JUDICIAL INDEPENDENCE & ACCOUNTABILITY

NARENDER KUMAR BISHNOI
AMIT VERMA

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Narender Kumar Bishnoi

Amit Verma

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CHAPTER 1

BRIEF INTRODUCTION TO JUDICIAL INDEPENDENCE & ACCOUNTABILITY

Amit Verma, Associate Professor
College of Law, Teerthanker Mahaveer University, Moradabad, Uttar Pradesh, India,
Email Id- amitverma2@gmail.com

ABSTRACT:

A fair and just legal system is built on the essential foundations of judicial independence and accountability. This succinct introduction offers an outline of these crucial ideas and their importance when viewed in the context of contemporary government and the rule of law. Judicial independence refers to the judiciary's freedom from outside influences, such as political pressure or unwarranted meddling, so judges may make unbiased, fair judgments without worrying about facing repercussions. It is essential to a democratic society because it protects people' rights and upholds the division of powers. Judiciary accountability, on the other hand, supports independence by making judges accountable for their deeds. It encourages honesty, equity, and moral behavior within the judicial system. To maintain the public's faith and confidence in the judicial system, independence and accountability must coexist in harmony.

KEYWORDS:

Accountability, Constitution, Courts, Independence, Judiciary.

INTRODUCTION

The Indian government is divided into three branches: the legislative, executive, and judicial branches. They each carry out the three crucial tasks of establishing rules, enforcing rules, and adjudicating rules. The "Separation of Powers" idea, which promotes accountability, keeps the government in check, and protects our rights and freedoms, is the driving force behind such a division of duties. Power corrupts people, and absolute power corrupts totally, runs through this. As Montesquieu put it, "Continual experience has shown us that every man invested with power is apt to abuse it, and to carry his authority until he is confronted with limits." In other words, unchecked ultimate authority breeds corruption. Corruption has long been a hot topic in India. In his prologue to the UN Convention against Corruption, Mr. Kofi Annan, the former Secretary General of the United Nations, stated: "Corruption is an insidious disease with a broad variety of destructive consequences on society [1], [2].

It undercuts democracy and the rule of law, results in human rights abuses, skews markets, lowers standard of living, and promotes the growth of organized crime, terrorism, and other security dangers to people. The corruption allegations against judges, however, have recently caught our attention. As examples, Judge Soumitra Sen of the Calcutta High Court is accused of embezzling large sums of money and making false statements about it, and Chief Justice P D Dinakaran of the Karnataka High Court is accused of land grabbing and corruption. These incidents raise the issue, "Who is judging the judges?" among others. Along with another idea known as checks and balances, the separation of powers or balance of power works. The idea behind checks and balances is that no organ should have unfettered authority. By placing one organ's power under control and restraint by the other two, a balance is established. Power, after all, "can be the antidote to power alone."

DISCUSSION

In India, we see that the executive is both individually and collectively accountable to the legislature, though this accountability has decreased due to the anti-defection law, which threatens the legislator with removal if he expresses even the slightest dissent, which could result in his constituency being unrepresented. As a result, parliament just gives its approval to all choices made by party leaders. The judiciary reviews the legislation that the legislature has approved, and if they violate the constitution, the court deems them to be invalid. Additionally, the general electorate holds the legislature responsible. It follows that the judiciary is the institution responsible for upholding the constitution and safeguarding basic rights. Recent cases demonstrated the institution's lack of accountability. This is significant because we define justice social, economic, and political justice in the preamble. Any authority with some kind of public power must answer to the people in a democracy. The truth is that under a "Democratic republic," individual responsibility and authority are necessary to prevent a democratic system's collapse. It is important to remember that in order to fully comprehend the notion, judicial responsibility and judicial independence must be studied simultaneously [3], [4].

The independence of the judiciary has a corollary reality of judicial accountability. In a nutshell, accountability refers to accepting responsibility for your acts and choices. In general, it refers to being accountable to any external entity; however, others claim accountability is required to one's own values or to one's own self rather than to any authority with the potential to criticize or punish. Since Article 235 of the Constitution lists accountability as one of the aspects of independence, it is a necessary provision. The fact that the High Court has "control" over the lower courts' judiciary shows that there is an efficient system in place to compel responsibility. As a result, giving the High Court control over the lower courts preserves its independence since it is not answerable to either the government or the legislature. The tough impeachment procedure is offered as a means of achieving this objective [5], [6].

The constitution's founders believed that "settled norms" and "peer pressure" would serve as sufficient checks, with the exception of extreme circumstances. This is why there is no system for the higher judiciary. However, since the judiciary is neither democratically responsible to the people nor to the other two institutions, it did not entirely occur in that fashion. The Hon. Supreme Court said, correctly, that "A single dishonest judge not only dishonours himself and disgraces his office but also jeopardizes the integrity of the entire judicial system." This makes us question why we need accountability. The People's Convention on Judicial Accountability and Reforms had stated in a campaign that "the country's judicial system, far from being an instrument for defending the rights of the weak and the oppressed, has become an instrument of harassment of the common people of the country. The system remains dysfunctional for the weak and the poor... displaying their elitist bias."

Transparency is facilitated via the accountability process. It is best accomplished when one is held legally responsible. Because the current system of accountability is ineffective, rising corruption is eroding this branch of democracy's foundations. In a tirade, Pt. Nehru blasted this lack of responsibility, saying that "Judges of the Supreme Court sit on ivory towers far removed from ordinary men and know nothing about them." The image of a demi-god is given to judges. After all, judges are also individuals who are capable of making errors and engaging in vices. What went wrong, though? The subject of holding the judiciary responsible is examined here, which will aid in our comprehension of the situation and our search for answers [7], [8].

Justice must be held accountable

Power with individual responsibility is necessary to preserve any democratic system in a "Democratic republic." Accountability should be universal, including not just elected officials

but also judges, bureaucrats, and anyone else with authority. Every public official must continually be responsible to the people, who are the source of political sovereignty, since with power and position comes responsibility. The judicial system deals with the administration of justice via the use of courts. The people who run the courts are called judges. They serve as genuine representatives of the courts rather than just being outward symbols. The way judges carry out their responsibilities affects both the integrity of the legal system and how well-regarded the courts are. Since ancient times, judges have been regarded in great regard in India. But lately, as a result of certain bad incidents, people are gradually losing trust in the judicial system and turning to self-government.

It is quite regrettable. Making the court accountable is necessary because it is more expensive for the judiciary to deviate from moral principles than it is for any other branch of government since it is responsible for protecting our constitution. The idea of judicial responsibility and judges being held to account is not new. A number of nations guarantee the judiciary's accountability in their constitutions. In nations like India, where it is criticized that judicial activism interferes with and intrudes into the territory of other organs, it is for preventing the consolidation of power in the hands of a single organ of the state. However, judicial independence is also a need for every judge, whose oath of office compels him to respect the country's constitution and laws and to act without fear, favor, or animosity. Hon. Mr. Justice S.H. Kapadia, a former chief justice of India, said: "When we speak about ethics, the judges often comment regarding ethics among politicians, students, academics, and others. However, I would assert that ethics, including ethical morality, need to form the cornerstone of a judge's conduct as well [9], [10].

Famous legal figures like former Chief Justice of India S. Venkataramaiah, former Supreme Court Justice D. A. Desai, and former Supreme Court Justice Chennappa Reddy have stated that if all members of society are held accountable for their actions, there is no reason why judges shouldn't be as well. When he said, "These days we are telling everyone what they should do but who is to tell us? " On one occasion, former Hon'ble Chief Justice, Verma acknowledged the merit of this statement. Although it is our responsibility to uphold the law, this does not absolve us of our obligation to do so. Judges are supposed to adhere to a code of behavior that is often referred to as judge ethics in order to properly apply this idea of judicial responsibility.

Judges' code of conduct

Honesty in judicial decision-making

It is crucial that the court judgment be honest and fair in order for the people to fully trust them in their function in society. No judicial judgment is honest unless it is the result of an honest opinion developed within the framework of the judges who are knowledgeable of the law and the facts. However, a judge's view could not be accurate. However, making a mistaken judgment while being honest does not constitute dishonesty. If a judgement is not made based on judicial belief of honesty, justice, and impartiality, it becomes dishonest.

A person cannot assess his own case.

No one can be the judge of his own case, according to the fundamental ethical rule. The rule applies to cases in which the judge has an interest in addition to those in which he is a real party. If a judge has an interest in a case, he or she is not expected to decide it. A judge must maintain a certain level of objectivity and detachment while dispensing justice. Judges must maintain their impartiality and should be recognized by everyone as such since they are

obligated by the oath of office, they took to decide the cases presented before the court in line therewith. Hon'ble the Supreme Court has made it obvious.

Dispense Justice

Judges should have no fear while dispensing justice. A judge must live by the maxim "Fiat justitia, ruat caelum," which means "Let justice be done though the heavens fall."

Similar Opportunities

The norms of law and justice should be followed, and parties to the conflict should be treated fairly. A judge is not a member of any certain department, division, or organization. He adjudicates over everyone. There is always equality before the law in courts of law. Judges should stay away from those who are involved in the case personally, and solely consider the merits. He must treat the disputing parties fairly and provide them with equal chance throughout the trial. "It is essential to the proper administration of justice that every party should have the opportunity to be heard, so that he may put forward his own views and support them with arguments and answer the views put forward by his opponents," said the Rt.Hon. Lord Hewart of Bury, Lord Chief Justice of England. In the well-known case, the Honorable Supreme Court ruled that "No man's right should be affected without an opportunity to express his views." The God of Justice is shown in ancient allegory as sitting on a golden throne with "law and equity" two lions at his feet. If a judge ignores their involvement and presence, he will be in breach of his duties.

Keeping Your Distance from Family

Since being a judge is a way of life rather than a career, the judge must keep a safe distance from the litigants and their attorneys during the course of the trial. One may see the emergence of a new caste in the legal profession today, one that prospers not through knowledge or skill but more via a tight relationship with the judges. It is possible to stop the spread of this troubling tendency by refraining from holding frequent private meetings with attorneys. High-ranking public officials must take care to ensure that anybody who claims to be close to them is not permitted to take advantage of that relationship, whether it is true or not.

Avoid engaging in excessive activities and attending too many social events.

It is sometimes said that a judge may identify with certain persons and points of view as a consequence of engaging in a sizable amount of routine social interaction, which might lead plaintiffs to believe they won't get a fair trial. A judge should refrain from engaging in too much social engagement to prevent such sensation. Again, it is advised that judges choose which social events to attend carefully. In the USA and England, judges often reject such participation. If they go to a private event, they ask for the guest list. A judge should not accept an invitation from a business or commercial organization, a political party, or a club or organization that follows a sectarian, communal, or parochial line, the Hon. Supreme Court warned in the case of Ram Pratap Sharma v. Daya Nand1.

Media Avoid public relations

A judge should try to limit his or her contact with the media. He should refrain from sharing his opinions in the media on issues that are either before him or are likely to come up for court review, since doing so might lead to accusations of bias and call into doubt his objectivity. "The best judge is the man who should not court publicity and should work in such a way that they don't catch the eyes of the newsmen," remarked Lord Widgery, who served as Lord Chief

Justice of England from 1971 to 1980. The finest judges, according to Lord Hailsham, are those whose names do not appear in The Daily Mail but still detest it [11], [12].

CONCLUSION

In conclusion, judicial accountability and independence are fundamental tenets of a just and equitable legal system. Judges are able to make judgments without being influenced or pressured by outside sources thanks to judicial independence, which protects the judiciary's objectivity and integrity. This idea is essential for sustaining the rule of law and defending citizen rights. But judicial impartiality shouldn't be unqualified. Equally essential to preserving public confidence and ensuring that judges are held accountable for any wrongdoing or neglect are accountability measures. For every democratic society, finding the ideal balance between judicial independence and accountability is a difficult but essential job.

REFERENCES:

[1] D. Simmons, "Aspects of judicial independence and accountability - Lessons for the commonwealth Caribbean?," *Commonw. Law Bull.*, 2007.

[2] H. Keller and S. Meier, "Independence and Impartiality in The Judicial Trilemma," *AJIL Unbound*, 2017.

[3] N. Garoupa and T. Ginsburg, "Guarding the guardians: Judicial councils and judicial independence," *American Journal of Comparative Law*. 2009.

[4] D. Piana, "Beyond Judicial Independence: Rule of Law and Judicial Accountabilities in Assessing Democratic Quality," *Comp. Sociol.*, 2010.

[5] F. R. De Limas Tomio and I. N. R. Filho, "Accountability e independência judiciais: Uma análise da competência do conselho nacional de justiça (CNJ)," *Rev. Sociol. e Polit.*, 2013.

[6] C. Goodhart and R. Lastra, "Populism and Central Bank Independence," *Open Econ. Rev.*, 2018.

[7] S. Voigt and J. Gutmann, "On the wrong side of the law - Causes and consequences of a corrupt judiciary," *Int. Rev. Law Econ.*, 2015.

[8] F. van Dijk and G. Vos, "A method for assessment of the independence and accountability of the judiciary," *Int. J. Court Adm.*, 2018.

[9] F. Contini and R. Mohr, "Reconciling independence and accountability in judicial systems," *Utr. Law Rev.*, 2008.

[10] D. Kosař, "Politics of judicial independence and judicial accountability in Czechia: Bargaining in the shadow of the law between court presidents and the Ministry of Justice," *European Constitutional Law Review*. 2017.

[11] I. Keilitz, "Viewing judicial independence and accountability through the 'lens' of performance measurement and management," *Int. J. Court Adm.*, 2018.

[12] D. Kosař and S. Spáč, "Conceptualization(s) of judicial independence and judicial accountability by the European network of councils for the judiciary: Two steps forward, one step back," *Int. J. Court Adm.*, 2018.

CHAPTER 2

LACK OF JUDICIAL ACCOUNTABILITY IN INDIA

Sourabh Batar, Assistant Professor
College of Law, Teerthanker Mahaveer University, Moradabad, Uttar Pradesh, India,
Email Id- battarsourabh@gmail.com

ABSTRACT:

Any democratic society must adhere to the idea of judicial accountability in order for the court to remain fair, open, and reachable to the people it is meant to serve. The subject of judicial accountability has long been a source of worry and discussion in India, a nation renowned for its thriving democracy. This summary gives a general review of India's ongoing court system's lack of accountability while emphasizing some of the major issues and effects. Because the judiciary in India is mainly self-regulated, addressing judicial accountability faces some significant obstacles. Although this independence is necessary to avoid political meddling in the judicial system, it has also led to a scenario where the judiciary often lacks effective internal accountability procedures. Due to this, there have been cases of judicial misconduct and corruption that have gone unnoticed.

KEYWORDS:

Accountability Gap, Corruption, Delayed Justice, Judicial Misconduct, Transparency Deficit.

INTRODUCTION

Any democratic society must have judicial accountability in order for the legal system to operate in a transparent, equitable, and honest manner. Although the judiciary in India has earned a lot of respect for its independence and dedication to following the law, there have been questions raised regarding the inadequacy of the systems in place to keep judges responsible for their decisions. The way the judicial system operates and how the public views it may be significantly impacted by this lack of accountability. The lengthy and time-consuming procedure of judicial impeachment is one of the major problems behind India's lack of judicial accountability. In India, only the parliament has the authority to begin the protracted and contentious process of impeaching a judge. Due to the need of a two-thirds majority in both houses of parliament, it has become very hard to dismiss judges who may be implicated in corruption or wrongdoing [1], [2].

The lack of a thorough code of behavior for judges is another problem. Although there are rules and standards in existence, they are toothless and don't have any concrete measures for enforcement. Since there is leeway for discretion and different interpretations, it is difficult to hold judges responsible for unethical or improper behavior. Concerns have also been expressed about the lack of openness in the appointment and transfer of judges. With little input from the government and legislature, the process of choosing judges for the higher judiciary is primarily within the discretion of the judiciary itself. Allegations of bias and nepotism in judge appointments have been raised as a result of this lack of openness [3], [4].

DISCUSSION

Ineffective judicial oversight in India

Within 60 years of the constitution's drafting, the Indian court would have become the State's most powerful institution, something the constitution's creators could not have foreseen. In addition to providing justice, the constitution established the Hon'ble High Courts and the

Supreme Court as watchdog institutions, separate and independent from the executive and the legislature, to make sure that they did not go beyond the scope of the power granted to them by the constitution. As a result, the judiciary was given the authority to interpret the law and the constitution as well as to invalidate executive actions that broke the law or a citizen's basic rights.

It has the power to determine whether legislation drafted by parliament were in accordance with the constitution and invalidate them if they weren't. The Hon'ble Supreme Court therefore gained the authority to revoke constitutional changes even when the court decided that they violated the fundamental principles of the constitution in 1973 by applying a creative interpretation to the clause allowing the parliament to modify the constitution. Since then, the courts have invalidated a number of legislation and certain constitutional amendments. All this has led to the Indian judiciary being the most powerful in the world, with almost imperial-like & uncontrolled authority. It is claimed that although judicial review of executive action and even legislation was often possible, the court's orders, sometimes given without even informing the parties involved, were considered final and had to be followed by all executive officials under penalty of contempt of court [5], [6].

Naturally, these authorities were often and sensibly used to address flagrant presidential inactivity. Furthermore, it is alleged that the court assumed the authority to nominate judges after attaining these powers by using an even more creative, or purposeful, reading of the clause relating to judicial appointments by the government. As a result, a collegium of senior judges from the Hon. Supreme Court appoints judges to the Hon. High Court and Supreme Court. Due to this, it is said that the court has resembled an aristocracy that commits its own crimes. There is no straight jacket method used to choose judges, and the process is not transparent. In particular, there is no consideration given to examining the background or credentials of judges in terms of their ideological adherence to the constitutional ideals of a secular, socialist democratic republic or their comprehension of or sensitivity towards the common people of the country who are poor, marginalized, and unable to defend their rights in court.

In brief, it is further criticized that Indian courts have nearly unrestricted authority that is unmatched by any other court in the world. It is extremely essential in such a circumstance that judges of the superior courts be held responsible for their performance and behavior, whether it be in regards to corruption or for disregarding constitutional ideals and citizen rights. Unfortunately, neither the constitution nor any other legislation has established a structure or organization especially to review complaints against judges or to evaluate their performance. According to the constitution, judges of the High Court and Supreme Court may only be dismissed by impeachment.

To begin the impeachment procedure, 100 members of the House of People or 50 members of the Council of States must sign. A three-judge inquiry committee is formed to conduct the judge's trial if a motion containing significant misconduct allegations is presented, authorized by the speaker of the House of People or the chairwoman of the Council of States, and has the required number of signatures. If he is found guilty, a resolution is presented to each house of parliament, and each house must adopt it by a 2/3 majority in order for it to become law. Even if one is somehow able to get documented proof of major misbehavior, it is practically very difficult to remove a judge by impeachment. It is further stated that this occurs because MPs are reluctant to challenge a sitting judge since it may be conceivable given the number of court cases that are already outstanding [7], [8].

The sole judge whose impeachment has so far succeeded was Justice V. Ramaswami in the early 1990s. When the motion was put up for a vote in parliament, a Judges Inquiry Committee

found him guilty of many accusations of misconduct. All of the lawmakers in the governing Congress party were instructed to abstain from voting. Therefore, even though the motion was approved by the Lok Sabha with a unanimous vote, it was unable to get the support of the majority of the whole membership of the house and failed. The then-honorable Chief Justice did not assign the judge any judicial work throughout his tenure in office, which lasted until his retirement. Second, a second motion against a Calcutta High Court judge was observed to be signed and sent to the Council of States Chairman.

Furthermore, it is noted that despite having documentary backing, accusations and charges against judges seldom ever get public attention due to the risk of being found in contempt of court. The Hon'ble High Court and Supreme Court judges have the jurisdiction under India's contempt statute to convict the offender of criminal contempt and sentence him to prison on the grounds that they have "lowered the authority or scandalized the court." The subjective assessment of each Judge is another factor that "lowers or scandalizes" the authority of a court. In Arundhati Roy's case 2, the Hon. Supreme Court punished her with contempt and imprisoned her for degrading the dignity of the court by criticizing it in her affidavit.

It is also stated that the court's criminal contempt jurisdiction is an illustration of the vast and unrestrained authority of India's higher courts. The courts opposed the Judicial Accountability campaign's call for legislation that would remove the courts' ability to punish for "scandalizing and lowering the authority of the court" on the grounds that doing so would greatly encourage false accusations and abuse of judges by irate litigants and erode public confidence in the courts. Furthermore, the Indian constitution gives judges the authority to penalize anybody for disrespecting the court. In a 1991 ruling, the Supreme Court established that no judge of a superior court could be the subject of a criminal investigation without the written consent of the Chief Justice of India. Justice Veeraswami, who was the Chief Justice of the Tamil Nadu High Court, was found to have assets that were greatly disproportionate to his income.

This viewpoint, according to others, gave judges the impression that they could get away with any kind of wrongdoing, even criminal behavior, without fear of punishment or removal. Additionally, the force of scorn shielded them from the worry of being exposed in public. All of this has created a troubling image of India's higher judiciary's lack of accountability. It is believed that it would be impossible to effectively punish or discipline judges for wrongdoing or crimes they commit. The danger of disdain increases when they are exposed to the public. The absence of accountability might result in judicial institution corruption.

Judiciary responsibility and control

The court must be impartial and free from the influence of political and economic organizations, such as governmental departments or trade organizations. whatever, judicial independence forbids judges and other court personnel from acting whatever they like. Indeed, public trust is the foundation of judicial independence, which must be maintained by judges who must be held to the highest ethical standards and answerable to them. Fair means must be in place to identify, look into, and discipline corrupt activities when judges or court workers are accused of betraying the public's confidence.

Who is supposed to hold the courts accountable?

Accountability often refers to the capacity to hold a person or organization accountable for their deeds. The judiciary must decide who and for what it is accountable. In general, the judiciary must be answerable to the law, which means that the judgments taken must be legal and not arbitrary. It must answer to the broad population it serves, just like the other arms of government.

How is it possible to attain judicial accountability?

A crucial element in protecting the general integrity of the court is for judges to cultivate a culture of independence, impartiality, and accountability. Since they act as both a standard and a guide for judicial behavior, creating codes of judicial conduct is a crucial way to promote judicial accountability. The finest means of holding judges accountable are further-reasoned directives and decisions.

Various initiatives taken by the judiciary to increase its accountability The many actions the court is doing to uphold its accountability are listed below. These are the steps:

1) The central information system

This system displays information on the cases, including future dates, rojnama, and phases of those cases that are still outstanding in the legal system.

2) Affidavit-supported complaints

This is the second method the judicial system is using to consider the complaints. At first, simply aircraft complaints were accepted, but once it was discovered that judges were the targets of ambiguous complaints, only complaints accompanied by affidavits are now accepted.

3) Persuade

We may hold the judiciary accountable via appeals as well since lower court orders and judgements can be appealed to the higher courts, who are then responsible for upholding those orders and verdicts.

4) Justified orders

Accountability also includes passing a justified directive. A judge is always required to provide a decision with good cause. The issuance of a reasoned order clarifies the reasoning behind the judge's decision-making process.

Impartiality of the judiciary

In the Constituent Assembly, Dr. Ambedkar advocated for the judiciary's independence from the government and competence. It was Nehru's opinion that "they (the judges) should be first class and seen to be first class." Freedom is a pillar of the rule of law. It is crucial that judges be impartial in how they interpret the law and make judgments in order for it to apply equally to all inhabitants of the nation. Judges are vulnerable to intimidation and coercion from litigants, especially the criminal part of society. The majority of democratic nations have accepted the notion of judicial independence [9].

United Kingdom: The United Kingdom is where the idea initially appeared. The parliament and monarchy fought a protracted battle for control of the judiciary. A settlement Act that was established by the parliament in the 17th century specified that judges' terms of office would be contingent on good behavior and that they might be removed after an address to both chambers of parliament.

United States: An effort at independence was made in 1985. "The judiciary shall decide matters before them without any restrictions, improper influence, inducement, pressures, threats, or interference, direct or indirect, from any quarter or for any reason," reads Basic Principles on the Independence of the Judiciary.

India: Judges were nominated by the Crown before to the country's independence, but they maintained their independence. This idea was included into the constitution's fundamental framework after the country attained independence and cannot be changed. However, we shall first address the necessity for judicial independence before turning our attention to the idea of judicial independence. It is crucial to analyze the structure of the Indian judicial system before talking about the need for judicial independence.

CONCLUSION

India's lack of judicial accountability is a troubling problem that seriously undermines the country's legal system and the values of justice that it is supposed to defend. Despite being a crucial pillar of democracy, India's court often evades the scrutiny and accountability required for the system to operate effectively. One of the main causes of this lack of responsibility is the perception that judges are shielded from outside influences in an effort to shield them from excessive pressure. This shielding may sometimes foster an attitude of impunity, however, when judges are unwilling to admit their errors or prejudices. As a result, there may be a decline in public confidence in the administration of justice and in the legal system. Furthermore, the situation is made worse by the absence of a reliable system for handling judicial misconduct or incompetence. There are some laws, but they are often seen as weak, and there aren't many occasions when judges really suffer major repercussions for their conduct. This conveys the idea that the court is exempt from the accountability rules that govern the other arms of government.

REFERENCES:

[1] S. Rose-Ackerman, “Corruption: Causes, consequences and cures.,” *Trends Organ. Crime*, 1997.

[2] S. Elena and F. Van Schalkwyk, “Open data for open justice in seven latin American Countries,” in *Achieving Open Justice through Citizen Participation and Transparency*, 2016.

[3] E. Benvenisti and G. W. Downs, “Toward global checks and balances,” *Const. Polit. Econ.*, 2009.

[4] C. Krenn, “Self-Government at the Court of Justice of the European Union: A Bedrock for Institutional Success,” *Ger. Law J.*, 2018.

[5] S. Voigt, “Innovate - Don’t imitate! - ENCJ research should focus on research gaps,” *Int. J. Court Adm.*, 2018.

[6] D. Kosar, “The least accountable branch,” *Int. J. Const. Law*, 2013.

[7] P. Bhushan, “Judicial accountability: Asset disclosures and beyond,” *Economic and Political Weekly*. 2009.

[8] D. Woodhouse, “United Kingdom: The Constitutional Reform Act 2005 - Defending judicial independence the English way,” *Int. J. Const. Law*, 2007.

[9] P. Aguilar, “Judiciary involvement in authoritarian repression and transitional justice: The spanish case in comparative perspective,” *Int. J. Transit. Justice*, 2013.

CHAPTER 3

WAYS FOR ACHIEVING JUDICIAL ACCOUNTABILITY

Bhirgu Raj Maurya, Assistant Professor,
College of Law, Teerthanker Mahaveer University, Moradabad, Uttar Pradesh, India,
Email Id- brmourya.mourya321@gmail.com

ABSTRACT:

A strong legal system is built on the core tenet of judicial accountability, which guarantees that judges follow the rule of law and sustain public confidence in the court. An overview of the main techniques and plans for creating judicial accountability is given in this abstract. In discussing several strategies for ensuring accountability inside the legal system, the study emphasizes the value of a multifaceted strategy that includes both internal and external processes. Codes of conduct, ethical standards, and judicial self-regulation are a few internal methods that aid judges in upholding high standards of moral character and professionalism. Holding judges responsible for their acts is mostly reliant on external procedures like court review, independent body monitoring, and public criticism. By enabling the investigation and settlement of complaints against judges, these processes guarantee their objectivity and independence.

KEYWORDS:

Citizen Petitions, Code of Conduct, Complaint Mechanisms, Disciplinary Actions, Ethics Committees.

INTRODUCTION

For the rule of law to be upheld and to guarantee the fairness and integrity of the legal system, judicial accountability must be attained. It entails developing systems to make judges and the court system accountable for their deeds. To obtain judicial accountability, try the following:

Code of Conduct and Ethics: A crucial first step is to create a thorough code of conduct and ethics for judges. This code should specify the expectations for judges' conduct, including guidelines for objectivity, honesty, and avoiding conflicts of interest. Discipline or even expulsion from the bench may result from violations of this code. Establishing independent judicial committees or councils to look into complaints against judges will assist promote accountability. To maintain neutrality, these panels should be made up of both judicial and non-judicial members. They are able to look into accusations of wrongdoing and provide suggestions for disciplinary measures [1], [2].

Promotion of Transparency in Judicial Decision-Making: This is still another essential component. Judges must provide rulings that are understandable to the public and supported by sound reasoning. To reduce undue influence or bias, transparency may also be used to the selection and appointment procedures for judges. Implementing regular performance reviews for judges may aid in uncovering any problems and ensuring that they are successfully carrying out their duties. Judicial councils or commissions may carry out these reviews, which need to include input from the public, peers, and legal professionals.

Public Access to Court Proceedings: A key component of accountability is allowing the public access to court proceedings, unless there are important privacy considerations. It makes sure that court judgements are made in the open and that anybody may check the procedures for impartiality and justice [3], [4].

DISCUSSION

How is it possible to attain judicial accountability?

A crucial element in protecting the general integrity of the court is for judges to cultivate a culture of independence, impartiality, and accountability. Since they act as both a standard and a guide for judicial behaviour, creating codes of judicial conduct is a crucial way to promote judicial accountability. The finest means of holding judges accountable are further-reasoned directives and decisions.

A Move for Impeachment

Case of Justice V. Ramaswami

205 Lok Sabha MPs who were members of the Congress and its allies voted on May 11, 1993, to begin the impeachment process against Justice V. Ramaswami of the Honoured Supreme Court. The motion to remove failed despite being approved by all of the members who cast ballots. As a result, the judge was permitted to carry out his judicial duties from the highest court in the land even though a high-power inquiry committee of three eminent judges found Ramaswami guilty of several acts of gross misbehavior that called for his removal. Ramaswami was convinced to quit when the impeachment motion was unsuccessful, but this resignation raised a number of serious difficulties for the future of the country's judicial system as well as for public life probity in general.

Lawyer Ashok Kumar

Despite being appointed as a second judge in April 2003, it is said that because of unfavorable allegations about his integrity, the Collegium of three senior justices of the Honorable Supreme Court voted unanimously in August 2005 not to approve Justice Ashok Kumar as a permanent judge. On the Hon'ble Chief Justice's recommendation, which was criticized for being made without consulting other members of the Collegium of judges and in flagrant violation of several judgments of the Hon'ble Supreme Court, it is claimed that despite this, an extension was given to him as an additional judge. He was finally confirmed as a judge in February 2007 as a result of this recommendation [5], [6].

This decreed that the chief justice should not designate justices alone, but rather with the support of the Collegium of Senior justices of the Hon'ble Supreme Court. An appointment made without consulting the Collegium was subject to dispute and might be overturned in court, according to the 9 Judge rulings. The law ministry's memorandum of procedure made it very apparent that the Hon. Chief Justice must contact the Collegium of Senior Judges and any other judges who have served on the same High Court as the prospective appointment before making such decisions. Justice Ashok Kumar's appointment was condemned for being done in violation of the constitution and the rules established by the Hon'ble Supreme Court itself. Even though prominent Supreme Court attorneys opposed Justice Ashok Kumar's appointment as a permanent judge, the court upheld it [7], [8].

The Chief Justice of India, Justice Soumitra Sen, recommended that Justice Sen be removed via an impeachment process for the crime of misappropriating monies that were given to him as a court receiver and afterwards for providing false justifications to the High Court. The Chief Justice made this suggestion in light of a report submitted by a panel of three judges, who concluded that he had engaged in a number of major infractions. According to the allegations, he was appointed at that time despite the fact that the Calcutta High Court was investigating him for these acts of misconduct at the time. This is allegedly because there was a lack of

openness around the appointment process. It is condemned as one of the instances of judicial ineptitude.

Justice Ashwini Kumar Mata's case

There was controversy around Mr. Ashwini Kumar Mata's suggested nomination as a judge on the Delhi High Court. According to the allegations, Mr. Mata bought the first floor of a home in Safdarjang Enclave from a constructor who had a contract with the owner of the site under which he would develop the structure and turn over the next three floors to the owner. He would keep the last two levels, which he could only sell after giving the owner custody of the three floors. Shri Mata entered into a deal to buy one of the floors that was supposed to go to the builder from him despite the fact that the builder had neither finished the building's construction nor given the owner control of the floors. After then, it was said that Shri Mata exploited the aforementioned contract with the constructor to request the modification of that floor in his own name. He included a copy of his contract with the builder, which was signed by the owner, Mr. Joshi, in false signatures, with his application. Mr. Joshi discovered the counterfeit and reported it to the police after discovering it. At the magistrate's request, a FIR was eventually filed, and the forgery was the subject of an inquiry. It was argued that when Mr. Mata submitted a different version of the same agreement in arbitration procedures that he had started, the crime of forgery became more obvious.

The owner's signatures were absent from this version of the agreement. Only after the Collegium of the High Court had already delivered its recommendation for Shri Mata's nomination to the Law Ministry were these facts discovered. Following that, a petition was delivered to the Hon. High Court and Hon. Supreme Court collegiums. In response to the argument, Mr. Mata said that the police's criminal investigation had cleared him. According to the allegations, the police report was dishonestly written hastily after the representation without even waiting for a forensic investigation of the forgeries. The Honorable Supreme Court and the Honorable High Court Collegiums were then given a second letter outlining Mr. Mata's misbehavior and arguing that the owner's signatures could not have been forged without Mr. Mata's knowledge and cooperation. To avoid a similar situation to that involving Justice Soumitra Sen of the Calcutta High Court, it was decided that even though it was not certain that Mr. Mata had a hand in forging his contract with the builder, it would be better to err on the side of caution and not appoint him [9], [10].

Case of Arundhati Roy

Following the Hon'ble Supreme Court's ruling in the Narmada Dam case, Medha Patkar and Arundhati Roy took part in a crowd demonstration outside the Hon'ble Supreme Court. Attorneys Patkar, Roy, and Mr. Prashant Bhushan were named in a contempt complaint for allegedly yelling obscenities before the court. Roy misled the court in her response to the court notice. She received a notice of contempt from the honorable court. She was jailed after being found guilty. The honorable judges' decision received harsh criticism.

Bill on judicial accountability

Setting judicial standards and holding judges responsible for their mistakes were the goals of the Judicial Standards and Accountability Bill. Additionally, it requires judges of the Supreme Court and the Honorable High Courts to disclose all of their assets and debts, including those of their wives and dependent children. The draft Judicial Standards and Accountability Bill, 2010, which calls for the creation of a five-member oversight body to handle complaints against members of the higher judiciary, was approved by the Union Cabinet. Judges will also be compelled to disclose their holdings and submit an annual statement of assets and liabilities,

according to official sources. The websites of the Supreme Court of the United States and the High Courts will both post all of these facts. Judges are supposed to maintain a professional distance from all members of the Bar, particularly those who work in the same court as the judge is appointed. By introducing more openness, the passage of the Bill would attempt to allay the rising concerns over the need to provide more accountability of the higher courts. It will also further boost the judiciary's credibility and independence. The attorney general, a judge on the Supreme Court, the chief justice of a High court, and a distinguished individual chosen by the President would be on the oversight committee, which would be led by a former chief justice of India.

Supervision Committee

The Judges Inquiry Act, which is to be replaced by the Bill, still has its fundamental components. The public may file complaints about bad judges, including the Chief Justice of India and the Chief Justices of the High Courts, with a national monitoring council to be established and led by a former Chief Justice of India. Judges are controlled by the "Restatement of Values of Judicial Life," which was accepted by the judiciary as a code of conduct without any legislative sanctions, and as such, there is currently no legal process for dealing with complaints against judges. The president will appoint the committee's five members. It will consist of one prominent person nominated by the president, the Attorney-General, a serving judge of the Hon'ble Supreme Court and a sitting judge of the High Court, both appointed by the Chief Justice of India.

Review panels

The committee will send a complaint to a series of review committees after receiving it. If the complaint is against a Supreme Court judge, the scrutiny panel will be made up of two sitting Supreme Court judges and a former Chief Justice of India, and if it is against a High Court judge, the panel will be made up of two serving High Court judges and a former Chief Justice of the High Court. The Chief Justice of India will nominate the members of the Supreme Court panel, and the Chief Justice of the High Court in question will do the same for the panels of the High Courts. The scrutiny panels will have the same authority to summon witnesses and present evidence as a civil court.

The oversight committee should get its report within three months. When a Chief Justice is the target of a complaint, the oversight committee will look into it. The oversight committee will form a committee to conduct more research after receiving the scrutiny panels' report. The inquiry committee will have the same authority as a civil court, including the ability to formulate specific charges, much as the scrutiny committees do. The investigative committee has the authority to end the inquiry if the accusations are not proven. If not, it will send a report to the oversight committee, which may propose a modest penalty if the allegations are not too severe or an advice or warning if they are, or, in the event of substantial charges, can ask the judge in question to retire.

The oversight committee will send the matter to the president with a recommendation for the judge's dismissal if he is unwilling to do so. Judges are prohibited under the Bill from having any intimate relationships with specific members of the Bar and from allowing anybody in their immediate family to represent them in court. Judges shall abstain from running for any position in a club, society, or other organization, with the exception of those related to the law or any court. Additionally, they should not exhibit any prejudice in their judicial decisions or actions based on their race, religion, caste, sex, or place of birth.

CONCLUSION

It is said that judicial corruption is unaffordable because the public has trust in the system and expects it to provide unbiased and fair decisions. It is said that there are several cases from which we might infer that the judiciary is not entirely free from corruption, even if it affects a relatively small percentage of it. Making the judiciary responsible in this scenario is vital, but it must also be considered that doing so must not jeopardize the independence of the court in any manner, which is not at all feasible. In these situations, it is important to examine the idea of judicial responsibility in relation to judicial independence.

REFERENCES:

[1] J. A. Laub, "Assessing the servant organization; Development of the Organizational Leadership Assessment (OLA) model. Dissertation Abstracts International," *Procedia - Soc. Behav. Sci.*, 1999.

[2] N. Vaisman, "Variations on Justice: Argentina's Pre- and Post-Transitional Justice and the Justice to Come," *Ethnos*, 2017.

[3] F. M. Hess, "Adequacy judgments and school reform," in *School Money Trials: The Legal Pursuit of Educational Adequacy*, 2007.

[4] P. G. Paper, "Open Source Planning," *PhD Propos.*, 2015.

[5] F. Bignami, "From expert administration to accountability network: A new paradigm for comparative administrative law," *Am. J. Comp. Law*, 2011.

[6] J. S. H. Eds, "Review of: Making money matter: Financing America's schools," *J. Econ. Lit.*, 2001.

[7] S. Voigt, "The economic effects of judicial accountability: Cross-country evidence," *Eur. J. Law Econ.*, 2008.

[8] L. Harris, "CEO Retention," *SSRN Electron. J.*, 2013.

[9] E. Archampong and F. Sampson, "Marital rape in ghana: Legal options for achieving state accountability," *Can. J. Women Law*, 2010.

[10] M. K. Lynch, "A Theory of Human Rights Accountability and Emergency Law: Bringing in Historical Institutionalism," *J. Hum. Rights*, 2015.

CHAPTER 4

THE INTEGRATED JUDICIAL SYSTEM AND METHODS FOR SECURING INDEPENDENCE OF JUDICIARY

Yogesh Chandra Gupta, Assistant Professor
College of Law, Teerthanker Mahaveer University, Moradabad, Uttar Pradesh, India,
Email Id- COGNITOR.YOGESH@GMAIL.COM

ABSTRACT:

An integral part of contemporary legal frameworks is the idea of an integrated judicial system, which aims to coordinate different aspects of the judiciary while retaining the fundamental value of judicial independence. The deep connection between the integrated judicial system and the strategies used to preserve the independence of the judiciary is explored in this essay. The term "integrated judicial system" refers to a framework in modern legal systems that unifies several judicial duties and jurisdictions. While this integration may improve productivity and expedite the court process, it also raises questions about the possibility of undue influence, judicial impartiality being compromised, and judicial independence being eroded. This essay explores the complex features of an integrated judicial system and how they may either strengthen or weaken the independence of the judiciary. In an interconnected system, strategies for ensuring the independence of the court are crucial. The study looks at several methods used across the world to protect judicial independence, such as legislative protections, judicial codes of conduct, and the creation of independent monitoring agencies. It also emphasizes the value of open hiring procedures, accountability systems, and public access to court hearings as crucial measures for preserving the independence of the judiciary.

KEYWORDS:

Accountability, Administrative Autonomy, Checks and Balances, Code of Conduct, Court Administration, Integrated Judicial System.

INTRODUCTION

The Hon'ble Supreme Court of India is at the top of the integrated judicial system that has been established under the constitution's plan, with the Hon'ble State High Courts serving as one of its key components. It is significant to note that the constitution itself also defines the role, authority, and jurisdiction of the State High Courts. In actuality, the president of India must consult with the chief justice of India, the governor of the state, and, in cases where a judge other than the chief justice must be appointed, the chief justice of the high court before appointing any judge to the prestigious High Court. The analysis of the Hon'ble Supreme Court of India's jurisdiction presented in the preceding paragraphs reveals that in addition to carrying out the fundamental duties of a federal court, the Hon'ble Supreme Court of India also serves as a regular court of appeal in routine civil and criminal cases decided by the Hon'ble High Courts. The issue is how independence is conceptualized; rather than being regarded as independence from responsibility, it should be seen as independence from the executive and legislative branches. Lord Woolf perfectly encapsulated the spirit of independence when he said, The independence of the judiciary is not the property of the judiciary, but a commodity to be held by the judiciary in trust for the public [1], [2].

The definition of "independence of judiciary" must be clarified before we can explore the idea of this notion in India. Dr. V.K. Rao said that "Independence of the judiciary has three meanings:

(i) The judiciary shall not have other organs in its domain infringe upon its authority. It is referred to as separation of powers in this context. The judiciary is completely autonomous under our constitution, with the exception of few cases when the executive heads are granted some remission or other powers.

(ii) It refers to the independence of the judiciary and the absence of legislative influence. Our constitutional situation is unsatisfactory in this regard since the government has the power to pass laws that, in certain cases, supersede judicial rulings.

(iii) The judiciary should be free from fear of, and favoritism from, the executive or the legislative so that its rulings are unaffected by either.

DISCUSSION

An independent Supreme Court is provided for under the Indian Constitution. In actuality, every member of the constituent assembly had been keen to see the court given the greatest degree of independence. The members of the constituent assembly "envisioned the judiciary as a bastion of rights and of justice," in Austin's words. The Assembly has taken pains to keep politics and the courts apart. "This is the institution that will preserve those fundamental rights and secure to every citizen the rights that have been granted to him under the constitution," said a member of the constituent assembly. Consequently, it must obviously be executive intervention above everything. The Supreme Court serves as the democracy's watchdog.In truth, judicial independence is crucial for upholding the integrity of justice in society and fostering public trust in the administration of justice. According to Graham Walles, "The psychological fact underlying the principle of independence is not the immediate reaction of feeling in a man whose impulses are restrained but the long-term outcome in his conduct of the destruction of some impulses and the encouragement of others." In order to prevent particular reasons from directing his official action and to prevent him from suffering personal embarrassment, we make judges independent [3], [4].

Techniques for ensuring judicial independence

The following strategies were used by the Indian Constitution to try to ensure the independence of the judiciary:

(a) High qualifications

By establishing strict minimum requirements for such positions in the constitution itself, political interference in judicial appointments is attempted to be prevented. A candidate for such a significant position must have served as a judge of a High Court for at least five years or as a High Court advocate for at least 10 years, or they must be a renowned jurist.

(b) Attractive compensation subject to legislative approval

High wages are offered in an effort to preserve independence since each judge has to be paid well to retain his rank and dignity. They also get free housing in addition to numerous other benefits. Their pay and benefits cannot be changed during their time of office, unless there is a serious financial emergency. The consolidated fund is used to pay for the court's administrative costs.

(c) Tenure security

The Hon. Supreme Court's judges have tenure security. They cannot be removed from office without the president's permission, and even then, only on the basis of incompetence or misbehavior that has been proven, and is supported by a resolution passed by a majority of the

members of each house combined, as well as by a majority of at least 2/3 of the members of that house who were present and voting.

(d) Prolonged tenure

Given the average life expectancy in India and the typical fitness of people for work in old age, the Indian Constitution's 65-year retirement age for judges seems disproportionately high. A retired judge may also be reappointed as a judge by the Chief Justice of India with the president's approval in accordance with Article 128.

(e) Promise to work bravely

Every judge must swear an oath to protect the constitution and carry out their responsibilities bravely before taking office. The matter was brought up by the removal of three justices and the appointment of a lesser judge as Chief Justice. A judge is also required to be completely neutral.

(f) After retirement, no practice

However, the constitution allows the government to appoint a retired judge for a specialized form of work, such as for conducting inquiries and special investigations. A retired judge of the court is prohibited from practicing law before any court below the rank in which he served as a judge.

(g) The ability to enact regulations governing their conduct

The Honorable Supreme Court has complete authority to establish rules governing its practice and procedure and to take appropriate action to enforce its decisions and decrees.

(h) Management of an institution

The court has full authority to run its own facility and exercise total control over it. However, it was believed that the court's independence would have been illusory without such a clause. The independence of the court is likely to suffer if the institution turns to outside sources for advancement. Therefore, the Chief Justice and the judges of the Hon'ble Supreme Court whom he may order for the purpose make all appointments of officials and employees of the Hon'ble Supreme Court. The Honorable Supreme Court also sets their working conditions.

Immunities

Judges are not subject to criticism for their official acts or rulings. They may, however, be the subject of rigorous scholarly scrutiny. The court has the authority to start contempt proceedings against any suspected offender and take necessary measures in order to preserve the court's honor and shield it from harmful criticism. The court was also given the go-ahead to halt any actions that would adversely influence its capacity to provide an unbiased and independent judgment.

Decision Of the Executive

The selection of judges has recently come under fire. In large part, how judges are chosen for positions determines the judiciary's independence. The judiciary would be subject to the whims of the people or a weapon in the hands of lawmakers if it were chosen by the legislature or the electorate. "Judiciary should be above suspicion and should be above party influences." Therefore, the government should appoint judges. Each judge of the Hon'ble Supreme Court is chosen by the president following consultation with the High Courts of the state and any other judges of the Hon'ble Supreme Court the president deems appropriate. The president must

contact the Chief Justice before appointing a judge other than him or her. The appointment of a committed judge, known as the "black day" in Indian law, occurred when Mr. A.N. Ray, a junior judge, was elevated to the position of Chief Justice of the Honorable Supreme Court by replacing Messrs. J.M. Shelat, K.S. Hegde, and A.N. Grover. On April 24, 1973, three superseded judges ruled against the contentious 24th and 25th Amendments in this case. A young judge was elevated to the position of Chief Justice only two days after Chief Justice S.M. Sikri announced his retirement. Distinguished attorneys and judicial giants agreed that the executive's move was regrettable since it seriously harmed the judiciary's independence. It was criticized that judges could only expect advancement if they sided with the governing party. Furthermore, it was believed that future selections may only be made from judges, attorneys, or jurists who would firmly support the ideology of the ruling party [5], [6].

Law on Access to Information

According to Hon. Balakrishnan, the 37th Chief Justice of the Supreme Court, judges serve as constitutional functionaries. Because of this, they are not covered by the "Right to Information Act." I am in a constitutional post, the Chief Justice of India said. The lawmakers disagree with this viewpoint. On April 29, 2008, the Parliamentary Standing Committee's report, which was sent to the Rajya Sabha, declared that, "Except for the making of judicial judgments, all other actions of the administration and those involving members of the judiciary are subject to the RTI Act. The Act's main goal is to give people more power by enabling them to look up information on public officials who are making choices that will have an impact on their lives. Any hesitation just serves to weaken the public's right to information. A legislator argues that since other constitutional officers are protected, why shouldn't judges also be? Furthermore, since they will also be held responsible to the nation's citizens, it will aid in sustaining the independence of the court. Obviously, the "RTI Act" does not apply to court rulings since doing so may have compromised fair judgements. It is worthwhile to quote some of the legal luminaries who have expressed how the executive's haughtiness undermines the dignity of the Indian court and attacks the foundation of its independence [7], [8].

The removal of three judges was "a big blow to the independence of judiciary...they were superseded after they decided against the government," in the words of Mr. S.M. Sikri, former top justice of India. The move by the union government to replace three of the Hon'ble Supreme Court's senior-most justices was seen by six distinguished jurists, including M.C. Setalvad and M.C. Chagla, ex-chief Justice of Bombay, to be "a transparent effort to weaken the courts' independence...The day is the most depressing in our free institutions' history. The same issue was made in a resolution by the Supreme Court Bar Association, which said, "It is a blatant and outrageous attempt to undermining the independence and impartiality of the judiciary and lowering the prestige and dignity of the Supreme Court. A identical case will undoubtedly be handled differently in various states if judges adhere to a certain social ideology. Judges will also no longer be in sync with the new party taking authority when the current one is overthrown. This will poison the nation's environment as a whole. In such situation, the government and the judiciary will always be on the lookout for methods to diminish each other's reputation. In a fair remark, former Lok Sabha Speaker P.A. Sangma characterized judicial activity in relation to executive and legislative activity: "All three branches of government are intended to be active and complementary [9], [10].

Judiciary activism has recently emerged as a consequence of the executive branch's inaction. Judicial activism is sparked by executive inactivity. The citizens of this nation may turn to the courts if they discover that the state's inactivity has failed to defend their basic rights and objectives. Why blame the courts when the only thing to blame is the unfavorable tendency to acquiesce? While praising the judiciary for its exemplary work, he advised moderation based

on his amazing knowledge of how the political system works and correctly noted that "the courts of last resort should not end up becoming the courts of first resort." The Law Commission indicated that seniority alone may not be the basis for elevating a judge to the office of Chief Justice in light of the super-session of senior justices. The idea of a dedicated judiciary is risky and seriously undermines the idea of judicial independence. As a result, Dash noted that "the Indian judiciary has not been so well protected against temptations and allures or threats of punishments as to eliminate all possibilities of consideration of personal career in the discharge of their duties." Thus, it may be said that the constitution and its implementers have made sincere efforts to ensure that the Hon. Supreme Court is independent and impartial, yet history indicates that there have nevertheless been attempts to compromise judicial independence.

CONCLUSION

A fair and equitable society under the rule of law depends critically on the development of an integrated judicial system and the use of measures to ensure the independence of the judiciary. A healthy democracy and a just legal system are based on the independence and impartiality of the judiciary. Processes may be streamlined, inefficiencies can be reduced, and consistency in the execution of the law can be ensured by integrating different levels and branches of the judicial system. This integration helps both people and the state by improving access to justice as well as fostering a unified and uniform legal system. In order to avoid excessive influence, political meddling, or any other type of prejudice in court rulings, it is crucial to protect the judiciary's independence. Codes of conduct, independent commissions, openness, frequent reviews, and whistleblower protection are just a few of the strategies mentioned that are essential for maintaining judicial accountability and integrity. In order to sustain the rule of law, defend individual rights, and preserve public confidence in the legal system, a court must function both independently and as part of an integrated system. It makes sure that justice is administered properly and without prejudice, fostering a culture in which anyone may file complaints and disputes are arbitrarily settled.

REFERENCES:

[1] R. K. Bhardwaj and M. Margam, “Metadata framework for online legal information system in Indian environment,” *Libr. Rev.*, 2017.

[2] S. Cooper, “Discretion in property law: A study of judicial correction of registered title,” *Leg. Stud.*, 2018.

[3] S. Al-Rawahi, “Crimes And Criminal Proceedings In Omani Criminal Justice System,” *IOSR J. Humanit. Soc. Sci. (IOSR-JHSS*, 2016.

[4] M. L. Howe and L. M. Knott, “The fallibility of memory in judicial processes: Lessons from the past and their modern consequences,” *Memory*. 2015.

[5] J. W. Rottman, L. D. Smith, D. A. Long, and C. Crofts, “Implementing Judicial Management Systems Within an Integrated Justice Information Framework,” *Am. Rev. Public Adm.*, 2007.

[6] T. TriwulanTutik, “PENGAWASAN HAKIM KONSTITUSI DALAM SISTEM PENGAWASAN HAKIM MENURUT UNDANG-UNDANG DASAR NEGARA RI 1945,” *J. Din. Huk.*, 2012.

[7] P. M. Faiz, “LEGAL PROBLEMS OF DUALISM OF JUDICIAL REVIEW SYSTEM IN INDONESIA,” *J. Din. Huk.*, 2016.

[8] J. W. Rottman, L. D. Smith, D. A. Long, and C. Crofts, “Implementing judicial management systems within an integrated justice information framework: A case study on information systems development in the public sector,” *Am. Rev. Public Adm.*, 2007.

[9] B. D. Baskoro, H. N. M. Wirasaputri, and I. Cahyaningtyas, “Efforts to Create Integrated Criminal Justice Systems: Judicial Management Approach,” in *IOP Conference Series: Earth and Environmental Science*, 2018.

[10] F. Contini and A. Cordella, “Law and Technology in Civil Judicial Procedures ,” *Oxford Handbooks Online*, 2017.

CHAPTER 5

JUDICIAL INDEPENDENCE UNDER INDIAN CONSTITUTION

Pradip Kumar Kashyap, Assistant Professor
College of Law, Teerthanker Mahaveer University, Moradabad, Uttar Pradesh, India,
Email Id- pradiprgnul@gmail.com

ABSTRACT:

Any strong democracy must have an independent judiciary as a protection against abuse of power and a defender of people' rights. The idea of judicial independence is placed front and center in the Indian Constitution as a crucial component of the country's democratic system. This abstract examines the historical development, legal provisions, and practical ramifications of judicial independence under the Indian Constitution, covering a wide range of related topics. The 1950 Indian Constitution was carefully drafted to provide an unbiased and independent judiciary. The separation of powers between the executive, the legislative, and the judiciary is established in Article 50 of the Constitution, providing a foundation for judicial autonomy. The Supreme Court is at the top of the hierarchy of India's judicial system, which is further supported by the formation of High Courts and lower courts in each state. The Indian judiciary's independence is strengthened by a number of important regulations. First off, there is a procedure for judicial nomination and dismissal that is intended to minimize political meddling, especially for judges of the Supreme Court and High Courts. The collegium system makes an effort to shield these nominations from executive influence, albeit it is not without controversy. Second, since judges get tenure security, it is difficult for governments to unilaterally fire them. Thirdly, the court has the authority to examine whether legislation are valid, serving as a check on legislative activities that could violate constitutional rights.

KEYWORDS:

Fundamental Rights, Independence, Indian Judiciary, Judicial Accountability, Judicial Review.

INTRODUCTION

In India, democracy and the rule of law are based on judicial independence. To protect the judiciary's autonomy and impartiality, the Indian Constitution strongly upholds the idea of judicial independence. This crucial idea guarantees that the judicial arm of government may function independently and without undue influence or interference from the executive or legislative branches of government, maintaining justice and safeguarding the rights of individuals. The architects of the Indian Constitution understood the need of an independent judiciary in preventing the abuse of power, defending basic rights, and preserving public confidence in the legal system. We shall examine the constitutional provisions and historical background that support judicial independence in India in this introduction, emphasizing its importance in sustaining the country's democratic foundations [1], [2].

DISCUSSION

The philosophy of "Separation of Powers" is the foundation upon which the idea of "Independence of the judiciary" is built. The doctrine stresses that the judiciary must be free from interference from the executive and legislature because it has the authority to interpret the law and render judgments. Judges' independence is essential to the proper functioning of the judiciary because it is possible that they may occasionally be subjected to improper influence, inducement, pressures, threats, or interference by litigants or other criminal elements of society.

The judiciary is the yardstick by which one may assess the state's true level of progress. Because power is concentrated in one hand and there is a 100% possibility that it will be abused if the court is not independent, it is the first step towards a totalitarian type of government.

Therefore, it is important to talk about what the judiciary's independence entails. The phrase "the independence of judges from any external factors which interfere with the performance of their functions in an impartial manner" may be used to describe the idea of judicial independence. Therefore, the independence of the judiciary may be seen as including both the institution's independence and the independence of the judges who make up its component parts. In order to guarantee judicial independence, which is designed for the benefit of the public rather than their own personal interests, the constitution granted judges immunity. In conclusion, it can be claimed that these immunities provide people unrestricted and unlimited authority, which increases the likelihood that these fundamental rights would be used arbitrarily and unfairly [3], [4].

However, more lately, the judiciary has been urged to exercise more accountability. A democratic constitution's authority of judicial review is closely related to the judiciary's independence. Marshall, C.J., created the foundation for judicial review without an explicit provision in the American Constitution in Marbury v. Madison in 1803; however, Lord Coke had already made a similar argument in Dr. Bonham's case in 1608. Under Articles 13, 32, 136, 141, 142, 226 and 227 of the Indian Constitution, judicial review is permitted. In accordance with the ruling in Keshavananda Bharti, it is also acknowledged as a fundamental element constituting an inviolable component of the Indian Constitution.

In accordance with Article 50 of Part IV of the Indian Constitution, which establishes the guiding concept of State policy, the judiciary must be kept independent from the executive branch in order to fulfill its constitutionally mandated role as the watchdog. However, the judiciary is an institution where every judge is a public functionary and is answerable to the political sovereign the People just like every other instrument of the state and every public institution in a democracy. The sole distinction is in the structure or character of the mechanism needed to impose their responsibility, judicial accountability is a component of the judiciary's independence, and the mechanisms used to maintain that independence should also be used to uphold judicial responsibility. The foundation of democracy is the rule of law, which would suffer if the integrity of the court is lost and its independence is jeopardized [5], [6].

Independent judiciary under the Indian Constitution

Most democratic countries in the globe uphold the "Independence of Judiciary" notion, yet nowhere is the definition of this principle given. By including the clauses, our constitution ensures judicial independence; yet, it is not clear what exactly qualifies as judicial independence. The following constitutional clauses guarantee the independence of the judiciary in India:

1. Article 50, which is referred to under the Directive Principles of State Policy, establishes the separation of the executive and judicial branches of government. According to this clause, "The State shall take steps to separate the judiciary from the executive in the public services of the State." Securing the judiciary's independence from the executive is the goal of the Directive Principle.

2. In accordance with Article 211 of the Constitution, "No discussion shall take place in the legislature of a state with respect to the conduct of any Judge of the Hon'ble Supreme Court or of a High Court in the discharge of his duties." As stated in Art. 121, "No discussion shall take place in Parliament with respect to the conduct of any Judge of the Hon'ble Supreme Court or

of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the Judge's removal." The Hon'ble Supreme Court and the High Court are so protected against political criticism by the Indian Constitution, which also grants them independence from political pressure and influence.

3. Article 129 gives the Honorable Supreme Court the authority to penalize for self-inflicted contempt. Similar to that, Article 215 gives each High Court the authority to impose penalties for contempt of court.

4. Judges' wages are covered under Article 125. Given that their pay is set, judges' salaries and benefits are one of the things that demonstrate their independence. The Consolidated Fund of India and the states, respectively, pay the salaries of the judges of the Honorable Supreme Court and High Court. According to Article 125(1), "There shall be paid to the Judges of the Supreme Court such salaries as may be determined by Parliament by law and, until provision in that behalf is so made, such salaries as are specified in the Second Schedule."Additionally, according to Article 125(2), "Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such privileges, allowances, and rights as are specified in the Second Schedule: Provided, That neither the privileges nor the allowances of a Judge shall be varied, nor shall his rights in respect of leave of absence or pension be altered."

5. While a High Court Judge's retirement age is 62 years, a Supreme Court Judge's retirement age is 65 years, according to Article 124(2) of the Constitution. Furthermore, according to 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 such removal on the ground of proved misbehavior or incapacity."

6. According to Article 138 (1), the parliament is not permitted to reduce the Hon'ble Supreme Court's authority. The Supreme Court's authority and jurisdiction are unaffected by legislative action; therefore, the legislature may only expand them.

Current disputes about judicial independence

In several instances, ranging from Sakalchand to the National Judicial Appointment Commission Bill, the question of judicial independence has been brought up. The National Judicial Appointments Commission Bill, which sought to alter the established collegiums method for appointing judges, has recently been the subject of debate. The collegium method used by the Hon'ble Supreme Court of India to designate judges to the country's constitutional courts is based on three of its own decisions known as the "Three Judges Cases."They are as follows:

1. The 1981 case of S. P. Gupta v. Union of India, sometimes referred to as the Judges' Transfer case

2. Union of India v. Supreme Court Advocates-on Record Association, a 1993 case

3. In re Special Reference,

The court developed the concept of judicial independence over the course of these three decisions to entail that neither the legislature nor the administration would have any influence

over a judge's nomination. The collegium system was established by the court and has been in effect ever since the Second Judges Case ruling in 1993. If we go through the whole Indian constitution, neither the original text of the constitution nor any of its subsequent revisions make any reference to the collegium. Despite the fact that the collegium system's establishment was considered as contentious by legal experts and jurists outside of India, its citizens most notably, parliament and the executive—have not taken much steps to change it. The Third Judges lawsuit of 1998 is not a lawsuit, but rather the Supreme Court of India's judgment in response to a legal query on the collegium system that was brought up by the country's then-president K. R. Narayanan in July 1998 in accordance with his constitutional authority.

Additionally, in January 2013, the court rejected a public interest lawsuit brought by the NGO Suraz India Trust that attempted to challenge the collegium method of appointment on the grounds of locus standi. Chief Justice of India P. Sathasivam came out against any efforts to alter the collegium system in July 2013. The Constitution (120th Amendment) bill, 2013, was approved by the Rajya Sabha on September 5th. It amends articles 124(2) and 217(1) of the Constitution of India, 1950 and creates the Judicial Appointment Commission, on the recommendation of which the president will nominate judges to the higher judiciary. The criticism of the new system focuses on what the government hopes to accomplish with the amendment, which is to change the makeup of the judicial appointment commission. The amendment bill places this responsibility on the parliament to regulate through Acts, rules, and regulations passed through the regular legislative process [7], [8].

What is meant by the phrase "Recommendation"?

The method of making a recommendation by a constitutional authority, such as the Supreme Court, the President of India, etc., was extensively discussed in the verdict of the presidential reference case by the Honorable Supreme Court. The decision to make a proposal is not left up to the individual who was consulted; rather, peer internal consultations must be conducted in writing, and the recommendation must be made in light of those consultations.

National Judicial Appointments Commission establishment

The National Judicial Appointments Commission (NJAC) Bill, 2014 was approved by the Lok Sabha and Rajya Sabha on August 13 and August 14, respectively, to replace the collegium system of judicial appointment. On December 31, 2014, the National Judicial Appointments Commission Bill, 2014 received the presidential seal of India, and as of January 1, 2015, it is now known as the National Judicial Appointments Commission Act, 2015. 99th Amendment and NJAC Act invalidated by the Hon'ble Supreme court

By a vote of 4:1 in favor, the Hon'ble Supreme Court invalidated the NJAC Act and the constitutional amendment that would have brought back the higher judiciary's 20-year-old collegium method of choosing judges on October 16, 2015. The Honorable Supreme Court ruled that NJAC's interference with the judiciary's independence by the administration amounted to meddling with the constitution's core framework, which Parliament is not authorized to alter. The Hon. Supreme Court has recognized, however, that the collegial method of judges choosing judges lacks openness and credibility and will be fixed or improved by the Judiciary.

To sum up, the Indian Constitution's foundational value of judicial independence protects the core notions of justice, fairness, and the rule of law. The authors of the Indian Constitution understood the crucial part that an impartial judiciary plays in safeguarding democratic principles and defending people' rights and freedoms. In accordance with the Indian Constitution, judicial independence is protected by a number of clauses, such as the separation

of powers, judge selection procedures, and tenure security. These measures are carefully crafted to shield judges from outside influences and political meddling, enabling them to make fair and courageous decisions [9], [10].

CONCLUSION

Consistent norms of accountability that give the Indian court its strength are crucial since citizens in India rely on the judiciary to resolve many of their problems. Lack of judicial accountability undermines the legitimacy of the court, but a responsible judicial system can only result in a more stable political climate and effective government. It is also understood that, if taken too far, judicial accountability may gravely undermine judicial independence, thus it is crucial that we find the correct balance between the two. The conclusion from the preceding talks is that the constitution's founders long ago understood the value of judicial independence, which the courts have recognized by designating it as one of the fundamental elements of the document. It is common knowledge that laws must evolve in order to fulfill the demands of a society that is always evolving. Similar to this, judicial independence must be seen in light of how society is developing. To guarantee that the true goal of creating the institution of justice is fulfilled, judicial accountability and independence must coexist together. The process of accountability encourages transparency. It is best accomplished when one is held legally responsible. Judiciary accountability and independence are thus two of the most crucial factors that can help to reduce tension between the legislature and the judiciary as these two factors facilitate the government's efficient operation and prevent the emergence of judicial autocracy.

REFERENCES:

[1] P. Verma, “Judicial Opinions as Literature - ADM Jabalpur v. Shivakant Shukla,” *SSRN Electron. J.*, 2014.

[2] M. Sahu, “Development of Law Relating to Factories in India,” *SSRN Electron. J.*, 2015.

[3] A. Burra, “Arguments from Colonial Continuity: The Constitution (First Amendment) Act, 1951,” *SSRN Electron. J.*, 2012.

[4] D. McDonald, “Becoming Indian,” *Indian Hist. Rev.*, 2015.

[5] P. Kumar Pandey and A. Raza, “‘Protection Against Self-Incrimination’ as a Fundamental Right in India: A Critical Appraisal,” *SSRN Electron. J.*, 2018.

[6] A. Mishra, “Towards Womenns Equal Right to Property - Recent Judicial Developments in India,” *SSRN Electron. J.*, 2018.

[7] S. B. N Prakash, “E Judiciary: a Step towards Modernization in Indian Legal System,” *J. Educ. Soc. Policy*, 2014.

[8] D. McDonald, “Becoming Indian: William Broome and colonial continuity in post-independence India,” *Indian Hist. Rev.*, 2015.

[9] R. Ahir, “A Brief History of Modern India,” *Spectr. Books Ltd.*, 2017.

[10] G. Sood, “PARLIAMENTARY DEMOCRACY IN INDIA: LEGAL ISSUES AND CHALLENGES,” *Facta Univ. Ser. Law Polit.*, 2017.

CHAPTER 6

THE CYCLES OF COURT CRITICISM AND THEIR INTERSTICES

Dal Chandra, Assistant Professor
College of Law, Teerthanker Mahaveer University, Moradabad, Uttar Pradesh, India,
Email Id- degautambahjoi@yahoo.co.in

ABSTRACT:

The entire analysis of the recurring themes in criticism of judicial systems is presented in this abstract, which also explores the complex gaps between these cycles. Any democracy's court systems are essential elements because they interpret the law, uphold justice, and uphold the rule of law. However, they are not exempt from examination and criticism, often going through several stages of public assessment. In order to analyze the fundamental causes of these cycles, this research dives into historical and modern accounts of judicial criticism. It examines how socioeconomic and political factors affect how the general public views the court and how important the media, public opinion, and political players are in influencing this perspective.

KEYWORDS:

Accountability

Appellate, Independence, Interstices, Legal System, Public Perception.

INTRODUCTION

Except for Professor Barry Friedman's excellent multipart study on counter majoritarian criticism of the Supreme Court, there hasn't been much research on court criticism in general or political branch attempts to influence the courts in particular. However, there have been a plethora of historical works examining discrete waves of court-directed animosity that, along with Professor Friedman's extraordinary contribution, yield at least six reasonably well-defined spikes of varying durations: (1) Court packing, unpacking, and impeachment in the early Nineteenth century; (2) Conflicts with the Marshall Court during the Jackson administration; (3) Republican confrontations with the Supreme Court beginning with the Dr. The six cycles of court-directed criticism, which took place at more or less regular periods, as mentioned in the introduction, provide a helpful framework for a historical investigation of traditional judicial independence. However, focusing on these high moments in the history of court bashing has at least two significant drawbacks: first, it often elevates the Supreme Court to the detriment of the subordinate courts; and second, it often ignores the times of peace that have intervened between those high points [1], [2].

To get around these restrictions, I will quickly summarize one or two of these well-documented "spikes" of court-directed animosity at the beginning of each section. These synopses will provide as a bridge between more in-depth studies of the intermediate epochs and current events that influenced the slow establishment of customary independence. The acceptance of various methods by which Congress could punish the judiciary for its decisions gradually decreased over the course of the nineteenth and twentieth centuries. Second, for the majority of the nineteenth century, Congress was increasingly reluctant to significantly depart from the structure of the 1789 Judiciary Act out of respect for the stability and predictability it provided.

The federal courts were the target of the first two rounds of persistent criticism. When taken separately, they show two major, repeated generations-spanning attacks on the independence and institutional legitimacy of the court. However, in the larger scheme of things, they would be better described as bursts of rage interspersed with periods of relative quiet during which an

attitude of respect for the independence of the gradually forming judicial branch started to take hold. While the American colonies' colonial courts were reliant on the King for their existence and remuneration, England's 1700 Act of Settlement, which made its courts independent of the Crown, did not apply there. In fact, the Crown's persistent efforts to influence colonial judges led to conflicts between the colonists and the Crown, which eventually gave birth to one of the complaints in the Declaration of Independence [3], [4].

The commonly recognized remedy for judicial reliance on the monarch or executive branch was not judicial independence, but rather judicial dependency on the legislative branch or the people when the new states started to draft their constitutions in the aftermath of independence. As a result of courts using their judicial review authority to overturn laws, legislators in various states threatened to remove judges during the course of the next 10 years. These and similar incidents sparked concerns about legislative tyranny and significantly increased support for judicial independence, which may have peaked just before the federal Constitutional Convention.

DISCUSSION

The judicial article was initially drafted at the Convention with tenure and salary protections included, and these provisions were not significantly contested for the duration of the Convention or the subsequent ratification process. The only important argument during the Constitutional Convention relevant to judicial independence addressed whether the federal judiciary should be composed of the Supreme Court and lower courts, or of the Supreme Court alone. The Federalists preferred the former in order to prevent hostile state courts from undermining the young national government, but the anti-Federalists preferred the latter out of concern that federal trial courts would assume the function of their state equivalents. In spite of a Convention majority against the outright formation of lower courts, Madison managed to reach a compromise that gave Congress the authority to create (or not create) such tribunals.

The first Congress used its authority to create inferior courts in 1789 to establish two tiers of courts with original jurisdiction: district courts, each of which was assigned to a state, and three regional circuit courts (which, in addition to their original jurisdiction, also had some appellate jurisdiction over the district courts). No extra judgeships were established to staff the circuit courts; district courts were staffed by district judges who were independently appointed. Instead, they were staffed by the district court judges in conjunction with the individual justices of the six-member Supreme Court, who were required to convene as circuit courts on occasion while also hearing cases in their capacity as the Supreme Court (hence the term "circuit-riding").

Court packing, unpacking, and impeachment in the early nineteenth century: Jeffersonian Anger

Thomas Jefferson's victory in office marked the beginning of the first significant public outcry against federal judges. Although judicial reform had been desired for a number of years, it was lame duck President John Adams, with the help of a lame duck Federalist Congress, who established sixteen new federal judgeships and filled them with Federalist sympathizers. The majority of these positions were created to staff redesigned circuit courts and relieve the Supreme Court of its circuit riding duties. That in turn sparked a push by the newly elected Jeffersonian Republicans to disband the courts the Federalists had established and then remove the Federalist judges whose positions had not been abolished through impeachment. "The only check upon the Judiciary system as it is now organized and filled," wrote Republican Senator William Giles to Thomas Jefferson, "is the removal of all its executive officers indiscriminately [5], [6].

The Jeffersonian Republicans succeeded in repealing the judgeships the outgoing Federalist had created, despite profound uncertainty surrounding the constitutionality of circumventing the tenure and salary protections of Article III by removing judges via abolition of their offices. In Marbury v. Madison, the Marshall Court had been willing to assert its power of judicial review to strike down an inconsequential procedural statute enacted years before by the now impotent Federalists. Less than a month later, however, when confronted with a constitutional challenge to the 1802 Act recently passed by the powerful and antagonistic Jeffersonians, the Court upheld the statute in a short, timid opinion that failed even to acknowledge that the issue of the repeal's constitutionality had been briefed and argued.

The 1802 repeal qualifies as an episode of court unpacking in which the Supreme Court was intimidated into acquiescence. It may not be an especially good illustration of what Congress can or will do to hold judges accountable for their behavior, however, because the repeal was motivated less by disaffection for the newly appointed judges quajudges, than by anger at the impudence of the outgoing Federalist Congress and President for packing the courts in the first place. The campaign to impeach and remove Federalist judges was more clearly directed at jurists whom members of Congress wished to rebuke for their behavior on the bench, and culminated in the ouster of District Judge John Pickering and the impeachment of Justice Samuel Chase. The success in removing Pickering, however, must be qualified by the fact that he was not just a strident Federalist, but an insane one [7], [8].

Oddly enough, it was the judge's supporters who asserted that Pickering was "totally deranged," on the theory that insanity was neither a high crime nor misdemeanor, for which reason Congress had no authority to remove him. Chase, on the other hand, was undeniably a Federalist ideologue, whose impeachment featured a series of specific accusations pertaining to the justice's behavior while riding circuit in four cases. The alleged misconduct ranged from issuing a prejudicial ruling of law and prohibiting counsel from citing relevant legal authority in one case, to denying a motion to postpone trial and refusing to excuse a juror who had prejudged the case in a second, to manipulating the grand jury in a third proceeding and subjecting a petit jury to a partisan harangue in the fourth. Chase did not dispute the accuracy of the allegations, but argued that they did not rise to the level of high crimes or misdemeanors. He was impeached by the House but acquitted in the Senate. Chase's acquittal sucked the life out of the Jeffersonians' antijudiciary campaign.

But it did more than that: it set a precedent that no judge would ever be removed for high-handed decisionmaking. This would be so, even though Alexander Hamilton, writing in the Federalist No. 81, identified impeachment as the appropriate remedy for judicial usurpations of power, and even though the House would appear free to impeach and the Senate free to remove any judge pursuant to whatever impeachment standard they wish, by virtue of the Constitution delegating the "sole" power of impeachment to Congress." The next impeachment-that of Judge James Peck in 1830, who was charged with abusing his power for issuing a contempt citation against a lawyer who had criticized him in a local newspaper-would be the last in which a judge was impeached solely on the basis of his rulings from the bench, and Peck's impeachment, like that of Samuel Chase before him, ended in acquittal. Following Pickering's dismissal, there would only be six further removals, all of which included unethical or illegal behavior. This is our first meeting with the first of the three main expressions of growing judicial independence standards inside Congress, which is the steady fall over time in the acceptability of holding the court responsible for its judgments by extrajudicial methods [9], [10].

Conflicts with the Marshall Court in the 1830s: Jacksonian Defiance

A fresh wave of opposition to the courts emerged towards the end of the 1820s with the emergence of Jacksonian Democracy. Jackson's special form of majoritarian democracy clashed strongly with an appointed court that placed restrictions on the majority's will. A bill to deny the US Supreme Court the authority to hear appeals from state court rulings was filed in Congress, and the idea of an independent judiciary was directly challenged by the outpouring of support for elected judiciaries. Jacksonian Democrat Frederick Robinson made the point bluntly: "Judges should be made responsible to the people by periodical elections. The boast of an independent judiciary is always made to deceive you. We want no part of our government independent of the people. If disestablishment of courts and the impeachment of Pickering and

Chase were the legacies of the first spike of judicial criticism, defiance of Supreme Court rulings was the legacy of the second. Indisputably, the high water mark was Georgia's refusal to submit itself to the jurisdiction of the Supreme Court in a series of cases involving the Cherokee Indian tribe. "Georgia will never so far compromise her sovereignty, as an independent state, as to become a party to the case sought to be made before the Supreme Court of the United States," declared a resolution of the Georgia legislature directed to the Governor, who subsequently executed a Cherokee prisoner in the teeth of a writ of error issued by the Supreme Court.

For his part, Jackson expressed the view that "the opinion of the judges, has no more authority over Congress than the opinion of Congress has over the judges and on that point the President is independent of both., And in response to another of the Cherokee Indian cases in which the Supreme Court invalidated a Georgia statute, Jackson is reported to have said, "John Marshall has made his decision, now let him enforce it." Jackson's antipathy toward the Court must be qualified, however. In addition to the fact that his claim about Chief Justice Marshall is probably untrue, Jackson's presidency never saw a confrontation with the Supreme Court. Jackson never took any action based on his philosophical opposition to judicial supremacy in questions of constitutional interpretation because he opposed the extreme beliefs of state sovereignty that motivated Georgia's contempt for federal authority.

The Intervening Period of Calm: Federal Court System Expansion in the West

Although those who created the Constitution and those who passed the Judiciary Act of 1789 shared a basic commitment to the creation of an independent judicial branch, the events of 1801 and 1802 threw that commitment into disarray as the departing Federalists and the incoming Jeffersonians packed and unpacked the courts for partisan political ends, leaving the courts powerless to determine their own course. Indeed, despite the opposing intentions of the founders, Senator William Giles, a supporter of the Jeffersonian Republicans, began to question the very existence of the court as a distinct and independent department of government in 1808.

"The theory of three distinct departments in government is, perhaps, not critically correct; although it is obvious that the framers of our Constitution proceeded upon this theory in its formation," Giles said. An independent branch would have "powers to organize itself and to execute the peculiar functions assigned to it without aid," which "is not in Constitutional character of our judicial Department. As the first great cycle of court directed hostility receded into the past, court-related legislation in the early decades of the Nineteenth century began to focus on enlarging the judicial workforce as the nation gradually expanded westward. The struggle to expand the federal courts westward during and between the first two spikes of court directed animus bears emphasis here, for two reasons.

First, it illuminates the emergence of what I described earlier as the second manifestation of judicial independence norms that would dominate Congress's regulation of the courts for the remainder of the Nineteenth century: a preference for conserving the structure of the 1789 Act, which was viewed as an implementation of the constitutional framers' vision for an independent judiciary, and against precipitous court reform of any kind, that might jeopardize the judiciary's fragile independence. Second, and related to the first, it illustrates how Congress preserved and furthered its institutional conservatism through adherence to its own precedent. As new states entered the Union, new judicial districts were created to service the new states, new district judges were added to staff the new judicial districts, new circuits were added to include the new states, and new Supreme Court Justices were added to oversee the new circuits.

Throughout the period, circuit riding-which the 1801 Act had abolished and the 1802 Act restored-remained a conceptual lynchpin of the federal courts qua "system. 53 It was believed that forcing Supreme Court justices to travel and preside over circuit courts alongside district judges would foster communication among the justices and judges themselves as well as between them and the lay and legal communities, thereby fostering an effective and cohesive judicial system. Interstate travel may have been annoying when the country was young and tiny, but with westward growth it rapidly became intolerable. By excluding the territories of Kentucky and Maine from the three circuits that the Justices of the Supreme Court were required to ride and giving local district judges in those states exclusive circuit court jurisdiction, the 1789 Act avoided an early manifestation of the issue.

But as soon as they had equal status as independent entities, they started to push for participation in the circuit system. Maine saw relief quickly because of its closeness to other New England states, but Kentucky, subsequently joined by Tennessee and Ohio as newly admitted western states excluded from the circuit system, was unable to experience the same. Finally, Congress gave up in 1807, creating a new circuit made up of the three western states, and staffing it with a seventh justice of the Supreme Court. Congress sometimes made, though unsuccessful, endeavors to reduce the difficulties of traveling by circuit. The number of Supreme Court Justices required to preside in circuit courts was lowered from two to one in 1793. Congress granted permission for circuit courts to be presided over by only one judge in 1802, at the same time that it repealed the 1801 Act and reinstated circuit riding. This allowed district judges to conduct circuit court without a Supreme Court Justice present.

CONCLUSION

In conclusion, the research on "Cycles of Court Criticism and Their Interstices" demonstrates how the court and society have a dynamic and changing interaction. Courts have received both acclaim and condemnation throughout history, reflecting the shifting ideologies, social norms, and political climate of the time. As a vehicle for judicial system accountability and reform, these cycles of criticism and acceptance are crucial for a robust democracy. Opportunities for significant change and advancement are present throughout the interstices, or the intervals, between these cycles. To address the flaws and difficulties the court faces, legal experts, legislators, and the general public may have a productive conversation during these lulls. We may endeavor to create a more equitable and efficient justice system by identifying the trends in criticism and using what we have learned in the past.

REFERENCES:

[1] R. Forbes, "Creating Legal Space for Animal-Indigenous Relationships," *UnderCurrents J. Crit. Environ. Stud.*, 2013.

[2] B. J. Love and D. M. Falk, "Brief Amici Curiae of Fifteen Professors of Intellectual Property Law in Carnegie Mellon Univ. v. Marvell Tech. Grp., Ltd., No. 14-1492 (Fed. Cir.)," *SSRN Electron. J.*, 2018.

[3] C. G. V. Carmona, "Judicial Review of Economic Policies: Implications on Policy Formulation and Implementation," *SSRN Electron. J.*, 2012.

[4] 박권수, "Flourishing Yin and the Decline of the Universe: Qishu Theory and Cosmological Interpretation on the Rise of 'Barbarian Power' in the Late Joseon Period," *Rev. Korean Stud.*, 2010.

[5] S. R. Bagenstos, "The perversity of limited civil rights remedies: The case of 'abusive' ADA litigation," *UCLA Law Review*. 2006.

[6] C. Taranu, "Who was the original dragon-slayer of the nibelung cycle?," *Viat. - Mediev. Renaiss. Stud.*, 2015.

[7] B. D. Weber, "Sworn swords: The Germanic context of Beowulf 2064, asweord," *Anglo-Saxon England*. 2018.

[8] S. King and A. Tomkins, *The poor in England 1700-1850: An economy of makeshifts*. 2018.

[9] M. De Bellis, "Procedural Rule-Making of European Supervisory Agencies (ESAs): An Effective Tool for Legitimacy?," *SSRN Electron. J.*, 2017.

[10] R. Weisberg, "THE DEATH PENALTY MEETS SOCIAL SCIENCE: Deterrence and Jury Behavior Under New Scrutiny," *Annu. Rev. Law Soc. Sci.*, 2005.

CHAPTER 7

JUDICIAL ACCOUNTABILITY: ISSUES AND CHALLENGES

Amit Verma, Associate Professor
College of Law, Teerthanker Mahaveer University, Moradabad, Uttar Pradesh, India
Email Id- amitverma2@gmail.com

ABSTRACT:

Judicial accountability is primarily responsible for the effective administration of justice, which is an important virtue of the rule of law and constitutional government. Despite being highly evolved in accordance with international judicial norms, Indian constitutional law still lacks basic requirements for judicial accountability and a Code of Ethics. Despite widespread suspicions of unethical and corrupt acts among the judges, the system's weakness and inefficiency are clear from the few instances recorded against judges. Due to an apparent failure of the constitutional protections against judges in India, there is a propensity for instances to go unreported that is both high and highly complicated. The issue has worsened as a result of long-standing judicial reforms in the nation and recent constitutional indiscipline on the part of Supreme Court of India justices who used this as a means of venting their frustration with how the nation's top court was operating.

KEYWORDS:

Corruption, Ethics, Legal Remedies, Judicial Misconduct.

INTRODUCTION

Any democratic system must have judicial accountability in order to maintain the judiciary's independence, openness, and deference to the law. But like every institution, it encounters a number of difficult problems and obstacles that must be resolved:

1. **Lack of Strong processes:** The lack of strong processes for holding judges responsible is a substantial obstacle to attaining judicial accountability. There are hardly many nations, including India, that have clear mechanisms in place to look into complaints against judges. The public may begin to lose faith in the court as a result of the idea that judges are above investigation and punishment.
2. **Standards Ambiguity**: The standards for judicial behavior and ethics are ambiguous, which presents problems. It may be challenging to evaluate and respond to charges consistently since different instances of judicial misconduct or unethical behavior may be considered. Accountability requires unambiguous rules that are recognized by everybody.
3. **Judiciary Independence vs. Accountability:** It's difficult to strike a balance between judicial independence and accountability. While political pressure and meddling must be kept at far from judges, this independence must not lead to impunity. It is difficult to establish the limits of responsibility without sacrificing judicial independence.
4. **Influence of the administration and Legislature:** The judiciary's capacity to be held accountable may also be hampered by the influence of the administration and legislature. Judicial judgments and independence may be impacted by political pressure, partisan appointment practices, or transfer threats. It is crucial to establish precautions against such impact.
5. **Backlogs and Delays:** In many court systems, an overwhelming backlog of cases may compromise accountability. When cases drag on for years, the public loses faith in the

judiciary's capacity to provide prompt justice. Efficiency and case management difficulties should be addressed via accountability measures [1], [2].

DISCUSSION

It is amazing how important the court will be in articulating and advancing fundamental ideas like justice, equality, and democracy. The complex relationship between liberty and sovereignty is a major topic in global politics today. Because it is a sovereign, a state has the absolute right to impose restrictions on the freedom of the person. Political ideologies and constitutional ideas have long sought to strike a compromise between these two extreme extremities. In actuality, man's human liberty can only be found in a State that can provide the required level of legal stability. The civilized society has developed a number of measures to check the authority of the State and provide adequate protection for individual rights against the backdrop of expanding political theories and State activities. The intra-organ test, which refers to the control of the authority of one organ of the State by the other organ, is one of the tools used by States all over the world to organize and regularize the sovereign power. The key tenet of the intraorgan theory of governmental authority is that the judiciary is an essential organ of the state [3], [4].

The court is required by this concept to hold the other State institutions accountable for upholding the liberty, freedom, and basic rights of the person. Being granted unrestricted control over land and people, sovereignty has the potential to significantly erode an individual's rights. It is necessary for a competent constitutional watchdog to be in place to prevent its functioning. In a constitutional sense, the judiciary is required to uphold the rule of law from a thick and thin viewpoint and to defend the individual against the material tyranny of the state. Under the constitutional system, the judiciary has taken on enormous significance in the framework of rule of law and human rights doctrine.

The potential outcome of the judiciary depends on how well-established and organized it is. The organization of the judiciary is woven with fundamental principles of good governance, such as transparency, accountability, and responsibility, which play a critical role in creating the favorable environment necessary for the fundamental freedom and individual liberty guaranteed by Articles 19 and 21, respectively, of the Constitution. The fundamental tenets of good governance in the judiciary, as recognized by the international community, are independence, impartiality, honesty, propriety, equality, competence, and diligence. The Constitution's authors were greatly concerned with these ideas and heavily included them because they understood the significance of a strong judiciary.

The Constitution's groundbreaking provisions on an independent judiciary have withstood the test of time and may have achieved the goals of its founders by promoting constitutional ideals and averting potential constitutional crises. This is categorically shown by the increased number of constitutionality issues that the Indian Supreme Court has ruled on. Despite the inspiring role that the judiciary has played as a result of its constitutional commitment, Indian political practices and reactions have shown that the system is inadequate for reining in the judiciary as a whole. Therefore, a thorough awareness of the nuances impacting the effectiveness of the nation's legal system is fundamentally necessary [5], [6].

The very consciousness of the people has been jolted by a number of complicated issues, including the partiality, groupism, prejudice, corrupt practices, ineffectiveness, and lack of confidence of the court. In order to preserve the regal reputation of the Indian court and to advance the constitutional culture of the system, these issues that are hurting the judiciary's very vitality must be resolved. In truth, accountability is the cornerstone of judicial independence and the mark of effective administration. Accordingly, it is believed that "judicial

independence could not stand by itself, there was something like judicial accountability also, which had to be kept in mind" However, recent changes in the Indian court have increased the level of worry about the nation's judicial accountability.

A debate concerning the judges' accountability has been sparked by the BJP government's nomination of Ranjan Gogoi to the Rajya Sabha on March 16, 2020. In light of Ranjan Gogoi's rulings in the Ayodhya Ramamandir Case, Rafale Review Case, Kashmir Habeas Corpus Case, Bank Employees Case, and NRC Case, the claim came to light. Critics claimed that the central government's goal was safeguarded by these decisions and that a political regime approach was purposefully used to resolve these cases. The ugly side of the Indian judicial system is exposed by the participation of a current judge of the Allahabad High Court and a retired judge of the Orissa High Court in a case involving bribery to get favorable rulings and to override a Supreme Court of India judgment [7], [8].

The news conference held by the Supreme Court of India's four justices in January 2018 is a remarkable example of where the Indian judicial system is at a crossroads. Although the press conferences of the justices of the highest court in the nation about the working and order of the Supreme Court of India should not be disregarded from the perspective of the Indian judiciary's accountability. Despite the fact that the letter sent by the Supreme Court of India's four judges to the Chief Justice of India was evasive and ambiguous in its substance and content, the judges' historic decision to write the CJI and hold a press conference to reveal the Supreme Court's unusual stance has led some people to lose faith in the judicial system.

The Supreme Court is not the only institution in disarray, as the justices of the Supreme Court have shown; the High Courts of the nation are also dealing with similar issues. In this regard, the first section of the study conceptualizes judicial responsibility by taking into consideration its many aspects and fundamental components. The second section of this essay discusses theoretical aspects of the interaction between judicial independence and accountability, noting their parallels and differences. The latter half of the article examines the Indian legal system on judicial accountability, followed by a critical study of the same, with a focus on the present statutory and constitutional position of judicial accountability. This is done with the use of descriptive and analytical techniques [9], [10].

The Indian judicial system has made a significant contribution to the growth of constitutional government and the rule of law during the last several decades. However, several fundamental problems and difficulties are compromising the basic integrity and reputation of the Indian judicial system. The goals of this research in this context are to first determine whether the current legal and constitutional framework is capable of attaining the basic goals of judicial accountability. The second goal is to investigate legislative shortcomings and difficulties in resolving judicial accountability in India. Finally, the report will provide potential suggestions for eradicating the barriers to the idea of judicial accountability in India.

Since the beginning, judicial accountability and independent judicial governance have been crucial for society in achieving the goals of the State. It refers to the government's techniques for governing the area and its citizens via established institutional mechanisms and developed tactics in the most detailed and practical meaning. the State's own efforts to accomplish its goals based on good governance-oriented policies. It is a successful application of the different governance proposals together. In the literature on governance, accountability is a subject that is receiving more and more attention. Accountability in a constitutional system built on a principal-agent relationship is primarily based on the powerholder's responsibility to the power addressee [11].

According to Normanton, accountability is a responsibility to uncover, explain, and defend what one does in order to fulfill financial or other obligations with a variety of sources that may include politics, hierarchies, or contracts. It is the duty-bound defense and persuasive justification of a person or people in a position of authority for their prior deeds, substantiating the legitimacy of their activities and the degree to which they are prudent and wise. The line-up of judicial accountability is based on the traditional theory of accountability, or the command and control relationship theory, which calls for a subordinate to account to his superior for any actions or omissions due to the subordinate's position, followed by a sanction if the power is used arbitrarily and without regard for the law.

Although it may sometimes be used to refer to accountability, its own meaning is considerably different from ideas like responsibility, responsiveness, and control. Judges are bound by intrinsic responsibilities to the State, the rule of law, the legal community, the prosecution, the court officer, the parties to the case, and witnesses. Their contribution to drawing the chariot of the administration of justice is immeasurable. The term "judicial accountability" is often used to denote the importance of these responsibilities. The goal of the judicial accountability regime is to encourage effective justice delivery and to establish the criteria needed for such a system. It is assumed that any improper or unprofessional behavior on the part of the judge would have a major negative impact on the judiciary's timeliness.

Under any developed legal system, judicial accountability has an expanded range that includes not only the evaluation of judicial performance, the relationship between judges and the staff of the judiciary, the role of the media and civility society in observing the judicial process, and the role of academia in fostering judicial accountability. Therefore, it won't only govern how judges behave on a personal level; it will also apply to any instances of judicial abuse that run counter to the Court's business, constitutional requirements, and sober legal principles. Judicial independence is a highly trustworthy indicator of the existence of the rule of law in a democratic system of government. It is a requirement for running the judicial system. It serves as the cornerstone of the legal system, the need for public trust, and a fundamental part of the restricted Constitution.

International and domestic organizations have given the issue of emphasizing judicial independence in specific terms a great deal of consideration. The ideals of judicial independence, seen as a set of protective protections, and judicial impartiality are crucially linked. Judicial accountability and judicial independence go hand in hand and complement one another. The following language from Article 22 of the Delaware Declaration of Rights illustrates how closely these two judicial concepts are related. The fair administration of justice and the protection of people's rights and freedoms rely heavily on the independence and integrity of judges. There are several academic works that separate the connections between these two ideas, nevertheless. "Judicial accountability focuses on the intimate connection between the governors and the democratically governed, while judicial independence emphasizes the effective isolation and separation of the judge from society."

According to F.K. Zemans, the fundamental fabric of judicial independence is under jeopardy because accountability mechanisms for the judiciary might endanger the rule of law itself. Therefore, it is necessary to balance these essential judicial concepts. Even while judicial independence is unavoidable, judges shouldn't use the legal system as a means of self-protection from their immorality and crime. People who seek courts in search of justice may experience horrible circumstances as a result of this unsuitable method. To advocate for independence while those who have it struggle to manage it defies logic and reason. From the observations made by Pannick, D., the following function of judicial independence, which leads to judicial responsibility unconventionally, may be understood. The benefit of the judicial

independence concept is that it shields the judge from being fired or subjected to other punishments by the government or other parties that disagree with the judgments' conclusions.

The idea that a person who has a plausible claim that a judge has acted dishonestly or maliciously to his detriment should have no legal recourse against the judge is quite indefensible. However, judicial independence was not intended to be, and should not be allowed to become, a shield for judicial misbehavior or incompetence. As stated by the United States Supreme Court in Bradley v. Fisher. It is imperative that judges who are chosen to uphold the law be given the freedom and protection of the law to do so independently, without interference, and without fear or favor. The public, whose interest it is that judges should be free to execute their roles independently and without fear of repercussions, is served by this legal provision, not for the protection or advantage of malevolent or corrupt judges.

CONCLUSION

In summary, the idea of judicial accountability is crucial for preserving the reliability and legitimacy of any legal system. While ensuring that judges keep the greatest ethical standards and are held accountable for their decisions is crucial, it's also critical to acknowledge the complicated problems and difficulties associated with the implementation of judicial accountability procedures. The obstacles vary from dealing with the practical issues in conducting judicial misconduct investigations to striking the delicate balance between independence and accountability. Additionally, the prospect of political influence and worries about public image make the pursuit of accountability more challenging. However, it is crucial that we keep pursuing a just system that is open and responsible. This may be accomplished by creating independent monitoring organizations, developing and improving standards of conduct, and fostering an accountability-oriented culture within the court. The values of justice, objectivity, and the rule of law must serve as the compass for these endeavors.

REFERENCES:

[1] Indran A. Naidoo, “Evaluation of UNDP contribution to anti-corruption and addressing drivers of corruption,” *IEO*, 2016.

[2] E. C. Lubaale, “Military Courts and Prosecution of Offences by National Defense Forces in the Dawn of the Complementarity Regime: The Case of Uganda,” *Crim. Law Forum*, 2017.

[3] United Nations, “Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka,” *United Nations*, 2011.

[4] D. Shirk, “Justice Reform in Mexico : Change & Challenges in the judicial sector,” *Wilson Cent.*, 2011.

[5] D. Walsh, K. Passerini, U. Varshney, and J. Fjermestad, “Safeguarding patient privacy in electronic healthcare in the USA: The legal view,” *International Journal of Electronic Healthcare*. 2008.

[6] D. C. Steelman, “Judicial tenure and the politics of impeachment - Comparing the United States and the Philippines,” *Int. J. Court Adm.*, 2018.

[7] D. C. Steelman, “JUDICIAL INDEPENDENCE IN A DEMOCRACY: Reflections on Impeachments in America and the Philippines*,” *Int. J. Court Adm.*, 2018.

[8] K. G. Noonan, C. F. Sabel, and W. H. Simon, “Legal accountability in the service-based welfare state: Lessons from child welfare reform,” *Law Soc. Inq.*, 2009.

[9] B. Easterly, "Judicial Responsiveness to Valence Issues: An Event History Analysis of the Initial Sex Offender Registration and Notification (SORN) Laws," *Law Policy*, 2016.

[10] C. B. A. Opata, "Regulatory accountability in the Nigerian telecommunications sector," *J. Afr. Law*, 2013.

[11] E. Benvenisti and G. W. Downs, "Toward global checks and balances," *Const. Polit. Econ.*, 2009.

CHAPTER 8

CURRENT MECHANISM OF JUDICIAL ACCOUNTABILITY IN INDIA

Sourabh Batar, Assistant Professor
College of Law, Teerthanker Mahaveer University, Moradabad, Uttar Pradesh, India,
Email Id- battarsourabh@gmail.com

ABSTRACT:

A key element of India's democratic framework is the system of judicial accountability. An overview of the present systems in place to enhance accountability within the Indian judicial system is given in this abstract. The separation of powers, which is a fundamental constitutional concept, serves as the guiding principle of India's judiciary, which is distinguished by its independence. To retain the public's confidence in the courts, this independence calls for systems for accountability. In India, a strong system of checks and balances, judicial review, and a complex procedure for judicial nominations and removals are the main means of judicial accountability. By using its judicial review authority, the court makes sure that laws and other acts taken by the government are constitutional. This serves as a significant check on the legislative and executive branches. Additionally, the system for appointing judges is set up to limit political interference and guarantee the nomination of competent and unbiased justices. Over the years, there have been discussions about and reforms to this procedure.

KEYWORDS:

Complaints, Constitutional Framework, Corruption, Disciplinary Proceedings.

INTRODUCTION

The 1950 Indian Constitution has more explicit clauses dealing to the maintenance of judicial accountability. These constitutional provisions provide both chambers of parliament the power to request a member's removal on the basis of shown misbehavior or incompetence, which is then followed by a presidential order. This is the relevant clause of the Government of India Act of 1935, which gave his majesty the right to dismiss judges for bad behavior or physical or mental disability. The legislature has been given permission under the constitution to begin the removal process as well as to draft legislation that will govern how the president of India will deliver his or her speech and how accusations of misbehavior and incompetence will be investigated. In order to clarify and rationalize the nation's judicial responsibility, the Indian Parliament passed the Judges Enquiry Act in 1968. This Act articulates procedural fairness for judges who are the targets of impeachment proceedings and illustrates the usefulness of the accountability system [1], [2].

According to the Act's structure, a motion for impeachment must have support from 50 members of the Rajya Sabha and 100 members of the Lok Sabha. Due to the democratic significance associated with this constitutional institution, it is important to stress that the constitutional framework exclusively grants authority to parliamentarians. This authority aims to put the checks and balances principle into practice. The Act has said that in order to encourage the arbitrary removal of judges from their positions, the removal procedure should be difficult. The following terms are represented by this notion of an accountability plan. "There is a good reason why removing a judge is tedious and challenging. Judges should be exempt from being removed at the electorate's or anybody else's whim for disagreeing with a judge's ideology or a specific judgement in a particular case. The Act states that when the motion is approved, the speaker or chairman, depending on the situation, must appoint an

inquiry committee to look into the allegations made by lawmakers against judges. According to the Judges Enquiry Act of 1968's provisions, the investigating committee's conclusions must be presented to each house of the Parliament after it has conducted its investigation and been communicated to the speaker or chairman, as appropriate [3], [4].

DISCUSSION

Bill on Judicial Accountability and Standards

The Indian government has made many attempts to reshape the framework for judicial accountability in India in light of recent changes in the legal system. The idea of the Indian government to change the current system is such a wise endeavor to breathe fresh life into the nation's judicial accountability. Since the Judge Enquiry Bill's original iteration in 2006, the Judicial Standards and Accountability Bill has been in existence for approximately 12 years. You may think of the Judges Enquiry Act of 1968 as the Parliament's reaction to establishing the process for an inquiry and presenting a request to the president to have judges removed. The fundamental idea of the accountability system has been sidestepped by the Act. In the years that followed, a need for reform of the current scheme's accountability framework garnered a lot of attention. By emphasizing enforceable judicial norms and ethical rules, the Bill seeks to revitalize India's judicial accountability system.

The Indian Parliament's initiative to expand a comprehensive package of changes resulting from the work of the Law Commission of India is excellent. It complies with global standards and promotes best practices. The concept of misconduct and incompetence, which was left unclear by the 1968 Act, is now made clearer by the Judicial Standards and Accountability Bill, 2012. By allowing him to file a complaint with the oversight committee, the Bill seems to offer the person the highest consideration for his or her capacity to take part in the accountability system. The Bill establishes an institutional framework for defining judicial responsibility. Institutions serve as the organizational framework for carrying out the tasks that have been delegated to them. The institution creates particular strategies or processes appropriate to its particular purpose for the achievement of the specific mission entrusted to it. To put the goals of the new legal system into practice, the new Bill calls for the establishment of the National Judicial Oversight Committee, which is the centerpiece of the new plan [5], [6].

The current study paper's technique is entirely doctrinal in character. For the aim of data analysis, the theoretical, analytical, and comparative technique is used. Various legal resources, including laws and reports on the Constitution, have been examined. International tools have been taken into consideration. The study is also based on findings from the Parliamentary Standing Committee and the Law Commission of India. A lot of scholarly material has also been used to support the paper's theoretical and conceptual elements.

One of the main duties of the state is the administration of justice. Only with improved management of the legal system is the pursuit of justice conceivable. The cornerstone for greater constitutional government and the rule of law is an impartial and responsible judiciary. The fundamental goal of this section of the paper is to increase judicial accountability and to guarantee a system that is favorable to the administration of justice. The key problems with the judicial system will be emphasized in this section along with suggestions for improvement based on the study.

Issue with Judicial Standards

Judicial standard is the primary flaw in the Indian judicial system with regard to the individual and institutional responsibility of judges. The importance of judicial standards cannot be

overstated. It could increase judges' accountability to the public, the general public, the rule of law, and the basic principles of due process. In light of this, a sizable number of governments have developed similar criteria as part of their judicial reforms around the world. The Indian court system has not made an ideal attempt to define and assemble a code of judicial behavior for judges. The Indian judiciary put in a significant effort in 1999 when "the Restatement of Values of Judicial Life" was approved by the Conference of Chief Justices.

This initiative aimed to reprimand the nation's top judges in accordance with ethical and acceptable practices. The Parliamentary Standing Committee firmly supported giving judicial standards legislative status after seeing how closely these standards relate to judicial duties. The following phrases were emphasized in the report of the Parliamentary Standing Committee about the judicial standard. "Through experience, it has been widely acknowledged that the current parliamentary process for removing a judge is onerous, drawn-out, and prone to politicking. There has only ever been one case of impeachment proceedings that failed for reasons other than procedural issues. The number game of Article 124 of the Constitution makes it abundantly evident that the constitutional structure designed for the removal of judges for their misbehavior and incompetence, subject to adequate regard to the democratic value of the parliament, is unworkable and impractical [7], [8].

According to the constitution, an impeachment resolution must get the backing of 100 MPs in the Lok Sabha and 50 MPs in the Rajya Sabha. Due to regional political parties' dominance in Parliament and the absence of a majority for national parties, it is now extremely speculative to find agreement among lawmakers to begin the impeachment process. The effectiveness of the judge-removal accountability system should be evaluated in light of the Constitution's provisions for the joint authority of judicial and political components. This concentrated constitutional power is unmistakable proof that parliament has the last say in carrying out and implementing constitutional requirements. It demonstrates the legislative branch's asserted monopoly in that the parliament has the discretion to offer or not bring the motion to the president's address, even if the investigative committee judged the judge to have acted inappropriately or was incompetent. It is advised that the judicial standards envisioned by numerous legislative frameworks and international agreements be condensed, and that such principles be given statutory validity. The lawmakers must to revise and move on with the protracted Judicial Standard and Accountability Bill, 2012.

Inadequate academic scholarship

A key component of judicial reform is using academic commentary as a source to increase the seriousness and intensity of judicial responsibility in the light of the growing problem of good governance. In India, there are very few academic critics and works of study that educate and rationalize about judicial accountability and related issues. The thoroughness of the nation's legal system has been hampered by studies on judicial accountability and high-quality literature that might result in judicial reform. The topic "Judicial Power and Judicial Process," which extensively covers numerous judicial concepts, should be made required for academic institutions so that students and professors may do study on problems related to accountability.

The proportionality principle

The following were the exact terms used by the Indian government to highlight the government's incapacity and the system's shortcomings in the context of the Judges Enquiry Act, 1968's flaws. "The Government has previously been made aware of allegations of morally reprehensible behavior, including acts of corruption, against a number of High Court judges. However, the Government lacks the constitutional authority to create a committee to investigate these claims. The complaint is at best sent to the Chief Justice of India for whatever

action he may see appropriate if a copy is not endorsed to him. Under the current system, the only form of punishment available to judges who are the subject of an impeachment procedure is removal from their position. It is advised that judges employ alternative sanctions such as advises, warnings, demotions, and non-assignment of court duties within the parameters of their penalty. These penalties, which are based on the proportionality principle, might undoubtedly end the crisis facing India's judicial accountability system [9], [10].

Statistics Problems

There are no data on judges' unethical and corrupt behavior, which is a sad reflection of the status of the Indian court. According to the parliamentary standing committee, there is no information accessible to inform the public or other institutions on how many of these instances were received, how they were handled, or what accountability steps were taken. Even the Bar, a court-affiliated organization, may not be aware of such a step. It is obvious that this system lacks both openness and confidence. Once again, having a reputable organization that adheres to the idea of appropriate openness is advised. Therefore, a separate agency with responsibility for the judges' disciplinary proceedings is required.

Participant's Responsibility in the Removal Process

The active engagement of the many stakeholders in the administration of justice may be a very effective tool for improving judicial accountability. The foundation of open government is the ability of the public to see judges and the judicial process. It is widely said that problems that are so important to our society and so ubiquitous must finally be settled by the people. According to Colbran, Chief Justice of New South Wales Spigelman claims that "the principle of open justice, in its various manifestations, is the basic mechanism of ensuring judicial accountability". The idea that the person should be permitted to take part in the removal process because he would stand to gain either legally or illegally from the court's decision is receiving increasing attention. Great lawyer and past president of the Montana Bar Association, Wuerthner, articulates the need of public engagement in the following remarks. "General apathy and phlegmatism obstruct judicial progress, and they must be shed by everyone in favor of the steeled armor of vigorous endeavor and firm-hearted commitment to implement necessary changes. Every judge, attorney, and citizen should participate in that program. It would be quite desirable to design the system such that there is room for the public to continuously see how the judges are conducting themselves in order to advance judicial accountability. This public outcry makes it feasible to increase judicial functions' ability to handle severe and scandalous circumstances.

Intra-Organ Control Mechanism ineffective

Due to the Bar's previous well-planned and organized efforts, involvement from the Bar is unavoidably desirable. The performance of judges is evaluated, and standards are imposed on them by advocates. It appears improbable that judicial accountability could function without the advocates' cooperation. By supporting judges in their adjudicatory process, they may directly affect judicial performance. Despite the professional regulation of advocacy under the Advocates Act, 1961, the Act is a mute spectator with respect to the action which could be initiated against judges for their misbehavior towards advocates barring filing of appeal against the decision of the judges before the appellate court and initiating contempt proceedings for their misbehavior such as such.

Judicial Assessment

Demanding respect for an independent judiciary will not work in a vacuum or without some give and take reflective of where we are as a country today. Judicial evaluations counter calls for extreme measures to sanction a judge who has rendered an unpopular decision or even made a mistake. Judges cannot be expected to be perfect or to figure out the bounds of independence on their own.

Persuasion and Responsibility

Appellate jurisdiction of the Courts in the hierarchical system ensures decisional accountability of the judges in the administration of justice system. Decisional accountability concerns the manner in which judges are held countable for rulings and decisions. It consists of appellate review and academic criticism of judgements. Indian legal system has created hierarchical appellate jurisdiction to decide the cases both under criminal and civil law system. However, the system is not matured enough to hear the appeals arising out of improper conduct of the judges which result in behavioural accountability of the judges. The mixture of the decisional as well as behaviour accountability regime could be provided under the Danish Code of Civil Procedure. The freedom of speech and expression of the judges should not be curtailed merely because of their judgeship. However, the prospective severity of such freedom should be foreseen by the judges as the very judicial functions are sensitive and delicacies in nature. Recommendation: There is a need of 'appearance of propriety clause' of the judicial conduct of the American Bar Association. Of course, those judges conducted the press conference are propriety in their character, the aspersions on the working of the supreme court of India certainly shocked the conscience of the people of the country on the judiciary.

CONCLUSION

The maintenance of judicial accountability is indispensable for the enrichment of the constitutional culture and constitutional morality. It could restrain and limit capricious tyranny and arbitrary despotism of the judiciary by interconnecting judges and judicial power with formal and informal scrutiny mechanisms. The framers of the Constitution being wholly conscious of the fact that the new constitutional regime oriented towards great ideological and constitutional values through which nation is to be governed requires vibrant and dynamic judiciary principled with responsibility, accountability and independence. Accordingly, the present chosen pattern of power control mechanism was institutionalised by the constituent power as shock observer of misuse of the judicial power. The technique of the promotion of judicial accountability lies with fact that the legal system should demonstrate the integrity of the institution without diverting the organisational legitimacy. The core findings, such as judicial standards, poor academic scholarship, the doctrine of proportionality, statistical issues, individual participation, inefficient intra-organ control mechanism, judicial evaluation, accountability through appeal; all these aspects though not diametric opposites, each of these values emphasizes different facets of the judicial accountability. The constitutional, as well as legislative scheme of the country, must resolve these issues on priority by adopting new provisions or amending existing provisions in line with judicial standards and code of ethics required for the judges. Such radical changes of the judicial administration reflect the view that ideal goals of the Constitution are intertwined with the fair and impartial judiciary.

REFERENCES:

[1] A. Flynn, "Plea-negotiations, prosecutors and discretion: An argument for legal reform," *Aust. New Zeal. J. Criminol.*, 2016.

[2] R. M. Jones, "Law, norms, and the breakdown of the board: Promoting accountability in corporate governance," *Iowa Law Review*. 2006.

[3] S. Lavrijssen and T. Kohlbacher, "EU Electricity Network Codes: Good Governance in a Network of Networks," *SSRN Electron. J.*, 2018.

[4] L. C. Pautassi, "Access to justice in health matters: An analysis based on the monitoring mechanisms of the inter-American system," *Health Hum. Rights*, 2018.

[5] U. Javaid, "CORRUPTION AND ITS DEEP IMPACT ON GOOD GOVERNANCE IN PAKISTAN," *Pak. Econ. Soc. Rev.*, 2010.

[6] N. S. Jabbar and F. S. Jabbar, "The need to accounting and judicial auditing and the expected effects of their application on the detection of financial and administrative irregularities (An exploratory study in Iraqi accounting environment)," *Acad. Account. Financ. Stud. J.*, 2018.

[7] J. L. Dunoff and M. A. Pollack, "The Judicial Trilemma," *Am. J. Int. Law*, 2017.

[8] N. Jiang, "Old wine in new bottles? New strategies for judicial accountability in China," *Int. J. Law, Crime Justice*, 2018.

[9] J. A. Laub, "Assessing the servant organization; Development of the Organizational Leadership Assessment (OLA) model. Dissertation Abstracts International," *Procedia - Soc. Behav. Sci.*, 1999.

[10] S. Qiu and G. Macnaughton, "Mechanisms of accountability for the realization of the right to health in China," *Health Hum. Rights*, 2017.

CHAPTER 9

JUDICIAL ACCOUNTABILITY: INDIA'S CURRENT SITUATION AND FUTURE DIRECTIONS

Bhirgu Raj Maurya, Assistant Professor
College of Law, Teerthanker Mahaveer University, Moradabad, Uttar Pradesh, India,
Email Id- brmourya.mourya321@gmail.com

ABSTRACT:

In India, a nation with a solid democratic structure and an independent court, the problem of judicial accountability has attracted attention. In this abstract, the present condition of judicial accountability in India is briefly discussed, along with some possible future options for improving this important facet of the legal system. As stated in its Constitution, India's judiciary is fundamental to maintaining the people' rights and freedoms, upholding the rule of law, and providing justice. But maintaining accountability inside the court system is still difficult. The mechanisms for judicial accountability now in place are examined in this study, including rules of conduct, the role of the judiciary itself, and outside review agencies.

KEYWORDS:

Constitutional Framework, Judicial Standards, Legal Reforms, Legislation, Whistleblower Protection.

INTRODUCTION

Justice should be delivered fairly and without favoritism as its fundamental goal. The supreme authority of law is what gives the nation and society stability. Justice is a broad concept, and the court, which is primarily in charge of administering justice in all political systems, should guarantee that it is distributed. The judiciary is crucial because it is the mechanism for settling disputes if the country as a whole is to grow and bring in a period of peace and prosperity. Similar to C.E. The Judiciary as K.S. Hughes puts it: "The nation lives under the Constitution, but the Constitution is what the judges say it is." According to Hegde, the Constitution should "function as the balancing wheel." Therefore, the court upholds the rule of law and defends the vulnerable, the helpless, the poor, and the oppressed. Therefore, it is essential for the growth and development of a fledgling democracy like India that the judiciary be robust, independent, and powerful [1], [2].

Judiciary's impartiality

In the 18th century, the idea of judicial independence first emerged. Prior to 1701, judges served at the pleasure of the Crown and were subject to arbitrary dismissal by the King. The Executive was superior to the judiciary. The judges' inherent preference for the royal prerogative resulted from this subservience. The Hampden's case, when 7 of 12 judges ruled in favor of the Crown's right to levy taxes without legislative authorization, is the most emblematic illustration of this mindset. The idea that "Rex is Lex" was once advanced by one of the judges. The Act of Settlement, 1701, which stated that judicial tenure would be during good conduct and that a judge might be removed legally with the consent of both Houses of Parliament, preserved the independence of the judiciary. An active democratic system requires an independent judiciary. Only a fair and impartial court can serve as a stronghold for the defense of a person's rights without favoritism or fear. Judicial independence is a crucial need for the rule of law in India, where it was established with the passage of the Indian High Courts Act in 1861. Up until 1935, the High courts served as the last arbiter in all disputes [3], [4].

The Federal Court of India was founded by the Government of India Act, 1935, and served as the highest court in India for cases concerning the interpretation of any sections of the Act of 1935. The Federal Court was founded on December 6th, 1937, and it only lasted 12 years, 50 days. Under the British Indian Constitution, the Federal Count, established by the Federal Count Act of 1935, became the Supreme Court. The Federal Court was successful in enhancing Indian law and elevating it to a supreme court. The Supreme Court was intended to be a tool of social justice and to have a broad appellate jurisdiction by the authors of the Indian Constitution. Deliberations in the Constituent Assembly showed that the members supported preserving the judiciary's independence. While arguing for independence, Alladi Krishna Swami Aiyar made the following statement: "While there can be no two views on the necessity to maintain judicial independence, both for the preservation of individual liberty and the proper operation of the Constitution. It is not acceptable to elevate the idea of independence to the status of dogma in order to give the court the power to act as a super legislator or super executive. The court is responsible for interpreting the Constitution and deciding disputes over legal rights between parties [5], [6].

Through the judicial review process, the judiciary has been granted the authority to rectify the actions or inactions of the legislative and the government. The ability to conduct judicial reviews was not a development of the post-independence era; rather, the Constituent Assembly sought to provide the court this capability in order to defend and maintain the Constitution. In order to make the constitution a living document that satisfies the requirements of the populace, the constitution's authors believed that the flaws in democracy might be changed and fixed through judicial review. The fundamental framework of the Constitution is judicial review. The cornerstone of the democratic arch is the doctrine of separation of powers. As a danger to political liberty, Montesquieu argued that the Doctrine's adoption would prevent the consolidation of power in one specific organ of government. The Constitution's fundamental framework is the separation of powers.

In the following sections of the Indian Constitution, the judiciary's independence is guaranteed:

a) The state must take efforts to isolate the judiciary from the executive, according to Article 50 of the Directive Principles of State Policy.

b) The Supreme Court and the High Courts' Constitutions: The Constitution's Articles 124, 126, 127, 214, 216, and 217 describe how the Supreme Court of India and the High Courts in different States are established, as well as its makeup and the process for removing justices.

c) Tenure Security: The Supreme Court and High Court justices are given tenure security.

d) Supreme Court Expenses are deducted from the Consolidated Fund of India: This indicates that the item is not up for vote in Parliament. Therefore, Parliament is unable to cut off the Court's funding. Golaknath and Kesvananda Bharti-style cases might happen at any moment. Therefore, it is a wonderful move to ensure judicial independence to make the funding of the Supreme Court independent of parliamentary action.

The Supreme Court's Authority: Parliament is only able to expand the Supreme Court's authority; it cannot reduce it.

f) Discussion of a judge's behavior in the State Legislature or Parliament is prohibited. This is in accordance with Articles 121 and 211, which apply to the Supreme Court and High Courts, respectively, with the exception of a request to remove a judge from office and an address to the President.

g) The ability to penalize for contempt is provided for under Articles 129 and 215 for the Supreme Court and High Courts, respectively.

DISCUSSION

Judicial accountability and independence are mutually supportive concepts because with tremendous authority comes great responsibility.

1. Justice System Corruption

J. S.P. Bharucha, a former chief justice of India, has admitted and calculated that up to 20% of the judges may be corrupt. J. K.G. Balakrishnan questioned whether there was such a high level of corruption, but he acknowledged that it did exist and that judges on the higher courts in particular were corrupt. In connection with the suspected participation of an Allahabad High Court judge in allowing a private medical college to enroll students despite a strict Supreme Court order, the CBI has detained the former judge of the Orissa High Court. UP Attorney General Raghvendra Singh and a man named Dr. Abhay Krishna filed objections after learning of the purported improperness of the rulings made by a J. The High Court Chief Justice of India, Shri Narayan Shukla, requested responses from the High Court judges involved, and the High Court Chief Justice of India established a three-judge inquiry committee to ascertain the facts. The committee is made up of Chief Justices Indira Banerjee of the Madras High Court, S.K. Agnihotri of the Sikkim High Court, and P.K. Jaiswal of the Madhya Pradesh High Courts. This internal investigation panel saw merit in the accusations [7], [8].

2. Judiciary's politicization

It is true that each judge has a distinct political ideology that they live by since they are members of the same community. Even some judges adhere to a certain political party's goal. The first time was in May 1967, when Dr. Jakir Hussain's opponent was the Chief Justice of India at the time, K. Subba Rao, who was then the opposition's presidential candidate. Additionally, participation in the Parliament and commission chairmanships were given to retiring judges. They would inevitably lean toward government in the hopes of receiving such post-retirement perks.

3. The rehiring of retired Supreme Court justices in a variety of executive positions

This poses a threat to the judiciary's independence since they are often nominated to pure administrative positions like governor of states like Fatima Beevi and P. Sathasivam.

4. A delay in the start and end of a criminal trial

L.N. 1975 Murder of Mishra case. What is the reason for this conviction when the four offenders who received life sentences from the Sessions Court are now 73, 66, 75, and 79 years old? A woman had filed a lawsuit against her brothers for robbing her of her store in another case that made it all the way to the supreme court in 2009. The Supreme Court expressed regret for the 13-year delay in starting a criminal trial because two conflicting orders issued by a High Court judge on the same day in two separate but related cases limited further investigation in one case while allowing it to continue in the other. Shyam Lata, the female plaintiff in this case, has died away.

5. Political interference in judicial appointments, including the appointment of young judges to the position of Chief Justice of India by bypassing the senior-most judge.

The Chief Justice of the Supreme Court was often chosen from among the Supreme Court's senior judges. This tradition was carried up until 1973. However, this technique has been

questioned due to experience, merit, and competency; thus, these aspects should be considered rather than seniority. But J. in 1973 breached this rule for the first time. As the Chief Justice of India, R.N. Ray replaced three senior colleagues, including J. J. M. Shelat, K. S. Hagde, and J. Grover, A.N. J. was the cause for this. In the Kesavananda Bharti case, A.N. Ray had sided with the government. However, the administration saw this as evidence that the president had exercised his latitude. The appointment of J. in 1976. M.H. Beg replaced J. to become India's Chief Justice. He was preceded in age by H.R. Khanna because J. Khanna alone abstained in the A.D.M. Jabalpur case, also known as the habeas corpus case, which shielded several individuals from the Emergency's misrule. He said that Article 21 was not something that was granted to us by our Constitution but rather predated it and could not be repealed during an emergency [9], [10].

6. Selection of Extra/Ad hoc Judges

The appointment of Additional Judges for terms of no more than two years is allowed under Article 224(1) of the Indian Constitution in order to distribute workloads. There is no need to appoint more judges if there is a permanent judge position. 1/3 of the judges of the Indian High Courts are extra judges who are appointed as permanent judges after two years.

7. The Status of Cases

According to a traditional proverb, Indian courts go so slowly that the grandson ultimately loses the lawsuit that his grandpa brings in court. According to data from 2015, there are more than 3.15 billion cases ongoing throughout India, which means there are more than 3 billion plaintiffs or petitioners and 9 billion defendants if each case contains three to five defendants. 12 crore litigants are involved. 36 crore Indian residents are at any one moment directly or indirectly engaged in litigation, assuming that each litigant has three family members. We are becoming a country of litigants if we take this to indicate that every fourth person in our society is engaged in litigation now (directly or indirectly). In another 20 years, this figure may rise to every second person. We have around 16,000 judges to handle the 66,000 cases in the Supreme Court that are still outstanding, the 45 cases in the 24 High Courts, and the 2.7 Crore cases in the district and inferior courts. One of the main causes of India's poor ranking on the World Bank's "Ease of Doing Business" Index is the large number of cases that are pending in Indian courts and the lack of judicial reforms.

8. The adoption of the college system

A 1993 and 1998 ruling by the Supreme Court gave rise to the collegium system. Our judicial system is impartial. This collegium system's appointment process is kept a secret. According to estimates, the relatives of judges occupy 80–90% of open positions on the Supreme Court and High Courts. The Supreme Court overturned the 99th Amendment to the Constitution, which created the National Judicial Appointment Commission to name Supreme Court and High Court judges, on the grounds that the inclusion of the Law Minister and two distinguished individuals violates the independence of the judiciary.

Any ruling that rejects a legislation passed by the legislature will be deemed unconstitutional if it does not specify which provision of the Constitution this law violates. Justice Krishna Iyer, who passed away recently, openly referred to the collegium system as a constitutionally irrelevant institution after the Supreme Court rejected NJAC and reinstituted it. The late Justice J.S. Verma, who was primarily responsible for the 1993 decision, said in a public statement: "My 1993 decision, which holds the field, was very much misunderstood and misused." J. Venkatchaliah, the chairman of the constitution review panel, has suggested the creation of a panel for Judiciary Appointment in 2002. Similar suggestions were made by the Administrative

Reforms Commission in 2007, the 214th Report of the Indian Law Commission in 2008, and three reports of the Parliamentary Standing Committee.

Both Houses of Parliament approved NJAC with no opposition. Following that, it was unanimously approved by 20 State Legislatures. To abolish the collegium system, the whole nation spoke with one voice via its elected representatives. The bigger problem of neglecting other elements of the Constitution's fundamental design, such parliamentary democracy, is quite important. In a debate in the Constituent Assembly, Dr. B.R. Ambedkar remarked. The Chief Justice is a man with all the flaws, all the sentiments, and all the prejudices that we as common people have, and to give him essentially a veto over the appointment of judges is really to transfer the authority that we are not willing to direct at the president on the Government of the day to the Chief Justice, so I think that is also a dangerous proposition. Does this imply that no other nation has an independent judicial system where a judge's standing is determined by his character rather than by the process of appointment?

9. Judges' appointments being delayed

a set deadline for the judiciary to suggest candidates for judgeships and the executive to make the appointments in order to "maintain the hope and aspirations of litigants for speedy justice." The Supreme Court's A.K. Sikri and J. "It is seen that once the names are forwarded, they remain pending at the executive level for an excessively long time, before they are sent with executive inputs to the collegium of the Supreme Court for approval. Even after the names are cleared by the collegium, these remain pending at the level of the executives. Sometimes, it takes more than one year to complete the process from the date of forwarding the names until appointment," said Ashok Bhusan. The Supreme Court "categorically stated that the appointment process must be initiated at least one month before the date of anticipated vacancy" in 1993. the dispute over the formulation of the Memorandum of Procedure (Mop) for the selection of Judges after the NJAC's dismissal between the government and the Supreme Court collegium. The Supreme Court's deadline for appointments to subordinate courts is not being adhered to:

10. Court Discipline, Court Propriety, And Court Transparency

a. A three-judge panel decided on February 8, 2018, that failure to receive compensation within the allotted five years would not be grounds for canceling the acquisition of the land, in contrast to a three-judge panel who decided on the opposite issue in 2014. On February 8, 2018, a three-judge panel ruled that the 2014 ruling was per incuriam. On February 13, 2018, a trio of judges, led by J. Referencing the February 8 ruling, Madan B. Lokur said the institution would "go forever" if "Judicial discipline" and propriety were not upheld.
b. The Supreme Court has often condemned media trials, but a press conference by the Supreme Court's four most senior justices is a serious issue. The wisest course of action was either for the Chief Justice of India to quit on moral grounds because his four fellow judges had lost faith in him, or for contempt proceedings to be brought against those four justices since Justice Karnan had received a contempt penalty. Similarly, if four judges wished to speak to the media, they should step down first.
c. A contentious collegium: Justice Jayant Patel's tragic transfer, which occurred just as he was about to assume the position of Chief Justice of the Karnataka High Court. 'Reasons' for this arbitrary relocation were required by the neighborhood bar organization. As a well-known American. "The political branches of Government claim legitimacy by election, Judges by reason," a judge once said.

d. At a seminar, a judge from the Delhi High Court openly said that judges do not need to provide "reasons" for imposing intellectual property (IP) injunctions since they are the experts and make decisions with "conviction."
e. A former Rajasthan High Court judge publicly stated his "conviction" that peacocks do not reproduce via sex but rather through tears.

CONCLUSION

In conclusion, the problem of judicial accountability in India is crucial because it has a direct bearing on how well the nation's democracy operates, how well individuals' rights are protected, and how much the public trusts the judicial system as a whole. Even though India has achieved great progress over the years in strengthening judicial independence and accountability, there are still issues that must be resolved to guarantee an impartial and open judicial system. In order to find a balance between judicial independence and accountability, a number of parties, including the judiciary, legislature, and civil society, must work together in the contemporary context of India. The creation of organizations like the National Judicial Appointments Commission (NJAC) and the current discussion around the Collegium system highlight the need of a thorough and open judicial appointment process.

REFERENCES:

[1] A. Römmele *et al.*, "Book Reviews.," *Party Polit.*, 2014.

[2] B. Galle, "Federal grants, state decisions," *Boston University Law Review*. 2008.

[3] E. C. Lubaale, "Military Courts and Prosecution of Offences by National Defense Forces in the Dawn of the Complementarity Regime: The Case of Uganda," *Crim. Law Forum*, 2017.

[4] D. S. Koller, "The global as local: the limits and possibilities of integrating international and transitional justice," in *Contested Justice The Politics and Practice of International Criminal Court Interventions*, 2015.

[5] B. Van Schaack, "The Building Blocks of Hybrid Justice," *SSRN Electron. J.*, 2015.

[6] M. Poerio and E. Keller, "Executive Compensation 2005: Many Forces, One Direction," *Compens. Benefits Rev.*, 2005.

[7] S. Collins, "'They're creepy and they're kooky' and They're Copyrighted: How Copyright Is Used to Dampen the (Re-)Imagination," *M/C J.*, 2016.

[8] E. Alekseevskaya and L. Treskina, "The 'justice index' is a step towards the implementation of the global goal 16 of the U.N. agenda," *BRICS Law J.*, 2018.

[9] U. Javaid, "CORRUPTION AND ITS DEEP IMPACT ON GOOD GOVERNANCE IN PAKISTAN," *Pak. Econ. Soc. Rev.*, 2010.

[10] L. M. Shannon, S. Birdwhistell, S. K. Hulbig, A. J. Jones, J. Newell, and C. Payne, "Examining implementation and preliminary performance indicators of veterans treatment courtsThe Kentucky experience," *Eval. Program Plann.*, 2017.

CHAPTER 10

FEDERALISM AND THE INTERNAL CONFLICT

Yogesh Chandra Gupta, Assistant Professor
College of Law, Teerthanker Mahaveer University, Moradabad, Uttar Pradesh, India,
Email Id- COGNITOR.YOGESH@GMAIL.COM

ABSTRACT:

Federalism, as a form of government, is important for controlling domestic disputes inside a country. The complex link between federalism and internal disputes is explored in this abstract using examples from several international locations. Federalism is often seen as a tool for accommodating variety, dividing up authority between the federal government and local governments, and promoting harmonious cohabitation among various ethnic, cultural, or linguistic groups. This article explores how the design, execution, and adaptation of federal systems may either reduce or increase internal disputes. With a focus on the value of inclusive and participatory decision-making processes within a federal framework, it analyzes the ways in which federalism may be used as a tool for conflict resolution. Additionally, it examines instances when federalism has failed to avoid or resolve disputes, illustrating the difficulties in striking a balance between regional autonomy and preserving national unity.

KEYWORDS:

Conflict Resolution, Decentralization, Federal Government, Internal Conflict, Regional Autonomy.

INTRODUCTION

This book explores the conflicts at the core of American federalism and the problems that have plagued the creators, theorists, and practitioners of American government for more than 200 years: How should we interpret the constitutional design? Which areas of regulatory decision-making should the federal government dominate, and which should be led by state or local officials? How should governance function in these two regulatory spheres? Which governmental branches should we entrust with making these decisions? What theoretical approaches ought to aid our interpretation of hazy federalism directives? What are these instructions meant to achieve? The introduction lays out the issues I want to tackle, directs the conversation, and offers my theoretical perspective [1], [2].

The book starts a philosophical discussion about the meaning of federalism through the lenses of the conflicting values that underlie it and the theoretical models for interpreting federalism that drive policy making and adjudication. It is written for both audiences new to these questions and audiences long familiar with them. In my view, it is more accurate to view conflicts between federalism's fundamental tenets rather than, for example, the conflict between states' rights and federal power, the argument between judicial restraint and political process, or even the conflict between competing interpretations of original intent. The "tug of war" between core federalism principles has led to varying Supreme Court interpretations and contentious judgments in regulatory areas where these conflicts are most acute, such as environmental law, land use law, and public health and safety regulation.

The Court's federalism rulings have been particularly challenged by increased jurisdictional overlap in environmental law, which has usefully highlighted the fault lines between conflicting objectives. However, the difficulties that environmental federalism has helped to reveal are being closely followed by fights over federalism that are developing in the areas of health law,

consumer protection, and homosexual marriage. The book recounts federalism's internal tug of war through history and into the present, offering a new conceptual language for grappling with these age-old problems. It also suggests a number of innovations to bring judicial, legislative, and executive attempts to control it into more fully theoretical focus. In this article, I present a theory of balanced federalism that seeks to balance the conflicting federalism values while also maximizing the wisdom of state and federal actors. This theory operates on three different levels and addresses the tensions within federalism. The book imagines three successive ways of coping with the values tug of war within federalism, each experimenting with different degrees of judicial and political leadership at different levels of government, after criticizing the Court's recent embrace of greater jurisdictional separation and stronger judicial constraints. Along the way, the study offers a better theoretical basis for the different ways that balance, compromise, and negotiation are already legally used to moderate the tug of war [3], [4].

DISCUSSION

Federalism and Internal Conflicts

The Constitution requires a federal system of dual sovereignty via written and implicit federalism guidelines, providing new power in a national government while maintaining unique authority within the more local state governments. However, federalism has evolved throughout history and in various countries all over the globe. What precisely does the Constitution need in terms of giving the federal and state governments their own special powers? Are these distributions intended to be exclusive of one another? What should happen if there are valid overlaps in certain areas? Practically speaking, the key issue is who gets to make the decision: the state or the federal government? The Constitution effectively informs us who should decide what regulatory policy looks like in diverse public realms by delegating power in this manner.

Certain areas of government are unquestionably assigned to one side or the other. For instance, the national government is given the authority to mint money, fight war, and regulate interstate trade, while the states are in charge of local zoning, elections, and law enforcement. However, there are areas in between the simple extremes where it is considerably more difficult to understand what the Constitution says about who makes the decisions. Locally controlled land uses are complicated by the need to safeguard navigable rivers because they affect interstate trade. Federal laws prohibiting unreasonable search and self-incrimination continue to bind state and local police. And to what degree should federal laws influence state governments' fundamental operations? In fact, due to the interlocking swirls of local and federal law, American government has been likened to a marble cake rather than just a layer cake because of how much state and federal authority overlap [5], [6].

The "who gets to decide" issue, however, looms big when policy-making disputes arise in these situations of jurisdictional overlap. Is this an area where the Supremacy Clause genuinely allows the federal government to override conflicting state laws, or is this an area where crafting policy goes beyond the federal government's stated powers and has been purposely left to the states? And even if federal legislation has the legal authority to supersede local initiative, does that imply it necessarily should? How do we make a decision? In fact, the crucial corollary becomes "who gets to decide that? " when the pressing issue is "who gets to decide the state or federal government.""

Which department of government should evaluate what the Constitution truly means concerning who makes regulatory policy when the regulatory context or the federalism mandate itself is unclear? Is it reasonable to leave these judgments up to Congress's judgment, where federalism concerns will be protected by the democratic system where state-elected

representatives create national laws? Or should the Supreme Court establish judicially enforceable federalism restrictions and act as the ultimate arbitrator in this matter? Is structural federalism distinct from other constitutional doctrines whose interpretation we normally leave to the Supreme Court to determine? What should the executive branch be doing, particularly in this era of expanding executive agency power? Do state government officials have a role to play in understanding these questions?

In other words, understanding federalism entails understanding both who gets to select who gets to make the decisions in specific regulatory contexts and who gets to decide whether it will be the state or the federal government. The Constitution divides power among the three distinct bodies of government as well as vertically between local and national actors. Based on their unique institutional characteristics, the legislative, executive, and judicial branches each provide a particular set of interpretative resources to the constitutional process. What role should each branch have in interpreting and putting American federalism into practice? A "zero-sum" federalism model is often used in political and legal discourse, indicating winner-take-all rivalry between state and federal policymakers and either/or supervision by legislative or judicial arbiters [7], [8].

But how well does this model capture what really takes on in the complex web of federalism-sensitive governance? How excellent ought it to be? The constitutional uncertainty that makes it so difficult to respond to these concerns raises the following issue, which is often disregarded in discussions about federalism: whose federalism? Or, how should we read this linguistic ambiguity using the federalism theory that best fits the situation? The Constitution requires but does not fully define American dual sovereignty, leaving certain issues up to interpretation by unidentified decision-makers who must use some kind of theory or philosophy about how federalism should function to fill in these gaps. However, in doing so, constitutional interpreters may choose from a variety of theoretical models of federalism, much as the Supreme Court has done over the ages as its jurisprudence has swung back and forth, providing different answers to the same concerns at different points in time.

Federalism idea has variedly dominated American history, particularly throughout the nineteenth century. At different stages, the "dual federalism" concept has ruled, separating state and federal sovereignty mostly along lines of subject matter. Since at least the New Deal, federalism practice has been dominated by a "cooperative federalism" approach that accepts more jurisdictional overlap. Additionally, there are additional options. Are all of these varied perspectives on federalism valid? Do they all share the same broad principles but disagree on specifics? How should we pick from available options if more than one is true? The "which federalism" conundrum brings us full around to the most crucial question of all: why federalism? Why did the Constitution's creators choose for a federal government? What goals does the federal system of governance serve? Understanding the purpose of American federalism can help us pick which type of federalism to use for addressing the age-old issues of who makes decisions in what situations [9].

This last question, however, turns out to be trickier than it first seems, since American federalism is really a set of objectives that are not necessarily congruent with one another. This is where federalism theory becomes really fascinating and where this book contributes most significantly. Structural federalism is not an objective in itself; rather, it is designed to serve the Constitution's greater substantive obligations, as the Court often confirms. Investigating the why of federalism reveals a number of good governance principles that support it, each of which represents an ideal in governance that federalism helps achieve. These principles include checks and balances between opposing centers of power to protect individuals, governmental accountability and transparency to increase democratic participation, local autonomy to

promote interjurisdictional innovation and competition, and regulatory synergy between the united states and its constituent states.

Each of these principles promotes the ideal form of government that the Constitution's creators hoped to establish, and they have subsequently been accepted as standards of good governance across the world. However, as the Supreme Court's wavering federalism jurisprudence demonstrates, these ideals are in conflict with one another, making the understanding of federalism a battleground for laudable but oftentimes conflicting ideas. Due to the nature of American dual sovereignty, there is a constant struggle between rival federalism concepts. For instance, the strong checks and balances made possible by concurrent state and federal governments compromise the value of governmental transparency to some extent. Because there are two options, it is inevitably more difficult for the average American to understand which elected representatives are accountable for which policies. Similarly, if local autonomy and innovation were the only factors that mattered, there would be no need for a national government at all. Instead, the national government exists as a result of a conscious decision to give priority to the protection of individual rights provided by a system of checks and balances and the practical problem-solving value of a national federation in order to address common interests and cross-border issues.

However, there may be significant conflict between the objectives of retaining the opposing centers of state and federal authority and using their complementary problem-solving abilities in cooperative settings. These tensions vary in intensity depending on the regulatory setting, but they are to some extent present in every federalism debate. As previously mentioned, the areas of environmental law, land use law, and public health and safety regulation in particular highlight the internal struggle of federalism. These sectors may entail regulatory efforts to address relatively recent issues, i.e., problems for which there is no historically accepted solution to the question of who should make the decision, such as climate change.

Other times, mounting evidence demonstrates that an issue that was thought to be "local"—such as water pollution, illness prevention, the legality of marriage, waste management, disaster preparedness, or even land use planning—also has significant national significance. While this is happening, state and local authorities are becoming more and more involved in issues that were formerly thought to be strictly national, including telecommunications, counterterrorism, and even foreign affairs. Underscoring contradictions between federalism ideals that have given rise to legal and political dispute, the "proper" degree of regulatory power in certain areas is often debated. Every federalism conundrum has this tug-of-war, and each resolution calls on the decision-maker to choose, consciously or unconsciously, how to prioritize among conflicting ideals. The heated policy debates that give rise to actual federalism controversies, such as those over the respective responsibilities of state and federal governments for regulating minimum wages, radioactive waste, gun rights, violence against women, criminal law enforcement, healthcare policy, immigration, and marriage rights, frequently obscure the internal tug of war in politics.

Instead of second-order structural issues about who should make decisions, public debate frequently focuses on first-order policy questions. Interest groups have frequently used federalism rhetoric to advance their own agendas, only to disregard it when it is no longer in their best interests. The Supreme Court's infamous "New Federalism" judgments' theoretical revisions, which indicate that the sole value of significance is the maintenance of checks and balances between the many reservoirs of local and national power, further obscure these conflicts. However, every judicial, legislative, and administrative decision that addresses these federalism concerns maintains the tug of war, whether explicitly or surreptitiously. The alternative model put out in this book, which strives to strike a balance between conflicting

principles and interpretative duties and bases its analysis on the Tenth Amendment of the Constitution, ultimately accounts for the ongoing struggle within federalism.

CONCLUSION

In conclusion, federalism is a complicated and dynamic form of administration that aims to strike a balance between the authority of the national government and its subordinate governments while also taking into account the various needs and identities of its population. While federalism may have many advantages, such as fostering local autonomy and preventing tyranny, it can also bring difficulties, particularly when internal disputes occur. Diverse issues, such as disagreements over the distribution of resources, discrepancies in cultural and linguistic identities, and ideological or political divides, may lead to internal conflicts within federal systems. The peace and unity of a country may be seriously threatened by these disputes. Federalism, however, also presents a possible resolution to these disputes. Federal systems may provide opportunities for amicable conflict resolution and accommodation of varied interests by delegating certain powers and decision-making authority to regional or state administrations. Strong institutions, a distinct separation of powers, and channels for dialogue and compromise are necessary for effective federalism.

REFERENCES:

[1] O. Umo, “Insurgency in Nigeria and the challenge of nationhood,” *Niger. J. Rural Sociol.*, 2016.

[2] P. Gauttier, “Horizontal Coherence and the External Competences of the European Union,” *Eur. Law J.*, 2004.

[3] K. Adeney and H. Bhattacharyya, “Current challenges to multinational federalism in India,” *Reg. Fed. Stud.*, 2018.

[4] M. Reuchamps, D. Kavadias, and K. Deschouwer, “Drawing Belgium: Using mental maps to measure territorial conflict,” *Territ. Polit. Gov.*, 2014.

[5] S. Aibieyi and D. A. Odigwe, “Fiscal federalism and development in Nigeria,” *Fisc. Fed. Dev. Niger.*, 2015.

[6] C. Clapham, “Post-war Ethiopia: The trajectories of crisis,” *Rev. Afr. Polit. Econ.*, 2009.

[7] A. Samson Adesola and A. Ola, “A HISTORICAL ANALYSIS OF VIOLENCE AND INTERNAL POPULATION DISPLACEMENT IN NIGERIA’S FOURTH REPUBLIC, 1999-2011,” *Int. J. Peace Confl. Stud.*, 2015.

[8] F. S. Weldegiorgis, B. Mesfin, and K. Sturman, “Looking for oil, gas and mineral development in Ethiopia: Prospects and risks for the political settlement,” *Extr. Ind. Soc.*, 2017.

[9] D. Caluwaerts and M. Reuchamps, “Combining Federalism with Consociationalism: Is Belgian Consociational Federalism Digging its Own Grave?,” *Ethnopolitics*, 2015.

CHAPTER 11

A FRACTIONAL HISTORY OF INDIAN PRISON REFORM

Pradip Kumar Kashyap, Assistant Professor
College of Law, Teerthanker Mahaveer University, Moradabad, Uttar Pradesh, India,
Email Id- pradiprgnul@gmail.com

ABSTRACT:

This article offers a succinct summary of India's changing prison reform environment, highlighting significant developments and changes to the country's criminal justice system. The history of India's prisons is a complicated one, characterized by intervals of abuse, neglect, and rare attempts at rehabilitation and human rights. This incomplete history reveals important changes, from colonial-era punitive measures to current efforts at humanization and reform. It discusses how influential laws, visionary leaders, and global influences shaped the Indian penal system. The abstract highlights the difficulties that remain and the need for comprehensive prison reform in India, while also noting the need to strike a balance between punitive measures and human rights principles and deterrence and rehabilitation. This analysis of a fragment of history intends to offer insight on the evolution of prison reform in India and stimulate more study and action in this crucial area of criminal justice.

KEYWORDS:

Colonial Era, Criminal Justice System, Deprivation of Rights, Human Rights, Judicial Interventions

INTRODUCTION

India's history of jail reform is a long and intricate one that has developed over many years. The following sentences provide a brief overview of Indian jail reform: The Colonial Period and the Origin of Penal Institutions. The Indian jail reform movement has its origins in the colonial period. During the time of British control, the colonial government built prisons largely to house criminals and political prisoners. Notably, a large number of freedom fighters were imprisoned in the Andaman Islands, which served as an isolated prison colony. These facilities were often criticized for their deplorable conditions and dearth of necessities [1], [2].

Following India's independence in 1947, the need for jail system reform became more widely acknowledged. The 1950 adoption of the Indian Constitution, which placed a strong emphasis on the defense of basic rights and outlawed harsh and inhumane treatment, provided the framework for jail reform. The government started putting more effort into humanely treating prisoners, improving prison conditions, and reintegrating criminals into society as law-abiding citizens. During the 1970s and 1980s, Justice V.R. Krishna Iyer, a former Supreme Court justice, was a key proponent of jail reform in India. He issued historic rulings on topics including violence against inmates in custody, their rights, and the need of rehabilitation programs within prisons. His work had a big impact on how the nation was going to restructure its jail system.

The Indian government passed the Prison Act in 1894, which established certain rules for the management of prisons. The Act also included the Model Prison Manual. Comprehensive model jail books, however, weren't created for states to use until the 1980s. With the intention of standardizing and improving prison conditions throughout the nation, these guides gave comprehensive recommendations on a number of facets of prison administration, including prisoner welfare, healthcare, and discipline. Focus on Rehabilitation and Reintegration:

Inmates' rehabilitation and reintegration into society has received more attention in recent years. To assist convicts, learn skills and increase their prospects of living legal lives after release, some state governments have started programs for skill development, education, and vocational training within prisons. Despite these initiatives, the Indian jail system continues to experience a number of issues, including as overcrowding, hold-ups in the legal system, and incidences of violence against inmates. Comprehensive prison changes that address these problems, uphold inmates' rights, and encourage rehabilitation are constantly required [3], [4].

DISCUSSION

Every community consists of individuals with various life methods and attitudes. There are many different views, which may often lead to variations in the behaviors individuals do to support those beliefs. But these various activities could have varied effects on society, all of which might not be favorable. According to Roscoe Pound's thesis of "social engineering," people's interests should be managed in a manner that allows them to behave freely while yet protecting society's overall best interests. At this point, the law steps in to control behavior so that people don't behave in ways that are detrimental to society. Humans were held accountable for their activities as a result of the necessity to manage human behavior, which led to the formation of a system for regulating individual behavior in order to safeguard the interests of society as a whole. It also developed a mechanism for isolating the offenders from society and imprisoning them as a kind of punishment [5], [6].

The concept of "prisonization" has recently taken on a very broad scope, including everything from deterrence when absolutely required to offering specific reformatory measures with the aim of reintegrating convicts into society and enabling them to lead normal lives. Because of this, the function of prison administration has greatly expanded to meet contemporary needs, ensuring that prisons are places of rehabilitation, and that inmates may be reintegrated back into society without endangering it. The emphasis on dealing with criminals has switched from deterrent to reformative methods as a result of recent breakthroughs in human rights theory. Prisons, however, continue to play a crucial role in the criminal justice system because they may serve as both deterrents and testing grounds for change. Prisons are important because they house those who are being tried yet whose presence is often necessary for the trial. But first, let's look at how the word "prison" is defined before we discuss the necessity for prisons or how to improve them. Prisons were formerly known as "jails," "gooels," or "penitentiaries."

"A place properly arranged and equipped for reception of persons who by legal processes are committed to it for safe custody while awaiting trial or for punishment" is the definition of a prison. It is a location where a person's liberty is violated and they are held under the control of the state by an appropriate legislation. The restriction of freedom in this way serves as a means of implementing the legal penalty owing to the person's unlawful conduct or omission. Most often, these locations are utilized to house individuals who have been accused or found guilty of a specific crime. As a result, a prison was initially thought of as a facility for the imprisonment of criminals before trial, judgment, and the effective implementation of that sentence. According to a fair interpretation of Article 246 and Schedule VII of the Indian Constitution, the provincial and federal or central governments in post-independence India each have their own legislative authority [7], [8].

According to a comparative research, prison administration in India underwent a significant transformation after independence when it was included to the state list of subjects and various states implemented various policies in accordance with their respective social and economic resources. When the independence fight was being repressed in pre-independent India, jails, this stood in sharp contrast. This essay's second section examines the formation of the different

committees and the following actions the Indian government took to improve its jail system. Part III focuses on the government of India's most recent comprehensive reform, evaluation, and report, which was finished and released in 2007. The judiciary has also actively participated in India's jail reform story. It has intervened to improve execution at times, and when legislative will be there, it changed policy. Part IV of the essay discusses these developments and crucial conclusions. Part V then identifies the significant psychological and human rights problems that inmates deal with as a consequence of the prison system's slow rehabilitation. The examination of legislative trends, executive recommendations, and judicial declarations in Part VI leads this paper to its ultimate findings and a few recommendations [9], [10].

Indian Prison Reform Committees

A number of committees have been established that have outlined certain topics that must be investigated in order for prisons to function as a setting for the reformation and rehabilitation of inmates while also preserving their human rights. The researcher will shed light on several similar committees established in India after independence as well as the suggestions they made in this chapter.

Following Independence

India after independence was a free country that adopted several laws supportive of human rights. The newly elected administration was eager to enact many laws motivated by the spirit of the constitution. This also motivated the government to improve jail management, and as a result, many committees were formed to examine the Indian prison system and provide reform recommendations. The main suggestions made by these committees and how they affected jail management will be covered in this section. The founding of the Pakwasa Committee in 1949 was the first action taken in this direction. It acknowledged a restricted right to labor for inmates in the sense that they shouldn't be under close monitoring. This group proposed paying salaries to convicts who were working while also arguing for prisoners' early release from punishment for good behavior. The following program attempted to bring Indian jails up to line with global standards. To provide recommendations for reforms to Indian jails, the government engaged Dr. W.C. Reckless, a technical expert on crime prevention and treatment of offenders. The Technical Assistance Programme in India requested the expert's services. The Indian government overwhelmingly embraced his recommendations for the reformation and rehabilitation of prisoners:

1. Establishing a Central Bureau of Correctional Service at the Central level and making correctional services a crucial component of each state's Home Department.

2. Using reformation techniques to lower the jail population and ease the strain on the system, such as parole and probation.

3. The creation of aftercare facilities to help all recently released inmates begin new lives and integrate smoothly into society.

4. The penalty of solitary confinement should be abolished since it has a detrimental effect on a prisoner's mental health.

5. Classifying convicts to help with individualized care and rehabilitation.

6. Regularly updating the State Jail to address new issues relating to the reformation and rehabilitation of inmates in accordance with changing societal norms.

The All-India Conference of Inspector Generals was also influenced by these ideas, which resulted in the foundation of a committee in 1952 that later produced the Draft All India Manual and the establishment of the Central Bureau of Correctional Service in 1961.

The 1957 All India Jail Manual Committee

This committee was constituted in 1957 by the Central government. It was created with the intention of creating a standard prison handbook for all states to preserve uniformity in prison administration and guarantee that at the very least minimal reformative measures were implemented in all prisons throughout the country. As a result, the 1960 committee report that was presented became the Draft Prison Manual. The committee made numerous recommendations for corrective actions, such as the use of contemporary approaches to problems with prison administration, probation, after-care, juvenile, remand homes, accredited and reformatory schools, portals, suppression of immoral traffic, etc. According to the research, India should implement a national program for jail reforms. The document also included guidelines for grouping convicts according to their needs in terms of care. Sadly, none of the committee's suggestions ever saw the light of day. The government has also been under fire from the Supreme Court for restricting this report on papers and has been urged to do so.

1961 Central Bureau of Corrections Services

In 1961, the Ministry of Home Affairs of the Government of India developed the CBCS in accordance with the suggestions included in the findings of the All India Jail Manual Committee and Dr. W.C. Reckless. The bureau was established with the aim of formulating a common strategy to counsel state governments on the new difficulties surrounding the management of jails. The CBCS recognized 1971 as 'Probation Year' throughout the country. The goal of this initiative was to raise awareness among the key players in the criminal justice system of the reformatory features of probation that had the potential to change the system. Furthermore, in accordance with the suggestions made in the All India Jail Manual, the government established a working committee in 1972. In 1973, this working group delivered its final report. It highlighted the need for a national policy on prisons in its report. Its key recommendations include the following:

1. Using alternatives to incarceration as a form of effective punishment.

2. The need of providing jail staff with sufficient training and improving their working circumstances was emphasized.

3. Using scientific classification and treatment methods, and establishing guidelines for follow-up and after-care treatments.

4. Establish a connection between the growth of prisons and the administration of corrections and the process of national development. These should be regarded as essential elements of the national planning process' social defense components.

5. Determined a hierarchy of importance for the advancement of jail management.

6. Including certain jail administration-related elements in the five-year plans.

7. Modifying the Constitution to include prisons and related institutions to the Concurrent List; passing appropriate prison laws at the federal and state levels; and updating State Prison Manuals.

The newly established Department of Social Security, presently known as the Department of Social Justice and Empowerment under the Ministry of Human Resource Development,

received the Central Bureau of Correctional Services in 1964 from the Ministry of Home Affairs. For a variety of issues relating to jail administration and reforms, the Bureau remained tethered to the Ministry of Home Affairs. Later, the position of Ex-officio Prison Advisor was given to its director. To assess policies and programs in the area of social defense, the Bureau was reorganized in 1971 to become the National Institute of Social Defence.

The All-India Commission for Prison Reform

Under the direction of Justice A.N. Mulla, this group was established by the Indian government in 1980. Justice Mulla offered a number of reformist strategies to be used in the Indian jail system to address previous shortcomings and prepare for difficulties to come. One of the committee's main recommendations was to establish an all-India agency called the Indian Prisons and Correctional agency for the purpose of hiring jail administration staff directly. The group focused on ending the diarchy of jail administration and thoroughly evaluated all Indian legislation pertaining to prison administration. The 1983 report also shifted the focus to the long-standing practice of grouping seasoned criminals and juvenile offenders, arguing that the goal of the criminal justice system should not only be to punish people for their crimes but also to treat each accusation delicately, taking into account factors like age, and that juveniles should be kept apart. The committee also made the following recommendations:

1. Improving jail circumstances by creating suitable provisions for nutrition, clothes, cleanliness, ventilation, etc.

2. Appropriate training of the jail personnel and division into several cadres. For the purpose of hiring prison guards, it suggested creating an all-India organization named the Indian Prisons & Correctional Service.

3. Rehabilitation, probation, and aftercare should be included as a standard component of prison service.

4. Periodic media and public visits to prisons and related correctional facilities should be permitted so that the public may learn firsthand about the circumstances there and be willing to collaborate with prison authorities to carry out rehabilitation efforts.

5. Less under-trails are being housed in prisons. They need to be kept apart from the criminally guilty inmates.

6. The government must provide sufficient funding and resources to carry out jail reform.

CONCLUSION

The goal of this initiative was to raise awareness among the key players in the criminal justice system of the reformatory features of probation that had the potential to change the system. Furthermore, in accordance with the suggestions made in the All India Jail Manual, the government established a working committee in 1972. In 1973, this working group delivered its final report. The group focused on ending the diarchy of jail administration and thoroughly evaluated all Indian legislation pertaining to prison administration. The 1983 report also shifted the focus to the long-standing practice of grouping seasoned criminals and juvenile offenders, arguing that the goal of the criminal justice system should not only be to punish people for their crimes but also to treat each accusation delicately, taking into account factors like age, and that juveniles should be kept apart.

REFERENCES:

[1] R. Gill, "Review of Made in India: Decolonizations, queer sexualities, trans/national projects," *Fem. Psychol.*, 2008.

[2] D. S. K. Shadangi, "Right to Vote: A Selected Choice," *Int. J. Trend Sci. Res. Dev.*, 2018.

[3] Z. Ahmed, "Jail reforms in India : A study of Indian jail reform committees," *Int. J. Multidiscip. Educ. Res.*, 2016.

[4] B. Sandeepa Bhat, "Judicial Activism in Regulating 'Human Rights Violations' by Police Authorities in India," *Kathmandu Sch. Law Rev.*, 2017.

[5] S. Roy, "Jail reforms in india: A review," *Kriminologija i Soc. Integr.*, 2003.

[6] K. D. Tunnell and M. S. Hamm, "Singing across the scars of wrong: Johnny Cash and his struggle for social justice," *Crime, Media, Culture*. 2009.

[7] K. Sims, "Cultures of Confinement: A History of the Prison in Africa, Asia, and Latin America," *Hist. Rev. New Books*, 2008.

[8] J. Murphy, "A toxic mix? Comparative efficiency and the privatization of sanitation services in India," *Public Adm. Dev.*, 2010.

[9] V. Kumar and U. Daria, "Psychiatric morbidity in prisoners," *Indian J. Psychiatry*, 2013.

[10] I. Popescu *et al.*, "Editorial.," *Child. Youth Serv. Rev.*, 2010.

CHAPTER 12

JUDICIAL ACCOUNTABILITY AND COMPARATIVE APPROACH

Bhirgu Raj Maurya, Assistant Professor
College of Law, Teerthanker Mahaveer University, Moradabad, Uttar Pradesh, India,
Email Id- brmourya.mourya321@gmail.com

ABSTRACT:

The judicial branch checks the other two branches of government, defends citizens' rights, and administers justice, among other duties. Every nation maintains a distinct judiciary in order to protect its integrity and independence and ensure that the public has sufficient access to justice. In order to accomplish this, it is equally crucial that the judges are appointed fairly and that there is a proper constitutional procedure for their removal in the event of misconduct. It is also crucial to declare their personal assets in order to keep an eye on their financial development while serving as judges and prevent corruption. This essay addresses these three problems in India and compares the Indian legal system's description of appointment, removal, and asset disclosure to the systems in the UK, Canada, and the USA. The author also uses provisions from other nations in this work to address certain situations when there aren't any specific statutes in the aforementioned nations. This article also discusses the difficulties the Indian court system is having in ensuring judicial accountability and openness, and it eliminates a number of issues with the current system. Finally, the author offers a number of suggestions for resolving these problems in this study.

KEYWORDS:

Accountability, Appointment, Misconduct, Transparency.

INTRODUCTION

A democratic system's foundation is judicial accountability, which is also essential to maintaining the rule of law. It refers to the process through which the judicial arm of government and judges are held accountable for their acts, ensuring that they follow the law and uphold the public's confidence. Examining the ways that other nations and legal systems put accountability mechanisms in place and uphold them for their judiciaries is a key component of a comparative approach to understanding judicial accountability [1], [2].

Definition of Judicial Accountability, Judicial accountability includes a number of characteristics, such as moral behavior, objectivity, skill, and conformity to accepted legal standards. It includes procedures for dealing with judicial misbehavior, making sure that decisions are made transparently, and offering channels for recourse when the court exceeds its bounds. Independence is important, but it shouldn't be mistaken for insulation from responsibility. Judicial independence is required for the judiciary to operate properly. By avoiding abuse of authority or unethical conduct and ensuring the independence of the court to fairly interpret and implement the law, accountability protects the integrity of the system. Comparative Approach, one way to look at judicial accountability is to compare how other nations handle the problem. This research takes into account differences in legislative frameworks, judicial recruitment procedures, discipline procedures, and the function of outside monitoring organizations such judicial commissions or councils [3], [4].

DISCUSSION

Legal reform guarantees that each person's rights are completely protected. The court is the final line of defense against flagrant violations of people' rights by the executive branch. The

absence of a judiciary that is impartial and responsible is a barrier in this regard. For judicial reform to succeed, accountability and independence are two essential elements. They are both the foundation of serious judicial reform. Moreover, the absence of judicial independence and accountability may endanger people's rights and freedoms. For instance, the Minister of Justice interfering with court decisions affects the independence of the judiciary. The total absence of judicial monitoring and accountability, on the other hand, can have the reverse effect and lead to judicial corruption.

As a result, this article promotes judicial accountability process reform. Justice system accountability brings up three major issues. Who is responsible? To who? For what purpose? The judiciary, either institutionally or as individual judges, is the answer to the first issue, "who is accountable," in a democratic government. For two reasons, this article has chosen not to answer that question. First off, the judiciary is defined quite broadly in Egypt. The Administrative Prosecution Office (APO), the Public Prosecution Office (PPO), the State Case Authority (SCA), the military judiciary, and the delegates to the Supreme Constitutional Court (SCC) are nonjudicial authorities with judicial functions [5], [6].

The court is the appropriate power to hold its members responsible, according to the second point. However, it is unclear who has the authority to demand that the institution answer for its deeds. This strategy need revision. The second question, "to whom is the judiciary accountable," is a contentious one. There are three general organizations to which the judiciary is answerable. First, the people may hold the court directly responsible. The foundation of this system is the election-based appointment of judges. Because it is the source of judicial authority and judicial responsibility and has the right to remove judges via elections, the public is seen as the cornerstone of judicial independence. Second, the judiciary may be considered accountable to legislative authorities (as in the U.S.), executive authority (as in authoritarian or monarchical regimes), or both (as in Germany). These procedures uphold the concept of checks and balances between the executive and legislative branches of government and the court. Third, the judiciary has a self-reporting option [7], [8].

The Constitution of Egypt reflects the unorthodox approach the country's court takes. Regarding the final question, "What holds a judge accountable," there are three categories of behavior for which judges are held responsible: disciplinary, political, and legal behavior. The Egyptian Constitution gives each judicial institution the authority to supervise disciplinary proceedings involving its own members. Theoretically, neither the executive nor the legislative branches of government are permitted to take part in such a procedure. In reality, the responsible authorities who begin disciplinary actions against judges, prosecutors, and members of other judicial institutions are the Ministry of Justice (MoJ) and its Judicial Inspection Department (JID). This discrepancy results from the fact that the Supreme Judicial Council (SJC), which approves the selection of judges, also appoints the Minister of Justice and JID members.

The American judicial system is a component of the political system. This is due to the fact that American judges either have political affiliations or seek for office. Regardless of whether they are state or federal judges, they are allowed to take part in politics. This is because of how politicians and the general public are involved in judicial independence, accountability, and nomination procedures. According to Egypt's Judicial Authority Law (JAL), political affiliation declaration by judges and the court is prohibited. However, the legislation doesn't outline any penalties for breaking this prohibition. This makes it possible for courts to impose arbitrary penalties, as the following sections demonstrate. Judges have been compelled to become involved in politics as a consequence of this lack of integration in the political process.

It is generally acknowledged that judges have some degree of immunity from civil proceedings as a consequence of their judicial duties in terms of law infractions [9], [10].

There is controversy around the question of judges' criminal immunity for crimes committed during court proceedings, but there is general agreement that judges are not exempt from civil and criminal culpability for conduct taken in their private lives. All judicial institutions, including the SCC, the regular judiciary, and the administrative judiciary, are granted judicial immunity under the Constitution and the JAL. Judges who have committed crimes won't be detained or arrested until the SJC issues an arrest warrant for them. If members of the council determine that a judge has committed a criminal offense, the SJC has the authority to order their arrest. The competent body that determines whether to hold a judge in jail or release him or her on bail is the SJC.

Additionally, judicial accountability raises the issue of judges' and the Judicial Accountability's separation of powers. The ability to keep the court responsible belongs to power. The Egyptian judiciary unites powers, in contrast to most universal jurisdictions, such those of the United States and Germany, which clearly distinguish between them. It is difficult to comprehend the judiciary's responsibility in the absence of a system of checks and balances and a separation of powers. Due to his dual judicial and administrative responsibilities, Egypt's Minister of Justice plays a variety of roles. The Minister of Justice is a member of the Cabinet on an executive level. The Minister of Justice is chosen by the President of the Republic after consulting with the Prime Minister from among members of the regular judiciary.

The character of the Minister of Justice and other senior officials who work in the ministry has an impact on the judicial side of the MoJ. All top officials are judges, and the MoJ is given a time-limited secondment to carry out their duties on their behalf. In other words, the executive branch employs judges as a means of retaliation against judges who hold dissenting opinions. Because of this, the integration of the judiciary and its Judicial Accountability Power raises a number of issues that this article aims to address. The primary goal of this article is to demonstrate how Egypt's present accountability laws are insufficient and encourage bias and subjectivity against judges. Due to the dearth of literature on this subject, research that is connected to it is based on testimony from multiple judges that was subsequently made public. The second goal of this study is to provide a solution to the problem of judicial accountability.

Reforming the laws and the accountability system are the two key components of the answer. Because of the regulations' lack of openness and clarity, the executive branch is free to disregard judicial independence. The MoJ and the SJC are two representatives of the accountability authority, both of which lack any democratic framework. As a result, the accountability rule has to be addressed. There are three parts in this article. The first discusses Egypt's present judicial accountability system, which includes complaints, trials, and disciplinary measures. It also addresses the issue of the division of powers in relation to judicial accountability. In light of the current issues Egypt is experiencing, improving judicial accountability is suggested in the second portion of this article. Finally, this article suggests a number of changes to Egypt's judicial accountability laws. These changes guarantee that the public is involved in judicial independence and accountability [11].

Procedures for Political Accountability

Depending on the kind of court violation political, criminal, disciplinary, or civil accountability processes vary. Article 73 of the JAL outlines two ways judges might participate in politics with regard to political accountability processes. First, political involvement by judges is prohibited. The JAL does not go into great depth on political involvement, especially when it comes to associated processes and penalties for offenders. The JID, however, views political

responsibility as a component of disciplinary accountability for the proceedings and applies the same standards therein. Second, judges are prohibited from running in any regional or political organization's legislative elections unless they resign from their positions. The steps and rights of judges and prosecutors who retire to contest in parliamentary elections are governed by Article 73 of the JAL. As a result, there is a legal vacuum regarding the processes for holding judges and prosecutors accountable for their political participation since the JAL does not explicitly define or identify the processes and repercussions for such behavior.

Procedures for Disciplinary Accountability

The district attorney of the PPO is the responsible authority for prosecutors, while the chairman of the main court is the appropriate authority for initiating disciplinary charges against judges. The disciplinary accountability process has various stages, beginning with a verbal warning to the offender (a judge or prosecutor), which may progress to a written notice if the offense is more severe or persistent.

A verbal warning or private admonition is given to the perpetrator in a first-instance violation by the main court chairman or the district attorney. If the judge or the prosecutor "violated [their] job obligations, or requirements of their job," they are permitted to issue such a notification. The legal definitions of a job's duties and requirements, however, are ambiguous. The necessity for specific definitions of these words arises from the fact that one of the main problems with verbal notice is that it allows for arbitrary judgments. If the verbal notice of a second offense is inadequate, a written notice is given to the offender. The problem is brought up in a complaint sent to the JID at the MoJ if the district attorney or the chairman thinks the violation was not discouraged by the warnings. Otherwise, the JID requests that the offender whether a judge or a prosecutor report to the JID headquarters for further inquiry. Investigative work is done by judicial inspectors, who are ranked higher than judges and prosecutors.

As a reference for their promotion or transfer, judges' records and files are kept by the JID, which is the competent body. With the exception of verbal notifications, it is also the responsible authority for all disciplinary investigations. If the JID did not begin the disciplinary processes, the disciplinary panel is not permitted to take any punitive action. All of the judges that serve in the JID are recommended by the Minister of Justice to investigate infractions committed by other judges. Any judge who is nominated must be of a rank that is either senior to or equivalent to the offending judge. The nominated judge must be a vice president of the Court of Cassation or president of the Court of Appeal if the offender is a judge on either the Court of Appeal or the Court of Cassation. The investigator must be a judge on the Court of Appeal or Court of Cassation if the offender is a main court judge.

For three reasons, written notice is seen as a more severe form of warning. First off, a written notice is a stain on the judge's competence, while verbal notification has no bearing on a judge or prosecutor's professional growth. Second, a verbal notice is not noted in any record, but a written notice is recorded in the file of the judge or the prosecutor up until their retirement. Third, only the court chairman or the district attorney may provide a verbal notice; the Minister of Justice or the Deputy Attorney General cannot. After receiving written warning, if the offender still violates the rules, the JID will file a disciplinary complaint with the Disciplinary Commission. The steps are identical to those for verbal and written notifications. The main court's chairman or the district attorney will inform the offender of their violation, and the offender will then argue their case. The Disciplinary Commission is then notified by the JID of the matter.

CONCLUSION

The Disciplinary Commission's goal is to remove the offender. The two most senior vice presidents of the Court of Cassation, the two most senior justices of the Court of Appeal, and the three most senior justices of the Court of Appeal make up the Commission. The seniority of the judges on both the Court of Appeal and the Court of Cassation is the key determining factor in this arrangement. If a senior-ranking judge is unable to attend the Commission, the next-in-command will take his place. As a result, the third most senior vice president of the Court of Cassation will take his place if the second most senior vice president is unable to attend. The Disciplinary Commission's procedures mirror those of a court trial. The Attorney General makes the case for the people against the judge while the defendant provides his defense. Each side argues their position before the Commission. The judge has the right to be represented by a public defender and a judge who is willing to do so throughout the trial.

REFERENCES:

[1] J. Landau, "Chevronmeets youngstown: National security and the administrative state," *Boston University Law Review*. 2012.

[2] H. J. Wiseman, "Disaggregating preemption in energy law," *Harvard Environmental Law Review*. 2016.

[3] A. O. Ruiz and C. L. Acosta, "La indeterminación del campo de la justicia transicional en Colombia. (Spanish)," *Indeterminate Content F. Transitional Justice Colomb.*, 2012.

[4] K. M. Stack, "Overcoming dicey in administrative law," *University of Toronto Law Journal*. 2018.

[5] United Nations, "Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka," *United Nations*, 2011.

[6] A. Anwar, "The Principles Of Liability On Telemedicine Practices," *Pattimura Law J.*, 2016.

[7] H. O. Yusuf, *Transitional Justice, Judicial Accountability and the Rule of Law*. 2010.

[8] A. Anwar, "The Principles Of Liability On Telemedicine Practices," *Pattimura Law J.*, 2016.

[9] E. Hilbink and W. C. Prillaman, "The Judiciary and Democratic Decay in Latin America: Declining Confidence in the Rule of Law," *Lat. Am. Polit. Soc.*, 2002.

[10] H. O. Yusuf, "Democratic transition, judicial accountability and judicialisation of politics in Africa: The Nigerian experience," *Int. J. Law Manag.*, 2008.

[11] G. J. Series, "Truth Commissions and Gender : Principles , Policies , and," *Hum. Rights*, 2006.