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# FROM INDEPENDENCE TO ACCOUNTABILITY: A CRITICAL STUDY OF THE WORKING OF INDIAN JUDICIARY

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## ABSTRACT

In a democracy like India, independence of judiciary and the accountability also are the prerequisites for the smooth governance of the nation and to administer justice for all. Independent & integrated judicial system is not only one of the salient features of our Indian Constitution but the Independence of Judiciary is also come under the Doctrine of Basic Structure. But, if the independence is unbridled, it will impose a challenge on the Judiciary to establish its accountability towards the **'People of India'** in administering fair and reasoned decision.

As we all know, every organ of the state whether its Legislature, Executive or Judiciary are entrusted with separate powers in respect of their specific functions. But it doesn't mean that the Judiciary being independent (i.e., free from any internal or external influence) will be able to destroy 'rule of law' through any of the tools & techniques of Judicial Process. In this Article the Researcher wants to explore the various aspects of independent judicial system with regard to judicial accountability and also try to emphasis on the point that the independence entrusted with the judiciary is not absolute in nature and if it is performing its duty without any rein, creates a direct threat towards its accountability.

**Keywords:** Constitution, Judiciary, Rule of Law, Judges, Judicial Accountability, Independence of Judiciary, Judicial Privacy, Right to Information, Judicial Creativity, Judicial Process, Basic Structure, Reason decision, Natural Justice.

## INTRODUCTION

In his famous quotation, Sir John Dalberg Acton said that power corrupts people and absolute power corrupts absolutely. It has effectively traced out, if a person entrusted with some power, he uses it for his own benefit and here the corruption begins. *“Men who make their way to the Bench sometimes exhibit vanity, irascibility, narrowness, arrogance and other weaknesses to which human flesh is heir”*<sup>1</sup>. However, if the power is absolute in nature, then it will corrupt absolutely, and the same goes with the Judiciary also. Corruption in the Judiciary is a serious problem. There is no dedicated forum or authority where you can file a complaint against the judges. The Indian Judiciary has the most independence but it is deemed to be least accountable. One of the cornerstones in the effective functioning of democracy is ‘an independent judiciary’. Independence of judiciary is a condition precedent for the establishment of Rule of law and it should be claimed that judicial independence must be effectively balanced in order to ensure reason decision in the administration of justice system.

The concept of judicial independence is inextricably linked to judicial ethics, one of the characteristics of which is judicial accountability. It is commonly assumed that the two concepts (judicial independence & judicial accountability) are diametrically opposed to one another and one cannot exist in the presence of the other. However, accountability is a part of judicial independence and cannot be considered as a separate entity because it is only an accountable judiciary that keeps the law intact with the public’s faith. The researcher found this doubt whether the concept of ‘Judicial Independence’ is really an antithesis to ‘Judicial Accountability’ and creating an obstacle in the path of securing accountability of the judiciary or both the concepts are just like two aspects of the same coin and exist simultaneously.

## INDEPENDENCE OF JUDICIARY: MEANING

An independent judicial system is the key for the establishment of ‘rule of law’ and to ensure the same Judiciary not only independent but it appears to be independent. The concept of independence in respect of judiciary connotes the uninfluenced justice delivery system where the Judges are able to perform their duty without any kind of interference from the other organs of the government (i.e., Legislature & Executive) or from any other organization or institution. Montesquieu propounded the idea of ‘independent judiciary’ as he believed that all the three

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<sup>1</sup> Sacher v. United States, 343 U.S. 1, 12 (1952).

organs of the government should perform their functions in their separate spheres. The concept of an Independent Judiciary first originated in Great Britain. There has been a long struggle between Parliament and the Monarchy for taking control over the Judiciary. In the 17<sup>th</sup> the Parliament passed a settlement Act, to regulate the tenure of the Judges which is subjected to good behavior. As stated by Dr. V.K. Rao, the term 'independent judiciary' envisages the following three meanings:

- i. The judiciary must be free from all encroachments in its sphere from other organs of the government.
- ii. Smooth running of the administration of justice system free from legislative interference.
- iii. The decisions of the Judiciary should be free from any favour or influence of either the executive or legislature.

In 1985, United States witnessed an attempt for independent judicial system. The fundamental notion of judicial independence connotes that administration of justice done by the judiciary without any restrictions, improper influence, inducement, threats, interference, pressures (direct or indirect), from any quarter or for any other reason. Before the independence of India, judges were appointed by the crown but they were yet independent from it. However, the principle of 'independent judiciary' now became the part of the 'basic structure' of the Indian Constitution.

## INDIAN JUDICIAL SYSTEM

*"There can be no difference of opinion in the House that our judiciary must be both independent of the executive and must also be competent in itself. And the question is how these two objects can be secured"*<sup>2</sup>

The precept of "Independence of Judiciary" is followed with the aid of using maximum democratic international locations with inside the global however the notion of independence of the judiciary isn't always defined anywhere. Our Indian Constitution incorporating the

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<sup>2</sup> Constitutional Assembly Debates.

provisions offers for judicial independence however it has no longer been described as to what simply constitutes judicial independence. Some of the provisions are-

1. Article 50- “Separation of judiciary from executive The State shall take steps to separate the judiciary from the executive in the public services of the State”
2. Article 211- “No discussion shall take place in the Legislature of a State with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties”
3. Article 124(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 the 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.”
4. Article 138 (1) states that the powers of the Hon’ble Supreme Court cannot be taken away by the parliament. Parliament can only add to the powers and jurisdiction of the Supreme Court but cannot curtail them, making the judiciary independent from legislature.

However, it is important to note that judicial independence is widely recognized as a world human right. Every person is entitled to equality for a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.<sup>3</sup>

As stated in *The Principles of Judicial Independence, 1995* signed by thirty-four Chief Justices of Asia-Pacific region, independence of the judiciary requires the judiciary to determine the case strictly based on fair and impartial assessment of the facts without being influenced by any source.<sup>4</sup>

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<sup>3</sup> Universal Declaration of Human Rights, 1948, art. 10.

<sup>4</sup> The Principles of Independence of Judiciary, 1995.

## JUDICIAL ACCOUNTABILITY: MEANING

Accountability works within the framework of the pursuit of integrity. This is essential for the delegated body to function efficiently. It is primarily about instilling a sense of transparency and subjecting the judicial system to strict public oversight to prevent fraud. Judicial Accountability is a corollary reality of the independence of the judiciary. In other words, accountability means duty of taking obligations or responsibilities on your moves and decisions. Since duty is one of the elements of independence which the Indian Constitution furnished under Article 235. The word 'control' of the High Court over the subordinate judiciary virtually suggests the supply of a powerful mechanism to implement accountability. Thus, entrustment of strength over subordinate judiciary to the High Court keeps independence as it's far neither responsible to the executive or the legislature. The provision of the hard manner of impeachment is likewise directed toward this goal.

## WHETHER JUDICIAL INDEPENDENCE CONTRARY TO ACCOUNTABILITY

Lord Woolf 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."*

Indeed, judicial independence is founded on public trust and, to maintain it, judges must uphold the highest standards of integrity and be held accountable to them. Where judges or court personnel are suspected of breaching the public's trust, fair measures must be in place to detect, investigate and sanction corrupt practices.<sup>5</sup> The existence of an independent judiciary can be said to be the bulwark of governance. In a host of other rulings, the need for an independent judiciary free from the interference of unwarranted political processes has been advocated as the sine qua non of a democratic society.

Independence of judiciary does not mean independence from its accountability. However, the question for the judiciary is that to whom it stands accountable and for what? There is no such reason as to why Indian judiciary cannot be made accountable. The judiciary is also accountable to the law, in the sense that the decisions made in administering justice are in accordance with the law and are not arbitrary in nature. Like any other organs of the

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<sup>5</sup> Corruption in India, "The Economist.Uncompromising global perspective" (Jan. 22, 2022, 11:45 AM), [https://subscribenow.economist.com/?utm\\_medium=cpc.adword.pd&utm\\_source=google&utm\\_campaign=a.io&utm\\_content=conversion.other\\_brand.anonymous&gclid=Cj0KCQjwxIOXBhCrARIsAL1QFCZ\\_GUvrT3EN9iW7M9R0SKVRmhuaRsWP3jyRejIVVWkBzGgTIYWtJdsaAsz\\_EALw\\_wcB&gclsrc=aw.ds](https://subscribenow.economist.com/?utm_medium=cpc.adword.pd&utm_source=google&utm_campaign=a.io&utm_content=conversion.other_brand.anonymous&gclid=Cj0KCQjwxIOXBhCrARIsAL1QFCZ_GUvrT3EN9iW7M9R0SKVRmhuaRsWP3jyRejIVVWkBzGgTIYWtJdsaAsz_EALw_wcB&gclsrc=aw.ds).

government, it must also be accountable before 'We the People of India' which is the very spirit and source of authority for the Constitution. Indeed, judicial accountability is a necessary means or tool to reinforce independence of judiciary and to ensure an effective system of justice administration. Therefore, it is submitted that both the concepts i.e., independence and accountability are not contrary but two sides of the same coin. As rightly stated by David Pannick, *"The value of the principle of judicial independence is that it protects the judge from dismissal or other sanctions imposed by the Government or by others who disapprove of the contents of his decisions. But judicial independence was not designed as, and should not be allowed to become, a shield for judicial misbehavior or incompetence or a barrier to examination of complaints about injudicious conduct on apolitical criteria...That a man who has an arguable case that a judge has acted corruptly or maliciously to his detriment should have no cause of action against the judge is quite indefensible"*<sup>6</sup>

### **LACK OF JUDICIAL ACCOUNTABILITY: INDIAN PERSPECTIVE**

Over the last few decades, corruption has steadily spread its tentacles to the Indian judiciary. Corruption takes the form of bribes, influential transactions, intimidation and coercion. Accountability issues have long plagued the judiciary, but a series of recent scandals have created a crisis. Never before has such a serious allegation been filed against the judiciary. It is driven by many factors, including executive intervention, lack of public voice, social pressure, and low wages. Corruption of the judiciary not only undermines the rule of law, but also impairs the effectiveness of other institutions.

In Democratic Republic, it is essential that power with accountability of the individual who enjoys it maintains all democratic regimes. Accountability must be inclusive, including not only politicians, but bureaucrats, judges, and everyone in power. Power and position in democracy comes with responsibility, and every public office must endure the same.

The manners wherein judges discharge their duties, decide the picture of courts in addition to the credibility of judicial system. In India due to the fact that immemorial time judges had been held in excessive esteem. But lately because of some unpleasant instances people are slowly dropping faith in judiciary. It is enormously deplorable. Therefore, its miles required to make

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<sup>6</sup> D Pannick, Judges 99 (Oxford University Press, 1987).

judiciary accountable, as derogation of values in judiciary is unaffordable than in some other wing of the authorities as judiciary is the guardian protector of our Constitution.

The issue of judicial independence was raised in several cases, from Sakalchand to the National Judicial Appointment Commission Bill on the Appointment of Judges. Recently, there has been controversy over the National Commission's bill for the appointment of judges who seek to change the established collegiums system. The Supreme Court of India's collegiums system for appointment of judges has its origin in three of its own judgments which are collectively known as the '**Three Judges Cases**'. These three cases are:

1. **First Judges Case- *S.P. Gupta vs. Union of India***<sup>7</sup>

This first Judges case popularly known as Judges' Transfer Case is a significant pronouncement of the Supreme Court which conferred over-riding powers upon the executive in the matters of appointing judges to the Supreme Court as well as High Courts in India. The Apex court examined and answered the interpretation as to what does the word 'consultation' mean for the purpose of appointment of judges? The Court placed reliance upon the interpretation given by it in the famous case titled *Union of India v. Sankalchand*<sup>8</sup> and held that the word 'consultation' denotes a conference of two or more persons or an impact of two or more minds in respect of a topic in order to enable them to evolve a correct or at-least a satisfactory solution and thus the President must present information he possesses and course of action he wishes to take to the Chief Justice of India who in turn gathers data and in the interests of administrative justice gives the course of action he believes will be the most efficient. It also re-stated the judgment given in Sakalchand's case that "Consultation is different from consentaneity. They may discuss the matter after which they may disagree. They may confer, but may not concur." The Apex Court further observed as to who has the final voice in the appointment of Judges of High Courts and the Supreme Court? It gave the interpretations which were completely based on the constitutional provisions i.e., Art. 124 and Art. 217 and held that a plain reading of the respective articles shows that the final voice in the process of appointment of judges rested with the President, that is, the executive. The President may consult the judges, governor and chief justices of the high

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<sup>7</sup> AIR 1982 SC 149.

<sup>8</sup> 1977 AIR 2328.

court as the central government may deem it necessary to consult, but it is only consultative role and the opinions offered would not be binding on the President and thus what if there is a difference of opinion between them? The Apex Court in answering this question said that the central government can override the opinion given by the constitutional functionaries required to be consulted and arrive at its own decision in regard to the appointment of a judge in the high court or the supreme court as long as such decision is based on relevant considerations and is not otherwise mala fide. It was further stated that the court did not think that the central government would proceed with the appointment of the judges if the constitutional functionaries have expressed opinions against the appointment in such a situation.

It was held that if primacy is to be given to the opinion of the Chief Justice of India, it would amount to concurrence because giving primacy would mean that his opinion should prevail over the chief justice of the high court and the governor of the state which makes it clear that the central government must accept his opinion. It is clear that the apex court gave the executive complete powers in the matter of appointment of judges and the opinions expressed by the judiciary were made irrelevant, but this established process was changed again after the Second Judges case.

2. **Second Judges Case- *Supreme Court Advocates-on-Record Association vs. Union of India***<sup>9</sup>

In this landmark case a new system emerged i.e., 'collegiums system' for the appointment of judges. This new collegium system vested the power itself on judiciary where the judges appointed by the judges themselves. This case can be summarized as:

- i. The process of appointment of judges to the Supreme Court and the High Courts is an integrated 'participatory consultative process' for selecting the best most suitable persons available for appointment; and all the constitutional functionaries must perform this duty collectively with a view primarily to reach an agreed decision, sub-serving the constitutional purpose so that the occasion of primacy does not arise.

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<sup>9</sup> (1993) 4 SCC 441.



- ii. Initiation of the proposal for appointment in the case of the Supreme Court must be by the Chief Justice of India, and in the case of a High Court by the Chief Justice of that High Court; this is the manner in which proposals for appointments to the Supreme Court and the High Courts must invariably be made.
- iii. No appointment of any judge to the Supreme Court or any High Court can be made unless it is in conformity with the opinion of the Chief Justice of India.
- iv. In exceptional cases alone, for stated strong cogent reasons disclosed to the Chief Justice of India indicating that the recommended is not suitable for appointment that appointment recommended by the chief justice of India may not be made. However, if the stated reasons are not accepted by the Chief Justice of India and the other judges of the Supreme Court who have been consulted in the matter on reiteration of the recommendation by the Chief Justice of India the appointment should be made as a healthy convention.
- v. Appointment to the office of the Chief Justice of India should be of the senior most Judge of the Supreme Court considered fit to hold the office.

### 3. Third Judges Case- In re Special Reference<sup>10</sup>

The judgment delivered by the Supreme Court in S.P. Gupta case<sup>11</sup> had retain some ambiguity in this regard and therefore, in third judge case, the President of India made by way of making reference held that the Chief Justice of India should consult a 'collegium' of four senior most Judges of the Supreme Court of India before he put forth his opinion and in case of appointment of High Court Judges, the Chief Justice of India was required to consult two Senior most Judges. This consultation process required consultation of plurality of judges and the sole opinion of the Chief Justice of India does not constitute consultation process.

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<sup>10</sup> 1 of 1998.

<sup>11</sup> *Supra* note 7, at 7.

However, it was further held that if collegium's decision is not in consensus with the decision of the Chief Justice of India, no recommendation is to be made with regard to such appointment. Further, a new provision was made and it was held that a Judge of a High Court can also be appointed as a Judge of the Supreme Court regardless of seniority on the basis of outstanding merit<sup>12</sup>. The researcher is of the opinion that the appointment of judges by the executive may have created some problems, but appointment of judges by the judges themselves cannot solve the problem, even somehow it is a gross violation of '**natural justice**' which has shaken the faith of a common people in present days. The judiciary must also be held accountable to the general public for all their actions taken in the administration of justice system. There is a need of major changes which should be implemented in the process of appointment of judges so that the judiciary will become more independent, transparent and accountable also.

## **JUDICIAL PRIVACY AND ACCOUNTABILITY**

In the controversy over the asset disclosure, the Delhi High Court in *Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal*<sup>13</sup> held that the Chief Justice of India (CJI) is a public authority who holds asset information in his capacity as CJI, a public office under the provisions of Right to Information Act, 2005. This decision calls for a measure of governance transparency and defends the public's right to know the actions of the authorities. With a lot of criticism and praise, this ruling is certainly a benchmark in Indian legal history. The Appellant had sought to know whether the judges were complying with the '**Code of Conduct**'<sup>14</sup> adopted at the full meeting of the Supreme Court in May, 1997. The Supreme Court had been making a distinction between the information held by the Chief Justice's office and by the Supreme Court which was out rightly rejected by the CIC. The CIC ruled that Supreme Court is an institution created by the Constitution and is thus a 'Public Authority'.

The Supreme Court petitioned the Delhi High Court against this order of the CIC, claiming exemption from disclosure of assets under the RTI Act, 2005 as the judges disclosed this information to the CJI under a 'fiduciary relationship' and that it was "personal information having no relationship to public interest and would cause an unwarranted invasion of privacy"

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<sup>12</sup> In re: Presidential reference AIR 1999 SC1.

<sup>13</sup> 162 (2009) D.L.T. 135.

<sup>14</sup> Restatement of Values of Judicial Life (1999) - Code of Judicial Ethics.

of judges. It further claimed that the CJI was not a 'public authority' under the RTI Act, 2005. The Supreme Court still maintains this stance despite the declaration of assets on the court's website. His Lordship, Justice Ravindra Bhat rejected these claims and held that the CJI had to disclose the information about assets. Since the code of conduct was adopted by the judges themselves, there could not be any claim of fiduciary relationship. In its appeal against the Delhi High Court order, before its Division Bench, the Supreme Court contended that there was no law providing for declaration of assets to the Chief Justice of India. Information could be sought only if it was held by or was under the control of any public authority under the provision of any statute or any law. It claimed that there was a plethora of information which was available with the judiciary but could not be made public.

The court observed that "well-defined and publicly-known standards and procedures complement, rather than diminish, the notion of judicial independence."<sup>15</sup> Affirming the earlier observations it held that the phrases 'held by' or 'under the control of' under Sec. 2(j) of the RTI Act, 2005 also includes information received or used or consciously retained, by any public authority in its official capacity. The declarations to the Chief Justice of India are made in discharge of the constitutional obligation to maintain higher standards and probity of judicial life and thus, are in larger public interest. The mechanism for declaration of assets should be fair, objective and transparent with a clear set of guidelines. It is opined that disclosure will have little or no impact without open public access or oversight.

It is pertinent to note that the court accorded right to information a status of a constitutional right by not exempting the office of the Chief Justice of India from the transparency framework. Right to information facilitates a vibrant democracy by assisting citizens to gather information required to participate in the democratic process and thus, to have the governors accountable to the governed. The decision comes as a ray of hope in the fight against corruption which has now become a living reality.<sup>16</sup>

## **JUDICIAL STANDARD AND ACCOUNTABILITY BILL, 2010**

Currently, there is no legal mechanism to deal with the complaints against judges' subject to the "**Restatement of Values of Judicial Life**" adopted by the Supreme Court of India on 7<sup>th</sup>

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<sup>15</sup> Secretary General, Supreme Court v. Subhash Chandra Agarwal, A.I.R. 2010 Del. 159.

<sup>16</sup> Udai Singh & Apoorva Tapas, "Judicial Accountability: The Eternal Dilema" *Christ University Law Journal*, 1, (2012).

May, 1997 as a code of conduct without legal sanctions to serve as a guide to be observed by Judges, essential for independent, strong and respected judiciary, indispensable in the impartial administration of justice. This Resolution was preceded by a draft statement circulated to all the High Courts of the country and suitably redrafted in the light of the suggestions received. It has been described as the 'restatement of the pre-existing and universally accepted norms, guidelines and conventions' observed by Judges. It is a complete code of the canons of judicial ethics. It reads as under<sup>17</sup>:

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.

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<sup>17</sup>Restatement of Values of Judicial Life (1999) – CODE OF JUDICIAL ETHICS, (Jan. 29, 2022, 10:15 PM), <https://indialawyers.wordpress.com/2009/11/12/restatement-of-values-of-judicial-life-1999-code-of-judicial-ethics/>.

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 interviews 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 through the Chief Justice.
16. Every Judge must at all-time 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 illustrative of what is expected of a Judge. The above “restatement” was ratified

and adopted by Indian Judiciary in the Chief Justices' Conference 1999. All the High Courts in the country have also adopted the same in their respective Full Court Meetings.

Judicial Standards and Accountability Bill is set up to replace the Judges Inquiry Act and aimed to set judicial standards and hold judges accountable for their failures. It also stipulates that the judges in the High Courts and the Supreme Court must disclose assets and liabilities, including their spouses and dependents. The Cabinet passed a draft of the Judicial Standards and Accountability Bill, 2010. Passing the bill aims to address growing concerns about the need for greater accountability in the higher judiciary through greater transparency and further strengthen the credibility and independence of the judiciary. The bill establishes a five-member '**oversight committee**' to deal with complaints against members of the higher judiciaries. This oversight committee would be headed by a former Chief Justice of India and also includes the Attorney General, Supreme Court Judge, Chief Justice of a High Court and an eminent person specially nominated by the President in this behalf.

## **SUGGESTIONS**

Until the extent of judicial corruption has been revealed and announced in public domain, government agencies cannot be activated to take effective action to eradicate this evil. However, the draconian power of contempt is often used by the judiciary to target public or media scrutiny of judicial misconduct.<sup>18</sup>Fostering a culture of judicial independence, impartiality and accountability is an important step in ensuring the overall integrity of the judiciary. Developing a judicial code of conduct is an important tool for promoting judicial accountability, as it serves as both a guide and a benchmark for judicial conduct. More rational orders and judgments are the best way to be accountable in the judiciary. Apart from these the Researcher is of the opinion that the following steps may be taken towards ensuring judicial accountability:

### **1. Introduction of Judicial Performance Evaluation (JPE):**

The process of Judicial Performance Evaluation (originated in US) should be adopted to promote transparency and accountability in the judiciary that will ensure efficiency in

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<sup>18</sup> Prashant Bhushan, *Judicial Accountability or Illusion: The National Judicial Council Bill*, ECONOMIC & POLITICAL WEEKLY, Nov. 25, 2006, <https://www.epw.in/journal/2006/47/commentary/judicial-accountability-or-illusion.html>.

justice delivery system.

## **2. Necessity of Judicial Standard and Accountability Act:**

A central Act should be legislated by the parliament so that the judges can also be made accountable for their actions before the 'people of India' through the eye of law.

## **3. Independent Committee:**

An independent committee may be established at central and state levels so that the committee impartially deal with the complaints against the judges of High Courts and Supreme Court regarding their conducts in securing better administration of justice.

## **4. Reasoned Decision:**

Reason decision is also part of judicial accountability. Judges are always expected to give reasonable orders so that it becomes clear why the judge reached a particular conclusion while making a judgment.

## **5. National Judicial Commission:**

An independent, full-time National Judiciary Committee is essential to the transparent process for appointing judges and the nominations for appointing the judges should be based on impartiality and fairness while considering judge's intelligence & diligence.

## **CONCLUSION**

Judicial independence means independence from the executive branch and the legislature, but not from accountability and it is an integral part of a democratic regime. Senior Judiciary sets standards of judicial conduct and competence, so these courts appoint only those who are absolutely impeccable honesty and quality, and serve with the highest dedication and skills. Lack of accountability in the judiciary reduces the credibility of the judiciary, but an accountable judiciary only leads to a stable political atmosphere and a much more efficient system of governance. However, it is submitted that judicial accountability can significantly undermine judicial independence if overdone, so it is important to strike a proper balance between the two.

The point of the above controversy is that constitutional lawmakers have long recognized the importance of judicial independence and the same have been accepted by the courts, citing it as one of the fundamental characteristics and 'basic structure' of the constitution. It is well known that the law must change in order to meet the expectations of a changing society minimizing the confliction of interests which is also a primary task of 'social engineering' as propounded by Roscoe Pound. Similarly, judicial independence must be seen in the light of the changing dimensions of society. Judicial accountability and judicial independence must work together in a symbiotic manner to ensure that the very purpose of establishing a judiciary is achieved. Transparency is facilitated by an accountability process and it can best be achieved by taking responsibility before the law. Therefore, accountability and judicial independence are two of the most important aspects that help to minimize the confliction among the three organs of government. This is because these two aspects help promote the smooth functioning of government establishing justice to all.