

# The Judicial System with special reference to India

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**Abstract-** *In a democratic system every organ of the state plays an important role and performs vital functions, however the judiciary has to perform a most crucial, difficult and major task as compared to the role played by the legislature and the executive. For the entire population of India there is one united judicial system. Sometimes it may happen that while performing the function these two organs i.e. executive and legislative may get politically motivated, while judiciary is usually neutral and unbiased and tries to uphold the rule of law acting as custodian, guardian or can say watchdog in safeguarding the citizens rights. The Judge is looked upon as a symbol of justice. People approach court for seeking justice and feel frustrated if justice is denied to them. Judiciary in India is not only competent to interpret the laws enacted by the Parliament but also to pronounce upon their validity. But in recent times it has been observed that judiciary is losing its creditability, trustworthiness, reliability in justice delivery system. There are number of cases found against judicial system doing corruption or immoral activity . This article lays down the jurisprudential theories on judiciary and rule of law and also appointment system and other drawbacks in present judicial system.*

**Index terms:** *independence of judiciary, appointment, accountability, misconduct, transparency, Constitution, judicial review, lacunae in functioning.*

## I. INTRODUCTION

The Indian Constitution has integrated judicial system with the Supreme Court at the apex level and below its high court unlike American Constitution because India has unified and one system of fundamental law and justice. On the other hand in United States of America the federal laws are enforced by the federal judiciary and the state laws are enforced by the state judiciary. It means that there are two system of courts in USA one for the centre and the other for the state. Under a high court there is hierarchy of subordinate courts, that is district court and lower courts. Thus this single system of courts is adopted from the Government of India Act of 1935, which enforces both central and state laws. Article 124 to 147 in Part V of the Indian Constitution[1] deals with the organisation, independence, jurisdiction, powers, procedures and so on of the Supreme Court. At present, the Supreme Court consist of thirty-four judges (one chief justice and thirty three judges). In July 2019, the centre notified an increase in the number of Supreme court judges from thirty one.[2]

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Earlier according to Article 124 of the Constitution, the judges of the Supreme Court were appointed by the President after the consultation with the Chief justice and other judges of Supreme court. The Supreme has given different interpretation of the word 'consultation' in the provision. In 1982 the *First Judges Case* [3] the question was raised over the word consultation and the court held that consultation does not mean concurrence and it only implies exchange of views. But again the same issue was raised in 1993 in the case known as *Second Judges case*, [4] where in the court reversed its earlier judgement and changed the meaning of the word consultation to concurrence. Thus it means that now chief justice's advice will be binding on the President in the matter of appointment. But Chief Justice would give his advice only after consulting with two senior most judges. Thus due to 1993 judgement, the *Third Judges case* [5] in 1998 emerged, where the court opined that, the consultation process to be adopted by Chief Justice of India requires Consultation of four senior-most judges of the Supreme Court. Thus it gave rise to collegiums system. Thus the 99<sup>th</sup> Constitutional Amendment Act 2014, has replaced the collegiums system of appointing judges to the Supreme Court and High Court with a new body called NJAC [6]. However in 2015, the Supreme Court in *Fourth Judges case*, [7] declared the 99<sup>th</sup> Amendment Act and NJAC as unconstitutional and void as it violate the independence of judiciary.

## **II. RESEARCH METHODOLOGY**

The research work done in this study is doctrinal in nature and is qualitative research. The doctrinal research methodology, which is used in this paper, includes various legal principles and concepts of all kinds such as legal statutes, commentaries, articles etc. The researcher has also studied various perception or theory like American legal realism, Scandinavian realist approach, Sociological approach etc. Thus the paper includes qualitative research of various national and international books, and journals on the same topic.

## **III. Jurisprudential Theories on Judiciary.**

The present judicial system is the impact of the British rule. In ancient British legal system judiciary played a very dominant role. The present researcher attempts to analysis a few relevant theories of jurisprudence related to judiciary. There are two separate and distinct opinions regarding the various aspect of the judiciary. Like jurist from positivist approach like Jeremy Bentham and John Austin identify a very limited role of the judiciary, [8] whereas on the other hand the realist approach [9] have not only identified very fast power of judiciary but even vested judiciary with law making powers. The Sociological school propounded by Roscoe Pound [10] confers upon the judiciary a very function of balancing the conflicting interest with the help of law.

## **IV. ROLE AND FUNCTION OF JUDICIARY IN INDEPENDENT INDIA.**

Though judiciary is independent but its judicial functions are interlinked and interdependent with other two organs that is the executive and the legislature. The judiciary has to perform a very crucial task of keeping a vigilant

eye on the excess or ultra-vires or arbitrary use of any power by any authority within the boundaries of the Indian legal system. In *Romesh Thapar v. State of Madras*, [11], it was observed by *Justice Patanjali Sastri* that, “*this court is thus constituted the protector and guarantor of fundamental rights, and it cannot consistently with the responsibility, so laid upon it, refuse to entertain applications seeking protection against the infringements of such rights*”. There are few essential functions of judiciary as follow.

a. Judiciary can be regarded as the foundation of justice as it should ooze out from the judiciary’s action of adjudication.

b. The judiciary undertakes the major function that is , to interpret the law according to the intention of the legislature who is the law making authority. For example while interpreting the term ‘life and liberty’ under Article 21, it has travelled from South Pole to North Pole.[12]

c. The judiciary also plays the role of law making in case where the matter is not covered by the statute or by any precedent. Thus by creating new precedents[13] is capable of maintaining a relationship between laws and morals.

d. Judiciary is also said as guardian of individuals rights. Thus one can say that, dispensing justice and guarding the individuals rights are the two side of the same coin.

e. Judiciary in India is also placed with the responsibility of giving advisory opinion to the President on any legal matter under Article 143 of the Indian Constitution.

f. Judiciary also performs certain executive functions like appointment of certain official of the court. Even the appointment of judicial post of the Supreme Court and high court judicial officers etc.[14]

## V. RESULTS AND FINDINGS

Despite the fact that the Indian judiciary is doing a remarkable work never the less it is suffering from some lacunae. The purpose of identifying the lacunae or pointing out the criticism is only to ensure the efficiency of the judiciary by forwarding some solutions for the lacunae. (a) Corruption in judicial system- According to Lord Acton “power tends to corrupt and absolute power corrupts absolutely”. It is seen that quite a large number of judges are appointed by recommendation or through other unfair means. In some cases it is also said that most of our judges are selected through back door. Judges were caught by the investigating authorities while taking bribes. (b) Absence in direct judicial accountability- The absolute power is enjoyed by the judiciary in India due to lack of judicial accountability, as there is no higher institution present to keep a watch on judicial working as it is present in all other countries. Even though parliament had made an 99<sup>th</sup> Constitutional amendment in 2014 in form of NJAC but it was also struck down as it hampered the basic structure of the Constitution that is independence of judiciary.[15] (c) Inadequate strength of judges- For the first time in July 2019 full strength of judges are seen in Supreme court of India. But in high court and subordinate courts there are 30,000 vacancies to be fulfilled within the territory in India.[16] (d) Frivolous or fictitious litigation- Many a times people file false cases against other person, either just

to harass the other party and compel him to fall into pray for some unreasonable and unjust demands.(e) In addition to long holidays which caused delays in dispensation of smooth and quick justice, even the frequent strikes by the lawyers also disrupt the work of courts and cause harassment to the law abiding citizens. (f) Indian legal system provides very lengthy procedure and parties are bound to follow and adhere it. This system is very complicated, cumbersome, ineffective and flawed.

To counter this problem there is an urgent need of judicial accountability which should be enforced to keep a watch on judicial system.

## **VI. CONCLUSION.**

The researcher has come to the conclusion with certain observation and knowledge that there is greater demand for institutional accountability in the Indian judiciary to thwart the decline in the standard of judges. Indian democracy is based on faith of the existence of the judicial system. But today it is seen that, judiciary is losing its importance due to rigidity, expensive, compulsion, uncertainty, delay and lack of confidentiality etc. Judiciary is not answerable to anyone and is not under pressure to reform or change with time, it has become a law in itself. The researcher has also observed that, to solve the problem for delay in justice system there should be an enhanced efficiency by way of using better infrastructure by providing alternative methods of settlements or by adopting improved strategies of management and training etc. Few examples like to bring about professionalism in the judiciary, proper training, management, utility programmes should be conducted for the judges at all the stages. Efficient use of modern technology is must to increase productivity of the courts, technology such as video-conferencing, submission of papers, documents or records in form of soft copies etc. The mechanism like e-governance, e-court, information communication technology etc should be applied in day to day working of the courts. Last but not the least, an effective, efficient and human judicial process is an essential foundation of good governance particularly in a country like India, which should be committed to the rule of law.

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