

CORRUPTION AND THE INDIAN JUDICIARY

Kanika Sharma¹ & Rahul Chawla²

INTRODUCTION

In the present scenario, corruption is accepted not as an unfortunate but as a practical tool in hands of the opportunist. And this is not because it paves easy way for things to be done but because of its abundant prevalence throughout the Govt. and administrative system. Corruption has long existed all around the world since time immemorial in one form or the other. It can be traced back to the fourth B.C to have been in India through the inscriptions of the *Arthashastra* by Kautilya³. Kautilya goes on to state that there are forty ways of embezzlement and goes on to enumerate the same. The term 'Corruption' is now an asset to political agendas. This filthy concept has now taken shape of a political weapon which is unleashed onto the rivals in the right circumstances.

India as a country stands widely infected by this plague of corruption. The state of such affairs leaves a man of principles unrecognized and struggling. Corruption may be said to be that, which forms the bond between the politicians, bureaucrats, and criminals giving way to the notion 'money is power'. Earlier, bribes were paid for getting wrong things done, but now bribe is paid for getting right things done at right time. 'Merely shouting from the house tops that everybody is corrupt creates an atmosphere of corruption. People feel they are in a climate of corruption and they get corrupted themselves.' These were the words of Jawaharlal Nehru spoken shortly after independence of India from the British rule.

The prevalence of corruption has sadly made its existence accepted as a part of the procedure. However, there have been a whole range of significant policies that have come to form an essential and an important step in the endeavour of combating with the evil of corruption. To list some, these include- Indian Penal Code, Prevention of Corruption Act, Prevention of Money Laundering Act, Right to Information Act, Central vigilance Commission Act and the Lokayukta Act of the States.

¹ Law Student, 10th Sem., BBA.LLB(H), University School of Law and Legal Studies, GGSIPU.

² Law Student, 10th Sem., BBA.LLB(H), University School of Law and Legal Studies, GGSIPU.

³ Pranab Bardhan, 'Corruption and Development: A Review of Issues'.

India has now witnessed some of the biggest scams that set new extents to corruption. These scams include- Indian Coal Allocation Scam – 2012 – Size 1.86L Crore; 2G Spectrum Scam – 2008 – 1.76 L Crore; Wakf Board Land Scam – 2012 – 1.5-2L Crore; Commonwealth Games Scam – 2010 – 70,000 Crore; Telgi Scam – 2002 - 20,000 Crore; Satyam Scam – 2009 – 14,000 Crore; Bofors Scam – 1980s & 90s – 100 to 200 Crore; The Fodder Scam – 1990s - 1,000 Crore; The Hawala Scandal – 1990-91 – 100 Crore; Harshad Mehta & Ketan Parekh Stock Market Scam – 1992 – 5000 Crore Combined.

The 2G spectrum scam involved politicians and government officials of India, illegally undercharging mobile telephone companies for frequency allocation licenses, which they would then use to create 2G spectrum subscriptions for cell phones. At the heart of the scam is the former Telecom minister A Raja – who according to the CAG evaded norms at every level. It remains to be the biggest scam in India with the cases still going on against many people including A. Raja, M. K. Kanimozhi and many telecommunication companies as well. The fodder scam of Bihar is also largely known as the ‘CharaGhotala’ in the vernacular language. The scam was worth Rs.900 Cr, within which, “vast herds of fictitious livestock” were created for which fodder, medicine and animal husbandry equipment was supposedly procured. Revenue was piped from the government treasury of the eastern Indian state of Bihar. Some big political names involved in this were, the then Chief Minister, Lalu Prasad Yadav, Jagannath Mishra, ShivanadTiwari.

Judiciary as a body has an important role of protector of law and justice. The basic function of the judicial system is the interpretation and protection of the constitution and other laws. The judiciary also ensures justice and protection of individual rights of citizens, it also has the advisory function. Such function is entrusted on the Supreme Court which advises the executive and the legislative bodies of the Nation.

The Judicial system thus forms a very significant and important role in the Nation’s functioning. However, it too has not been completely devoid of the evil of corruption. Corruption is found to be rampant in the lower courts but even more sadly so, it has like termite, found its way to the highest forum of the Supreme Court. There have been an endless number of corruption cases and reports by activists, politicians and other victims who have suffered under the unfortunate disadvantage that comes along which the evil of corruption. There is widespread corruption in India at all levels of the

judiciary the government including judiciary, said a US Congress-mandated report⁴. The report reiterates that, the Indian legal provisions provide criminal penalties for official corruption however the report also points out the inability of ineffective implementation of such laws thus frequenting incidences of corrupt practices. Over 6,800 corruption cases are pending in various special CBI courts across the country with the highest number of such pending cases in the national capital⁵.

JUDICIAL ACCOUNTABILITY IN INDIA

Definition of Judicial Accountability

The word 'accountable' as defined in the Oxford Dictionary means 'responsible for your own decisions or actions and expected to explain them when you are asked'. Accountability is indispensable in a Democratic State. Transparency facilitates accountability. Every public institution or public functionary is under scrutiny and liability may be enforced for their accountability to the public, although the manner in which they are held liable may vary according to the nature of the office and manner in which duties are discharged by the office holder. The judiciary being a vital cornerstone of the State is also accountable. Judicial accountability is different from the accountability of the executive or the legislature or any other public institution. The faith of the common man in the eminence, integrity and efficiency of the judiciary has severely degraded since its inception.

The common man usually looks up to the judiciary to grant him justice, whenever his rights are violated, as his last bastion of hope. But lately, the judiciary has not been performing its duty in a diligent manner making one lose his faith in the judiciary. The makers of the Constitution guaranteed a free and impartial judiciary, by imbibing the Doctrine of Separation of Powers in the Constitution, which stand as the pillars of a democratic form of Government. A judiciary abridged of these essentials cannot provide justice and equality without fear and favour. The independence of the judiciary is indemnified by the many privileges provided by the constitution of India. The Preamble of the Constitution in itself states the intention of the makers of our Constitution of securing to every citizen, JUSTICE: Social, Economic and Political, which is regarded as the reflection of the spirit and aspirations of the people. The Constitution treats each and every citizen with equality, irrespective of how high his status is. No person or institution can be excused from being

⁴<http://www.ndtv.com/article/india/corruption-widespread-in-india-says-us-report-489313>, Feb. 28, 2014.

⁵The Hindu, Business Line, New Delhi, March 13, 2013.

accountable. This also includes the Judiciary. The accountability of the judiciary, with respect to its judicial functions, is bestowed by way of provision for appeal, review, reversion, etc. The Constitution also provides for a mechanism for enforcing accountability for judicial misconduct and disciplining errant judges. If a judge of the Supreme Court or the High Court is found guilty of misbehaviour or incapacity, he may be removed by a process which is popularly known as Impeachment, under which, two thirds of the member of each House of the Parliament can vote for the removal of the judge. Up till now, only the proceeding for Impeachment has been initiated against a judge of the Supreme Court. However, it failed due to abstention by Congress (the ruling party of that time) to vote on the matter concerned.

The process of Impeachment being time consuming, complex and vulnerable to politics, needs urgent reformation.

NEED FOR JUDICIAL ACCOUNTABILITY

“All power is a trust, that we are accountable for its exercise, that from the people and for the people, all springs and all must exist”. It is essential that in a Democratic Republic like India, the people in power are made accountable, to prevent the country from falling into anarchy or for worse dictatorship. Accountability, in order to be effective should be comprehensive, not to be exclusive to politicians, but should also include bureaucrats, judges and any civil servant vested with power. “With great power comes an even greater responsibility”, power and stature play a huge role in a democracy, by handing over authority in order to fulfil the responsibility associated with it. Every individual who is incumbent of a public office is under ceaselessly accountable to the people that are the receptacle of political supremacy. The courts are called the temples of justice, where justice is duly administered. But inside these courts, gods are not the ones that preside over the task of administration of justice, it is instead humans. The judges are not merely the insignia of the courts visible to us; they are the agents or the representatives of the courts in flesh and blood.

The credibility of the judicial system is determined by the manner in which a judge carries on his duty. Judges have been, since the beginning of time been held with high esteem and given the status of Lords in India. However, the occurring of recent incident in Bihar (killing of an under trial within the court premises itself; and lynching a suspected thief to death) delineate the ever growing frustration in the people to get justice, the gradual loss of faith in the judiciary and the common man taking the law in his own hands. This is highly deplorable. There is a definite need to make the judiciary more accountable as loss of the values of the

judiciary is more catastrophic as compared to the same happening in any other faction of the government because the judiciary is the guardian of the Constitution.

Judicial Accountability is not a nascent concept in the history of the world. Several countries have ensured the same by delineating provisions for ensuring judicial accountability in their Constitution. This is necessary to ensure that the power does not get concentrated in the hands of a single person or institution of the state, especially in states in which judicial activism circumvents into the domain of other organs. However, at the same time, the need for judicial independence cannot be stressed more. It is a pre-requisite for every judge under oath to act without fear or favour, affection of ill-will and to uphold the sanctity of the laws and first and foremost the Constitution of the country.

CODE OF CONDUCT FOR JUDGES

Hon'ble Mr. Justice S.H. Kapadia, Chief Justice of India said: "When we talk of ethics, the judges normally comment upon ethics among politicians, students and professors and others. But I would say that for a judge too, ethics, not only constitutional morality but even ethical morality, should be the base..."

Former Chief Justice of India S. Venkatramiah, former Judge of the Supreme Court D.A. Deasai and Former Judge of the Supreme Court Chennappa Reddy while stating their views on Judicial Accountability, expressed, "if all sections of the society are accountable for their actions, there is no reason why the Judges should not be so. Former Chief Justice Verma remarked on one occasion while recognising the validity of judicial accountability, stating, "These days we (Judges) are telling everyone what they should do but who is to tell us? We have the task of enforcing the rule of law, but that does not exempt and even exonerate us from following it." A Code of Ethics must be followed by the Judges in order to implement the concept of judicial accountability properly.

CODE OF ETHICS OF A JUDGE:-

1. Judicial decision must be honestly given

In order to have a life which is full of public confidence with respect to their role in the society, it is of utmost importance that the judicial decision given by a judge should be honest and fair. A judicial decision is said to be honest if it is decided in response to an honest opinion formed in the mind of the judge in the light of the facts and circumstances of the case and the law on which the subject matter is based. The

perception or the opinion of the judge on a certain point might be wrong, judge being human after all. However, a wrong decision which is honestly given does not make the decision a dishonest one. A decision is said to become dishonest, if it is not adjudicated upon by judicial conviction of impartiality, honesty and equality.

2. *Nemo iudex in causa sua*

The basic principle of administering justice is that no man can be a judge of his own cause. The doctrine is not only applicable in a cause where the Judge is an actual party, but also applies to a cause in which the judge has a vested interest. A judge should not decide a case if he has got interest therein. For the decision of a judge to be fair and just, it requires a degree of detachment and objectivity in dispensing the case. Judges are bound by oath of office, to adjudicate the matters before them in an impartial manner, so that justice is not only done but is seen to be done. This has been reiterated by the Supreme Court time and time again.

3. Administer justice

Judges should not be afraid of administering justice. “Fiat justitia, ruat caelum” that is “let justice be done though the heavens fall” should be the guiding light for every judge while adjudicating a matter presented before him.

4. Equal opportunity

The principle of equality enshrined in the Constitution has to be upheld by the judges and the parties to a dispute should be treated equally. A judge has to on all occasions rise above any inclination towards an individual, section, faction or group. He has to adjudicate disputes by keeping each and every individual on the same scale. In a court of law, there is no room for hypocrisy or double standards on the basis of the income, power, influence or stature. A judge is supposed to decide a dispute on the merits of the case and does not need to take in to consideration with the personalities of the parties. The parties to a dispute must be dealt with equality, and must be given equal

opportunity during the pendency of the matter. The Retired Hon'ble Lord Hewart of Bury, Lord Chief Justice of England, stated that it is "essential for the proper administration of justice that every party should have an opportunity of being heard, so that he may put forward his own views and support them by argument and answer the views put forward by his opponents". The Supreme Court also has opined that "No Man's right should be affected without an opportunity to ventilate his views". To state the same in a classic metaphor, the God of Justice sits on a golden throne, but at its feet, sit two lions: Equity and Law. There will be serious miscarriage of justice if a party to a dispute is not given an equal opportunity to present his side.

5. Maintaining distance from relatives

Being a judge is not just a profession, it is the way a man leads his life, a Judge, in order to show that justice is not only being done, but is also seen to be done, must distance himself from the parties to the dispute, as well as their legal attorneys during the conduct of the trial. A very contemporary development is the development of a new sector in the legal profession that utilize their close connections with the judges, instead of their intellectual or professional capabilities. This suspicious trend is on the rise and should be put under scrutiny. There should be a check put upon this by avoid meetings frequently in private between a sitting judge and a practicing lawyer. Public servants occupying high offices should practically judge that persons claiming to be close are not in turn exploiting that closeness by the abuse of power.

6. Active participation in social functions shall be avoided

A judge, who is socially active, may be isolated by people and their opinion of not being fair and impartial. In order to avoid the same, a judge should put a restrain on his social activities. They should selectively attend social gathering and public functions. The practice in United Kingdom and United States is that a judge asks for the list of invites if they have to attend a private function. Generally they decline participation in any social events.

In the case of *Ram Pratap v. Dayanand*⁶, the Supreme Court issued a note of caution to the effect that it is proper for a Judge not to accept any invitation and hospitality of any business or commercial organisation or of any political party or of any club or organisation run for sectarian, communal or parochial line.

7. Media Publicity should be avoided

A Judge should keep off the media, as far as possible. He should avoid sharing his views in media with regard to matters that are pending before him or that are presumably going to appear for judicial scrutiny. If this restraint is not followed, he may be accused of prejudice and his impartiality may be objected to. Lord Widgery, Lord Chief Justice of England since 1971 to 1980, said that “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”. Lord Hailsham said that the “best judges are those who do not find their names in the *The Daily Mail* and still, who abhor it”.

LACK OF JUDICIAL ACCOUNTABILITY IN INDIA

The makers of the Indian Constitution would disbelieve, that the Indian judiciary has emerged as the most powerful wing of the State, 60 years after framing of the Constitution. The Constitution being the supreme law of the land provided for watchdogs in the form High Courts and Supreme Court, free from the control of the Legislature or the Executive, with the intent of not only administering justice, but at the same time keeping a check that the Legislature and Executive do not abuse the power conferred upon them by the Constitution. The judiciary has been assigned with the duty of interpreting the Constitution and other laws. It also has the power to declare an action of the executive as ultra vires and strike it down as being violative of fundamental rights. At the same time it also has the power to declare any law made by the parliament as ultra vires and void, if it is not in consonance with the Constitution. In fact, in 1973, the Supreme Court by giving a creative interpretation to the Constitution acquired the power to strike down amendments to the Constitution which here held to violative of the basic structure of the Constitution. Quite a few constitutional amendments and a number of laws have been struck down by the Courts in the recent time.

⁶ 1977 SCC (1) 150.

Through this process of judicial activism and judicial intervention, the Indian judiciary is categorised as perhaps one of the most active judiciary, exercising virtually, imperial and unchecked powers. While the courts are empowered to strike down legislative and executive actions, it has been noticed that at certain times, the same has been done by the arbitrary use of power or without any reasonable explanation. The executive and legislature have to conform to such directions, to prevent from being charged with contempt of court. These powers used to be exercised wisely to correct gross executive inaction.

As the Judicial system was creating a subtle dominance over the other wings of the State, by even more inventive or purposive interpretation, the court took over the power of appointment of Judges from the government. It established the collegiums system of appointment by which the Judges of the Supreme Court and High Courts were appointed by the Collegiums of senior judges of the Supreme Court. In other terms, the judiciary has now become a self perpetrating oligarchy. The system of appointment of judges is closed, and without any transparency or scrutiny. The appointment is made without considering the records and credentials of the judges, or their ideological adherence to the constitutional ideals of democracy, secularity, or their sensitivity towards the common man, who are suffering from poverty and not able to get their rights enforced.

The judiciary in India is in a very privileged position as regards to power with respect to the judiciary in any other part of the world. In such a scenario, it is absolutely necessary to hold the judiciary accountable for their conduct (misconduct) irrespective of the reason, be it corruption or disregard to the Constitution of the country or the rights of the citizens, especially the higher judiciary. Neither the Constitution, nor any other law provides for the establishment of an institution or examine the performance of the judges or examine complaints against them. The only process for the removal of the Judges of the Supreme Court and High Courts is the process of Impeachment. The process of Impeachment essentially requires the signatures of 100 members of the lower house and 50 members of the upper house, in order to initiate the process. If there is a charge of misconduct against the judge in the form of a motion, supported by the required number of signatures of the Member of Parliament, the same is submitted to the speaker of the Lok Sabha or the Chairperson of the Council of States. An inquiry committee is then established to hold the trial of the judge. If the judge is found guilty, only then is the motion put to vote in front of both the houses of Parliament where it has to be passed by a majority of 2/3 majority of each House.

History tells us that it is literally impossible to remove a judge via impeachment, even if there is incriminating evidence available against the judge of severe misconduct. The reason behind this shortcoming is the refusal or reluctance of the members of the Parliament, and their affiliation to political parties, that all have cases pending against them in various courts. The judiciary is quite similar to trade union and does not take kindly to brethren being accused of misconduct. Thus, unless the matter has received media attention and is a major issue in the eyes of the public, it is very difficult to get an impeachment off. The only case in which the Impeachment process was initiated against a Supreme Court Judge was the case of *Justice v. Ramaswami* in 1990's. After the presentation of the motion, he was found guilty by the Judges Inquiry Committee on several charges of misconduct.

When the matter was presented in the Parliament for voting, the Congress Party (ruling party at that time) directed all its MPs to abstain from voting. Even though the motion was unanimously passed, it failed as it did not get the support from the majority of the membership of the House. Justice Ramaswami continued in his office till his actual retirement, but did not preside over any judicial work during his remaining tenure.

In July, 2011, the second motion against a Judge of the Calcutta High Court was passed in RajyaSabha after finding him guilty under the charge of misappropriation of funds. Justice SoumitraSen is the first Judge to have been impeached after the framing of the Constitution.

Allegations and charges against a Judge are rarely brought into the light of the media due to fear of being charged with contempt of Court, even if the charges are supported by documentary evidence. The Contempt law in India is ~~ab~~an arbitrary power in the hands of the judges. It allows the judge of the Supreme Court or the High Court to charge anyone with contempt of court and send them to jail on the ground that he/she has "scandalized the Court or lowered the authority of the Court". What "scandalizes or lowers" the authority of a Court is also the subjective judgment of each Judge. In Arundhati Roy's (the well-known writer) case, a bench of 2 judges of the Supreme Court charged her with contempt and sent her to jail merely because she criticized the Court in her affidavit.

The campaign for Judicial Accountability has since long been demanding that the courts' power to punish for "scandalizing and lowering the authority of the Court" must be taken away by legislation. Of course, this demand has been stoutly resisted by the courts who claim that deleting this provision would greatly encourage baseless allegations and abuse of judges by disgruntled litigants and would thereby erode public confidence in the courts. It is for the

judiciary to realise that public confidence in the Court is not eroded by the baseless allegations of disgruntled litigants, but by their own actions in the discharge of their duty of administering justice. However, observing such reluctance in the judiciary against the removal of obsolete law, the legislature did not have the courage to delete the provision from the Contempt of Courts Act.

In another case involving Justice Veeraswami (father-in-law of Justice Ramaswami), the Chief Justice of the Tamil Nadu High Court, who was caught with assets vastly disproportionate to his income, stated that “no judge of a superior court shall be subjected to a criminal investigation without the permission of the Chief Justice of India. The same has been used as a shield to protect the judges from investigation and prosecution against whom there existed documentary evidence of fraud, corruption, misappropriation, etc. This has in a way increased the impunity who feels that they cannot be charged with any kind of misconduct, professional or criminal. All this accompanied with the power of contempt, depicts an image of dominance of the judiciary that shows the lack of accountability of the higher judiciary in India.

JUDGING THE JUDGES (Case Laws)

In the recent history, there have a string a of judicial scandals that have erupted, starting with Chief Justice Sabharwal’s case, and then going on to the Ghaziabad district court Provident fund scam, the 15 lakh cash-at-judges-door scam of Chandigarh, and the Justice SoumitraSen case of Calcutta. The subject matter of these cases vary from lack of transparency in selection and appointment to criminal misappropriation of funds. Unfortunately however, we are finding that these rotten eggs who come to be appointed, get confirmed, even when they are found by the Collegium to have been of doubtful integrity, and are not removed even when a judge's committee has found them guilty of criminal misappropriation and criminal breach of trust, and even after the Chief Justice of India has recommended their impeachment selection, appointment and removal of judges.

Following are the major cases that took place:

1949: Mr. Justice Sinha is the only Judge to have been impeached by the framers of our Constitution. The Constituent Assembly of India impeached him after finding him guilty of improper exercise of Judicial functions, which led to lowering the dignity of the office and t the same time undermine public confidence in the administration of justice.

1979: Chief Justice K. Veeraswami, Chief Justice of the Tamil Nadu High Court. The Chief Justice of India at that time gave permission to Central Bureau of Investigation to carry out an investigation on charges of disproportionate of income/wealth

1991-93:Mr. Justice V. Ramaswami (son-in-law of Chief Justice Mr. K. Veeraswami)

The Sawant Committee gave its Report and he Justice Ramaswami guilty on several charges. The Supreme Court of India also validated the decision and upheld the guilty verdict of 3-4 charges. The Court recommended the Parliament for the impeachment and the motion was put for voting in front of both the houses of Parliament. But the ruling party of that time, Congress, refused to vote and thus the impeachment of the judge failed. He retired after the completion of his complete tenure, although he wasn't assigned any work during the remaining tenure by the Chief Justice of India. d failed in their Duty to Impeach the Sitting Judge of Supreme Court Mr. Justice V. Ramaswami; not rising to the Heights of Eminent Constitution makers ; but chose to have unholy alliance with Corruption in Judiciary vis-a-vis Legislature & Government.[008.00].

1995 A.M. BHATTACHARJEE: The Chief Justice of the Bombay High Court was compelled to resign after it was found that he had received Rs.70 lakh as book advance from a publishing firm known to have links with the underworld.

The Case Of Justice Ashok Kumar

In the case of Justice Ashok Kumar, who was appointed an additional judge in April 2003, the Collegium of three senior judges of the Supreme Court unanimously decided not to confirm him as a permanent judge in August 2005 because of adverse reports regarding his integrity. Despite this, he was given extensions as additional judge, and finally came to be confirmed in February 2007 on the Chief Justice's recommendation, which was made without consulting other members of the Collegium of judges, in complete violation of several judgements of the Supreme Court. These had clearly laid down that in a matter of appointment of judges, the Chief Justice cannot act alone and must go along with the majority view of the Collegium of senior judges of the Supreme Court. The 9 Judge judgments also provided that an appointment made without consulting the Collegium was challengeable and could be struck down in a judicial proceeding. The memorandum of procedure lay down by the law ministry also made it abundantly clear that in such matters the Chief Justice must consult the Collegium of senior judges, as well as those other judges who have come from the

same High Court in which the proposed appointment is to be made. Thus, Justice Ashok Kumar's appointment was clearly contrary to the Constitution, and the law laid down by the Supreme Court itself. Though Justice Ashok Kumar's confirmation as a permanent judge was challenged by senior advocates of the Supreme Court, unfortunately the court has upheld his confirmation on the basis of very dubious reasoning. While the Court berated the previous Chief Justices for having given extensions to Justice Ashok Kumar as additional judge for political considerations, it found nothing wrong with his confirmation, despite the fact that it was done without consulting the Collegium and after his integrity was found doubtful by the previous Collegium of judges when it had considered the matter. Moreover, nothing had changed subsequently to cast any doubt on the finding of the previous Collegium. Thus the Supreme Court, missed the opportunity to judicially correct the administrative illegality in confirming a judge whose integrity had been found to be doubtful, and that too without consulting the Collegium of senior judges of the Court. Such judicial behaviour of the Supreme Court only confirms the growing public perception that the recent crisis of credibility and integrity of the higher courts is largely a result of improper appointments due to extraneous considerations which are facilitated by the totally nontransparent manner in which judges are selected and appointed.

1996 AJIT SENGUPTA: The Calcutta High Court judge made it a routine to issue ex parte, ad interim stay orders on anticipatory bail pleas from smugglers having links with the Mumbai underworld. He was arrested in 1996 for FERA violations after retirement.

1994 to 1997: A.M. AHMADI: When he was Chief Justice of India (October 1994-March 1997), his daughter, a lawyer in the Delhi High Court, caused eyebrows to be raised for getting "special" treatment from certain judges. When some members of the bar sought a resolution banning lawyer relatives of judges from staying in the same house, the CJI got members to defeat the motion.

2000 A.S. ANAND: As Chief Justice of India. (a) He was accused of using his position to get the subordinate judiciary to rule in favour of his wife and mother-in-law in a suit that had been barred by limitation for two decades called as TANGLED PLOT. (b) Supreme Court, while he was CJI, directed a CBI probe after a dispute arose over his age in 2000. The investigation report was not made public. This arose due to scan copy published in Ram Jethmalani's "BIG EGOS, small men".

2002 SEX FOR ACQUITTAL: In November 2002, Sunita Malviya, a Jodhpur-based doctor, alleged that a deputy registrar of the Rajasthan High Court had sought sexual favours for himself and for Justice Arun Madan to "fix" a case in her favour. A committee set up by former CJI G.B. Pattanaik found prima facie evidence against Madan, who does not attend court anymore. Judge Resigned.

CASH-FOR-JOB: Three judges of the Punjab and Haryana High Court sought the help of disgraced PPSC chief R.P. Sidhu to ensure that their daughters and other kin topped examinations conducted by the commission. Judges are M.L. Singh, Mehtab Singh Gill & Amarbir Singh

STATUS: Two inquiry panels indicted the judges. Gill and Amarbir Singh have resigned. M.L. Singh continues, though no work is allotted to him.

2002-03: 3 Judges Mysore Sex Scandal (alleged) : On Sunday, November 3, 2002, three judges of the Karnataka High Court, along with two women advocates, allegedly got involved in a brawl with a woman guest at a resort. The police arrived but reportedly didn't take action. Judges are N.S. Veerabhadraiah, V. Gopalagowda & Chandrashekaraiiah.
STATUS: The three-judge inquiry committee appointed by the CJI filed its report. Gave a clean chit.

March 2003 - Delhi High Court Judge resigns: Suspected of collusion with Property Developers. Raids by CBI on corrupt higher officials in Delhi Development Authority (DDA), found Draft Judgement-N-Court Records.

Arundhati Roy's Case

The facts were these: After the judgment of the Supreme Court in the Narmada Dam case, there was a public protest outside the Supreme Court in which Medha Patkar (the leader of the anti-Dam movement in India) and Arundhati Roy participated. A couple of lawyers (probably on the hint of the Court itself) filed a contempt petition against Patkar, Roy and Mr. Prashant Bhushan alleging that we had raised abusive slogans against the Court. The lawyers' contempt application, apart from being in grotesque language, also contained palpably absurd allegations that Roy and Patkar (who can hardly be considered rowdies) manhandled the burly lawyers. Roy, in her reply to the court notice said: "For the Court to have issued notice on such a ridiculous petition to three persons who have been vocal in their criticism of the Court shows a disquieting inclination on the part of the Court to muzzle

dissent and stifle criticism”. Though he discharged the first notice, the same judge (Justice G.B. Patnaik) who had issued the first notice, issued a second contempt notice, this time to Roy alone for daring to berate the court in this manner. They eventually held her guilty of contempt and sent her to jail with Justice Patnaik sitting as a Judge in his own cause.

The Case of Justice SoumitraSen

Justice Sen has been recommended to be removed by impeachment by the Chief Justice of India, for the offence of misappropriating funds received by him as a court receiver and thereafter for giving false explanations to the High Court. The Chief Justice made this recommendation after a report of a committee of three Judges, who after carefully examining the facts came to the conclusion that he had committed several acts of serious misconduct. Though these acts of misconduct were the subject matter of proceedings pending against him in the Calcutta High Court, yet he came to be appointed during that time, due to the lack of transparency in the matter of appointments. Though the report of the judges committee was submitted a year ago, and the Chief Justice’s recommendation for the removal by impeachment of Justice Sen was made five months ago, the government has not made any attempt to proceed with his impeachment. This is despite the fact that the government has proposed a bill to amend the Judges Enquiry Act by which this very procedure for initiating impeachment proceedings is being sought to be given statutory status. The inaction of the government in Justice Sen’s matter displays the complete lack of seriousness on the part of the government in enforcing judicial accountability. In these circumstances, the Campaign for Judicial Accountability and Reforms has prepared an impeachment motion against Justice Sen and is sending it to all the political parties with the request that they should have it signed by their MPs so that it could be presented to the Chairman of RajyaSabha for proceeding with his impeachment.

THE JUDICIAL ACCOUNTABILITY BILL, 2010

The Judicial Standards and Accountability Bill, 2010 lays down standards and provides for accountability of the judges and establish credible and expedient mechanism for investigating into individual complains for misbehaviour or incapacity of the judge of the Supreme Court or High Court⁷. The bill was introduced in the Loksabha on Dec. 1, 2010 by ShriVeerappaMoily, the Minister of Law and Justice. Presently the procedure for removal of

⁷Preamble of the Bill.

Judges is regulated by the Judges (inquiry) Act, 1968. The bill prohibits judges from close association with individual members of the bar, practicing in the same court as the judge; allowing family members who are members of the bar to use the judge's residence for professional work; hearing and deciding matters in which a member of the judge's family or relative is concerned; entering into public debate on political matters which the judge is likely to decide⁸. The bill also requires the judge, their spouse and children to declare their assets and liabilities, which would further be displayed on the website of the respective court.

Investigating authorities set up by the bill for investigation of the complaint against the judge are- (a) National Judicial Oversight committee; (b) Scrutiny Panel. The initial complaints would be made to the former and referred to the later. A Scrutiny Panel will be constituted for the Supreme Court and every High Court and shall comprise of a former Chief Justice and two sitting judges of that court. Complaints found to be frivolous and vexatious would be penalised for by the Oversight committee. This committee would comprise of a retired Chief Justice of India as the chairperson, a judge of the Supreme Court, a Chief Justice of the High Court, Attorney General and an eminent person appointed by the president. If the charges are proved, the judge may either be requested to resign voluntarily or if he fails to do so, then the committee would advise the president to proceed with the removal of the judge.

One of the significant features of the Bill includes the exemption provision for documents and records of proceedings related to the complaint from the purview of the Right to Information Act, 2005. However, the reports of the investigation committee and the Oversight Committee's order shall be made public.

There have been mixed reactions about the Bill. Some point out the bill to be a knee-jerk reaction following the events of reported incidences of corruption on part of the Judge, however not proven yet, bringing the very pillar of democracy under intense scrutiny. There have also been exhibited apprehension that, the bill will take away the main character of independent existence of the judiciary which was entrusted to it by the Constitution that separated it and kept at bay from interference from the legislation, executive and other such bodies.

At the other end, there also some who support the bill in light of justice and equality. In 2013, the former Chief Justice of India S.H.Kapadia, on the occasion of Independence Day,

⁸AnirudhBurman, 'The Judicial Standards and Accountability Bill, 2010: Bill Summary', Dec 14, 2010.

organized by Supreme Court Bar Association, expressed his opinion, reflecting that, the judiciary did not hold any fear towards laws that make judges accountable. He however, did caution the government not to tinker with the independence of the judiciary. He said-“I would request the government that accountability be balanced with judicial independence.” In enacting laws, the concept of judicial independence should not be lost sight of. For, “decisional independence and structural independence are more important when you are required to balance accountability and judicial independence.”⁹

There have also been concerns relating to the validity of the bill. There have been opinions that suggest that the bill is in contravention with the constitutional provisions. It is pointed out that, the bill is cleverly disguised as being permissible under Art 124(5). However the legal provision brought to light, proving the unconstitutionality of the bill is that, the Article 124(5) does not empower Parliament to create any other forum for recommending impeachment proceedings, or allow complaints to be made by any person, or to make a judge liable for minor penalties. Thus indicating that, the power levied upon a hundred or more members of the Lok Sabha or fifty or more members of the Rajya Sabha (i.e. initiation of impeachment proceedings) can now theoretically be done by only one person¹⁰.

Thus, while the bill consists promising new measures to keep a check on corrupt practices, it also is under speculation for its legal standing. The guiding principle must always be preferred to be: accountability there is and must be, but let it always be commensurate with judicial independence and impartiality. Ultimately, the appropriate balance between competing principles must be found in something that is best suited to our constitutional setup and is, in that sense, uniquely Indian. The citizens of India deserve no less¹¹.

CONCLUSION

The Judiciary hold the great responsibility of ‘trust’. This is the trust that people hold when they have given up on all other organs of the country’s administration. Thus the judiciary has the extra burden over its head to live up to all of its expectations.

It is however accepted that there exist the evil of corruption which has not pardoned the judiciary even. But the acceptance should not become an excuse for remorse but shall be

⁹<http://www.lawyersclubindia.com/articles/Judicial-Accountability-Bill-Need-and-Consequences-5276.asp#.VHB85TSUfNs>.

¹⁰The Hindu, Judicial Standards and Accountability Bill, AjitPrakash Shah, march 29, 2011.

¹¹Ibid.

taken up as a problem and dealt with tools to counter it. Thus the correction of the flaws such as corruption that may unavoidably act up should be diminished and eradicated through legislations, policies and implementation of such other rules and regulations that shall help the cause.

The legislators should be encouraged to come up with laws for example the Judicial Standards and Accountability Bill and make it to be the best possible form of legislation that would head-on be able to curb this nuisance of corruption. Such legislations would not just contribute to the judiciary or the legal fraternity, but to the whole society, because, a just system will make a just society. Therefore all persons at all levels must endeavour to contribute their part by acting against corruption.