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THE JUDICIARY OF INDIA: SINCE PRE-INDEPENDENCE TO POST INDEPENDENCE (1950-2011)

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Abstract: *"The Judiciary was to be an arm of the social revolution upholding the equality that Indians had longed for". The present paper throws an adequate light on the role of judiciary in the post independent period. The historic past of India indicate that the monarchy system of hundreds of princely states which have characterized with despotism. This system has paved the way for switching on the democratic system in India. The institution of constitution has paved the way for rendering its services for safe guard through the directive principles and fundamental rights for efficiently restoring the democratic system in India. The institution of federal system and working of judiciary system and exercising the power vest with their jurisdiction are supposed to be worked in relation to judicious judgments to all people of India.*

Keywords: *Judiciary; social; political; constitution; independence; democratic system of India*

INTRODUCTION

India is one of great democratic states of the world and she has a large democratic judicial system. Before independence, judiciary of India was completely influenced by elitists; because during past the political and judicial system of India has been monopolized by feudal and rich people. Thus, the Judiciary was not independent during the British period in India. When British had came in India; and subsequently hold the political power through establishing an independent judicial system. It has been observed that the judicial system used to often influence by elites due to their political and economic vested interests. It is because of the British alone were not in a position to perform all the administrative functions to establish a power for a long time. It is because of the main reason that the judiciary was in the hand of the British. After the independence; we have established our own independent judicial system in India, which was started under democratic system and pave the way for justice for the people of India; living in millions of cities and villages in India.

THE HISTORIC PAST

The Government of India Act, 1935 established a Federal court in India. The court used to have their chief justice and six other Judges[1] .The Judges were appointed by the crown. The Federal court had three kinds of Jurisdiction viz, original, appellate and advisory. The court had exclusive original Jurisdiction in any dispute between the Union and its State or the States interests. The appellate jurisdiction of the Federal Court extended to appeals from the judgment of any high Court in India to the Federal Court if the high Court certified that the case involved a substantial question of law as to the interpretation of the Government of India Act, 1935 or any order in council made there under. An appeal could go to the Privy Council from decisions of the Federal Court. The Federal Court had also advisory jurisdiction. The Governor could refer any question of law to the Court to obtain its opinion whenever he liked to seek its advice.

When India got independence on 15th August 1947 later on 26th January, 1950 was a *red letter day* in the long and struggle full history of India on that day. The present Constitution of India was came into force which was announced to the World 'A *birth of* a *new republic*. The essence of a federal constitution was the division of powers between the centre and State Governments. The division made by a written constitution which was the Supreme Law of land. It is therefore, in order to maintain the supremacy of the constitution, there must be an independent and impartial authority to decide disputes between the centre and States or the States inter se. This function can only be entrusted to a judicial body. The Supreme court under over constitution, in addition, to the above function of maintaining the supremacy of the constitution, the Supreme Court is also the guardian of the Fundamental Rights of the people. Truly, the Supreme Court has been called upon to safeguard civil and minority rights and plays the role of "guardian of the social revolution.[2]" It is the great tribunal which has to draw the line between individual liberty and social control[3] it is the highest court of appeal in civil and criminal matters.

Under our constitution there is a single integrated system stands the Supreme court in India. Below the Supreme Court stand the high court's there is a hierarchy of other courts which are referred to the constitution as 'subordinate courts' viz, courts subordinate to and

1 The Govt. of India Act,1935,Article 200
2 G.Austin-The Indian constitution cornerstone of nation.P-169
3 Sri Alladi K. Aiyer. Member of drafting committee

under the control of the High Court (Art.233-237). The Supreme Court has appellate jurisdiction over the High Courts and is the highest tribunal of the land. The Supreme Court also possesses original and advisory jurisdiction.

COMPOSITION OF SUPERIME COURTS

There will be a Supreme Court in India consisting of a chief justice and until Parliament by law prescribes a larger number of not more than seven[4] other judges. Thus the Parliament increases this number by law. So that the Parliament in 1977 this was increased to 18 including the chief justice[5].In 1986 this number has been increased to 26 including the chief justice of India and also increased in 2009 this number has been 31 including the chief justice of India. The constitution does not provide for the minimum number of judges who will constitute a bench for hearing cases.

APPOINTMENT OF JUDGES

Every judge of the Supreme Court should be appointed by the President with the consultation of such judges of the Supreme Court and High Courts as he deems necessary for the purpose. But in appointing other judges the President shall always consult the chief justice of India.

1950-1970: Judiciary as an agent of elite class/Pro-Status quo/Barrier in eco-social changes-

Between the period of the year 1950 and 1970; the court came in to repeated challenges of its authority by the Government. Meanwhile; the decision was given by the Supreme Court, indicates that the Supreme Court was an agent of elite class. The First Amendment was introduced which widened the scope of restrictions on freedom of speech and facilitated admission of backward classes into educational institutions. The most controversial provision in the first Amendment however related to land reforms. Social justice in particular, landlord abolition was a significant political issue for Congress Governments at the centre and the States. In *Shankri Prasad* vs. *Union of India*[6], the First Amendment Act of 1951 was challenged before the Supreme Court on the ground that the said Act abridged the right to property and that it could not be done as there was a restriction on the

[4] Constitutions article 124
[5] Constitutional amendment,1977, 1986 and 2009
[6] AIR 1951 SC 448

amendment of Fundamental Rights under Article 13(2).The Supreme Court rejected the contention and unanimously held." The term of Article 368 are perfectly general and empower Parliament to amend the constitution without any exception whatever. In context of Article 13, law must be taken to main rule and regulations made in exercise ordinary legislative power and amendments to the constitution made in exercise of constituent power with result that Article 13(2) does not affect amendment made under Article 368. In Sajjan Singh's case[7], the competence of Parliament to Act 17th amendment was challenged before the constitution Bench comprising of 5 judges on the ground that it violated the Fundamental Rights under Article 31(a). The Court reiterated its earlier stand taken in *Shankri Prasad*'s case and held "when Article 368 confers on Parliament the Right to amend the constitution the power in question can be exercised over all the provisions of the constitution. It would be unreasonable to hold that the world 'Law' in Article 13(2) takes in Amendment Acts past under Article 368."

In the case of **A**.K.**Gopalan vs**. **States of Madras**, that came up before the Court in which the Preventive Detention Act, 1950 was challenged as invalid. The Court by a unanimous decision declared sec 14 of the Act invalid and thus manifested its competence to declare void any Parliamentary enactment repugnant to the provision of the constitution. Since then, the Court has had many occasions to declare Centre or State legislations invalid either wholly or partly. The historic case of **GolakNath** vs. **State of Punjab**[8], was heard by a special bench of 11 judges as the validity of three constitutional amendment (1st, 4th and 17th) was challenged. The Court by a majority of 6/5 reversed its earlier decision and declared that Parliament under Article 368 has no power to take away or abridge the Fundamental Rights contained in chapter 3.

1970-1980: Changing perspective of Judiciary –

During the period of 1970 to 1980, there was a process of politicization of the Supreme Court but in the case of **Keshavanand Bharti**[9], the Court held that the Parliament cannot amend in the 'Basic Structure' of the constitution. It was shocked for the Government. In many cases the Supreme Court has displayed judicial creativity of a high order. The high watermark of such judicial creativity in India has been reached in such landmark cases as

7 AIR 1965 SC845
8 AIR 1967 SC 1643
9 AIR 1973 SC 1461

Golaknath, Keshvanandbharti and Menka Gandhi. In these cases, the role of Supreme Court is comparable to be constituent or constitution making. The court judgments in Golaknath, Bank Nationalization and Privy Purses were in favour of private property. Then Indira Gandhi developed a deep antipathy towards the Supreme Court. She became convinced that the court had lined up with the right wing opposition was determined to obstruct her socio-economic programme. Her advisers were able to take advantage of the situation to propagate there doctrine of "committed judges". They persuaded Mrs Gandhi that it was necessary to clip the wings of the judiciary.

The supersession of judges followed in 1973 and 1977.The choice of A.N. Fortunately for Indian jurisprudence, '*the brooding spirit of law*' referred to by justice Khanna was to correct the excesses of the emergency soon enough. On 1st February 1970, the Supreme Court invalidated the Government sponsored Bank Nationalization Bill that had been passed by Parliament in August 1969. The Supreme Court has also rejected unconstitutional of Presidential order 7th Sept. 1970 that abolished the titles, privileges and privy purses of the former rulers of India's old princely States. In reaction of the Supreme Court in 1971 the Parliament of India passed an amendment empowering itself to amend any provision of the constitution, including the Fundamental Rights. The Parliament of India passed the 25th amendment making legislative decision concerning proper land compensation non-justifiable. The Parliament also passed an amendment to the constitution of India, which added a constitutional article abolishing princely privileges and privy purses.

In the counter response the Supreme Court ruled that the basic the constitution cannot be amended for convenience on 24 April, 1973 the Supreme Court responded the Parliamentary offensive by ruling in **Keshvanand Bhartivs**. State of Kerala[1]that although these amendments were constitutional the Court still In the counter response the Supreme Court ruled that the basic structure of reserved for itself the discretion to reject any constitutional amendments passed by Parliament by declaring that the amendment cannot change the constitution '*Basic structure*' a decision piloted through by chief justice India (Sikri) After Indira Gandhi lost election in 1977, the new Government of Mr. Moraji Desai and especially law minister **Shanti Bhushan** introduced a number amendments making it more difficult to declare and sustain an emergency and reinstated much of the power to the Supreme Court .It is said that the basic structure doctrine created in **Keshvanand Bharti** was

strengthened in Indira case and set in stone in Minerva mills[10]."It was only **Justice Khanna**, who despite Governmental pressure to conform, held inter alia that the rule of law requires that the life and personal liberty cannot be suspended under any circumstances and the legality of the of the detention can certainly be questioned by the detune. He ended the judgment with the stirring words-'A dissent in a Court of last resort is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possible correct the error in to which the dissenting judge believes the Court to have been betrayed.

Conventions of seniority were disregarded judicial loyalty to Government rewarded and opposition punished. Justice **Shelat J.M.**, **K.S. Hegde** and Grover were superseded who were next in line for the post of CJI according to established seniority convention but the appointment of Mr. Justice **A.N. Ray** as the chief Justice of India on April 25, 1973 has become a subject of uninformed criticism and needless controversy. Conventions of seniority were disregarded judicial loyalty to Government rewarded and opposition punished. Justice **Shelat J.M., K.S. Hegde** and Grover were superseded who were next in line for the post of CJI according to established seniority convention but the appointment of Mr Justice **A.N. Ray** as the chief Justice of India on April 25, 1973 has become a subject of uninformed criticism and needless controversy.

1980-2000:- Judiciary as an agency of changes: Pro- poor, Environmental, Judicial Activism and PIL:

The Supreme Court's creative and expensive interpretations of Article 21(Life and personal liberty), primarily after emergency period, have given rise to a new jurisprudence of public interest litigation has including, but not restricted liberty. The right to free education, livelihood, a clean environment, food and many others. Civil and political rights have also been expended and more fiercely protected. The new interpretations have opened the avenue for litigation on a number of important issues. It is interesting to note that the pioneer of the expanded interpretations of Article 21, Chief justice of India **P. N. Bhagwati** was also one of the judges who heard the ADM Jabalpur case[11] and held that the right to life could not be claimed in emergency. The Court now permits public interest litigations or

[10] AIR 1980
[11] AIR 1976 SC 1207

social interest litigations at the instance of 'Public spirited citizens' for the enforcement of constitutional and other legal rights of any person or group of persons who because of their poverty or socially or economically disadvantages positions are unable to approach the Court for relief. The most specific of these cases is judges transfer case[12]; a seven member Bench of the Supreme Court has firmly established the rule regarding the public interest litigation. The Court held that any member of the public having "sufficient interest" can approach the Court for enforcing constitutional or legal rights of other persons and reprisal of a common grievance.

"As a result of this broad view of locus stand permitting public interest litigations or social action litigations. Supreme Court has considerably widened the scope of Article 32 of the constitution. The Supreme Court will now be ready to interfere under Article 32 where ever and whenever any injustice is caused or being caused by the State action to the poor and helpless person who cannot approach the Court. The Court has jurisdiction to give appropriate remedy to the aggrieved person in various situations. Bihar blinding case, flesh trade in protective home of Agra[13], injustice done to children in jails, protection of pavement and slum-dwellers of Mumbai payment of minimum wages and other benefits to workers in various State projects, abolition of bonded labours, protections of environment and ecology are the instances where the Court has issued appropriate writs, orders and directions on the basis of public interest litigation or social action litigation[14]"

The Supreme Court role in sensation the Central investigating authorities to discharge their legal obligations in various scams cases and if various judgments ranging from the need for Uniform civil code, pollution control, preservation of historical monuments like Tajmahal, cleaning and keeping the big cities more hygienic, directing removal of encroachments, interim compensation rape victims, protecting working from sexual harassment, punishing senior Karnataka IAS officer, Vasudeven and puncturing the ego of chief election commissioner T.N. Seshan have attracted praise. Hussainara Khatoon vs. State of Bihar[15], the Supreme Court has help that speedy trial is an essential and integral part of Fundamental Rights life and liberty enshrined in Article 21. In Bihar a number of under trial

12 S.P.Gupta and Others vs President of India and Others,AIR 1982 SC 149
13 UpendraBaxivs State of U.P. (1983) 2 SSC 308,(1986)4 SSC 106
14 Constitutional law of India,Pandey,Dr.J.N.,P-336
15 AIR 1979n SC 1369

prisoners were kept in various jails for several years without trial. The Court order, " all such prisoners whose names were submitted to the Court should be released forth with" Since speedy trial was held to be a Fundamental Right guaranteed by Article 21, the Supreme Court considered its constitutional duty to enforce this right of the accused person. The Court has now realized its proper role in a welfare State, and it is using this new strategy not only for helping the poor by enforcing their Fundamental rights of persons but for the transformation of the whole society as an ordered and crime free society.

Ban on smoking in public places[16], the Court had directed all States and Union Territories to immediately issue orders banning smoking in public places. In a significant Case of Sunil Batra (2) vs. Delhi Administration[17], the Court recognized a departure from the strict rule of locus standing in the service of the poor, oppressed and voiceless. It permitted members of the public to move the Court for enforcement of constitutional or legal rights in cases where those whose constitutional or legal rights were violated were, by reason of social or economic disadvantage, unable to approach the Court for Judicial redress. In Bandhu Mukti Morcha vs. Union of India[18], an organization dedicated to the cause of release of bonded labours informed the Supreme Court through a letter that they conducted a survey of the stone quarries situated in Faridabad District of the State of Haryana and found that there were a large number of labours working in these stone quarries undue "*In human and intolerable conditions*" and many of them were bonded labours.

On the other hand, the rights of a prisoner either under the constitution or under other laws are violated the writ power of the Court can run and should run to rescue, declared Krishana Iyer, J.In Veena Sethi vs. State of Bihar[19], the Court was informed through a letter that some prisoners who were insane at the time of trial but subsequently declared sane were not released due to inaction of State authorities and had to remain in Jails from 20 to 30 years. The court directed that they be released forth with. In **Lakshmi** Kant **Pandey** vs. **Union** of **India**[20], a writ petition was filed on the basis of a letter complaining of malpractices indulged in by social organization and voluntary agencies engaged in the work of offering Indian children in adoption to foreign parents. Justice **Bhagwati** laid down

16 Hindustan Times 3 nov.,2001
17 AIR 1980 SC 1779
18 AIR 1984 SC 803
19 AIR 1983 SC 339
20 AIR

principles and norms which should be followed in determining whether a child should be allowed to be adopted by foreign parents with objects of ensuring the welfare of the child his lordship directed the Government and various agencies dealing with matter to follow these principles in such cases as if is their constitutional obligation under Article 15(3) and 39(c) and (f) to ensure the welfare of the child. In a landmark judgment in **Vishakhi *vs*. State of Rajasthan**[21] the court has laid down exhaustive guidelines to prevent sexual harassment of working women in place of their work until legislation is enacted for the purpose.

Protection of Ecology and Environment pollution- The court has also used the 'judicial activism' to perform a similar role in ecology and environmental issues. It has passed orders to protect the Taj Mahal due to the atmospheric pollution caused by a number of foundries, chemically hazardous industries established and functioning around the Taj Mahal[22], rid the river Ganges of trade effluent[23], address air pollution in Delhi and other metro Politian cities[24], the Supreme court held that the writ was maintain able and directed the Government and authorities concerned to perform their statutory duties under various Act- environment (protection) Act 1986, water (prevention and control of pollution) Act 1981 and hazardous wastes rule 1984.

An era of judicial over reach and account ability (2000-2010)

The Supreme Court of India has become the Centre of controversy due to the sudden outburst in level of judicial activism and overreach. The issue has been put on the National agenda. Judicial activism and overreach have been criticised by politicians and some constitutional experts while it has been warmly welcomed generally by the lawyers and the public. It has been observed that during last decade, the Courts have been steadily enacted the '*Judicial legislation'* and undertaking the task that which are supposed to be performed by the legislatures and elected representatives. This trend reached at a new height; when the Supreme Court recently "*ordered the Central Government to distribute food grains found rotting for want of storage facilities to the poor and hungry*". The Prime minister had to intervene to make it clear the Court was stepping in to the domain of policy making, an area meant for the executive. November 4, 2010 the Central cabinet approved the

[21] AIR 1997 SC 3011
[22] AIR 1997 SC 735
[23] M.C.Mehta(2) vs Union of India
[24] (1996)4SCC 750

introduction of the production women against sexual Harassment at work place bill, 2010 in Parliament. It has taken 13 years to reach this stage since the Supreme Court laid down guidelines on the subject in the famous Vishaka case[25]in 1997. The judicially legislation in the **Vishaka** case is being followed by steps towards making a law on that subject. As a matter of fact, it should have been the other way round. The legislature should have enacted the law and left it to be interpreted and upheld by the judiciary. Ideally, law should be made by the legislature and not the judiciary, especially in a democratic set up. In a significant case *Bachan Singh* vs. *State of Punjab*[26], the Supreme Court chief justice of India, **Y**.**V**. **Chandrachud**, held.

"We must live unto the legislature the things that are the legislatures. The highest judicial duty is to recognise the limits on judicial power and to permit the democratic processes to deal with matters falling outside of those limits. As Judges, we have to resist the temptation to substitute our own value choices for the will of the people."But it has been violated by the Supreme Court and High Courts on many occasions due to law making, policy formulation and unrealistic orders. In the exercise of its public interest jurisdiction, the judiciary may reach the limits of its constitutional competence and begin dabbling in policy making the exclusive domain of the democratically elected legislature. Indeed this danger was recognised as yearly as in **Bandhua Mukti Morcha**[27]where4 justice **Pathak** noted-

"In the process of correcting executive error or re4moving legislative omission the Court can so easily find itself involved in policy making of quality and degree characteristic of political authority, and indeed run the risk of being mistaken for one. An excessively political role identifiable with political governance betrays which the Court into function alien to its fundamental character and tend to destroy the delicate balance envisaged in our constitutional system between its three basic institutions the judiciary is passing in through a bad pitch for various reasons. The backlog of cases has been increasing every year. There are over three crore cases pending in the Courts of which 2.5 Crore are in subordinate Courts, 40 lakh in High Courts and 52000 in the Supreme Court.[28]In the circumstances judges may be well advised, as justice **Mathur** and **Katju** recommended, exercising

[25] AIR 1997 SC 3011
[26] AIR 1980 SC 898
[27] AIR 1984 SC 802
[28] The Tribune,November 1,2010.

restraint. In their words "Judicial restraint complements the twin, over reaching value of the independence of the judiciary and the separation of power.[29]

2000-2010:-Judicial Overreach and Accountability

On 21 Oct. 2010, the Supreme Court laid down the condition for women seeking maintenance in live in relationship.[30] The Court observed that the Indian society in changing and this change has been rejected and recognized by the Parliament by enacting the protection of women from Domestic violence Act,2005.[31] It is also noted that the Court passed unrealistic order many times such as recently on 21 August 2010 The Times of India[32]reported that the Supreme Court had directed the Government counsel, saying. It was not a suggestion. It is there in our order. You tell the minister".

Earlier on 12 August the SC had asked the Government to distributed food grains rotting in Government go downs or rotting due to lack of storage facilities for free to the poor and the hungry. According to Hindustan Times[33] the Supreme Court said, "The food grains are rotting you can look alter your own people. As a part of short term measure, distribute it to the hungry for free."The Supreme Court had passed this order while hearing the PIL by PUCL. Besides this the Court laid down quid lines of the subject. The judiciary was plainly usurping the power of the executive and trying to enter in to a domain which is clearly marked as policy making. This was expected to be resisted by the executive and in a couple of days, the de facto chief executive of the country, the Prime minister of India **Manmohan Singh**, told the apex Court politely but firming in unambiguous term that he had respect for the Court's sentiments but was against the idea of giving away food grains for free as it would kill farmers incentive to produce, thus creating a different set of problem. The Prime minister said that the Supreme Court should not get into policy formulation[34]. In a Country where the executive and legislature had failed to discharge their constitutional duties, the Supreme Court had no other choice but to step in and direct them to fulfill their obligations. Criticizing the role of the executive, former Supreme Court judge '**Ratnavel Pandian'** asked if the executive abdicated its responsibilities, which forum could not public approach,

29 (2008)1scc683 para35.
30 D Velusamyvs D Patchaiammal,21oct.2010,sci
31 Act 43 of 2005.
32 The Times of India, "Distrubtion of foodgrains an order,Not a suggestion,SCpulls up power"
33 19 August,2010.
34 The Times of India, 7sept.2010.

barring the judiciary, to seek solution. Describing judicial creativity, judicial activism and judicial overreach as two side of the same coin, he said that the recent trend of public interest litigation led to increased judicial overreach.

"Judicial activism is alright as it protects the public from the despotism of the Executive; but it must not lead to Government by the judiciary"[6]. The noted lawyer Fali S Nariman[35] wrote in 2007, "In this 60th year of our independence we have reached a stage where all laws made by Parliament, all decisions by Government at the Centre and in State, are turned over to what has been deprecatingly (but not inaccurately) described as "The Government of judges "Like it or not, the balance constitutional power will remain in favor of the Courts-but only so long as our judges are perceived to be persons of exceptional competence and of high moral integrity. If that perception changes (God forbid!), the constitutional system as it now operates will break down. 60Years after independence the people have come to trust the Courts; but the peoples trust rests in confidence; sometimes rudely shaken by gossip, rumor and a lack of transparency.

In this 70th year of independence, then, there is much to be done by higher judiciary to maintain its bright image."It is therefore, the judicial exercise of overreach should be restrained and making of policy, laws and passed orders must be worked by legislative and executive. *Need for judicial Accountability*[36]As per mentioned in campaign statement issued by the people's convention on judicial Accountability and reforms. It becomes an imperative to work of judiciary in accordance with the basic principle of Human right, "*Growth with Justices*" for all, the people who live in the territory of India.

CONCLUSIONS

"The judicial system of the country far from being an instrument for protecting the rights of the week and oppressed has become an instrument of harassment of the common people of contrary. In fact it has become the leading age on the ruling establishment for pushing through near liberal policies by which the resources such as land, water and public spaces left with poor and being increasingly appropriated by the rich and the powerful. While the system remains dysfunctional for the week and the poor when it comes to protective their rights, it functions with real speed and alacrity when invoked by the rich and powerful,

[35] Ajay K Mehara,'The Executive must govern, The Hindu, April252001,p.10.
[36] Judicial Accountablity,Mona Sukla,p.3

especially when it is appropriating the land and the public spaces from the poor. The Courts are increasingly displaying their elitist bias and it appears that they have seeded from the principles of the constitution which set up a republic of the people who were guaranteed "*Justice – social economic and political*"[37].

It is very necessary to find out ways to get rid on the *black sheep* and save the *judiciary* from *corruption*. It is desirable to make a provision in the constitution for premature retirement of judges of doubtful integrity at any time without prescribing any minimum qualifying service on the recommendation of the collegiums. The problem of judicial accountability will be minimum if proper persons are appointed. To have persons of ability and integrity, the post of judges should be made attractive to leading and deserving members of the bar. This will help in ensuring justice of high quality"[38].

It is shame for Indian judiciary that many High Court judges are facing charges of corruption. The causes involving justice **SoumitraSen** of the Calcutta High Court, Chief justice **P.D**.**Dinakaran** of the **Sikkam High** Court and justice *Nirmala Yadav* of the *Uttarakhand High Court* are all various stages. The charge that many former chief justice of India were corrupt has given a new twist to judicial corruption. There is also the Rs. 23 Crore Ghaziabad P.F. scam in which a Supreme Court judge (since retired), seven Allahabad High Court judges are allegedly involved. And it also an abnormal situation when the senior most advocate of the Supreme Court, he has been a public spirited counsel of corrective strategy. He has questioned the integrity of the top brethren of the highest judiciary of the republic, hurling charges of the corruption against eight of sixteen chief justices of the past[39]. The Union minister of law and Justice **Virappa Moily** –"We have now brought in the judges standard and accountability bill 2010. No person with a tainted character can become judge. The system will be such that once he becomes a judge, at no point of time he will be allowed to commit a mistake. If this kind of accountability is built, perhaps this perception will disappear the bill will introduced in Parliament soon[40]. This is done for ensuring greater transparency in the functioning of judiciary. The bill seeks to strengthen the institutions of judiciary by making it more accountable in a formal manner by an Act of Parliament and

[37] Held in New Delhi on 10-11th march 2007.
[38] The Tribune, December 8, 2010.
[39] The Hindu, September 21, 2010.S
[40] The Tribune, Octerber 24, 2010.

thereby increasing the faith and confidence of the Indian public in the administration of justice[41]. The bill 2010 is a step in the right direction.

It has some welcome feature such as providing for a transparent mechanism for scrutiny and an inquiry in to complaints against judges, requiring declaration of assets and liabilities by them and for exhibition of information on the website of the Court concerned every judge shall practice, including not permitting any member of his family to appear him or to use his residence or other facilities provided to him for professional work etc[42].These days all Courts are facing a syndrome of '*Uncle Judges'* in a recent case of Raja Khan vs. U.P. Sunni central waft board the Supreme Court found "*Really needs some hose cleaning*". The BCI head then forwarded to the Union law ministry a list of 131 'Uncle judges' (out of a total 499) in 21 High Courts and 180 advocates with their names and nature of relationship. Some judges have their kith and kin practicing in the same Court. *The rot in the higher judiciary seems to be much deeper than what has surfaced*[43].

The centers decision to set up a *National Judicial Oversight Committee* to look in to complains against Supreme Court and High Court judges and imposes 'Minor penalties' or recommended their removed is welcome under bill 2010.Although the Parliament passed the many Act such as judges inquiry Act, 1968, judges inquiry bill 2006, *Right to information Act*, 2005, The judges (Declaration of assets and liabilities) bill, 2009 and but we hope that the bill, 2010 will be more effective than earlier. Supreme Court mentioned in S.P. Gupta vs. VOI, "Accountability and Transparency are the very essence of democracy". A kind of balance is to be maintained between judicial accountability and judicial independence if judicial accountability stretched too far can seriously harm judicial independence and thus it is essential that we strike the right balance between the two.

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