with the judiciary to get one or the other service.[444]
- Nearly 47.32 percent of those interacting with the judiciary had actually paid bribes. This works out to 6.32% of the total households, (approx. 129 lakhs).[445]
- The average amount of bribe paid to the judiciary was estimated to be Rs. 2095/ - (Rs. 2181/- for Urban households, and Rs. 1942/- for Rural households). Therefore, the total monetary value of the bribe paid in the last one year works out to Rs. 2630/- Crores.[446]

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[439] *Ibid.*

[440] *C. Ravichandran Iyer* v. *Justice A.M. Bhattacharjee* (1995) 5 SCC 457.

[441] *Ibid.*

[442] *Available at*: "http://www.nchro.org/index.php?option=com_content&view=article&id=6761%3A corruption-set-backs-in-indian-judiciary-bala-nikit&catid=45%3Alaw-and-judiciary&Itemid=40&showall= 1" (last visited on May 15, 2021).

[443] "India Corruption Study to improve governance, 2 (Corruption on Judiciary), as study conducted by the *Centre of Media Studies* (2005)". *available at*: http://www.cmsindia.org/cms/events/corruption.pdf. (last visited on March, 2020).

[444] *Ibid.*

[445] "India-Corruption-Study-2005.pdf."available at:https://transparencyindia.org/wp-content/uploads/2019/04/India-Corruption-Study-2005.pdf (last visited December 2019).

[446] *Ibid.*

There was a variation in the amount of bribe paid depending on the nature of work. The average bribe for getting a favourable judgment was Rs. 2939/- while the average bribe paid for getting a case listed was Rs. 799/-.[447]

In 2020 the overall score of rule of law published by 'World Justice Project'

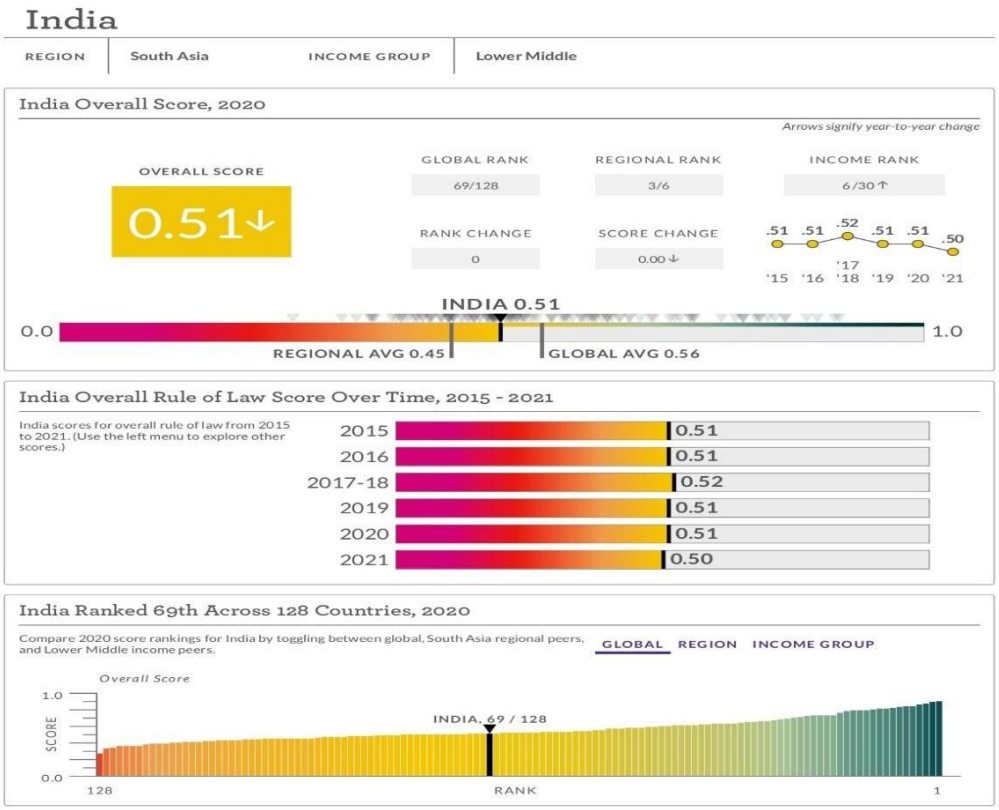

Fig. No. 5.10: World Justice Report

This report published by[448]

In rule of law overall score of India is 0.51 in 2021. On the basis of the above data India is behind the global average score stood 0.56. Out of 128 countries around the word India is ranked 69th, which is below the some developing countries also.

[447] *Ibid.*

[448] "WJP Rule of Law Index" *worldjusticeproject.org/*, 2020*available at*: https://worldjusticeproject.org//rule-of-law-index/ (last visited February 8, 2022).

Fig. No. 11: India rank in World Justice Report

Explanation: From above data India stood 0.45 in civil justice and 0.40 in criminal justice which is behind the global average 0.47.

Crime in 2011:

In India, NCRB reported, "prosecution succeeds in only 12% in criminal cases in India. But also, today about 2, 00,000 people are in jails for longer than the maximum period they would have served had they been convicted. On the other hand, criminals can fight

elections from jails, while they wait for a judgement on their court matters! By the time criminal cases reach the court, years have passed and the witnesses have turned hostile."[449]

As of 2011, NCRB said that, "at least 11 million people are being held in prisons and jails around the world, about half of them in the United States, China, and Russia. The USA has 2.2 million behind bars, China comes second at 1.5 million and Russia has 870,000. In absolute numbers too, USA, China and Russia each have at least six times more prisoners than India."[450] In 2011, California spent $9.6 billion on prisons, versus $5.7 billion on higher education.

Crime in 2022:

According to Numbeo.com, worldwide research on crime index, India stands 76th and the crime index stands at 44.63. Whereas the safety index of India is 55.37 which is very below the average neighbor countries like Sri Lanka and Pakistan.[451]

Table 5.8[452]: Worldwide Prison Statistics (May 2001)

'Highest Rates'	**'Rates of imprisonment per 100,000 population'**
Russia	687
USA	682
Ukraine	413
S. Africa	321
Uzbekistan	258
Canada	115
China	109
Turkey	95
France	90
Lowest Rates	**Rates of imprisonment per 100,000 population**
Japan	39
Bangladesh	37
Nepal	29
India	**24**
Indonesia	20

[449]NCRB, *Crime in India 2011* (National Crime Record Bureau, 1 January 2011).
[450]*Ibid.*
[451]"Crime Index by Country 2022"*available at*: https://www.numbeo.com/crime/rankings_by_country.jsp (last visited February 8, 2022).
[452]Fortune magazine and US Department of Justice peg US incarceration rate at 481 per 100,000 residents.

High Court looking into 500 petitions against judicial officers: The Chief Justice of Madras High Court Chief Justice M. Y. Eqbal said "recently those 500 petitions against judicial officers were under the court's scrutiny and anyone coming under a cloud should better quit.[453] In a candid talk while administering oath of office to the newly appointed civil judges, he said the common opinion of general public was not appreciative and judicial officers are also equally blamed along with any other government servants."[454]

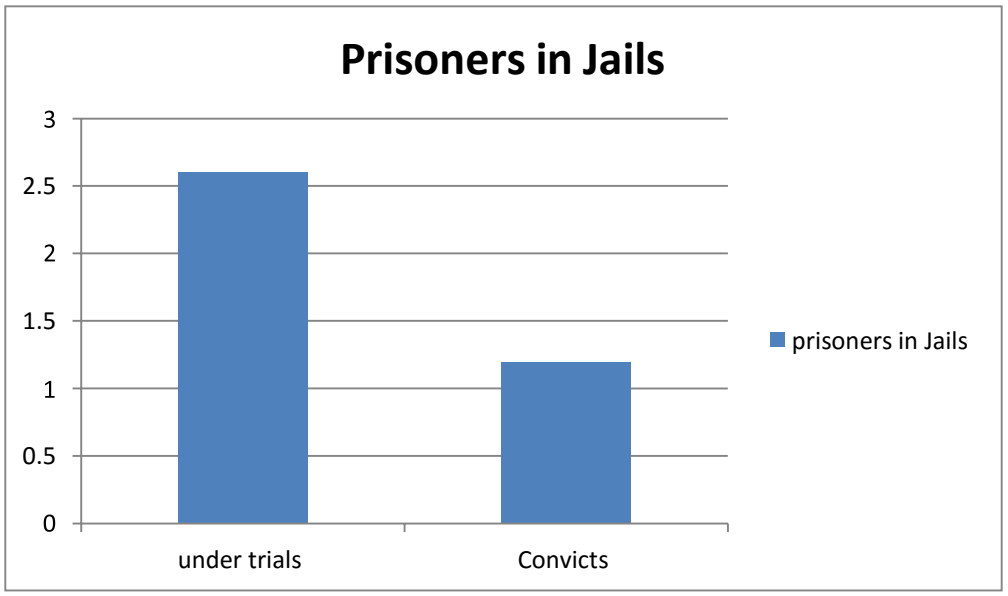

Fig. No.5.12: Under Trials Prisoners and Judicial Accountability

- In June 2009, there were 3.8 lakh prisoners in Indian jails. Of these 2.6 lakh were under trials.[455]
- As on December 31, 2019, almost 4.8 lakh prisoners were confined in Indian jails. Of these, over two-thirds were under trials (3.3 lakh).[456]

[453]"High Court looking into 500 petitions against judicial officers: Chief Justice" *available at*: https://www.ndtv.com/south/high-court-looking-into-500-petitions-against-judicial-officers-chief-justice-501463.(last visited on December, 2020).
[454]Wendell L. Griffen, "Comment : Judicial Accountability and Discipline" 61 *Law and Contemporary Problems* (1998).
[455]*Vital Stats Pendency of Cases in Indian Courts*, (National Human Rights Commission, June 2009). *available at:* http://nhrc.nic.in/PRISON_STATS_JUN_09_FOR_NIC.xls (last visited December, 2020).
[456]"Vital Stats," *PRS Legislative Research*, 2021*available at*: https://prsindia.org/policy/vital-stats/pendency-and-vacancies-in-the-judiciary (last visited February 7, 2022).

After ten years even the situation not being subject to change in India.

- Of the under trials, several inmates have been in jail for many years, in large measure because of delays in the justice delivery system.[457]
- This is also expected to help in decongestion of prisons. In all-India level, the number of prisoners in Indian jails is 3.8 which are 127% of the built capacity.

"If we receive petitions continuously then we will be compelled to take the drastic action of suspending the Judicial Officer, whether they are at the higher level in the cadre of District Judge or lower level in the cadre of Civil Judge Junior division", the Chief Justice said.[458]

Provision of Adjournments:

The main problem of pendency of cases is the adjournments granted by court. "The adjournment granted by court on the basis of section 309 of Code of CriminalProcedure Code and Rule 1 Order XVII of Code of Civil Procedure deals with the adjournments and power of the courts to postpone the hearing. The adjournment shall be granted only when the court deems it necessary or advisable for reason to be recorded."[459] But in actual practice of court these conditions are not strictly followed and the bad practices are not only followed by practitioners, litigants but by sitting judges also.

A bench of Justices K. S. Radhakrishnan and Dipak Misra expressed that, "anguish, agony, and concern over the adjournments granted by a Punjab trial court in a bride

[457] *Vital Stats Pendency of Cases in Indian Courts*, (National Human Rights Commission, June 2009). *available at:* http://nhrc.nic.in/PRISON_STATS_JUN_09_FOR_NIC.xls (last visited December, 2020).

[458] *There were complaints about some judicial officers of the last batch which were being carefully scrutinized, he said. "Observing that judiciary is the last resort of an affected common man and everyone looks upon a judicial officer with utmost respect and reverence, he said that respect and reverence must be kept up .if anybody raises a little finger against any judicial officer making allegation of corruption or favouritism, then it is better to quit the job and can resume practice again instead of continuing as judicial officer", he said. "I have to say these harsh words because nowadays the common opinion of the general public is not appreciative. Judicial officers also are equally blamed along with any other government servants", he said.*

[459] Mona Shukla, *Judicial Accountability Welfare and Globalization* 125 (Regal Publication, 2010).

burning case which stretched the process of examination of witnesses to more than two years."[460]

On perusal of dates of examination-in-chief and cross-examination, it neither requires Solomon's wisdom nor Argus eyes (mythological giant with 100 eyes) scrutiny to observe that the trial was conducted in an absolute piecemeal manner as if the entire trial was required to be held at the mercy of the counsel,[461] Justice Mishra, who authored the judgment, said. Referring to section 309 of the Criminal Procedure Code, "the bench said once a case reached the stage of examination of witnesses, the law mandated that it shall be continued from day-to-day until all witnesses in attendance have been examined. The section provides that if for some unavoidable reason the court was to grant an adjournment, it must record its reasons in writing.[462]

"It is apt to note here that this court expressed its distress that it has become a common practice and regular occurrence that the trial courts flout the legislative command with impunity,"[463] the bench said.

The SC judges said that, "the criminal justice dispensation system casts a heavy burden on the trial judge to have full control over the proceedings." "The criminal justice system has to be placed on a proper pedestal and it cannot be left to the whims and fancies of the parties or their counsel", they said. "A trial judge cannot be a mute spectator to the trial being controlled by the parties, for it is his primary duty to monitor the trial and such monitoring has to be in consonance with the Code of Criminal Procedure," the bench said.[464]

"The Supreme Court wanted trial judges to keep in mind the mandate of Criminal Procedure Code and not get guided by their thinking" "or should not become mute spectators when a trial is being conducted by allowing the control to the counsel for parties." They have their roles to perform. "They are required to monitor. They cannot abandon their responsibility. It should be borne in mind that the whole dispensation of the criminal justice system at the ground level rests on how a trial is conducted. It needs

[460]Justices K S Radhakrishnan and Dipak Misra, "Curb adjournments, speed up trials, SC tells trial courts" (The Times of India, 15 May 2013).

[461]Dhananjay Mahapatra, "Curb adjournments, speed up trials, SC tells trial courts" *The Times of India*, 15 May 2013.

[462]*Ibid.*

[463]*Ibid.*

[464]*Ibid.*

no special emphasis to state that dispensation of the criminal justice system is not only a concern of the bench but has to be the concern of the bar", bench said.[465]

5.4 The Economic Consequences of Weak Judiciary:

"The judiciary is a mechanism whereby disputes on the allocation of rights, e.g., property rights, are decided according to norms and rules of the society. The weak judiciary has a negative effect on economic and social development", which leads to:

(i) "lower per capita income";

(ii) "higher poverty rates";

(iii) "lower private economic activity";

(iv) "poorer public infrastructure"; and,

(v) "Higher crime rates and more industrial riots".[466]

The judiciary has two important functions, "the implementation of the laws and defines the procedures within the organisation. The judicial institution follows certain rules which are the code of Civil Procedure for civil and administrative cases and the Code of Criminal Procedure for criminal cases. The judiciary itself can be considered an institution in the economic sense.[467] Researcher trying to explain in the context of economic analysis, the Code of Civil Procedure considered the most important legal institution. It not only determines the mechanism applied in the judicial system, but also how other institutions are enforced. Institutions determine the framework of markets and all other mechanisms where goods, services, and information are exchanged.

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[465] *Ibid.*

[466] K.C. Kohling, "The Economic Consequences of a Weak Judiciary, Insights from India" *Center for Development Research, ZEF*25 (2000).

Prof. Kohling developed research paper where he found "empirical relationship between the quality of the Indian Judiciary and the economic development of the Indian States and Union Territories. It evaluates causality by analysing the development of the state –level per capita income and poverty rates. Researcher defines the quality of the judiciary in terms of: (i) its speed in deciding trials; and, (ii) the predictability of the trial outcome. The speed of the court was determined by the backlog in High Courts and predictability through the rate of allowed appeals to the Supreme Court from the High Court. The methodology applied by researcher was a cross-regional time-series regression that simultaneously estimates the endogenous relationship between the quality of the judiciary and productive factors, such as agricultural production, private sector development, capital formation, poverty rates, public security and infrastructure. These productive factors influenced the level of per capita income".

[467] *Ibid.*

The market either can be efficient or less efficient. The judiciary as an institution is exposed to types of inefficiency: (i) from the rules governing the judiciary; and (ii) from the laws the judiciary is supposed to enforce.

The co-relationship between the judiciary and the economy is not direct because the judiciary has no direct impact on productive factors, but influences individual decision-making, which themselves can influence economic relevant decisions.

In order to estimate the effect of a weak judiciary, the author had applied an endogenous system of estimations accounting for the indirect impact of institutions. The system consists of equations determining the impact of the standard economic variables on the per capita income, which are subject to influence of the judicial and other economic and institutional variables.[468]

The result of the study was that, in the Indian context, a weak judiciary can have a significant and negative impact on the economic growth, poverty rates and agriculture output. Both the variable for the average duration of cases in High Courts, representing the speed of the judiciary, and the indicator representing the perceived predictability of the High courts have a significant and negative impact economic growth, poverty rates and agriculture output.[469]

Economically relevant institutions are those that govern taxes relating to subsidies and duties. Clearly, these laws have an immediate effect on prices, interest rates, and other economic factors. Besides these institutions, other regulations can have a significant effect on economic development. For example, one of the most important non-economic factors, in the sense of non-monetary or physical capital, for economic development is the level of human capital. Human capital is the level of knowledge and skill in a society that is accumulated through education. The level of education determines the productivity of the single worker, and the technology level of the production function determines the overall productivity. Laws governing the provision of education are the most prominent non-economic institutions. The quality of education institutions is measured in applied development economics often

[468] *Ibid.*

[469] *Ibid.*

through enrolment and literacy rates. The positive correlation between education and per capita income growth nowadays is well known.[470]

The well-functioning court boosts economic performance by way of controlling government corruption and upholds the rule of law. The researcher namely *la-porta* and others proposed that judicial independence is the predetermining factor in any economic freedom. And judicial efficiency directly influences economic development.

5.5 Conclusion:

From above data it may concluded in following ways;

- In India, the serious predicament for progress is a lack of judicial accountability whichis a major hurdle for the Indian judicial system.
- Provisions of adjournments, under trial matters, unnatural delays in proceedings, bias to matters, political and economic connection with the subject of the dispute are regular phenomena of judges in India.
- This is the violation of the Rule of Law and Constitutional obligations of judges. Ranking of judiciary is lower than South Asian Countries in transparency and Justice mechanism.
- From the above discussion, reports, and data the judicial system is not responding to judicial accountability.
- So, judicial accountability and economic progress have close connections or we can say that judicial accountability is the variable to test the economic development.

So, hypothesis no. 1 has been proved here. On the basis of non-empirical data, it shows to researcher issues like abuse of judicial authority and its several instances, corruption cases and its data available, pendency cases, under trials cases, the vacation of judicial officers, and lack of responsibility for judgements amount to lack of judicial accountability which has an indirect connection with the economic progress of a nation.

[470] *Ibid.*

CHAPTER-6

RECUSAL: PRE AND POST RETIREMENT OF THE JUDGES

6.1 Introduction:

Recusal of the judges and post-retirement jobs of judges is a very modest issue on paper but it is very important to discuss because it has a large impact on court proceedings and the legal system. It is being said by Justice Lahoti that, "Judges are being criticised usually because they never live in the real world. So, there is a problem arises to link the judges with the outside world. The critical function of the judiciary is the application and interpretation of the lawand to ensure that justice should not only be done, but also seen to be done."[471]"The behavior of judges is closely scrutinized to ensure continued confidence in the integrity of the courts."[472] The public confidence will evaporate if judgesseem to be biased when it happens then the very institution of the Judiciary willbe lost its worth and the whole judicial function difficult to exercise.[473] Therefore, an action which is connected with self-interest and preconception, judges shall be deserted from it. It was mentioned by the author that, "throughout the ages, and in all societies, impartiality has been regarded as the essence of the administration of justice. It is essential for a judge to maintain, in court, a demeanor which gives to the parties an assurance that theircase will be heard and determined on its merits, and not according to some personal predisposition on the part of the judge."[474]

Judges and normal citizens are similar according to physical appearance but mentally and emotionally they have to be differing from them. It is expressed by author that, "The Judges, also human beings, do not approach the task of adjudication blindfolded. They disembark at the bench already fashioned by their own experiences and by the perception of the society they come from, and

[471]Chief Justice R. C. Lahoti, "First M. C. Setalvad Memorial Lecture on "Canons of Judicial Ethics ""81 (presented at the Canons of Judicial Ethics , 45 University of New Brunswick L. Jour., 1991), XLV.; This quote laid down by Lord Hewart the Lord Chief Justice of England in the year 1924.

[472]*Ibid.*

[473]Kharel Rajendra, "Recusal and Disqualification of Judges: An Overview"4 *NJA Law Journal* 13-24 (2010).

[474]*Ibid.*

they might have belief and disbelief, like everyone else. The difference may happen between judicial fairness and the human being nature of judges. Judges shall not deny their human nature relatively; they have to acknowledge it."[475] But when they accept their human nature "they shall be in a position to recognize how they can reach impartiality which is the demand of their job."[476] The Constitution vests a lot of power and a certain amount of immunity in judges. Fairness and impartiality are the fundamental qualities to be possessed by a judge. In India, for the vast majority of cases, there are no reports of having been heard by a partial and unfair judge but there are instances where the contrary happens.[477]

It was held in *Ram Jawaya*v. *State of Punjab*[478] that, the Indian Constitution has not completely accepted the theory of separation of power in a rigid sense even though the role of branches of the government has adequately separated from each other because the Indian constitution believes that, "One organ of the government shall not interfere and function of another branch of the government."[479]

The independence of judges does not mean independence from obligations. Recusal is that kind of issue where judges' capabilities are tested on the basis of temperament. It is a fundamental tenet that no one should be judge in his or her own case. Courts must uphold their promises of providing fair and impartial justice by resolving controversies without bias. The practice of recusal, when and how an individual judge should be barred from adjudicating in a specific case in which he has an interest. Recusal of judges without any reason or not supporting any reason to recusal, and attain the post-retirements jobs to have benefit in future is the direct output of violation of judicial accountability. It is also violations of rule of law, constitutionalism and judicial obligations. If judges will do practice this regularly then democracy and rule of law will not be sustain in India.

[475]Kharel Rajendra, "Recusal and Disqualification of Judges: An Overview"4 *NJA Law Journal* 13-24 (2010).
[476]*Ibid.*
[477]ManeeshChhibber, "Recusal has become a selective call of morality for Supreme Court judges," 2019 *available at*: https://theprint.in/opinion/recusal-supreme-court-judges-gautam-navlakha-kashmir-cji-gogoi/303036/. (visited on March 2020)
[478]*Ram Jawaya* v. *State of Punjab* AIR 1955 SC 549.
[479]*Ibid.*

6.2 Post-Retirement Appointments:

The opinions of the various scholars in India is that, several laws were passed by the parliament and state legislature, through this legislation various tribunals, commissions, and other bodies were constituted where the persons who have been the judges of High Courts and Supreme Court of India were appointed. There are also non-statutory commissions like 'Law commission of India' where retired judges of the high court and Supreme Court may be appointed.[480] The authors stated that, "The question arises here is whether Central Government or State Government is bound to consult with Chief justice of SC and respective HC where the retired judges of that court going to appoint to a commission, tribunal or other similar body?"[481]

Actually, this question will arrive only where the concerned statute is silent relating to the appointment or does not provide a specific mode of appointment. The first 'Law Commission of India', headed by M. C. Setalvad, had briefly dealt with this issue. In paragraph 28 of the report, the Commission states: "We have noticed the only bar imposed on a Judge of the Supreme Court who has retired is that he shall not thereafter plead or act in any Court or before any authority. As a result, some Supreme Court Judges have, after retirement, set up chamber practices while some others have found employment in important positions under the Government. We have grave doubts whether starting chamber practice after retirement is consistent with the dignity of these retired judges and consonant with the high traditions which retired judges observe in other countries."[482]

Where a appointment of a retired High Court judge or Supreme Court judge to a tribunal or commission lies within the discretion of the central government or state government and if the consultation with Chief justice of the Supreme Court or the High Court is not approved, then there is chances that governmentwill make bias and favourable decision in related to the appointment of retiredjudges which would indirectly affect the independence and integrity of the

[480]Priyadarshini Barua, Sarthak Makkar and Vasanthi Hariharan, "Judicial Recusal: A Comparative Analysis Editorial" 7 *GNLU Law Review* 1–16 (2020).

[481]Kharel Rajendra, "Recusal and Disqualification of Judges: An Overview"4 *NJA Law Journal* 13-24 (2010).

[482]Lokendra Malik, "Chapter 5 Post-Retirement Assignments of the Supreme Court Judges in India: A Critical Analysis" *SSRN Electronic Journal* 39 (2020).

judicial system. There is grave apprehension of appointments have been made on selfishness other than merit and concentrate on political consideration.[483]

To dilute the scope for any such inappropriate considerations there should be appropriate law where retired judges will be appointed to a commission or tribunal only with the consultation of the Chief justice of the concerned court. It means that Consultation with the Chief Justice of the Supreme Court and the High Court would be mandatory so to avoid any possibility of judicial corruption.

The Supreme Court in *State of A.P.* v. *K. Mohanlal*[484], issue of this case was that "appointment of judicial and revenue members to the Special Court constituted under section 7 of the A.P. Land-grabbing (Prohibition) Act, 1982." In this case, The state legislation provided that the chairman of the Special Court shall be appointed after consultation with the High Court Chief Justice and in case of the nomination by the respective HC for an appointment then consensus with the chief Justice of SC if necessary (in case of the sitting judgeof the High Court). In this case, no consultation process was applied in the appointment of judicial members and revenue members.

A contention was raised before the Supreme Court that the appointment of members of the tribunal without consulting the chief justice of the High Court concerned, Act shall be declared unconstitutional. The Supreme Court rejected the contention raised and upheld the validity of the Act. This decision is not related to the 'consultation' process but it was related to validity of the state legislation. "The decision, it must be remembered, was concerned only with the constitutional validity of enactment and not with the desirability of such consultation."[485]

So, in the provision of appointment of retired judges in commission or tribunal as a judge then consultation with Chief justice of Supreme Court and High Court has to be mandatory.

Anangav Udaya Singh Deo v. *Ranganath Misra*[486], In this case, "the issue before the High Court was whether the respondent, a former Chief Justice of

[483] *Ibid.*

[484] *State of A.P.* v. *K. Mohanlal* (1998) 5 SCC 468.

[485] *Ibid.*

[486] AIR 2000 Ori 24.

India, could become a Member of Parliament of Rajya Sabha in light of the restriction in Article 124(7) of the Constitution". Court observed that, "repelling the contention that Parliament was an 'authority' and becoming a Member of Parliament would constitute 'acting' for purposes of the said article". The Court held that in interpreting Article 124(7), attention must be paid to Article 220, the analogous provision for High Court judges, specifically to its marginal note which read: "Restriction on practice after being a permanent judge." Accordingly, the restriction in Article 124(7) should be limited to postretirement practice. Since acting as a legislator did not constitute such practice, the bar would not apply."[487]

Recent issue:

"Justice Gogoi has nominated to Rajya Sabha and the appointment of Justice Sathasivam as a Governor."[488] In these cases, a lot of public criticism aroused against the judicial system and judicial independence, and many of the legal scholars opined that this appointment is based on pure political desire and favoritism. Such post-retirement jobs have created a lot of dissatisfactionamong the common citizens regarding the independence of the judiciary. The citizens are losing faith and the independence of the judiciary which is a seriousthreat to democracy and the justice delivery system, even Dr. B. R. Ambedkar has cautioned that once the judiciary is corrupted, it will evil day for democracy.

6.3 Doctrine of Recusal: The Concept:

A judge may sometimes meet in a situation where differences of interest arise or apparent conflict of interest requires him to recuse from the case. On the ground of bias, the recusal of judges is required. While on the ground of bias, a judge may have to evaluate not only on the basis of real likelihood of bias but also on the ground of reasonable suspicion of bias.

The basic concept is that no one is judged for his own cause. Courts shall maintain the oath of giving fair and natural justice without any kind of partiality.

[487]Lokendra Malik, "Chapter 5 Post-Retirement Assignments of the Supreme Court Judges in India: A Critical Analysis" *SSRN Electronic Journal* 39 (2020).

[488]A Vaidyanathan, "Former Chief Justice RanjanGogoi Nominated to Rajya Sabha by President" *NDTV.com, available at*: https://www.ndtv.com/india-news/former-chief-justice-ranjan-gogoi-nominated-to-rajya-sabha-by-president-kovind-2195802 (last visited March 7, 2022).

When an individual judge has any kind of personal interest in a specific case then the practice of recusal may benefit in that case so, it is the practice to have impartial and unbiased justice. When there will be a conflict of interest in a specific case at the time of decision or policy making then the judge may remove him from that matter or case. When a judge has been appointed to hear to decide that matter then in between he can leave the case and may transfer to another colleague. When it is seen that the judges cannot decide the matter in an impartial manner he may recuse. It is also the discretion of the judge to stand down.

This is being started from *Dimes* v. *Grand Junction Canal*[489]the Court held that, where Lord Cottenham recused himself from the case on the ground that he possessed some of the shares in the company involved in the case, from that movement it became practice.[490]

The law relating to recusal deals with the circumstances in which a judge (or other independent decision-maker), acting under legal power, should take no part, or no further part, in a decision or in the steps leading to a decision, although he or she has been initially empowered to decide it.[491]

The recusal includes acting in a fair and impartial manner which is embedded in Articles 14 and 21 of the constitution.

- Article 14 of the Constitution incorporates "to all person equality before the law and equal protection of the laws."[492]
- "Article 21 confers on every person the fundamental right to life and personal liberty."[493]

Basic standard of Judge: The Judges of the SC and HC have taken the oath and promise to deliver justice, ***"****without fear or favour, affection or ill-will".*

Recusal of Judges in India:

It is the practice in the Supreme Court of India and HC'S judges may not sit on the issue which is connected with his respective state and accumulate the dispute is very

[489]*Dimes* v. *Grand Junction Canal* (1852) 3HL Cas 759.
[490]*Ibid.*
[491] Michael Kirby, "Judicial Recusal: Differentiating Judicial Impartiality and Judicial Independence" 4 *Australian Bar Review* (2014).
[492]The Constitution of India, 1950, art. 14.
[493]The Constitution of India, 1950, art. 21.

serious. In India there, is the absence of any legislation on recusal; several commissions and conferences have discussed the issue and laid down some of the principles.

One of these is "**The Bangalore Principles of Judicial Conduct**"[494]

The Bangalore Principles of Judicial Conduct laid down some basic principles for recusal or judicial disqualification as are following;

a. A Judge shall disqualify himself or herself from participating in any proceeding in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially.[495]

b. The judge has actually bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding.[496]

c. The judge previously served as a lawyer or was a material witness in the matter in controversy[497]

d. The judge or a member of the judge's family has an economic interest in the outcome of the matter in controversy.[498]

In India, there is no statute laying down the minimum procedure that judges must follow in order to ensure impartiality.

The principle of fairness and objectivity is very necessary for the court and any adjudicating authority and especially judges shall imbibe this quality in their functioning. With the expansion of civilization, rule of law in each and every country indicates the nature of development of principles of natural justice.[499]

Man, always thought that someone shall be savior from the excessive force of power which is beyond his endeavor to protect himself from danger or in difficulty. Principles of natural justice are the same principle which may be called as divine principles of God principles which can be savior form the excessive power of the state. All manmade legislation shall be in consonance with the law made by the

[494] "The Bangalore Principle of Judicial Conduct, 2002" (Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 2002)

[495]"The Bangalore Principle of Judicial Conduct, 2002 Principle 2.5" (Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 2002).

[496] 2.5.1.

[497] 2.5.2.

[498]2.5.3.

[499]*K. I. Shephard* v. *Union of India*, (1987) 4 SCC 431.

divine energy that is main idea behind to creating the principles of natural justice. "It implies fairness, reasonableness, equity and equality."[500]

Though the Indian constitution does not use this expression, the concept divested of all its metaphysical and theological trappings pervades the whole scheme of the Constitution.[501]

Articles 14 and 21 of the Constitution of India implanted fairness and objectivity. In Administrative proceedings, the test to decide biasness depends upon the two tests one is a real likelihood of bias and another one is reasonable suspicious of bias. Indian Courts developed these principles to nourish the values of impartialityand fairness. Reasonable apprehension of bias is depending upon the mindset of the party.[502] As Lord Denning has said "justice must be rooted in the confidence of the party, the confidence may diminish when right-minded people think negatively about the approach of the judiciary."[503]

The question here is not whether a judge is biased or not? Question here is whether the mind of the party sensing biasness or not. The doctrine of recusal is not still clear in India because law relating to the recusal is not so clear. In present times, the SC and HC judges exercising recusal practices frequently. The recusal principles are not clear, so, there is again a predicament about on what condition and what time it should be exercised. In convention of SC and HC two methods adopted by the judges in times of recusal, automatic recusal and second one is that the judge may recuse himself if there will not be any objection. Justice Markandey Katju first time did the recusal in the matter of *Novartis Ag case*.[504]

In that case, he makes remarks that he is not suitable for this case. Justice S. B. Sinha also had made the remarks on the concept of recusal that the matter is a little bit more concern for him because automatic recusal becomes the general practice in a court of law and ultimately it is the cry of judicial ethics of the judges.

In an article,[505] he had written five years earlier against the Pharma patent.

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[500]I. P. Massey, *Administrative Law* 65(Eastern Book Company, Lucknow, 2005).

[501]*Ibid.*

[502]*Ranjit Thakur* v. *Union of India* (1987) 4 SCC 611.

[503]Alfred Thompson Denning, *The Discipline of Law*22 (Butterworths, London, 2004).

[504]*Novartis Ag* v. *Union of India and Ors.* (2013) 6 SCC 1.

[505]Lamenting that *"many of the medical drugs available in the market are too costly for the poor people in India"*, Katju said in his article that *"ways and means should therefore be thought out for making these drugs available to the masses at affordable prices"*.

This case related to the Department of Telecom and Reliance communication where Airtel without getting a 3G spectrum license was using the service of 3G in a circle for customers and was adding the customer.

So, this issue went before the SC of India ultimately and in this case, SC judges Justice Sen and Justice Dave decided to recuse themselves without providing any reason for the recusal both the judges recused themselves from this case. The reason behind the recusal of Justice Dal veer Bhandari was very distant, because he participated in an international conference namely the Intellectual Property owner Association where Novartis was also host member of this conference. The letter of activist published in the name of the Government of India in Times of India where activist mentioned that this is very serious issue relating Indian patent Act and the government should take the steps in concern with Intellectual Property opinion held in the conference by the Justice Dalveer Bhandari because the matter is *subjudice*.

Judge may precede the matter if there is no objection from nowhere:

The principle is that if there will be no objection in the matter which is even though such kind of issue involves then the judge may proceed with the case, if no one has objected. There is such example available where SC court judges heard the matter even though before who chaired the committee on service matter as capacity of judges of Punjab high Court.[506]

In this case, judges ask the questions to the lawyer that whether they are comfortable with the judges if they will reside on this case, advocates made no objection.

So, finally this case was heard by the judges. Same kind of practice also was initiated by the Justice Kapadia where in a distinct case he asked the lawyers voluntarily that whether they are happy about the decision of being presiding judge in this case because he had some shares in the Vedanta Company if advocates had any objection, he can recuse this case.[507]

This code of practice would satisfy the concept of justice or not. This is also a delicate question that is it right to ask a lawyer to be the presiding judge in the case? The lawyer represents the party how the lawyer can decide the position of judge to remain as a judge or not, lawyer is the agent of the party.

[506] *Inderpreet Singh Kahlon and Ors.* v. *State of Punjab & Ors.* (*2006*).*available at* https://indiankanoon.org/doc/753943/ (last visited on December 2021).

[507] He was a member of Forest Bench which allowed the mining of bauxite in Orissa in an Eco-sensitive tribal area subject to various concessions and conditions.

So, this question remains unanswerable again. Lawyer cannot answer this question openly and full-heartedly because if the decision goes against his favour, he would be remorseful about his decision. This shall be decided by the judges alone even though, there are chances of allegation that the judge is biased if he recused the case but if he does not recuse the case where he is involved then it would be a breakdown of the justice, because justice is not to be done it seems to be done.

Recent Cases:

- ***Central Bureau of Investigation case***[508]:

  In this case of Mr. Nageshwara Rao was appointed as chief of the CBI instead of the AlokVerma was removed by the government of India.

  This appointment of Mr. Nageshwara Rao was challenged before SC of India where judges were recused themselves to hear the matter, the names of the judges were Chief Justice RanjanGagoi, Justice Ramana and Justice A.k. Sikri. "Rao was continued to be a director after former CBI director AlokVerma was removed by the high-power selection panel headed by PM Modi."[509]

  It has been reported by one of the newspaper that, The plea by non-government organization (NGO) Common Cause sought the quashing of the order of 10 January and argued that Rao's appointment as interim director was not according to the constitutional principles and principles in high power appointment usually done in selection considered to be illegal, arbitrary, mala fide and in infringement of the provisions of the Delhi Special Police Establishment Act (DSPE Act).

  Appointment of Mr. Rao as a CBI director was considered unauthenticated and legal. It seems that the committee has been neglected by the Centre which was acting without jurisdiction and appointed Rao, the plea was added.

Ayodhya case[510]:

[508]"Supreme Court holds CBI's ex-interim chief Nageswara Rao guilty of contempt", *The Hindu*, 12-2-2019, *available at* https://www.livemint.com/politics/news/another-judge-recuses-himself-from-hearing-plea-against-cbi-s-rao-1548914117000.html; (last visited September 10, 2020).

[509]*Ibid.*

[510]*M Siddiq (D) ThrLrs* v. *Mahant Suresh Das &Ors.*(decided by SC in November 9, 1919).

In this case, lawyer for the Sunni Central Waqf Board, senior advocate Rajeev Dhavan pointed out that Justice UdayLalit had appeared as counsel in the Kalyan Singh case related to the Babri Masjid-Ram Janmabhoomi structure demolition. Kalyan Sing was the Chief Minister at that time when BabriMazid was robbed by the people. Senior advocate Harish Salve spoke up for the judge, saying that it was a different case. The Kalyan Singh case appeared in 1997. It was the judge's discretion to recuse the case.

Bhima-Koregaon case[511]:

Justice B.R. Gavai voluntarily left the case which was related Bhima-Koregaon riots. The petition was filed by Navlakha for bail application against the decision of "Bombay High Court refused to quash the FIR registered against him by Pune police" under the provisions of the "Unlawful Activities Prevention Act and the Indian Penal Code. Appeal filed by the Navlakha came before a bench consist of justices NV Ramana, R Subhash Reddy and BR Gavai." [512]

In this case also, CJI Gogoi also refused to hear the petition and not cited any reason for the recusal. "Bombay High Court Judges including Justice Ranjit More and Dongre refused to cancel the FIR filed against Navlakha because there is prima facie material available against him which contain documents where Novlakha in work against the violence during Bhima-Koregaon appeared in 2018."[513]

Table 6.1: Recusal cases in 2021-22

Case	Judges	Date
River Krishna Water Dispute case	Justice Chandrachud and Justice A. S. Boppanna	3 January 2022
Post poll violence case against Mamata Banerjee	Justice Anirudhha Bose &Justice Indira Banerjee	June 2021

[511]Bhima-Koregaon case: Another Supreme Court Judge recuses himself from hearing Gautam Navlakha's plea, *The Leaflet*, 1/10/2019, *available at* https://www.theleaflet.in/bhima-koregaon-case-another-supreme-court-judge-recuses-himself-from-hearing-gautam-navlakhas-plea/#; (last visited on 10 September 2020).

[512]*Ibid.*

[513]*Ibid.*

The principle of judicial independence is intended to safeguard the justice system and the rule of law. To maintain public trust and confidence in the court, it is imperative that in the present legal system, some critical components of our judicial mechanism need to be revised.

Unless there are reasonable grounds for recusal, a constitutionally appointed judge is obliged to sit on any case assigned to them. The judges should recuse themselves if there is an apprehension that they might bring an impartial mind to the settlement of the question which judges have to decide. Instead of probability, the principle for recusal is a real and not remote possibility.

The analysis is divided into two stages. The judge should always consider first what reasonably leads to apprehension by a fully informed observer that the judge might decide the case other than on its merit; and secondly, whether there is a logical and sufficient connection between those circumstances and that apprehension.

6.4 Previous Cases of Recusal:

- ***Sexual harassment case***[514]:

  When a woman employee of the Supreme Court accused Chief Justice of India (CJI) Ranjan Gogoi of sexual harassment, CJI hear the case. On 19thapril 2019, a former junior court officer claimed that she was sexually annoy by the Chief justice of India Ranjan Gogoi case went to the Supreme Court where special hearing was called by Chief Justice of India which also been shared by the Justice Arun Mishra and Sanjiv khanna. On 25th April Justice AK patnaik was appointed to conduct the inquiry with the assistance of CBI and Delhi Police Commissioner. In house proceedings of the Supreme Court also conducted comprising Justices SA Bobde, NV Ramana and Indira Banerjeee. Justice NV Ramana recused from the case due to objection from the complainant because NV Ramana was close to the Chief Justice. But finally on 30th April complainant withdrew from in-house inquiry because of the following reasons:

  a) Complainant not allowed the presence of her lawyer;
  b) Not allowed video/audio recording during proceeding; and

[514] *Re: Matter of Great Public Importance Touching Upon the Independence of the Judiciary*

c) Not informed about the Committee's procedure.[515]

Interestingly, the former Chief Justice of India, Ranjan Gogoi in an interview accepted that it was a mistake to sit on a bench hearing sexual harassment case against him. The basic principle and rule under the criminal justice system is that "No one should be judge of his own." Such acts cast aspersions on the credibility of judicial independence. It was a fit case, where we can say that former CJI should have recused himself from the case. It is important to mention that procedure of recusal is not clear which needs to be regulated in animpartial way.

- ***Assam detention Center case*** :

  CJI Ranjan Gogoi also decided against recusing from hearing a PIL highlighting the 'sub-human' living conditions of detenues in Assam's detention centers.[516] When Mr. Mandar makes a plea for recusal of chief Justice of India then CJ of Supreme Court refused and warned him not to overstep.

  He told this plea had "enormous potential to damage the institution" and that the CJI's recusal would mean the "destruction of the institution."[517]

- ***International Centre for Alternative Dispute Resolution (ICADR) case*** :
- In petition where Centre's (ICADR), CJI Gogoi refused to recuse when requested by ICADR counsel to recuse from the bench since he was ex-officio chairman of the ICADR.[518]
- ***National Judicial Appointments Commission Case***[519]:

  "During hearings in the National Judicial Appointments Commission case, a request was raised against Justice Jagdish Singh Khehar, to recuse from the

[515]Gautam Bhatia, "Re: Matter of Great Public Importance Touching upon the Independence of the Judiciary (Reprise)" *Indian Constitutional Law and Philosophy*, 2021*available at*: https://indconlawphil.wordpress.com/2021/07/19/re-matter-of-great-public-importance-touching-upon-the-independence-of-the-judiciary-reprise/ (last visited February 3, 2022).

[516]ManeeshChhibber, "Recusal has become a selective call of morality for Supreme Court judges" 2019*available at*: https://theprint.in/opinion/recusal-supreme-court-judges-gautam-navlakha-kashmir-cji-gogoi/303036/.

[517]*Ibid.*

[518]*Ibid.*

[519]*Supreme Court Advocates-on-Record Association and another* v. *Union of India*, (2016) 5 SCC 1.

case, because he was a member of the collegiums."[520] SC rejected and said that Judge can only be recuse on his own.

- ***Medical college scam case***: "CJI Mishra was requested to recuse himself from hearing the medical college scam case, where a former judge was an accused and in which the CJI's own conduct was under the scanner. CJI Mishra discarded the request."[521]
- ***Justice Murlidhar Case***

  Actually, this case may include the irregular transfer of the High Court judge on the basis of political reasons. Justice Muralidhar was hearing the case relating to Delhi violence and where he expressed "anguish" over the Delhi police behavior, the same day he was transferred to Punjab and Haryana High Court.

- Additional Session Judge, Vinod Yadav who has been critical of the "callous and farcical" probe of Delhi Police in the same riots cases of 2020 and had once observed that failure to conduct a proper investigation will torments "sentinels of democracy" was also transferred to another court.
- Justice Joseph had not been elevated by the Centre to the Supreme Court because he quashed 'Presidential rule' in Uttarakhand 2016.

Supreme Court Guidelines on the issue in *Ranjit Thakur* v. *Union of India*[522]where the court said that, "reasonable apprehension in the mind of the litigant is the appropriate test to decide likelihood of bias." Proper approach of the judge must be looking toward the mind of the party and when there is little doubt about the judge then he has to recuse himself. But at the same time, it should be forgotten that the test of the real likelihood of bias must be based on the reasonable apprehension of a reasonable man fully apprised of the facts. It is no doubt that all judges, like Caesar's wife, must be above suspicion, but it would be hopeless for the courts to insist that only 'people who cannot be suspected of improper motives' were qualified to discharge judicial function, or to quash decision on the strength of the suspicious of fools or other capricious and unreasonable people.[523]

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[520]*Ibid.*

[521]Anantha Krishnan G, "Medical college bribe case: CJI decides who hears a case even if facing allegation, Supreme Court underlines" *The Indian Express*, 15 November 2017.

[522]*Ranjit thakur* v. *Union of India* AIR 1987 SC 2386.

[523]*Ibid.*

In *PK Ghosh* v. *JG Rajput*[524] the Supreme Court said that, "A basic postulate of the rule of law is that 'justice should not only be done but it must also be seen to be done.' If there be a basis which cannot be treated as unreasonable for a litigant to except that his matter should not be heard by a particular judge and there is no compelling necessity, such as the absence of an alternative, it is appropriate that the learned Judge should recuse himself from the Bench hearing that matter.[525] This step is required to be taken by the learned Judge not because he is likely to be influenced in any manner in doing justice in the cause, but because his hearing the matter is likely to give ties to a reasonable apprehension in the mind of the litigant that the mind of the learned Judge, may be subconsciously, has been influenced by some extraneous factor in making the decision, particularly if it happens to be in favour of the opposite party.[526] Credibility in the functioning of the justice delivery system and the reasonable perception of the affected parties are relevant considerations to ensure the continuance of public confidence in the credibility and impartiality of the judiciary.[527] This is necessary not only for doing justice but also for ensuring that justice is seen to be done."[528]

Supreme Court categorically states in relation with judicial standard of life, "A Judge shall not hear and decide a matter in a company in which he holds shares is concerned unless he has disclosed his interest and no objection to his hearing and deciding the matter is raised."[529]

Union of India* v. *Union Carbide Corporation*[530]*:

Special leave to appeal before The Supreme Court against the judgment and order passed by Justice S.K. Seth, Judge, High Court of Madhya Pradesh on 13.10.1988 in Civil Revision Petition No. 229of 1988, issues of this case were;

1. Whether the application requesting the Learned District Judge to recuse himself from the case was maintainable in view of the circumstances that "the Order of the

[524] AIR 1996 SC 513.
[525] *Ibid.*
[526] *Ibid.*
[527] *Ibid.*
[528] *P.K. Ghosh and others* v. *J.G. Rajput* MANU/SC/0124/1996.
[529] *Ibid.*
[530] Petition before the Supreme Court for special leave to appeal (c) no. 13080 of 1988.

District Judge granting interim relief of Rs. 350 Crores which was disputed in revision no. CR. 26/88 before the High Court and the High Court."[531]

2. The Order of the learned District Judge having been attacked before the High Court on various grounds on which the recusal application was also found, was it capable for the High Court to allow the revision against the order dismissing the recusal application as the order wherever it is silent must be held in law to have opposed the said contentions and therefore operates against the defendants as estoppels by record?
3. Whether the Learned Judge of the High Court is not in error in not bearing in mind the principle that a litigant may under certain circumstances ask for transfer on grounds of reasonable apprehension of bias and cannot base a claim for transfer or recusal by virtue of judicial order passed in a case adjudicating on the controversy between the parties?
4. Whether the Learned Judge of the High Court has correctly stated the test for deciding whether the Judge was prejudiced by bias and whether he has applied the test properly?

Answers of the issues;

1. The order of the Learned District Judge was challenged before the High Court in revision, the view on which recusal submission was based, and the defendant submission also failed in the revision petition, the court will not rely on those grounds. In divergent the revision order clearly shows that the grounds for recusal were unsustainable.
2. The confirmation of the Order of the District Judge by the High Court though for a reduced amount has the effect in law, the grounds on which recusal petition submitted, it rejected and that the High Court could not have passed the order which is impugned.
3. The High Court overlooked that an application before the same District Judge for recusal was incompetent and the revision before the High Court was also equally incompetent and liable to be dismissed.
4. The High Court failed to appreciate that a ground for recusal is different from the ground for transfer. In a recusal, prayer was to plead for the Judge to disqualify

[531] *Ibid.*

himself from hearing the case further; in and application for transfer, even the reasonable apprehension on the bias of a reasonable party would be a ground. The Judge of the High Court has exercised the power of transfer under Section 24 C.P.C. by nominating also the Additional District Judge as the Court to which the suit will stand transferred thereby not validly exercising the power of revision under Section 115 C.P.C. but a power under Section 24 C.P.C. which he had no jurisdiction to do so.

5. The High Court, the test for deciding whether a Judge is biased against a litigant, does not apply it suitably in this case. Most of the time losing litigants would feel aggrieved by an adverse order, and only because the order is unfavourable to him, he cannot be certified to say that the Judge is biased. The test is whether a reasonable person has a reasonable ground to sense that the Judge is presenting bias. And not by an aggrieved litigant complaining against the order adverse to him especially when the order was confirmed by the High Court. Such a litigant can only move to the Higher Court for transfer.
6. The High Court erred in criticising the order of the District Court as empty rhetoric.

6.5 Guidelines by the Supreme Court:

(1) When there is impartiality is questioned in the matter then judge shall remove himself or herself from;

(a) Judge is involved in personal bias or unfairness towards the party or any lawyer who represents the party; or he has knowledge about the dispute or facts of the case which is very important to the proceeding.

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it[532];

c) the judge knows that he or she, individually or as a fiduciary, or the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in

[532]"U.S.C. Title 28 - Judiciary and Judicial Procedure" *available at*: https://www.govinfo.gov/content/pkg/USCODE-2011-title28/html/USCODE-2011-title28-partI-chap21-sec455.htm (last visited February 3, 2022).

controversy or in a party to the proceeding or has any other more than *de-minimis* interest that could be substantially affected by the proceeding[533] ;

(d) The judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person[534] :

(i) "is a party to the proceeding, or an officer, director or trustee of a party";

(ii) "is acting as a lawyer in the proceeding";

(iii) "is known by the judge to have a more than *de minimis* interest that could be substantially affected by the proceeding";

(iv) "is to the judge's knowledge likely to be a material witness in the proceeding".

(e) "the judge knows or learns by means of a timely motion that a party or a party's lawyer has within the previous year made aggregate contributions to the judge's campaign in an amount that the judge, while a judge or a candidate for judicial office, has made a public statement that commits, or appears to commit"[535], the judge with respect to

(i) "An issue in the proceeding"; or

(ii) "The controversy in the proceeding".

6.6 Issues of Judges Who Do Not Record their Reasons in Writing:

This is a very important issue in the modern court of practice in the Supreme Court in India. The judges of the SC sometimes do not record the reason for their recusal which is diluting the concept of equality. There are instances like the former Chief Justice of India Justice Gogoi. The author of the article mentioned that, "CJI Gogoi listed out reasons for why he wouldn't recuse from the cases mentioned above. But he didn't disclose any reason why he was recusing from hearing Navlakha's bail plea."[536]

[533]"JEAC Opinion 2019-08"*available at*: https://www.jud6.org/legalcommunity/legalpractice/opinions/jeacopinions/2019/2019-08.html (last visited February 3, 2022).

[534]*Ibid.*

[535]*Ibid.*

[536]Nalini Sharma, "Might've been better if I wasn't part of bench hearing sexual harassment case: Former CJI RanjanGogoi" *India Todayavailable at*: https://www.indiatoday.in/law/story/cji-ranjan-gogoi-book-autobiography-supreme-court-bench-sexual-harassment-allegations-1885690-2021-12-08 (last visited February 3, 2022).

- If no justification of recusal is given. It becomes difficult to tell whether recusal was required or not.[537]

  Only judges decide themselves and they decide on their own principles which prolong the case.
- An unjustified recusal or a failure to recuse when faced with genuine doubts damages the rule of law. Withdrawing from a case merely on a party's request allows parties to cherry-pick a bench of their choice.[538] In such cases, CJI has to interfere to restrict the bench and litigants to do the recusal practices.
- Revealing the reasons in detail could lead to similar requests from parties in other cases, delaying the delivery of justice.[539]
- There is also the possibility of the concept of recusal being misused by parties that may not like a particular judge handling their case.[540]

There are three grounds for recusal that derive from the ICJ Statute:

1) "Judge exercising political or administrative function. The restriction is derived from Article 16."[541]
2) Acting as agent, counsel, or advocate in any case. The prohibition is derived from Article 17(1) and applies only to elected members.
3) Past participation in a case as agent, counsel, or advocate for one of the parties, or as a member of a national or international court, or of a commission of enquiry, or in any other capacity. This provision derives from Article 17(2),[542] which applies to both elected and, by operation of Article 31(6), ad-hoc judges.

[537]"Column: To recuse or not to recuse? - Bar & Bench" *Bar and Bench - Indian Legal news available at*: https://www.barandbench.com/columns/column-to-recuse-or-not-to-recuse (last visited February 3, 2022).

[538]*Id.*

[539]Deborah Goldberg, James Sample and David E. Pozen, "The Best Defense: Why Elected Courts Should Lead Recusal Reform" 46 *Washburn Law Journal* 503–34 (2006).

[540]*Ibid.*

[541]Statute of The International Court of Justice, 1945, art.16.
No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.

[542] Statute of The International Court of Justice, 1945, art.17 (2).
No Member may participate in the decision of any case in which he has previously taken part as agent, counsel, or advocate for one of the parties, or as a member of a national or international court, or of a commission of enquiry, or in any other capacity.

6.7 Conclusion:

Ideally, the retired judges should reject such sinecures in the collective interest of the institution that they have served for many years. It is also a trend that people do not hesitate to link pre-retirement judgments of judges to their post-retirement conduct to secure lucrative appointments. This is an extremely dangerous perception for the institution of the judiciary. It badly tarnishes the image of the judicial system. The time has come when all the stakeholders of the legal profession should sit together to find out a long-lasting solution to this problem.[543]

Shanti Bhushan, former Union Law Minister, rightly states that judges should not accept posts that are in the realm of the government as that could dilute their independence and if judges know that they could be offered sinecures post-retirement, they will yield to temptation.[544]

The Bar Council says that if the retirement age is raised, there should be no post-retirement assignment for the retired judges of the Supreme Court/High Courts, and the assignments in various commissions, tribunals, boards, etc., should be meant for deserving advocates only.[545]

Mr. H. M. Seervaionce said that, "No judge should have frequent social contacts with ministers and members of the executive."

For inevitable appointments of post-retirement recruitment a high-level committee or commission of SC and HC judges has to be created.

Articles 124 and 217 shall be amended if post-retirement jobs of the SC and HC judges want to be continued, in this way it may be controlled by proper law.

- It is an utmost urgency to have legislation for the recusal of judges.
- The Court relies mostly on a self-regulation system, by which it is for a judge to recuse him or herself when the case so requires.[546]
- There should be reasons exist for which a judge should be removed or not sit in a case.

[543]Lokendra Malik, "Chapter 5 Post-Retirement Assignments of the Supreme Court Judges in India: A Critical Analysis" *SSRN Electronic Journal* 39 (2020).
[544]*Ibid.*
[545]*Ibid.*
[546]*Id.*

- Judges will perform their duties and exercise powers as judge honourably, faithfully, impartially, and conscientiously. [547]
- Not exercise any political or administrative functions, or engage in any other occupation of a professional nature, it is relatively more common for judges to resign from the Bench before the end of their terms if a reason exists that precludes them to exercise their functions.[548]
- Article 24 (1) provides that "if a member of the Court considers that 'for some special reasons' he should not take part in the decision of a particular case, he should inform the President."[549] The wording of the provision very clear so as to allow its application in a variety of circumstances and to ensure that any possible appearance of bias is voluntary addressed by the judge.
- Wrongdoing by judges will not be presumed.
- Judge has to work on the self-regulation principles.
- Edible equilibrium between judge's self-autonomy and judicial accountability.
- A judge has a constitutional duty when despairing justice and rendering judgements fairly while presiding once a case. When judges are assigned to a case, they should review the facts of the case impartially and determine whether they have any conflict of interest that would possibly prevent them from being impartial, ethical and fair.
- There is no statute in India that specifies the minimum procedure that judges must follow to ensure impartiality. However, courts have always insisted that judges and other adjudicatory authorities must adhere to impartiality principles. The principles of natural justice have evolved alongside the progress of civilization.

[547]Chiara Giorgetti, "The Challenge and Recusal of Judges at the International Court of Justice" *Challenges and Recusals of Judges and Arbitrators in International Courts and Tribunals* 3–33 (2015).
[548]*Ibid.*
[549] Statute of The International Court of Justice, 1945, art.24.

Hypothesis testing on the basis of non-empirical data:

- Judicial awareness and constitutional morality are necessary to implement especially in the present Indian judicial system.
- Implied interference by external factors in the judicial process is a threat to judicial impartiality.

These two hypotheses were tested by the researcher on the basis of non-empirical data and observation made in this chapter, it has been proved. Reasons to prove these hypotheses have been mentioned earlier in this chapter while discussing post-retirement recruitments and instances of recusal by the SC judges. The implied political interference in the judicial process and judgement is alleged to be a regular phenomenon. For the post-retirement benefits, judges have given favourable judgements to the government which is one of the potential threats to judicial impartiality.

CHAPTER-7

EMPIRICAL STUDY AND OBSERVATIONS

7.1 Observations of Non-Doctrinal Data[550]:

Sample collected from various sources. Most of the respondents were from legal backgrounds, they were aware about the judiciary and courts process. Some samples were collected from the non-legal background for the purpose of knowing general public opinion. As from the below charts, it would show that most of the samples were from Lawyers and Professors. Professors were aware of the enormous area of present research topic. Lawyers from High Courts and District courts were randomly selected to get accurate data for this present topic.

Classification of data:

Total **390** samples were collected from the respondents for this research purpose and this number is still increasing because the Google form open, so there are chances that it will cross up to more than 400. There are two reports of evaluations first report is 120 respondents and Second report is 270 respondents.

Table No. 7.1: Stratification of Samples

Category of sample	Numbers
Academicians	6
Advocates	167
Assistant professors in Law	31
Civil Judge	01
CS	01
Law Students	125
Businessmen	04
gender equality Activist	02
Engineers	07
CA students	01

[550]This observation has been collected through circulated Google form where response collected from lawyers, academicians, various professionals, professors and legal experts.

Category of sample	Numbers
Central Government officer	01
Officers relating to finance	05
Dentist	01
HR, IT manager	02
Lecturer	04
Professor in Law	04
Librarian	01
Research scholar	03
Service	09
Tax consultant	01
Teaching in law	14
Total	**390**

FIRST GOOGLE REPORT:

This report collection of 113 samples of respondents and evaluation of their responses.

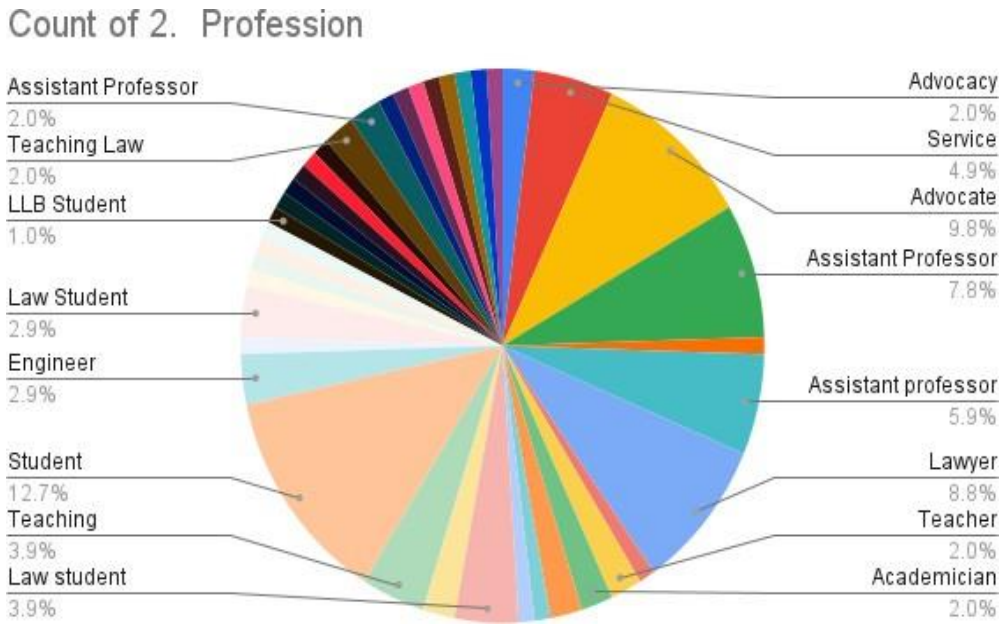

Fig. No. 7.1: Category of Profession of respondents

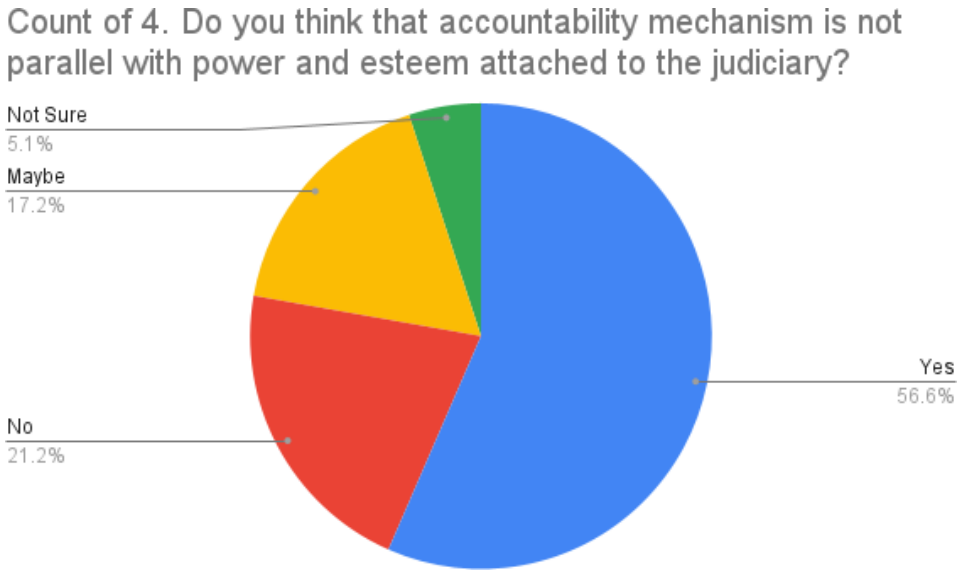

Fig. No. 7.2: Data on Research Question No.1

Report:

In present figure No. 2 Research question: Do you think that accountability mechanism is not parallel with power and esteem provided to the Indian Judiciary. Answer of this question given

Yes	56.6%
No	21.2%
May Be	17.2%
Not Sure	5%

Result:

So, on this basis of data collected from respondents; they were of the opinion that the accountability mechanism is not equivalent to power and respect provided to Judiciary. Only 21% answers are in Positive relating to accountability mechanism in the judicial system in India. 57% strictly negative about Judicial Accountability Mechanism and 22.2% combine (May be + Not sure) towards the research questions.

So, the result has been given in favour of the Research Question.

Answer – Yes (Accountability mechanism is absent)

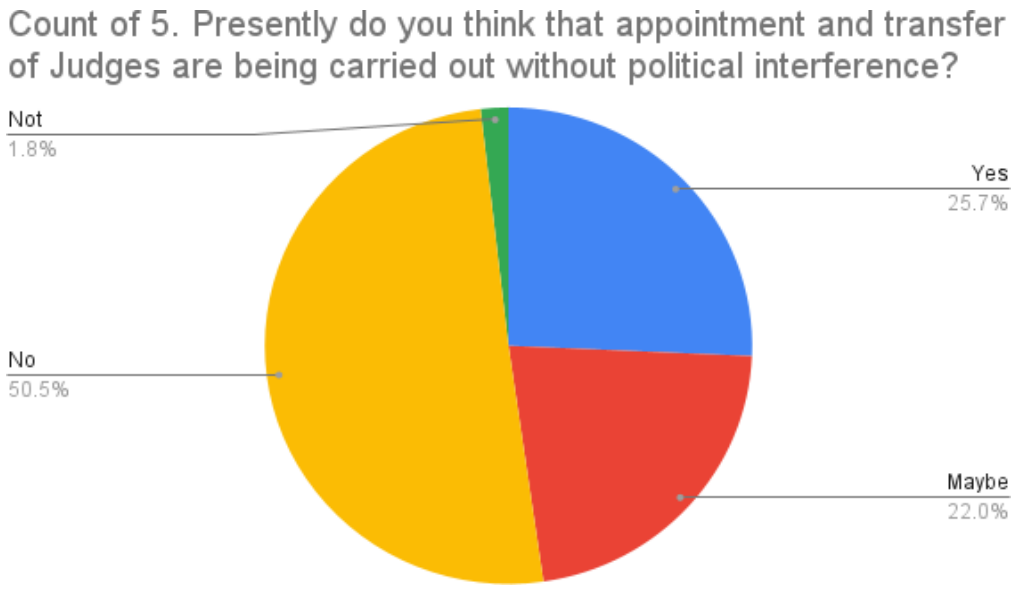

Fig. No. 7.3: Data of Research Question No.2

Report:

- Research question: - Presently do you think that appointment and transfer of Judges are being carried out without political interference?

  Answer of this question given in %

Yes	25.7%
No	50.5%
May Be	22.0%
NOT Sure	1.8%

Result:

So, on this basis of data collected from respondents; they were of the opinion that appointment and transfer of Judges are being carried out without political interference, only 25.7% answers is in Positively gave the answer. 50.5% strictly negative about appointments not carried out without political interference. It means more than 50% respondents think that there is direct and indirect political interference in Judicial Appointments. And 23.8% are not sure about their opinion.

- **Answer- In favour of Research Question - So, result has been given in favour of the Research Question.**

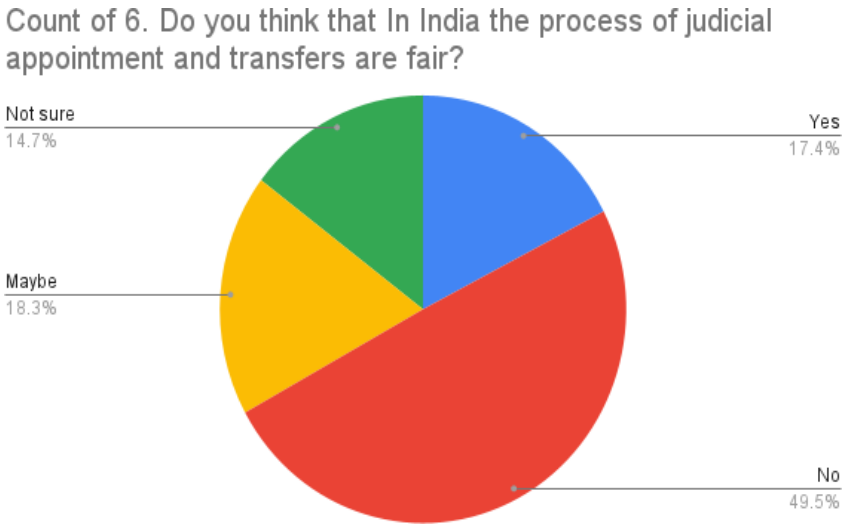

Fig. No. 7.4: Data of Research Question No.3

Report:

- **Research question:** - Do you think that In India the process of judicial appointment and transfers are fair?
- Answer of this question given in %

Yes	17.4%
No	49.5%
May Be	18.3%
Not Sure	14.7%

- **Result:** So, on this basis of data collected from respondents; they were of the opinion that in India the process of judicial appointment and transfers are not fair. Only 17.4% respondents answered positively. 49.5% are strictly negative about appointment and transfer of judges in India is not fair. It means 50% respondents think that in India Judicial Appointments are not fair andtransparent. And 33% are not sure about their opinion.
- **Result – Appointment and transfer in India is not fair and transparent.**

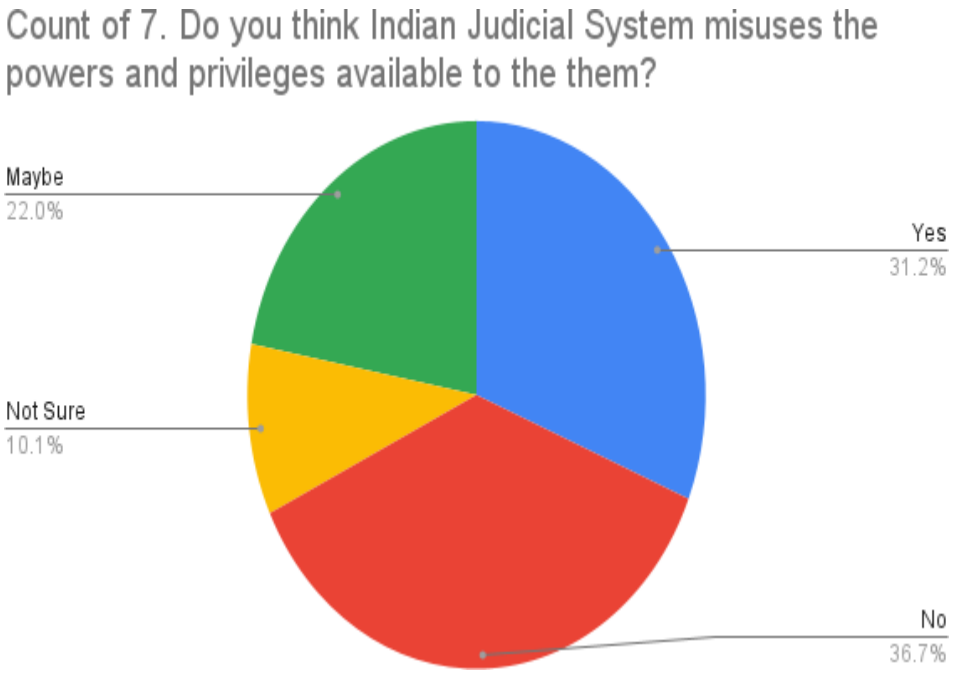

Fig. No. 7.5: Data of Research Question No.4

Report:

Research question: - Do you think the Indian Judicial System misuses the powers and privileges available to them?

Answer of this question given in %

Yes	31.2%
No	36.7%
May Be	22%
Not Sure	10.1%

- **Result:** So, on this basis of data collected from respondents; 36.7% opinion that in India the Indian Judicial system is not misusing the power and esteem available to them, whereas 31.2% respondents gave answers in the positive sense. 10.1% of people are not sure about their answer and 22% are probable for their answer.
- **Answer – Negative about Research Question (Indian Judiciary not misusing the power and esteem)**

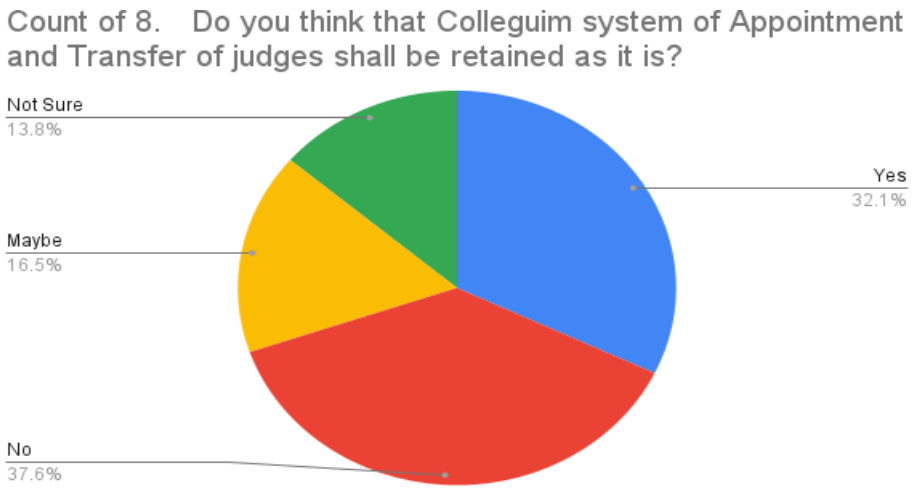

Fig. No. 7.6: Data of Research Question No.5

Report:

Research question:

Do you think that collegium system of Appointment and Transfer of judges shall be retained as it is?

Answer of this question given in %

Yes	32.1%
No	37.6%
May Be	16.5%
Not Sure	13.8 %

- **Result:** So, on this basis of data collected from respondents; majority is of the opinion that in India the collegium system of Appointment and Transfer of judges shall not be retained as it is. So, it needs to be changed. 37.6% respondents feel that there is a need for some changes in the appointment and transfer system of the judiciary in India. 32.1% respondents are positive about the present mechanism of appointment and transfer of the judicial system.
- **Answer – Negative about Research Question (**Collegium system of Appointment and Transfer of judges shall be changed**)**

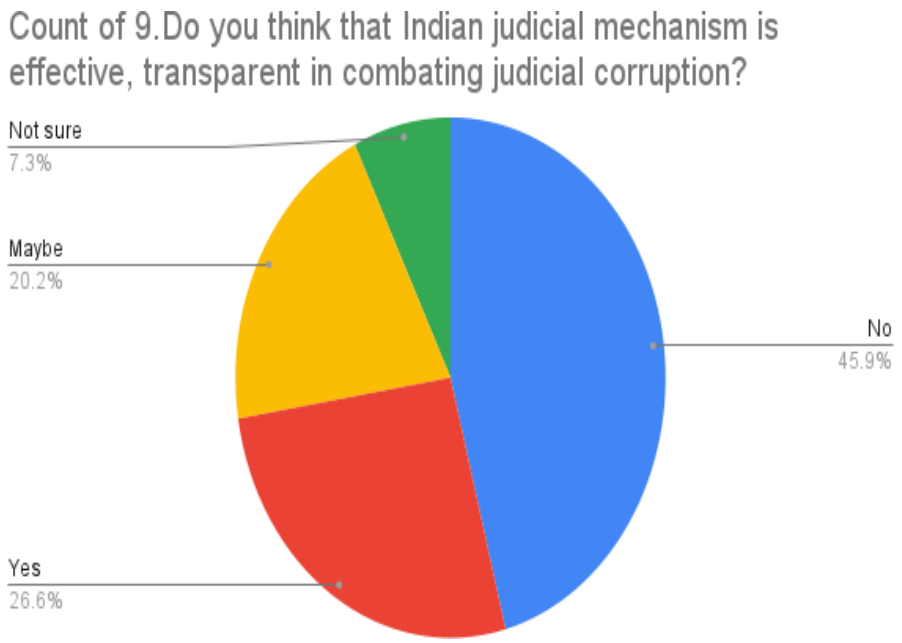

Fig. No. 7.7: Data of Research Question No.6

Report:

Research question: Do you think that the Indian judicial mechanism is effective, transparent in combating judicial corruption?

Answer of this question given in %

Yes	26.6%
No	45.9%
May Be	20.2%
NOT Sure	7.3 %

- **Result**: So, on this basis of data collected from respondents; majority is of the opinion that the Indian Judicial mechanism is not effective, transparent in combating judicial corruption. 45.9% respondents have given answers in a negative manner and only 20.2% respondents were satisfied with present judicial performance. It means that Present judicial system is ineffective and not obvious in combating judicial corruption in India.
- **Answer – Negative about Research Question (**Present Judicial system is ineffective to fighting with corruption in India **)**

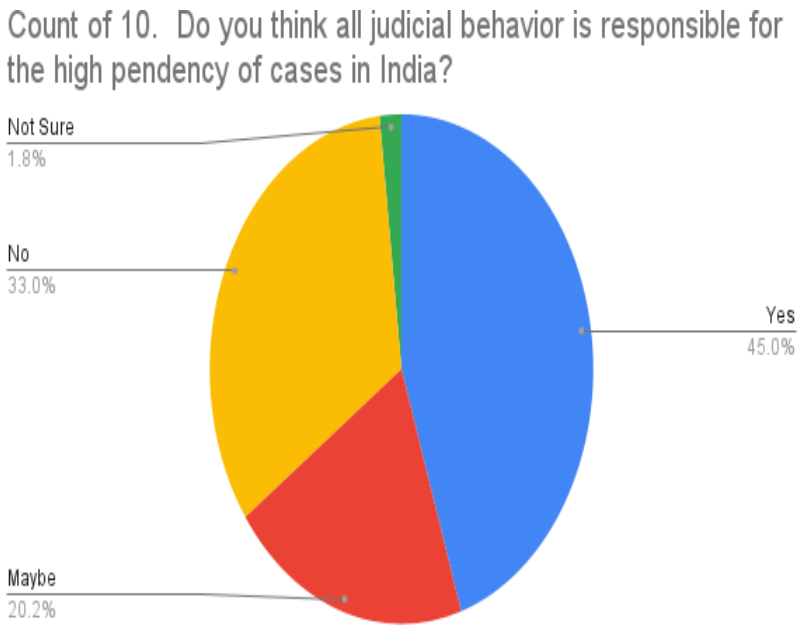

Fig. No. 7.8: Data of Research Question No.7

Report:

Research question: Do you think all judicial behavior is responsible for the high pendency of cases in India?

Answer of this question given in %

Yes	45%
No	33%
May Be	20.2%
NOT Sure	7.3 %

- **Result:** So, on this basis of data collected from respondents; majority is in opinion that judicial behaviour is responsible for the high pendency cases in India. 45% respondents have given answers in positive manner and only 33% respondents were given answer in Negative manner. 20.2% respondents are probable about Research Question whereas 7.3% respondents are non-probable about Research Question.
- **Answer – Positive in favour of Research Question (**Judicial behaviour is responsible for the pendency cases in India**)**

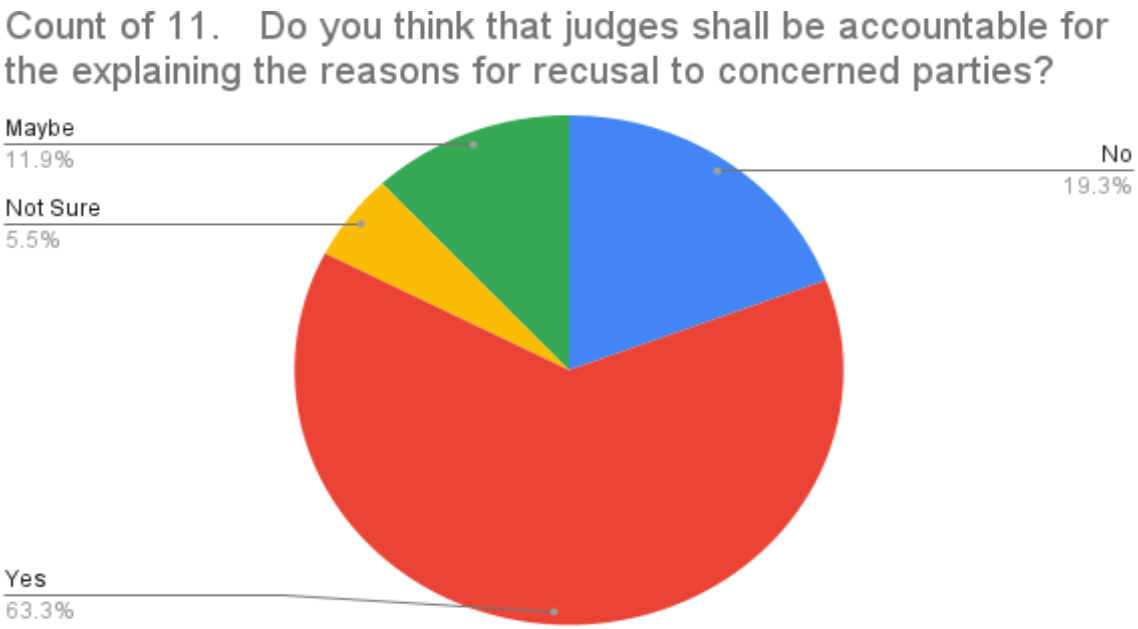

Fig. No. 7.9: Data of Research Question No.8

Report:

Research question: "Do you think that judges shall be accountable for the explaining the reasons for recusal to concerned parties?"

Answer of this question given in %

Yes	63.3%
No	19.3%
May Be	11.9%
Not Sure	5.5 %

- **Result:** So, on this basis of data collected from respondents; majority is in opinion that "judges shall be accountable for the explaining the reasons for recusal to concerned parties". 63.3% respondents have given answer in Positive manner and only 19.3% respondents were given answer in Negative manner. 11.9% respondents are probable about Research Question whereas 5.5% respondents are non-probable about Research Question.
- **Answer – Positive in favour of Research Question (**judges shall provide the reasons for recusal to concerned parties.)

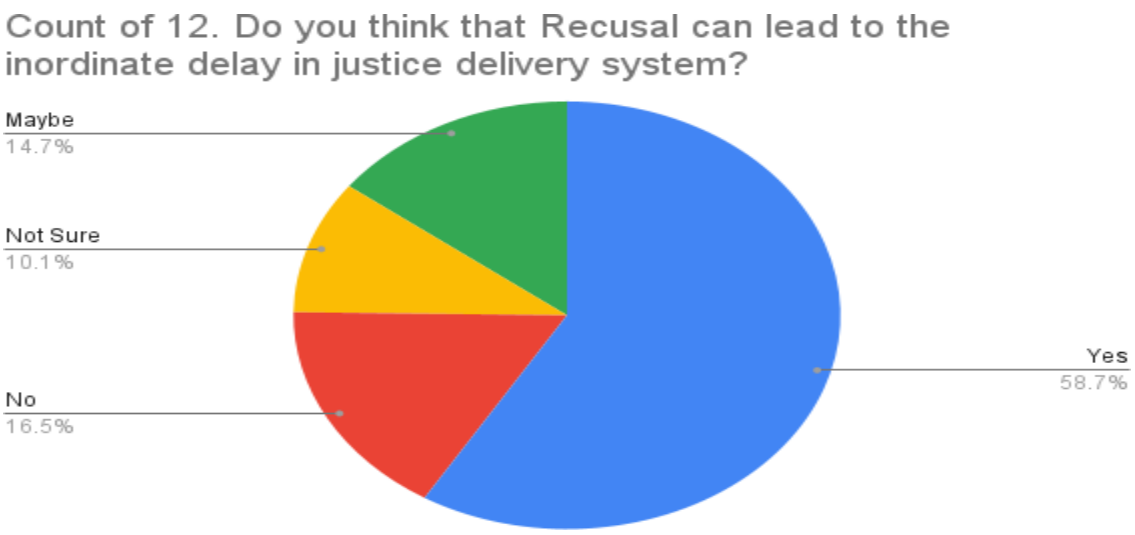

Fig. No. 7.10: Data of Research Question No.9

Report:

Research question: Do you think that Recusal can lead to the inordinate delay in the justice delivery system?

Answer of this question given in %

Yes	58.7%
No	16.5%
May Be	14.7%
Not Sure	10.1 %

Result:

- So, on this basis of data collected from respondents; majority opinion is in opinion practice of recusal is leading to the inordinate delay in the justice delivery system. 58.7% respondents have given answers in Positive manner and only 16.5% respondents were given answer in Negative manner. 14.7% respondents are probable about Research Question whereas 10.1% respondents are non-probable about Research Question. So, conclusion may derive that Recusal is responsible for the inordinate delay in the judicial system in India.
- **Answer – Positive in favour of Research Question (**Recusal may lead to delay in Judicial proceedings)

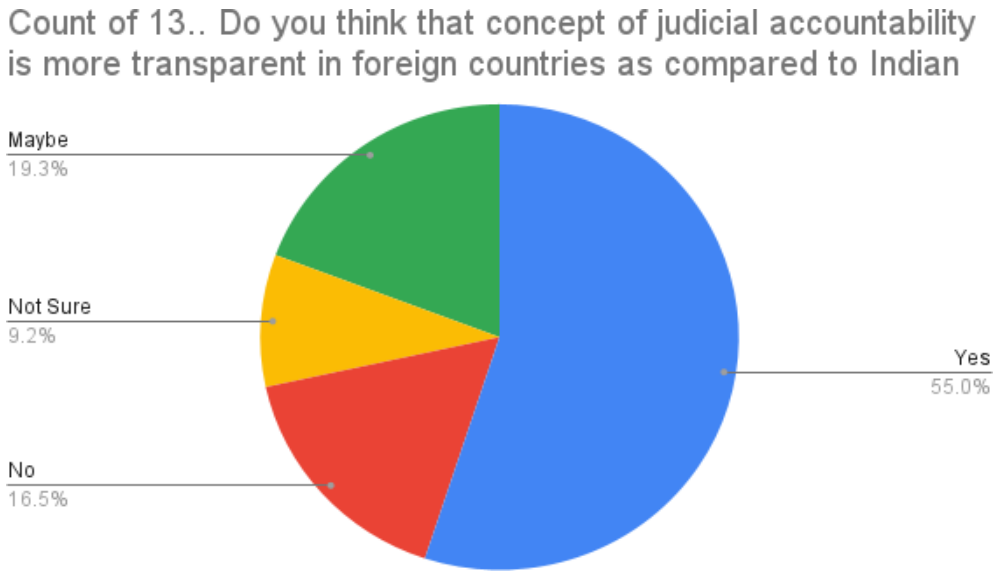

Fig. No. 7.11: Data of Research Question No.10

Report:

Research question: Do you think that the concept of judicial accountability is more transparent in foreign countries as compared to Indian Judiciary?

Answer of this question given in %

Yes	55%
No	16.5%
May Be	19.3%
Not Sure	9.2 %

Result:

- So, on this basis of data collected from respondents; majority in opinion judicial accountability is more transparent in foreign countries as compared to Indian Judiciary. 55% respondents have given answers in positive manner and only 16.5% respondents were given answer in Negative manner. 19.3% respondents are probable about Research Question whereas 9.2% respondents are non-probable about Research Question. So, conclusion may derive that judicial accountability in foreign countries is transparent as compared to Indian judiciary.
- **Answer – Positive in favour of Research Question (**Concept of Judicial Accountability more available in foreign Countries if we compare with Indian Judicial Accountability.)

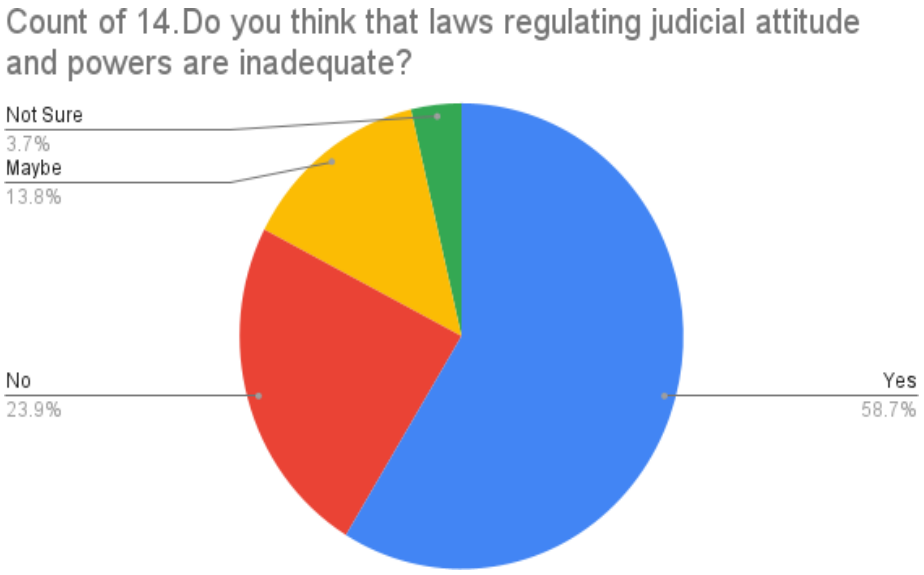

Fig. No. 7.12: Data of Research Question No.11

Report:

Research question: Do you think that laws regulating judicial attitude and powers are inadequate?

Answer of this question given in %

Yes	58.7%
No	23.9%
May Be	13.8%
Not Sure	3.7 %

Result:

So, on this basis of data collected from respondents; majority is in opinion laws regulating judicial attitude and powers are inadequate in the Indian judicial system. 58.7% respondents gave answers in a positive manner and only 23.9% respondents were given answers in a negative manner. 13.8% respondents are probable about Research Question whereas 3.7% respondents are non-probable about Research Question. So, conclusion may derive, the Indian laws regulating judicial conduct, behavior and power are insufficient.

Answer – Positive in favour of Research Question (laws regulating judicial attitude and powers are inadequate in India.)

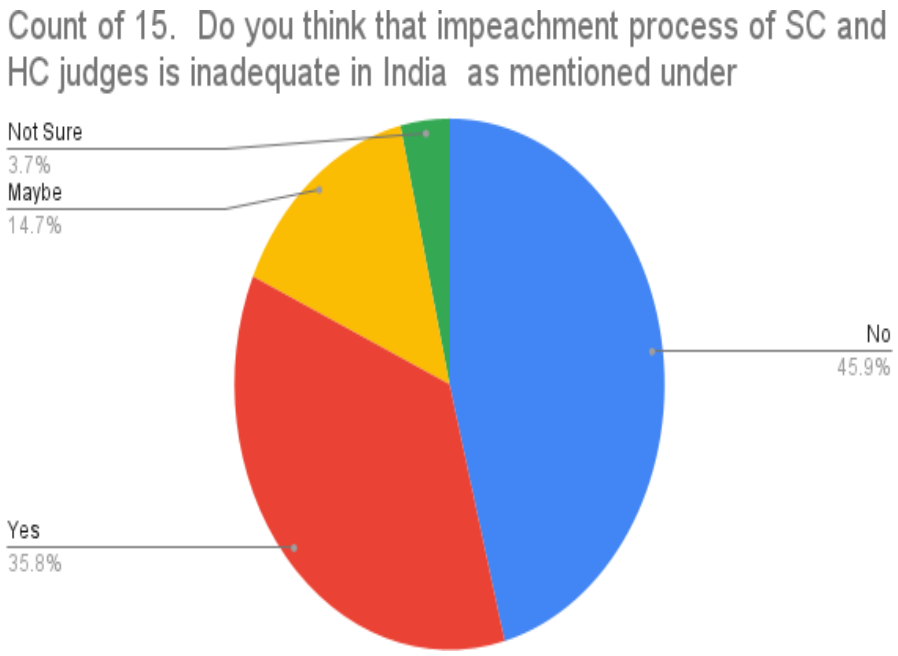

Fig. No. 7.13: Data of Research Question No.12

Report:

Research question: Do you think that the impeachment process of SC and HC judges is inadequate in India as mentioned under the Constitution of India?

Answer of this question given in %

Yes	45.9%
No	35.8%
May Be	14.7%
Not Sure	3.7 %

Result:

So, on this basis of data collected from respondents; majority is of the opinion that the impeachment process of SC and HC judges is inadequate in India as mentioned under the Constitution of India. 45.9% respondents gave answers in a positive manner and only 35.8% respondents were given answers in a negative manner. 14.7% respondents are probable about Research Question whereas 3.7% respondents are non-probable about Research Question.

So, Conclusion may derive impeachment process available for removal of judges of SC & HC in India is not sufficient.

Answer – Positive in favour of Research Question (Impeachment Process is inadequate in India.)

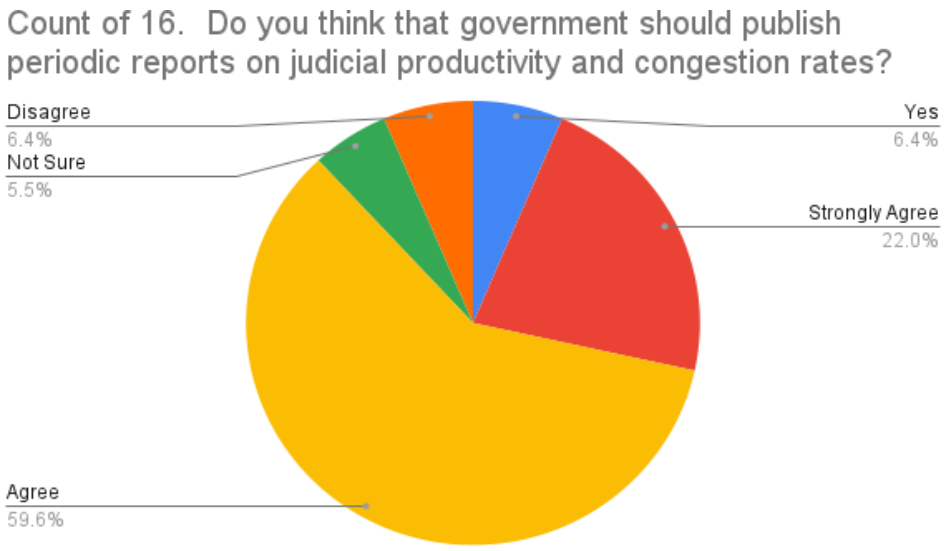

Fig. No. 7.14: Data of Research Question No.13

Report:

Research question: Do you think that government should publish periodic reports on judicial productivity and congestion rates?

Answer of this question given in %

Agree	59.6%
Strongly Agree	22.0%
Yes	6.4%
Disagree	6.4 %
Not Sure	5.5%

Result:

So, on this basis of data collected from respondents; majority is in opinion that the government should publish periodic reports on judicial productivity and congestion rates. Total (59.6+22+6.4) = 88% respondents have given answers in a positive manner and only 6.4% respondents were given answers in a negative manner and 5.5% respondents are non-probable about Research Question.

So, conclusion may be that the government should publish periodic reports on judicial productivity and congestion rates. It means people are more intended to have Judicial Accountability in India.

Answer – Positive in favour of Research Question (Strongly in favour to publish periodic reports and judicial productivity)

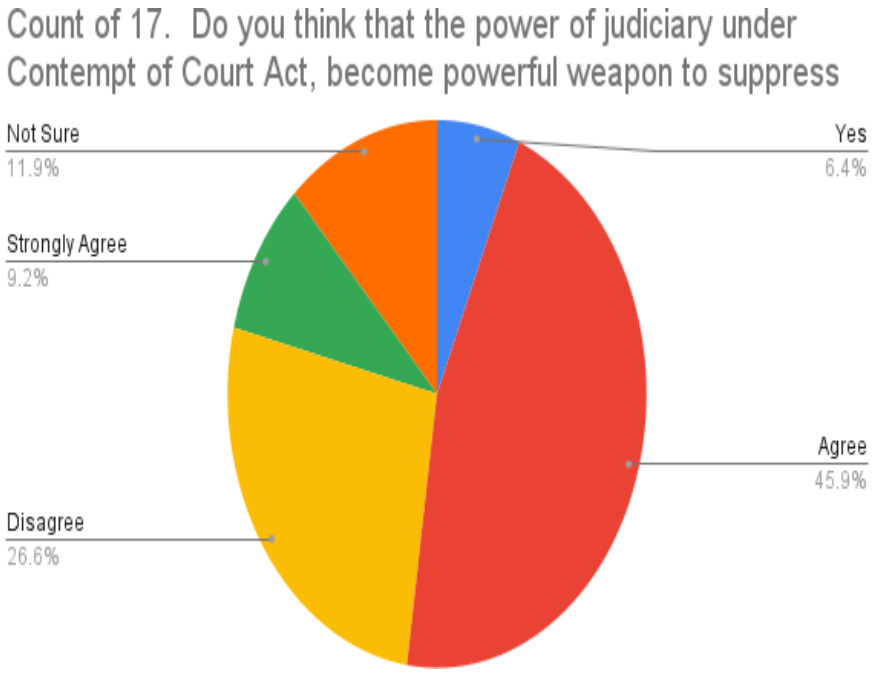

Fig. No. 7.15: Data of Research Question No.14

Report:

Research question:

"Do you think that the power of judiciary under Contempt of Court Act, become powerful weapon to suppress the public criticism or even honest evaluation of the judiciary?"

Answer of this question given in %

Agree	45.9%
Strongly Agree	9.2%
Yes	6.4%
Disagree	26.6 %
Not Sure	11.9%

Result:

So, on this basis of data collected from respondents; majority is in opinion that "power of judiciary under Contempt of Court Act, become powerful weapon to suppress the public criticism or even honest evaluation of the judiciary".[551] Total (45.9+9.2+6.4) = 61.5% respondents have given answer in Positive manner and only 26.6% respondents were given answer in Negative manner and 11.9% respondents are non-probable about Research Question.

So, conclusion may derive that the Contempt of Court Act is the hurdle for honest evaluation of Indian Judiciary. It means this Act needs to be revised.

Answer – Positive in favour of Research Question (Strongly in favour to accept that the Contempt of Court Act is being misused by Indian Judiciary for their own benefit.)

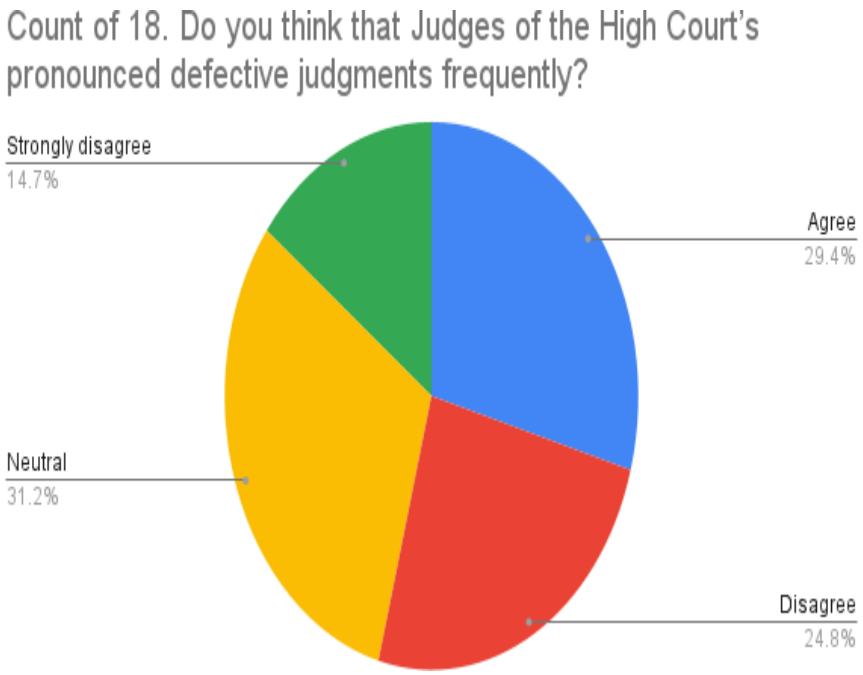

Fig. No. 7.16: Data of Research Question No.15

Report:

Research question: - Do you think that Judges of the High Court's pronounce defectivejudgments frequently?

Answer of this question given in %

Agree	29.4%
Strongly Agree	14.7%
Neutral	31.2%
Disagree	24.8 %

Result:

So, on this basis of data collected from respondents; majority is in opinion that "power of judiciary under Contempt of Court Act, become powerful weapon to suppress the public criticism or even honest evaluation of the judiciary". Total (29.4+14.7) = 44.1% respondents have given answer in Positive manner and 24.8% respondents were given answer in Negative manner and 31.2% respondents are neutral about Research Question.

So, Conclusion may derive that Judges of the High Court's pronounced defective judgments frequently. But proving chances of this proposition is not very clear because 31.2% people are neutral about present research question.

Answer – Positive in favour of Research Question (but presently here proving the research question is uncertain)

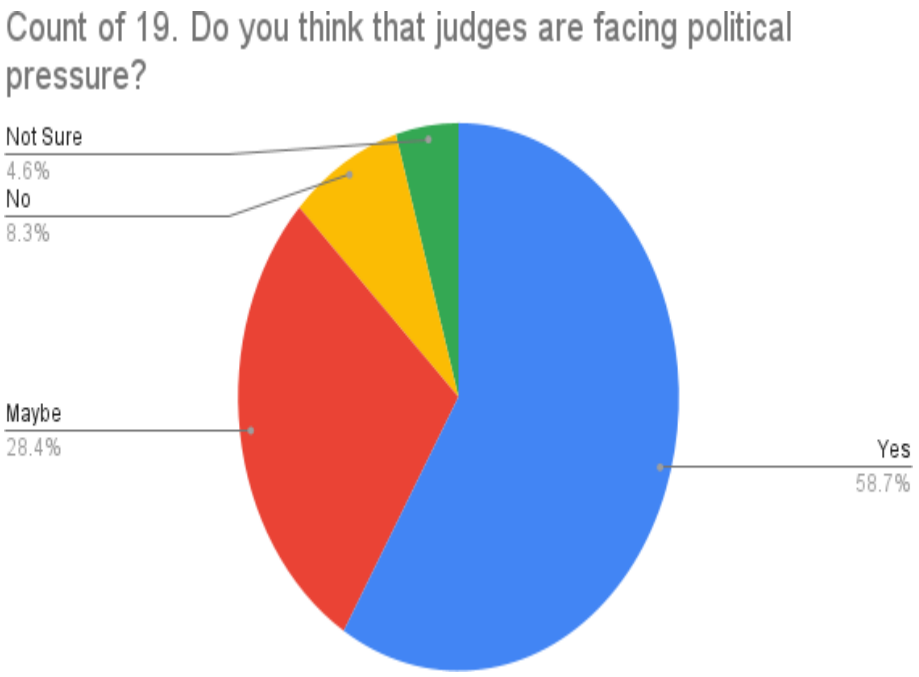

Fig. No. 7.17: Data of Research Question No.16

Report:

Research question: - Do you think that judges are facing political pressure?

Answer of this question given in %

Yes	58.7%
No	8.3%
Not Sure	4.6%
May be	28.4%

Result:

So, on this basis of data collected from respondents; majority is in opinion that the judges are facing political pressure. 58.7% respondents gave answers in a positive manner and 8.3% respondents were given answers in a negative manner. 28.4% respondents are probable about Research Question whereas 4.6% respondents are non-probable about Research Question.

So, conclusion may derive that judges are facing political pressure while pronouncing judgement.

Answer – Positive in favour of Research Question (Judges in India facing political interference and pressure)

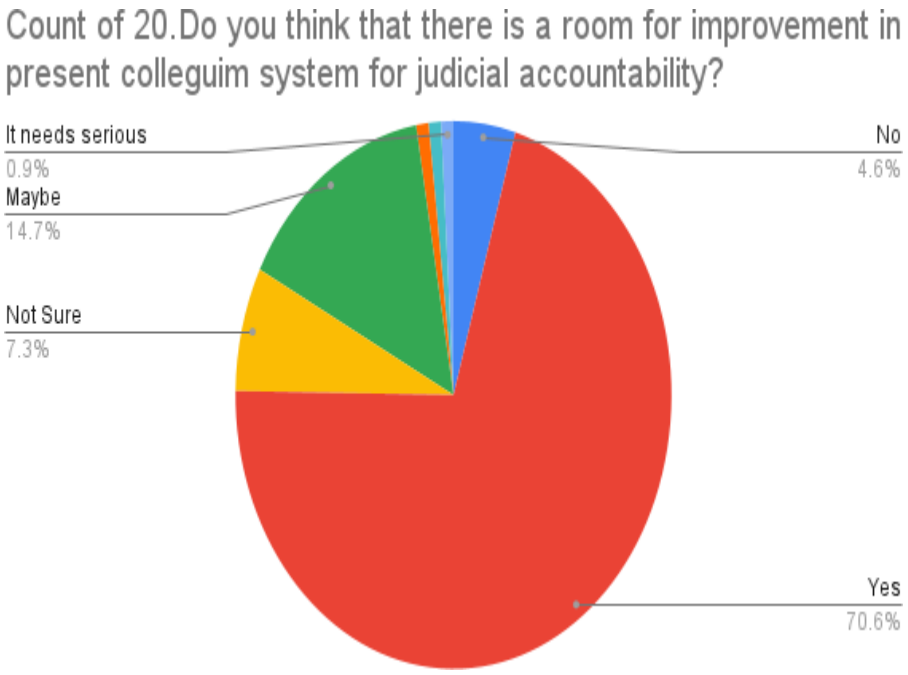

Fig. No. 7.18: Data of Research Question No.17

Report:

Research question: - Do you think that there is room for improvement in the present collegium system for judicial accountability?

Answer of this question given in %

Yes	70.6%
No	4.6%
It needs serious	0.9%
May be	14.7 %
Not Sure	7.3%

Result:

So, on this basis of data collected from respondents; majority is of the opinion that there is room for improvement in the present collegiums system for judicial accountability. Total (70.6+4.6+0.9) = 76.1% respondents have given answers in a Positive manner and 4.6% respondents were given answers in a negative manner and 7.3% respondents are non-probable for Research Question.

So, conclusion may derive that people are inclined towards improvement in present appointment and transfer of judges system in India. Most of the respondent gave decision in favour of improvement in collegium system in India.

Answer – Positive in favour of Research Question (Present collegium system shall be improved)

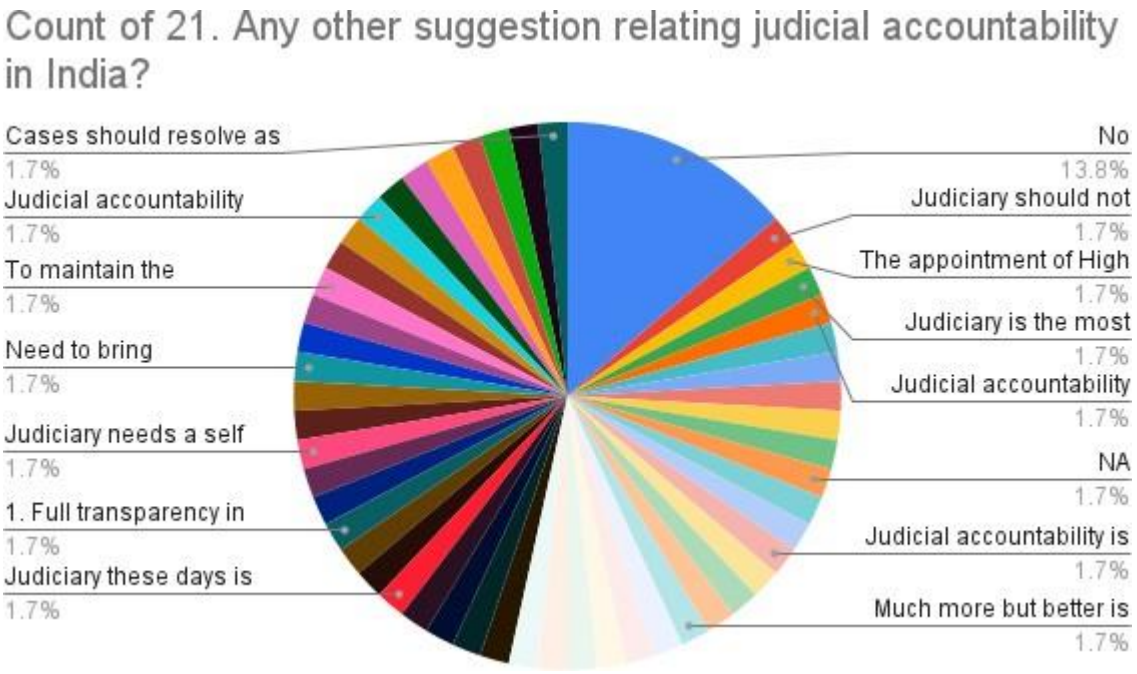

Fig. No. 7.19: Suggestions of Respondents

Suggestion given by Respondents
Judiciary should not be a victim of the government.
The appointment of High Court and Supreme Court Judges should be by taking the examination a All India Level and the High Court Judge shall not be appointed in his own city.
Judiciary is the most important pillar of society. It shall be stronger and more transparent.
Judicial accountability can be achieved through consistent reporting of the performance to a body responsible for it.
Need to amend Contempt of Court Act 1971. Indian judiciary system must be free from its executive and legislative body.
New committee for appointment.

- The mechanism and processes for holding Judicial accountability must be fair, transparent and impartial
- Speedy disposal of cases is necessary.
- Judiciary these days is being influenced in matters of its decisions by the legislature and that coul impact the delivery of fairness and justice.
- "The judges are responsible for the decisions they deliver all by themselves; it should be an independent body responsible for delivering justice and holding the integrity of the Constitution".
- "The chances of a lower court judge being promoted to the high court or Supreme Court are also paper thin. There exist a disproportionately high number of judges selected as direct appointments from the Bar in the high courts, as compared to elevations from the subordinate judiciary".
- 1. Full transparency in Appointment.
  2. Less holidays with corporate office styles.
  3. Time limit on lower courts to decide the case.
  4. Investigation and policing should be separate.
- Sheet bharti video Dekha
  2ed ARC report Dekha
  Previous judgement dekhe
  Now it's time to improvement
  Follow 2 ARC report and
  All India judiciary appointment exam.
- Empower the senior Advocates to hear and listen to the hearings and give judgements for minor and small cases to reduce the pendency of cases. Make ADR a law and not an exception.
- Judiciary needs self-introspection and reforms to strengthen judicial accountability. The Judiciary has enough power to come up with the reform. Reforms made by executives may be termed as political and with vested interests, can be a threat to the independence of judiciary. However, JR is available but it will kill a lot of time and effort.

  Judiciary is free to make these reforms, at least to fill the vacancies in HCs.

  Like Justice Ruma Pal said, "the manner of appointment of judges happened to be one of the most safeguarded secrets". The collegium system needs to be made transparent, and accountable.

  Some critics say, "We became a republic in 1947 but the judiciary is yet to understand the spirit of the republic".
- Judicial accountability in every case because the judges give justice for people but in many cases, judges are not accountable.
- Need to bring automation to expedite cases and keep Judicial system only for discretion
- Technological interventions can be a game changer in the judicial field.
- Need of reformation in the justice delivery system.

□ To maintain the independence of the judiciary, it should be allowed to work freely without any interference so as to retain the faith of the citizens.
□ Appointment of judges, should be made more frequent and in transparent manner, not by itself bu by some independent recruitment agency,
□ Direct Appointment of judges should be stopped and there should be All India Exams like IAS.
□ Judicial accountability should be governed under special strict law
□ Should be transparency in appointment of judges. It should be in the public domain on what criteria judges are appointed. Generally it is seen that their relatives are appointed which is called 'uncle judge syndrome'. It is clearly misuse of their power in appointments
□ More judges should be appointed as well as elevated from the District Court.
□ The judiciary should be designed within the constitutional framework to be fool proof, honest, impartial and independent at the same time accountable. Total isolation from political influence in appointment or judicial functions.
□ It should be transparent and fair
□ Yes, time limitation should be applicable for proper conduct of all cases on time, as drs for other professionals.
□ Cases should be resolved as early as possible. And every one should get justice

Evaluation of suggestions given by respondents:

The points which are discussed by the respondent's through headings are following;

a. All India Services level appointment;

b. More strong and transparent;

c. Consistent reporting;

d. Amendment in Contempt Act;

e. Appointment committee;

f. Speedy disposal of cases;

g. Judiciary are influenced by government;

h. Lower court chances to higher judiciary are very low;

i. Technological intervention, reformation;

j. Governance under strict law;

k. Less holidays to judges, there should be time limit;

l. Senior advocate as adjudicator;

m. Self-introspection of judges;

n. Uncle judge syndrome shall remove;

o. And all others etc.

After observing all suggestions, it is clear that all respondents agree to have reform in the judiciary. More transparent removal, transfer and appointment of judiciary were the keen crux of all suggestions. All suggestions were in favour of the research topic and it was not mentioned by any respondents that the judicial system has to be maintained as it is. All suggestions were given to remove the recent issues of the judiciary.

SECOND GOOGLE REPORT

This report is collected from remaining 270 samples of the respondents and this was evaluated on April 2022.

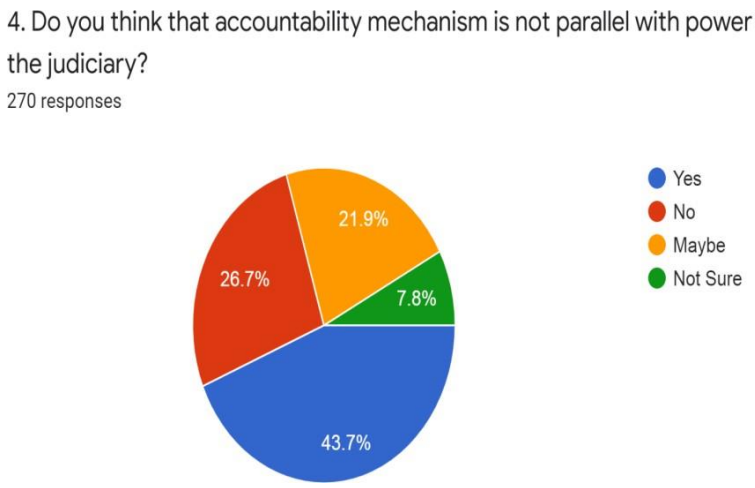

Fig. No. 7.20: Data of Research Question no. 1

Research question: Do you think that accountability mechanism is not parallel with power and esteem provided to the Indian Judiciary.

Answer of this question given

Yes	43.7%
No	26.7%
May Be	21.9%
Not Sure	7%

Result:

So, on this basis of data collected from respondents; they were of the opinion that the accountability mechanism is not equivalent to power and respect provided to Judiciary. Only 26% answers are in Positive relating to accountability mechanism in the judicial system in India. 43.7% strictly negative about Judicial Accountability Mechanism and 28.9% combine (May be + Not sure) towards the research questions.

So, the result has been given in favour of the Research Question.

Answer – Yes (Accountability mechanism is absent)

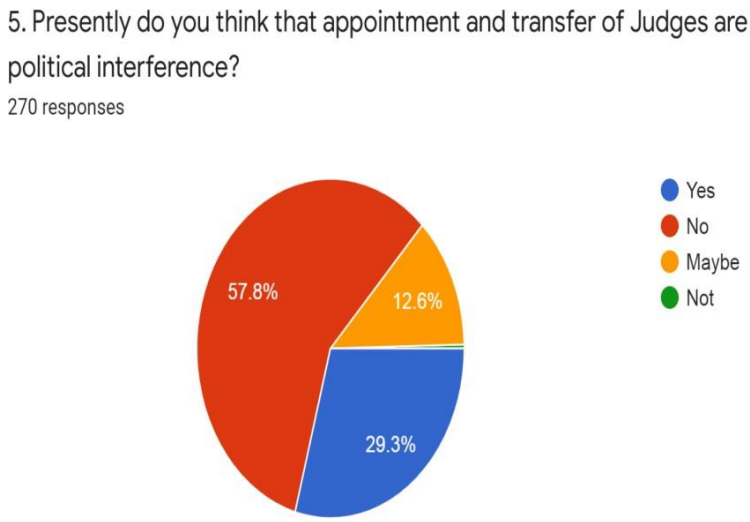

Fig. No. 7.21: Data of Research Question no. 2

Research question: Presently do you think that appointment and transfer of Judges are being carried out without political interference?

Answer of this question given in %

Yes	29.3%
No	57.8%
May Be	12.6%
Not Sure	0%

- **Result:** So, on this basis of data collected from respondents; they were of the opinion that appointment and transfer of Judges are being carried out without political interference, only 29.3% answers is in Positively gave the answer. 57.8% strictly negative about appointments not carried out without political interference. It means more than 50% respondents think that there is direct and indirect political interference in Judicial Appointments.
- **Answer- In favour of Research Question - So, result has been given in favour of the Research Question.**

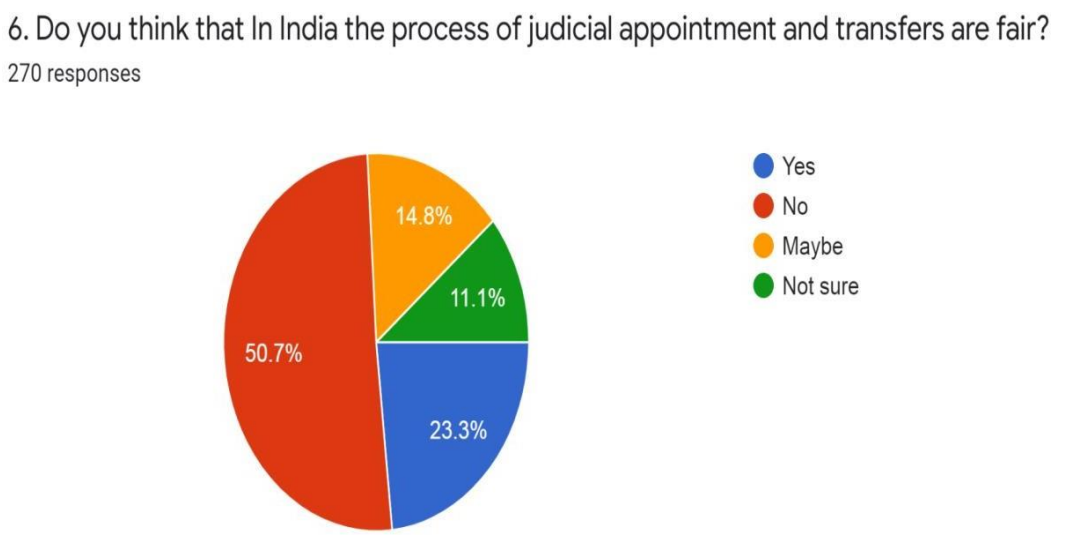

Fig. No. 7.22: Data of Research Question no.3

Research question: Do you think that In India the process of judicial appointment and transfers are fair?

Answer of this question given in %

Yes	23.3%
No	50.7%
May Be	23.3%
Not Sure	11.1%

Result: So, on this basis of data collected from respondents; they were of the opinion that in India the process of judicial appointment and transfers are not fair. Only 23.3% respondents answered positively. 50.7% are strictly negative about appointment and transfer of judges in India is not fair. It means 50% respondents think that in India Judicial Appointments are not fair and transparent. And 34% are not sure about their opinion.

- **Result – Appointment and transfer in India is not fair and transparent.**

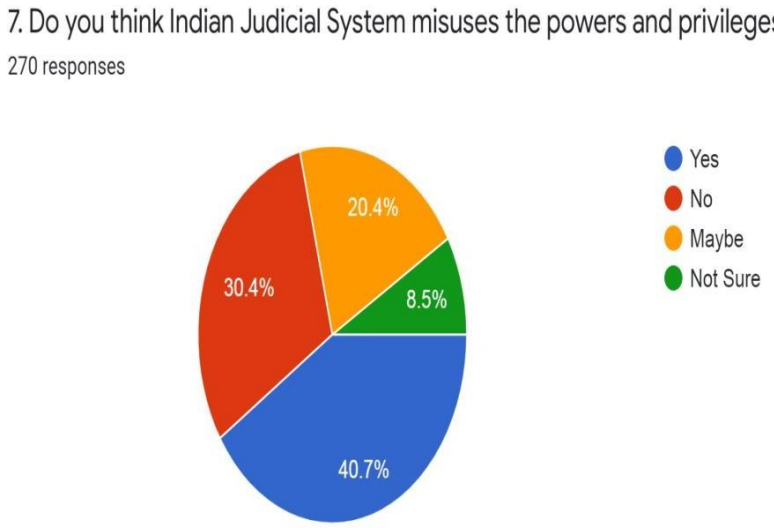

Fig. No. 7.23: Data of Research Question no.4

Research question: Do you think the Indian Judicial System misuses the powers and privileges available to them?

Answer of this question given in %

Yes	40.7%
No	30.4%
May Be	20.4%
Not Sure	8.5 %

- **Result:** So, on this basis of data collected from respondents; 30.4% opinion that in India the Indian Judicial system is not misusing the power and esteem available to them, whereas 40.7% respondents gave answers in the positive sense. 8.5% of people are not sure about their answer and 20.4% are probable for their answer.
- **Answer – Positive about Research Question (Indian Judiciary is misusing the power and esteem.)**

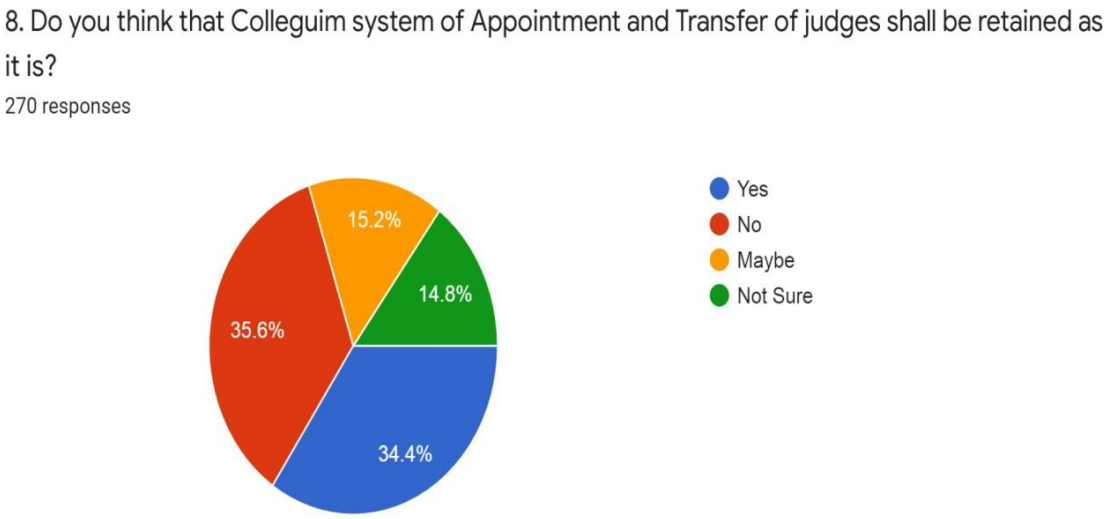

Fig. No. 7.24: Data of Research Question no.5

Research question:

Do you think that collegium system of Appointment and Transfer of judges shall be retained as it is?

Answer of this question given in %

Yes	34.4%
No	35.6%
May Be	15.2%
Not Sure	14.8%

- **Result:** So, on this basis of data collected from respondents; majority is of the opinion that in India the collegium system of Appointment and Transfer of judges shall not be retained as it is. So, it needs to be changed. 35.6% respondents feel that there is a need for some changes in the appointment and transfer system of the judiciary in India. 34.4% respondents are positive about the present mechanism of appointment and transfer of the judicial system. Answer of this research question is non-probable.
- **Answer – Negative about Research Question (**Collegium system of Appointment and Transfer of judges shall be changed**)**

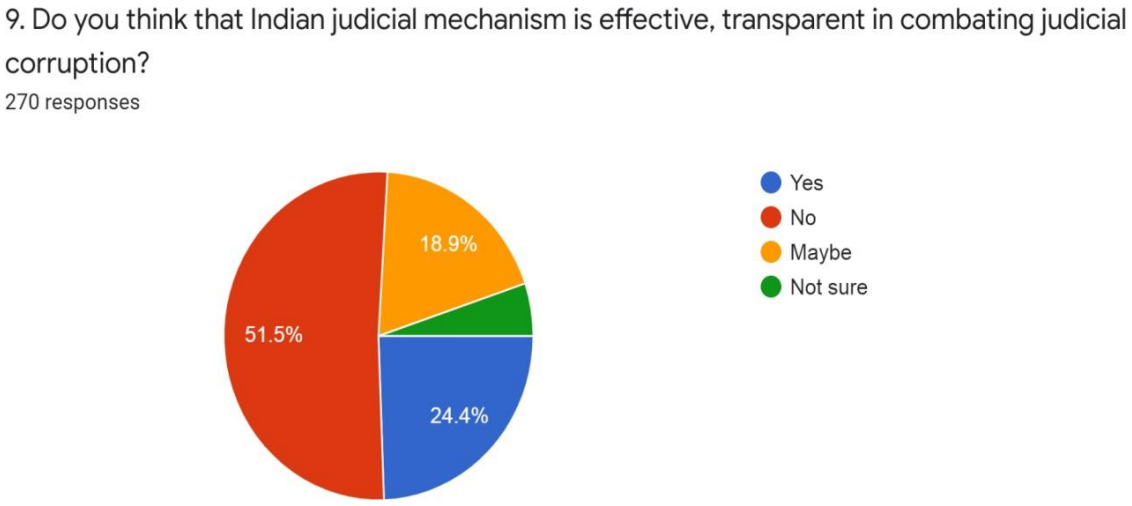

Fig. No. 7.25: Data of Research Question no.6

Research question:

Do you think that the Indian judicial mechanism is effective, transparent in combating judicial corruption?

Answer of this question given in %

Yes	24.4%
No	51.5%
May Be	18.9%
Not Sure	6 %

- **Result:** So, on this basis of data collected from respondents; majority is of the opinion that the Indian Judicial mechanism is not effective, transparent in combating judicial corruption. 51.5% respondents have given answers in a negative manner and only 24.4% respondents were satisfied with present judicial performance. It means that Present judicial system is ineffective and not obvious in combating judicial corruption in India.

  Answer – Negative about Research Question (Present Judicial system is ineffective to fighting with corruption in India.)

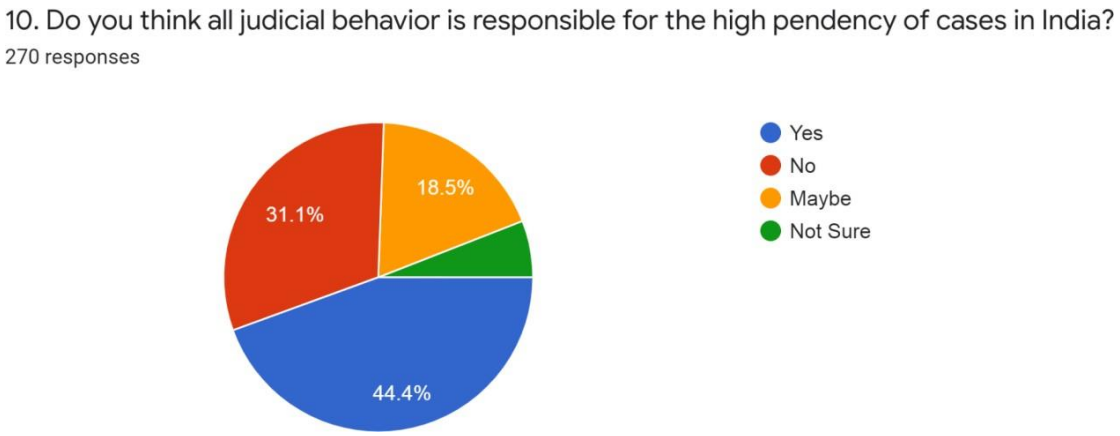

Fig. No. 7.26: Data of Research Question no.7

Research question: Do you think all judicial behavior is responsible for the high pendency of cases in India?

Answer of this question given in %

Yes	44.4%
No	31.1%
May Be	18.5%
Not Sure	6%

Result:

So, on this basis of data collected from respondents; majority is in opinion that judicial behaviour is responsible for the high pendency cases in India. 44.4% respondents have given answers in positive manner and only 31% respondents were given answer in Negative manner. 18.5% respondents are probable about Research Question whereas 6% respondents are non-probable about Research Question.

Answer – Positive in favour of Research Question (Judicial behaviour is responsible for the pendency cases in India**)**

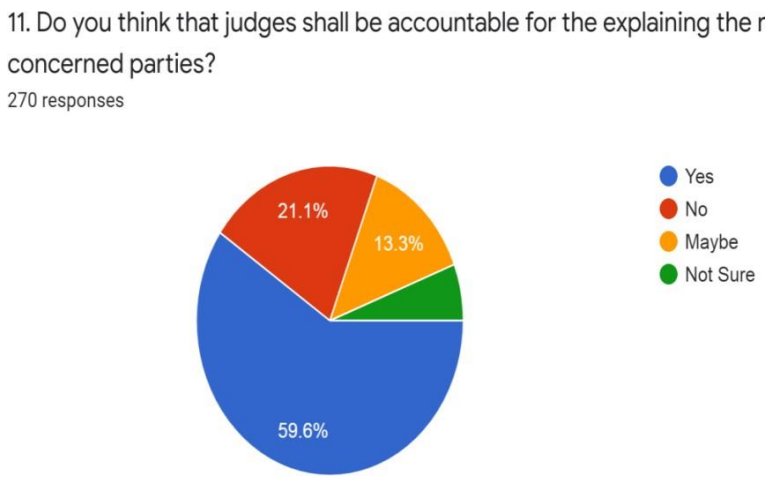

Fig. No. 7.27: Data of Research Question no.8

Research question:

"Do you think that judges shall be accountable for the explaining the reasons for recusal to concerned parties?"

Answer of this question given in %

Yes	59.6%
No	21.1%
May Be	13.3%
Not Sure	5 %

Result:

So, on this basis of data collected from respondents; majority is in opinion that "judges shall be accountable for the explaining the reasons for recusal to concerned parties". 59.6 % respondents have given answer in Positive manner and only 21.1% respondents were given answer in Negative manner. 13.3% respondents are probable about Research Question whereas 5% respondents are non-probable about Research Question.

Answer – Positive in favour of Research Question (judges shall provide the reasons for recusal to concerned parties.)

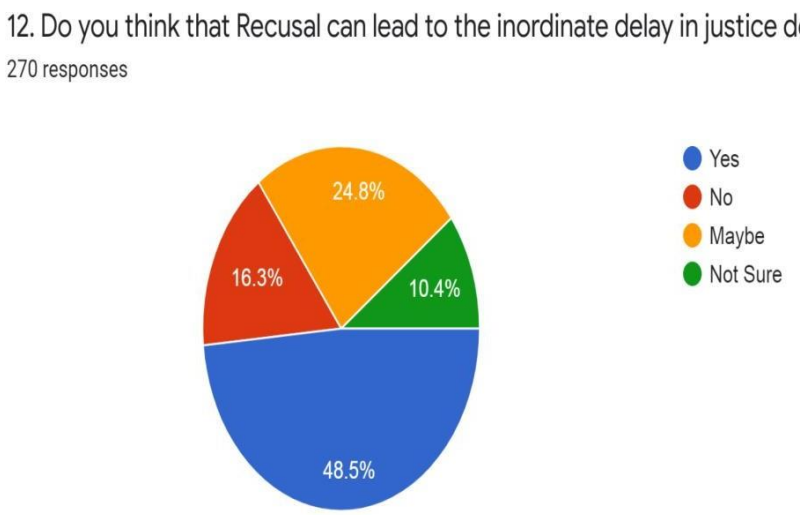

Fig. No. 7.28: Data of Research Question no.9

Research question:

Do you think that Recusal can lead to the inordinate delay in the justice delivery system?

Answer of this question given in %

Yes	48.5%
No	16.3%
May Be	24.8%
Not Sure	10.4%

Result:

So, on this basis of data collected from respondents; majority opinion is in opinion practice of recusal is leading to the inordinate delay in the justice delivery system. 48.5% respondents have given answers in Positive manner and only 16.3% respondents were given answer in Negative manner. 24.8% respondents are probable about Research Question whereas 10.4% respondents are non-probable about Research Question. So, conclusion may derive that Recusal is responsible for the inordinate delay in the judicial system in India.

Answer – Positive in favour of Research Question (Recusal may lead to delay in Judicial proceedings)

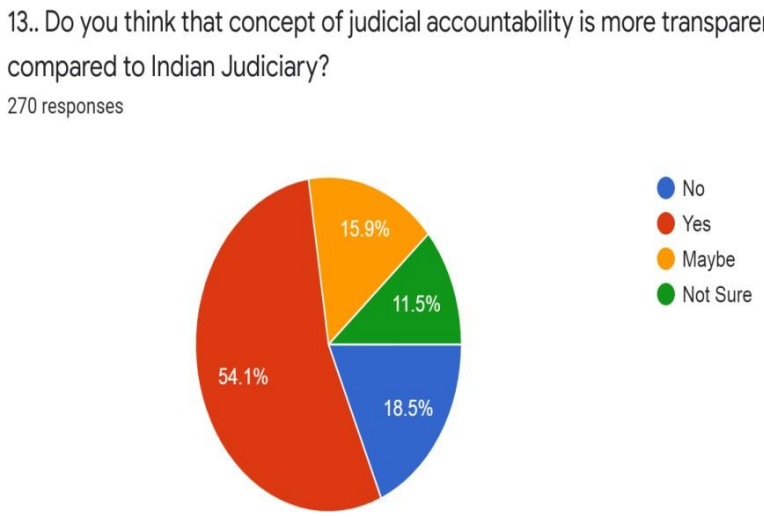

Fig. No. 7.29: Data of Research Question no.10

Research question: Do you think that the concept of judicial accountability is more transparent in foreign countries as compared to Indian Judiciary?

Answer of this question given in %

Yes	54.1%
No	18.5%
May Be	15.9%
Not Sure	11.5 %

Result:

So, on this basis of data collected from respondents; majority in opinion judicial accountability is more transparent in foreign countries as compared to Indian Judiciary. 54.1% respondents have given answers in positive manner and only 18.5% respondents were given answer in Negative manner. 15.9% respondents are probable about Research Question whereas 11.5% respondents are non-probable about Research Question. So, conclusion may derive that judicial accountability in foreign countries is transparent as compared to Indian judiciary.

Answer – Positive in favour of Research Question (Concept of Judicial Accountability more available in foreign Countries if we compare with Indian Judicial Accountability.)

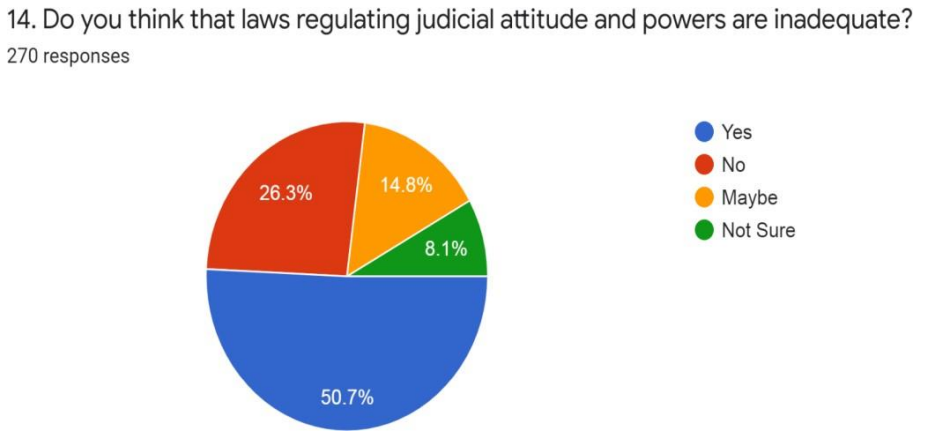

Fig. No. 7.30: Data of Research Question no.11

Research question:

Do you think that laws regulating judicial attitude and powers are inadequate?

Answer of this question given in %

Yes	50.7%
No	26.3%
May Be	14.8%
Not Sure	8.1%

Result:

So, on this basis of data collected from respondents; majority is in opinion laws regulating judicial attitude and powers are inadequate in the Indian judicial system. 50.7% respondents gave answers in a positive manner and only 26.3% respondents were given answers in a negative manner. 14.8% respondents are probable about Research Question whereas 8.1% respondents are non-probable about Research Question. So, conclusion may derive, the Indian laws regulating judicial conduct, behavior and power are insufficient.

Answer – Positive in favour of Research Question (laws regulating judicial attitude and powers are inadequate in India.)

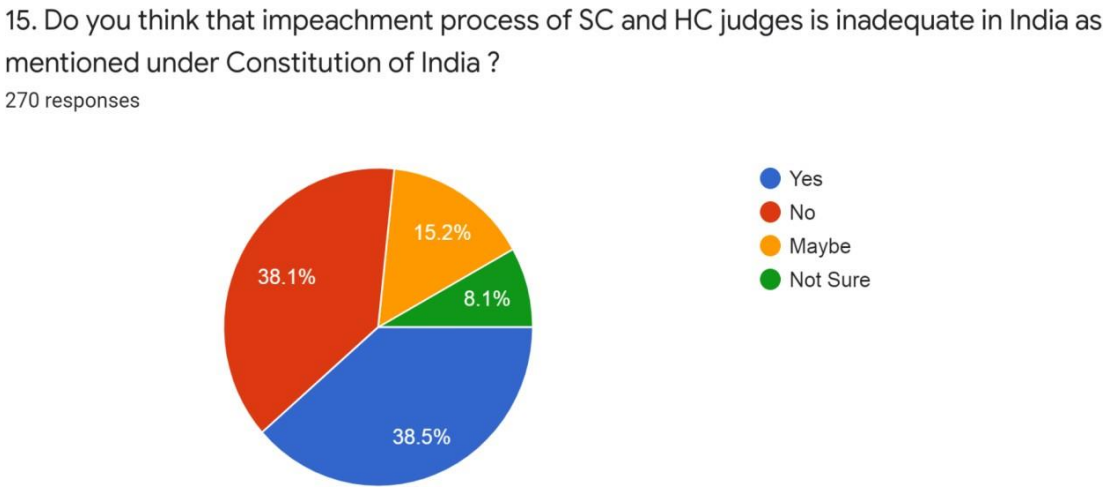

Fig. No. 7.31: Data of Research Question no.12

Research question:

Do you think that the impeachment process of SC and HC judges is inadequate in India as mentioned under the Constitution of India?

Answer of this question given in %

Yes	38.5%
No	38.1%
May Be	15.2%
Not Sure	8.1 %

Result:

So, on this basis of data collected from respondents; majority is of the opinion that the impeachment process of SC and HC judges is inadequate in India as mentioned under the Constitution of India. 38.5% respondents gave answers in a positive manner and only 38.1% respondents were given answers in a negative manner. 15.2% respondents are probable about Research Question whereas 8.1% respondents are non-probable about Research Question.

So, Conclusion may derive impeachment process available for removal of judges of SC & HC in India is not sufficient.

Answer – Positive in favour of Research Question (Impeachment Process is inadequate in India.)

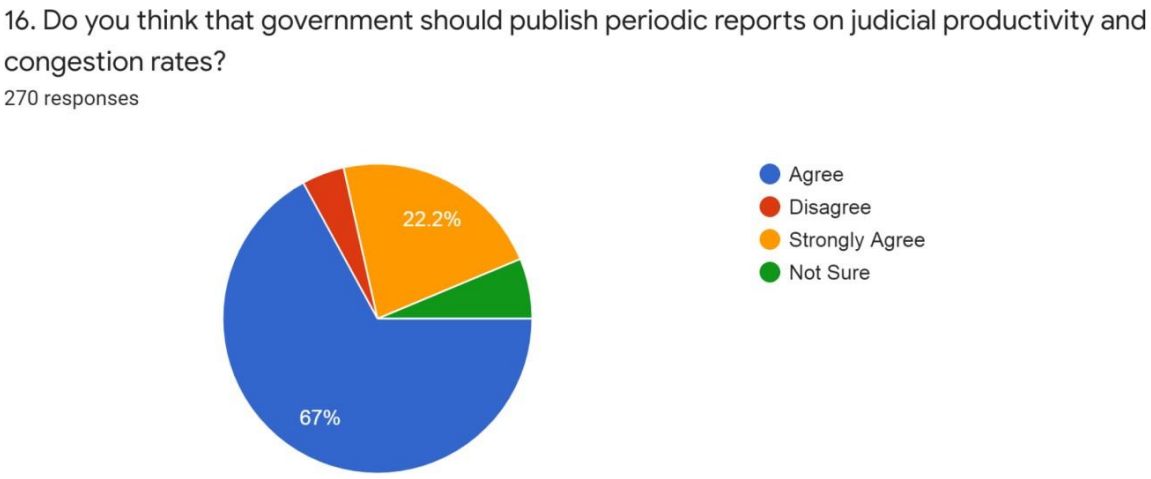

Fig. No. 7.32: Data of Research Question no.13

Research question:

Do you think that government should publish periodic reports on judicial productivity and congestion rates?

Answer of this question given in %

Agree	67.%
Strongly Agree	22.2%
Yes	6.%
Disagree	5%

Result:

So, on this basis of data collected from respondents; majority is in opinion that the government should publish periodic reports on judicial productivity and congestion rates. Total (67+22+6) = 95% respondents have given answers in a positive manner and only 5% respondents were given answers in a negative manner.

So, conclusion may be that the government should publish periodic reports on judicial productivity and congestion rates. It means people are more intended to have Judicial Accountability in India.

Answer – Positive in favour of Research Question (Strongly in favour to publish periodic reports and judicial productivity)

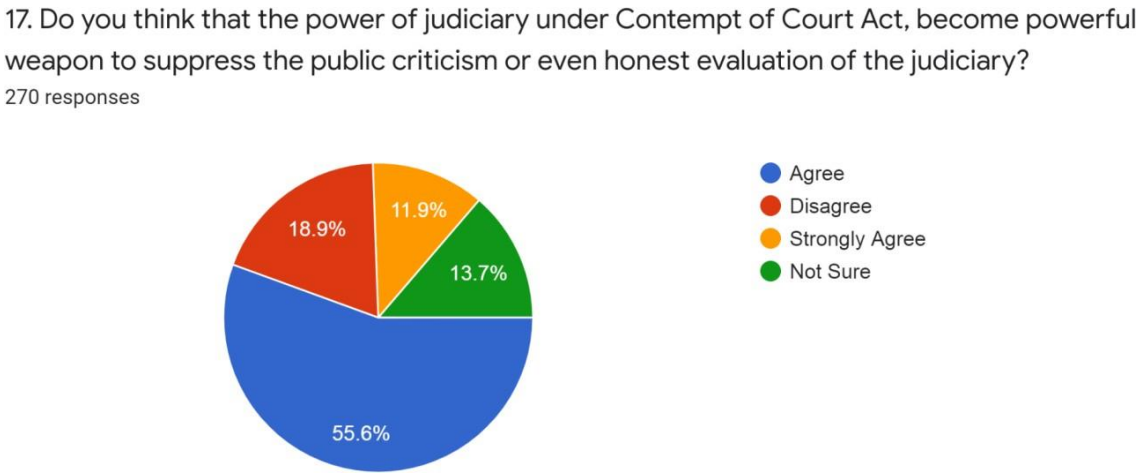

Fig. No. 7.33: Data of Research Question no.14

Research question:

"Do you think that the power of judiciary under Contempt of Court Act, become powerful weapon to suppress the public criticism or even honest evaluation of the judiciary?"

Answer of this question given in %

Agree	55.6%
Strongly Agree	11.9%
Disagree	18.9 %
Not Sure	13.7%

Result:

So, on this basis of data collected from respondents; majority is in opinion that "power of judiciary under Contempt of Court Act, become powerful weapon to suppress the public criticism or even honest evaluation of the judiciary". Total (55.6+11.9) = 67.5% respondents have given answer in Positive manner and only 18.9% respondents were given answer in Negative manner and 13.7% respondents are non-probable about Research Question.

So, conclusion may derive that the Contempt of Court Act is the hurdle for honest evaluation of Indian Judiciary. It means this Act needs to be revised.

Answer – Positive in favour of Research Question (Strongly in favour to accept that the Contempt of Court Act is being misused by Indian Judiciary for their own benefit.)

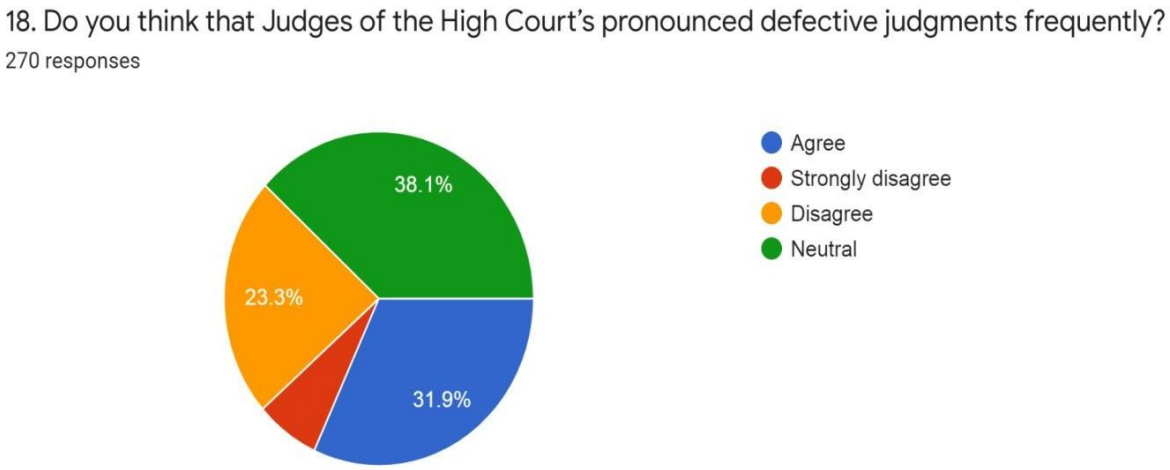

Fig. No. 7.34: Data of Research Question no.15

Research question:

Do you think that Judges of the High Court's pronounce defective judgments frequently?

Answer of this question given in %

Agree	31.9%
Strongly Agree	6.7%
Neutral	38.1%
Disagree	23.3%

So, on this basis of data collected from respondents; majority is in opinion that "power of judiciary under Contempt of Court Act, become powerful weapon to suppress the public criticism or even honest evaluation of the judiciary". Total (31.9+6.7) = 38.6% respondents have given answer in Positive manner and 23.3% respondents were given answer in Negative manner and 38.1% respondents are neutral about Research Question.

So, Conclusion may derive that Judges of the High Court's pronounced defective judgments frequently. But proving chances of this proposition is not very clear because 38.1% people are neutral about present research question.

Answer – Positive in favour of Research Question (but presently here proving the research question is uncertain)

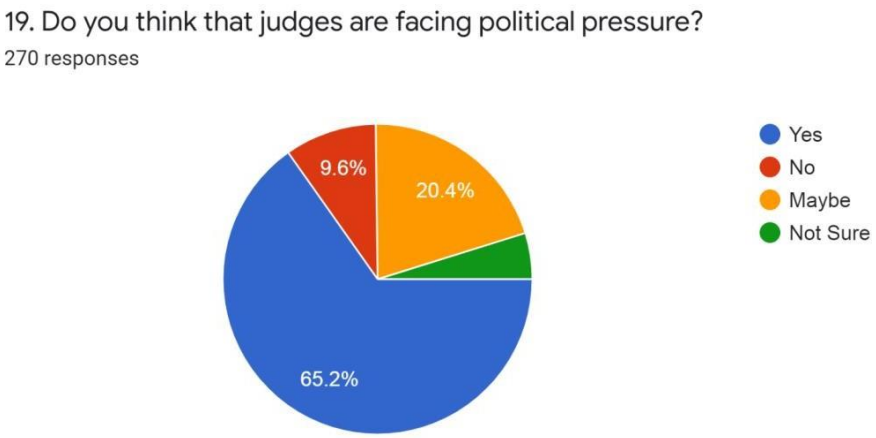

Fig. No. 7.35: Data of Research Question no.16

Research question:

Do you think that judges are facing political pressure?

Answer of this question given in %

Yes	65.2%
No	9.6%
Not Sure	4.8%
May be	20.4%

Result:

So, on this basis of data collected from respondents; majority is in opinion that the judges are facing political pressure. 65.2% respondents gave answers in a positive manner and only 9.6% respondents were given answers in a negative manner. 20.4% respondents are probable about Research Question whereas 4.8% respondents are non-probable about Research Question.

So, conclusion may derive that judges are facing political pressure while pronouncing judgement. But proving chances of this proposition is very clear. **Answer – Positive**

in favour of Research Question (Judges in India facing political interference and pressure)

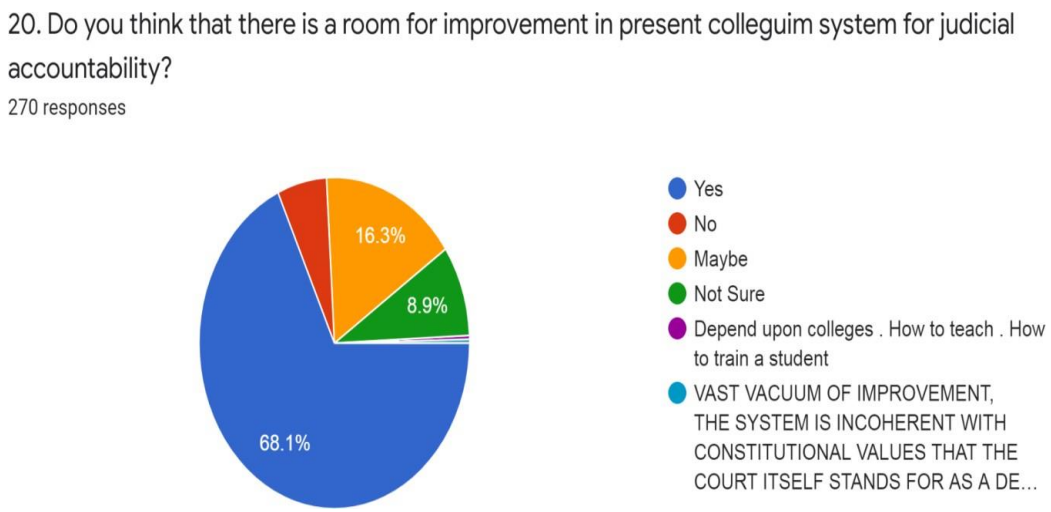

Fig. No. 7.36: Data of Research Question no.17

Research question:

Do you think that there is room for improvement in the present collegium system for judicial accountability?

Answer of this question given in %

Yes	68.1%
No	6.8%
It needs serious	0.9%
May be	16.3%
Not Sure	8.9%

Result:

So, on this basis of data collected from respondents; majority is of the opinion that there is room for improvement in the present collegiums system for judicial accountability. Total (68.1+16.3+0.9) = 85.3% respondents have given answers in a Positive manner

and 6.8% respondents were given answers in a negative manner and 8.9% respondents are non-probable for Research Question.

So, conclusion may derive that people are inclined towards improvement in present appointment and transfer of judges system in India. Most of the respondent gave decision in favour of improvement in collegium system in India.

Answer – Positive in favour of Research Question (Present collegium system shall be improved)

7.1.1 Hypothesis Testing on the Basis of Empirical Data:

Research Hypothesis

- The lack of judicial accountability in India is a serious predicament in justice delivery system.
- Judicial awareness and constitutional morality are necessary to implement especially in the present Indian judicial system.
- The existing constitutional scheme of appointing judges and holding them accountable is compromising with the 'fairness' aspect of justice delivery system.
- Implied interference by external factors in the judicial process is a threat to judicial impartiality.

Google Report No. 1

Table No. 7.2: Complete data of Research questions

R.Q. NO.	Results in favour Hypothesis	Results in opposites of Hypothesis	Out Score
1	56.6%	21.2%	100
2	50.5%	25.7%	100
3	49.5%	17.4%	100
4	31.2%	36.7%	100
5	37.6%	32.1%	100
6	45.9%	26.6%	100
7	45%	33%	100
8	63.3%	19.3%	100
9	58.7%	16.5%	100

R.Q. NO.	Results in favour Hypothesis	Results in opposites of Hypothesis	Out Score
10	55%	16.5%	100
11	58.7%	23.9%	100
12	45.9%	35.8%	100
13	88%	22.0%	100
14	61.5%	26.6%	100
15	44.1%	24.8 %	100
16	58.7%	8.3%	100
17	76.1%	4.6%	100
Total	**1040**	**371**	**1700**

Result:

Results in favour of Hypothesis = 1040

Results in favour of Hypothesis in % =61.17%

Results in opposites of Hypothesis = 371

Results in opposites of Hypothesis in% = 21.82

After completing the Hypothesis test, the researcher finds on the basis of Report No. 1 that 61.17% responses were positive in favour of the Hypothesis.

On the basis of Google Report No. 2

Table No.7.3: Complete data of research questions

R.Q. NO.	Results in favour Hypothesis	Results in opposites of Hypothesis	Out Score
1	43.7	26.7	100
2	57.8	29.3	100
3	50.7	23.3	100
4	40.7	30.4	100
5	35.6	34.4	100
6	51.5	24.4	100
7	44.4	31.1	100
8	59.6	21.1	100

R.Q. NO.	Results in favour Hypothesis	Results in opposites of Hypothesis	Out Score
9	48.5	16.3	100
10	54.1	18.5	100
11	50.7	26.3	100
12	38.5	38.1	100
13	95	5	100
14	67.5	18.9	100
15	38.6	23.3	100
16	65.2	9.6	100
17	85.3	6.8	100
Total	**927.4**	**383.5**	1700

Result:

Results in favour of Hypothesis = 927.4

Results in favour of Hypothesis in % =54.52%

Results in opposites of Hypothesis = 383.5

Results in opposites of Hypothesis in% = 22.52

After completing the Hypothesis test, the researcher finds on the basis of Report No. 2 that 54.52 % responses were positive in favour of the Hypothesis.

7.2 Analysis of Empirical Data through SPSS:

This report is the final report of SPSS of total 390 respondents and complete observation and evaluation was carried out by the researcher on the basis of this report. This Total result of the Respondents submitted their response.

Frequencies Variables:

Accountability Mechanism

"Appointment and Transfer of Judges"

Process of Judicial Appointment

Indian Judicial System

Collegium System and Transfer of Judges

Effectiveness of Indian Judicial System

Judicial Behavior for High Pendency of Cases,

Judges Accountability to Explain

Recusal to the Inordinate Delay

Judicial Accountability Transparent Laws Regulating Judicial Attitude

Impeachment Process of SC

Publication of Public Reports

Power of Judiciary under Contempt Of Court

Pronouncement of Defective Judgment

Facing Of Political Pressure

Room in Improvement

/PIECHART PERCENT

/ORDER=VARIABLE.

Frequencies:

Notes:

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Missing Value Handling	Definition of Missing	User-defined missing values are treated as missing.
	Cases Used	Statistics are based on all cases with valid data.
Syntax		FREQUENCIES VARIABLES=Accountability Mechanism, Appointment and Transfer of Judges, Process Of Judicial Appointment Indian Judicial System, Collegium System and Transfer of Judges Effectiveness of Indian Judicial System, Judicial Behaviour for High Pendency of Cases Judges Accountability to Explain Recusal to the Inordinate Delay Judicial Accountability Transparent Laws Regulating Judicial Attitude Impeachment Process of SC Publication of Public Reports Power of Judiciary Under Contempt of Court Pronouncement of Defective Judgment Facing of Political Pressure, Room in Improvement /PIECHART PERCENT /ORDER=VARIABLE.

Frequency Table:

Accountability Mechanism:

Do you think that accountability mechanism is not parallel with Power and esteem provided to the Indian Judiciary?

Table No. 7.4: SPSS data for RQ no.1

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	May be	78	20.0	20.0	20.0
	No	100	25.6	25.6	45.6
	Not Sure	27	6.9	6.9	52.6
	Yes	185	47.4	47.4	100.0
	Total	390	100.0	100.0	

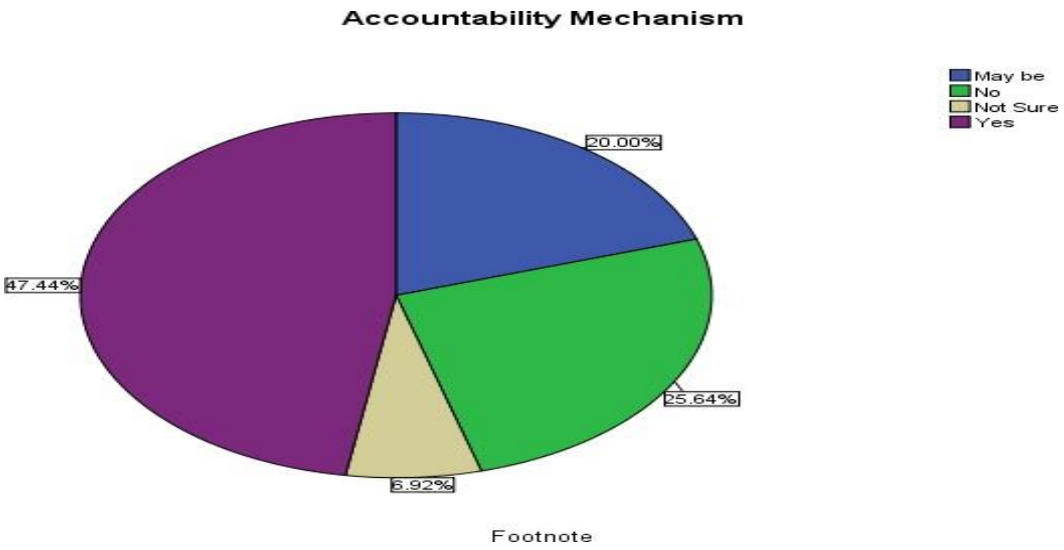

Fig. No. 7.37: Pie Chart for RQ no. 1

Result:

So, on this basis of data collected from respondents; majority of the respondents gave response in favour of the Research question. Total 47.4% respondents gave answers in a positive manner and only 25.6% respondents were given answers in a negative manner, whereas 6.9 % respondents are not probable about Research Question. According to data it proves that accountability mechanism is not properly available in India.

Appointment and Transfer of Judges:

Presently do you think that appointment and transfer of Judges are being carried out without political interference?

Table No. 7.5 : SPSS data for RQ no.2

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	May Be	59	15.1	15.1	15.1
	No	221	56.7	56.7	71.8
	Yes	110	28.2	28.2	100.0
	Total	390	100.0	100.0	

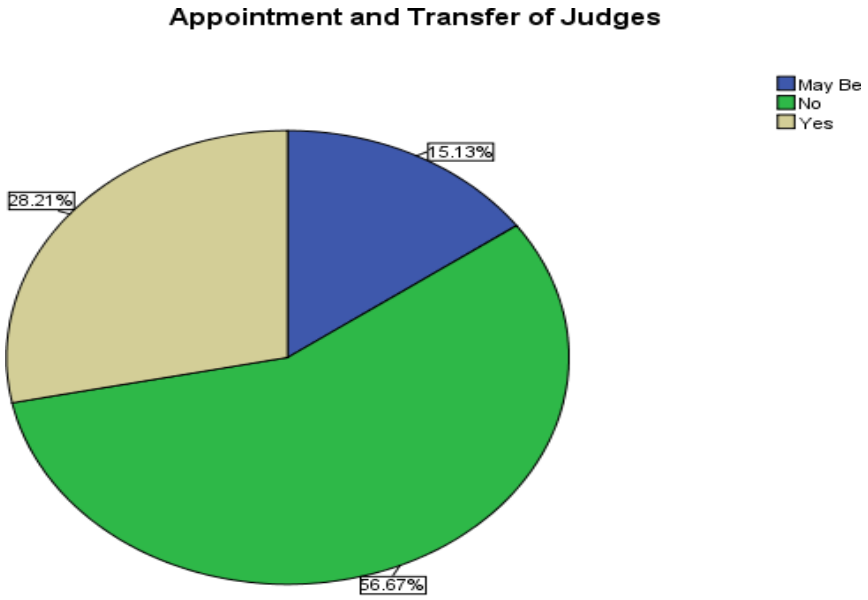

Fig. No. 7.38: Pie Chart for RQ no. 2

Result:

So, on this basis of data collected from respondents; majority of the respondents gave response in favour of the Research question. Total 28.2% respondents gave answers in a positive manner and only 56.7% respondents were given answers in a negative manner, whereas 15.1% respondents are not probable about Research Question.

According data available it proves that appointment and transfer of judges carried with political interferences.

Process of Judicial Appointment:

Research Question: Do you think that In India the process of judicial appointment and transfers are fair?

Table No. 7.6 : SPSS data for RQ no.3

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Maybe	62	15.9	15.9	15.9
	No	176	45.1	45.1	61.0
	Not Sure	33	8.5	8.5	69.5
	Yes	119	30.5	30.5	100.0
	Total	390	100.0	100.0	

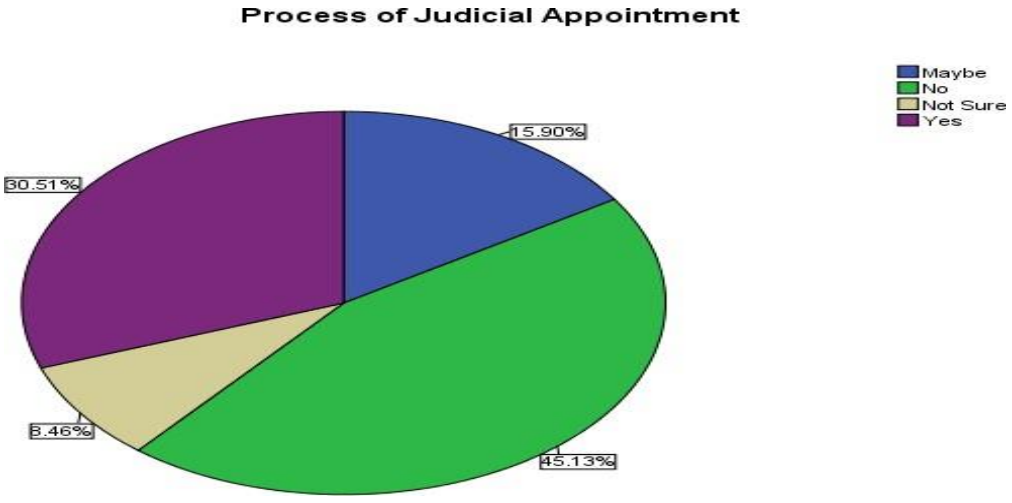

Fig. No. 7.39: **Pie Chart for RQ no. 3**

Result:

So, on this basis of data collected from respondents; majority of the respondents gave response in favour of the Research question. Total 30.5% respondents gave answers in a positive manner and only 45.1% respondents were given answers in a negative manner, whereas 8.5% respondents are not probable about Research Question.

According data available it proves that the process of judicial appointment and transfers are not fair.

Do you think Indian Judicial System misuses the powers and privileges available to them?

Table No. 7.7: SPSS data for RQ no.4

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	May be	82	21.0	21.0	21.0
	No	123	31.5	31.5	52.6
	Not Sure	35	9.0	9.0	61.5
	Yes	150	38.5	38.5	100.0
	Total	390	100.0	100.0	

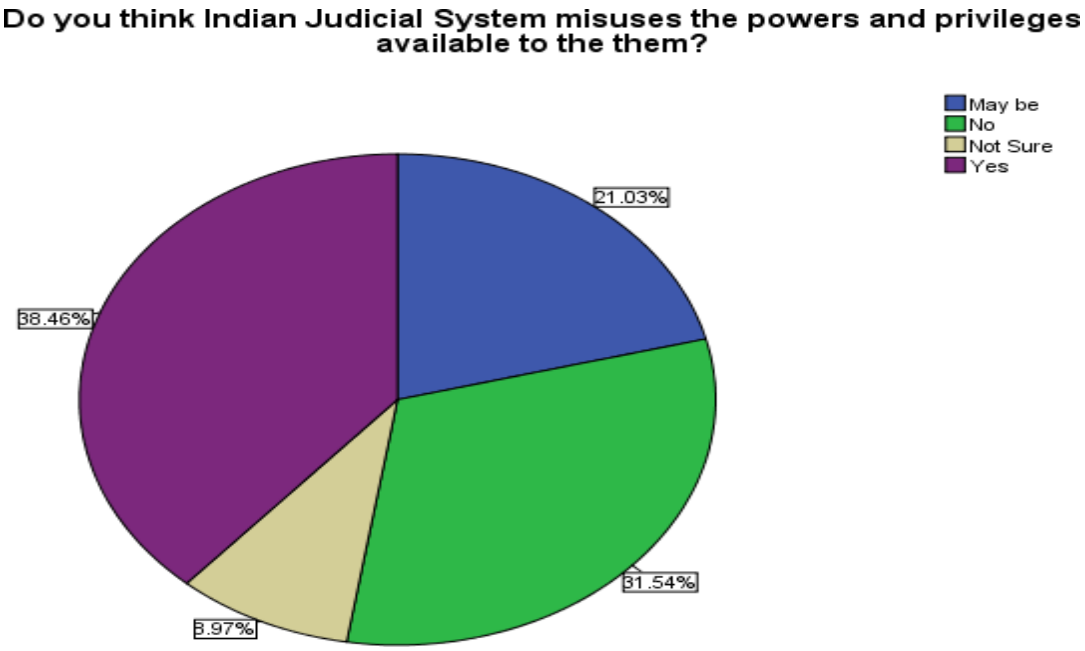

Fig. No. 7.40: **Pie Chart for RQ no. 4**

Result:

So, on this basis of data collected from respondents; majority of the respondents gave response in favour of the Research question. Total 38.5% respondents gave answers in a positive manner and only 31.5% respondents were given answers in a negative

manner, whereas 9.5% respondents are not probable about Research Question. Still majority of the respondents think that judicial system misuses the power.

Do you think that Colleguim system of Appointment and Transfer of judges shall be retained as it is?

Table No. 7.8: SPSS data for RQ no.5

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	May Be	60	15.4	15.4	15.4
	No	147	37.7	37.7	53.1
	Not Sure	54	13.8	13.8	66.9
	Yes	129	33.1	33.1	100.0
	Total	390	100.0	100.0	

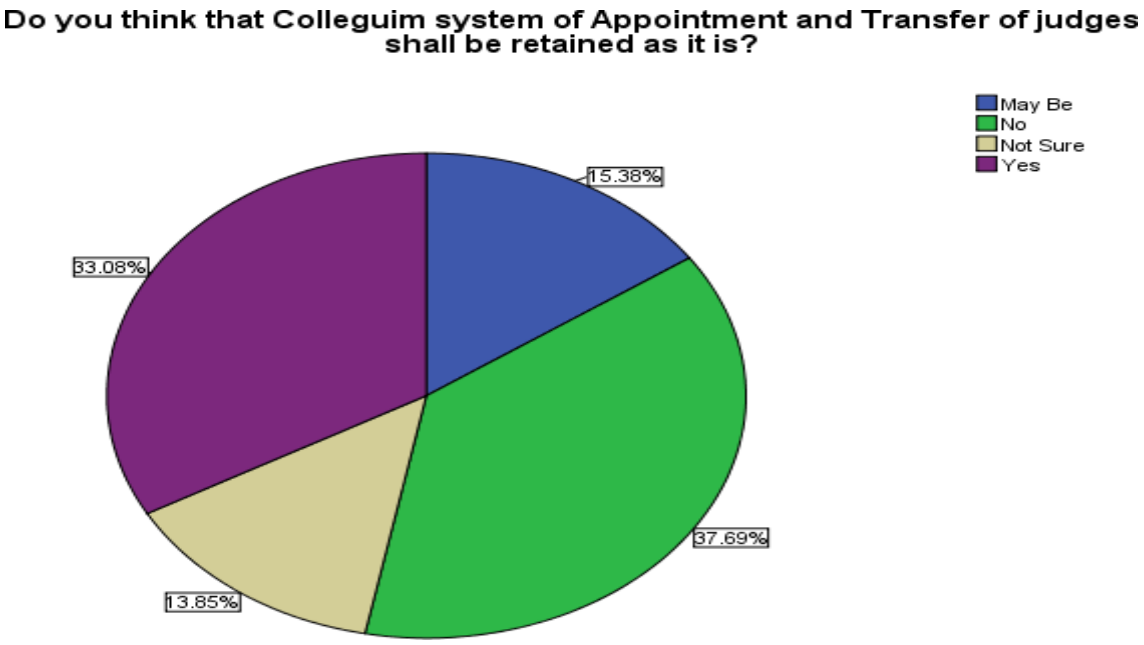

Fig. No. 7.41: **Pie Chart for RQ no. 5**

Result:

So, on this basis of data collected from respondents; majority of the respondents gave response in favour of the Research question. Total 33.1% respondents gave answers in a positive manner and only 37.7% respondents were given answers in a negative

manner, whereas 13.8% respondents are not probable about Research Question. It means, the present colleguim system needs to be improved.

Do you think that Indian judicial mechanism is effective, transparent in combating judicial corruption?

Table No.7.9: SPSS data for RQ no.6

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	May Be	75	19.2	19.2	19.2
	No	197	50.5	50.5	69.7
	Not Sure	22	5.6	5.6	75.4
	Yes	96	24.6	24.6	100.0
	Total	390	100.0	100.0	

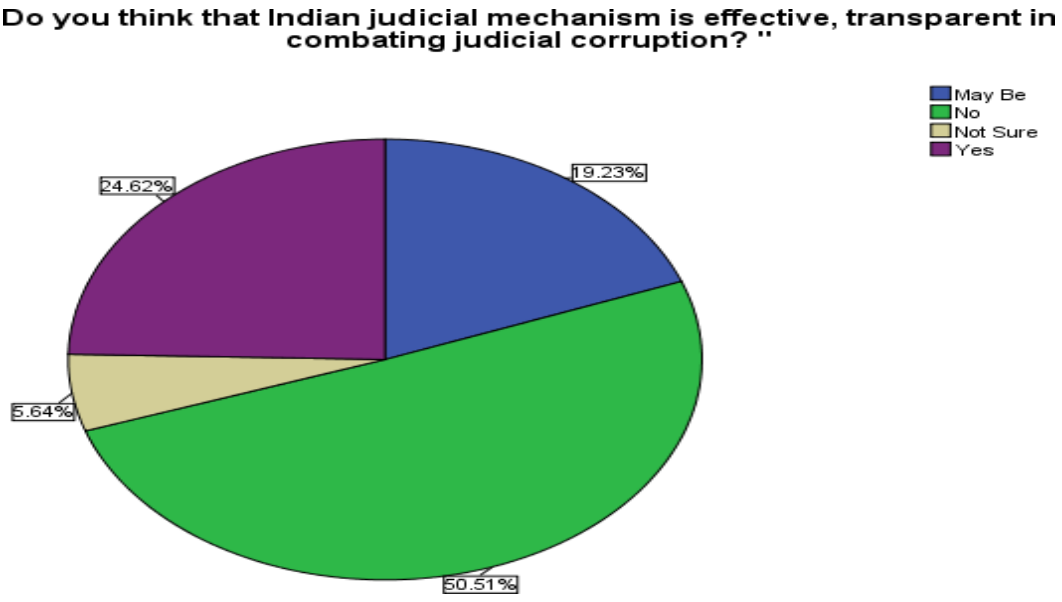

Fig. No. 7.42: **Pie Chart for RQ no. 6**

Result:

So, on this basis of data collected from respondents; majority of the respondents gave response in favour of the Research question. Total 24.6% respondents gave answers in a positive manner and only 50.5% respondents were given answers in a negative

manner, whereas 5.6% respondents are not probable about Research Question. According on the basis of data it proves that Indian judicial system is not effective and transparent to combat corruption.

Do you think all judicial behavior is responsible for the high pendency of cases in India?

Table No. 7.10 : SPSS data for RQ no.7

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	May Be	74	19.0	19.0	19.0
	No	122	31.3	31.3	50.3
	Not Sure	19	4.9	4.9	55.1
	Yes	175	44.9	44.9	100.0
	Total	390	100.0	100.0	

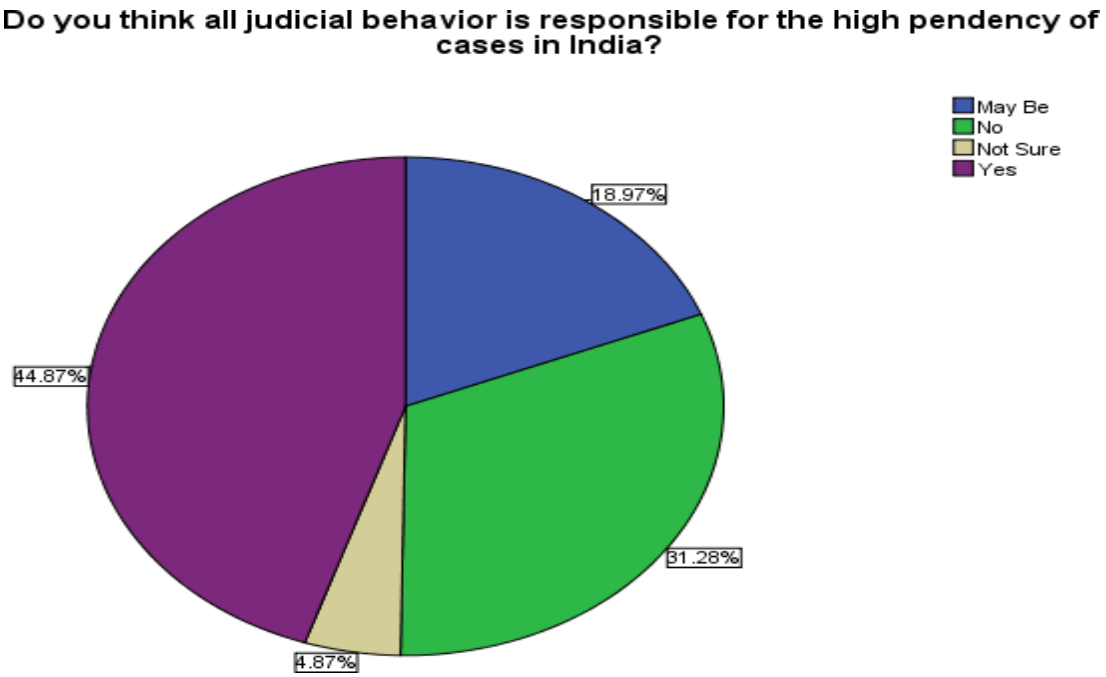

Fig. No. 7.43: Pie Chart for RQ no. 7

Result:

So, on this basis of data collected from respondents; majority of the respondents gave response in favour of the Research question. Total 44.9% respondents gave answers in a positive manner and only 31.3% respondents were given answers in a negative

manner, whereas 4.9% respondents are not probable about Research Question. It means judicial behaviour also responsible for high pendency of cases in India.

Do you think that judges shall be accountable for the explaining the reasons for recusal to concerned parties?

Table No. 7.11 : SPSS data for RQ no.8

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	May Be	51	13.1	13.1	13.1
	No	78	20.0	20.0	33.1
	Not Sure	23	5.9	5.9	39.0
	Yes	238	61.0	61.0	100.0
	Total	390	100.0	100.0	

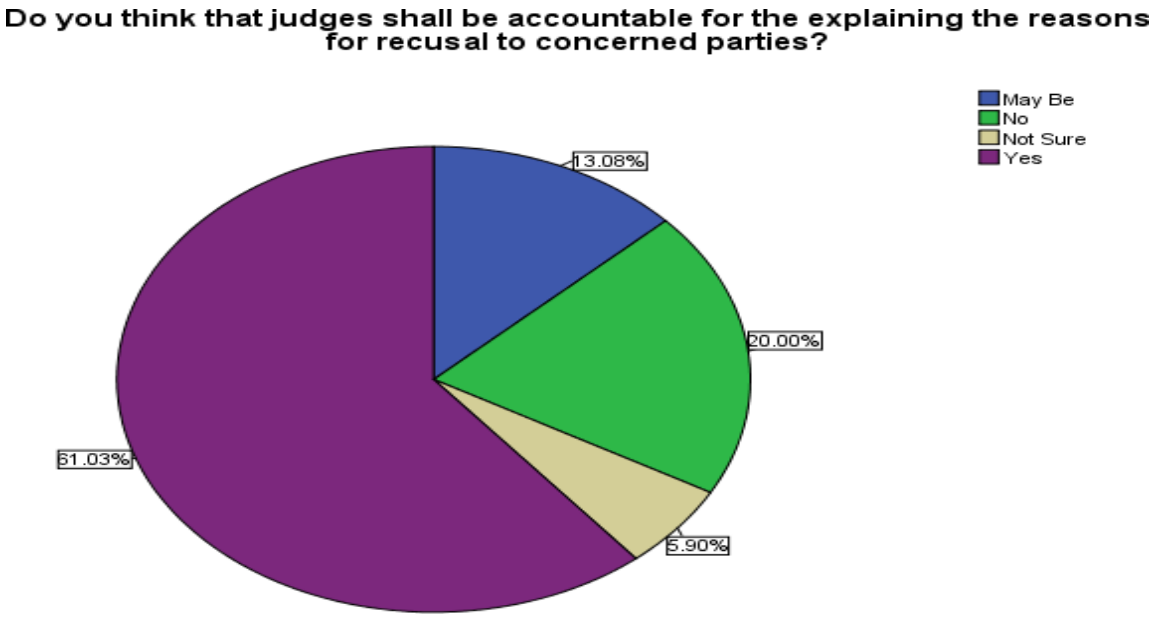

Fig. No. 7.44: Pie Chart for RQ no. 8

Result:

So, on this basis of data collected from respondents; majority of the respondents gave response in favour of the Research question. Total 61% respondents gave answers in a positive manner and only 20% respondents were given answers in a negative manner,

whereas 5.9% respondents are not probable about Research Question. It favours the principal that, judges shall provide the reason of recusal.

Do you think that Recusal can lead to the inordinate delay in justice delivery system?

Table No. 7.12: SPSS data for RQ no.9

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	May Be	51	13.1	13.1	13.1
	No	78	20.0	20.0	33.1
	Not Sure	24	6.2	6.2	39.2
	Yes	237	60.8	60.8	100.0
	Total	390	100.0	100.0	

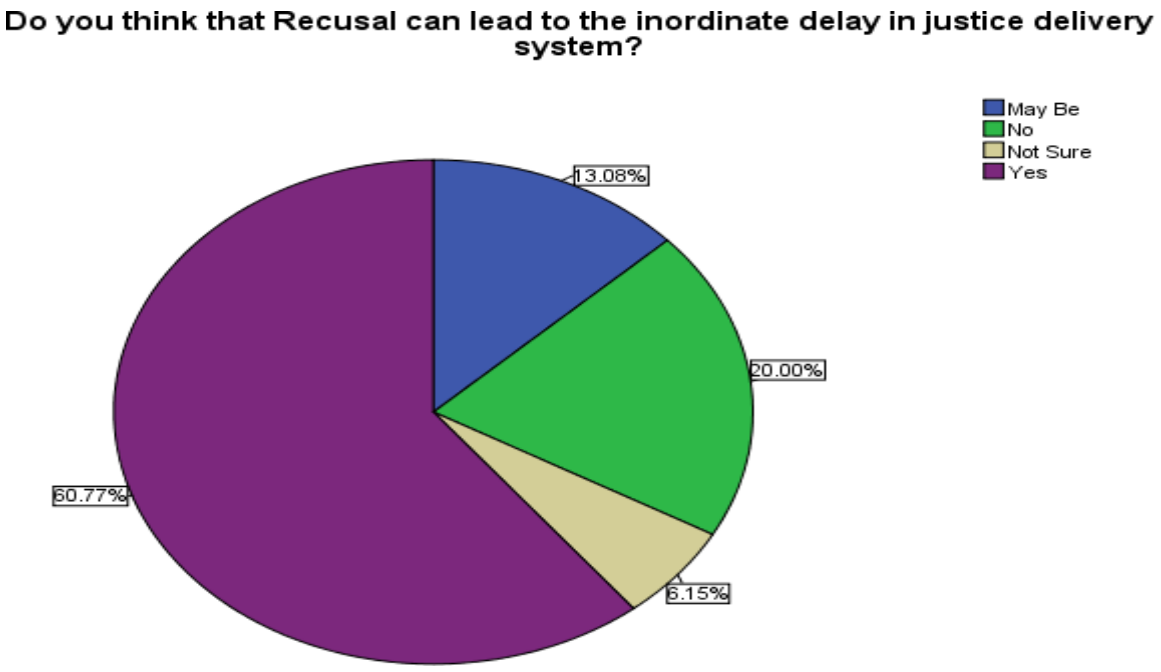

Fig. No. 7.45: Pie Chart for RQ no. 9

Result:

So, on this basis of data collected from respondents; majority of the respondents gave response in favour of the Research question. Total 66.8% respondents gave answers in a positive manner and only 20% respondents were given answers in a negative manner,

whereas 6.2% respondents are not probable about Research Question. On the basis of data it shows that recusal can lead inordinate delay in judicial system.

Do you think that concept of judicial accountability is more transparent in foreign countries as compared to Indian Judiciary?

Table No. 7.13: SPSS data for RQ no.10

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	May Be	84	21.5	21.5	21.5
	No	62	15.9	15.9	37.4
	Not Sure	45	11.5	11.5	49.0
	Yes	199	51.0	51.0	100.0
	Total	390	100.0	100.0	

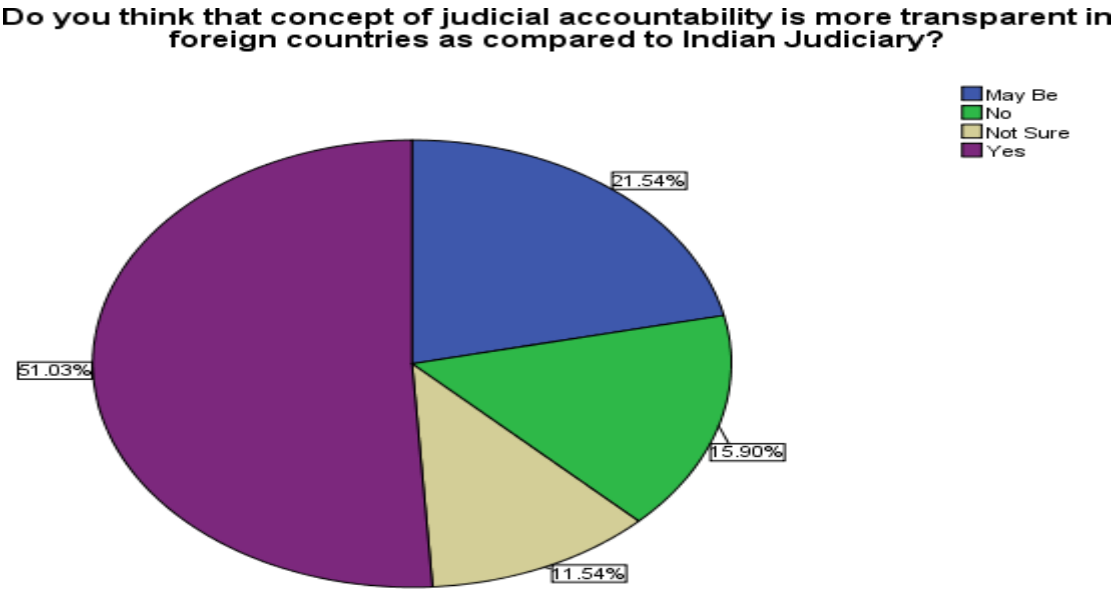

Fig. No. 7.46: Pie Chart for RQ no. 10

Result:

So, on this basis of data collected from respondents; majority of the respondents gave response in favour of the Research question. Total 51% respondents gave answers in a positive manner and only 15.9% respondents were given answers in a negative manner, whereas 11.5% respondents are not probable about Research Question. On the basis of

data available it proves that judicial accountability more transperent in foreign nations as compared to India.

Do you think that laws regulating judicial attitude and powers are inadequate?"

Table No. 7.14: SPSS data for RQ no.11

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	May Be	65	16.7	16.7	16.7
	No	73	18.7	18.7	35.4
	Not Sure	42	10.8	10.8	46.2
	Yes	210	53.8	53.8	100.0
	Total	390	100.0	100.0	

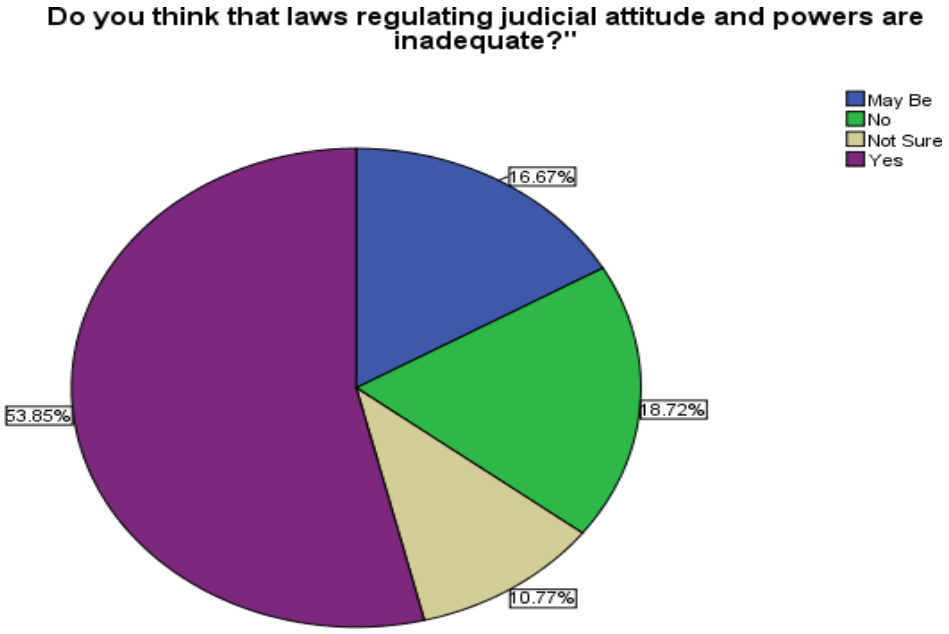

Fig. No. 7.47: Pie Chart for RQ no. 11

Result:

So, on this basis of data collected from respondents; majority of the respondents gave response in favour of the Research question. Total 53.8% respondents gave answers in a positive manner and only 18.7% respondents were given answers in a negative

manner, whereas 10.8% respondents are not probable about Research Question. On the basis of data it proves that, laws relating to regulation of judicial conduct and power is not properly available in India.

Do you think that impeachment process of SC and HC judges is inadequate in India as mentioned under Constitution of India?

Table No. 7.15: SPSS data for RQ no.12

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	May Be	65	16.7	16.7	16.7
	No	140	35.9	35.9	52.6
	Not Sure	38	9.7	9.7	62.3
	Yes	147	37.7	37.7	100.0
	Total	390	100.0	100.0	

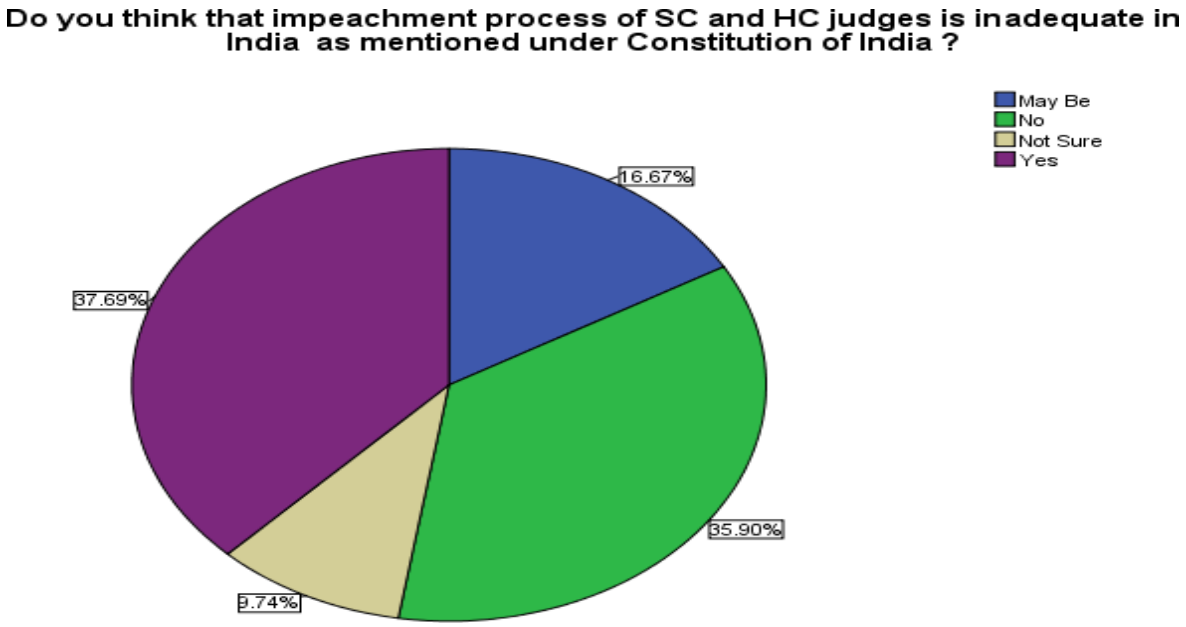

Fig. No. 7.48: Pie Chart for RQ no. 12

Result:

So, on this basis of data collected from respondents; majority of the respondents gave response in favour of the Research question. Total 37.7% respondents gave answers in

a positive manner and only 35.9% respondents were given answers in a negative manner, whereas 9.7% respondents are not probable about Research Question. The response is not directly conclusive in favour of the Research Question.

Do you think that government should publish periodic reports on judicial productivity and congestion rates?

Table No. 7.16: SPSS data for RQ no.13

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Agree	255	65.4	65.4	65.4
	Disagree	20	5.1	5.1	70.5
	Not Sure	23	5.9	5.9	76.4
	Strongly Agree	85	21.8	21.8	98.2
	Yes	7	1.8	1.8	100.0
	Total	390	100.0	100.0	

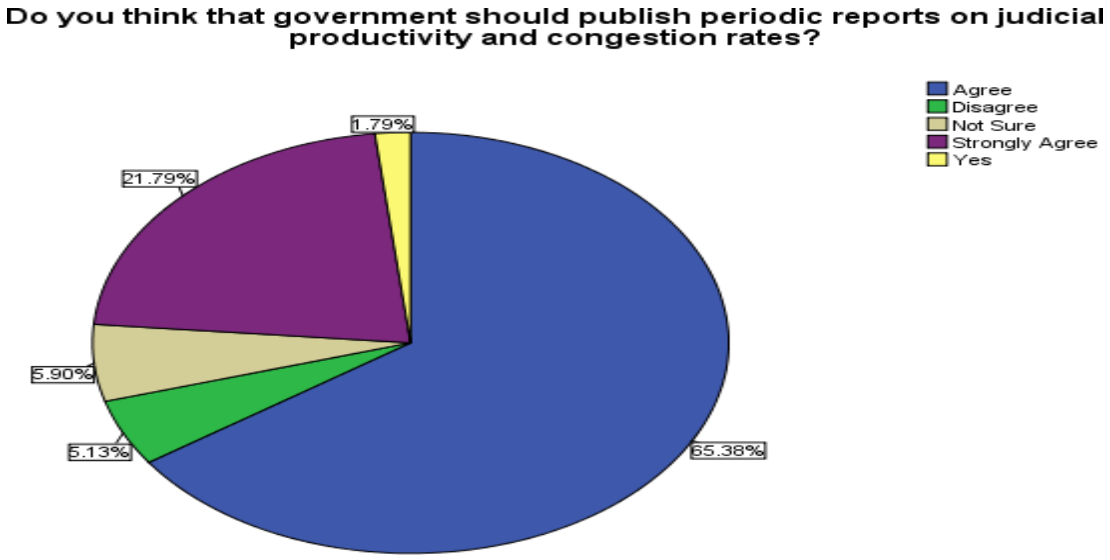

Fig. No. 7.49: Pie Chart for RQ no. 13

Result:

So, on this basis of data collected from respondents; majority of the respondents gave response in favour of the Research question. Total 88% respondents gave answers in a

positive manner and only 5.1% respondents were given answers in a negative manner, whereas 5.9% respondents are not probable about Research Question. Respondent were strongly in favour of publication of periodic records by the governments.

Do you think that the power of judiciary under Contempt of Court Act, become powerful weapon to suppress the public criticism or even honest evaluation of the judiciary?"

Table No. 7.17: SPSS data for RQ no.14

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Agree	208	53.3	53.3	53.3
	Disagree	82	21.0	21.0	74.4
	Not Sure	50	12.8	12.8	87.2
	Strongly Agree	42	10.8	10.8	97.9
	Yes	8	2.1	2.1	100.0
	Total	390	100.0	100.0	

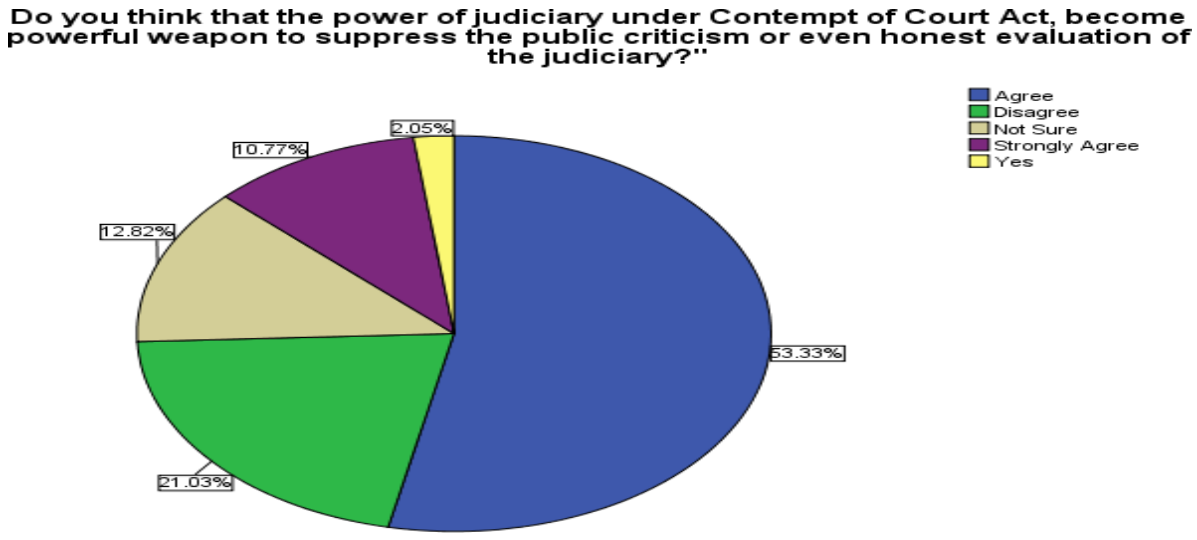

Fig. No. 7.50: Pie Chart for RQ no. 14

Result:

So, on this basis of data collected from respondents; majority of the respondents gave response in favour of the Research question. Total 66.1% respondents gave answers in a positive manner and only 21% respondents were given answers in a negative manner,

whereas 12.8% respondents are not probable about Research Question. Majority of the respondents think that The Contempt of Court Act misuses by the Judiciary in India.

Do you think that Judges of the High Court's pronounced defective judgments frequently?

Table No. 7.18: SPSS data for RQ no.15

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Agree	122	31.3	31.3	31.3
	Disagree	94	24.1	24.1	55.4
	Neutral	138	35.4	35.4	90.8
	Strongly Agree	36	9.2	9.2	100.0
	Total	390	100.0	100.0	

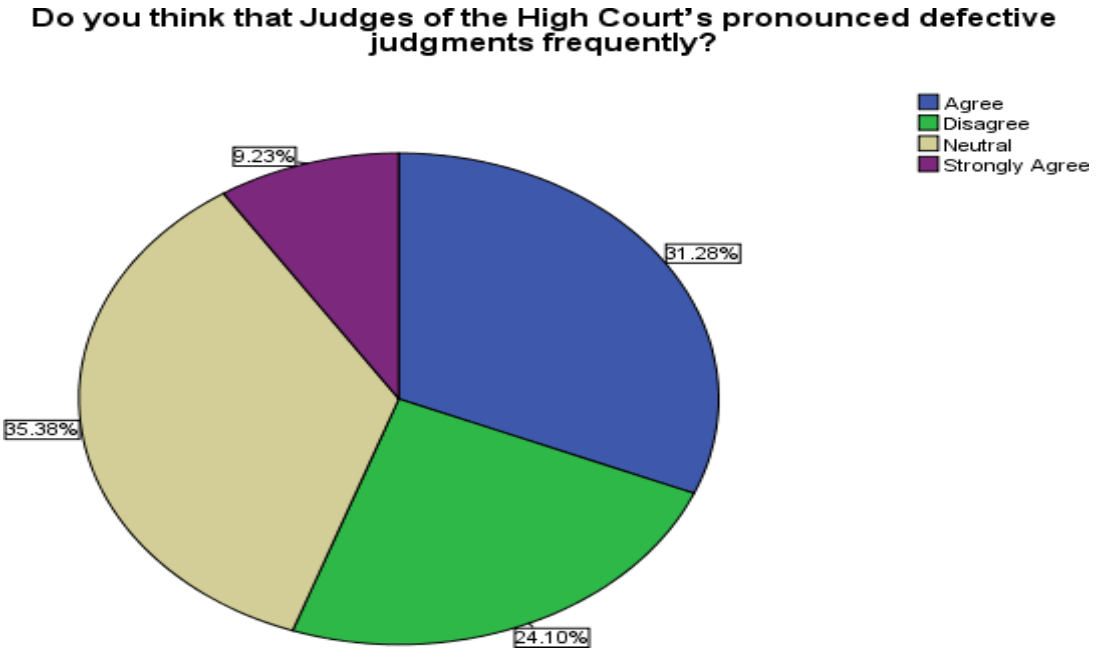

Fig. No. 7.51: Pie Chart for RQ no. 15

Result:

So, on this basis of data collected from respondents; the research question does not prove strongly according to the data available before researcher. Total 40.5% respondents gave answers in a positive manner and only 24.5% respondents were given answers in a negative manner, whereas 35.4% respondents are not probable about Research Question. The answers given by respondents are not satisfying the result.

Do you think that judges are facing political pressure?

Table No. 7.19: SPSS data for RQ no.16

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Agree	82	21.0	21.0	21.0
	Disagree	41	10.5	10.5	31.5
	Not Sure	18	4.6	4.6	36.2
	Yes	249	63.8	63.8	100.0
	Total	390	100.0	100.0	

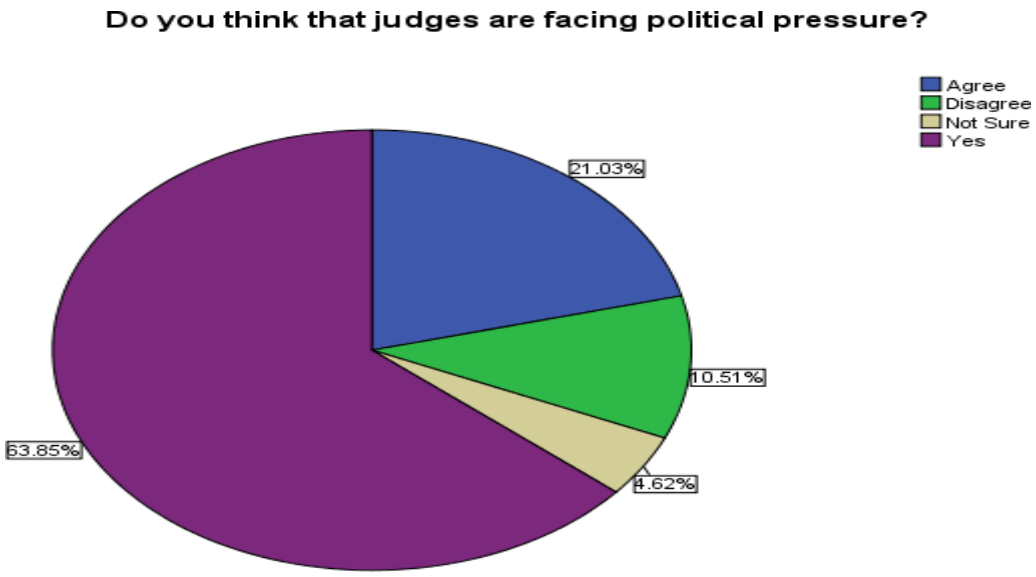

Fig. No. 7.52: Pie Chart for RQ no. 16

Result:

So, on this basis of data collected from respondents; majority is in opinion that the judges of Indian judiciary facing political pressure. Total 84.8% respondents gave answers in a positive manner and only 10.5% respondents were given answers in a negative manner, whereas 4.6% respondents are not probable about Research Question.

Do you think that there is a room for improvement in present colleguim system for judicial accountability?

Table No. 7.20: SPSS data for RQ no.17

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Agree	63	16.2	16.2	16.2
	Disagree	22	5.6	5.6	21.8
	Not Sure	34	8.7	8.7	30.5
	Yes	271	69.5	69.5	100.0
	Total	390	100.0	100.0	

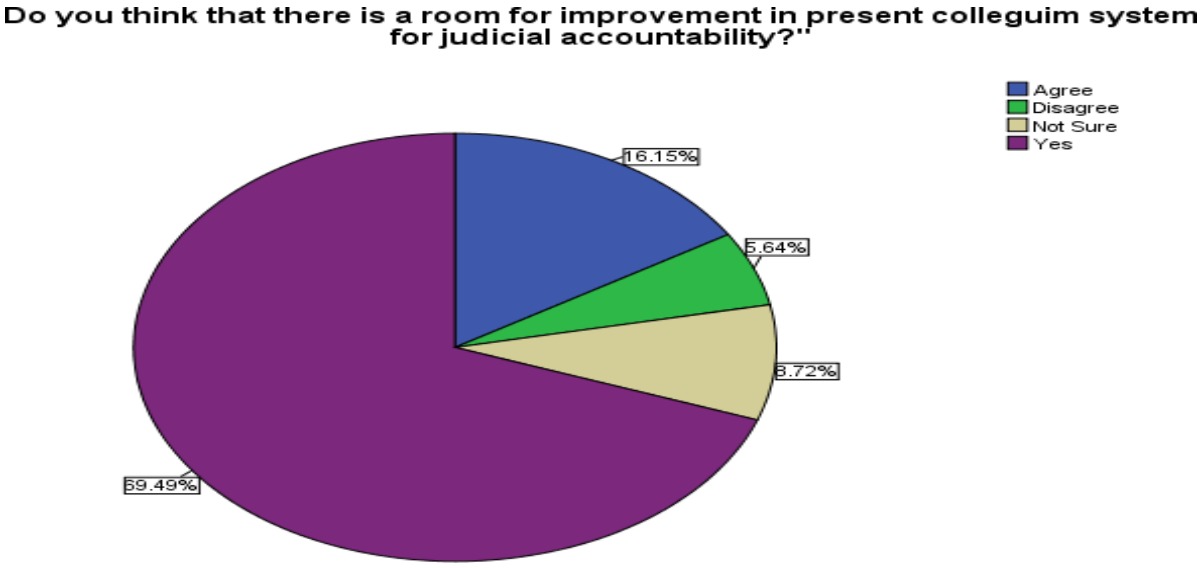

Fig. No. 7.53: Pie Chart for RQ no. 17

Result:

So, on this basis of data collected from respondents; majority is in opinion that there is scope for improvement in Indian Judicial system. Total 80% respondents gave answers in a positive manner and only 5.6% respondents were given answers in a negative manner, whereas 8.7% respondents are not probable about Research Question.

Table No. 7.21: Hypothesis Testing: On the basis of SPSS statistical tool

R.Q. NO.	Results in favour Hypothesis	Results in opposites of Hypothesis	Out Score
1	47.44%	25.64%	100
2	56.67%	28.21%	100
3	45.13%	30.51%	100
4	38.46%	31.54%	100
5	37.69%	33.08%	100
6	50.51	24.62	100
7	44.87	31.28	100
8	61.03	20	100
9	60.77	20	100
10	51.63	15.90%	100
11	53.85	18.72	100
12	37.69	35.40	100
13	87.17	5.10	100
14	64.1	21.03	100
15	40.51	24.10	100
16	84.88	10.51	100
17	85.64	5.64	100
Total	894.19	375.64	1700

Result:

Results in favour of Hypothesis = 894.19

Results in favour of Hypothesis in % =52.59%

Results in opposites of Hypothesis = 375.64

Results in opposites of Hypothesis in% = 22.09%

After completing the Hypothesis test, the researcher finds that 52.59% responses were positive in favour of the Hypothesis.

ANALYSIS OF THE EMPIRICAL DATA

In the present research study in the name of, '**Judicial Accountability and Judicial Obligations of Judges: Analytical Study in India',** the researcher carried out empirical observation on the basis of data available before the researcher. This observation process starts from the stage of formulating the research questions on the present research topic to the establishment of conclusions.

On the basis of empirical data, the researcher carried out two evaluations. The first evaluation was carried out with the help of Google form and directly data collected from the responses and the second evaluation was carried out with the help of SPSS ('Statistical Package for the Social Science'). Both the observations found some similarities in results whereas on some research questions there having some contradictions. But, ultimately it derives conclusions in favour of hypothesizes.

The evolution of the first Research question is Do you think that accountability mechanism is not parallel with power and esteem provided to the Indian Judiciary the answer given by the respondents in favor of the hypothesis is 56.6% in Google form software whereas in SPSS answer given by the respondents in 47.44%. Ultimately, it proves the hypothesis with the majority of the opinion. Then in opposite the research question, only 21.2% and 23.0% respectively response was recorded. It means the majority of the respondents were of the opinion that in India accountability mechanism is not equivalent to power and honor available to the Indian judicial system.

The evolution of the second Research question is "Presently do you think that appointment and transfer of Judges are being carried out without politicalinterference?" the percentage of the Negative answer is 50.5% in Goggle-form and 56.67% in SPSS. It means the respondent's majority opinions were in favour of the hypothesis. It derives the conclusion that in India judicial appointment is not free frompolitical interference. So, even though the collegium system is available in India for theappointment of higher judiciary judges still higher judiciary influenced by political interference.

Evolution of the third research question that is Do you think that the Indian judicial mechanism is effective, transparent in combating judicial corruption? Negative answers are given by respondents were in 45.9% and 45.13% in both tolls of statistical analysis whereas in positive answers were in 26 % and 28% respectively. Ultimately, it derives the conclusion from the responses of the respondents that there is a necessity

in the Indian judicial system to improve the judicial mechanism because it became a failure to combat judicial corruption in India.

The remaining analysis of the research questions will be done in the following ways;

Table No. 7.22: Detailed evaluation of SPSS data

No.	Research questions	G form %		SPSS %	
		yes	No	Yes	No
1	Do you think that judges shall be accountable for the explaining the reasons for recusal to concerned parties?	**63**	19	**61**	20
2	Do you think that Recusal can lead to the inordinate delay in the justice delivery system?	**58**	16	**60**	20
3	Do you think that laws regulating judicial attitude and powers are inadequate?	**58**	23	**54**	18
4	Do you think that the impeachment process of SC and HC judges is inadequate in India as mentioned under the Constitution of India?	**45**	35	**38**	35
5	Do you think that the power of judiciary under Contempt of Court Act, become a powerful weapon to suppress the public criticism or even honest evaluation of the judiciary?	**46**	26	**64**	21
6	Do you think that government should publish periodic reports on judicial productivity and congestion rates?	**59**	22	**87**	5
7	Do you think that In India the process of judicial appointment and transfers are fair?	23.3	**50.7**	30.5	**45.1**
8	Do you think that Colleguim system of Appointment and Transfer of judges shall be retained as it is?	34.4	**35.6**	33.1	**37.7**
9	Do you think that Indian judicial mechanism is effective, transparent in combating judicial corruption?	24.4	**51.5**	24.6	**50.5**
10	Do you think all judicial behavior is responsible for the high pendency of cases in India?	**44.4**	31.1	**44.9**	31.3

No.	Research questions	G form %		SPSS %	
		yes	No	Yes	No
11	Do you think that concept of judicial accountability is more transparent in foreign countries as compared to Indian Judiciary?	**54.1**	18.5	**51.0**	15.9
12	Do you think that judges are facing political pressure?	**65.2**	9.6	**84.8**	10.57
13	Do you think that there is a room for improvement in present colleguim system	**68.1**	6.8	**85.64**	5.64

- By observing responses to research question no. 4, 60% majority opinions were given in favaour of the positive response. It means judges shall provide the reason for the recusal. If a judge does not explain the recusal then it would be a violation of judicial accountability. The respondents were very clear about this research question and they prominently feel the responsibility of judges is connected with the reason of the recusal as like in judgement, a judge has to give the reason. If any judge does not provide the reason for the judgement then it is a violation of the principles of natural justice.
- By observing responses to research question no. 5, almost 60% of responses are in favour of the research question. Recusal in only the rarest of the rare case shall be taken by the judges and it shall be allowed to take only when the judge is financially connected with the dispute of the case.
- By observing responses to research question no. 6, again 58% in favour of the research question in both the analyzing tolls of research. Respondents are in favour of the legislation for the code of conduct of judges.
- In relating to research question no. 7, mixed answers of responses were given by the respondents. The legislation relating to impeachment is not effective because of the political will of the government. Hence, respondents are very not sure about raised objections against the Constitution of India. According to them that implementation of the Constitution seems to be necessary. This type of collusion is derived by the researcher relating to this research question through observing the percentage of the responses of the respondents.

- By observing responses to research question no. 8, the direct majority of opinions were given in favour of the research question. Contempt law in India is becoming a weapon to curtail genuine objection against the judiciary.
- By observing responses to research question no. 9, judicial transparency is expected by the learned respondents and because of this, they are in favour to publish the periodic records of the judiciary and the government has to take the responsibility to publish them.
- By observing responses to research question no. 10, the majority of the respondents gave negative answers. 50.7% and 45.1% responses were collected negatively, whereas 23.3% and 30.5% are responses collected positively. It means the process of judicial appointment and transfer are not fair according to responses.
- By observing responses to research question no. 11, the majority of the respondents gave negative answers. 35.6% and 37.7% responses were collected negatively, whereas 34.4% and 33.1% are responses collected positively. It means respondents are not in favour of the Collegium system of appointment.
- By observing responses to research question no. 12, the majority of the respondents gave negative answers. 51.5% and 50.5% responses were collected negatively, whereas 24.4% and 24.6% are responses collected positively. It means the majority of respondents think that the Indian judicial mechanism is not effective to curtail the present situation of judicial corruption.
- By observing responses to research question no. 13, the majority of the respondents gave positive answers. 44.4% and 49.9% responses were collected positively, whereas 31.1% and 31.3% are responses collected negative manner. It means, the respondents think that judiciary is also responsible to the pending cases in India.
- By observing responses to research question no. 14, the majority of the respondents gave positive answers. 54.1% and 51% responses were collected positively, whereas 18.5% and 15.9% are responses collected negative manner. It means, the respondents think that judicial accountability is strongly available in foreign nation as compared to Indian judicial system.
- By observing responses to research question no. 15, the majority of the respondents gave positive answers. 65.2% and 84% responses were collected positively, whereas 9.6% and 10.57% are responses collected negative manner. It means, the respondents think that judges in India usually face the political pressure.

- By observing responses to research question no. 16, the majority of the respondents gave positive answers. 68.1% and 85% responses were collected positively, whereas 6.8% and 5.64% are responses collected negative manner. It means, the respondents think that in India, is need to improve the present collegium system. While, after observation, the researcher is allowed to make a conclusion in favour of the hypothesizes which has been mentioned in the previous chapter of the research study.
- The existing constitutional scheme of appointing judges and holding them accountable is compromising with the 'fairness' aspect of justice delivery system.
- Implied interference by external factors in the judicial process is a threat to judicial impartiality.

These hypothesizes gets proved in this chapter with the help of empirical data. The majority of the empirical responses are in favour of the statement of research mentioned by the researcher in research.

CHAPTER-8

CONCLUSION AND SUGGESTIONS

8.1 Conclusion:

After analyzing all doctrinal and non-doctrinal data available in the above chapter and sources of knowledge of present in the research study, the researcher leading to the following conclusion;

- Accountability mechanism is not clearly present in the Indian judicial system. Because no law exists for judicial accountability in India and there is an absence of clear provisions or principles in the Indian legal system. No clear principles for judicial recusal, judicial post-retirement recruitments, judicial appointment and transfer, contempt of court, and right to information of judicial offices, etc. In chapters V and VII, the researcher especially pointed out these issues. In Chapter II the judicial appointments, contempt of court, and right to information of judicial offices have been discussed thoroughly.
- Judges are not the law, they are like the institution of the State, shall be responsible for accountability. There is no other way to remove the judges except impeachment procedure which is complicated and lengthy in nature. Recently opinion in legal fraternity is that the fittest person (judge) shall be appointed to judiciary not known person to the collegium. There is politics in the judiciary also.
- "Appointment and transfer of judges" are being carried out through political interference in India. It is bitter truth of Indian Judicial System that the appointments in higher judiciary based on the politics. Politics and judicial appointments is more apparent in higher judicial appointments rather than lower judicial system.
- In India, no clear legal provisions are available for appointments of judges, especially in the higher judiciary. Political interference is a regular phenomenon of the Indian judiciary which is shown by the researcher in chapter VI. Only for post-retirement benefits, do judges pass the judgment in favor of the government. Detailed discussion already has been done by the researcher on previous topics. The role of the CJI is important in higher judicial appointments and if the CJI is controlled or influenced by the government then appointment and transfer are also influenced by the

government.

- The appointments and transfers of judges in India are not fair and transparent. As like appointments, in transfer of the judges is not doing on the basis of caliber or merit or public order, it is happened only on the basis of politics, to maintain economic and political interests.
- Appointment and transfer of higher judiciary based on the collegium system is in suspicion. The parameter to appoint judges to the Supreme Court and High Court is not provided anywhere in the Constitution. So, judges appoint judges to themselves. Here it is necessary to improve the system.
- Recusal practices may lead to delays in judicial proceedings. In the name of judicial independence violations of the rule of law or rights of the litigants Practice of recusal is not carried out according to a Constitutional basis. It will have a grave injury to the litigants if the matter is prolonged due to recusal practice.
- The concept of judicial accountability is strongly available in foreign countries if we compare it with Indian judicial accountability.
- In foreign nations, positive comments and suggestions are accepted and approved by the judiciary. There are various developments approved on the subject of contempt laws, speed delivery of judgement, writing judgements, and the working process of the judicial system. In India, this type of development is still awaiting.
- For post-retirement recruitments, clear laws is not available in India. Articles 124(7) and 220 of the Constitution is not sufficient to cope up the subject like post-retirements.
- There is room to have independent commission for the appointments of post- retirement assignments of the SC and HC judges. Without commission or any superior authority over the judges who are retired or going to be retired, misused by the Executive.
- Laws regulating judicial attitude and powers are inadequate in India. Judges Inquiry Act, 1968 in not sufficient to curtail the judicial conduct and power. In present era this legislation become failure to maintain rule of law in India relating judicial power despotism.
- The Impeachment Process is inadequate in India. Even though action of the judges fall under misbehavior or incapacity, still it is difficult to established before parliament, as we seen in previous examples like Justice Verraswami,

Justice Ramaswamy case, etc; and to impeach a Supreme or High Court Judge.

- As a researcher of this present research, researcher may conclude that Government should publish periodic reports on judicial productivity and congestion rates. The Contempt of Court Act is sometimes being misused by the Indian judiciary for itsown benefit. Present collegium system needs to be improved for the benefit of the litigants and safeguard the rule of law.

8.2. Suggestions:

1. Subordinate Judicial Appointments: The government may appoint all subordinate judicial appointment and transfer through All India Judicial Commission (AIJS) on the same basis as selected members under Indian Administrative Service (IAS).

2. National Judicial Appointment Commission:

Researcher suggested about the creation of Independent National Judicial Appointment Commission in Indian Judicial system.

If Independent National Judicial Appointment Commission performs the role of the transfer and appointment of higher court judges then there is a possibility of non-interference from government.

NJAC member body, will not allow a member of government (like law Minister) in this commission. All members may be selected from the judiciary, including the Chief Justice of SC, senior judges of the SC, Chief Justice of High Court, a member from the Law Commission of India, and a member from social Justice. In this way, the judiciary's transparency, and independence will be maintained together.

3. **Judges actually have to bring under the scope of Right to Information Act.**
4. **Contempt Laws**:

One and the foremost task is to being amend the contempt of Court Act, 1971, because wide powers are being conferred upon the courts through Contempt of Court Act. Even today, we are following the age-old colonial system ofdeciding contemptuous Act; the law of contempt in India has deviated from itsvery object. So, the definition of 'contempt' has to be confine within the four corners

of the statutory definition.

5. **New Law required for impeachment procedure:**

   The government should also focus on the procedure of impeachment of judges keeping into the mind of new methods for ensuring judicial accountability as it has been adopted by the United States of America.

6. **Incentive-oriented reforms:**

   A possible reform in judiciary may also be initiated by introducing incentives to the litigants if matter disposed of within 2 or 3 days. The court expenses or fee would be returned to litigants, incentives to the judges if matter disposes within a reasonable time, and proper incentives to the lawyers also if matter carried within the proper time from the court.

7. **Individual Calendars and Management:**

   The individual calendars and proper case management may also increase accountability and competition. Some studies found that individual calendars reduce times to disposition not only because the judge in charge is more familiar with his or her own cases but also because the judges feel more comfortable.

8. **Case Management:**

   The introduction of case management techniques in the Supreme Court of India is believed to be the driving force in reducing the backlog to almost a third despite a considerable increase in the filing. Transferring to a particular judge, as in individual calendars and case management, allows for measuring judicial performance. Mere ability to generate accurate statistics reduces delay, without enforcement because judges care about their numbers.

9. **Sharpening incentive for lawyers:**

   Judges are not responsible solely for causing inefficiency. In civil and criminal cases, both parties often pursue delay. Making lawyers compete with other professionals and facilitating self-representation by litigants can be a beneficial strategy for making lawyers more accountable and increasing efficiency.

   In the Japanese judicial system, "the absence of lawyers is 90 percent in summary court cases, which account for more than 60 percent of civil litigation in Japan". The Same example is in England where 80 percent of unrepresented small claims litigants said that they would not have preferred representation.

10. **Deregulating the legal service market**:

    It will not only increase efficiency but also equity by increasing access to the judicial system.

11. Sharpening the incentives for litigants:

This is one another technique to discourage long litigation is to increase the direct costs to one or both parties. In Singapore, where the first day of proceedings is free but afterward court fees increase day by day. So, 80 percent of trials end on the first day. The same system has applied in Latin America where direct costs may imposed on litigants to shorten the period of cases. There are other countries where the losing party has to pay the cost of the court.If losers pay the cost of the system then it will cut down frivolous litigation by deterring parties who have no chance of succeeding on the merits but just bringa case to force the defendant to bring a settlement.

12. Creating competition among Courts:

Creating specialized courts improves efficiency because such courts rationalized procedures and they also offer an alternative system for litigants that may produce competition with regular courts. In the English Legal system, there is a healthy competition among the Royal Common Law Courts by offering better procedures to attract the litigants. The court has adopted flexible procedures and remedies.

13. Creating a small claim court system:

In many western countries, small claim courts have reduced the time to disposition and inflated the rate of access to justice. Brazil 1995, has introduced small claim courts by allowing people to litigate at a low cost, in an informal manner. In Great Britain and the Netherlands, the ordinary procedure is allowed after the filing of the case. The court applies simple, informal procedures, decisions are made by consensus or majority vote, and lawyers are not allowed in the court.

14. Providing alternative dispute resolution:

Alternative dispute resolution system creates competition and choice and also reduces the opportunities for corruption. In criminal courts, introducing plea bargaining to avoid or reduce trial, it reduces the time of disposition of a case also.

15. Simplifying procedures and increasing their flexibility

In the Netherlands, the *kortgeding*, namely the procedure for a preliminary injunction, has developed into a type of summary proceeding on matters of substantive law. Deciding the (*kortgeding*) matter requires one hearing only.In India, Lokadalat is very popular and an alternative to formal justice. Normally

a retired judge, lawyer, and social worker mediate disputes in an informal manner.

16. Recusals are allowed only when in financial connection of the judges with the dispute.
17. **Different procedures for a different types of cases:**

    This type of reform also is required in the proceedings of the court. Litigation shall be divided into small claims, fast-track cases for the limited procedure, and fixed costs whereas for multi-track there should have effective control of judiciary and protection of interest of litigants.
18. **Balance between power and practice**:

    There may be a practical and politically acceptable balance between absolute autonomy for judges, and administrative accountability. The judiciary is still capable of self-redemption. There is an urgent need in India to ensure judicial accountability which will ensure fairness, and impartiality and moreover increases public trust in the judiciary.
19. **The Post-retirement recruitments of Judges**

    The retirement age of Judges of higher Courts should be raised, or otherwise, there should be no post-retirement assignment for the retired judges of the Supreme Court/High Courts. Also, there should be possibility to have a cooling period after the retirement of SC and HC judges. The assignments in various commissions, tribunals, boards, etc., should be reserved for deserving advocates only.
20. **Master of the Roaster**

    CJI's powers of allotting cases to constitutional courts should be shared with other most senior judges of the Supreme Court.

21. For post-retirement recruitments, clear laws shall be created by the Parliament of India. Articles 124(7) and 220 of the Constitution shall be amended only then irregularity in post-retirement assignments may be improved.

APPENDICES

Judicial Accountability, Judicial Responsibility of Judges in India.

Hello everyone, I am research scholar as well as assistant professor in law, collecting responses from all academicians and scholars for my research project. I hereby request to allrespondents to fill this form which will benefit in my research.

* Required

1. Email *

2. 1. Enter Name *

3. 2. Profession *

4. 4. Do you think that accountability mechanism is not parallel with power and esteem attached to the judiciary? *

Mark only one oval.

- Yes No
- Maybe
- Not Sure
-

5. 5. Presently do you think that appointment and transfer of Judges are being carried out without political interference? *

Mark only one oval.

- Yes No
- Maybe
- Not

6. 6. Do you think that In India the process of judicial appointment and transfers are fair? *

Mark only one oval.

- Yes No
- Maybe
- Not sure

7. 7. Do you think Indian Judicial System misuses the powers and privileges available to the them? *

Mark only one oval.

- Yes No
- Maybe
- Not Sure

8. 8. Do you think that Colleguim system of Appointment and Transfer of judges shall be retained as it is? *

Mark only one oval.

- Yes No
- Maybe
- Not Sure
-

9. 9. Do you think that Indian judicial mechanism is effective, transparent in combating judicial corruption? *

Mark only one oval.

- Yes No
- Maybe
- Not sure
-

10. 10. Do you think all judicial behavior is responsible for the high pendency of cases in India? *

Mark only one oval.

- Yes No
- Maybe
- Not Sure
-

11. 11. Do you think that judges shall be accountable for the explaining the reasons for recusal to concerned parties? *

Mark only one oval.

- Yes No
- Maybe
- Not Sure
-

12. 12. Do you think that Recusal can lead to the inordinate delay in justice delivery system? *

Mark only one oval.

- Yes No
- Maybe
- Not Sure
-

13. 13.. Do you think that concept of judicial accountability is more transparent in foreign countries as compared to Indian Judiciary? *

Mark only one oval.

- No Yes
- Maybe
- Not Sure
-

14. 14. Do you think that laws regulating judicial attitude and powers are inadequate? *

Mark only one oval.

- Yes No
- Maybe
- Not Sure
-

15. 15. Do you think that impeachment process of SC and HC judges is inadequate *in India as mentioned under Constitution of India ?

Mark only one oval.

- Yes No
- Maybe
- Not Sure
-

16. 16. Do you think that government should publish periodic reports on judicial productivity and congestion rates? *

Mark only one oval.

- Agree Disagree
- Strongly Agree
- Not Sure
-

17. 17. Do you think that the power of judiciary under Contempt of Court Act, become powerful weapon to suppress the public criticism or even honest evaluation of the judiciary? *

Mark only one oval.

- Agree Disagree
- Strongly Agree
- Not Sure
-

18. 18. Do you think that Judges of the High Court's pronounced defective judgments frequently? *

Mark only one oval.

- Agree
- Strongly disagree
- Disagree
- Neutral

19. 19. Do you think that judges are facing political pressure? *

Mark only one oval.

- Yes No
- Maybe
- Not Sure
-

20. 20. Do you think that there is a room for improvement in present colleguim system for judicial accountability? *

Mark only one oval.

- Yes No
- Maybe
- Not Sure
- Other: _____

21. 21. Any other suggestion relating judicial accountability in India?

_____

_____

_____

_____

_____

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POST-RETIREMENTS RECRUITMENTS OF JUDGES, JUDICIAL RECUSAL AND JUDICIAL ACCOUNTABILITY

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POST-RETIREMENTS RECRUITMENTS OF JUDGES, JUDICIAL RECUSAL AND JUDICIAL ACCOUNTABILITY

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Abstract: Indian Constitutional law is silent about the post retirements assignments of the higher court judges. Appointments of judges and judicial accountability has close connection between these two variables, if appointments have been carried out not on the basis of merit or caliber but it was carried out on the basis of political connection then definitely there would be violation of rule of law and mannerisms of judicial accountability. In India, it is a regular phenomenon that retired judges of the Supreme Court and High Court are appointed to some assignments by the government. So, this is a major issue in the Indian judicial system that postretirement assignments carried out with political intention and benefits which also affect delivery of administration of justice, judges give favorable judgements in favour of the political parties on account of future lucrative assignments.

In Present article researchers will discuss this issue in detail on the basis of non-empirical data. Non-empirical data will include law commission reports, the Supreme Court judgements, constitutional principles, general principles of judicial conduct and international standards for judges. Judicial accountability is getting injured because of the post-retirement assignments of the Superior court judges. Researchers will try to prove this hypothesis in this article.

Keywords: Judicial Accountability, post-retirement assignments, Colleguim, miscarriage of justice, civil liberties.

Introduction:

Judicial accountability is getting injured because of the post-retirement

assignments of the Superior court judges. This premise is toughly applicable to the present Indian Judicial system. This fact is undeletable even though the Indian Judiciary is the strongest judiciary in the world. Indian Judiciary is the champion of the fundamental rights of the Individuals. The retiring judges of the Supreme Court and High Courts pronounced the judgements which will be pleased the government to gain the post-retirement appointment like various tribunals and commissions.

"The behavior of judges is closely scrutinized to ensure continued confidence in the integrity of the courts".[1] The public confidence will evaporate if judges seem to be biased when it happens then very institution of Judiciary will lost its worth and the whole judicial function difficult to exercise.[2] Therefore, action which is connected with self-interest and preconception, judges shall be deserted from it. It was mentioned by author that, "Throughout the ages, and in all societies, impartiality has been regarded as the essence of the administration of justice. It is essential for a judge to maintain, in court, a demeanor which gives to the parties an assurance that their case will be heard and determined on its merits, and not according to some personal predisposition on the part of the judge".[3]Judges and normal citizens are similar according to physical appearance but mentally and emotionally they have to be differing from them. It is expressed by author that, "The Judges, also human beings, do not approach the task of adjudication blindfolded. They disembark at the bench already fashioned by their own experiences and by the perception of the society they come from, and they might have belief and disbelief, like everyone else. The difference may happen between judicial fairness and the human being nature of judges. Judges shall not deny their human nature relatively; they have to acknowledge it".[4] But when they accept their human nature "they shall be in position to recognize how they can reach impartiality which is demand of their job".[5]

"The Constitution vests a lot of power and a certain amount of immunity in judges. Fairness and impartiality are the fundamental qualities to be possessed by a judge. In India, for the vast majority of cases, there are no reports of having been heard by a partial and unfair judge but there are instances where the contrary happens".[6]

It was held in *Ram Jawaya* v. *State of Punjab*[7] that in India, and Indian Constitution has not completely accepted the theory of separation of power in rigid sense even though role of branches of the government has adequately separated from each other because Indian constitution believes that, "One organ of the government

shall not interfere and function of other branch of the government".[8]

Independence of judges does not mean independence from obligations. Recusal is that kind of issue where judges' capabilities are tested on the basis of temperament. It is a tenet that no one should be judges in his or her own case. Courts must uphold their promises of providing fair and impartial justice by resolving controversies without bias. The practice of recusal, when and how an individual judge should be barred from adjudicating in a specific case in which he has an interest.

The opinions of the various scholars in India is that, "Several laws were passed by the parliament and state legislature, through this legislation various tribunals, commissions and other bodies were constituted where the persons who have been the judges of high Courts and Supreme Court of India were appointed. There are also non-statutory commissions like 'Law commission of India' where retired judges of high court and Supreme Court may be appointed".[9]The authors stated that, "The question arises here is that whether Central Government or State Government is bound to consult with Chief justice of SC and respective HC where the retired judges of that court going to appoint to a commission, tribunal or other similar body"?[10] Actually this question will arrive only where the concerned statute is silent relating to appointment or does not provide a specific mode of appointment.

The first 'Law Commission of India', headed by M. C. Setalvad, had briefly dealt with this issue. In paragraph 28 of the report, the Commission states: "we have noticed the only bar imposed on a Judge of the Supreme Court who has retired is that he shall not thereafter plead or act in any Court or before any authority. In the result, some Supreme Court Judges have, after retirement, set up chamber practice while some others have found employment in important positions under the Government. We have grave doubts whether starting chamber practice after retirement is consistent with the dignity of these retired judges and consonant with the high traditions which retired judges observe in other countries."[11]

"Where is appointment a retired High Court judge to a tribunal or commission lies within the discretion of the Central government or state government and if the consultation with Chief justice of the Supreme Court or the High Court is not approved then there is chances that government will make bias and favourable decision in related to appointment of judges which would indirectly affect the independence and integrity

of judicial system. There may be chances come across where appointment have been made on selfishness other than merit and concentrate on political consideration".[12]To dilute the scope for any such inappropriate considerations there should be appropriate law where retired judged will be appointed to a commission or tribunal only with the consultation of Chief justice of concerned court. It means that Consultation with the Chief Justice of the Supreme Court and High Court would be mandatory.

Development in Indian Judiciary

The Supreme Court in *State of A.P.* v. *K. Mohanlal*[13], issue of this case was that "appointment of judicial and revenue members to the Special Court constituted under section 7 of the A.P. Land-grabbing (Prohibition) Act, 1982". In this case, "The state legislation provided that the chairman of the Special Court shall be appointed after consultation with the High Court Chief Justice and in case of the nomination by the respective HC for appointment then consensus with the chief Justice of SC if necessary (in case of the sitting judge of the High Court). In this case no consultation process was applied in appointment judicial members and revenue members".[14]

"A contention was raised before the Supreme Court that appointment of members of the tribunal without consulting the chief justice of the High Court concerned, Act shall be declared unconstitutional."[15]The Supreme Court rejected the contention raised and upheld the validity of the Act. This decision is related to the 'consultation' process but it was related to validity of the state legislation. "The decision, it must be remembered, was concerned only with the constitutional validity of enactment and not with the desirability of such consultation".[16]

So, in the provision of appointment of retired judges in commission or tribunal as a judge then consultation with Chief justice of Supreme Court and High Court has to be mandatory.

Anangav Udaya Singh Deo v. *Ranganath Misra*[17], In this case, "the issue before the High Court was whether the respondent, a former Chief Justice of India, could become a Member of Parliament of Rajya Sabha in light of the restriction in Article 124(7) of the Constitution. Repelling the contention that Parliament was an 'authority' and becoming a Member of Parliament would constitute 'acting' for purposes of the said article, the Court held that in interpreting Article 124(7), attention must be paid to Article 220, the analogous provision for High Court judges, specifically to its marginal note which read: "Restriction on practice after being a permanent judge." Accordingly,

the restriction in Article 124(7) should be limited to post-retirement practice. Since acting as a legislator did not constitute such practice, the bar would not apply".[18]

Recent issue

"Justice Gogoi has nominated to Rajya Sabha and the appointment of Justice Sathasivam as a Governor". In these cases a lot of public criticism aroused against the judicial system and judicial independence, many of the legal scholars opined that this appointment is based on pure political desire and favoritism. The citizens are losing faith and the independence of judiciary which is a serious threat for democracy and justice delivery system, even Dr. B. R. Ambedkar has cautioned that once judiciary be corrupted, it will evil day for democracy.

JUDICIAL RECUSAL

A judge may sometimes meet in a situation where differences of interest arise or apparent conflict of interest requires him to recuse from the case. On the ground of bias, the recusal of judges is required. While on the ground of bias, a judge may have to evaluate not only on the basis of real likelihood of bias but also on the ground of reasonable suspicion of bias.

RECUSAL OF JUDGES IN INDIA

It is the practice in the Supreme Court of India and HC'S judges may not sit on the issue which is connected with his respective state and accumulate the dispute is a very serious. In India there, is absence of any legislation on recusal; several commissions and conferences have discussed the issue and laid down some of the principles.

In India, there is no statute laying down the minimum procedure which judges must follow in order to ensure impartiality.

RECENT CASES

- ***Central Bureau of Investigation case***[19]:

In this case of Mr. Nageshwara Rao was appointed as chief of the CBI instead of the AlokVerma was removed by the government of India.

This appointment of Mr. Nageshwara Rao was challenged before SC of India where judges were recused themselves to hear the matter, the names of the judges were Chief Justice Ranjan Gagoi, Justice Ramana and Justice A.k. Sikri. "Rao was continued to be a director after former CBI director AlokVerma was removed by the high-power selection panel headed by PM Modi".[20]

It has been reported by one of the newspaper that, “The plea by non-government organization (NGO) Common Cause sought the quashing of the order of 10 January and argued that Rao’s appointment as interim director was not according to the constitutional principles and principles in high power appointment usually done in selection considered to be illegal, arbitrary, mala fide and in infringement of the provisions of the Delhi Special Police Establishment Act (DSPE Act)".[21]

“Appointment of Mr. Rao as a CBI director was considered unauthenticated and legal. It seems that committee has been neglected by the Centre which was acting without jurisdiction appointed Rao,"[22] the plea was added.

Ayodhya case[23]:

In this case, lawyer for the Sunni Central Waqf Board, senior advocate Rajeev Dhavan pointed out that Justice Uday Lalit had appeared as counsel in the Kalyan Singh case related to the Babri Masjid-Ram Janmabhoomi structure demolition. Kalyan Sing was the Chief Minister at that time when Babri Mazid was robbed by the people. Senior advocate Harish Salve spoke up for the judge, saying that it was a different case. The Kalyan Singh case appeared in 1997. It was the judge’s discretion to recuse the case.

Bhima Koregaon case[24]:

Justice B.R. Gavai voluntarily left the case which was related Bhima Koregaon riots. The petition was filed by Navlakha for bail application against the decision of “Bombay High Court refused to quash the FIR registered against him by Pune police” under the provisions of the “Unlawful Activities Prevention Act and the Indian Penal Code. Appeal filed by the Navlakha came before a bench consist of justices NV Ramana, R Subhash Reddy and BR Gavai”.[25]

In this case also, CJI Gogoi also refused to hear the petition and not cited any reason for the recusal. “Bombay High Court Judges including Justice Ranjit More and Dongre refused to cancel the FIR filed against Navlakha because there is prima facie material available against him which contain documents where Novlakha in work against the violence during Bhima Koregaon appeared in 2018”.[26]

Recusal cases in 2021-22

Table 1.9

Case	Judges	Date
River Krishna Water Dispute case	Justice Chandrachud and Justice A. S. Boppanna	3 January 2022
Post poll violence case against Mamata Banerjee	Justice Anirudhha Bose &Justice Indira Banerjee	June 2021

The principle of judicial independence is intended to safeguard the justice system and the rule of law. To maintain public trust and confidence in the court, it is imperative that in the present legal system, some critical components of our judicial mechanism need to be revised.

Unless there are reasonable grounds for recusal, a constitutionally appointed judge is obliged to sit on any case assigned to them. The judges should recuse themselves if there is an apprehension that they might bring an impartial mind to the settlement of the question which judges have to decide. Instead of probability, the principle for recusal is a real and not remote possibility.

The analysis is divided into two stages. The judge should always consider first what reasonably leads to apprehension by a fully informed observer that the judge might decide the case other than on its merit; and secondly, whether there is a logical and sufficient connection between those circumstances and that apprehension.

In India there is no guidelines on what basis judges shall recuse themselves from the case. So, it hurt the judicial process and the right of the litigants.

Conclusion:

- Ideally, the retired judges should reject such sinecures in the collective interest of the institution that they have served for many years. It is also a trend that people do not hesitate to link pre-retirement judgments of judges to their post-retirement conduct to secure lucrative appointments. This is an extremely dangerous perception for the institution of the judiciary. It badly tarnishes the image of the judicial system. The time has come when all the stakeholders of the legal profession should sit together to find out a long-lasting solution of this problem."

- Judges shall not accept any posts after retirements if the rule of law or independence of the judiciary will be on stake.
- Age of the Retirements of the SC and HC judges shall be increased so, then issues of post-retirements benefits to judges will not arrive.
- For inevitable appointments of post retirement recruitment a high level committee or commission of SC and HC judges has to be created.
- Article 124 and 217 shall be amended if post retirement jobs of the SC and HC judges want to be continued, in this way it may be controlled by proper law.
- Judges will perform their duties and exercise powers as judge honourably, faithfully, impartially and conscientiously."
- Edible equilibrium between judge's self-autonomy and judicial accountability.
- A judge has a constitutional duty when despairing justice and rendering judgements fairly while presiding once a case. When judges are assigned to a case, they should review the facts of the case impartially and determine whether they have any conflict of interest that would possibly prevent them from being impartial, ethical and fair.
- There is no statute in India that specifies the minimum procedure that judges must follow to ensure impartiality. However, courts have always insisted that judges and other adjudicatory authorities must adhere to impartiality principles. The principles of natural justice have evolved alongside the progress of civilization.
- A law for recusal shall be passed by the Parliament of India.
- Judges shall provide the reason of the recusal in every case.

References

[1] *Id.*

[2] Kharel Rajendra, "Recusal and Disqualification of Judges: An Overview"4 *NJA Law Journal* 13-24 (2010).

[3] *Id.*

[4] Kharel Rajendra, "Recusal and Disqualification of Judges: An Overview"4 *NJA Law Journal* 13-24 (2010).

[5] *Id.*

[6]ManeeshChhibber, “Recusal has become a selective call of morality for Supreme Court judges,” 2019 *available at*: https://theprint.in/opinion/recusal-supreme-court-judges-gautam-navlakha-kashmir-cji-gogoi/303036/.
[7]*Ram Jawaya*v. *State of Punjab* AIR 1955 SC 549.
[8]*Id.*
[9]Priyadarshini Barua, Sarthak Makkar and Vasanthi Hariharan, “Judicial Recusal: A Comparative Analysis Editorial” 7 *GNLU Law Review* 1–16 (2020).
[10]Kharel Rajendra, "Recusal and Disqualification of Judges: An Overview"4 *NJA Law Journal* 13-24 (2010).
[11]Lokendra Malik, “Chapter 5 Post-Retirement Assignments of the Supreme Court Judges in India: A Critical Analysis” *SSRN Electronic Journal* 39 (2020).
[12]*Id.*
[13]*State of A.P*. v. *K. Mohanlal* (1998) 5 SCC 468.
[14]*Id.*
[15]*Id.*
[16]*Id.*
[17] AIR 2000 Ori 24.
[18]Lokendra Malik, “Chapter 5 Post-Retirement Assignments of the Supreme Court Judges in India: A Critical Analysis” *SSRN Electronic Journal* 39 (2020).
[19]“Supreme Court holds CBI's ex-interim chief Nageswara Rao guilty of contempt”, *The Hindu*, 12-2-2019, *available at* https://www.livemint.com/politics/news/another-judge-recuses-himself-from-hearing-plea-against-cbi-s-rao-1548914117000.html; (last visited September 10, 2020).
[20]*Id.*
[21]*Id.*
[22]*Id.*
[23]*M Siddiq (D) ThrLrs* v. *Mahant Suresh Das &Ors.*(decided by SC in November 9, 1919).
[24]Bhima Koregaon case: Another Supreme Court Judge recuses himself from hearing Gautam Navlakha’s plea, *The Leaflet*, 1/10/2019, *available at* https://www.theleaflet.in/bhima-koregaon-case-another-supreme-court-judge-recuses-himself-from-hearing-gautam-navlakhas-plea/#; (last visited on 10 September 2020).
[25]*Id.*
[26]*Id.*

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February 28, 2022

TO WHOMSOVER IT MAY CONCERN

This is to certify that Mr. Jay Bhongale Assistant Professor, New Law College Bharti Vidypeeth, Deemed to be University, presented a paper titled as 'Post Retirement Recruitments of Judges and Judicial Accountability' in the Virtual National Conference on 'Independence of Judiciary & Judicial Accountability : Contemporary Challenges and Solutions' organized by ILS Law College, Pune on 26th and 27th February 2022.

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Assistant Professor of Law

from

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has participated and presented paper on the topic

Right to Privacy And Narco-Analysis Test.

Dr. Manojkumar V. Hiremath
IQAC Coordinator

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ACT No. XII OF 1926.

[PASSED BY THE INDIAN LEGISLATURE.]

(*Received the assent of the Governor General on the 8th March, 1926.*)

An Act to define and limit the powers of certain Courts in punishing contempts of courts.

WHEREAS doubts have arisen as to the powers of a High Court of Judicature to punish contempts of subordinate Courts;

AND WHEREAS it is expedient to resolve these doubts and to define and limit the powers exercisable by High Courts and Chief Courts in punishing contempts of court; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Contempt of Courts Act, 1926.

(*2*) It shall extend to the whole of British India.

(*3*) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint.

Power of superior Courts to punish contempts of court.

2. (*1*) Subject to the provisions of sub-section (*3*), the High Courts of Judicature established by Letters Patent shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to them as they have and exercise in respect of contempts of themselves.

(*2*) Subject to the provisions of sub-section (*3*), a Chief Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt of itself as a High Court referred to in sub-section (*1*).

(*3*) No High Court shall take cognisance of a contempt alleged to have been committed in respect of a Court subordinate

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ordinate to it where such contempt is an offence punishable under the Indian Penal Code. XLV of 1860.

nit of nishment contempt court.

3. Save as otherwise expressly provided by any law for the time being in force, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine, which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.

MGIPC—L—1-142—20-4-26—7,500.

THE CONTEMPT OF COURTS ACT, 1971

ACT NO. 70 OF 1971

[24*th December*, 1971.]

An Act to define and limit the powers of certain courts in punishing contempts of courts and to regulate their procedure in relation thereto.

BE it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:—

1. Short title and extent.—(*1*) This Act may be called the Contempt of Courts Act, 1971.

(2) It extends to the whole of India:

Provided that it shall not apply to the State of Jammu and Kashmir except to the extent to which the provisions of this Act relate to contempt of the Supreme Court.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "contempt of court" means civil contempt or criminal contempt;

(b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;

(c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

(d) "High Court" means the High Court for a State or a Union territory, and includes the court of the Judicial Commissioner in any Union territory.

3. Innocent publication and distribution of matter not contempt.—(*1*) A person shall not be guilty of contempt of court on the ground that he has published (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceeding pending at that time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending.

(2) Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, the publication of any such matter as is mentioned in sub-section (*1*) in connection with any civil or criminal proceeding which is not pending at the time of publication shall not be deemed to constitute contempt of court.

(3) A person shall not be guilty of contempt of court on the ground that he has distributed a publication containing any such matter as is mentioned in sub-section (*1*), if at the time of distribution he had no reasonable grounds for believing that it contained or was likely to contain any such matter as aforesaid:

Provided that this sub-section shall not apply in respect of the distribution of—

(i) any publication which is a book or paper printed or published otherwise than in conformity with the rules contained in section 3 of the Press and Registration of Books Act, 1867 (25 of 1867);

(ii) any publication which is a newspaper published otherwise than in conformity with the rules contained in section 5 of the said Act.

Explanation.—For the purposes of this section, a judicial proceeding—

(a) is said to be pending—

(A) in the case of a civil proceeding, when it is instituted by the filing of a plaint or otherwise,

(B) in the case of a criminal proceeding under the Code of Criminal Procedure, 1898 (5 of 1898), or any other law—

(i) where it relates to the commission of an offence, when the charge-sheet or *challan* is filed, or when the court issues summons or warrant, as the case may be, against the accused, and

(ii) in any other case, when the court takes cognizance of the matter to which the proceeding relates, and

in the case of a civil or criminal proceeding, shall be deemed to continue to be pending until it is heard and finally decided, that is to say, in a case where an appeal or revision is competent, until the appeal or revision is heard and finally decided or, where no appeal or revision is preferred, until the period of limitation prescribed for such appeal or revision has expired;

(b) which has been heard and finally decided shall not be deemed to be pending merely by reason of the fact that proceedings for the execution of the decree, order or sentence passed therein are pending.

4. Fair and accurate report of judicial proceeding not contempt.—Subject to the provisions contained in section 7, a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding or any stage thereof.

5. Fair criticism of judicial act not contempt.—A person shall not be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided.

6. Complaint against presiding officers of subordinate courts when not contempt.—A person shall not be guilty of contempt of court in respect of any statement made by him in good faith concerning the presiding officer of any subordinate court to—

(a) any other subordinate court, or

(b) the High Court,

to which it is subordinate.

Explanation.—In this section, "subordinate court" means any court subordinate to a High Court.

7. Publication of information relating to proceedings in chambers or *in camera* not contempt except in certain cases.—(*1*) Notwithstanding anything contained in this Act, a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding before any court sitting in chambers or *in camera* except in the following cases, that is to say,—

(a) where the publication is contrary to the provisions of any enactment for the time being in force;

(b) where the court, on grounds of public policy or in exercise of any power vested in it, expressly prohibits the publication of all information relating to the proceeding or of information of thedescription which is published;

(c) where the court sits in chambers or *in camera* for reasons connected with public order or the security of the State, the publication of information relating to those proceedings;

(d) where the information relates to a secret process, discovery or invention which is an issue in proceedings.

(*2*) Without prejudice to the provisions contained in sub-section (*1*), a person shall not be guilty of contempt of court for publishing the text or a fair and accurate summary of the whole, or any part, of an order made by a court sitting in chambers or *in camera*, unless the court has expressly prohibited the

publication thereof on grounds of public policy, or for reasons connected with public order or the security of the State, or on the ground that it contains information relating to a secret process, discovery or invention, or in exercise of any power vested in it.

8. Other defences not affected.—Nothing contained in this Act shall be construed as implying that any other defence which would have been a valid defence in any proceedings for contempt of court has ceased to be available merely by reason of the provisions of this Act.

9. Act not to imply enlargement of scope of contempt.—Nothing contained in this Act shall be construed as implying that any disobedience, breach, publication or other act is punishable as contempt of court which would not be so punishable apart from this Act.

10. Power of High Court to punish contempts of subordinate courts.—Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself:

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860).

11. Power of High Court to try offences committed or offenders found outside jurisdiction.—A High Court shall have jurisdiction to inquire into or try a contempt of itself or of any court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction, and whether the person alleged to be guilty of contempt is within or outside such limits.

12. Punishment for contempt of court.—(*1*) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.

Explanation.—An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it *bona fide*.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (*1*) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub-section (*4*), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.

Explanation.—For the purpose of sub-sections (*4*) and (*5*),—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

[1][**13. Contempts not punishable in certain cases.**—Notwithstanding anything contained in any law for the time being in force,—

(a) no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice;

(b) the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is *bona fide*.]

14. Procedure where contempt is in the face of the Supreme Court or a High Court.—(*1*) When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and, at any time before the rising of the Court, on the same day, or as early as possible thereafter, shall—

(a) cause him to be informed in writing of the contempt with which he is charged;

(b) afford him an opportunity to make his defence to the charge;

(c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and

(d) make such order for the punishment or discharge of such person as may be just.

(2) Notwithstanding anything contained in sub-section (*1*), where a person charged with contempt under that sub-section applies, whether orally or in writing, to have the charge against him tried by some judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the Court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed,together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.

(3) Notwithstanding anything contained in any other law, in any trial of a person charged with contempt under sub-section (*1*) which is held, in pursuance of a direction given under sub-section (*2*), by a Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed to appear as a witness and the statement placed before the Chief Justice under sub-section (*2*) shall be treated as evidence in the case.

(4) Pending the determination of the charge, the Court may direct that a person charged withcontempt under this section shall be detained in such custody as it may specify:

Provided that he shall be released on bail, if a bond for such sum of money as the Court thinks sufficient is executed with or without sureties conditioned that the person charged shall attend at the time and place mentioned in the bond and shall continue to so attend until otherwise directed by the Court:

Provided further that the Court may, if it thinks fit, instead of taking bail from such person, discharge him on his executing a bond without sureties for his attendance as aforesaid.

1. Subs. by Act 6 of 2006, s. 2, for section 13 (w.e.f. 17-3-2006).

15. Cognizance of criminal contempt in other cases.—(*1*) In the case of a criminal contempt, other than a contempt referred to in section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by—

(a) the Advocate-General, or

(b) any other person, with the consent in writing of the Advocate-General, [1][or]

[1][(*c*) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.]

(2) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate-General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.

Explanation.—In this section, the expression "Advocate-General" means,—

(a) in relation to the Supreme Court, the Attorney-General or the Solicitor-General;

(b) in relation to the High Court, the Advocate-General of the State or any of the States for which the High Court has been established;

(c) in relation to the court of a Judicial Commissioner, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

16. Contempt by judge, magistrate or other person acting judicially.—(*1*) Subject to the provisions of any law for the time being in force, a judge, magistrate or other person acting judicially shall also be liable for contempt of his own court or of any other court in the same manner as any other individual is liable and the provisions of this Act shall, so far as may be, apply accordingly.

(*2*) Nothing in this section shall apply to any observations or remarks made by a judge, magistrate or other person acting judicially, regarding a subordinate court in an appeal or revision pending before such judge, magistrate or other person against the order or judgment of the subordinate court.

17. Procedure after cognizance.—(*1*) Notice of every proceeding under section l5 shall be served personally on the person charged, unless the Court for reasons to be recorded directs otherwise.

(2) The notice shall be accompanied,—

(a) in the case of proceedings commenced on a motion, by a copy of the motion as also copies of the affidavits, if any, on which such motion is founded; and

(b) in case of proceedings commenced on a reference by a subordinate court, by a copy of the reference.

(3) The Court may, if it is satisfied that a person charged under section 15 is likely to abscond or keep out of the way to avoid service of the notice, order the attachment of his property of such value or amount as it may deem reasonable.

(4) Every attachment under sub-section (*3*) shall be effected in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908), for the attachment of property in execution of a decree for payment of money, and if, after such attachment, the person charged appears and shows to the satisfaction of the Court that he did not abscond or keep out of the way to avoid service of the notice, the Court shall order the release of his property from attachment upon such terms as to costs or otherwise as it may think fit.

1. Ins. by Act 45 of 1976, s. 2 (w.e.f. 30-3-1976).

(5) Any person charged with contempt under section 15 may file an affidavit in support of his defence, and the Court may determine the matter of the charge either on the affidavits filed or after taking such further evidence as may be necessary, and pass such order as the justice of the case requires.

18. Hearing of cases of criminal contempt to be by Benches.—(*1*) Every case of criminal contempt under section 15 shall be heard and determined by a Bench of not less than two judges.

(*2*) Sub-section (*1*) shall not apply to the Court of a Judicial Commissioner.

19. Appeals.—(*1*) An appeal shall lie as of right from any order or decision of the High Court in the exercise of its jurisdiction to punish for contempt—

(a) where the order or decision is that of a single judge, to a Bench of not less than two judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court:

Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.

(2) Pending any appeal, the appellate Court may order that—

(a) the execution of the punishment or order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (*2*).

(4) An appeal under sub-section (*1*) shall be filed—

(a) in the case of an appeal to a Bench of the High Court, within thirty days;

(b) in the case of an appeal to the Supreme Court, within sixty days,

from the date of the order appealed against.

20. Limitation for actions for contempt.—No court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

21. Act not to apply to *Nyaya Panchayats* or other village courts.—Nothing contained in this Act shall apply in relation to contempt of *Nyaya Panchayats* or other village courts, by whatever name known, for the administration of justice, established under any law.

22. Act to be in addition to, and not in derogation of, other laws relating to contempt.—The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law relating to contempt of courts.

23. Power of Supreme Court and High Courts to make rules.—The Supreme Court or, as the case may be, any High Court, may make rules, not inconsistent with the provisions of this Act, providing for any matter relating to its procedure.

24. Repeal.—The Contempt of Courts Act, 1952 (32 of 1952), is hereby repealed.

THE CONTEMPT OF COURTS (AMENDMENT) ACT, 2006

NO. 6 OF 2006

[17th March, 2006.]

An Act further to amend the Contempt of Courts Act, 1971.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:-

1.

Short title.

1. Short title.-This Act may be called the Contempt of Courts (Amendment) Act, 2006.

2.

Substitution of new section for section 13.

2. Substitution of new section for section 13.-In the Contempt of Courts Act, 1971 (70 of 1971), for section 13, the following section shall be substituted, namely:-

"13. Contempts not punishable in certain cases.-Notwithstanding anything contained in any law for the time being in force,-

(a) no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice;

(b) the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bona fide.''.

T. K. VISWANATHAN,

Secy. to the Govt. of India.

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THE JUDGES (INQUIRY) ACT, 1968

THE JUDGES (INQUIRY) ACT, 1968

SYNOPSIS

THE JUDGES (INQUIRY) ACT, 1968

(51 of 1968)

[*5th December, 1968*]

PREAMBLE

An Act to regulate the procedure for the investigation and proof of the misbehaviour or incapacity of a Judge of the Supreme Court or of a High Court and for the presentation of an address by Parliament to the President and for matters connected therewith.

BE it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:—

1. Short title and commencement.—(1) This Act may be called the Judges (Inquiry) Act, 1968.

(2) It shall come into force on such date[1] as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "Chairman" means the Chairman of the Council of States;

(b) "Committee" means a Committee constituted under section 3;

(c) "Judge" means a Judge of the Supreme Court or of a High Court and includes the Chief Justice of India and the Chief Justice of a High Court;

(d) "prescribed" means prescribed by rules made under this Act;

(e) "Speaker" means the Speaker of the House of the People.

3. Investigation into misbehaviour or incapacity of Judge by Committee.—(1) If notice is given of a motion for presenting an address to the President praying for the removal of a Judge signed,—

(a) in the case of a notice given in the House of the People, by not less than one hundred members of that House;

(b) in the case of a notice given in the Council of States, by not less, than fifty members of that Council, then, the Speaker or, as the case may be, the Chairman may, after consulting such persons, if any, as he thinks fit and after considering such materials, if any, as may be available to him either admit the motion or refuse to admit the same.

(2) If the motion referred to in sub-section (1) is admitted, the Speaker or, as the case maybe, the Chairman shall keep the motion pending and constitute as soon as may be for the purpose of making an investigation into the grounds on which the removal of a Judge is prayed for, a Committee consisting of three members of whom—

(a) one shall be chosen from among the Chief Justice and other Judges of the Supreme Court;

(b) one shall be chosen from among the Chief Justices of the High Courts; and

1. *Vide* Gazette of India, Extra., Pt. II, Sec. 3(i), Dated 22-7-1968.

(c) one shall be a person who is in the opinion of the Speaker or, as the case may be, the Chairman, a distinguished jurist:

Provided that where notices of a motion referred to in sub-section (1) are given on the same day in both Houses of Parliament, no Committee shall be constituted unless the motion has been admitted in both Houses and where such motion has been admitted in both Houses, the Committee shall be constituted jointly by the Speaker and the Chairman: Provided further that where notices of a motion as aforesaid are given in the Houses of Parliament on different dates, the notice which is given later shall stand rejected.

(3) The Committee shall frame definite charges against the Judge on the basis of which the investigation is proposed to be held.

(4) Such charges together with a Statement of the grounds on which each such Charge is based shall be communicated to the Judge and he shall be given a reasonable opportunity of presenting a written Statement of defence within such time as may be specified in this behalf by the Committee.

(5) Where it is alleged that the Judge is unable to discharge the duties of his office efficiently due to any physical or mental incapacity and the allegation is denied, the Committee may arrange for the medical examination of the Judge by such Medical Board as may be appointed for the purpose by the Speaker or, as the case may be, the Chairman or, where the Committee is constituted jointly by the Speaker and the Chairman, by both of them, for the purpose and the Judge shall submit himself to such medical examination within the time specified in this behalf by the Committee.

(6) The Medical Board shall undertake such medical examination of the Judge as may be considered necessary and submit a report to the Committee stating therein whether the incapacity is such as to render the Judge unfit to continue in office.

(7) If the Judge refuses to undergo medical examination considered necessary by the Medical Board, the Board shall submit a report to the Committee stating therein the examination which the Judge has refused to undergo, and the Committee may, on receipt of such report, presume that the Judge suffers from such physical or mental incapacity as is alleged in the motion referred to in sub-section (1).

(8) The Committee may, after considering the written Statement of the Judge and the medical report, if any, amend the charges framed under sub-section (3) and in such a case, the Judge shall be given a reasonable opportunity of presenting a fresh written Statement of defence.

(9) The Central Government may, if required by the Speaker or the Chairman, or both, as the case may be, appoint an advocate to conduct the case against the Judge.

4. Report of Committee.—(1) Subject to any rules that may be made in this behalf, the Committee shall have power to regulate its own procedure in making the investigation and shall give a reasonable opportunity to the Judge of cross-examining witnesses, adducing evidence and of being heard in his defence.

(2) At the conclusion of the investigation, the Committee shall submit its report to the Speaker or, as the case may be, to the Chairman, or where the

Committee has been constituted jointly by the Speaker and the Chairman, to both of them, stating therein its findings on each of the charges separately with such observations on the whole case as it thinks fit.

(3) The Speaker or the Chairman, or, where the Committee has been constituted jointly by the Speaker and the Chairman, both of them, shall cause the report submitted under sub-section (2) to be laid, as soon as may be, respectively before the House of the People and the Council of States.

5. Powers of Committee.—For the purpose of making any investigation under this Act, the Committee shall have the powers of a civil court, while trying a suit, under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on oath;

(d) issuing commissions for the examination of witnesses or documents;

(e) such other matters as may be prescribed.

6. Consideration of report and procedure for presentation of an address for removal of Judge.—(1) If the report of the Committee contains a finding that the Judge is not guilty of any misbehaviour or does not suffer from any incapacity, then, no further Steps shall be taken in either House of Parliament in relation to the report and the motion pending in the House or the Houses of Parliament shall not be proceeded with.

(2) If the report of the Committee contains a finding that the Judge is guilty of any misbehaviour or suffers from any incapacity, then, the motion referred to in sub-section (1) of section 3 shall, together with the report of the Committee, be taken up for consideration by the House or the Houses of Parliament in which it is pending.

(3) If the motion is adopted by each House of Parliament in accordance with the provisions of clause (4) of article 124 or, as the case may be, in accordance with that clause read with article 218 of the Constitution, then, the misbehaviour or incapacity of the Judge shall be deemed to have been proved and an address praying for the removal of the Judge shall be presented in the prescribed manner to the President by each House of Parliament in the same session in which the motion has been adopted.

7. Power to make rules.—(1) There shall be constituted a Joint Committee of both Houses of Parliament in accordance with the provisions hereinafter contained for the purpose of making rules to carry out the purposes of this Act.

(2) The Joint Committee shall consist of fifteen members of whom ten shall be nominated by the Speaker and five shall be nominated by the Chairman.

(3) The Joint Committee shall elect its own Chairman and shall have power to regulate its own procedure.

(4) Without prejudice to the generality of the provisions of sub-section (1), the Joint Committee may make rules to provide for the following among other matters, namely:—

(a) the manner of transmission of a motion adopted in one House to the other House of Parliament;

(b) the manner of presentation of an address to the President for the removal of a Judge;

(c) the travelling and other allowances payable to the members of the Committee and the witnesses who may be required to attend such Committee;

(d) the facilities which may be accorded to the Judge for defending himself;

(e) any other matter which has to be, or may be, provided for by rules or in respect of which provision is, in the opinion of the Joint Committee, necessary.

(5) Any rules made under this section shall not take effect until they are approved and confirmed both by the Speaker and the Chairman and are published in the Official Gazette, and such publication of the rules shall be conclusive proof that they have been duly made.

Bill No. 97 of 2006

THE JUDGES (INQUIRY) BILL, 2006

A

BILL

for establishing the National Judicial Council to undertake preliminary investigation and inquire into allegations of misbehaviour or incapacity of a Judge of the Supreme Court or of a High Court and to regulate the procedure for such investigation, inquiry and proof, and for imposing minor measures; and for the presentation of an address by Parliament to the President and for matters connected therewith.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and commencement.

1. (*1*) This Act may be called the Judges (Inquiry) Act, 2006.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "Chairman" means the Chairman of the Council of States;

(b) "Code of Conduct" means the guidelines issued by the Council under sub-section (*1*) of section 36;

THE NATIONAL JUDICIAL APPOINTMENTS COMMISSION ACT, 2014

ACT NO. 40 OF 2014

[31*st December*, 2014.]

An Act to regulate the procedure to be followed by the National Judicial Appointments Commission for recommending persons for appointment as the Chief Justice of India and other Judges of the Supreme Court and Chief Justices and other Judges of High Courts andfor their transfers and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-fifth Year of the Republic of India as follows:—

1. Short title and commencement.—(*1*) This Act may be called the National Judicial Appointments Commission Act, 2014.

(*2*) It shall come into force on such date[1] as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) ―Chairperson‖ means the Chairperson of the Commission;

(b) ―Commission‖ means the National Judicial Appointments Commission referred to in article 124A of the Constitution;

(c) ―High Court‖ means the High Court in respect of which recommendation for appointment of a Judge is proposed to be made by the Commission;

(d) ―Member‖ means a Member of the Commission and includes its Chairperson;

(e) ―prescribed‖ means prescribed by the rules made under this Act;

(f) ―regulations‖ means the regulations made by the Commission under this Act.

3. Headquarters of Commission.—The Headquarters of the Commission shall be at Delhi.

4. Reference to Commission for filling up of vacancies.—(*1*)The Central Government shall, within a period of thirty days from the date of coming into force of this Act, intimate the vacancies existing in the posts of Judges in the Supreme Court and in a High Court to the Commission for making its recommendations to fill up such vacancies.

(2) The Central Government shall, six months prior to the date of occurrence of any vacancy by reason of completion of the term of a Judge of the Supreme Court or of a High Court, make a reference to the Commission for making its recommendation to fill up such vacancy.

(3) The Central Government shall, within a period of thirty days from the date of occurrence of any vacancy by reason of death or resignation of a Judge of the Supreme Court or of a High Court, make a reference to the Commission for making its recommendations to fill up such vacancy.

5. Procedure for selection of Judge of Supreme Court.—(*1*) The Commission shall recommend for appointment the senior-most Judge of the Supreme Court as the Chief Justice of India if he is considered fit to hold the office:

Provided that a member of the Commission whose name is being considered for recommendation shall not participate in the meeting.

(2) The Commission shall, on the basis of ability, merit and any other criteria of suitability as may be specified by regulations, recommend the name for appointment as a Judge of the Supreme Court from amongst persons who are eligible to be appointed as such under clause (3) of article 124 of the Constitution:

1. 13th April, 2015, *vide* notification No. S.O. 1001(E), dated by 13th April, 2015, *see* Gazette of India, Extraordinary, Part II, sec. 3(*ii*).

Provided that while making recommendation for appointment of a High Court Judge, apart from seniority, the ability and merit of such Judge shall be considered:

Provided further that the Commission shall not recommend a person for appointment if any two members of the Commission do not agree for such recommendation.

(3) The Commission may, by regulations, specify such other procedure and conditions for selection and appointment of a Judge of the Supreme Court as it may consider necessary.

6. Procedure for selection of Judge of High Court.—(*1*) The Commission shall recommend for appointment a Judge of a High Court to be the Chief Justice of a High Court on the basis of *inter se* seniority of High Court Judges and ability, merit and any other criteria of suitability as may be specified by regulations.

(2) The Commission shall seek nomination from the Chief Justice of the concerned High Court for the purpose of recommending for appointment a person to be a Judge of that.

(3) The Commission shall also on the basis of ability, merit and any other criteria of suitability as may be specified by regulations, nominate name for appointment as a Judge of a High Court from amongst persons who are eligible to be appointed as such under clause (2) of article 217 of the Constitution and forward such names to the Chief Justice of the concerned High Court for its views.

(4) Before making any nomination under sub-section (*2*) or giving its views under sub-section (*3*), the Chief Justice of the concerned High Court shall consult two senior-most Judges of that High Court and such other Judges and eminent advocates of that High Court as may be specified by regulations.

(5) After receiving views and nomination under sub-sections (*2*) and (*3*), the Commission may recommend for appointment the person who is found suitable on the basis of ability, merit and any other criteria of suitability as may be specified by regulations.

(6) The Commission shall not recommend a person for appointment under this section if any two members of the Commission do not agree for such recommendation.

(7) The Commission shall elicit in writing the views of the Governor and the Chief Minister of the State concerned before making such recommendation in such manner as may be specified by regulations.

(8) The Commission may, by regulations, specify such other procedure and conditions for selection and appointment of a Chief Justice of a High Court and a Judge of a High Court as it may consider necessary.

7. Power of President to require reconsideration.—The President shall, on the recommendations made by the Commission, appoint the Chief Justice of India or a Judge of the Supreme Court or, as the case may be, the Chief Justice of a High Court or the Judge of a High Court:

Provided that the President may, if considers necessary, require the Commission to reconsider, either generally or otherwise, the recommendation made by it:

Provided further that if the Commission makes a recommendation after reconsideration in accordance with the provisions contained in sections 5 or 6, the President shall make the appointment accordingly.

8.Officers and employees of Commission.—(*1*) The Central Government may, in consultation with the Commission, appoint such number of officers and other employees for the discharge of functions of the Commission under this Act.

(2) The terms and other conditions of service of officers and other employees of the Commission appointed under sub-section (*1*) shall be such as may be prescribed.

(3) The Convenor of the Commission shall be the Secretary to the Government of India in the Department of Justice.

9. Procedure for transfer of Judges.—The Commission shall recommend for transfer of Chief Justices and other Judges of High Courts from one High Court to any other High Court, and for this purpose, specify, by regulations, the procedure for such transfer.

10. Procedure to be followed by Commission in discharge of its functions.—(*1*) The Commission shall have the power to specify, by regulations, the procedure for the discharge of its functions.

(*2*) The Commission shall meet at such time and place as the Chairperson may direct and observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meeting), as it may specify by regulations.

11. Power to make rules.—(*1*) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the fees and allowances payable to the eminent persons nominated under sub-clause (*d*) of clause (1) of article 124A of the Constitution;

(b) the terms and other conditions of service of officers and other employees of the Commission under sub-section (*2*) of section 8;

(c) any other matter which is to be, or may be, prescribed, in respect of which provision is to be made by the rules.

12. Power to make regulations.—(*1*) The Commission may, by notification in the Official Gazette, make regulations consistent with this Act, and the rules made thereunder, to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the criteria of suitability with respect to appointment of a Judge of the Supreme Court under sub-section (*2*) of section 5;

(b) other procedure and conditions for selection and appointment of a Judge of the Supreme Court under sub-section (*3*) of section 5;

(c) the criteria of suitability with respect to appointment of a Judge of the High Court under sub-section (*3*) of section 6;

(d) other Judges and eminent advocates who may be consulted by the Chief Justice undersub-section (*4*) of section 6;

(e) the manner of eliciting views of the Governor and the Chief Minister under sub-section (*7*) of section 6;

(f) other procedure and conditions for selection and appointment of a Judge of the High Court under sub-section (*8*) of section 6;

(g) the procedure for transfer of Chief Justices and other Judges from one High Court to any other High Court under section 9;

(h) the procedure to be followed by the Commission in the discharge of its functions under sub-section (*1*) of section 10;

(i) the rules of procedure in regard to the transaction of business at the meetings of Commission, including the quorum at its meeting, under sub-section (*2*) of section 10;

(j) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.

13.Rules and regulations to be laid before Parliament.—Every rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter

have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

14. Power to remove difficulties.—(*1*) If any difficulty arises in giving effect to the provisions ofthis Act, the Central Government may, after consultation with the Commission, by an order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of five years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

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MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 31*st December*, 2014/*Pausa* 10, 1936 (*Saka*)

The following Act of Parliament received the assent of the President on the 31st December, 2014, and is hereby published for general information:—

THE CONSTITUTION (NINETY-NINTH AMENDMENT) ACT, 2014

[31*st December*, 2014.]

An Act further to amend the Constitution of India.

BE it enacted by Parliament in the Sixty-fifth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Constitution (Ninety-ninth Amendment) Act, 2014.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of article 124.

2. In article 124 of the Constitution, in clause (2),—

(a) for the words "after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose", the words, figures and letter "on the recommendation of the National Judicial Appointments Commission referred to in article 124A" shall be substituted;

(b) the first proviso shall be omitted;

(c) in the second proviso, for the words "Provided further that", the words "Provided that" shall be substituted.

Insertion of new articles 124A, 124B and 124C.

3. After article 124 of the Constitution, the following articles shall be inserted, namely:—

National Judicial Appointments Commission.

"124A. (1) There shall be a Commission to be known as the National Judicial Appointments Commission consisting of the following, namely:—

(a) the Chief Justice of India, Chairperson, *ex officio*;

(b) two other senior Judges of the Supreme Court next to the Chief Justice of India —Members, *ex officio*;

(c) the Union Minister in charge of Law and Justice—Member, *ex officio*;

(d) two eminent persons to be nominated by the committee consisting of the Prime Minister, the Chief Justice of India and the Leader of Opposition in the House of the People or where there is no such Leader of Opposition, then, the Leader of single largest Opposition Party in the House of the People — Members:

Provided that one of the eminent person shall be nominated from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities or Women:

Provided further that an eminent person shall be nominated for a period of three years and shall not be eligible for renomination.

(2) No act or proceedings of the National Judicial Appointments Commission shall be questioned or be invalidated merely on the ground of the existence of any vacancy or defect in the constitution of the Commission.

Functions of Commission.

124B. It shall be the duty of the National Judicial Appointments Commission to—

(a) recommend persons for appointment as Chief Justice of India, Judges of the Supreme Court, Chief Justices of High Courts and other Judges of High Courts;

(b) recommend transfer of Chief Justices and other Judges of High Courts from one High Court to any other High Court; and

(c) ensure that the person recommended is of ability and integrity. 124C.

Power of Parliament to make law.

Parliament may, by law, regulate the procedure for the appointment of Chief Justice of India and other Judges of the Supreme Court and Chief Justices and other Judges of High Courts and empower the Commission to lay down by regulations the procedure for the discharge of its functions, the manner of selection of persons for appointment and such other matters as may be considered necessary by it.".

Amendment of article 127.

4. In article 127 of the Constitution, in clause (1), for the words "the Chief Justice of India may, with the previous consent of the President", the words "the National Judicial Appointments Commission on a reference made to it by the Chief Justice of India, may with the previous consent of the President" shall be substituted.

Amendment of article 128.

5. In article 128 of the Constitution, for the words "the Chief Justice of India", the words "the National Judicial Appointments Commission" shall be substituted.

Amendment of article 217.

6. In article 217 of the Constitution, in clause (1), for the portion beginning with the words "after consultation", and ending with the words "the High Court", the words, figures and letter "on the recommendation of the National Judicial Appointments Commission referred to in article 124A" shall be substituted.

Amendment of article 222.

7. In article 222 of the Constitution, in clause (1), for the words "after consultation with the Chief Justice of India", the words, figures and letter "on the recommendation of the National Judicial Appointments Commission referred to in article 124A" shall be substituted.

Amendment of article 224.

8. In article 224 of the Constitution,—

(a) in clause (1), for the words "the President may appoint", the words "the President may, in consultation with the National Judicial Appointments Commission, appoint" shall be substituted;

(b) in clause (2), for the words "the President may appoint", the words "the President may, in consultation with the National Judicial Appointments Commission, appoint" shall be substituted.

Amendment of article 224A.

9. In article 224A of the Constitution, for the words ''the Chief Justice of a High Court for any State may at any time, with the previous consent of the President'', the words ''the National Judicial Appointments Commission on a reference made to it by the Chief Justice of a High Court for any State, may with the previous consent of the President'' shall be substituted.

Amendment of article 231.

10. In article 231 of the Constitution, in clause (2), sub-clause (*a*) shall be omitted.

———

DR. SANJAY SINGH,
Secretary to the Govt. of India.

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Article 124 THE UNION JUDICIARY – Constitution of India

(1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven2 other Judges.

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years: Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted: Provided further that—

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office in the manner provided in clause (4).

(2A) The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.] (3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and—

(a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or

(b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or

(c) is, in the opinion of the President, a distinguished jurist.

Explanation I.—In this clause "High Court" means a High Court which exercises, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

Explanation II.—In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district judge after he became an advocate shall be included.

(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).

(6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.

Article 217 Appointment and conditions of the office of a Judge of a High Court – Constitution of India

(1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, and 1 [shall hold office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of sixtytwo years:

Provided that—

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office by the President in the manner provided in clause (4) of article 124 for the removal of a Judge of the Supreme Court; (c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.

(2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and—

(a) has for at least ten years held a judicial office in the territory of India; or

(b) has for at least ten years been an advocate of a High Court 3 *** or of two or more such Courts in succession;

Explanation.—For the purposes of this clause—

(a) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the

person has been an advocate of a High Court or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law;]

(aa) in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person 3 [has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law] after he became an advocate;

(b) in computing the period during which a person has held judicial office in the territory of India or been an advocate of a High Court, there shall be included any period before the commencement of this Constitution during which he has held judicial office in any area which was comprised before the fifteenth day of August, 1947, within India as defined by the Government of India Act, 1935, or has been an advocate of any High Court in any such area, as the case may be.

(3) If any question arises as to the age of a Judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final.

Article 125 in The Constitution Of India 1949

125. Salaries, etc, of Judges
(1) There shall be paid to the Judges of the Supreme Court such salaries as may be determined by Parliament by law and, until provision in that behalf is so made, such salaries as are specified in the Second Schedule
(2) Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such privileges, allowances and rights as are specified in the Second Schedule: Provided that neither the privileges nor the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment

Article 129 Supreme Court to be a court of record – Constitution of India

The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

VED PRAKASH
Registrar General
High Court of Madhya Pradesh
JABALPUR

Phone : 0761-2621259 (O)
Mobile : 94251-54355

2nd May, 2013

D.O. No. 586
Gen 26/2013

Dear District Judge,

As directed, I am to communicate that 'Restatement of Values of Judicial Life (1999) adopted by Hon'ble the Supreme Court of India in its Full Court Meeting on May 7, 1997 was adopted by the High Court of M.P. in its Full Court Meeting held on 8th July, 2000.

All the Judicial Officers of the State are directed to follow the aforesaid 'Restatement of Values of Judicial Life' and the same should be given effect to by all the Judicial Officers.

The memo dated 12.4.2013, issued by the Registry, directing all the Judicial Officers to observe caution and not to attend the personal functions hosted by the Advocates is hereby recalled. You are requested to bring the aforesaid directions to the notice of all the Judicial Officers posted in the district for information.

With regards,

Yours sincerely,

02.05.13

(VED PRAKASH)

Shri B.K. Shrivastava,
District & Sessions Judge,
DAMOH

"RESTATEMENT OF VALUES OF JUDICIAL LIFE (CODE OF CONDUCT)" ADOPTED IN THE CHIEF JUSTICES' CONFERENCE IN DECEMBER 1999

The Conference of Chief Justices of all High Courts was held on 3rd and 4th December, 1999 in the Supreme Court premises. During the said Conference, the Chief Justices unanimously resolved to adopt the "Restatement of Values of Judicial Life" (Code of Conduct).

WHEREAS by a Resolution passed in the Chief Justices' Conference held at New Delhi on September 18-19, 1992, it was resolved that it is desirable to restate the pre-existing and universally accepted norms, guidelines and conventions reflecting the high values of judicial life to be followed by Judges during their tenure of office;

AND WHEREAS the Chief Justice of India was further requested by that Resolution to constitute a Committee for preparing the draft restatement to be circulated to the Chief Justices of the High Courts for discussion with their colleagues, which was duly circulated on 21.11.1993;

AND WHEREAS suggestions have been received from the Chief Justices of the High Courts after discussion with their colleagues;

AND WHEREAS a Committee has been reconstituted by the Chief Justice of India on April 7, 1997, to finalize the 'Restatement of Values of Judicial Life' after taking note of the draft Restatement of Values of Judicial Life prepared by a Committee appointed pursuant to the Resolution passed in the Chief Justices' Conference 1992 and placed before the Chief Justices' Conference in 1993;

AND WHEREAS such a Committee constituted by the Chief Justice of India has prepared a draft restatement after taking into consideration the views received from various High Courts to the draft which was circulated to them;

NOW THEREFORE, on a consideration of the views of the High Courts on the draft, the restatement of the pre-existing and universally accepted norms, guidelines and

conventions called the 'RESTATEMENT OF VALUES OF JUDICIAL LIFE' to serve as a guide to be observed by Judges, essential for an independent, strong and respected judiciary, indispensable in the impartial administration of justice, as redrafted, has been considered in the Full Court Meeting of the Supreme Court of India on May 7, 1997 and has been ADOPTED for due observance.

RESTATEMENT OF VALUES OF JUDICIAL LIFE:

(1) Justice must not merely be done but it must also be seen to be done. The behaviour and conduct of members of the higher judiciary must reaffirm the people's faith in the impartiality of the judiciary. Accordingly, any act of a Judge of the Supreme Court or a High Court, whether in official or personal capacity, which erodes the credibility of this perception has to be avoided.

(2) A Judge should not contest the election to any office of a Club, society or other association; further he shall not hold such elective office except in a society or association connected with the law.

(3) Close association with individual members of the Bar, particularly those who practice in the same court, shall be eschewed.

(4) A Judge should not permit any member of his immediate family, such as spouse, son, daughter, son-in-law or daughter-in-law or any other close relative, if a member of the Bar, to appear before him or even be associated in any manner with a cause to be dealt with by him.

(5) No member of his family, who is a member of the Bar, shall be permitted to use the residence in which the Judge actually resides or other facilities for professional work.

(6) A Judge should practice a degree of aloofness consistent with the dignity of his office.

(7) A Judge shall not hear and decide a matter in which a member of his family, a close relation or a friend is concerned.

(8) A Judge shall not enter into public debate or express his views in public on political matters or on matters that are pending or are likely to arise for judicial determination.

(9) A Judge is expected to let his judgments speak for themselves; he shall not give interview to the media.

(10) A Judge shall not accept gifts or hospitality except from his family, close relations and friends.

(11) A Judge shall not hear and decide a matter in which a company in which he holds shares is concerned unless he has disclosed his interest and no objection to his hearing and deciding the matter is raised.

(12) A Judge shall not speculate in shares, stocks or the like.

(13) A Judge should not engage directly or indirectly in trade or business, either by himself or in association with any other person. (Publication of a legal treatise or any activity in the nature of a hobby shall not be construed as trade or business).

(14) A Judge should not ask for, accept contributions or otherwise actively associate himself with the raising of any fund for any purpose.

(15) A Judge should not seek any financial benefit in the form of a perquisite or privilege attached to his office unless it is clearly available. Any doubt in this behalf must be got resolved and clarified though the Chief Justice.

(16) Every Judge must at all times be conscious that he is under the public gaze and there should be no act or omission by him which is unbecoming of the high office he occupies and the public esteem in which that office is held.

These are only the "Restatement of the Values of Judicial Life" and are not meant to be exhaustive but only illustrative of what is expected of a Judge.

Peoples' Convention on Judicial Accountability and Judicial Reforms

10 th -11 th March 2007
Indian Social Institute, New Delhi

The mandate to bring together peoples' organizations was to ensure a more accountable judiciary, which can be accessed by poor. In his **welcome note Shri Prashant Bhushan** spoke of the need for all like -minded individuals, institutions and organisations to assert the right to justice. Shri Prashant Bhushan began by introducing the Convention and putting forward the rationale for such a People's Convention. Shri Bhushan said that when the World Bank or the Government of India talk of judicial reforms they talk of alternate judicial resolutions, such as privatisation or arbitration , which is only accessible to the well -off. The Government of India is quite happy with an unaccountable judiciary so long as the judiciary does not hold the government to account and the government allow the judiciary to remain unaccountable. Through this Convention an attempt is being made to take the issue of an insensitive judiciary to the people and start a people's campaign.

Fifty per cent of the people (the common women and men) of this country have no access to the judicial system in this country. Those who have access to the system have to tackle delays and corruption. Judiciary is as corrupt as any other wing of the State and there is no system for disciplining judges apart from impeachment. [Ref: Justice Ramaswamy case] And even then no judge has been subjected to any criminal investigation in the last 15 years.The power of contempt does not allow any criticism of the judiciary. He also referred to the increasingly elitist anti-poor attitude of the judiciary, which is now much more pronounced, particularly in this period of economic liberalisation. Anything which is necessary to enable an individual to lead a dignified life has been held to be part of his fundamental right, however, despite these pronouncements; the judiciary has been on the cutting edge of ordering demolitions or evictions of slums rendering lakhs of people homeless. Judgments ordering lakhs of hawkers off the streets have become common. Recent Supreme Court orders have asked for the removal of vendors and hawkers in Delhi and if these orders were implemented they would render several thousand without livelihood. Referring to the Delhi High Court judgments on rickshaw pullers he said that judicial orders are being passed to prohibit rickshaws although there is no system of licensing the number for cars plying on the streets which seems to be a crying need .

Today, judiciary is seeking to do things which the executive have never dared to do, since they are accountable t o people at large. Instead of protecting the rights of the poor; the Judiciary has been instrumental in suppressing th e ir rights which the people's representatives will never dare to openly. It is the common people who are the main stake holders of the Judiciary, for whose protection they should work.

It is very easy system for the government to remain unaccountable and it will also not allow the judiciary to be accountable too.

THE BANGALORE PRINCIPLES

OF JUDICIAL CONDUCT

2002

(The Bangalore Draft Code of Judicial Conduct 2001
adopted by the Judicial Group on Strengthening Judicial Integrity,
as revised at the Round Table Meeting of Chief Justices
held at the Peace Palace, The Hague, November 25-26, 2002)

plag report jay bhongle

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Constitution of Malaysia 1957

PART IX - THE JUDICIARY

Article 121

(1) Subject to Clause (2) the judicial power of the Federation shall be vested into High Courts of co- ordinate jurisdiction and status, namely-

(a) one of the States of Malaya, which shall be known as the High Court in Malaya and shall have its principle registry in Kuala Lumpur; and

(b) one in the States of Sabah and Sarawak, which shall be known as the High Court in Borneo and shall have its principle registry at such place in the States of Sabah and Sarawak as the Yang di- Pertaun Agong may determine;

(c) (Repealed);

and in such inferior courts as may be provided by federal law.

(2) The following jurisdiction shall be vested in a court which shall be known as the Mahkamah Agung (Supreme Court) and shall have its principle registry in Kuala Lumpur, that is to say -

(a) exclusive jurisdiction to determine appeals from decisions of a High Court or a judge thereof (except decision of a High Court given by a registrar or other officer of the court and appealable under federal law to a judge of the Court);

(b) such original or consultative jurisdiction as is specified in Articles 128 and 130; and

(c) such other jurisdiction as may be conferred by or under federal law.

(3) Subject to any limitations imposed by or under federal law, any order, decree, judgement or process of the courts referred to in Clause (1) or of any judge thereof shall (so far as its nature permits) have full force and effect according to its tenor throughout the Federation, and may be executed or enforced in any part of the Federation accordingly; and federal law may provide for courts in one part of the Federation or theirofficers to act in aid of courts in another part.

(4) In determining where the principal registry of the High Court in Borneo is to be, the Yang di- Pertuan Agong shall act on the advice of the Prime Minister, who shall consult the Chief Ministers of the States of Sabah and Sarawak and the Chief Justice of the High Court.

Article 122