

# Judicial Accountability and Comparative Approach

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**Abstract:** The Judiciary plays a huge role in the society from the checking the other two organs to protecting the rights of the people to giving justice. In every country the Judiciary is kept separate in order to maintain its independence and its credibility so that the people get proper and fair access to the justice. To achieve this it is equally important that their appointment remains fair there is a proper constitutional procedure for the removal of the judges on their misconduct along with the declaration of their personal assets which is equally important to check their financial growth while the judges were in office check corruption. This paper deals with these three issues in India and makes a comparative analysis to the judicial system described in Indian Constitution regarding appointment, removal and declaration of the assets to the system UK, Canada and USA. The author through this paper also borrows provision from other countries on some issues where there is absence of concrete statues in the abovementioned countries. This paper further deal with the challenges the Indian juridical administration is facing pertaining to judicial accountability and transparency and weeds out a list of problem present at the present system. At last the author through this paper provides various recommendations through which these issues can be solved.

**Key Words –** Appointment, Misconduct, accountability, transparency, comparative, Constitution

## I. INTRODUCTION

The Judiciary is an arm of the social revolution and transformation which holds the equality and social security for all the Indian<sup>[1]</sup> <sup>[2]</sup>. Unlike England, in India Constitution is supreme and to maintain its supremacy there is a need of an unbiased and unprejudiced judicial body.

In India the Supreme Court has been depicted as a custodian of the constitution<sup>[3]</sup> and also portrays the role “guardian of social revolution”<sup>[4]</sup>. It is equally important that the appointment of judges to such institution as well as to other higher judicial authority is transparent and the judicial officers appointed are accountable.

## 1) COMPOSITION OF JUDGES IN INDIAN APEX COURT

The total strength is 31 which include 30 judges and one Chief Justice of India<sup>[5]</sup>.

## 2) APPOINTMENT OF JUDGES IN INDIA

### ❖ KESHAVNANDA BHARATI CASE<sup>[6]</sup>

This was a landmark judgement which was not only the lengthy judgement but was also a judgement which changed the course of history of India. This judgement is also seen as the initial stage where the fight for supremacy between the judiciary and the legislature was observed.

In this judgement the apex court clarified the confusion regarding the constitutional amendment and held that the Parliament possess capacity to change anything in the constitution, except the basic structure of the Constitution which included important provision such as fundamental rights, secularism, etc.

The then central government being unhappy with judgement changed the established convention of appointing the senior most judges as a CJI was altered and Justice AN Ray who was 4<sup>th</sup> in the order of seniority and gave the dissenting judgement was appointed as a CJI, the instance which was repeated in the instance of Justice Khanna who dissented in the *ADM Jabalpur Case*<sup>[7]</sup> <sup>[8]</sup> during emergency and was also ignored to be the CJI<sup>[9]</sup>.

## II. RESEARCH METHODOLOGY

The research work done in this study is doctrinal in nature and is qualitative research. Doctrinal research methodology, which is used in this paper, includes various legal principles and concepts, of all kinds, such as case laws, legal statutes, commentaries etc. The researchers have also studied various decisions of the Supreme Court and High Court for this paper. The paper includes Qualitative research of various National and International books, and journals on the same topic.

## III. HISTORICAL BACKGROUND

### ❖ POSITION BEFORE 99<sup>TH</sup> CONSTITUTIONAL AMENDMENT IN SUPREME COURT

The nomination procedures of the Judges at the Apex Court are carried out by the Indian President as propounded in Article 124(2)<sup>[10]</sup>.

Under the abovementioned article, it is mandatory for the President to consult the CJI while nominating other Judges and the Chief Justice of the High Court. The word “consultation” has the identical interpretation to Article 222 of Indian Constitution.

In its judgement<sup>[11]</sup>, the apex court held that the term “consultation” means full and effective consultation, although the President is not bound by it and can differ from it.

In *Judges Transfer Case*<sup>[12]</sup> or the *First Judge Case*, it was observed the supremacy of Executive and the power to appoint judges is “solely and exclusively” conferred to the central government. In the same judgement<sup>[13]</sup>, Justice PN Bhagwati, suggested appointed of judges to be held by a National Judicial committee as followed in Australia where the judges are appointed by the Australian Judicial Committee<sup>[14]</sup>.

The constitutional bench of Supreme Court examined the “Consultation” in Article 124(2) and directed that CJI ought to have pivotal significance in the matter of appointment of judges<sup>[15]</sup>.

Same judgement observed that an independent non-political judicial body is necessary for the socio-economic transformation of society and protection of constitution and Rule of Law.

However, in the *Second Judge Case*<sup>[16]</sup>, the apex court repealed its own judgement given in the *First Judge case* and held that there is a reason why the word “consultation” is used instead of “concurrence”.

The court with a majority of 9:2 held that the appointment must be in the accordance to the opinion of the Chief Justice of India, after the CJI consults with the other two senior-most judges of the Supreme Court. Thus, it reduces individual favouritism and political interference prejudice and appointment of *political committed judges*. The court further gave the guideline that the appointment of Chief Justice of India should be based on seniority, which in practise prior to 1973. This was the landmark judgement which gave birth to collegiums system. It was established that no appointment can be made unless it is in confirmation with the collegium and the CJI and only in the exceptional circumstances the recommendation will not be accepted by the President.

The court also clarified the stand of CJI that it is not desirable to give absolute power of veto to CJI and some power are also reserved with the Executive body for the purpose of check and balance<sup>[17]</sup>. The guidelines given in the abovementioned judgement<sup>[18]</sup> are discussed below:-

1. The appointment of Judges at the Apex Court must be insisted by the CJI. In the extraordinary circumstances if the person recommended by the CJI is found to be inappropriate for appointment and such disclosure is rejected by the collegium then the appointment should be conducted with all due respectful procedure.
2. The CJI hold the final opinion in the matte related to appointments. Every the consultation done should be written and it includes all the Judges

consulted. This is an inbuilt check on exercise of the power, and ensures due circumspection.

3. Senior most Judges must be appointed as CJI. The seniority of the Judges in their respective HCs clubbed with their seniority on all India bases should be kept into consideration while making appointment from HC Judges to the SC.

While dealing with the issues of collegium in the *Third judge case*<sup>[19]</sup> the court clarified that the sole opinion of the CJI without consulting the other judges shall not have the binding force on the government. The CJI must adopt the plurality of the others *in the consultation*.

In this judgement the court increased the number of judges to consult from two to four and also directed that if two of the four judges are of dissenting opinion, then the collegiums should not send the recommendations.

1. The CJI and other four senior judges in the collegium should be consulted
2. Their opinion should be registered in the writing.
3. A High Court having exceptional and remarkable outstanding virtue and calibre can be nominated as a judge in the Supreme Court irrespective of his/her seniority.
4. A high Court judge can also be appointed for other “good reasons”, like if there is same Court in the province of the country where the parent Court is situated and there is no representation from that particular high court to the Apex Bench.

#### IV. FINDINGS

##### ❖ POSITION AFTER 99<sup>TH</sup> CONSTITUTIONAL AMENDMENT IN SUPREME COURT

The law commission also held conformity with the view of Justice Bhagwati in the *first judge case*<sup>[20]</sup> and also suggested the same in 1987<sup>[21]</sup>. The Parliament in the year 2014 amendment the Article 124(2), 127 & 128 of the Constitution and added Article 124A, 124B and 124C.

This amendment replaced the system of collegiums and introduced National Judicial Appointment Commission (NJAC), which will appoint the judges in the Supreme Court and the High Court.<sup>[22]</sup> The issues highlighted in the collegium, system were that the appointment of the judges through this system is absolutely transparent with no procedure to check the reasonableness of appointment<sup>[23]</sup>.

The objective of the NJAC was to make Judiciary more accountable. It was also mooted that the present system lack answerability and speedy implementation, is less transparent<sup>[24]</sup>, and promotes nepotism<sup>[25]</sup>.

This commission consisted of CJI as the chairperson, two senior-most judges of the SC as *ex-officio* member, and Law Minister. This committee also has two member appointed by the board comprising CJI, PM and the Opposition Leader<sup>[26]</sup>. The main functions of this NJAC were in nomination and transfer the judges at the higher judiciary.

The Apex Court by margin of 4:1 held this amendment as unconstitutional and void <sup>[27]</sup> [*except for the Justice*

*Chelameswar who dissented*<sup>[28]</sup> <sup>[29]</sup> and re-instated the collegiums system.<sup>[30]</sup>

The reason given by the Apex Judicial body while quashing the NJAC bill was that it will lead to appointing of unworthy candidate, *politically committed judges*. There is a reasonable massive abuse of power, and it threatens the independence of the judiciary<sup>[31]</sup>.

The apex court found the act in *ultra vires* to basic structure of Constitution. The Apex held that it is in the contradiction of Article 124, 217 and 222, where the advice of the CJI is obligatory<sup>[32]</sup>, a statute established in the past judgements<sup>[33]</sup> <sup>[34]</sup>.

The reason explicated in order to declare NJAC null was that it was overweighting executive in the matter of appointment of the judiciary, which is more vulnerable and impuissant to biasness, compromising and partiality to the political powerhouse, hence endangering the judicial independence. The veto was determined on the vote with CJI having same weight as other. The use of expression "*any other suitable criteria*"<sup>[35]</sup> in the NJAC Act had its own share of ambiguity and invited loopholes for nepotism and favouritism, and also has paucity of genuineness.

The appointment was decided when 5 out of 6 members assent to a particular recommendation, a majority bigger than the special one and one being practically impossible to implement on regular basis.

#### ❖ APPOINTMENTS OF THE JUDGES IN USA, UK, AND CANADA

##### UK

The appointment of Judges in **England and Wales** is done by the independent Judicial Appointments Commission, which was formed in 2006<sup>[36]</sup>. The final veto in the appointment is with the Executive.<sup>[37]</sup>

- The said commission consists of 15 Commissioners. They are accountable for ensuring that the commission executes its functions effectively and transparently.
- These members must never been part of any commission, a member of parliament or should not be in civil or judicial service in the past.
- They are appointment are done for five years and then they become ineligible to preside in the commission after their completion of the second tenure.
- The foremost and essential work of this commission is to prepare the list of eligible candidate, discuss and then recommend for final selection to the Executive.<sup>[38]</sup>
- These recommendations can only be rejected once by the secretary, hence its gives certain binding power to this commission.

##### CANADA

Judges in the Canadian higher judiciary are appointed and not elected. The strength of Canadian Supreme Court is nine, including the Chief Justice. Except for the selection of PM, Parliament has no role in the appointment of judges in the Supreme Court nor does it hold any authority to

review the recommendations made. These appointments of Judges are done on the advice of the Prime Minister<sup>[39]</sup>. An independent Judicial Appointment Committee shortlist and recommend the list of people eligible and worthy to be judge at the Supreme Court to the PM for the final selection. A committee of seven members including three 3 lays persons, 3 lawyers, and one retired Judge. Their recommendation as opposed to the UK system is *non-binding*. The seven incorporating members of the Advisory Board are as follows.

- Three lay members, out of which two must be from non legal background, and they nominated by the Ministry of Justice
- Practising advocates with outstanding merit in bar, selected by the Canadian Bar Association.<sup>[40]</sup>
- Practising advocate with outstanding merit in bar, selected by the Federation of Law Societies of Canada<sup>[41]</sup>;
- Retired Justice of higher judicial court who is nominated by the Canadian Judicial Council;
- Jurists who is nominated by the Council of Canadian Law Deans<sup>[42]</sup>.

##### USA

- Appointment processes of a Judge in the Supreme Court in the US are done by the US President after obtaining approval of the US Senate<sup>[43]</sup> <sup>[44]</sup>. The involvement of the Senators in the nomination and election of the Supreme Court is less. The power of the President of the United States to appoint the Supreme Court Judge is protected under Article 2 (Section2) of Constitution of United States.<sup>[45]</sup>
- The tenure of a Supreme Court judge is not fixed and there is no predetermined and definite retirement age in USA opposite to the procedure followed in India. The procedure adopted in USA for appointing a Justice in the Apex Court involves considerable amount of politics as a lot of powers vests in the hand of the President. The appointment of a judge is less frequent due to the less number of the judicial strength of Judges in Apex Court and responsibility to appoint a Judge to the Supreme Court occur only one or two times during tenure of one President.
- In addition to this, there is also no written and prescribed Statute or any eligibility criteria for Judicial Members in the Apex Court on in the federal court of the country<sup>[46]</sup> <sup>[47]</sup>.
- Like other democracies in the world, the Judiciary is independent in USA from the hands of Legislature and executive. A system of dual court system is in practised in United States, allowing the federal government and the State to have their courts.<sup>[48]</sup>

#### ❖ REMOVAL OF JUDGE FROM HIGHER JUDICIARY INDIA

- A judge can be removed from his/her officer only by the official order given by the President. The president is authorized to take this step only after the impeachment process is conducted in the

parliament, after the president addresses the issue to the parliament and the said address is supported by special majority of each house of the parliament. The grounds of removal are – proved misbehavior and incapacity<sup>[49]</sup> <sup>[50]</sup>.

- A Judge can be dismissed for the proved misbehavior, professional misconduct, incapacity. The court here has clarified the expression “misbehaviors” in the *Daphtary’s Case* and observed in the “Power of Review” that Even if a Judges commits errors, or any gross error in the judgement it do not qualify for the provision of misbehaviour<sup>[51]</sup>.
- The expression “misbehavior” in the Article 124 (4) was widely discussed by the Apex Court in *Ravichandran’s Case* and observed that this expression is ambiguous and is subjected to various interpretations with wide creation of hypothesis<sup>[52]</sup> <sup>[53]</sup>.
- The Judiciary is independent and the terms of Judges are protected and every action or the performance of the Judge in the execution of his/her duties cannot be scrutinized within the lens of the word “misbehaviors”.
- The Judges Inquiry Act<sup>[54]</sup> checks procedures concerning to dismissal of the judge in the higher judicial authority by impeachment. This removal must be signed by 100 lok sabha members or 50 rajya sabha members and it is submitted to Speaker at the lower house or to Chairman of upper house (Vice President).
- The speaker/chairman can admit as well as refuse such motion and if such motion is admitted then the 3 members committee is setup by the speaker or the chairman which investigates the matter. The Apex Court has also clarified in *Sub-Committee of Judicial Accountability’s Judgement*<sup>[55]</sup> that the impeachment process of the Judge do not lapse with the dissolution of Parliament.
- When the same board finds the charges genuine then impeachment motion is conducted and taken into consideration by the parliament to be passed y the special majority, and then it is submitted to the President. Finally the president passes an order for the discharging the judge from his/her duties.
- In India first impeachment case was done to *Justice V Ramaswami*<sup>[56]</sup>. In spite of found guilty by the enquiry committee for misbehavior, he was not removed as the impeachment motion as defeated by not fining majority in the lower house of the parliament<sup>[57]</sup> <sup>[58]</sup>.
- When the wife of the accused, *Sarojini Ramaswami*<sup>[59]</sup>, filed an writ petition, the court held that the speaker must supply the Inquiry Committee report to the accused<sup>[60]</sup>, the accused can be termed as “guilty” but after consideration Parliament has the power to decide against the report, and lastly if the Parliament do not adopt the said reports and do

not go in further with motion for the impeachment of the Judge then that process ends there without any ground of challenge<sup>[61]</sup>. It is also outside the ambit of Judicial Review as it was considered to be immature and unwarranted of Constitution<sup>[62]</sup>.

- Another impeachment happened to *Justice Karnan* of Madras High Court (2017) on the ground of incapacity<sup>[63]</sup> <sup>[64]</sup>. This was the first time when a sitting high court judge was impeached and was sentenced 6 months imprisonment for being guilty of contempt.
- In the judgment of *K. Veeraswami*<sup>[65]</sup>, the apex court adjudged that the Judges higher judiciary can be prosecuted and convicted for criminal misconduct. The court further observed that the expression “misbehavior” in the Art. 124(5) also incorporate and substantiate the expression “criminal misconduct” elucidated in PC Act<sup>[66]</sup>. But few parts of this judgement was also criticised which is discussed below.
- The removal of the judge principle is adopted from the English Rule of Law but in India the removal process is more definite then the English Law.
- In India there is requirement of special majority of both the houses of the Parliament but it is not in the case in UK.
- The grounds for the removal is more precisely defined in the Constitution and also the Procedure established in India concerning investigation of the matter of misconduct, grounds before addressing the issue in Parliament is present which is absent in English Law<sup>[67]</sup> <sup>[68]</sup>.

#### ❖ REMOVAL OF THE JUDGES IN USA, UK AND CANADA

##### UK

- In order to observe the Rule of Law, every democratic country has its own set of procedure for the dismissal of judge.
- In United Kingdom, a Judge can be discharged from their duties after addressing to both the houses (House of Lords and House of Commons) of the British Parliament<sup>[69]</sup> <sup>[70]</sup>.
- The two houses after conducting the required inquiry related to the Judge and the complaint attached to it, after being satisfied, holds the power to appeal<sup>[71]</sup>.
- This provision was initially mentioned in the Act of Settlement of 1701 and now is placed as Section 11(3) of the Supreme Court Act, 1981<sup>[72]</sup>.
- Although such impeachment has never been in actual practice in the England and Wales but it has been in use for once in the Ireland, where the Justice Sir Jonah Barrington was removed from his office on the charges of corruption, misappropriation of the funds of court for the personal gain in the year 1810<sup>[73]</sup>.
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#### USA

- The initiation of procedure for Impeachment and expulsion of a Supreme Court is subject of high and authentic charges of treason, bribery or any other crime of higher form<sup>[74][75]</sup>.
- The impeachment proceeding is instead in the US senate and only after the special majority of two-third (66%) affirm the said impeachment proceeding a Judge is removed from his office.
- The provision of impeachment of Judge is protected under Article II, Section 4 of the Constitution."

#### CANADA

- In Canada too, the judges are rarely removed from their office.
- There is Judicial Investigating body known as Canadian Judicial Council who takes cognizance of the complaint and further inquire the matters relating to professional misconduct of the judges of higher judicial bodies.
- After being satisfied the report is forwarded and recommended to Ministry of Law and Justice of Canada for the removal of the judge from the office. The Ministry then removes the Judge after getting the approval of the House of Senate and Commons.<sup>[76]</sup>

#### ❖ DISCLOSURE OF ASSETS BY THE JUDGES IN INDIA

- At present one see the assets of the Supreme Court Judges can be seen in their official website<sup>[77]</sup>. As of now only 7 Supreme Court Judges of total judges present in the Apex Court of the Country has declared their assets.
- There is no written statute or law related to such compulsion unlike to the provision present to the legislature and executive along with the source of income<sup>[78]</sup>.
- The bill also contains the provision where the Judges have to attest and asseverate the assets (moveable and immoveable) of their spouses and their dependents family members and the same displayed on the official website of the Supreme Court<sup>[79]</sup>.
- The **Judges Assets Bill** a proposed legislation in India ought to make the disclosure of all the private property and other commercial belongings of judges Compulsory.
- It was passed decade ago by the Lok Sabha and currently it is pending in the Rajya Sabha.<sup>[80] [81]</sup>
- There had been much opposition for the said bill like it will harm the independence of the judiciary and Judicial officer being subjected to various media scrutiny and others<sup>[82]</sup>.

#### ❖ DISCLOSURE OF ASSETS BY THE JUDGES IN USA, UK AND CANADA

##### USA

- In United States, although there is no written or official statutes regarding making an compulsion or obligatory for the Judges to asseverate their financial holdings but they are expected to make a disclosure about their entire financial holdings, including the gifts, fees received after delivering a lecture and others.
- Section 101 to 111 of the Ethics Act<sup>[83]</sup> guides the Judges at the higher judicial authority to declare their financial assets both moveable and immoveable.
- Under section 105 of the abovementioned act permit any person to have an access to the copy of the declaration after furnishing a written statement to the concerned Judge<sup>[84]</sup>.
- The Judicial Code of Conduct Passed in 1995 requires a Judge to annually file the Compensation received by law related activities<sup>[85]</sup>.

##### UK

- There is no such provision for the judges in the UK.

##### CANADA

- There is no such provision in Canada.

#### V. RESULTS AND DISCUSSION

#### ❖ COUNTRIES HAVING THE PROVISIONS FOR JUDGES TO DECLARE THEIR ASSETS.

##### SOUTH KOREA

- There is no constitutional provision concerning the declaration of assets of the Judges at the Higher Judiciary but under their Public Services Ethics Act, 1993 every officer at the higher rank are asked to unveil their assets along with the asset of their spouse with many of their close blood relatives. Judges too are also governed under the abovementioned law<sup>[86]</sup>. Their disclosed properties are put up in the public domain within one month of their appointment.

##### PHILIPPINES

- It is one of the few countries which has Constitutional provision regarding financial and asset declaration of judicial officers. It also has the right to review all the financial disclosures made by the judges and the same law is applied since 1897<sup>[87]</sup>. These constitutional provisions are protected under Article XI and Section 17 of their Constitution<sup>[88]</sup>. There are also other legislation present such as Anti-Graft and Corrupt Practices Act, 1960, which oblige all the public officials to disclose their assets. This Act also allows the inspection for the contents published in the media but there is restriction on such information for commercial purpose.

## GHANA

- Under Article 66 of the Ghana Constitution, it is mandatory for all the Judicial and Legal officer to disclose their assets at the beginning and at the end of their professional term.
- Unlike other countries Citizens of Ghana cannot access declarations of assets disclosed by the judges.

## THAILAND

1. Thailand's Constitution also has provisions for disclosure of asset protected in it. Contains a disclosure requirement. Under Section 259, it is mandatory that all the people who are holding major political and judicial position are required to disclose their assets. They are also asked to declare the assets of their spouses and all these disclosures are submitted to the National Counter Corruption Unit of the State.

### ❖ CHALLENGES TO INDIAN JUDICIARY, ACCOUNTABILITY AND TRANSPARENCY

Juridical administration in India has proved to be slow and has failed to deliver at the desired result. One of the primary causes for this is that the lack of courts and judges which results in slow pace disposal of the case which is less than the initiation of the new cases<sup>[89]</sup>. This delay can be further categorized as the following:-

- **The increasing pendency of cases and its burden on the judiciary** – As per reliable resources there are more than 3.3 crore cases are pending.
- **Small number of judge** - The vacant position of the judges too results in the slow disposal of the cases hence resulting in the delay of the justice. There are approximately 6000 vacancies for the Judges in trial courts<sup>[90]</sup> <sup>[91]</sup>. The figure at the Higher Judicial Authority is also below expectations as six of thirty at the apex level and 413 judge positions in various 24 High Courts are vacant<sup>[92]</sup> <sup>[93]</sup>.
- **Hardships of the under trials:** At present there are 4.2 lakhs prisoners in India and two third of them are under trail. Due to lack of accessibility of legal aid, poor prisoners cannot afford for the bail on the non-bailable charges and other serious charges levied upon them.

The Supreme Court in its recent judgement gave much needed financial relief concerning waiving of the huge financial bonds on the grounds of poverty and financial issues, but its true purpose can only be achieved once it is implemented at the grassroots level and at the lower judiciary<sup>[94]</sup> <sup>[95]</sup>.

- **Corruption:** It has become a big issue in the modern India. There have been instances where many Judges are caught by the investigating authorities while taking bribes.<sup>[96]</sup> The statutory provision is absent for registering FIR against a Judge without the permission of CJI. Justice Soumitra Sen, a former judge at the Calcutta High Court became the first judge in the India to be

impeached by the Rajya Sabha alleged for misappropriation of funds.<sup>[97]</sup>

In the famous Ghaziabad provident Fund Case, a big scam concerning misusing of funds of 49 crore was unearthed off. The key witness gave the detailed account of the scam which included many judges from higher judiciary. Although he was found dead in the prison under mysterious circumstances and due to lack of other evidence it was not been to able to investigated properly.

- **Judicial Accountability issue in India** – It has now become like a self-perpetrating oligarchy, without any transparency. The higher judicial court exercise power which is virtually absolute and unchecked. The media too fears to cover the story of misconduct of judges out of the fear of contempt of court<sup>[98]</sup>.

This judgment has prevented many investigations against judges, who have committed illegal acts. Even the judge who gave favourable judgement in declaring NJAC Act unconstitutional regrets that judgment after observing the lack of transparency in collegiums.<sup>[99]</sup> The judicial body being outside in the name of judicial independence has led to question its credibility.

### ❖ CHALLENGES TO TRANSPARENCY IN THE APPOINTMENT PROCESS AND ACCOUNTABILITY

**NEPOTISM AND LACK OF CASTE DIVERSITY** – It is an issue which has entered the nucleus in all the spheres of the profession in India<sup>[100]</sup>. There have been many instances where there are judges appointed whose fathers and uncles have served as judges in the higher court and Supreme Court including being the CJI<sup>[101]</sup>. The collegiums system has provided opportunity to select Judges in the will of the CJI and many cases of Nepotism has been observed, which was dissent by a High Court judge in 2019<sup>[102]</sup>. Justice Chelameswar notes that judicial independence introduced in the second and third judge case are not the safest way to protect the interest of the Judiciary, which was also referred previously against the loopholes in the collegium system in other matters of the Apex Court<sup>[103]</sup><sup>[104]</sup>. As established in the *First Judge Case*, judicial independence “*fearless to powerful centre, impartiality to socio-economic prejudice to the class even to one the judge affiliated*”.

The Indian judiciary is the only organ whose selection is done in total secrecy and holds no accountability for the judgements but to one self<sup>[105]</sup>. When 33 judges were nominated by the collegium in the Allahabad High Court there was huge uproar and dissent in the legal fraternity, as one third of them were directly or indirectly a close family member of the sitting or a retired judge of Supreme Court or the High Court. There are many examples where the Supreme Court Judges has their family members as judges in SC or HC in the Past<sup>[106]</sup>. In 2009, the Law Commission too said regarding the existing practise of nepotism in the higher judiciary and the main cause was the collegium system which has become a system of monopoly for some families<sup>[107]</sup> <sup>[108]</sup>

A research conducted on social backgrounds of people designated as Supreme Court Judge from 1950 to 1990 uncovers caste imbalance in the Supreme Court with close to forty percent of them affiliating from *Brahmins community*<sup>[109][110]</sup> and half of them comes from the forward castes such as *Jains*<sup>[111]</sup>, and the percentage of under privileged caste from reserved category scarcely touched ten percent<sup>[112]</sup>. As of 2011, as per the reports of National Commission of SC, the total strength of High Courts judges coming from SC/STs was 24 out of total 850 judges in various 21 High Courts of the Country<sup>[113] [114]</sup>.

#### ❖ *CONTROVERSY OF CJI ROSTER AND FOUR JUDGES COMING IN PUBLIC*

In a writ petition filed concerning Judicial Accountability to a bench headed by Justice Chelameswar concerning an investigation of a corruption and the Honorable Justice Chelameswar ordered the formation of a constitutional bench of five judges, later the same case was nullified by CJI after the transfer of the case<sup>[115]</sup>.

In another case where the CJI (J. Misra) was alleged involved heard that case for himself and held that an advocate is not qualified to appeal to CJI concerning not to preside over a particular case, which further led to uproar and dissent by the legal fraternity<sup>[116] [117]</sup>.

Another case where the inquiry related to death of Justice Loya was handled with gross negligence concerning in the fair investigation of the demise of the CBI judge, irregularity in the court administration etc led to dissent among the senior judges of the apex court<sup>[118]</sup>. All these action clubbed compelled the four senior most Judges to come up the press openly and address the constitutional violation issues straight to the public and media.

#### ❖ *CJI SEXUAL HARASSMENT CASE IN 2019*

Recently the CJI, Justice Ranjan Gogoi, was accused of sexual harassment by a woman. A complaint of sexual harassment against the sitting Chief Justice of India was made and the complainant also furnished affidavit and other supporting evidence to the other judges of Supreme Court asking for an inquiry. After the complain was taken up but there were many legal issues cropped up which needed immediate attention such as;

- I. The respondent was himself sitting in judgment over his own case, defying the principles of natural justice.
- II. There were no woman judges on the special bench, violating the terms of POSH Act.
- III. Why this matter was taken into as an in-house procedure instead of judicial side?
- IV. Why the allegation against an individual being treated as attack on Institution?
- V. Does Judicial Independence mean immunity from the charges of Sexual harassment?
- VI. Can the judiciary communicate to media through judicial hearing?
- VII. What justice remains to the aggrieved person?

It is an accepted belief that the same amount of accusation would have initiated an inquiry against the prime minister,

or would have also led to his resignation, but the supreme court judge get away because of the immunity provided to him from such investigation<sup>[119]</sup>. The Supreme Court has the benefit of having an In House Procedure to check the conduct of the court but have protection against the police investigation<sup>[120]</sup>.

## VI. CONCLUSION AND SUGGESTIONS

### ❖ *RECOMMENDATIONS*

1. Our democracy can adopt the appointment of judge's procedure from Canadian Model<sup>[121]</sup>. The Canada has recently new process for appointment of SC judges introduced in Canada. It is different from Indian NJAC as it does have a sitting Supreme Court Judge or a minister.<sup>[122] [123]</sup>
2. While taking the Judicial accountability into main consideration the NJAC Act and 99<sup>th</sup> Amendment was a right step in the right direction. The 99<sup>th</sup> Amendment was definitely a step in the right direction, considering the urgent need for reform in judicial independence.<sup>[124] [125]</sup>
3. A Judicial appointment commission of UK also draws certain importance concerning the member of Independent Judicial appointment body who is free from all the interference.<sup>[126]</sup>
4. In terms of Professional Ethics it is time to bring written code of conduct regarding the roster and allocation of the cases, disqualification from election. Also there must fix guidelines concerning the Post Retirement post occupied by the judge should also needs to Checked.
5. There must be mandatory 20-33% reservation of woman in the higher judiciary <sup>[127]</sup>.
6. The vacancy of the Judiciaries should be taken into serious consideration by the independent judicial appointment committee<sup>[128]</sup>. This Judicial appointment committee should be selected by the Nomination of the members of Bar Council, Social workers, and senior advocates, retired Judges.<sup>[129]</sup>
7. The panel selecting the members in the judicial appointment committee should not be related to each other and the members selected should hold the office for three to five years and they should not be eligible for re appointment.
8. There is need of female reservation in the Supreme Court along with Retired JAG officer (Judge Attorney General) to be appointed in the Supreme Court and High Courts as the member of disciplinary committee to check the criminal misconduct of the Judges and if any application is made then and found guilty after the inquiry then the case should be initiated in the separate special Tribunal presiding the retired Justice of the higher judicial authority with great track record and whose family member are not in Judicial service.

NOW THIS PAPER WILL DEAL WITH SPECIFIC RECOMMENDATION WHICH IS THE NEED OF THE HOUR.

❖ THE JUDICIAL STANDARDS AND ACCOUNTABILITY BILL, 2010

The Parliament introduced Judicial Standard and Accountability Bill in 2010 which lays down enforceable standard for the conduct of the judges. The bill also made mandatory for the judges to declare their financial holdings and the income and the net worth of their children, their family member income, assets and liabilities.

Most significantly, this bill also has provision regarding allowing a person to complain against the judge on the ground of misbehaviour or incapacity.

The complaint made to this committee would be confidential and false complainant will be penalising with imprisonment and hefty fines. The bill was passed by the Lower house on 29/03/2012 but the bill was not taken for the discussion by the upper house<sup>[130]</sup>.

The Government recently said that there is no proposal to bring a fresh bill, allegedly citing to the nexus between the cases of national importance, causes related to the ideologies of political parties in the power and the judges dealing with such cases<sup>[131]</sup>.

❖ IMPROVING THE COLLEGIUM SYSTEM

The apex court accepted to improve the present collegium while striking down the 99<sup>th</sup> amendments. The present system is arbitrary where the whole process is conducted within the closed doors of the judge with zero accountability. It is against the “principles of natural justice” and “rule of law”.

- a. Only the collegium system of the total Supreme Court administration should be brought under the ambit of RTI and judicial review, and this will not be in the contradiction of the judgement given by the apex court<sup>[132]</sup>. It will help in bringing more transparency and accountability and the whole process will gain efficiency and credibility.
- b. The vacancies should be announced publically so that all those people who are eligible can apply. An independent body or Judicial Appointment Commission consisting of Retired Judge, four senior judges of the Supreme Court and retired civil servants who can review the applications. At the latter stage where the few individuals will be left it will be ideal for the body to give them individual feedback.

Then the interview stage should be organised by the UPSC. After that the candidates can be reviewed by the CJI, who will make the final call for the selection. This method will make the process more transparent while giving the final veto power to the CJI. This dual procedure will preserve the Collegium system besides selecting deserving candidates for Judgeship.

After doing the in-depth research I can conclude that the whole process the appointment and removal process of the Judge in India has its own share of loopholes which has went into the nucleus of the system. The appointment and

removal system of Canada and England are more transparent than India and it is time when we should adopt the unique judicial appointment commission which is a combination of the English and Canadian model with the fair mix of collegium. Our Constitution too has taken from various sources and then it is clubbed by the intellectuals in order to achieve world renowned written Constitution.

It is well accepted by the researcher that there is a administration lapse at most of the level and the JAC is also subject to prejudice of the Executive and Legislature but the Judiciary being independent has the power to overcome such irregularities from time to time just as it has done in *Keshavnanda Bharati case*, *Minerva Mills Case* etc. This will further create a path for bigger judicial reforms such as, increasing the strength of judges, increasing the retirement age, etc.

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