JUDICIAL APPOINTMENTS AND JUDICIAL INDEPENDENCE

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ABSTRACT

The Constitution of India provided for the appointment of judges and independence of judiciary. In India, the doctrine of Separation of Power given by Montesquieu with the principles of Checks and Balances is applicable which means that the three organs of government i.e. legislature, executive and judiciary will not have to interfere in the working of the others. But there always remain tussle between the executive and the judiciary. Judicial Accountability and Judicial Independence both have to work hand in hand to ensure the real purpose of setting up of the institution of Judiciary. The same view was given by Dr. B.R. Ambedkar in the constituent assembly debate and the framers of the Constitution also opined that for the smooth working of the judiciary, there must be independence as well as certain restrictions that are to be imposed upon judiciary. But it is not easy to maintain the independence of judiciary as there is interference by the other organ of the government to show its superiority. The detailed discussion is in the paper.

The full length paper also contains the judicial appointment, various instances of tussle between executive and judiciary, constitutional provisions regarding independence of judiciary and its need with recent amendment i.e. The Constitution (99th Amendment) Act, 2014.

INTRODUCTION

The judicial appointment to the Indian judiciary i.e. to the Supreme Court of India and the high court's of India has been a subject of conflict over so many years between the judiciary and the executive. This conflict has stemmed from the need to preserve the independence of judiciary which is often used but the meaning of which is little explicated in India's constitution. The meaning of judicial independence has different meanings to different people over period of time also to several members of the constituent assembly.

At the time when Indian constitution is getting framed, the framers of the Indian constitution were concerned about the kind of judiciary our country should have. Dr. B.R. Ambedkar responded the concern of the framers in the following words:

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"*There can be no difference of opinion in the House that our judiciary must be both independent of the executive and must also be competent in itself. And the question is how these two objects can be secured*".

The question arises in the mind at first instant is this that what were the reasons that made the framers of our constitution to concern so much to make the judiciary as a separate entity and making itself competent.

The answer to this question is this that to secure the stability and prosperity the framers understood that to achieve this there must be fundamental rights and that too must be secured when independence of judiciary is there. Also independence of judiciary is of utmost importance in upholding the pillars of democratic countries such as India and hence ensuring a free society.

Rule of law which plays an important role and is responsible for the good governance of the country to secure the stability and prosperity of the society can be secured when the judiciary is unbiased. It is very well clear that the independence of the judiciary is the minimum requisite for ensuring a free and fair society under the rule of law.

The doctrine of separation of power (given by Montesquieu) draw the boundaries and separates the functioning of all the three organs of the state -Legislature, Executive and the Judiciary which provides a duty to the judiciary to act as a watchdog and to check whether the other two organ's i.e. legislature and executive are working within their limits under the constitution and do not interfere in the work of the other. This work which is given to judiciary under the doctrine of separation of power cannot exist or work in its true spirit if there is not independence of judiciary. The base of the doctrine of separation of power is supported by the independence of judiciary to a large extent.

Theoretically, it's very easy to talk about the independence of judiciary as for which the provisions are provided in the constitution but these provisions can only initiate towards the independence of judiciary. For achieving the independence of judiciary practically it is essential to create a favourable environment for its working and also that other state organs cooperate with it.

Whenever there is a talk of independence of judiciary there must also be a talk regarding the restrictions that must be imposed on judiciary and on the judges as an individual. To ensure smooth running of independent judiciary there must be blend of two.

I. JUDICIAL APPOINTMENTS IN INDIA:-

Article 124(2)[3]and Art. 217 (1)[4] of the Indian Constitution provides the appointment of the judges to the Supreme Court of India and the High Court of India respectively. These articles provides that for Supreme Court appointments the power vests in the President in consultation with the Chief Justice of India and for the appointments of the judges to the High Court in consultation with the Governor of the concerned state, the Chief Justice of the concerned High Court in addition to the Chief Justice of India were the results of debate in the constituent assembly. The main issue that arose before the constituent assembly was to make a system that secure independence of judiciary[5]. There was the broad consensus among the members of the constituent assembly that the power of appointments would vest focally, even though not entirely in the executive on the points to achieve these ends. The reasons for this sort of view were clear----- the system of executive led appointments (widely prevalent all over the world at that time) was seen by the drafters as incorporating a degree of public accountability in the process. Also the unfavourable colonial experiences regarding the executive discretion in judicial appointments convinced them to institute proper checks and

[3]Art. 124(2) reads:

> '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 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…'

[4]Art. 217(1) reads:

> 'Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court…'

[5] The key discussions on the issue of appointments were held between the 24th and 27th of May, 1949. Constituent Assembly Debates, Vol. VIII (New Delhi: Lok Sabha Secretariat, 2003) 229-399 (hereinafter "CAD").

balances. In the words of Nehru that this would ensure judges **"**people who can stand up against the executive government and whoever may come in their way".[6]

The constituent assembly after dismissing the role of the legislature in the appointments make it an object of political bargain[7] agreed on a system by which the President have the power to appoint the judges after consulting the Chief Justice of India. However according to Ambedkar the consultation did not amount to a veto being exercised by Chief Justice of India. In this way the Constituent Assembly envisaged inter-institutional equilibrium in the appointments of the judges.

The senior most judge of the Supreme Court was appointed as the Chief Justice of India till 1973 and this practice was followed by the executive without any exception. But in the year 1956, the law commission headed by the then Attorney General M.C. Stelvad criticised this practice and suggested that mere the seniority should not be taken as the consideration for the appointment as Chief Justice of India but the experience of a person as a judge, his administrative competence and merit should also to be taken into consideration. But after 17 years of its publication no attempt was taken by the government to implement it and the principle of seniority as a matter of appointment is continued. However on 25th April, 1973, this rule was suddenly broken after the judgement in the Fundamental Right case by the government within few hours of its delivery. Instead of three senior most judges (Justices Shelat, Hegde and Grover) Mr. A.N. Ray was appointed as the Chief Justice of India and these three judges resigned after the swearing in ceremony of Mr. A.N. Ray as the Chief Justice of India. This action of the government raised controversy. The Supreme Court Bar Association also criticised this action of the government. However the government justified its action on the following grounds:

The first reason given by the government was that under Article 124 of the constitution the president has absolute discretion to appoint any one whom he finds suitable for the post of Chief Justice of India. Secondly, it was argued that the government followed the recommendations of the Law Commission. But these arguments are not strong one.

A. Supremacy of Executive: Judges Transfer Case I:-

[6] CAD vol VIII, 246-247 (24th May 1949).
[7]Ibid., 258 (24th May 1949).

Literally, under Art. 124 the President is required to "consult" the Chief Justice of India but before the decision on *S.C. Advocate-on-Record Association*, it has always been interpreted as President was not bound to act in accordance with such consultation.

In *S.P. Gupta v. Union of India*[8], (popularly known as Judges Transfer Case) the Supreme Court held that the meaning of the word 'consultation' in Art. 124(2) is same as the meaning of the word 'consultation' in Art. 217 and Art. 222 of the Constitution. Only on the basis of mala fide and irrelevant considerations the government decisions can be challenged.

This means that the executive ultimately has the power to appoint the judges. This creates an adverse effect on the independence and impartiality of judiciary. Therefore Bhagwati, J., said "it is unwise to entrust power in any significant or sensitive area to a single individual however high or important may be the office, which he is occupying".

B. Judicial Supremacy: S.C. Advocate on Record Association v. Union of India: Judges Transfer Case II:-

In the case of *S.C. Advocate on Record Association v. Union of India*[9], a nine judge bench of the Supreme Court by a 7-2 majority overruled its earlier judgement in the Judges Transfer case and it was held by the court that the Chief Justice of India should have primacy in the case of the appointment of the judges. The appointment of Chief Justice of India shall be on the basis of the seniority. The view of the Chief Justice of India will be formed after taking into account the views of two senior most judges of the Supreme Court. It has reduced to the minimum individual discretion conferred upon the President and the Chief Justice of India so that there would not be any sort of partiality in the appointment of the judges.

C. Appointment and Judges Transfer Case III:-

In *re Presidential Reference*[10]**,** a nine judge bench of the Supreme Court has held that the recommendation made by the Chief Justice of India without following the consultation process on the appointment of the judges of the Supreme Court and the High Court are not binding on the government. The consultation process which is adopted by the Chief Justice of India requires the consultation of the 'Plurality of Judges'. The only opinion of the Chief

[8] AIR 1982 SC 149.
[9] (1993) 4 SCC 441.
[10] AIR 1999 SC 1.

Justice of India does not constitute 'consultation' within the meaning of the said articles. Under Art. 124(2) the Chief Justice of India should consult "a collegium of four senior most judges of the Supreme Court" and if the two judges of that collegium give the adverse opinion the Chief Justice of India should not send the recommendation to the government of India. Also the opinion must be in writing and Chief Justice of India should send the recommendation along with his opinion to the President.

This decision of the Supreme Court has made the consultation process more democratic and transparent.

II. INDEPENDENCE OF JUDICIARY:-

The concept of the judicial independence arises with the change of the time in the developed countries as well as in the developing countries (whether it is in the old legal system or in the new one). Different people have different understanding regarding the meaning of judicial independence. Even different countries of the world have not the consensus in regard to the meaning of judicial independence. The same conflict was in the constituent assembly where the framers have assigned different meanings to the term judicial independence--- to some of them it was a principle to allow the Judiciary to adjudicate freely, whereas a majority considered it to be a requirement of rule of law, to be enshrined in the basic structure of the constitution.

A. Meaning of the term 'Judicial Independence':-

Several years have been passed and yet the meaning of the independence of judiciary is still not clear. In our constitution what actually the independence of judiciary is nowhere defined but some provisions just talks of the independence of Judiciary.

Basically independence of judiciary is based on the doctrine of Separation of Power (given by Montesquieu) which holds its existence from several years. This doctrine separates the judiciary from the executive and legislature and establishes its independence. According to Montesquieu if legislative, executive and judicial powers are exercised by a single person, there is no liberty[11]. For him, if the judge and executor were the same, 'the judge could have the force of an oppressor...and it (sic) can destroy each citizen by using its particular wills'[12].

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[11] Montesquieu, The Spirit of Laws (Anne Cohler, Basia Miller and Harold Stone (eds), CUP, Cambridge 1989) 157 [hereinafter 'Montesquieu'].

[12] Supra Montesquieu, 157.

Another meaning of the term judicial independence can be derived from the writings of the scholars who have researched on the issue. They have used the 'constituent mechanism' (i.e. what constitutes the judiciary) to explain the meaning of independence of judiciary. Hence according to them if judges discharge functions in an unbiased manner i.e. free from any external factor, then the judiciary is independent and the society will be benefitted. So, the independence of judiciary exists when there is independence of institution of judiciary and also the independence of judges who constitutes judiciary.

In his work Shetreet explains the words "independence" and "judiciary" separately, and states that the judiciary is "the organ of the government not forming a part of the executive or the legislative, which is not subject to personal, substantive and collective control, and which performs the primary function of adjudication". From this work of Shetreet it can be derived that independence of judiciary as an institution and the independence of judges both have to go hand in hand and if this does not exist then there is no doubt that independence of judiciary exists.

B. Need for the Independence of Judiciary:-

The Independence of Judiciary is basically needed because of the following reasons:-

1. **To check the functioning of the organs**: -According to the doctrine of separation of power, the three organs of the govt. namely legislature, executive and judiciary are separated from each other and cannot interfere in the other's work. The doctrine of separation of power works with the principle of checks and balances due to which Judiciary acts as a watchdog and ensures that all the organs of the state works within their respective areas and according to the constitutional provisions. It acts as a guardian of the constitution and is helpful in achieving doctrine of separation of power in its true spirit.

2. Interpreting the provisions of the Constitution:-

The framers of the Indian Constitution are well aware of the of the fact that in future ambiguity will arise regarding the provisions of the Indian Constitution therefore they make the judiciary independent and self-competent so that the provisions of Constitution must be interpreted in an unbiased manner. Judiciary has to interpret the Constitutional provisions

according to the constitutional philosophy and constitutional norms. If the judiciary is not independent and self-competent, then the other organs would pressurise judiciary to interpret the provisions of the constitution according to them.

3. Disputes referred to the Judiciary:-

Judiciary acts as a guardian of the Constitution and it is expected from it that judicial justice will be delivered and not the partial or committed justice. Committed justice means that the judgement is made by a judge emphasizing upon only one aspect and not considering all the aspects involved in a particular situation. Judiciary must have to act free from any external factor and to deliver justice without any partiality.

C. Judicial Review:-

Judicial review is the doctrine under which judiciary has the power to review the works of legislative and executive. The judiciary can review and determine the validity of a law or an order. Constitution is the supreme law of land and any law inconsistent therewith is void through judicial review.

It has two primary functions and these are as follows:-

(1) Legitimizing government action; and

(2) To protect the constitution against any undue encroachment by the government.

The Constitutional Provisions which guarantee judicial review of legislation are Articles 13, 32, 131-136, 143, 226, 145, 246, 251, 254 and 372.

D. Judicial Activism:-

Black's Law Dictionary defines judicial activism as a "philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions."The public interest litigation (PIL) was such an instrument devised by the court to reach to the public and take the cases which is filed by the litigant though he may not be the victim. **"**suomotu**"** allows the court to take cognizance of such cases on its

own. The *Golak Nath case*[13] is an example of judicial activism. The Supreme Court by a majority of six against five laid down that the fundamental rights as enshrined in Part-III of the Constitution are immutable and beyond the reach of the amendatory process. The power of parliament to amend any provision in Part-III of the Constitution was taken away.

E. Constitutional Provisions Regarding the Independence of Judiciary:-

The rights of the individual can be protected only when there is an impartial and independent judiciary. This is helpful in providing equal justice without any sort of fear or favour. It is necessary that the judiciary should be allowed to work in an atmosphere of independence and that must be free from all political pressures and other external forces. Many provisions are provided in our constitution to ensure the independence of the judiciary. The constitutional provisions are as follows:-

1. Security of Tenure:-

The judges of the Supreme Court and the High Court have security of tenure. Once appointed, they continue to remain in office till they reach the age of retirement i.e. 65 years in case of Supreme Court (Art. 124 (2)) and 62 years in the case of High Court (Art. 217(1)). The judges cannot be removed from their offices except by the order of the President and that also only on the ground if proven misbehaviour a or incapacity, and that too is supported by a resolution adopted by a majority of total membership of each House of Parliament and also by a majority of not less than two third of the members of the house present and voting. This procedure is so complicated that till now there has been no case of a removal of judges of Supreme Court or the High Court under this provision.

2. Salaries and Allowances:-

Another factor that makes the judiciary independent is salaries and allowances that is given to the judges as their salaries and allowances are fixed and are not subject to a vote of the legislature. The salaries and allowances of the Supreme Court judge are charged on the Consolidated Fund of India and that of High Court are charged on the Consolidated Fond of the State. Their salaries and allowances cannot be altered to their disadvantage except in the grave financial cases as provided under the Art. 125(2).

3. Powers and Jurisdiction of the Supreme Court:-

[13]DR. BHURE LAL, "Judicial Activism and Accountability", Siddharth Publications, ISBN : 81-7220-158-3,p38-39.

Parliament has no power to curtail the powers and jurisdiction of the Supreme Court but add the power. In respect of its jurisdiction, Parliament may change pecuniary limit for appeals to the Supreme Court in civil cases, enhance the appellate jurisdiction of the Supreme Court and confer supplementary power to issue directions, order or writs for any purpose other than those mentioned in Art. 32. According to Art. 138 Parliament can exceed the power of the Supreme Court but cannot curtail it. Hence, makes the judiciary independent.

4. No Discussion on Conduct of Judges in State Legislature or Parliament:-

Art. 211 states 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. Art. 121 of the Indian Constitution provides that no discussions 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 expect upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided.

5. Power to Punish for its Contempt:-

The Supreme Court and the High Court have the power to punish any person for its contempt. Art. 129 provide that The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Art. 215 provides that every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

6. Separation of Judiciary from Executive:-

Art. 50 states that The State shall take steps to separate the judiciary from the executive in the public services of the State. The object behind the Directive Principle is to secure independence of judiciary from the executive. Art. 50 say that there shall be a separate judicial service which is free from the executive control.

7. Prohibition on Practice after Retirement:-

Art. 124(7) prohibit a retired Judge of the Supreme Court to appear and plead in any court or before any authority within the territory of India.

It is clear that the position of the Supreme Court is very strong and its independence is adequately guaranteed.

Firstly, Art. 124 vests the power of appointments in the hand of executive but the executive is required to 'consult' the legal experts i.e. judges of the Supreme Court and the High Courts in appointing judges of the higher courts. But the Supreme Court interpreted the word 'consultation' in such a literal manner that it gave virtually discretion in the matter.

In *S.P. Gupta v. Union of India*[14], (popularly known as Judges Transfer Case) the Supreme Court held that the meaning of the word 'consultation' in Art. 124(2) are same as the meaning of the word 'consultation' in Art. 217 and Art. 222 of the constitution. Only on the basis of mala fide and irrelevant considerations the government decisions can be challenged.

This means that the executive ultimately has the power to appoint the judges. This creates an adverse effect on the independence and impartiality of judiciary. Therefore Bhagwati, J., said "it is unwise to entrust power in any significant or sensitive area to a single individual however high or important may be the office, which he is occupying". Hence he had suggested for establishment of a Judicial Commission for recommending the names of persons for the appointment of Judges of the Supreme Court and the High Courts.

Secondly, the power of the President under Art. 222 to transfer a judge from one High Court to another may also be used to undermine the independence of the Judiciary.

Fortunately, in the case of *S.C. Advocate on Record Association v. Union of India*[15] , a nine judge bench of the Supreme Court by a 7-2 majority overruled its earlier judgement in the Judges Transfer case and it was held by the court that the Chief Justice of India should have primacy in the case of the appointment of the judges. The appointment of Chief Justice of India shall be on the basis of the seniority. The view of the Chief Justice of India will be formed after taking into account the views of two senior most judges of the Supreme Court. It has reduced to the minimum individual discretion conferred upon the President and the Chief Justice of India so that there would not be any sort of partiality in the appointment of the judges. The criterion of appointment of Chief Justice of India shall be seniority.

In *re Presidential Reference*[16], a nine judge bench of the Supreme Court has held that the recommendation made by the Chief Justice of India without following the consultation process on the appointment of the judges of the Supreme Court and the High Court are not

[14] AIR 1982 SC 149.
[15] (1993) 4 SCC 441.
[16] AIR 1999 SC 1.

binding on the government. The consultation process which is adopted by the Chief Justice of India requires the consultation of the 'Plurality of Judges'. The only opinion of the Chief Justice of India does not constitute 'consultation' within the meaning of the said articles. Under Art. 124(2) the Chief Justice of India should consult "a collegium of four senior most judges of the Supreme Court" and if the two judges of that collegium give the adverse opinion the Chief Justice of India should not send the recommendation to the government of India. Also the opinion must be in writing and Chief Justice of India should send the recommendation along with his opinion to the President.

In regard to the transfer of High Court Judges it was said by the Court that in addition to four Judges the Chief Justice of India is obliged to consult Chief Justice of the concerned High Courts(one from which the judge is being transferred and the other receiving him). However in regard to the appointment of the judges the Chief Justice of India is required to consult only two senior most judges of the Supreme Court.

POSITION NOT SATISFACTORY: Need for a National Judicial Commission

In the Indian scenario the controversial situation arises because the executive and the judiciary both assert themselves in a tug of war for supremacy in the matter. However, both of them have shown their failings on this matter. The solution of this problem is this that neither side enjoys supremacy in this matter. A Constitutional body should be entrusted so that it brings the harmony in between the two organs of the government i.e. in between the executive and the judiciary. A National Judicial Service Commission as suggested by the Law Commission in 1987 is the final way in the matters of selection, promotion and transfer relating to judiciary. The commission consists of Chief Justice of India (head of the Commission) including three judges each of Supreme Court and the High Courts, the Attorney General, an outstanding legal academician and a representative of the Ministry of Law and Justice.

The National Front Government Law minister Dinesh Goswami introduced a bill in 1990 for setting up a National Judicial Commission empowering the President to constitute commission for the appointments of a Judge to the Supreme Court (other than Chief Justice of India), Chief Justice of High Courts and to the transfer of Judges from one High court to another. However this Constitution Amendment Bill lapsed consequent to the dissolution of the Lok Sabha.

THE CONSTITUTION (99th AMENDMENT) ACT, 2014:

The following Act of Parliament received the assent of the President on 31st December, 2014 and is hereby published for general information.

Be it enacted by Parliament in the Sixty-fifth Year of the Republic of India as follows:-

1. (*1*) This Act may be called the Constitution (Ninety-ninth Amendment) Act, 2014.(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In Article 124 of the Constitution, in clause (2),-

(*a*) for the words "after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose", the words, figures and letter "on the recommendation of the National Judicial Appointments Commission referred to in article 124A" shall be substituted;

(*b*) the first proviso shall be omitted;

(*c*) in the second proviso, for the words "Provided further that", the words "Provided that" shall be substituted.

3. After article 124 of the Constitution, the following articles shall be inserted, namely-

"124A. (1) There shall be a Commission to be known as the National Judicial Appointments Commission consisting of the following, namely:—

(*a*) the Chief Justice of India, Chairperson, *ex officio*;

(*b*) two other senior Judges of the Supreme Court next to the Chief Justice of India members, *ex officio*;

(*c*) the Union Minister in charge of Law and Justice—Member, *ex officio*;

(*d*) two eminent persons to be nominated by the committee consisting of the Prime Minister, the Chief Justice of India and the Leader of Opposition in the House of the People or where there is no such Leader of Opposition, then, the Leader of single largest Opposition Party in the House of the People — Members:

Provided that, one of the eminent person shall be nominated from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities or Women:

Provided further that, an eminent person shall be nominated for a period of three years and shall not be eligible for re-nomination.

(2) No act or proceedings of the National Judicial Appointments Commission shall be questioned or be invalidated merely on the ground of the existence of any vacancy or defect in the constitution of the Commission.

124B. It shall be the duty of the National Judicial Appointments Commission to-

(*a*) recommend persons for appointment as Chief Justice of India, Judges of the Supreme Court, Chief Justices of High Courts and other Judges of High Courts;

(*b*) recommend transfer of Chief Justices and other Judges of High Courts from one High Court to any other High Court; and

(*c*) ensure that the person recommended is of ability and integrity.

124C. Parliament may, by law, regulate the procedure for the appointment of

Chief Justice of India and other Judges of the Supreme Court and Chief Justices and other Judges of High Courts and empower the Commission to lay down by regulations the procedure for the discharge of its functions, the manner of selection of persons for appointment and such other matters as may be considered necessary by it.".

4. In article 127 of the Constitution, in clause (1), for the words "the Chief Justice of India may, with the previous consent of the President", the words "the National Judicial Appointments Commission on a reference made to it by the Chief Justice of India, may with the previous consent of the President" shall be substituted.

5. In article 128 of the Constitution, for the words "the Chief Justice of India", the words "the National Judicial Appointments Commission" shall be substituted.

6. In article 217 of the Constitution, in clause (1), for the portion beginning with the words "after consultation", and ending with the words "the High Court", the words, figures and letter "on the recommendation of the National Judicial Appointments Commission referred to in article 124A" shall be substituted.

7. In article 222 of the Constitution, in clause (1), for the words "after consultation with the Chief Justice of India", the words, figures and letter "on the recommendation of the National Judicial Appointments Commission referred to in article 124A" shall be substituted.

8. In article 224 of the Constitution,—

(*a*) in clause (1), for the words "the President may appoint", the words "the President may, in consultation with the National Judicial Appointments Commission, appoint" shall be substituted;

(*b*) in clause (2), for the words "the President may appoint", the words "the President may, in consultation with the National Judicial Appointments Commission, appoint" shall be substituted.

9. In article 224A of the Constitution, for the words ‘‘the Chief Justice of a High Court for any State may at any time, with the previous consent of the President’’, the words ‘‘the National Judicial Appointments Commission on a reference made to it by the Chief Justice of High Court for any State, may with the previous consent of the President’’ shall be substituted.

10. In article 231 of the Constitution, in clause (2), sub-clause (*a*) shall be omitted.

CONCLUSION:

The independence of Judiciary holds a prominent position as it secures the stability and prosperity of the society by giving the judicial decisions and that decisions are free from external pressure. As it is clear from the historical view that the independence of judiciary has struggled in the past especially in the matters to the appointment and the transfer of Judges. Court always tried to maintain the independence of Judiciary and always said that it is the basic feature of the Constitution because of the reason that the independence of judiciary is the pre-requisite for better working of the Constitution and for the realization that the democratic society is based on the rule of law. Also the independence of judiciary is important for the reason that it maintains the stability, security and prosperity of the society.

The interpretation in interpretation which was done in the case of Judges Transfer gives the power to executive regarding the appointment of judges and makes it superior. However in the subsequent decisions in case of Second Judges and Third Judges case is a praiseworthy step by the court and the new system i.e. collegium system came into existence. Lord Acton said, “Power tends to corrupt, and absolute power corrupts absolutely”.

Whenever there is a talk of independence of judiciary there is always a concern regarding the latent dangers of the judicial independence and hence importance of judicial accountability arises. The recent development in this regard is the National Judicial Appointment Commission for maintaining the independence and transparency of the Judiciary.

The final outcome of the whole discussion is this that the framers of the Indian Constitution realized the independence of judiciary long ago which has been adopted by the court as the basic structure of the Indian Constitution. Law is dynamic in nature as it has to change with the passage of time and new dimensions of the society. Judicial Accountability and Judicial Independence both have to work hand in hand to ensure the real purpose of setting up of the institution of Judiciary.