

JUDICIAL ACCOUNTABILITY AND THE INDEPENDENCE OF THE INDIAN JUDICIARY

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Abstract

One of the great paradoxes of the Indian Judiciary is to maintain the precarious balance between the slippery slopes of power and accountability. On one side of the spectrum are the stalwarts of judicial independence and on the other, the faction championing the cause of increased accountability. Therefore the primary aim of this essay through the medium of rigorous doctrinal research is to examine the functioning of the judiciary and provide a nonpartisan view of whether increased accountability is a need of the hour via increased legislation or rather is the current system sustainable in providing a more effective result. Through compiled research from a host of multi disciplinarian sources we shall compare the standards of accountability of the Indian Judicial System to a broader concept on a global perspective and try to identify and provide constructive solutions to resolve lacunas if found. Hopefully the authors can conclude by trying to motivate the readers into aspiring for a perfect system if not being able to achieve it.

Keywords: power, accountability, judicial independence, lacunas and increased legislation,

1. INTRODUCTION

India is the largest democracy with the lengthiest Constitution in the history of mankind. The people, as is evident from the preamble have given the Constitution to themselves and have solemnly resolved to constitute India as a Sovereign Socialist Secular Democratic Republic securing liberty, equality and justice to all its citizens. The people of India having resolved to do so; have adopted a participatory form of Democratic Republican Government to realize these above mentioned resolutions and aspirations.

Now, being a Democratic Republic the Government is of the people, for the people and by the people¹. Therefore, the responsibility of the Government is to endeavour to constitute India into an idyllic

¹Abraham Lincoln, Gettysburg Address, November 19th 1863

Sovereign Socialist Secular Democratic Republic and secure “Liberty” of thought, expression, belief, faith and worship, “Equality” of status and opportunity and “Justice” - social economic and political, to every citizen of India, in other words, to accomplish the resolution and aspirations of the people of India.

In the Grund Norm² the “People” makes themselves the “Sovereign” and confer on the organs of the Democratic Government i.e. the Legislature, Executive and Judiciary, the responsibility to make, execute and interpret the laws and rules in public welfare thereby achieving the aspirations of the people. For the obvious reason, of the “People” being the sovereign, if the Government fails then, it must be answerable to the sovereign.

The whole system of governance based on the principle of “Separation of Powers” and the judicial organ of the Government plays a major role in maintaining the constitutional balance on the workings of the Government. The Judiciary keeps a check on the functioning of the Legislature Executive and ensures that they work with the four corners of the Constitution³. This system of checks and balance brings constitutionality into the functions of the organs of the Government and makes them accountable for their work. The Constitution of India also recognises certain Fundamental and Constitutional Rights, protecting these rights lies on the judiciary, who are its protector apart from being the guardians of the Constitution⁴.

Therefore, the Judiciary, especially the Higher Judiciary consisting of the High Courts of the State and Supreme Court, is especially empowered by the Constitution with some of the most significant powers of protecting the rights of the people, guarding the Constitution, interpreting the laws in the public interest, and thereby exercising its Jurisdiction.

The justice delivery system is preserved by the judicial organ of the government consists of the Lower judiciary i.e. all the courts which are subordinate to the High Courts of the State, and the Higher judiciary i.e. the High Courts and the Supreme Court. Where, the lower judiciary is accountable to the higher judiciary, according to Article 227 of the Constitution (the High Court of the States has the superintendence over all the courts and tribunals throughout the territory in relation to which it exercises jurisdiction), while the higher judiciary has been given the power to work independently from the interference of the other organs of the Government.

The higher judiciary being the most imperative and powerful organ of the Democratic Government, ensures justice liberty and equality to every citizen of India and acts as the guardian of the Constitution and the rights of the people. The judiciary has received the highest level of respect from the people because of their confidence on its sanctity. Therefore to retain this confidence and ensure the constitutional governance of the nation, independent working of the judicial organ is an essential requisite. Hence, in India we follow the same concept of the “Independence of Judiciary” as is followed in USA and UK.

The concept of the “Independence of Judiciary” is of common law origin originated in UK and thus it has not been properly codified, as to, from whom the judiciary is independent, what is the extent of their independence and at what point does this independence end. Therefore, as a consequence the present day judiciary has been superfluously empowered behind undefined curtains under the principle of the “Independence of Judiciary”. The ultimate consequence can simply be described by a simple saying that “Power corrupts man and absolute power corrupts absolutely”⁵.

The present day judiciary having been empowered in the name of the independent working has himself expanded the horizons of its powers and jurisdiction. Today the courts in addition to performing

²Joseph Raz, Kelson’s Theory of the Basic Norm, Am. J. Juris. (1974) 19 (1): Pg. 94-111

³Registrar (Administration), High Court of Orissa vs. Sisir Kanta Satapathy 1991 II OLR 316

⁴Kesavananda Bharati vs. State Of Kerala And Anr AIR 1973 SC 1461

⁵John Emerich Edward Dalberg Acton, 1st Baron Acton, Letter to Bishop Creighton, April 5, 1887

their routine functions have also started to interfere and indulge in the legislative and executive functions of the Government. Example today its deciding the heights of the dams (the Sardar Sarovar Dam)⁶ which is an executive function or giving directions to the Government to formulate a particular law in a particular way (Vishaka v. State of Rajasthan)⁷ which is a Legislative function. All these are nothing but the outcomes of an undefined line on the limitations of the Judiciary.

The expanding prospects of the powers and authorities of the Higher Judiciary has also led to the obvious consequence of judges pandering to corrupt practices, which is evident from several recent cases. The cases involving Justice Soumitra Sen of the Calcutta High Court, Chief Justice P.D. Dinakaran of the Sikkim High Court and Justice Nirmal Yadav of the Uttarakhand High Court are all at various stages. The only reason for all this is the delegation of extraneous powers in the hands of the judges in the name of independence and lack of accountability. As Montesquieu says that, “Constant 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”⁸. Today the Higher Judiciary having been enormously empowered with authority and extended jurisdiction has started abusing its power, and will continue abusing it until it’s confronted with limits and is subjected to accountability.

The present condition is that in a system of governance built on the principles of Separation of Powers, Rule of Law and Checks and Balance the Higher Judiciary is still unchecked and there is no effective system, authority or institution to judge the judges for their malfunction and misbehaviour, if there’s, then the system is so ineffective that in last 64 years since the adoption of our Constitution there have been no impeachment or disciplinary actions against even a single one.

The Constitution makers have given the judicial wing, the charge of guarding the Constitution⁹, protecting the rights of the people and ensuring governance according to the ideal principles laid down in the Constitution. But, presently the prevailing conditions in the judiciary are not only going against these ideals, but is also adversely affecting the rights of the people at large thereby rendering the functions and workings of the judiciary in itself unconstitutional.

In a Democratic Republic, where the people are the sovereign and the Government and its subsidiaries serve this sovereign master, the organ which is entrusted with one of the most important function of ensuring “Justice for all¹⁰” must be, without any doubt, subjected to accountably. Although the independent working of the judiciary is inevitably essential in a democratic nation, but this independence obviously does not mean independence from accountability.

Any authority having some public power must also be responsible to the public. In a democratic republic like India, power with accountability of the person enjoying it, is inevitably essential to avert the debacle of the democratic system. Therefore, the need for the hour is that of balance between the “Independence of Judiciary” and “Accountability” thereby making the judges answerable for their malevolent functions. It is of utmost importance, to ensure and secure JUSTICE- Social, Economic and Political¹¹, in its true essence, to all the citizens of India and this is what the authors will be discussing in the paper below.

But before moving into the theoretical problems regarding independence and accountability and their proposed solutions it is important to understand the concept of ‘independence of judiciary’ and its

⁶S.L.P. (C) No. 3608/1985

⁷Vishaka v. State of Rajasthan AIR 1997 SC 3011

⁸Montesquieu: The Spirit of Laws: Book 11

⁹Kesavananda Bharati vs. State Of Kerala And Anr AIR 1973 SC 1461

¹⁰ Nelson Mandela Inauguration Speech, May 10, 1994 http://www.africa.upenn.edu/Articles_Gen/Inaugural_Speech_17984.html (Accessed on 20/1/14)

¹¹The Constitution Of India, Article 38 (1)

relation with 'Accountability' in the context of judicial functioning of the Government. Both these concepts have to be studied together to draw a proper line of balance between the two.

2. INDEPENDENCE AND ACCOUNTABILITY

The concept of "Independence of Judiciary" originated from the United Kingdom's. USA also adopted this principle, in Article III of the American Constitution which states that "The Judges, of the Supreme and inferior courts shall hold their offices during good behaviour and shall, at stated times, receive for their services, a compensation which shall not be diminished during their continuance in office." When the people of India adopted the Constitution, the principle of Independence of Judiciary was taken from USA and UK and therefore judicial independence is protected under various provisions of the Indian Constitution.

Although "Independence of Judiciary" is a principle adopted by most democratic nations, the meaning of independence of the judiciary is still vague even after years of its existence. Our constitution by way of the provisions just talks of the independence but nowhere is it defined what actually constitutes this independence. The constitutional provisions which ensure the independence of judiciary in India are:-

1. **Article 50** which contains the Directive Principles of State Policy providing the provision for separation of judiciary from executive. It provides that "The State shall take steps to separate the judiciary from the executive in the public services of the State." The objective behind the Directive Principle is to secure the independence of the judiciary from the executive.
2. **Art. 211** of the Constitution provide that "No discussion shall take place in the Legislature of a State with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties." A similar provision made in Art. 121 provides that "No discussion shall take place in Parliament with respect to the conduct of any Judge of the 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 removal of the Judge." Therefore, the Constitution of India insulates the Supreme Court and the High Court's from political criticism, and thus ensures their independence from political pressures and influence.
3. **Article 129** provides that the Supreme Court shall have the power to punish for contempt of itself. Likewise, Article 215 lays down that every High Court shall have the power to punish for contempt of itself.
4. **Article 125** provides the provisions about the salaries of the judges. The salaries and allowances of the judges are also a factor which shows that judges are independent as their salaries and allowances are fixed. They are paid from the Consolidated Fund of India in case of Supreme Court judges and the Consolidated Fund of the state in case of High Court judges. Article 125(1) provides that "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." And Article 125(2) provides "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 nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment."
5. **Article 124(2)** provides that the retirement age of a Supreme Court Judge is 65 years and Article 217(1) provides that the retirement age of a High Court Judge is 62 years. Moreover, Article 124(4) provides that "A Judge of the Supreme Court shall not be removed from his office except by an order of the

President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of the House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.”

6. **Article 138 (1)** Powers of the Supreme Court cannot be taken away by the Parliament. Parliament can only add to the powers and jurisdiction of the Supreme Court but cannot curtail them. Making the judiciary independent from Legislature.

The principle of “Independence of the Judiciary” is based on the doctrine of “Separation of Powers”. The doctrine talks about the independence of the judiciary from the interference of the Executive and the Legislature. Moreover, as the judiciary is empowered to interpret the laws and render judicial decisions; the independence of judges is an imperative component for its appropriate working as judges may sometimes be subjected to improper influence, inducement, pressures, threats or interference by litigants or any other criminal elements of society.

Therefore the independence of the judiciary may be defined as the independence of judges from any external factors which interfere with the performance of their functions in an unbiased manner. So the independence of the judiciary can be understood as the independence of the institution and also the independence of judges which forms a part of the judiciary.

The immunities provided to judges by the Constitution are to ensure judicial independence intended for the benefit of the citizens and not for the fulfilment of their personal interests. Taken as a whole it may be said that these immunities provide unrestrained and boundless powers which further adds to the probability of arbitrary and unfair use of these constitutional powers, privileges and immunities. The misuse of the immunities has actually occurred many a times has also led to a call for making provisions providing a binding standard of conduct for the judges and better accountability from the judiciary (example the February 2004 Incident)¹².

Accountability and transparency are the very essence of a democratic system of governance. Like every other organ, the judicial arm must also be accountable. To be “Accountable” is to be reasonable, answerable and to take responsibility of one’s own functions, not to oneself, but to some external body. Example the lower Judiciary under Article 235 is accountable and answerable to the respective High Court of the State; on the other hand it also enjoys the privilege to work independently, away from the interference of any other organ or institution of the Government.

But the same can’t be said in the higher judiciary. The higher judiciary suffers from an imbalance where independence outweighs accountability. In the name of accountability the only way by which a judge of the higher judiciary can be made answerable or be brought to the books is by the process of impeachment. But this procedure is so complicated that the result has been that not a single case of impeachment against a Judge of the Higher Judiciary has come to fruition. Therefore the Constitution in the name of accountability provides an almost impractical procedure and for its impracticality it may be inferred that the higher judiciary of our democratic nation is not accountable to anyone, not even the sovereign people.

Therefore to fill up this lacuna in the democratic setup the time has come for urgent enactment of provisions and establishment of a constitutional institution to which the higher judiciary is answerable making the judicial organ transparent, like all the other organs of the Government. But the standard of accountability for the judiciary should be different from that expected from the executive or any other public institutions. Expectation of independence and impartiality are much higher than any other organ. Deciding the cases before them in an expeditious and fair manner and giving reasoned orders is another aspect of such

¹²Fali S Nariman, The State of the Nation, Pg. 353

accountability. The strength of any judicial institution depends upon the standards of accountability it sets, higher the standard, the more respect and confidence it garners. Thus, one needs to recognise and critically analyse the factors or reasons and ramifications that are responsible for the failure of accountability in the higher judiciary so that they may be amicably resolved and higher standards of transparency are achieved.

3. PROBLEMS AND PROPOSED SOLUTIONS

There are several problems that have been responsible for the failure of accountability in the higher judiciary, such as:

3.1 Appointment of Judges:

According to The Chief Justice of India, P Sathasivam, “Judicial accountability is fostered through the process of selection, discipline and removal found in the Constitution. The success of a democracy largely depends upon an impartial strong and independent judiciary endowed with sufficient power to administer justice. Although both judicial independence and judicial accountability are vital for maintaining the rule of law, they are sometimes projected as conflicting phenomenon. Judicial accountability has become an indispensable counterbalance to judicial independence. In that connection, accountability is fostered through the process of selection, discipline and removal found in the Constitution and the statutes in various judicial systems. Without accountability, there is a little hope for the rule of law. Thus, the need for judicial independence is not for judges or the judiciary per se but for the people”¹³

In the present scenario, the court wields vast political powers, either because of a weakened political class or over strengthened judges. A weakened political class over the last four decades has meekly surrendered to judicial supremacy and the judiciary has tried to become even superior to the Constitution since the present perception is that the Constitution is what the judiciary says it is¹⁴. The incompetent legislature has often found it convenient to avoid decision making, leaving for the courts to decide. It is in this background that we need to examine the system of appointments in the Superior courts, i.e. the Supreme Court and the High Courts, which interpret and apply the Constitution. Does the system of judicial appointments meet the requirements of democratic accountability?

Apart from the self-conferred power to strike down amendments to the Constitution which violate of the basic structure of the Constitution by the Kesavananda Bharti Case¹⁵, the superior courts have the power to strike down laws made by Parliament and the state legislatures also. Laws can be struck down on two grounds:

(1) If they violate fundamental rights, or

(2) If the concerned legislature lacks ‘legislative competence’ (for instance, a Union law made on subjects which falls within the state list and vice versa).

This is a necessary feature of a system of checks and balances. But our judges are not elected and once appointed, are virtually irremovable. Surely, the system of checks and balances must apply to the process of judicial appointments also.

Article 124 of the Constitution reads:

“1. There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than thirty other judges.

2. Every judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the judges of the Supreme Court and of the High Courts in the

¹³ “CJI defends Collegiums system of appointment of judges”, The Hindu, NEW DELHI, September 14, 2013

¹⁴ Charles Evans Hughes, Addresses and Papers, Pg. 139 (1908)

¹⁵ Kesavananda Bharti Supra Note 2, at Pg. 6

states as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a judge other than the Chief Justice, the Chief Justice of India shall always be consulted: Provided further that –

- (a) A judge may, by writing under his hand addressed to the President, resign his office.
- (b) A judge may be removed from his office in the manner provided in clause 4.

4. A judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of the House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.”

It is important to note that removal for ‘misbehaviour’ refers to personal misbehaviour, not for constitutional transgressions. It is, therefore, essential that there is public accountability in the appointment of judges.

In the S.P. Gupta case ¹⁶(the First Judge’s Case, 1981); the Supreme Court held by a majority that amongst the opinion of three constitutional functionaries, the opinion of the Chief Justice of India does not enjoy primacy over those of the other two in the matter of appointment of judges. This view paid due regard to plain language, the word ‘consultation’ was held not an ambiguous word at all.

The Second Judges’ Case¹⁷, i.e. Supreme Court Advocates on Record of 1993, held that ‘The primary aim must be to reach an agreed decision taking into account the views of all the consultants, giving the greatest weight to the opinion of the Chief Justice of India who is best suited to know the worth of the appointee as the technical competence of lawyers could best be appraised by judges, it is also essential for ensuring the independence of the judiciary, and thereby, to preserve democracy”.

In this case the nine judge bench of SC also laid down a new system for making appointments of judges in HC and SC. It introduced the “Collegium” system for the appointment of judges. This system gave enormous powers to the Collegium of senior judges of the SC to select and make recommendation to the government for appointments. This means that the opinion of the Chief Justice of India doesn’t mean the individual opinion of the Chief Justice of India; it meant his opinion formed collectively, that is to say, after taking into account the views of his senior colleagues, who are required to be consulted by him for the formation of his opinion.

The whole process of appointment of the judges presently followed is entirely ad hoc and arbitrary; there is no transparency in the present appointment process. The process has led to political favouritism when appointments were in the hands of the executive and nepotism when it has been in the hands of the judiciary. Those who created the Collegium do not acknowledge the constitutional overreach which the judiciary has done in asserting primacy. Every system needs good men and women to work in it and this is what the present system has exactly failed to provide to the nation.

One of the solutions of this problem of accountability in the process of the appointment of judges can be the creation of a new constitutional body for the sake of securing independence of the judiciary. Over years the idea of a National Judicial Commission has surfaced from time to time and now with the “JUDICIAL APPOINTMENTS COMMISSION BILL, 2013” the consensus is around the corner. The preamble of the proposed bill provides for the composition of a Judicial Appointments Commission for the purpose of recommending persons for appointment as Chief Justice of India and other Judges of the Supreme Court, Chief Justices and other Judges of High Courts, its functions, procedure to be followed by it

¹⁶SP Gupta vs. UOI AIR 1982 SCC149

¹⁷Supreme Court Advocates on Record vs. UOI1993(2)Suppl.SCR 659

and for matters connected therewith or incidental thereto.¹⁸ Therefore the bill can hopefully prove to be a solution to the problem.

3.2 Contempt of court

Section 2 of the Contempt of Court Act, 1971 defines “Contempt of Court”, “Civil Contempt” and “Criminal Contempt”. Section 2 reads:

“2. **Definitions.**—in this Act, unless the context otherwise requires,—

- (a) “Contempt of court” means civil contempt or criminal contempt;
- (b) “civil contempt” means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;
- (c) “Criminal contempt” means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which—
 - (i) Scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or
 - (ii) Prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
 - (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;”

The purpose of the contempt of court act is to protect the independence of the judiciary and not the dignity of judges. If a person commits a contempt of court then he commits a wrong against the court or the position which a judge holds, not against the judge himself. Therefore a contempt of court may be committed even by a judge. For example if the judge of a subordinate court disobeys the order of direction of the High Court then the subordinate court judge has committed a contempt of court and may be prosecuted for the same.

As apparent above, the definition of criminal contempt is so wide that its jurisdiction can be very easily invoked and unfortunately, judges do invoke it generally not to protect the independent working of the judiciary but to protect them self(as seen in the Arundhanti Roy Contemptuous Affidavit Case¹⁹). It may be normally seen that the judges today use the contempt as a shield to protect themselves from any kind of criticism or controversy.

The actual problem lies in the definition of the contempt itself. Section 2 of the Contempt of Court Act, 1971 which provides that publication of any matter or doing of an act which scandalises or tends to scandalise the authority of the court is a criminal contempt. The word “Scandalise” has a very vague meaning and has generally been interpreted widely by the courts. The ultimate consequence of this is that people don’t file complaints against a judge for his misconduct because of fear of contempt proceedings against them if they could not prove the judge guilty. Therefore the contempt of court has become a big obstruction in making the judges accountable for their acts and this can be solved by amending the Contempt of Court Act, 1971 and thereby making it more precise and clear.

The Contempt of Courts (Amendment) Act, 2006 made an important addition to the Contempt of Courts Act, 1971, to provide for truth as a valid defence in contempt proceedings. But the 2006 Amendment is only a half-hearted attempt to ensure judicial accountability, and realise the objectives of the Contempt of Courts Act.²⁰ For proper accountability some more alterations are must. Parliament Standing Committee on Home Affairs made the following suggestions of amendment in the Contempt of Courts (Amendment) Bill, 2003:

¹⁸Raju Ramchandran “Judicial supremacy and the collegiums”, [Http://india-seminar.com/2013/642/642_raju_ramachandran.htm](http://india-seminar.com/2013/642/642_raju_ramachandran.htm) (Accessed on 21/12/13)

¹⁹AIR 2002, SC 1375, Order dated 6th March 2002

²⁰V. Venkatesan, “Truth As A Defence: How Effective Is The Amendment Of The Contempt Of Courts Act?”, www.Commonlii.Org/In/Journals/Injlcconlaw/2008/5.Pdf (Accessed On 25/12/13)

- a) Accused should be given reasonable opportunity to defend himself according to law.
- b) Cases of contempt should not be tried by courts but by an independent commission of concerned district.
- c) The Act should be amended to remove words, 'scandalizing the court or lowering the authority of the court' from the definition of criminal contempt

3.3 Impeachment

As per the Law of the Land the only means by which a sitting Judge can be disciplined for his insidious acts is visa vie Article 124(4) and Article 217(1) (b) (in case of High Court Judges) under Chapter 4 and 5 of the Indian Constitution. The provision mandates a Motion of Impeachment requiring the signatures of not less 100 Members of the Lokh Sabha or 50 from the Rajya Sabha. From here onwards the procedural law begins its course with the Motion being stayed by the Speaker subject to a detailed an inquiry by three member committee stipulated under Sec 3 (2) of the Judges Enquiry Act, 1968.

To ensure that the principles of Natural Justice are abided too the accused is given ample opportunity, under the principle of "*Audi Alterm Partem*²¹" to present his side of the case under Sec 3(4) of the Judges Inquiry Act. If still unable to prove his innocence, then either the Chairman of the Committee or the Speaker under Sec4 (3) shall submit a report recommending the removal of the Judge to Parliament. After this the Constitutional provisions under Article 124(4) antes in, whereby the judge can be removed from his post by a two third majority in both the houses constituting the only current means of disciplinary action within the territory of India.

The law purposely defined in black and white was actually supposed to act as a deterrent to prevent the judiciary from practicing absolute despotism has ironically become their shield since the process of Impeachment is a task fit only for the audacious and since it's the only medium of enforcing disciplinary action, the harm this punishment evokes can not only besmirch the name of a judge whom in certain cases erroneously makes a bad call but being a double edged sword destroys his reputation for all the annals of time even if he's found innocent.

Since the filing of this motion requires the signatures from either 100 Members of the Lokh Sabha or 50 members from the Rajya Sabha a task as per the history of our nation it is only accomplished if

- a) The documentary evidence if so infallible it needs to be recognised or
- b) The arbitrary act has garnered so much attention that it's amalgamated into media spectacle.

The reason for the fulfilment of either of these criterions has become an abject necessity as the political class on a general basis are themselves reluctant to persecute a sitting judge. The logic upon closer examination seems seamless as, politicians themselves are chosen from a district. Each district consists of people each with their own job, family problems, and most importantly disputes. Since the only remedy to solve these disputes lies with the Judiciary therefore if a corrupt judge upon finding that "X" politician of "Y" district has signed an impeachment motion against him, (till an inquiry is conducted under the Judicial Inquiry Act, 1968) can make the life of that politicians a living hell merely by pronouncing judgements which are arbitrary and against the people of his district. This in itself will dissuade a politician because a disgruntled district automatically translates to a boot in the next election. Alternatively when a corrupt judge is floating in deep waters which are outside his purview or control (power of impeachment lies with the Legislation) he will seek all refuge including the patronage from politicians in exchange for professional security.

Another detriment to this process is the abject politicisation during the process of impeachment which in itself fuelled by the media turns from a simple removal proceeding into an out of control debacle laced with its own drama regarding constitutional validity transcending it into one of the primary causes which hinders

²¹Arvind P Datar, Commentary on the Constitution of India, 2nd Edi 2007 Pg. 108

the objectivity of the politicians as seen in the Justice Ramaswami Case²².

To curb this phenomenon overtime, since we have already seen its spectacular results, the Judicial Accountability and Standards Bill was introduced destined by the knight in shining armour but unfortunately that too has been corroded by political mismanagement

4. THE JUDICIAL ACCOUNTABILITY BILL, 2010: AN OVERVIEW

Present Judicial Accountability Bill

*“Something is rotten in the Allahabad High Court”*²³

Participation is the bedrock of an active and healthy parliamentary democracy. Whether it's participation in the Legislative procedure through elections or showing our dissent via the NOTA button. Our constitution enshrines the sacrosanct functioning of the 3 branches as essential ingredients towards a whole and idyllic democracy; thereby participation even in the judiciary via this new bill through the complaint mechanism is a welcome initiative. As Article 14 makes all citizens equal (except in J&K) before the law²⁴ it's only logical that the removal/disciplinary mechanism should not only be initiated indirectly by our Parliamentarians via the impeachment motion but by the common citizens as well.

Mode of Functioning

Approved by the Cabinet on 5th October 2010 aiming to replace the Judges (inquiry) Act 1968 the Judicial Accountability Bill, 2010 has come under heavy fire from both the civil as well as the legal fraternity. Unilaterally aggrieved, however by different provisions of the bill (the civil society fuming over the exclusion of RTI, while the legal fraternity shocked at the strict scope of Section 2(1)) they have unanimously and vociferously proclaimed that the bill in its present scenario made in haste and gusto is a cure worse than the malady.

Therefore the authors keeping in mind the judgments of Ex- Captain Harish Uppal vs. UOI²⁵ (it can be easily realised that this weapon does more harm than justice; sufferer is the society, public at large), SP Gupta vs. UOI²⁶ (independence of the Judiciary is the basic feature of the Constitution) and the Latimer House Principles of 2003 (the oversight mechanism must not hamper judicial independence) list the following positives and negatives of the bill in order to create awareness and more importantly highlight the flaws which may hopefully be rectified expeditiously.

Positives

1. **Committees**- the bill under Chapter 5 and 6, seeks to establish 3 committees namely a Scrutiny Committee (at the State Level), a Judicial Oversight Committee (at the Central Level) and an Investigation Committee. Through the establishment of these committees the Legislature is sending out a positive message that prospectively even a single valid complaint is equivalent to an impeachment motion as Rule of Law envisaged in Article 14 (except in the State of J & K) needs to be followed and though Judges may not come under the ambit of Government Employees but as per Sec 21²⁷ they are Public Servants and thereby responsible to society at large.

²²“Judicial integrity: Lessons from the past”, The Hindu, New Delhi October 21st 2009

²³Krishna Ashram Educational Trust vs. District Judge Allahabad AIR 1995 All 415

²⁴ P.M. Bakshi, The Constitution of India pg19

²⁵Ex-Captain Harish Uppal vs. UOI, AIR 200, SC 739(CB)

²⁶SP Gupta vs. UOI Supra Note 2, at Pg. 11

²⁷ Indian Penal Code, 1860, Sec 21

2. **Stoppage of Work** – Under Sec 33 of the bill the Judicial Oversight Committee (prospectively referred to as JOC) has been empowered to stop assigning judicial work to the accused in the interest of impartial scrutiny. This provision is a welcome edition previously held in the Judicial Inquiry Bill 1968 under Sec 21, this allows the Attorney General (now a member of the JOC) to perform his duty to the utmost of his integrity without worrying about the ramifications if the Judge is acquitted.
3. **Time Limit for Investigation**- defined under Sec 29(4) a new edition in the form of a time limit (6 months) for the conduction of the investigation starting from the date of receipt of the complaint with a reasonable extension of 6 more months to be granted by the JOC will further benefit the judges currently isolated from doing their work under Sec 33 but will also help in the conduction of the investigation in a judicious and timely manner.
4. **Minor Punishments**-the new form of punitive mechanism to discipline judges though controversial (since the constitution on provides impeachment as a form of disciplinary action under Article 124(4)) is a welcome edition as it not only allows
 - a) The benefit of doubt to a judge who might have taken out an erogenous order unconsciously or for bonafide purposes
 - b) In case of habitual complaints since each complaint is recorded by the JOC under sec 20 it will only further help strengthen their cause to approve his removal.

However the authors contend that this is a half toothed measure as the bill in its current form only allows minor punishments to be limited to guidance's and advice. Either these should be made more stringent as seen in the US where voluntary retirement²⁸ is a form of disciplinary action or in France where the Council of State can sanction a demotion²⁹ or have none at all.

Negatives

- 1) **Need of a Constitutional Amendment** -as per Article 124(5) the Legislature only has powers to formulate procedural laws regarding

- a) Presentation of an address
- b) For investigation and proof of the misbehaviour/ incapacity of a Judge

As the bill seeks to introduce alternative remedies to prevent judicial malpractice, the provision itself is inconsistent with A 124(5), which explicitly restricts the scope of Legislative intervention to procedural laws relating of investigation and address. Hence a constitutional amendment is necessary to support these alternative remedies (like advises and warnings) otherwise the act can go beyond its mandated powers and ultimately lead to substantive ultravires.

- 2) **Definition of Misbehaviour**- following Jeremy Bentham's definition of law³⁰ the Legislature hoped to provide a strict definition of misbehaviour in Sec 2 (j) but alas like Bentham's definition this to suffers from the same structural flaw namely that -

- a. It limits the scope of the term making it exhaustive covering only limited ground
- b. By defining the term it opens the doors to further prospective loophole currently unknown

Thereby it keeps prospective incidents that may constitute misbehaviour out of the acts ambit (unless by express amendment the term is added). Even the Supreme Court in Krishna Swami vs. UOI³¹ refused to give a statutory definition as:

"The Constitution or the Act did not define 'misbehaviour'. Several international forums for judicial independence suggested to define misbehaviour but to no avail. No legislature in any democratic country

²⁸Judicial Conduct and Disability Act, 1980 ,Sec 28 U.S.C

²⁹ The Constitution of France, 1958 Article 45

³⁰Frederick Schauer, "Thinking like a Lawyer a new introduction to legal reasoning"

³¹Krishna Swami vs. UOI AIR 1993 SC 1407, JT 1992

attempted to do so as it would appear to be difficult to give a comprehensive definition to meet myriad situations.”

Therefore the authors ardently pray that either this restrictive scope should be amended or hope that the given definition can meet the expectations of not only the current but also the future generations.

3) **Problems with the Declaration of Assets**

- a) While making it a statutory requirements that assets of a Judge need to be disclosed (as per Section 4), the bill is silent on Judges providing justification about the increase or decrease in their assets. This in hindsight is extremely precarious as in the absence of a statutory provision the CIC recommendation to the RTI filed by Subhash C Agarwal³² will prevail whereby the SC refused Judges to give details about the change of their assets hence annually creating a floodgate where both the legal fraternity and civil society alike shall file complaints (many a times frivolously) to question the change as Sec 4(4) seeks Judges to provide updated copies of their asset. Not only will this further overburden the committees, increasing the likelihood of frivolous complaints but also in the long term promote opaqueness ultimately tarnishing the reputation of an already tainted Judiciary.
 - b) Another serious problem is regarding Sec 5 (a) of the act as Judges shall if the act is passed be compelled to disclose their entire asset related information to the competent authorities and visa vie it shall be rendered into public domain via the internet. This too poses a double edged problem because of the exclusion RTI. On one hand if the complete information is disclosed there are serious threats of misuse of non-asset related information like PAN card no. etc., similarly if the entire information is not disclosed it would go against the spirit of the act thereby rendering the section futile. The amicable solution would have been the non-disclosure of non-asset related information to the public with if (RTI was allowed) provisions to disclose such information on a need to know basis.
- 4) **Need of a 2 Tier System-** The bill provides the constitution of 2 primary committees namely the Scrutiny Panel under Sec 10 and the Judicial Oversight Committee under Sec 17. While providing the Panel with powers to scrutinize the complaint as per the Sec 14 of the CPC, the Panel only serves the purpose of a post master as –
- a) If sufficient grounds after scrutiny is found can only record the reasons and send the report to the Judicial Overview Committee as per Sec 12 (a)
 - b) If the complaint is found to be vexatious or frivolous it has no power to take action only the power to record its reasons and submit its findings to the Judicial Oversight Committee as per Sec 12(b)
- Since the only vestigial function remaining with the committee is to scrutinize the complaint and that too is already being performed by the Investigations Committee then apart from acting like a conduit i.e. a middleman between the Central Committee and the aggrieved party the committee neither serves a function nor a purpose.
- 5) **Incapacity** – Under Sec 7 of the bill incapacity has been made a ground for removal of a judge from his designated post. While a laudable effort has been made on behalf of the legislature by defining incapacity in Sec 2(d), the procedure for determination of this so called incapacity remains undefined further creating another hurdle.
- 6) **Investigation Agency** – Presumably the most important wing in establishing the guilt of a judge is unfortunately also the most structurally flawed due to the presence of Sec 22(2) which provides that not only the composition of the investigation agency but also the tenure of its members will be decided by

³²Supreme Court Of India vs. Subhash Chandra Agarwal & Anr W.P. (C) 288/2009

the JOC (an act which will not only over politicize the appointments procedure but also make the agency a hotbed for favouritism and nepotism) allowing its members to reign like despots if they have the approval of the JOC. This further hampers the biasness of the investigation as it directly places the members of the investigative branch at the mercy of the JOC and can only lead to further opacity.

7) **Selection Criterion is creates Conflict of Interest**

a) **At the State Level the Scrutiny Committee**

The very onset of the act in Sec 11(2) reeks of biasness as the committee at the state level i.e. the Scrutiny Panel consist of an Ex-Chief Justice and 2 other serving judges of the same court. This provision is not only counter intuitive of the act -

- a. Since there is a high chance of personal bias due to presiding officers affinity with the accused
- b. Another serious threat is the chance of omission of evidence or biasness at the basic level of the investigation since the Scrutiny Panel alone presents the report to the Judicial Oversight Committee creating further apprehension.
- c. The reputation of the 2 serving judges are themselves at stake because despite the best of their intentions ultimately and undeniably their reputation will get tarnished and this too in the long run will undermine the entire objective of this act.

Therefore this provision not only violates the principles of natural justice i.e. the maxim of *nemo iudex in re sua*³³ (the authority deciding the matter should be free of bias) but also is a step backwards from the precedent set in the SC judgment *‘There was a real likelihood of a bias for the mere presence of the candidate on the Selection Board may adversely influence the judgment of the other members’*³⁴. Because after all as Lord Howard has succulently observed *“The fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seem to be done”*³⁵.

b) **At the Central Level the Judicial Oversight Committee**

The inclusion of the Attorney General as the only non-judicial personality within the JOC creates a conflict of interest even though the reports are confidential, since the Attorney General is a representative of the Central Government and therefore have to regularly attend the court of the accused (unless there is a stoppage of work under Sec 33 of the bill).

8) **Exclusion of RTI except as provided by Sec 34(1) (b)** – Arguably the most controversial provision is the exclusion of the Bill from the ambit of the RTI, along with providing a whitewash proviso that the Judicial Oversight Committee will have the discretion of publishing the documents in the public domain under Sec 34(1) (b). Since no amicable reason is provided by the Legislature for the exclusion and under Sec 30 of the bill the investigating agency has power to form its own rules for investigation, the authors can safely deduce that it may have been a bonafide mistake on behalf of the Legislature forgetting that the long title of the act itself asks for the creation of a “credible and expedient mechanism for investigation”!!!³⁶

9) **Tenure/Removal of Committee members** – The bill envisages an ombudsman to reduce judicial malpractice itself suffers the flaw that neither the tenure nor the process of removal of any of the officers defined. This not only displays the legislatures haste in indoctrinating this bill into an act but further if passed would allow the appointed officers to reign as despots as silence of statutory provision automatically translates into life tenure.

³³ <http://www.legalindia.in/tag/maxim-nemo-judex-in-re-sua> (Accessed on 10/1/14)

³⁴ A.K. Kraipak v. Union of India 1969 (2) SCC 262

³⁵ R v Sussex Justices, Ex parte McCarthy (1924) 1 KB 256

³⁶ The Judicial Accountability Bill, 2010, Long Title

- 10) **Behind closed doors** – Sec 29(2) of the bill requires the conduction of investigations, due to the gravity of the offence behind closed doors. Quite possibly a retrograde step as compared to the Judges Inquiry Act, 1968 coupled with the exclusion of RTI will only further seek to exasperate the current situation. While the authors accept as well as respect the fact that incase of malafide or vexatious complaints the reputation of a judge should not be besmirched upon his resumption of office but the disclosure of such finding will
- a) Clear the air of controversy surrounding the dismissal of the complaint since “Sunlight is the best disinfectant³⁷”.
 - b) also further increase the respect judge if the complaint is found vexatious in the public domain
- 11) **Reduction in Sentencing** – sentencing for frivolous and vexatious complaints is a modicum to reduce the flood gate of complaints into a narrow stream however the provisions of Sec 53 transform this stream into a distant mirage. While the authors accept the contention that “*A man that does not fear punishment little regards crime*”³⁸
We still believe that “*the punishment should fit the crime*”³⁹ hence there should be a reduction from 5yrs RI as per the current act to 6 months imprisonment and the fine from 5 lakhs to Rs 25000/-.
- 12) **Judicial Standards**-The bill included 18 clauses in Chapter 2 which formulates the standards a judge is expected to adhere to. Of the 18, 14 clauses have been derived from a Full Bench Meeting in the Supreme Court on September May 7th, 1997 entitled Reinstatement of Values of Judicial Life⁴⁰. The question which therefore arises is whether the formulation of such rules are inconsistent with Article 19(1) a as well as a hindrance towards the independence of the judiciary which forms the core of the basic structure⁴¹.

5. COMPARATIVE ANALYSIS OF JUDICIAL ACCOUNTABILITY

Prior to the commencement of this article the authors would like to restrict the scope of this section to only countries which fall within Common Law Jurisdiction and would only include developed countries as one should always move forward rather than back.

- 1) **Canada** The statutory provision under the Judges Act, 1985 under Sec 59 creates a Federal body called the Canadian Judicial Council “to promote efficiency, uniformity, and accountability and to improve the quality of Judicial Services in the Superior Courts of Canada”. Any member of the public including the Attorney General is allowed to file a complaint before the council under Sec 63(2) of the act. The Council is mandated the power to initiate inquires under Sec 63 of the act and upon finding substantive grounds can refer the matter to an Inquiry Committee. The inquiry committee consists of 2 members of the Council and a lawyer appointed by the Minister of Justice of Canada. The accused is given a chance to present his case under Sec 64 with powers to cross examine, being heard and adducing evidence. Upon the receipt of the report the Full Council i.e. the Chief Justice of Canada along with the associate Chief Justices under Sec 59 (a) (b) (c) and (d) mandate if the report is to be dismissed or recommend impeachment to the Parliament of Canada under Sec 71.
- 2) **United Kingdom** Along with the Constitutional Reforms Act, 2005 the Judicial Discipline (Prescribed Procedure) Regulations 2013 (which revokes the Judicial Discipline (Prescribed Procedure) Regulations 2006 and the Judicial Discipline (Prescribed Procedure) (Amendment) Regulations 2008), govern the

³⁷Louis Brandeis, *Other People's Money—and How Bankers Use It* (1914)

³⁸Norman Macdonald, *Maxims and Morals Reflections*

³⁹W.S. Gilbert, *The Mikado*

⁴⁰<http://indialawyers.wordpress.com/2009/09/02/%E2%80%9Crestatement-of-values-of-judicial-life-code-of-conduct-adopted-in-the-chief-justices%E2%80%99-conference-in-december-1999/>(Accessed on 20/1/14)

⁴¹Indira Gandhi vs. Raj Narain , 1975 AIR 1975 SC 2299

conduct as well as the independence of Judges. Under Sec 108 (1) ⁴² the Lord Chancellor even has disciplinary powers to suspend a judge but subject to the restricts under Sec 108(4) (a) (b) (c) of the act (i.e. he must have been subject to criminal proceedings, serving a sentence imposed in criminal proceedings and must be convicted or subject to proscribed procedures in relation to the conduct of constituting an offence)⁴³. Under the regulations in Sec 4(1) a Judicial Conduct Investigation can be constituted, ⁴⁴the officers chosen by the Lord Chancellor, Lord Chief Justice and President of the Sessions Court of Northern Ireland. By virtue of Sec 6 any member of the public can file a complaint with the Judicial Conduct Investigation Office and adequate investigations shall be carried out by a separate Disciplinary Panel⁴⁵. They directly answer to the Lord Chancellor or Lord Chief of Justice (thereby removing the chance of biasness or undue pressure from the JCI) who then based on the investigation report may dismiss the complaint ⁴⁶or initiate disciplinary proceedings⁴⁷. The Lord Chancellors decision is then informed to the accused via the JCI⁴⁸. Hence in the U.K. apart from impeachment, punitive punishments also constitute viable alternatives without compromising the independence of the Judiciary.

- 3) **United States** Due to separate procedures for Judicial Discipline implemented in each of the 53 states this part of the Article is restricted to only the Federal Judges of the Union.

Federal judges as per Article 2, Sec 4 can only be removed on grounds of misbehaviour (rightly not defined) treasons, bribery and other high level crimes. Though the statutory provisions are vague on the positive side it enables a wider ambit for which a judge can be remedied as compared to India where The Judicial Accountability Bill, 2010 defines both “misbehaviour” and “incapacity”. The procedure for investigation is defined Judicial Conduct and Disability Act, 1980 and any member of the public can file a complaint with the Clerk of the Courts of the Circuit⁴⁹. The Chief Circuit Judge looks into the complaint and if credible can constitute a Special Committee to investigate into the matter⁵⁰. The findings are submitted to an independent Circuit Judicial Council ⁵¹whom upon receipt of the complaint can either dismiss ⁵²the complaint or further refer it to the Judicial Conference⁵³. The Circuit Judicial Council is vested with powers to implement mild forms of punishments in the form of temporary suspension of work, informal counselling or issue censure or reprimand. The Judicial Conference upon finding meritorious claim can issue a recommendation for impeachment of the accused⁵⁴. The difference between the Indian and US system lies in the process of impeachment where a Judge in US is found guilty by 2/3rd majority in House of Congress (Lower House) he is impeached (15 so far) and if guilty in the Senate (Upper House) by 2/3rd majority is convicted (7 so far), ⁵⁵.

⁴²Constitutional Reforms Act, 2005

⁴³ <http://www.legislation.gov.uk/ukpga/2005/4/section/108>(Accessed on 15/1/14)

⁴⁴Judicial Discipline (Prescribed Procedure) Regulations 2013

⁴⁵Sec 11 Judicial Discipline(Prescribed Procedure) Regulations 2013

⁴⁶ Sec 15(a) ibid

⁴⁷ Sec 15(b)ibid

⁴⁸ Sec 16 ibid

⁴⁹Judicial Conduct and Disability Act, 1980Sec 28(a) § 351

⁵⁰Sec 28(b) ibid

⁵¹Sec 28(c) ibid

⁵² Sec 28 (a)(1)(b) Judicial Conduct and Disability Act, 1980 §354

⁵³Sec 28 (a)(1)(a) ibid

⁵⁴ Sec 28(b) Judicial Conduct and Disability Act, 1980§ 355

⁵⁵Mira Gur-Arie Russell Wheeler, Guidelines for Promoting Judicial Independence and Impartiality Pg 138

Judiciary's Code of Conduct

Adopted in 1973, the code is non-binding in nature and forms the edifice on the basis of which both the Circuit Judicial Council and the Judicial Conference decide gross misconduct carried out by a Federal Judge as well as its adequate punishment⁵⁶.

Conclusion

One must realize that in countries like India the judiciary is relied upon by the citizenry to solve many of their difficulties and therefore consistent standards of accountability that give the Indian judiciary this strength are of utmost importance. The moment judicial accountability wavers it creates a vacuum where, both the political class and vested interests would take advantage of the conundrum to further reduce the credibility of the judiciary whereas, an accountable judicial institution can only lead to a stable political atmosphere as well as a far more efficient system of governance.

However, it is also acknowledged that judicial accountability if stretched too far can seriously hamper judicial independence and thus it is essential that we strike the right balance between the two.

The final outcome of the above discussions is that the importance of the independence of the judiciary was long ago realized by the framers of the constitution which has been accepted by the courts by marking it as the basic feature of the constitution. It is well known that law has to change so as to meet to the expectations of a changing society. Similarly judicial independence too has to be seen keeping in mind the changing dimension of society. Judicial Accountability and Judicial Independence have to work hand in hand symbiotically to ensure that the real purpose for setting up of the institution of judiciary is achieved.

Transparency is facilitated through the process of accountability. It is best achieved when one is accountable to law. The existing system of accountability has failed, and the growing corruption is masticating the vitals of this branch of democracy. This lack of accountability has been best put forward by Pt. Nehru in a diatribe, "judges of the Supreme Court sit on ivory towers far removed from ordinary men and know nothing about them." The demi-god's image has to be replaced, as after all judges too are humans capable of making mistakes and committing vices. Moreover the judges need to understand that although the people of India through the constitution provides them with immunities and power to work independently but with greater power comes even greater responsibility toward the people to who the judges are appointed to serve.

In respect to the Judicial Accountability Bill, 2010 and the Draconian process of Impeachment the author's ardently pray for a structural upheaval from the currently prescribed procedure. Based on a thorough analysis the authors fail to understand the need for a Central Committee to over regulate matters of state relevance. Not only will it unnecessarily lead to the Unions intervention into matters where they have no grass root understanding or information but will also only further facilitate in a colossal waste of time and resources culminating into a quagmire where the only thing for certain is the miscarriage of justice. Instead the authors propose an alternative mashing of both the US model with Indian concepts to better suit our present conditions. We content the creation of a 5 member Scrutiny Panel chosen by a Collegium consisting of senior advocates of the State BAR associations to choose 2 members, 1 chosen by the Leader of opposition, speaker, and Chief Minister of the state. These shall elect an independent 4th candidate an active member of the civil society and together they shall be headed by an Ex-Chief Justice of that Court who understands the prevailing conditions. We also propose the creation of a Constitutional body like the CVC or Election Commission which shall investigate into the alleged complaints and shall have power to prescribe alternative remedies like suspension, early retirement etc. This body will be chaired by an Ex-

⁵⁶[http://www.fjc.gov/public/pdf.nsf/lookup/Jud_Conduct_Discipline_English_2010.pdf/\\$file/Jud_Conduct_Discipline_English_2010.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/Jud_Conduct_Discipline_English_2010.pdf/$file/Jud_Conduct_Discipline_English_2010.pdf)(Accessed on 17/1/14)

Chief Justice of India and 2 retired senior advocates of the SC Bar Association. In case of proved gross misconduct they can recommend the motion of impeachment and so forth. The entire procedure of investigation should be recorded and open to the RTI to further promote transparency and accountability.

The authors also believe that based on the US model to improve the undisputedly ineffective mode of impeachment the Lokh Sabha in case of 2/3rd majority should be empowered to impeach the sitting judge there and then, and in case of a 2/3rd majority in the Rajya Sabha the Judge should be convicted for his alleged offence. This will make the process more expeditious and transparent and also make judges think twice before usurping their “Independence” to break the trust of this country’s true Sovereign.