Legal Article

Corruption in Judiciary And Judicial Accountability

Submitted as a student of LLB on participating in the competition for Award of Best Article to be published in

Journal of Law Teachers of India

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On 15th October, 2011

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CORRUPTION IN JUDICIARY AND JUDICIAL ACCOUNTABILITY

Nearly two decades ago, the Supreme Court set exacting standards for judges. In ***All India Judges Association v. Union of India***[1], the Supreme Court said, "*The conduct of every judicial officer should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private, political or partisan influences; he should administer justice according to law, and deal with his appointment as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity.*"

There is no impartial agency at present in testing the High Court and Supreme Court Judges against these norms. They consequently enjoy the leverage undeterred by any controlling agency so as to maintain a discernible degree of discipline in demeanour, dealings and decisions while deciding the cases.

Corruption in judiciary is one of the most controversial topics in India where citizens have woken up against absolute authority to any individual. The undeterred and uncontrolled judges enjoy the leverage and scope for corrupt practices in higher judiciary. The accountability of judges though generally assessed in terms of interpretation of law and on issues of facts, is diluted by their statutory immunities and unwillingness to entertain complaints against them. However, the law in most developed countries is changing, and the voice against corrupt Judges in India is also strengthening. In the United States, judges are now being impeached since Sept' 2006. Conversely, in India, the complainants are deterred by severe contempt proceedings or by maintaining reticence on their applications seeking previous sanction for prosecution, unless a judge himself complains to state agencies for investigation.

As the role of jury on question of fact has been usurped by the Judges in India since 1961, the scope of corruption in judiciary widens. Although, Justice V Ramaswami in 1993, and both Justice Soumitra Sen and Justice P D Dinakaran in 2011, have successfully avoided impeachment due to their victory or pre-emptive resignations, none is found guilty for their

[1] Manu/SC/0039/1992, para 71.

malicious verdicts u/s 219 IPC and their victims are still unknown for the public scrutiny or precedence, and the principle of res judicata adds fuel to fury. The public policy on equality of law swindles in favour of judges, which desperately requires reformative measures, particularly towards the citizen's right to recall.

Constitutional safeguards and statutory immunities

A Judge of the Supreme Court or High Court enjoys the full term until he retires or resigns but he cannot be removed from his office except through a motion of impeachment under Articles 124 and 217 of the Constitution.

The motion for impeachment has to be moved by either 100 Lok Sabha Members or 50 Rajya Sabha Members of Parliament. On admission, the Speaker of Lok Sabha or Chairman of Rajya Sabha constitutes an inquiry committee. The committee comprises three members, *viz* a Supreme Court judge, a High Court Chief Justice, and an eminent jurist. The charges framed by the committee are inquired into. Based on the unfavourable Inquiry Report, the House of Parliament which initiated the motion, continues with the motion for debate. The judge (or his representative) has the right to represent his case. After that, the motion is voted upon. If there is two-thirds support of those voting, and majority support of the total strength of the House, it is considered to have passed. The process is then repeated in the other House. After that, the Houses send an address to the President asking that the judge be removed from office. The tedious procedure for impeachment as defined under *Judges (Inquiry) Act, 1968*, is presently under consideration for replacement by the *Judicial Standards and Accountability Bill, 2010*.

Judges are also protected under *Judges (Protection) Act, 1985*, whereby any Judicial Officer, whether he is serving or retired from service, cannot be prosecuted for the discharge of his official or judicial duty or function. Only the Central or State Government or the Supreme Court or High Court or any other statutory or public authority may take some action against the Judicial Officer serving or retired. No other litigant can implicate a Judicial Officer for the discharge of his judicial function.

Similarly, under *Contempt of Courts Act, 1971*, the Judge of the High Court or Supreme Court has got powers to conduct *sui generis* proceedings for civil or criminal contempt, which is defined u/s 2(b) & 2(c) of the Act. 'Civil contempt' means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court. However, 'Criminal contempt' is the most controversial subject, and it includes publication or any other act, which is scandalous for the court, or prejudicial or interfering the court proceedings.

Independence of judiciary is part of the basic structure of the Constitution as held in ***Supreme Court Advocates-on-Record Association v. Union of India***[2]. It is further strengthened by adopting stringent procedure of selection for the Judges of High Court and

[2] Manu/SC/0073/1994, para 531;

Supreme Court. ***In re Special Reference No. 1 of 1998***[3], Supreme Court made it mandatory that the consultations with Chief Justice of India would be binding on the President for selection and transfer of a Judge of the High Court and for elevation to the Supreme Court, and the Chief Justice of India includes its Collegiums for the purpose of consultation.

Impeachment versus statutory punishment

Judges can be impeached under Article 124(5) of the Constitution, on the ground of proved misbehavior or incapacity, and the procedure is laid down under *Judges (Inquiry) Act, 1968*. It is purely an administrative action, where charges are framed, and inquiry is conducted in respect of a single major penalty, i.e. 'removal from the public office', unless he vacates the office by resignation or retirement.

However, administrative actions are subject to judicial review under Article 226 and 32 of the Constitution, as the 'Judicial review' is 'basic structure' of the Constitution, which can never be abridged or taken away by the legislature, as held in ***L. Chandra Kumar v. Union of India***[4]. Moreover, the highest authority for proving guilt of a person is the Supreme Court under Articles 32 and 134, read with Article 141 of the Constitution.

Guilt always demands punishment. No punishment can be awarded unless guilt of the person is fully established beyond any reasonable doubt u/s 235(2) CrPC. However, a guilty person can be let off by simple censure, pardon, reprimands, reprieve, remission, etc, or can be punished severely to deter others, depending on the circumstances and the theories of punishment, such as Retribution/ Desert, Deterrence, Incapacitation, Rehabilitation, Denunciation, Reform and Prevention theories, as also explained in ***Bishnu Deo Shaw v. State of West Bengal***[5].

It is a settled law as per scheme of punishment under Indian Penal Code and the denunciation theory of punishment that the "public servant" of higher authority is awarded more severe punishment for the similar offences. Moreover, the relief on account of compromise with the victim is also denied to public servant, as the offences committed by Public Servants purporting to act in that capacity must remain non-compoundable, as per guidelines provided by five judges bench in ***Kulvinder Singh v. State of Punjab***[6].

Judges of Supreme Court and High Courts are "public servants" within the meaning u/s 21(Third) of IPC, as held in ***K. Veeraswami v. Union of India***[7]. They can be punished u/s 219 IPC for their corrupt or malicious verdicts. Moreover, as a general law applicable to others, a guilty 'public servant' can be punished for disobeying law [u/s 166 & 217 IPC], framing incorrect documents or records [u/s 167 & 218 IPC], and for their unlawful trade or for unlawful buying or bidding property [u/s 168 & 169 IPC], etc. However, none of the

[3] MANU/SC/1146/1998;
[4] MANU/SC/0261/1997, para 76;
[5] MANU/SC/0089/1979;
[6] MANU/PH/0222/2007: 2007 (4) CTC 769;
[7] MANU/SC/0610/1991, p. 2 & 3; Reaffirmed in ***P. V. Narasimha Rao v. State (CBI/ SPE)*** - Manu/SC/0293/1998, p. 187;

Judges of the High Courts or Supreme Court have ever been prosecuted or punished under any of these provisions.

Contrary to this, Justice V. Ramaswami of Supreme Court won the impeachment motion on 10th May' 1993 for the established guilt of his ostentatious expenditure on his official residence during his tenure as a Chief Justice of Punjab and Haryana High Court.

Justice Soumitra Sen aborted the impeachment motion due to his resignation on 1.9.2011 after defeat in Rajya Sabha voted on 18.8.2011. He was found guilty by the Inquiry Committee of misappropriating sale proceeds to the tune of Rs 24 lakh in a case in 1984 where he was appointed as receiver by the Calcutta High Court. He was an advocate at that time. He was later directed to deposit Rs 52 lakh by the High Court. He had allegedly unauthorisedly taken out Rs 25 lakh from another account and invested it elsewhere.

Justice P D Dinakaran also aborted the impeachment motion due to his resignation on 30.7.2011. Earlier in ***Justice P.D. Dinakaran v. Judges Inquiry Committee***[8], he lost his attempt to quash all 16 charges leveled against him on 24.4.2011 by the Judges Inquiry Committee of Rajya Sabha. Some of the charges include dishonest judicial orders, unlawfully securing five Housing Board plots, Benami Transactions, encroachment of government and public properties to deprive dalits and poor, destruction of evidence, etc.

None could be removed through impeachment. The question remains unanswered regarding their offences as public servant, when none is prosecuted for their criminal offences. Moreover, a guilty judge is also enjoying the title of "Justice", which can only tarnish the status of Indian judiciary for being ignorant on the subject.

The objective of proving the offences beyond any reasonable doubt remains diluted when the victims of these judges are not disclosed for public scrutiny and the precedence. No judicial review, even on public interest or on initiative of Central Government, exists against their let off from the criminal prosecutions. Moreover, *Judges (Protection) Act, 1985*, bars general public from implicating a Judicial Officer for the discharge of his judicial function. However, the doctrine of judicial immunity is being diluted significantly during past one decade in other countries like USA, Canada, UK and Australia, by creating a forum for inviting complaints against the misconduct of Judges.

Citizen's Safeguards in Other Countries

In United States of America, judicial misconduct or public misfeasance by judges is strictly taken care by inviting complaints against judges under United States Code[9] [28 USC §§ 351 – 364]. Accordingly, any person alleging that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such judge is unable to discharge all the duties of office by reason of mental or

[8] MANU/SC/0983/2011
[9] http://www.ca1.uscourts.gov/circuitexec/files/misconduct.pdf

physical disability, may file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct.

Under *Constitutional Reform Act, 2005*[10] of the United Kingdom, *Office for Judicial Complaints* (OJC) was set up to handle complaints and provide advice and assistance to the Lord Chancellor and Lord Chief Justice in the performance of their joint role. They cannot consider any complaint about a judicial decision or the way in which an individual's case has been handled. The complaint can be filed against District Judge, Circuit Judge, High Court Judge, Lord Justice, Tribunal Chambers President, Tribunal Members, Magistrates, etc.

In Canada, complaint about the conduct of a Supreme Court judge may be filed before the *Canadian Judicial Council*[11], provided the complaint is about judicial conduct, not a decision the judge made in court.

In Australia, a complaint about judicial conduct is made to the Chief Justice[12], in connection with the performance of a judge's judicial functions. If a complaint is capable of being dealt with by an appeal to the Full Court, the Chief Justice will reply accordingly.

Justice Christopher Steytler[13], in his article "*Transparency, Accountability And Fighting Corruption In The Judiciary*" presented during *International Conference and Showcase on Judicial Reforms* held in Philippines on 28-30 November 2005, observed that there have recently been calls for performance reviews in respect of individual judges in Australia, like the system of performance appraisal encompassing surveys by members of the legal profession, or a system of peer evaluation. In England also, the possibility of performance review has been mooted. Although performance reviews could aid in the improvement of judicial standards, any formal system of evaluation raises concerns for individual independence.

Misfeasance and scope of corrupt practices

There is no statute to define misfeasance of the judges. *In the absence of such statute, misfeasance of a judicial officer is not a criminal offence, impeachment being the exclusive remedy. No FIR can be could be registered against a serving SC or HC Judge without prior permission of CJI,* as held in ***K. Veeraswami v. Union of India***[14]. The matter is, however, being reconsidered in the Supreme Court as per Order dated 1.8.2008 in multi-crore Provident Fund scam of Ghaziabad.

Later, in a Resolution adopted on 7.5.1997, the Supreme Court Judges asserted as a part of its independence that it believes in self-regulation, i.e. for regulating the conduct of judges without requiring any enacted law for that purpose, as observed in ***Secretary General, Supreme Court of India v. Subhash Chandra Agarwal***[15]. Similarly, the Conference of Chief

[10] http://www.legislation.gov.uk/ukpga/2005/4/contents
[11] http://www.cjc-ccm.gc.ca/english/conduct_en.asp?selMenu=conduct_complaint_en.asp#wcymaca
[12] http://www.familycourt.gov.au/wps/wcm/connect/FCOA/home/about/Feedback/FCOA_complaints_judicial
[13] President of the Court of Appeal of the Supreme Court of Western Australia.
[14] supra, Manu para 129
[15] Manu/DE/0013/2010, para 84

Justices of all High Courts also unanimously resolved to adopt the "*Restatement of Values of Judicial Life*" (i.e. Code of Conduct) on 4.12.1999. By and large these standards are not maintained. Both the Resolutions of 1997 and 1999 have focused on two different aspects of accountability of the judges, firstly, the Conduct of judges as an in-house mechanism, and secondly, the Declaration of assets as a facet of accountability. Both are now incorporated under sections 3 & 4 of the proposed *Judicial Standard and Accountability Bill, 2010*.

It is also observed that the Chief Justice of India is NOT vested with any power to decide about the conduct of a judge, as held in ***Indira Jai Sing v. Registrar General, Supreme Court of India***[16]. The Court further said that under *Judges (Inquiry) Act, 1968*, the Presiding Officer of the concerned House has the power to constitute a Committee consisting of three persons. No other disciplinary inquiry is envisaged or contemplated either under the Constitution or under the Act. On account of this lacuna, an In-House procedure has been adopted for inquiry to be made by the peers of judges for report to the CJI in case of a complaint against the Chief Justices or Judges of the High Court in order to find out truth of the imputation made in the complaint and that In-House inquiry is for the purpose of his own information and satisfaction. This report of inquiry cannot be made public, as it would only lead to more harm than good to the institution as the charged judge would prefer to face inquiry leading to impeachment.

However, the Supreme Court also noticed circumstances of corruption and misconduct committed by the Senior Judges. Some of their comments are:

- "*We are not giving the certificate that no judge is corrupt. Black sheep are everywhere. It's only a question of degree*", on 6.8.2008 by the Supreme Court Bench[17], Justice B N Agrawal, Justice V S Sirpurkar and Justice G S Singhvi, in a case relating to PF scam in Ghaziabad;
- "*What about the character of politicians, lawyers and the society? We come from the same corrupt society and do not descend from heaven. But it seems you have descended from heaven and are, therefore, accusing us*", on 7.8.2008 by the Supreme Court[18] Justice B N Agarwal on a multi-crore PF scam case of Ghaziabad, involving 36 judges;
- "*The rot has set in*", "*The time has come because people have started categorizing some judges as very honest despite it being the foremost qualification of any judge. It is the system. We have to find the mechanism to stem the rot" "Has the existing mechanism become outdated? Should with some minor modification, the mechanism could still be effective?*" on 9.9.2008 by the Supreme Court Bench[19], Justice Arijit Pasayat, Justice V S Sirpurkar and Justice G S Singhvi;
- ‘‘*Something is rotten in the Allahabad High Court...Some judges (of the HC) have their kith and kin practising in the same court, and within a few years of starting*

[16] Manu/SC/0395/2003, para 2 & 3;
[17] http://www.nerve.in/news:253500154207
[18] Hindustan Times, Delhi, dated 7.8.2008;
[19] Times of India, Delhi, dated 10.9.2008;

practice, sons or relatives of the judges become multi-millionaires, have huge bank balances, luxurious cars, huge houses and are enjoying a luxurious life. This is a far cry from the days when sons and relatives of judges could derive no benefit from their relationship and had to struggle at the Bar like any other lawyer...We are sorry to say but a lot of complaints are coming against certain judges of Allahabad HC relating to their integrity,'' Supreme Court[20] Justices Markandey Katju and Gyan Sudha Misra said on Friday 26.11.2010 as they expressed distress over rampant nepotism and corruption in the HC.

The conduct of judges may be categorized as under:

(1) corrupt or malicious judgment, verdict or order being an offence u/s 219 IPC, where a judge may also be separately prosecuted for corruption as he is within the meaning of "public servant" u/s 2(c)(iv) of Prevention of Corruption Act, 1988, and u/s 21 (Third) IPC;
(2) misbehavior, which is prejudicial to the effective and expeditious administration of the business of the courts;
(3) incapacity in terms of mental or physical disability;

A judge may be removed by the process of impeachment for his proved misbehavior or incapacity under Article 124(4) of the Constitution of India. However, in most of the developed countries, such as UK, Canada and Australia, the judicial misconduct does not include the matters that are decision the judge made in court, or the matter capable of being dealt with by an appeal to the Full Court. Such a narrow approach to the judicial misconduct is practically incomprehensible for the experiences in USA and India.

The Judicial Accountability Initiative Law (JAIL) for Judges, at portal www.jail4judges.org, is a single-issue national grassroots organization designed to end the rampant and pervasive judicial corruption in the legal system of the United States. J.A.I.L. recognizes this can be achieved only through making the Judicial Branch of government answerable and accountable to an entity other than itself. At this time it isn't, resulting in the judiciary's *arbitrary abuse of the doctrine of judicial immunity, leaving the People without recourse when their inherent rights are violated by judges*. It is highly critical of the double standards played by judges for their self-interest in passing colourable judgments. Another portal www.corruptusjudicialsystem.org, cites instances of corruption, torture, criminal and human rights violations by officials and Judiciary of the States of the United States. The portal exposed the "cash for kids" scandal, that finally resulted in Mark Ciavarella and Michael Conahan, former US President Judges, found guilty of kickback $2.6 million to lock 6500 juveniles. Similarly, India Against Corruption, at portal www.indiaagainstcorruption.org, and its associate organisations of Team Anna, criticized the *Judicial Standards and Accountability Bill, 2010*, as it does not deal with investigation of the judges for corruption or their prosecution. It only deals with the complaints against judges for misconduct.

[20] Times of India, Delhi, dated 27.11.2010;

Under Chapter-III of the *Prevention of Corruption Act, 1988*, in India, any kind of gratification, other than legal remuneration, such as a motive or reward or any valuable thing with inadequate consideration, is a ground for punishable offences, where gratification is not restricted to pecuniary gratifications alone.

For *Voglewede & Associates*[21], there are four categories of corruption (viz. FACT):

(1) **F**avoritism → such as Nepotism, Discrimination, Prejudice, Supply Chain and Distribution;
(2) **A**uthority → such as Privilege, Abuse, Contract, Embezzlement and Harassment;
(3) **C**ompetence → such as Indolence, Ineptitude, Resistance, Cheating and Theft;
(4) **T**ribute → such as Protection, Bribe, Extortion, Commission and Tapping;

In *Political Corruption in Ireland 1922 - 2010: A Crooked Harp?* published by Manchester University Press, the author Dr Elaine Byrne warned that blindly labeling something as corruption is meaningless. For example, we cannot cure cancer unless we know what type of cancer it is. She defined corruption from a different perspective, namely:

(1) Systemic corruption → when major institutions are routinely dominated and used by corrupt individuals, leaving most people with no alternatives to dealing with corruption. It is an integrated aspect of the economic, social and political system, embedded in a wider situation that helps sustain it.
(2) Sporadic (individual) corruption) → It occurs irregularly and therefore it does not threaten the mechanisms of control nor the economy as such. It is not crippling, but it can seriously undermine morale and sap the economy of resources.
(3) Political corruption → when politicians are using their authority to sustain their power, status and wealth. It results in misallocation of resources, and the manner in which decisions are made. The laws and regulations are abused by the rulers, side-stepped, ignored, or even tailored to fit their interests.
(4) Grand corruption → when policies and rules are formulated to favour someone.
(5) Petty corruption → A small scale, bureaucratic or petty corruption.
(6) Legal and moral corruption → due to vague laws, leaving discretion to the public officials on legal interpretation, and hence, misused for corrupt purposes. If an official's act is prohibited by laws established by the government, it is corrupt; if it is not prohibited, it is not corrupt even if it is abusive or unethical. It is this category, where corrupt judges make the most advantage.

I may like to categorize misconduct of judges in terms of substantive and procedural aspects. Primary role of the judges is to deliver justice on the questions of facts or law, as the substantive relief, distinct from the procedural relief. Therefore, the judges ought to be accountable for not only their misbehavior or incapacity (the procedural aspect) but also substantively for their corrupt or malicious judgments, which affect the individual's rights.

[21] A team of professionals of over 25 years of experience in USA, at www.CorruptionControl.Com, is an independent professional network specialized in Profit Engineering. They have found that corrupt practices are the most important drain on profitability, and the greatest obstacle to economic development.

Any decision on the questions of facts or of law purposely interpreted for corrupt purposes, is bound to affect substantially the litigant, such that the fact-in-issue become inconsistent with other interrelated circumstances and the core issue on law get ignored or diluted under the halo of procedural or other legal provisions. Public scrutiny of the judges, or what England or Australia call it as "Performance Review of the Judges", is need of the time for their misfeasance.

In United Nations Office for Drug Control and Crime Prevention (UN-ODCCP) Report of March 2001, Petter Langseth[22] identified some of the indicators of corruption in judiciary, as perceived by the public. They include: delay in the execution of court orders; unjustifiable issuance of summons and granting of bails; prisoners not being brought to court; lack of public access to records of court proceedings; disappearance of files; unusual variations in sentencing; delays in delivery of judgments; high acquittal rates; conflict of interest; prejudices for or against a party witness, or lawyer (individually or as member of a particular group); prolonged service in a particular judicial station; high rates of decisions in favour of the executive; appointments perceived as resulting from political patronage; preferential or hostile treatment by the executive or legislature; frequent socializing with particular members of the legal profession, executive or legislature (with litigants or potential litigants); and postretirement placements.

US cases on Corrupt Judges

Considering several instances of corruption in judiciary, the law on Judicial Immunity in USA is gradually changing. Some of the cases on judicial misconduct, since Sept' 2006, in United States[23] are:

(1). Manuel L Real, US District Judge for California charged for the custody of disputed Filipino assets. His impeachment proceedings were dropped as per report dated 21.9.2006;

(2). Edward Willis Nottingham Jr, US Federal Judge for District Court charged for use of a topless club and escort service. He resigned on 21-October-2008 without resolution of the complaints;

(3). Samuel B Kent, US District Judge, sentenced to 33 months prison on 11-May-2009 followed by impeachment for sex scandal;

(4). Alex Kozinski, Chief Judge of US Court of Appeals for 9th Circuit, charged for sexual photos & videos on his Website. In July-2009, Kozinski was admonished by a panel headed by Judge Anthony Scirica;

(5). Gabriel Thomas Porteous, Jr, a former US Federal judge, charged for perjury and improperly accepting gifts & money. He was impeached, removed from office and

[22] Presented "*Strengthening Judicial Integrity Against Corruption*" on 20.12.2000 before UN-ODCCP, Vienna.
[23] http://en.wikipedia.org/wiki/

disqualified from ever holding any office of honor or profit under the United States on December 8, 2010;

(6). Mark Ciavarella and Michael Conahan, former US President Judges, found guilty of kickback $2.6 million to lock 6500 juveniles, also known as “Cash-for-kids” scandal. Ciavarella tendered his resignation on 23-January-2009. On 18-February-2011, a jury in federal court found Ciavarella guilty of racketeering, for accepting $ 997000 in illegal payments and tax evasion. On 11-August-2011, Ciavarella was sentenced to 28 years in federal prison;

Indian cases on Corruption in Judiciary

When a case of corruption is cast upon a judge by a an ordinary person, the contempt of court proceedings are attracted, though it is duty of State alone to investigate every alleged offences, as every offence is the offense against the society. At the same time proof of taking or giving of bribe/ gratification is required under Prevention of Corruption Act, 1988, which is extremely difficult to collect. Hence, one has to rely on circumstantial evidences, and the success depends largely on State investigations.

In ***Vishwanath v. ES Venkataramiah***[24], the retiring Chief Justice of India ES Venkataramiah, on 17.12.1987 created a furor with the candid revelation that he had in his possession the names of 90 sitting judges who were "entertained" by members of the Bar.

In ***C Ravichandran Iyer v. Justice AM Bhattacharjee***[25], the Bombay High Court Chief Justice AM Bhattacharjee resigned on 1.4.1995 in the wake of resolutions by three Associations of Bombay High Court following the controversy over a payment of $ 80000 received by him for the overseas publishing rights of his book, "*Muslim Law and the Constitution*".

Contrary to this, in ***Dr DC Saxena v. Chief Justice of India***[26] of 1995, the contemnor, a professor of English in Chandigarh University, prayed for directions to Police for registration of FIR against Chief Justice of India under IPC for committing forgery and fraud and under Prevention of Corruption Act. The Apex Court considered the totality of the averments and their effect on the judicial process to adjudge the conduct of the petitioner to be contumacious and awarded imprisonment with fine.

The Apex Court in this case also considered the contemnor’s fundamental rights and held that the purpose of freedom of speech is to understand political issues so as to protect the citizens and to enable them to participate effectively in the working of the democracy in a representative form of Government. The debate on public issues would be uninhibited, robust and wide open. It may also include vehement, sarcastic and sometimes unpleasant sharp criticism of Government and public officials. However, nobody has a right to denigrate other's right to person or reputation. If the speech or expression is malicious or libelous, being untrue

[24] 1990 CriLJ 2179 Bom
[25] MANU/SC/0771/1995
[26] MANU/SC/0627/1996

and so reckless as to its truth, the author does not get protection of Article 19(1)(a), rather it would be subject to restrictions under Articles 19(2), 129 and 215 of the Constitution. At the same time, critics are instruments of reform but not those actuated by malice but those who are inspired by public weal. Bona fide criticism of any system or institution including judiciary is aimed at inducing the administration of the system or institution to look inward and improve its public image. Constructive public criticism even if it slightly oversteps its limits, has fruitful play in preserving democratic health of public institutions. Section 5 of the Contempt of Courts Act accords protection to such fair criticism and saves from contempt.

The court further explained that in a democracy judges and courts alike are, therefore, subject to criticism and if reasonable argument or criticism in respectful language and tempered with moderation is offered against any judicial act as contrary to law or public good no court would treat criticism as a contempt of court. However, any criticism about judicial system or the judges which hampers the administration of justice or which erodes the faith in the objective approach of the judges and brings administration of justice to ridicule must be prevented. Similarly, scandalizing the judges or courts tends to bring the authority and administration of law into disrespect and disregard and tantamount to contempt. All acts which bring the court into disrepute or disrespect or which offend its dignity or its majesty or challenge its authority, constitute contempt committed in respect of single judge or single court or in certain circumstances committed in respect of the whole of the judiciary or Judicial system. Scandalizing the court would mean hostile criticism of judges as judges or judiciary. Any personal attack upon a judge in connection with office he holds is dealt with under law of libel or slender.

The Apex Court, thus, held that the criminal contempt as defined u/s 2(c) of Contempt of Court Act, excludes the proof of *mens rea*. At the same time, imputation of corrupt or improper motives in judicial conduct would impair the efficacy of judicial dispensation and due protection of the liberties of the citizen or due administration of justice. The court has to consider the nature of the imputations, the occasion of making the imputations and whether the contemnor foresees the possibility of his act and whether he was reckless as to either the result or had foresight like any other fact in issue to be inferred from the facts and circumstances emerging in the case. It would not be open to the contemnor to bring forward evidence or circumstances to justify or to show whether and how fairly imputations were justified because the judge is not before the Court. The defence justification to an imputation would not be available to the contemnor. Taking *sou motu* cognizance of contempt of Court under Article 129 of the Constitution of India, the Apex Court found him guilty of criminal contempt to undergo three months imprisonment with fine.

Justice Shameet Mukherjee of Delhi High Court was compelled to resign on 31.3.2003 in matters of ***Azad Singh v. DDA***[27] case when its unsigned corrected draft order dated 20.2.2003 and other official documents and records of court were recovered by CBI in a

[27] Suit No. 1493/2000 of Delhi High Court, as reported in ***Shameet Mukherjee v. CBI*** - MANU/DE/0863/2003;

raid on 26.3.2003 at the premises of businessman Vinod Khatri, whose Sahara Restaurant premises was preventing the widening of Aruna Asaf Ali Road near JNU in Delhi.

In *Mysore Sex Scandal* case, three Judges of Karnataka High Court were allegedly caught on 3.11.2002 in a resort near Mysore, though the high-level judicial inquiry committee absolved them due to lack of evidences. Discloser of the inquiry report was later denied in ***Indira Jaising v. Registrar General, Supreme Court of India***[28], as the inquiry was moral or ethical and not in exercise of powers under any law. If that be the rationale, commissioning judicial inquiry itself become optional for the Chief Justice of India, even though Article 145 of Constitution empowers the Supreme Court to regulate its own procedure.

More recently, the former additional advocate general of Haryana, Sanjeev Bansal, had sent his clerk to deliver Rs 15 lakh at the residence of Justice Nirmal Yadav on 13.8.2008. However, the clerk, in confusion, had delivered the money at the residence of Justice Nirmaljit Kaur. The case against Justice Nirmal Yadav is still pending.

In ***Amicus Curiae v. Prashant Bhushan***[29], the 82 years old Shanti Bhushan sought to be impleaded in the contempt case, and filed an affidavit on 16.11.2010 claiming that eight out of sixteen CJIs were "definitely corrupt", other six of the CJIs were "definitely honest", and he could not comment on the remaining two CJIs.

In a leading case of 2010, it has been held in ***Secretary General, Supreme Court of India v. Subhash Chandra Agarwal***[30] that higher the judge in judicial hierarchy, greater is the standard of accountability and stricter is the scrutiny of accountability, and all judges in the hierarchy form part of same institution and are independent of undue interference by the Executive or the Legislature. However, by and large the judicial standards are not maintained by the Judges due to judicial immunity and the tool of contempt proceedings.

The doctrine of judicial immunity, therefore, cannot be applied blindly to prosecute the complainant for criminal contempt. More than that, respecting rights of the common citizens, each case must be scrutinized on its own merits as a mechanism of performance review of the Judge to find out from their judgments if the facts are distorted or the core issue on law is diluted under halo of procedural or other legal provisions. The role of jury, in this respect, becomes a critical check upon the excesses of the judges.

Jury versus Judges in the West

On questions of facts, there can be no substitutes for the jury, when it comprises members from all sections of society. A Jury of nine members and above are effective check on the possible error in judgment of the judges. Moreover, its larger membership also dilutes the chances of corruption, especially when the jury members are selected randomly through computer from non-legal professions such as working or retired public servants or from

[28] MANU/SC/0395/2003
[29] Contempt Petition (Criminal) No. 10/2009 in I.A.Nos.1324,1474,2134/07 in WP(C)No.202/1995 PIL, is pending before Supreme Court for hearing on 16.11.2011;
[30] Manu/DE/0013/2010, para 86

electoral rolls, who are taken to an isolated juror room, as in the case of Ireland, though they are also subjected to *voir dire* to ensure their impartiality as in USA.

Originated from the French word "jure" (sworn), the juries, in modern time, act as triers of fact, while judges act as triers of law. A trial without a jury is known as a bench trial. In British India, we had two types of juries, (1) the ordinary and (2) the special jury. Special jury was selected at a party's request in an unusually important or complicated cases to try more important questions than those heard by ordinary juries. In USA, there are three types of juries:

(1) Grand jury → for capital or infamous crimes. Besides, they primarily focus on oversight of governmental institutions or any entity that receives public money.

(2) Petty jury → for ordinary cases.

(3) Coroner's jury → for mostly judicial investigation, including medical examination, into the cause of a death that was sudden, violent or suspicious, or occurs in prison.

The role of jury is distinct from that of a judge. In ***Maple v. Gustafson***[31] reiterated by the Australian High Court in ***Osland v The Queen***[32], it was held that the appellate court should not usurp the function of the jury and substitute its judgment on questions of fact fairly submitted, tried, and determined from the evidence which did not greatly preponderate either way. In ***AK v State of Western Australia***[33], Heydon J of the High Court of Australia observed that the "*Trial by jury means a compounding of the legal mind with the lay. The prescription for this compound has been one of the greatest achievements of the common law*." Trial by jury was so greatly valued by the framers of the *United States Constitution* that it was guaranteed by the Sixth Amendment. Section 80 of the *Constitution of Australia* also provides that trials on indictment of any offence against any law of the Commonwealth shall be by jury.

The jury is so important in USA that sectional representation in jury is become mandatory to eliminate even potentiality of racial discrimination, without going into the actual bias. Some of the examples[34] are:

- In 1879, ***Strauder v. West Virginia*** [100 US 303], it was held that *all-white jury* violated the Equal Protection Clause of 14th amendment.
- In ***Norris v. Alabama*** [294 US 587 (1935)], conviction of nine Negroes in a rape case was quashed on the grounds of *exclusion of blacks from the jury* lists;
- In ***Hernandez v. Texas*** [347 US 475 (1954)], the *systematic exclusion of persons of Mexican descent* from service as jury commissioners, grand jurors, and petit jurors in the Texas county was held to be improper.

[31] 603 N.E.2d 508 (1992).
[32] (1998) HCA 75, also at www.austlii.edu.au/au/cases/cth/HCA/1998/75.html
[33] (2008) HCA 8, also at www.austlii.edu.au/au/cases/cth/HCA/2008/8.html
[34] All available at supreme.justia.com, for instance 100 US 303 at supreme.justia.com/us/100/303/case.html

- In ***Taylor v. Louisiana*** [419 U.S. 522 (1975)], the *systematic exclusion of women* from jury panels, was held to be illegal.
- In ***Duren v. Missouri*** [439 US 357 (1979)], the *exemption on request of women* from jury service under Missouri law, resulting in an average of less than 15% women on jury venires in the forum county, violates the "fair-cross-section" requirement of the Sixth Amendment. If women, who "are sufficiently numerous and distinct from men," are systematically excluded from venires, the fair cross-section requirement cannot be satisfied.
- In ***Batson v. Kentucky*** [476 US 79 (1986)], the *selection procedures that purposefully exclude black* persons from juries undermine public confidence in the fairness of American system of justice.
- In ***Edmonson v. Leesville Concrete Co*** [500 US 614 (1991)], race-based use of peremptory challenges was *extended to civil cases*.

The importance of jury in judicial system can be summed up in the words of Lord Denning, in ***Ward v. James***[35], who suggested: "*It (trial by jury) has been the bulwark of our liberties too long for any of us to seek to alter it. Whenever a man is on trial for serious crime or when in a civil case a man's honour or integrity is at stake . . . then trial by jury has no equal*". The jury system allows a man to be judged by people just like him, i.e. ordinary people.

Jury system in India until 1961

The role of jury on the question of fact has been appreciated even in British India. In ***Emperor v. Bent Pramanik***[36], the opinion of seven jurors was found to be correct as against the trial court judge. The decision on question of fact is pivotal before deciding the question of law. Similarly, in ***Government of Bombay v. Inchya Fernandez***[37], the Court held that there had been no failure in the summing-up as not-guilty by the jury, and that the verdict of the jury could not be regarded as either opposed to the evidence or manifestly wrong or unreasonable, and accordingly, the views of Trial Court Judge were treated as dicta only.

However, considering the distinct role of jury and the judges, and particularly on the questions of fact, the abolition of jury system in 1961 does not hold a good decision, as there was no dispute over the question of facts arrived at by the jury of nine members in ***K. M. Nanavati v. State of Maharashtra***[38]. Moreover, any error of jury, if exceptional, need not be made a ground for elimination of the system, particularly when is keeps check of the judges.

Considering the success of jury system in the West and the role it played in assessing issues on facts, through representative form of jury, which has members from all sections to eliminate or dilute the possible communal biases or corrupt intentions, the role of jury becomes inseparable part of the judicial system and a check on the absolutism and tyranny of

[35] (1965) 1 All ER 563, also at www.uniset.ca/other/cs6/ward_james.html;
[36] AIR 1935 Cal 407: www.indiankanoon.org/doc/1084970;
[37] (1945) 47 Bom. L.R. 363 F.B.: www.indiankanoon.org/doc/130498;
[38] MANU/SC/0147/1961

the individual Judges that India need to reconsider once again. The enlightened citizens now a day become intolerant to the error in judgment that corrupt judges are encashing under the doctrine judicial immunity.

Error in Judgment for Corruption

Under Articles 129, 141 and 215 of the Constitution, the Supreme Court and High Courts are the courts of record and the law declared by the Supreme court is binding on all inferior courts. Together, these provisions confer very wide powers on the higher judiciary to do complete justice between the parties. On the same principle, Supreme Court in ***Rupa Ashok Hurra v. Ashok Hurra***[39] has laid down guidelines for allowing curative petitions in the Supreme Court for any strong reasons. Although enumerating all the grounds for entertaining curative petitions in the supreme court were not possible, the court identified two possible grounds, (1) violation of principle of natural justice, and (2) judge failed to disclose his connection with the subject-matter or with the parties during judicial proceedings.

When applying the same principle on High Courts, the combined effect of Articles 129, 141 & 215 indicates that the respective courts are responsible for their own records, which must express the law with due diligence, and the errors, if any, apparent on the face of its record either in terms of law or on assessment of facts, must be rectified by the respective courts under their power of review either under Articles 137 of the Constitution or u/s 114 CPC, which can be exercised either *suo motto* or on application of the party. When applying principle of *res judicata* on such errors, it would cause insult to injury for the aggrieved party.

Bowen L. J. in ***Mellor v. Swira***[40], said "*Every court has inherent power over its own records so long as those records are within its power and that it can set right any mistake in them. An order even when passed and entered may be amended by the court so as to carry out its intention and express the meaning of the court when the order was made*." In ***Samarendra Nath Sinha v. Krishna Kumar Nag***[41], it was observed that although under Order 20 Rule 3 of the Code of Civil procedure, once a judgment is signed by the judge it cannot be altered or added to but the rule expressly provides that a correction can be made under section 152.

However, in recent times, the principle of *res judicata* has been applied even where the judges commit error in interpreting facts, as held in ***Narender Kumar V. Union of India***[42], where appeal was dismissed with cost. Here, the appellant's contentions are worth mentioning that the principle of *res judicata* should not be applied on the ground that while finality of judgment is the general rule, there are several judicially recognized exceptions to this rule,

a) Principles of *Actus curiae Neminem Gravabit* & *per incurium*, both of which mandate that if a decision sanctions an illegality, or is contrary to law or to some

[39] Manu/SC/0910/2002, para 47-52;
[40] 30 Ch. 239, as quoted in MANU/SC/0217/1966;
[41] MANU/SC/0217/1966, para 13: AIR 1967 SC 1440 @ 1443;
[42] MANU/DE/1476/2009, para 15 & 28;

binding precedent, then the same cannot be allowed to operate to the detriment of a citizen's rights.

b) Principle that a decision obtained by suppression of important facts or material is vitiated by fraud, and such a fraudulently obtained decision is a nullity in the eyes of law.

c) Principle that under Article 215, the High Court, as a Court of Record, has not just the power but the duty to ensure that if it is faced with a judgment clearly erroneous on its face, then it must correct its record and not be hampered by procedural rules or technicalities.

With the application of principle of *res judicata* on erroneous judgment, the scope for corruption in judiciary widens. The provision of appeal to the superior court does not answer the factual error in assessing facts or interpreting law by the HC judges. Such corrupt judges should be allowed to face corruption charges and on establishing their guilt, they should not be allowed to continue their Constitutional status, and their title "Justice" should be stripped. At the same time, such erroneous judgments should be removed from the records of High Court/ Supreme Court, while granting appropriate relief to the aggrieved party.

Moreover, with the abolition of jury system in India in 1961, where-after the judges usurped the role of jury in deciding the questions of facts, the scope of error in judgment for corruption widens. Considering that the Supreme Court ought to entertain the questions of law alone, the High Court owes an additional responsibility to rectify every aspect of error in facts, either by calling commissions or otherwise its own investigations. The questions of facts ought to be settled in the High Court itself without any error therein.

Considering most of the litigations arise out of government actions or even under other fiduciary relations of the contesting parties, the onus of evidence of official records must lie on the master or the trustee in respect of its records. However, several instances indicate that the trustee conceals the official records, in spite of the exercise of Right to Information Act, 2005, and the court decides the matter without calling for any commission or investigations therein on discovery of material facts. Error in fact bound to reflect in the error in application of law and thus, the whole judgment is vitiated by erroneous presumption. Such a helplessness of the inferior party compels him to suffer injustice and the scope for corrupt practices further widens in the judiciary.

Proposals on Judicial Accountability

"*India Corruption Study - 2005*" of Transparency International India[43] in alliance with Centre for Media Studies (CMS) Delhi, was the largest corruption study ever undertaken in the country with a sample of 14405 respondents spread across 20 States. According to the study, the Police ranked highest in the corruption index, followed by the lower Judiciary and Land Administration. Higher judiciary was specifically kept away from the survey. Since then, there has been a little decline in India's Integrity Score to 3.3 in 2010 from 3.5 in 2007,

[43] http://www.transparency.org

3.4 in 2008 and 2009, on a scale from 0 (perceived to be highly corrupt) to 10 (perceived to have low levels of corruption). India's rank on Transparency International's Corruption Perception Index (CPI) is 87 out of 178 countries, surveyed during 2010, indicating a serious corruption problem.

The judiciary, which was hitherto the strongest pillar of Indian democracy, has been beset with unprecedented problems. The working of the judges of superior courts has come in for intense scrutiny and grave doubts have been cast against the conduct of some judges. The pressing call for greater institutional accountability compelled the Lok Sabha to introduce the *Judges (Inquiry) Bill 2006*, which was renamed as the *Judicial Standards and Accountability Bill, 2010*, for replacing the *Judges (Inquiry) Act, 1968*.

The object of the Bill of 2010 is to lay down judicial standards and provide for accountability of judges and establish credibility and expedient mechanism into individual complaints for misbehavior or incapacity of a Judge of the Supreme Court or of High Court and to regulate the procedure for such investigation. *Incapacity* [u/s 2(d)] means physical or mental incapacity of permanent character, and '*misbehaviour'* [u/s 2(j)] means:

(i) conduct which brings dishonor or disrepute to the judiciary,
(ii) willful or persistent failure to perform the duties of a Judge,
(iii) willful abuse of Judicial office,
(iv) corruption or lack of integrity which includes delivering judgments for collateral or extraneous reasons which has the effect of subverting the administration of justice,
(v) committing an offence involving moral turpitude,
(vi) failure to furnish declaration of assets & liabilities, in compliance to sec. 4 of Bill,
(vii) willfully giving false information in the declaration of assets and liabilities,
(viii) willful suppression of any material facts, having bearing on his integrity, or
(ix) willful breach of judicial standards, as defined u/s 3 of the Bill;

Under the Bill, any person can file a complaint against the Judge [sec. 7], and refer to the source of information in the complaint [sec 8]. The complaint will be examined by the proposed *National Judicial Oversight Committee* to be established u/s 17 of the Bill, which shall within three months [sec 19], refer the compliant to *Complaints Scrutiny Panel* of the respective Court [sec 9], except for the complaint against CJI [sec 21], and get its report within three months [sec 11(2)]. In case of unfavourable report of the Scrutiny Panel, the Oversight Committee shall constitute an *Investigation Committee* [sec 22], which will frame the charges, conduct in camera inquiry and submit report within six months [sec 29]. During pendency of inquiry, the Oversight Committee may withdraw work from the charged judge [sec 33]. If the charges proved do not warrant removal of the judge, the Oversight Committee may issue advisories or warnings [sec 34(1)(b)], but without prejudice thereto, the Oversight Committee may also recommend Central Government for prosecution of the judge for any offence under any law [sec 34(2)]. On unfavorable report of the Investigation Committee, the Oversight Committee may advise the President to proceed for removal of the judge [sec 35], who will lay the reports before both Houses [sec 45]. The entire investigation proceedings

shall not affect the criminal liability of the allegations [sec 42], but its records are kept exempted from the Right to Information Act, 2005 [sec 43].

Motion for removal of judge in either House can be moved by either Central Government on recommendations of Oversight Committee [sec 46], or even otherwise as per existing practice by 100 members of Lok Sabha or 50 members of Rajya Sabha [sec 47]. In the later case, the Oversight Committee shall constitute the Investigation Committee and proceed as in the former case [sec 47]. The Joint Committee of the Parliament shall have powers to make rules on the Motion for removal of judge [sec 49].

However, on recommendations of Scrutiny Panel regarding frivolous/ vexatious complaints filed for scandalizing or intimidating the judge [sec 16], the Oversight Committee may authorize the filing of criminal complaint against the complainant [sec 36], and penalize for rigorous imprisonment upto five years with fine [sec 53]. The Bill also proposes penal provisions for intentional insult or interruptions of the investigation proceedings [sec 50], for breaching confidentiality u/s 39, 40 or 43 [sec 51], and for offences by companies [sec 54], and by societies/ trusts [sec 55].

Claiming it to be a cleverly disguised Bill, Justice Ajit Prakash Shah[44], a former Chief Justice of the Madras and Delhi High Courts, has pointed out the major defects in the Bill. According to him, firstly, 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. What can be done only by a hundred members of the Lok Sabha or fifty members of the Rajya Sabha for initiation of impeachment proceedings, can now theoretically be done by only one person. Secondly, the judicial commissions existing in other countries like the U.S. and Canada, do not extend to the apex court. Thirdly, the idea of "minor" punishments is unworkable and has the potential to seriously undermine judicial status. Fourthly, it is totally impermissible for the legislature to strike upon the independence and fearlessness of the judiciary. A judge of a superior court cannot be treated as an employee of the government. Finally, in a system where half the litigants must necessarily lose their cases, and where most of the complaints against judges are frivolous and made by disgruntled litigants, this bill, if implemented, would mark the beginning of the end of the judiciary.

These observations of Justice Ajit Prakash Shah are incomprehensible as the independence of judiciary, being part of the basic structure of Constitution, should not result in the consequent freedom of judges to loot, scoot, misuse and abuse, and to Lord over the empire in an arbitrary manner.

Questioning "*Who will judge the judges*?", Justice V. R. Krishna Iyer[45], a Retired Judge of the Supreme Court, appealed to the Parliamentarians to implement glasnost and perestroika in the judiciary. In the name of independence there cannot be judicial absolutism and tyranny. The so called Collegium is a judicial creation and the syndrome of the

[44] http://indialawyers.wordpress.com/2011/03/30/judicial-standards-accountability-bill/
[45] http://www.editorialjunction.com/2010/09/v-r-krishna-iyer-who-will-judge-the-judges/

personality cult being beyond accountability. Such arbitrary power will corrupt even the best of persons absolutely. This is a democracy, not a robed dictatorship with papal-like infallibility vested in the Supreme Court for the purely administrative functions of government. Corrupt anti-socialist 'brethren' judges are dangerous without accountability. Comparing the three organs, he says, the executive is weak and tends to treat this country as a dollar colony. The judiciary is British-oriented and precedent-board. Therefore, Parliament at least must be supreme, activist, sovereign, democratic, socialist and, secular. If the Parliament fail, India dies. It is the voice of swaraj, the victory of a do-or-die struggle. Its Constituency is the People of India. Accordingly, Justice Kishna Iyer sought intervention of Parliament against judicial absolutism, corruption and tyranny.

Social activist Aruna Roy suggested that the Bill should be revised to facilitate effective action against the higher judiciary. The Civil Society of Team Anna criticized the Bill as it does not deal with investigation of the judges for corruption or their prosecution. It only deals with the complaints against judges for misconduct. As an alternate, Team Anna proposed the *Jan Lokpal Bill*[46], for constitution of an independent Lokpal institution, empowered to effectively investigate corruption of all public servants of the Central government, including the Prime Minister, the judiciary, etc. The 11-member Lokpal would have a full investigative agency under its control for investigating the complaints.

Earlier in 1960s – 1980s, Fred Warren Riggs[47] in his series of lectures, stated that the developing countries like India are governed by the "clects", i.e. a prismatic group, which makes use of modern, associational methods of organisation, but retains suffuse and particularistic goals of a traditional type. Membership in a clect is restricted to people who share a common religious, racial, or linguistic background. The 'clects' represent exclusively the people of a particular community or group, and the members belonging to that category serve only the members of their respective clects effectively by ignoring others.

Conclusion

Corruption in judiciary is a menace in the society recognized all over the world and the doctrine of judicial immunity is abused, leaving the people without recourse when their inherent rights are violated by judges. As the Judiciary is the only pillar of democracy where people have faith, it becomes necessary that the Parliament or the Judiciary itself initiate constructive steps to enforce judicial standards, which by and large are not being maintained. Whether it is Judicial Standard and Accountability Bill, Lokpal or Jan Lokpal, the Judges ought to be made accountable directly to the citizens with their right to recall.

There are several weaknesses of the judicial system that contribute to the corrupt practices in judiciary. The Impeachment procedure is not enough to work as deterrent for the corrupt Judges, as the process can be aborted by resignation, retirement or by gaining sympathy of the Parliament. Criminal liability u/s 219 IPC for passing corrupt or malicious

[46] http://en.wikipedia.org/wiki/Jan_Lokpal_Bill

[47] *The Ecology of Public Administration* (1961), *Administration in Developing Countries: The Theory of Prismatic Society* (1964), and *Thailand: The Modernization of a Bureaucratic Polity* (1966).

judgment has been waived and never exercised against the Judges either on the pretext of impeachment procedure or for availability of appellate jurisdiction. Although, Judicial Inquiry Committee has been constituted on three occasions in the past under *Judges (Inquiry) Act*, none has discloses the names of victims of the charged Judge for the purpose of public scrutiny and precedence. The corruption flourishes in judiciary as there is prohibition of litigation by the public under *Judges (Protection) Act*. The scope for impeachment is restricted to misbehavior and incapacity of the judges. However, their corrupt or malicious judgments are never considered as an offence due to availability of appellate jurisdiction before the superior court. The abolition of jury system provides wider scope for the corruption in judiciary as the check and balances on the role of judges has been eliminated with the jury system. More the accuracy and clarity in decision making, lesser would be the litigation, as there would be lesser chances of grounds for making an appeal. The role of jury system could bring that accuracy and over the period reduce the burden of the courts.

The principle of *res judicata* further adds insult to the injury for the aggrieved party, who is basically seeking an independent authority to scrutinize his re-agitation on the grounds of former decision being erroneous or *per incurium*, particularly due to inconsistent decision on the question of facts in comparison to factual scenario ought to have been scrutinized, discovered or investigated by the court. The Constitutional status of the judges requires that a team of facilitating subordinates must be made available to the Judiciary for assisting, commissioning, scrutinizing and examining every aspect of the litigation before the matter is placed for argument and decision of the judge. These safeguards are essentially required in the present system.

In order to improve quality of justice at each level of the judiciary, and to eliminate corruption therein, a system of complaint scrutiny ought to be set up so that the judges at all levels are made accountable to the public directly for each individual case and for appropriate cases, the citizens must be allowed to exercise their *right to recall* the guilty Judge for his public misfeasance.

Declaration

This is to certify that the content of this article is my original work, which has been prepared after in-depth research on the subject and the collection of sources cited under reference therein and nothing material whatsoever is copied from any other source.

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