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Judicial Accountability: Myth or Reality?

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ABSTRACT

The paper studies the role of the Judiciary, the basic principles of Independence of the Judiciary, and the doctrine of Separation of Powers in relation to the Legislative and Executive branches of the government. The author has analyzed the development in the powers of the Judiciary by understanding the concepts of Judicial Review and Activism and its effect on the other two branches of the government. Finally, the measures controlling the acts of the judiciary have been considered to realize judicial accountability in India.

I. INTRODUCTION

The Judiciary is one of the three organs of the democratic government. It is the guardian of the Constitution, recognizing the fundamental rights of the citizens, and protecting its violation from the acts of the Legislature and the Executive. For this purpose, there has been a development in the role of the Judiciary with the expansion in its powers for securing justice for all. With the increase in the powers, the responsibility too rises, but in cases of failure in the functioning of the judiciary, misuse of its powers, who will be held responsible? Is there an accountability for its functions?

II. PURPOSE FOR THE ESTABLISHMENT OF COURT SYSTEM IN INDIA

(A) The Need

The legal system in India emerged from the colonization and eventual rule of the British. The East India Company (EIC) entered India to widen the scope of its business, but after witnessing the Indian kings unaware of the modern politics, and ruling in disunity, the company saw an opportunity to acquire the territories to control the natives and earn maximum profits. The purpose of the company thereby got extended to regulating the people living in the settlements and it started administering justice.

(B) Separation of Powers and the Independence of Judiciary during the British Rule

The British governed India on a Judicial system which did not give importance to the rule of

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Separation of Powers. Throughout the stages of legal development in India, the executive controlled the judiciary, with the power to appoint and remove judges. The Governor-in-Council of a factory had both the executive and judicial powers. In the presidency town of Madras, the executive heard appeals from the Choultry courts. An attempt to separate the two branches of the government was made under the Charter of 1683 with the establishment of the Court of Admiralty. The Court of Admiralty had jurisdiction over mercantile, maritime, civil, and criminal cases, therefore there was no need for the executive to interfere in the judicial process. But the court could function only under the leadership of Sir John Biggs, and after his death, the functioning of the court slowly deteriorated with the Governor-in-Council (the executive) gaining control over the Judiciary. The executive took appeals from the Mayor's court. The officers of the Mayor's court were a part of the council, and the council was empowered to remove and appoint the judges of the court. The EIC avoided appointing advocates as judges because it believed that this would give them independence, causing failure of the company to maintain its dominance. A serious attempt to raise the status of Judiciary was made in the Bombay settlement. Attempts were made by the judges of the Court of Judicature to convey the importance of the Independence of Judiciary, but it was treated as insubordinate and insolvent behaviour, causing their dismissal². Any proceedings against the members of the council were frowned upon and caused immediate dismissal of the judges. The Charter of 1726 tried to make the judiciary independent of the executive control by not giving the power of appointment of judges to the council, but they were empowered to make by-laws, rules, and ordinances, for the regulation of the corporation and inhabitants of the settlement and given the power of prescribing punishments. The legislations adopted consequently too, under the authority of the Crown failed in securing the Independence of the Judiciary.

Thus, the company was successful in controlling the administration of the colonized settlements by appointing the traders, merchants, as the presiding officers of the court, keeping the power of appointment and removal of judges in the executive domain, appeals with the Governor-in-Council, suppressing the voice of the judges demanding justice through dismissals, etc. The Judiciary was hence treated as subservient to the Executive during the British Rule.

III. JUDICIARY AFTER THE ADOPTION OF THE CONSTITUTION

(A) Development in the structure & purpose of the Judiciary

² DR. KAILASH RAI, HISTORY OF COURTS 16, 17 (6th ed. 2013).

The law of the land, the Constitution of India has clearly stated the hierarchy of the court system with the Supreme Court as the apex authority, and the High Courts established in the States to be subordinate to the supreme court, having the highest authority in the respective states. Further, it also includes the establishment and appointment of judges to courts subordinate to the High Court, along with the criteria for the appointment of judges to the apex and high courts.

The Judiciary forms one of the branches of the Democratic government in India having the function to interpret the constitution, laws made by the legislation, and enforce the same. The Supreme Court is a court of record (Article 129, The Constitution of India, 1950) with its decisions having evidentiary value in the court of law. It is also conferred with the power to punish for its contempt – willful disobedience to any judgement, decree, order, direction, etc. and publication of any matter, or doing of an act, which scandalizes, or lowers the authority of any court, prejudices or interferes with the due course of any judicial proceedings, and its attempt, etc.³ The role of the Supreme Court is to decide cases involving substantial question of law as to the interpretation of the Constitution.⁴ The apex court has the powers and jurisdiction of the Federal Court in relation to matters exercisable by it before the commencement of the Constitution (Article 135). The Supreme Court under its Original Jurisdiction has the power to decide disputes involving the Government of India and the States (Article 131). Under Article 139A of the Constitution, the court has the power to withdraw a case involving the same or substantially the same question of law, pending before a High Court or High Courts and dispose of the case itself. It can also for the need of justice, transfer any case, appeal, or other proceedings pending before any High Court or Courts. The law declared by the Supreme Court has precedential value and is binding on all courts within the territory of India.⁵ An important provision with respect to the importance of the Judiciary includes any decree or order passed by the Supreme Court in exercise of its jurisdiction for doing complete justice to have enforceability throughout the territory of India under any law made by the Parliament, or until the provision on this behalf is made, in a manner prescribed by the President.⁶

Article 227 grants power to every high court to have superintendence over all courts and tribunals throughout the territories to which it exercises jurisdiction. It may call for returns from the courts subordinate, make, and issue general rules and prescribe forms for regulating

³ The Contempt of Courts Act, 1971, S 2 (a,b), No.70, Acts of Parliament, 1971 (India).

⁴ INDIA CONST. art. 132.

⁵ INDIA CONST. art. 141.

⁶ INDIA CONST. art. 142.

the practice and proceedings of the courts, etc. Under Article 228, a case having substantial question of law as to the interpretation of the Constitution pending in a court subordinate, the High Court may dispose of it itself, or determine the question of law and return the case to the court.

IV. INDEPENDENCE OF JUDICIARY – BASIC FEATURE OF THE CONSTITUTION

The appointment of Judges is a foundational and integral part of the Independence of Judiciary.⁷ Prior to the 99th Amendment of the Constitution, the President appointed the judges of the Supreme Court, the Chief Justice of India, on consultation of the judges of the Supreme Court and High Courts, if deemed necessary, he was bound to consult the CJI for the appointment of the other judges to the Supreme Court and High Courts, and had the discretion to consult the judges of the SC and HCs for this purpose. The appointment of the Chief Justice was based on Seniority, and up till 1973 it was followed till the executive appointed the Chief Justice by superseding three senior judges of the Supreme Court.

As a result, a question with respect to the “consultation of judges” by the President for appointment of the CJI and other judges was brought to the apex court. It mainly involved the query whether it was necessary for the executive to consult with the judiciary, for appointment of its judges. This question was answered through three cases, with contrary decisions, recommendations, and eventually a mechanism was adopted for appointment of the judges, preserving the Independence of Judiciary.

*S.C. Advocate-on-Record Association v. Union of India*⁸ (Judges Transfer Case II) was the second case discussing the need of consultation to the executive for appointment of judges to the higher judiciary. This case overruled the decision given in the previous case of *S.P. Gupta v. Union of India*⁹ wherein the Supreme Court abdicated its power and ruled that the authority for the appointment of judges was “solely and exclusively” vested in the Central Government. The court in the present case held that the greatest significance to the matters of appointment and transfer of judges should be attached to the CJI and gave the authority, the final say. No Judge could be appointed by the Union Government without consulting the Chief Justice of India. In *re Presidential Reference*,¹⁰ the apex court had the view that the sole opinion of the CJI did not constitute “consultation” within the meaning of the provision, and it was here that the court held the need of introducing a collegium constituting the CJI

⁷ *Supreme Court Advocates- on- Record Association v. Union of India*, (2015) AIR SCW 5457.

⁸ *S.C. Advocate-on-Record Association v. Union of India*, (1993) 4 SCC 441.

⁹ *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

¹⁰ *Re: Presidential Reference*, AIR 1999 SC 1.

and four senior most judges of the SC as a body for providing recommendations to the President. The 99th Amendment introduced the Judicial Appointments Commission as a body for assisting the President for the appointments, but it consisted of the CJI and two judges of the Supreme Court, along with the members of the executive. No act or proceedings could be brought against the NJAC for matters with respect to any defects in its constitution. Thereby the involvement of the executive could not be questioned in the court of law. The Parliament empowered the commission to lay down by regulation the manner of selection of persons to be appointed to it.

In the case of *Supreme Court Advocates-on-Record Association v. Union of India*¹¹ the question of the involvement of the executive in the appointment of Judges was finally decided. The court held the 99th Amendment Act and the NJAC Act, 2014 to be unconstitutional, thereby void and called the collegium system operative. The court stated that the primacy of the matter of selection of judges to the higher judiciary must remain with the Chief Justice in consultation with a plurality of judges and thereby upheld the Independence of the Judiciary, and Separation of Powers between the three branches of the government.

(A) Importance of the Judiciary

1. Guardian of the Constitution

India is a quasi-federal state. The essence of a federal state is the division of powers between the Centre and the States. The Constitution of India, the Supreme Law of the land is written, and contains the details on the distribution of powers between the two government levels. In cases of dispute between the two, having different understanding and interpretations of the provisions incorporating the powers, the Supreme Court is the arbitrator, and is the final interpreter of the Constitution. This power could only be entrusted to the Judiciary. The Supreme Court is also the guardian of the fundamental rights of the people. It has been called upon to safeguard the civil and minority rights and has played an essential role in drawing a line between individual liberty, and social control thereby holding the State liable for its actions. It is the highest interpreter of the general law, and court of appeal in civil and criminal matters.

2. Protects Fundamental Rights – Writs (Art 32, 226)

According to Dr. B. R. Ambedkar, Article 32 is the heart and soul of the Constitution, without which it would be a nullity. Without a remedy, there is no meaning to a right. Hence,

¹¹ *supra* note 6.

the Constitution makers provided for an effective remedy for the enforcement of fundamental rights, under Articles 32 and 226, as well as enforcement of other rights under the latter provision. Art. 32(1) includes the right to move to the Supreme Court for the enforcement of fundamental rights, and the clause (2) confers the power on the apex court to issue appropriate directions, orders, writs, along with the writs “in the nature of” Habeas Corpus, Mandamus, Prohibition, Quo Warranto, and Certiorari for any of the rights conferred under Part III of the Constitution (fundamental rights). The courts are not bound to issue these Writs strictly, but in the nature of the subject, or the right which the writ covers. The clause (4) of the article does not allow the suspension of the right except if provided for by the Constitution.

Under Article 32 (1) the Supreme Court’s power to enforce fundamental rights is the widest. There is no limitation regarding the kind of proceedings that must be followed for enforcing the said rights, except that the proceedings must be appropriate (within the limits of the purpose). This was done to allow all the people in India, especially the poverty stricken, illiterate, vulnerable to exploitation, etc. to have the availability of the right for ensuring justice to all. Under Article 139 of the Constitution, the legislature has been given the right to confer to the Supreme Court the power to issue directions, orders, writs, including the five writs, for any purpose other than mentioned in Article 32 (2).

In the case of *Minerva Mills. v. Union of India*¹², the Supreme Court stated that the constitution has created an independent judiciary which is vested with the power of judicial review to determine the legality of administrative action and the validity of legislation. It is the solemn duty of the judiciary to keep different organs of the State within the limits of the powers conferred upon them by the constitution by exercising powers of judicial review as sentinel on the quivive (watchful guardian). As per Article 13 (2) of the Constitution any law which takes away or abridges the fundamental rights, will be void to the extent of the contravention. The Supreme Court can review the legislative, executive, as well as its own actions under the purview of Judicial review.

Therefore, the provision assists the higher Judiciary in protecting the rights of the citizens as well as maintaining control over the acts of the Legislature and the Executive.

V. JUDICIAL ACTIVISM – PUBLIC INTEREST LITIGATION

Public Interest Litigation is a development to the right conferred under Article 32 of the Constitution. One could apply to the higher judiciary for the enforcement of the fundamental

¹² *Minerva Mills v. Union of India*, AIR 1980 SC 1789.

rights only on having the Locus Standi (whose fundamental right has been infringed) moving to the court, but the Supreme Court has relaxed this rule and now permits Public Interest Litigations or Social Interest Litigations at the instance of ‘public spirited citizens’ having sufficient interest, for the enforcement of Constitutional and other Legal rights. It was introduced keeping in mind the people affected by poverty, helplessness, disability, or having social or economic disadvantage resulting in their inability to approach the court for relief. It has helped protect the interests of the weaker sections of the community such as the undertrial prisoners, harijan workers, slum dwellers, minimum wage workers, etc. It includes in its scope any public injury arising from breach of public duty, violation of a provision of the Constitution, or any law, and seeks for enforcement of such public duty, observance of such constitutional or legal provision¹³. This brings out the power of the Judiciary to investigate the acts of the executive in case of any breach.

Justice Bhagwati in *Bandhua Mukti Morcha v. Union of India*¹⁴ stated that Article 32, along with the powers conferred in the provision, also lays a constitutional obligation on the Supreme Court to protect the fundamental rights of the people and for that purpose the apex court has all incidental and ancillary powers including to forge new remedies and fashion new strategies designed to enforce fundamental rights particularly for the poor and the disadvantaged who are denied human rights and to whom freedom and liberty have no meaning”. The court in this case believed that the government should welcome an inquiry by the court so that if it is found that there are bonded labourers or workers living in inhuman conditions, such a situation can be set right by the government. Thereby proving the importance of the provision in assisting the executive functions.

As a part of the constitutional obligation, the Supreme Court in *M.C. Mehta v. Union of India*¹⁵ held that the court under Art. 32 has the power to grant remedial relief which includes the power to grant compensation in appropriate cases where the fundamental rights of the poor and disadvantaged persons are violated. In this way the Judiciary brought accountability to the actions of the State.

Judicial Activism is one of the measures adopted by the Judiciary for ensuring absolute protection and enforcement of the rights of the people. Moving forward from the traditional approach of the Judiciary involving judicial decisions based on the literal interpretation of the provisions, the Judiciary has adopted a method of active participation for understanding the

¹³ Justice Bhagwati in *S.P. Gupta & Ors. v. President of India & Ors.*, AIR 1982 SC 149.

¹⁴ *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802.

¹⁵ *M.C. Mehta v. Union of India*, AIR 1987 SC 1087.

real purpose of the law for securing the rights of the people. This process has involved the recognition of several fundamental rights and provided for justice across various subject matters.

*Kesavananda Bharti v. Union of India*¹⁶ (recognized the basic structure of the constitution), *Maneka Gandhi v. Union of India*¹⁷ (introduced procedural due process based on the principles of natural justice, recognized the violation of fundamental rights by the procedure followed by the executive), *Sunil Batra v. Delhi Administration*¹⁸ (writ of habeas corpus would include the protection of prisoners from inhuman and barbarous treatment), *Munna v. State of U.P.*¹⁹ (children were shifted from jail to children's home on account of sexual exploitation in jails), Recognition of right to clean and pollution free environment as a part of Art. 21 in *Rural Litigation and Entitlement Kendra v. State of U.P.*²⁰ (appointment of committee for inspection of limestone quarries causing serious deficiencies, and their closure) and in *M.C. Mehta v. Union of India*²¹ (ordered closure of tanneries polluting the river Ganga), In *Vincent Panikurlangara v. Union of India*²² (writ was maintainable because it concerned the maintenance and improvement of public health), Providing guidelines for rehabilitation and compensation to working women facing rape in *Delhi Domestic Working Women's Forum v. Union of India*²³. In *Nilabati Behra v. State of Orissa*²⁴ (the supreme court laid down the principle for awarding compensation in cases of violation of constitutional right by state actions), etc.

Judicial Activism developed because of the inability of the governments to remain in power, non-availability of legislation on certain subject matters, pressure on the Judiciary, etc. as a result, the Judiciary sought to the mechanism of Activism to ensure the protection of the rights of all, as well as assisting the other two branches in the process of effective governance.

VI. THE RELATIONSHIP OF JUDICIARY WITH THE OTHER TWO BRANCHES

(A) Separation of Powers

Montesquieu a French Scholar coined the term “trias politica” or “separation of powers”, in

¹⁶ *Kesavananda Bharti v. Union of India*, (1973) 4 SCC 225.

¹⁷ *Maneka Gandhi v. Union of India*, 1978 AIR 597.

¹⁸ *Sunil Batra v. Delhi Administration*, AIR 1980 SC 1759.

¹⁹ *Munna v. State of U.P.*, (1982) 1 SCC 545.

²⁰ *Rural Litigation and Entitlement Kendra v. State of U.P.*, (1985) 2 SCC 431.

²¹ *M.C. Mehta v. Union of India*, (1987) 4 SCC 463.

²² *Vincent Panikurlangara v. Union of India*, (1987) 2 SCC 165.

²³ *Delhi Domestic Working Women's Forum v. Union of India*, (1995) 1 SCC 14.

²⁴ *Nilabati Behra v. State of Orissa*, 1993 AIR 1960.

his words, “There would be an end of everything, were the same man or same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing laws, that of executing public resolutions, and of trying the causes of individuals”. He propounded that the powers should be vested in three distinct organs. In India, the Legislature makes laws, the Executive implements the laws, makes policies, and the Judiciary, interprets the laws and enforces them ultimately to provide justice. The doctrine has not been specifically mentioned in the Constitution, but the law of the land involves the clear representation of the roles and duties of each of the organs in a written form.

To avoid the usurpation of function of one organ by another, certain provisions have been incorporated in the Constitution like Article 50 (Separation of the Judiciary from the Executive), Articles 121 and 211 (the legislatures cannot discuss the conduct of a judge of the High Court or Supreme Court. They can do so only in matters of impeachment), Article 361 (the President and Governors enjoy immunity from the court proceedings).

In *Kesavananda Bharti V. State of Kerala and Anr*²⁵ the Supreme Court held that “the doctrine of separation of powers was included in the basic structure of the constitution and thus any amendments which gave control of one organ over another would be unconstitutional, leaving the Executive, the Legislature and the Judiciary completely independent.

(B) Checks and Balance

India follows the Parliamentary system of governance, hence even with the separation of functions between the three organs of the government, there is overlapping of powers. The legislature and the executive are closely connected with each other wherein the executive is responsible to the legislature for its actions and derives its powers from the legislature, the Judiciary has the power of Judicial review over the legislative and executive actions. The Judiciary can declare any law passed by the Parliament as void, if it violates any provision of the Constitution. The Executive, having the power to appoint the judges of the High Courts and the Supreme Court, exercises its control over the functioning of the Judiciary.

Thus, all the three organs of the government act as a check and balance to each other to prevent the abuse of power by any one of them and work in coordination and with cooperation.

²⁵ *supra* note 15.

VII. MISUSE OF POWERS BY THE JUDICIARY

The line between Judicial Activism and Judicial Overreach is a thin one - A takeover of the functions of another organ may become a case of overreach (Dr. Manmohan Singh).

The development in the role of judiciary involving the extension of interpretation to provisions under Art.32, 21, etc. was for the purpose of ensuring equality of justice to all, (social, economic, and political²⁶) this principle adopted by the constitution is fundamental to the functioning of a democratic state. It also provided for a review on the actions of the executive and the legislature for the purpose of protecting the rights of the people. As a part of Judicial Activism, not only did the higher judiciary recognize certain fundamental rights, but also provided for involvement in the matters of the executive by holding enquiries, and in the matters of the legislature by providing guidelines on subject matters not covered under any law. This is permissible if there is an urgent need for the interference of the Judiciary and is valid till it is covered under its jurisdiction, but crossing the line of separation for reasons clearly under the domain of the other two branches would render the Judiciary to be usurping the powers of the Legislature and the Executive causing Judicial Overreach.

In *Divisional Manager, Aravali Golf v. Chander Hass & Anr*²⁷ the Supreme Court admitted that the judiciary erred in the recent past usurping the powers of the executive. Cautioning against judicial activism it said, if the judiciary does not exercise restraint and over stretches its limits, there is bound to be a reaction from politicians and others. The politicians will then step in and curtail the power, or even the independence of the judiciary.

Some of the recent decisions of the Judiciary causing overreach include the cancellation of telecom licenses in the 2G case, where the Supreme Court held that the process of allocation was flawed and directed the government to allocate national resources through auction only. This had a negative impact on the economy. The court interfered in the decisions under the sole domain of the legislative and executive bodies and the court, in this case, overreached its power. Proactive Censorship in case of *Jolly LLB 2: Central Board for Film Certification*, filed a petition claiming that the film was in violation of Section 5B of the Cinematograph Act, 1952, which deals with the prevention of the certification of films that involve defamation or contempt of court. The Bombay High Court admitted the petition and appointed a committee to report and gave the committee the power to suggest changes. On the recommendations, the Court ordered to cut four scenes from the movie and directed the

²⁶ INDIA CONST. art. 14.

²⁷ *Divisional Manager, Aravali Golf v. Chander Hass & Anr*; 2008 1 SCC 683.

CBFC to re-certify the film. The Cinematograph Act, 1952 includes a provision which clearly states the CBFC having the power to censor movies and suggest cuts with an appeal lying to an Appellate Tribunal and the Government having revisional powers. The Act does not give the Courts the power to certify, modify, or refuse certification of films.²⁸

The court also misuses its powers by convicting people in the name of Contempt without any reasonable justification to such a decision.

In *Re. Arundhati Roy*²⁹, after the judgment of the Supreme Court in the Narmada Dam case, there was a public protest outside the Supreme Court in which Medha Patkar (the leader of the anti-dam movement in India) and Arundhati Roy participated. A couple of lawyers (probably on the hint of the Court itself) filed a contempt petition against Patkar, Roy and Mr. Prashant Bhushan for allegedly raising abusive slogans against the court. Along with the allegation of the usage of grotesque language, the contempt petition involved the manhandling of the lawyers by the alleged. Roy, in her reply condemned the action of the court for issuing a notice of contempt to the people vocal about criticisms of the court and said that such a practice was the way of the court to avoid dissent and self-criticism. Justice G.B. Patnaik discharged the first notice, but a second notice was issued by him this time only to Roy, and she was held guilty of contempt and sent to jail by the same Justice as the sitting judge.

VIII. ACCOUNTABILITY OF THE JUDICIARY

The word 'accountable' as per the Oxford Dictionary means 'being responsible for one's own decisions or actions and the expectation to explain your actions when asked'. Accountability is the sine qua non of democracy. There is a need for transparency in the working of a public institution, functionary, and nobody is exempt from accountability although the manner of enforcing it may vary depending upon the nature of the office and the functions discharged by the office holder. The guardian of the Constitution, the Judiciary, is also accountable for its actions. Judicial accountability, however, is not on the same plane as the accountability of the executive or the legislature or any other public institution. This is because the rule of Independence of Judiciary acts as a shield and protects all the actions of the courts. Although there cannot be any interference of the Legislature and the Executive in the matters of the Judiciary, the judiciary cannot cross the line of separation of powers and dominate the government structure. The purpose of the Independence of Judiciary is to ensure the courts

²⁸ Utkarsh Sharma, 5 Examples of Judicial Overreach, IPLEADERS (Jan. 30, 2018, 10:00 PM), <https://blog.ipleaders.in/judicial-overreach-india/>.

²⁹ *Re: Arundhati Roy*, AIR 2002 SC 1375.

the complete freedom to provide justice without any interference by the other two branches. But with the power of widened scope of interpretation, the judiciary is interfering in the functions of the legislature and the executive and seeking the defense of its independent nature.

The measures for ensuring accountability of the Judiciary:

(A) Judges Enquiry Act, 1968³⁰

This act calls for the procedure to investigate misbehavior or incapacity of a Judge of the Supreme Court or High Court by a committee, and for the presentation of an address by Parliament to the President for his removal. The committee formed has to investigate into the misbehavior or incapacity of a Judge if notice is given, signed by: (a) Not less than 100 members in the House of the People or (b) Not less than 50 members in the Council of States for presenting an address to the President praying for the removal of a Judge. But after considering the materials provided by the committee, it is the discretion of the Speaker/Chairman to either admit the motion for removal or refuse to initiate the process. Even if the motion were admitted, there is a lengthy procedure that follows with a formation of an Investigation committee, report of the committee, its presentation in the houses of the parliament and then finally with the vote of the two houses.

(B) Impeachment under Article 124 (4) – Article 217 (b)

The judges of the higher judiciary can be removed 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 the House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehavior or incapacity.

Failure – The Chief Justice of India recommended for the impeachment proceedings against Justice Sen for the offence of misappropriating funds received by him as a court receiver and thereafter for giving false explanations to the High Court. The Chief Justice made this recommendation after a report of a committee of three Judges, who on careful examination of facts concluded that he had committed several acts of serious misconduct. Though these acts of misconduct were the subject matter of proceedings pending against him in the Calcutta High Court, he was appointed, due to the lack of transparency in the matters of appointments. The government ignored the report and did not make any attempt to proceed with his impeachment. The inaction of the government in Justice Sen's matter displays the complete

³⁰ Judges Enquiry Act, 1968, S 3, No. 51, Acts of Parliament, 1968 (India).

lack of seriousness on the part of the government in enforcing judicial accountability.

(C) Contempt of Court

Under Article 129, the Supreme Court has the power to punish for contempt of itself. Civil and Criminal Contempt³¹- willful disobedience to any judgement, decree, order, direction, etc. and publication of any matter, or doing of an act, which scandalizes, or lowers the authority of any court, prejudices or interferes with the due course of any judicial proceedings, and its attempt. But this right is being misused by the Judiciary for stifling the voices of criticism against the courts. Senior Advocate Prashant Bhushan has stated "It is a very dangerous jurisdiction in which judges act in their own cause and that is why in all countries this power to punish has been abolished. It is continued only in few countries like India."³². The advocate was charged with contempt of court because of his tweets against the judiciary and awarded the punishment of fine of Rs.1 on failing which he would get imprisonment of three months and debarment from the practice of law for three years. Section 16 of the Contempt of Courts Act, 1971 makes a judge, magistrate or other person acting judicially, liable for contempt of his own court, or any other court in the same manner as any other individual is liable. As per section 11 of the Act, every High Court has the power to try offences committed, or offenders found outside of its jurisdiction.

The Judges (Protection) Act, 1985³³ under section 3 protects any person who is or was a judge from any civil or criminal proceedings for any act, word, or thing committed, done, or spoken by him, when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function, subject to exceptions.

In *K. Veeraswami v. Union of India*³⁴ it was held that a judge of the Supreme Court and High Court can be prosecuted and convicted for criminal misconduct. It did not provide for prosecution of a Judge for offences under Section 5 (1) (e) of the Prevention of Corruption Act, 1988.

In *Supreme Court of India v. Subhash Chandra Agarwal*³⁵, the constant debate that revolved around the inclusion of Judiciary under the ambit of RTI (Right to Information Act, 2005) was finally answered. The court pronounced that the need to have transparency did not undermine judicial independence and stated that independence and accountability go hand in

³¹ The Contempt of Courts Act, 1971, S 2 (a, b), No. 70, Acts of Parliament, 1971 (India).

³² Power of Contempt of Court Misused to stifle free speech: Prashant Bhushan, *THE TIMES OF INDIA* (September 3, 2020, 22:59 IST), <http://timesofindia.indiatimes.com/articleshow/77913580.cmst>.

³³ The Judges (Protection) Act, 1985, S 3, No. 59, Acts of Parliament, 1985 (India).

³⁴ *K. Veeraswami v. Union of India*, (1991) 3 SCC 655.

³⁵ *Supreme Court of India v. Subhash Chandra Agarwal*, (2020) 5 SCC 674.

hand in the case of Judiciary. The court observed that the Supreme Court of India, a public authority, in view of Article 124 (11) of the Constitution, necessarily includes the office of the CJI as well other judges and therefore they too would be brought under the purview of the RTI.

The Judicial Standards Accountability Bill, 2010 has not been passed as legislation.

Although there are measures of accountability against the Judiciary, they have failed in their purpose with lengthy procedures, lack of transparency in appointment, corruption, no provision for curbing corruption, late decisions, etc. Hence, these means of accountability have not had any practical implementation.

IX. SUGGESTIONS

The author would suggest for the implementation of a legislation, keeping in consideration the purpose and the role of the judges, for regulating corruption in the Judiciary, including provisions for disciplinary actions to be conducted against a judge, causing removal of a judge based on the number of appearances before the disciplinary committee. Suggestion to form a committee to revise the cases of failed impeachment of the Judges in the Parliament, and to understand the cause and formulate a solution for the same. It is necessary for the Judiciary to realize that in order to maintain its Independence, adherence to the rule of Separation of Powers is necessary.

X. CONCLUSION

The Independence of Judiciary is an essential feature allowing the Judiciary to discharge its functions independently without any control of the other two branches. This feature has helped the courts to ensure protection of the basic rights of the people. But there is a need to realize the importance of the Separation of Powers in maintaining a balance in the functioning of the government. Although as a guardian of the constitution, the Judiciary is lauded, but the unfair practices of the judges, and the frequent interference of the courts in the matters of the executive and legislative domain, have raised the question of authenticity of the purpose behind the acts of the Judiciary. Just like the other two branches, the Judiciary too is accountable for its actions to the whole of the government, but with the countless attempts made to bring out accountability of the courts into reality, its existence only remains on paper and thereby is perceived as a “myth” by the people.

XI. REFERENCES

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