

## SUMMARY

The “Transparency International’s Global Corruption Barometer 2013” highlighted the lack of public trust in India’s judiciary, which many feel is overbearing and democratically unaccountable.

In India, from times immemorial, judges have been held in highest esteem and revered as super humans. But now a days the instances of corruption infecting the judicial system are reported. There is a great danger that such instances can erode the faith that people have in the judiciary. The judge is accountable to no one. The judiciary versus the executive or legislature is a battle which is not new but in present times, the confrontation is unprecedented with both the sides taking the demarcation of powers to a flash-point. A need definitely is there to make judiciary accountable, as derogation of values in judiciary is far more dangerous than in any other wing of the government as judiciary has to act as the guardian of our Constitution.

Judicial accountability or answerability of the judges is not a new concept. Several countries in their Constitutions have already provided for ensuring accountability of judiciary. The accountability of judges, particularly in the context of increasing allegations of malpractices resorted to by judges, is a matter of a grave concern in India. As of now there is no open process for the selection, promotion and, if required, the dismissal of High Court or Supreme Court judges in the country. The entire process is retained within the whims of the Supreme Court. All attempts so far to enforce accountability on the judiciary are vetoed by the judiciary itself.

A string of judicial scandals has erupted in the past, starting with Chief Justice Sabharwal’s case, and then going on to the Ghaziabad district court Provident fund scam, the 15 lakh cash-at-judges-door scam of Chandigarh, elevation of Justice Dinakaran to Supreme Court and the Justice Soumitra Sen case of Calcutta. Some of these have arisen due to the lack of transparency in the selection and appointment of judges.

Under Article 121 of the Constitution, the conduct of a judge cannot be debated in the Parliament. There is a separate procedure for impeachment; this is with the intention to

secure the independence of the judiciary. Similarly, under Article 122, the proceedings of the Parliament cannot be questioned by the judiciary even if a point of order is found contrary to the statute. This is indirectly envisaging the supremacy of the legislature in making laws, based on reasonable policies that cannot be questioned. It is not that there is no provision for judicial accountability under our Constitution. A difficult impeachment process is the best weapon of Indian judiciary.

The Supreme Court of India has ruled that no first information report (FIR) can be registered against a judge, nor a criminal investigation be initiated without prior approval of the Chief Justice of the Supreme Court. Further, the judiciary is even insulated from public criticism by the threat of Contempt of Court, which can be used in a very draconian manner by the very judges towards whom the criticism is directed, as we saw in the Arudhanti Roy case. The sword of contempt has kept the judiciary away from searching public scrutiny, particularly within the mainstream media.

The judiciary is obviously happy to live with this situation as well. The judiciary is even seeking to effectively remove itself from the purview of the Right to Information Act. The Supreme Court has recommended amending the Act to remove this jurisdiction of the Central Information Commission over it under the Act and further that any information interdicted by the Chief Justice on the ground of the independence of judiciary will not be given. It is generally accepted that public interest litigation and judicial activism have touched almost every aspect of life. But there are also many instance of judiciary being unlimited.

The foul smell of corruption is increasingly enveloping the temples of justice, popularly referred to as courts. Almost everyone is aware of the level of the corruption in the lower stream of justice. But, the screamers about instances of corruption in the higher judiciary appear to have forced the government and the Chief Justice of India to look afresh for an effective antidote. One of the most frequently used words in India is 'corruption' which signifies a range of things.

In India, the removal of a corrupt judge is virtually impossible. In India, the procedure of impeachment is not feasible because it requires a huge (two-thirds) majority in

Parliament. In the 1990s, when the Congress was in power, a motion seeking to impeach Justice V. Ramaswami could not be passed by Parliament as Congress members abstained from voting. There has been no other attempt at impeachment in India.

Judicial corruption in India is attributable to a number of factors, including "delays in the disposal of cases, shortage of judges and complex procedures, all of which are exacerbated by a preponderance of new laws." In 2012, it was estimated that at the current rate of disposal it would take another 350 years for disposal of the pending cases even if no other cases were added. Another factor is the low ratio of judges per one million population. This high workload encourages delays and adjournments on frivolous grounds. The judicial system, including judges and lawyers, has developed a vested interest in delays as well as corruption.

The judicial system of our country, far from being an instrument for protecting the rights of the weak and oppressed, has become an instrument of harassment of the common people of the country. In fact it has become the leading edge of the ruling establishment for pushing through neo liberal policies by which the resources such as land, water and public spaces left with the poor are being increasingly appropriated by the rich and the powerful. The courts are increasingly displaying their elitist bias and it appears that they have seceded from the principles of the Constitution which set up a republic of the people who were guaranteed "justice- social, economic and political".

In the words of David P. Currie, "The critical question is neither how to make judge independent nor how to control them but rather how best to reconcile the best values to find the happy medium the golden mean, how in other words to optimize the cost and benefits of judicial independence and accountability"

### **Judicial Accountability: Meaning**

The word 'accountability' is defined in Oxford dictionary and the meaning is that 'responsible for your own decisions or actions and expected to explain them when you are asked'. Simply, it means that one who will be held responsible for his work or duty or

action or decision and even would be expected to give the explanation about his action that has been performed by him. The word ‘accountability’ and the word ‘judicial’ should be read together to form a meaning of judicial accountability. Judicial accountability expects immunity of judges from internal infirmities with total independence. Judicial accountability must be in consonance with the Article 235 of the Constitution of India which empowers the higher judiciary to control subordinate judiciary. India is a democratic country where judges are treated as a “God” in the judicial system.

Such environment creates serious situation as it is hard to keep our eyes closed and remain blind folded from what is happening? Delay in dispensing of justice and increasing corruption in the judiciary made us to realize that this is all happening because of lack of judicial accountability towards the judicial system, towards the government as well as towards the citizens of India. This is all because justice has supreme place in our democratic system. Accountability of the judges preserves the rule of law and also promotes it by deterring conduct that compromises integrity, impartiality, and independence of judiciary. The judge who is facing impeachment process in the allegation of taking bribe with impurity, in spite of all, he is employed. Then accountability decreases his literal independence as he is enjoying to make himself dependent on external and internal influences that might interfere with his ability to follow the concept of rule of law.

### **Objectives of the Study**

The objectives of this research work are to touch upon all the important facets of judicial accountability. The main objective of the study is to find out various shortcomings available in the object of the rational, critical and comparative analysis of the following concept and find out their answers:

1. To evaluate the issue of judicial accountability in a democratic set up informed by rule of law and separations of powers.

2. To appreciate the reasons for delay in imparting justice.
3. To evaluate the constitutional and legislative mechanism related to the issue of judicial accountability.
4. To find out the efficacy of measure to check corruption among judges and to suggest an appropriate mechanism, if required.
5. To discuss the condition of services of judges and their impact on judge's functions.
6. To place the much talked about controversy regarding judiciary vs legislature and executive in proper perspective.

### **Scope of the Study**

To analyze that the laws which has been passed by the legislature, are sufficient to curb the corruption in the judiciary. Whether it being successful in bringing the more transparency and accountability in the judiciary of India?

### **Research Methodology**

1. The proposed study would be based mainly on descriptive, analytical and doctrinal methods. Besides these methods, some other methods found to be appropriate during study will also be applied according to the need of the study.
2. All the primary as well as secondary documentary sources will be utilized to make the study up-to-date, orderly and scientific. Various reports, books, articles, journals, judicial decision, website, international, constitutional norms and national measures will be taken as important research tools.
3. The hypotheses will be evaluated on the basis of provisions and polices made by the government. A critical analysis would do to evaluate the recent government policies in context to accountability of the judiciary. The research will be pursued by consulting various institutional libraries.

Independence of the judiciary plays importance role in upholding the foundations of the democratic system, hence ensuring a free society. Whenever there is a mention of the independence of the judiciary, there is always a concern about the latent dangers to the judicial independence and there arises the need of judicial accountability. In this regard, some necessary steps will have to be taken if state and the judiciary want to provide speedy justice to citizens of India.

1. Lower judiciary should not be under the control of higher judiciary.
2. It is suggested that the President should appoint an advocate of 25 years of practice on the recommendation of Union Public Service Commission on examination or interview held by it. The officers of the lower judiciary having a career of 20-25 years of services may also be allowed to appear in a examination held by Public Service Examination for recommendation of the appointment of the judges of the High Court.
3. In a democratic set-up a party generally doesn't get the two- third majority in the Parliament. President of India should also be given the power of the dismissal on the proved misbehaviour or incapacity on the recommendation of a panel consisting of senior judges of Supreme Court, senior advocates and high senior-most Chief Justices of states.
4. The All Indian Judicial Services should be created for judicial officers in the same manner as that of IAS and IPS officers. At no point, the political party in power should have a choice to recommend the candidates. The collegium system may be adopted for selection to higher judiciary. Every 5 years judges to be tested for updating their knowledge by the higher judicial officers. Recently, it is a good news that National Judicial Appointment Commission Bill 2014 has been passed by the Houses of the Parliament and it will replace the collegium system. Hope it would be good step of government of India to bring transparency in the appointment of the judges.

5. There should be a permanent body at the level of district judiciary, High Court and Supreme Court to hear the grievances of litigants and public in general in administration sides. In the absence of any forum to hear the grievances of the litigants, the official of the court have become unbridled.
6. Bar Association should set- up a committee at its own level to see that its members are working properly. The Bar Association must also take an action against its erring members. The members of Bar should not act in a manner which may be cost their reputation in the eyes of the public.
7. The license of advocates may be made subject to removal after a fixed period to show that they not be unbridled. Their licenses may be renewed after a examination by the concerned Bar Council.
8. There should be timely meetings between the members of the Bar and the members of the judiciary from time to time to ensure that they may remove their misunderstanding against each other. In the meetings, the officers of the district administration and police may also be invited. They must also raise their grievances in such meetings.
9. It has been seen that judges of a lower court and High Court do not give date of hearing to the litigants by their own hands. Every court must follow the directions of the Honorable Supreme Court, which have been issued in this regard.
10. Information and communication technology in lower courts should be adopted to provide speedy justice to the common people of India. The use of modern communication and information technology will also have a positive effect in a way of eliminating arbitrariness and corruption from courts. Video conferencing may be included in the processing of the courts to escape from the lots of crowd in courts and for the safety purposes of the judges and the litigants. So that there is an urgent need to upgrade and expand infrastructure and simplify procedures.
11. There is a need to set up a judicial disciplinary authority over the misconduct of judges, to prevent the corruption in judiciary.

12. It is suggested that the number of courts should be increased so that the cases may be decided within a month. Police investigation is also the main reason of delay in justice. The police force engaged in investigation may be separated from the police engaged in maintaining the law and order.
13. Salaries of the judges should be increased and the number of holidays in all levels of judiciary should be cut down.
14. There should be an interaction between the judiciary and academics to attract talent and to cultivate fresh ideas. The law curriculum needs ethics education and up-gradation.
15. There is a need of an independent National Judicial Commission (NJC), which must be created as a constitutional body like the Election Commission.
16. The Judicial Commission must not be monopolized by existing or retired judges and must include respected members from the legislature and academia, independent thinkers, and activists. It should be empowered to appoint judges as well as probe complaints of misconduct against them and initiate criminal proceedings wherever required without anyone's consent.
17. Court should adopt a simple procedures enabling a common man to directly approach the court.
18. Ensuring the required standards in the legal professional or the person concerned.
19. There is a need that judicial process would should have been automated. This process can be made available in the software library. Generic package can be made available which will be utilized for creation of new applications by the domain user itself.
20. It is expected that the judicial system will be completely ICT enabled during this phase.

It is, therefore, indispensable that judiciary must be made accountable in its working so that it may restore the faith of the public. The Supreme Court has also observed that a single dishonest judge not only dishonors himself and disgraces his office but destroys the integrity of the entire judicial system. People's Convention on Judicial Accountability

said that judicial system of the country far from being an instrument for protecting the rights of the weak and oppressed people of India, it has now become an instrument of the harassment of the common man of the country. Fingers are raised against the judicial system that it works only for the rich classes and not for the weak and the poor sections of the society.

In fact, the judicial system needs to be reclaimed and reinvented by the people of the country, so that it can come to function in accordance with the philosophy of the constitution. The system will need to be cleared of procedural complexities and cobwebs so that it can be accessed by the common citizens without professional lawyers, who have become a part of the exploitative judicial system. It will need to be strengthened to deliver justice quickly, efficiently and honestly. Whatever, additional financial allocation or additional judges are required for this must be done. For this, the various layers of protection created to shield the judges from accountability would have to be peeled away. In last, it may be concluded that there is a close relation between judicial appointments and independence of the judges. Public confidence in the judiciary depends upon open and transparent procedure for the appointments of the judges. Transparency and openness in the appointment of the judges depends upon the criteria and mechanism that is adopted. The criteria and mechanism should not be complicated because it shall have direct impact on the public trust as well as judicial independence. It is a need of the time that judicial appointment should be fair and transparent so that judicial independence may be well maintained. There has been a long controversy regarding the appointment of the judges from the very beginning. The appointment should be so made as to make the judges accountable to their work. It is judicial accountability that may maintain the confidence of people in the court system. The judicial independence and accountability must be balanced. Recently, the National Judicial Appointment Commission Bill 2014 has been passed by the both Houses of Parliament and it is hoped that it would bring more transparency and accountability in procedure of appointment of the judges.