

## JUDICIAL INDEPENDENCE: THE PROS AND CONS

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### INTRODUCTION

The concept of the independence of judiciary has always been a very furious argument for analysis, which had achieved more impulse recently. Independence of judiciary, to certify specifically, means an impartial and inactive judicial system, which can assist to take its decisions without being influenced by any external or internal firm or forces or by irrelevant considerations. The independence of the judiciary is an essential part of democracy; expect to shield the judicial process from external impact and to provide full legal protection to all individuals going to court for whatever reason. The Courts are contemplated to act as partisan of the law, who independently operate their judicial power without any practicable or individual inhibit. Such inhibits frequently comes from executive and legislative officials, political parties, the military, paramilitary and intelligence forces, criminal groups and the judicial hierarchy itself. The imminent of human blunder, specifically when human interest comes into conflict with the claims of others, requires that a judiciary should interpret the laws, and the hypothesis, which determine it, as far as potential independent of the Executive and the Legislature.

The Judicial independence is a dual concept. It not only means freedom from extraneous impact but it also means an independent accession by the individual judge. Judge commitment also able to think independently for himself. He should not be fluctuating by the altercation of one side and just close his eyes to the argument of the other side. He must be independently capable of evaluating the arguments of both sides and come to a right conclusion. He should be self-reliant and not submissive. Judges must be developing a judicial temperament. Judicial temperament is defined as objectivity growing into wisdom. It is the equanimity devoid of

passion or ego of the self. It is an attitude of mind, a quality that integrates the entire personality of the judge.

## **MEANING OF THE JUDICIAL INDEPENDENCE**

Judicial independence can be defined as the competence of respective judges and the judiciary as an aggregate to function their duties free of consequence or control by the other performer. Judicial independence is decrepit the constitutionalism itself. Ascetic assurance of judicial independence from the government jurisdiction in 1701, when England's Act of Settlement assuredly judges specific stability from unilateral discard by the crown in the context of a enormous deviation of power from the King toward Parliament and the courts.<sup>i</sup>

## **HISTORICAL BACKGROUND OF JUDICIAL INDEPENDENCE**

Human institutions lie deeply buried in the past of roots of the present day. The same is true of a country's law and legal institutions. As M.P. Jain stated "The legal system of a country at a given time is not the creation of one man or of one day; it represents the cumulative fruit of the venture attention, thoughtful planning and patient labour of a large number of people through generations. To comprehend, understand and appreciate the present judicial system adequately, it is necessary, therefore, to acquire background knowledge of the course of its growth and development."<sup>ii</sup>

## **OBJECTIVE OF JUDICIAL INDEPENDENCE**

The objectives of the Study of Judicial Independence are for the purpose of determine whether the Judicial Independence is veraciously Independent, and if so how it is perpetuate and protected. If there is entire Independent Institution, Authority, Tribunal, Commission, etc. is constituted and convenient to enforce the Accountability against the judicial independence? There are the following factors for this purpose-

(1) To consideration of the native and scope of the judicial independence in India.

- (2) To consideration of the appointment of Judges in Higher Judiciary in the light of Supreme Court Cases regarding more transparency in the appointment.
- (3) To consideration the Judicial Accountability under the Indian Constitution?
- (4) To consideration the formalistic analysis of Higher Judiciary in India?
- (5) To consideration the advocacy of Law Commission regarding Judicial Accountability including National Judicial Commission and Judges Inquiry Bill.

Today, if there is entire such code of conduct to Higher Judiciary? Whether is the any code of conduct to the Lower Judiciary? Is admissible or is it within the scope and extent of its powers and Jurisdiction? Whether such Judicial Activism can be examined as exceeding the powers by the Indian Judiciary beyond its Jurisdiction? Whether such Judicial Activism can be confining or restricted if so by blow?<sup>iii</sup>

## **NEED OF JUDICIAL INDEPENDENCE**

The Indian Constitution assumes distinct appliance to ensure the judicial independence in keeping with both the doctrines of constitutional and Parliamentary sovereignty. Amplify provisions are in place for ensuring the independent position of the Judges of the Supreme Court and the High Courts.

1. *The judges of the Supreme Court and the High Courts have to part the testimony before entering office that they will anxiously perform their duties without fear, favour, affection, acrimony, and oppose the constitution of India and the laws. Recognition of the doctrine of constitutional sovereignty is implicit in this testimony.*
2. *The action of appointment of judges also insures the independence of judiciary in India. The judges of the Supreme and the High Courts are appointed by the President. The India's Constitution has formed it requisite on the President to accomplish the appointments in hearing with the highest judicial authorities. He of course the part advice of the Cabinet. The constitution also direct mandatory qualifications for such appointments. The constitution tries to form the appointments neutral by political detachment.<sup>iv</sup>*

3. *The security of tenure of Judges afford by the Constitution. The judges of the Supreme Court and the High Court's assist "during good behavior" and not during the contentment of the President, as is the case with other high Government officials. They cannot be capricious discard by the President. They may be discarded from office only through accuse. A Judge can be discard on the ground of determine misbehavior or incapacity on a report by both Houses of Parliament supported by a appropriate majority*
4. *Their salaries and allowances are allegation upon the Centralized Fund of India. Further, the salaries and other allowances of Judges of Supreme Court and High courts cannot be curtailed during their regime, except during a financial emergency under Article 360 of the constitution.<sup>v</sup>*

## **THE PROS AND CONS OF THE JUDICIAL INDEPENDENCE**

If we see the pros and cons of the independent judiciary on the one hand there are the advantages while on the other there are disadvantages. The criteria used to judge certain cases are astonish and unfair. In order to secure the strength and to maintain the fortune, the builder of the constitution had granted fundamental rights to its citizens and to enforce them they could approach the Courts. The judicial system was given the independence in conformity to the Rule of Law. Aristotle believed too, "*Law should govern.*" To ensure this, there were many provisions adopted in the Constitution for citizens. They specify the domains of the Legislature, the Executive and the Judiciary and provide them their due autonomy to work in their concerned spheres of formulating legislations, their execution and redresses to the grievances respectively. However, the constitution of India also provides for Judicial Review wherein legislation can be quashed by the Courts on the grounds of unconstitutionality.<sup>vi</sup>

## THE PROS IN INDEPENDENT JUDICIARY

### *Concept of Separation of Powers:*

It is very important to distinguish between the role of a Legislature, an Executive and a Judiciary in order to achieve judicial independence. The need for Separation of Powers was felt by the French philosopher **Baron de Montesquieu** as he describes it in his book “**In the Spirit of Laws**” (1748). The words of Montesquieu, “*There would be an end of everything, were the same man or same body, whether of the nobles or of the people, to exercise those three powers, that of imposing laws, that of executing laws, that of executing public resolutions, and of trying the causes of individuals*”.<sup>vii</sup>

In India, though there is no strict faithfulness to the concept of Separation of Powers, however, it is consigned that the parliament has legislative powers, while the executive powers are vested in the President who is advised by the Prime Minister and his council; finally, the judicial powers are in the hands of the courts. There is no explicit mention about such separation in the constitution but it is in practice wherein the legislative and the executive branch are closely related and the judiciary enjoys its independence.

### *Aspect of Judiciary:*

Judiciary is a unit of the government that interprets the laws formulated by the legislature, and penalizes its contravention in order to cede justice to whose right has been intrude. The quote of **Henry Sedgwick**, “*The importance of the judiciary in political construction is rather philosophical than prominent.*”<sup>viii</sup> The salient features of a Judiciary are: -

1. **Interpretation** – In India, Supreme Court is known to be the *Sole Interpreter of the Constitution* and its primary function is the interpretation of the constitution and the laws. It clarifies the laws and applies the interpretation to a particular in order to convey justice.
2. **Custodian** – Supreme Court is sometimes also referred to as the *Custodian of the Constitution*. In the landmark case of *Kesavananda Bharati v. State of Kerala* [ii] the fundamental formation of Doctrine was propounded whereby amendments that did not deviate from the fundamental formation of the constitution were only constitutionally validated. The Courts enjoy the power of judicial review envision in **Article 13** of the Constitution of India where it can quash any law opposing the ideals of the fundamental formation of the constitution.<sup>ix</sup>



3. **Guardian** – The Supreme Court and the High Courts of India aim to protect the civil rights and liabilities of all the citizens of the country. **Article 32** and **Article 226** grants the right to approach the Supreme Court and the High Court’s respectively for the enforcement of fundamental rights by issuing writs such as *Habeas Corpus*, *Mandamus*, *Certiorari*, *Prohibition* and *Quo Warranto*.
4. **Legislation** – As **Laski** said, “*The court finds the law, but in finding it the court also makes the law.*” The decided cases are taken as precedents to decide new cases.
5. **Advisory** – The President can seek advice from the Courts on any question of constitutional law.
6. **Administrative** – The judiciary is responsible for the appointment of Chief Justice of India, Supreme Court and High Court Judges and such staff for the proper functioning of the judicial machinery.<sup>x</sup>

## JUDICIAL REVIEW

After adaptation the Constitution, India opted for **Rule of Law**. On other hand legislature builds laws against the fundamental rights then rule of law becomes impractical. For that reason, the constitution provides for Judicial Review of all the legislations made in India in this article and it also gives the power to the Judiciary to ensure that all the laws build by the legislature or by any such authority and that the ordinances are in conformity with the fundamental rights granted to the citizens of country.

The **Judicial Review** concept emerged within the case of *Marbury v. Madison* [iii] in 1800s and the judiciary has the power to review the legislations even if there is no explicit clause.

### *The Three Judges’ Case:*

There are a series of three landmark cases also known as “**Three Judges’ Cases**” accordingly the procedure of appointment of judges has been argued for the independence of judiciary in India.

- *S.P. Gupta v. Union of India*[iv]
- *Supreme Court Advocates-on-Records Association and another v. Union of India*[v]
- Special Reference No. 1 of 1998[vi]

The Collegiums system will be acclimated for appointment of the Judges and it necessary for the Chief Justice of India will have to consult his four senior-most colleagues for Supreme Court and two senior-most for the High Court appointments. In the procedure of appointment an utmost independence has given by the judiciary. It has also in India Neither the National Judicial Appointments Commission nor Executive appointment model (that prevailed till 1998) been found satisfactory much to preserve the independence of judiciary while promoting efficiency and accountability of the system.<sup>xi</sup>

### ***The Cons in Independent Judiciary:***

It would ensure that the justice is delivered impartially as imperative having an independent judiciary and without any intervention by the legislature or executive branch, there are a certain shortcoming associated with pour judicial system:

1. The primary defect of our Judicial system is the huge backlog of cases, there are over 3 crore cases pending in the Indian courts. Lag in the decision making process defeats the entire purpose of having an independent judiciary. It is the situation we say Justice delayed is Justice denied. As per the lateral data available, as of 1 April 2014 there are 64,330, cases pending in Supreme Court.
2. There is the incident too of the corruption in Judiciary, where the Rich are in a position to engage best lawyers and even bribe and influence the Judges. Rich can also have accessible bails. Capable person can control the witnesses and make use of their money power.
3. There is the lot of complications challenged by the common man to access courts, because of lack awareness, legal terminology is by far too complicated to be understood and at this time common people are not aware of the actual court proceedings and lack resources to engage the best lawyers.<sup>xii</sup>
4. Our Judicial system is the lack effective cooperation with the society, though today because of media things are known to common people but there is no direct interaction by the judiciary.
5. Further, because the lack of access, there are a large number of under trials enervated in the jails that are still waiting for their verdicts and have not been proven guilty. Because of lack of intervention by nay branch, abounding a time under trials has spent more time on the jails than actually required.

6. The Judiciary lacks transparency and accountability in its working unlike the executive branch. There is no fundamental test on the Judiciary, Judicial appointments and complaints against judges' transfer are still not part of RTI.<sup>xiii</sup>

**Lack of transparency:** The lack of transparency seen in Indian Judicial System that the Right to Information (RTI) Act is totally out of the bounds of the legal system. Hence, the functioning of the judiciary, the massive issues like the quality of justice and accountability are not known properly.

**Hardships of the Under Trials:** In Indian jails, there are the most of prisoners are under trials, which are imprisoned to the jails till their case comes to a definite conclusion. In the most of cases, they wind up consume more time in the jail than the actual term that might have had been awarded to them had the case been decided on time and, assuming, against them. Plus, the expenses and pain and misery of defending themselves in courts are worse than serving the actual sentence. Under trials are not guilty till convicted. On the other hand, the rich and powerful people can bring the police to their sides, and the police can harass or silence annoying and poor persons, during the long ordeals in the courts.<sup>xiv</sup>

**Lack of communication with the society:** It is very essential that the judiciary of any country should be an essential part of the society and its interactions with the society must be made ordinary and admissible. It is also seen that there is involvement of common citizens in judicial decision-making in various countries. However, in India, the Indian judicial system has no attachment with the society, something which it had legacy from the British judicial set-up. Although, the concept has been changed over the last 60 years. Even today, the law officers have not been able to come warm to the ground to meet the common people.

**Corruption in judiciary:** Alike any other institution of the Government, the Indian judicial system is equally corrupted. The various recent scams like the CWG scam, 2G scam, Adarsh Society scam, including rapes and other enormity in the society etc. have emphasized both the behavior of the politicians and public celebrities, including the common man, and also on the drawbacks in the functioning of Indian judiciary. There is no system of accountability. The media also do not furnish with a clear picture on account of the fear of contempt. There is no



provision for registering an FIR against a judge holding bribes without the permission of the Chief Justice of India.

**Backlog of pending cases:** The Legal system of India has the largest backlog of pending cases in the world. In India there are the 30 million of pending cases. Of them, over the four million are High Court and 65,000 Supreme Court cases. The number these cases are continuously increasing and itself shows the incompetent of the legal system. It has always been argued to increase the number of judges, constitute more courts, but implementation is always late or inadequate. The rich can afford expensive lawyers and change the course of dispensation of the law in their favour while the ordinary or poor people suffer and it's also creates a huge blockade for international investors and corporations to do business in India. Due to this backlog, there the most of the prisoners in India's prisons are detainees awaiting trial. It is also described that in Mumbai, India's financial hub, the courts are abundant with age-old land disputes, which act as a hurdle in the city's industrial development.<sup>xv</sup>

## **A CHALLENGE OF JUDICIAL INDEPENDENCE IN RECENTLY**

**Corruption in Judiciary:** The corruption is a disease which has been spreading all over the world as a whole in almost all the public offices and even judiciary has not been escaped from this menace. The judiciary of every State must be impartial and the judges have been given the seat of judgment so that they may provide justice to the people without any fear and favour. The question arises that in recently some of the judges have been bent upon to misuse the powers in the temple of justice as they have no liable and articulate coloured judgments under influence in connivance with corrupt bureaucrats, politicians and non-governmental organization in the society in corrupt manner by accepting huge through illegal means for which the judicial system has become corrupt. The accuse procedure is there for the judges which is practically impossible under Constitution of India.<sup>xvi</sup>

Now regarding this the former Supreme Court judge Kurian Joseph assertion that the allegations of corruption in higher judiciary are unfounded comes as a surprise. Do the respective states High Courts of India constitute an essential part of higher judiciary? In an Interview at the time his retirement on 30 November he said, "I will never really agree that there's corruption in higher judiciary. In the lower judiciary, the concerning authority of state and in higher judiciary, it has not come to my notice." He was the part of the group of four

Supreme Court judges, who on 12 January, 2018 held a press conference and accused the then Chief Justice of India Deepak Mishra of assigning important cases to select few judges and constructed serious doubts on the functioning of Supreme Court under his leadership.

He also said, "CJI Deepak Mishra was being jurisdiction from outside and was admeasuring cases to judges with political bias." While the accusation made by him are arguable and what amazement the most is Joseph's ignorance who is well aware of external forces jurisdiction of Mishra and the the corruption in higher judiciary.

In India it has penetrate into all organs of the state – with one difference: although the media both print and electronic, is not restraint when questioning or broadcasting offense amongst public officials (expect for the sanctions imposed by the general law of denigration), the same is not the case with regard to questioning hypothetical lapses of good conduct amongst the judges in the higher judiciary and they enjoy almost complete protection under the law of contempt: laws that are conducted and interpreted entirely and finally by the judges themselves.

*Apart from these observations by legal notables there are recorded cases of alleged corruption against judges of 'higher judiciary'.*

- There have sixty-one Rajya Sabha members moved a petition seeking the proceeding to remove Justice CV Nagarjuna Reddy of the Andhra Pradesh/Telangana high court in 2016. The accusation made against him included excessive income and enormity against members of scheduled castes. Again, in May 2017 there have been 54 Rajya Sabha members moved a petition for his removal for alleged interference in the judicial process and hurling castes abuses against a junior dalit judge. On both occasions, the proposal to accuse him failed.
- The well-known case former Calcutta high court judge of Soumitra Sen. He was found guilty of desecration '33.23 lakh under his custody as a court-appointed acceptor in the capacity as a lawyer, and distortion facts before a Kolkata court in a 1983 case. The Rajya Sabha had already passed the agility for his accuse when he resigned from his post.
- The CBI allegation the former judge of Punjab and Haryana High Court Nirmal Yadav in a corruption case. A bag consist of Rs 15 lakh was delivered at the residence of justice Nirmaljit

Kaur of the same court in 2008 by mistake; it was supposedly meant for Nirmal Yadav. Now retired and facing trial.

- The former chief justice of the Sikkim high court PD Dinakaran was accused of assemble huge assets and land and his hometown, Arakkonam, which were excessive to his known income and regarding it's what was fixed by the Tamil Nadu Land reforms. The Rajya Sabha chairman had set up a judicial panel to look into allegations of corruption, but he resigned in July 2011, before accused proceedings could be initiated.
- V Ramaswami was the first Supreme Court judge against who accused proceedings were initiated of incurring "ostentatious expenditure" on his official residence during his tenure as chief justice of the Punjab and Haryana high court. The activity for his removal was put on voting in 1993 but was defeated in Lok Sabha.
- Shamit Mukherjee was the Delhi high court judge in 2003 when CBI arrested him for his alleged role in a multi-crore land scam involving the DDA and regarding this case a Delhi court framed charges against Mukherjee and four others in 2008.

The above cases are the only ones which came to light and therefore officials could take action. Beyond this, lie many more cases of alleged corruption which will never be even talked about as the law of contempt deters betrayer in highlighting these cases.<sup>xvii</sup>

**Sexual Harassment Allegations under Judiciary:** In recent, the Indian Judiciary faced an unparalleled problem alleged under sexual harassment by the Chief Justice of India. It is the matter to an unfair issue for Independent Judicial system in our society. It is one of the also challenged to Judicial Independence. There are the famous Supreme Court judges who accused under this.

1. **Justice A K Ganguly** the former judge of the Supreme Court, conclude to have been accused by a law trainee of sexual harassment, has recorded a statement before the three-judge committee, which has submitted its report. The Committee chief Justice R M Lodha submitted the report after recording the statement of Justice Ganguly, who is heading the West Bengal Human Rights Commission during the period; an apogee the court official said Ganguly demitted office as Supreme Court judge on 3 February, 2012.<sup>xviii</sup>

2. Another former Supreme Court judge has been named in a sexual harassment case of **Justice Swatanter Kumar** who was accused of sexual harassment by a law intern.<sup>xix</sup> A bench with Chief Justice P. Sathasivam, was constituted urgent hearing, agreed to augment up the case on 15 January, 2014. The law intern has objection the apogee court's on 5, December, 2013 with full court resolution that rule that it would not entertain complaints against its retired judges. On this time the intern has made Justice Kumar, the Secretary General of the Supreme Court and the Union of India parties in the case. She submitted that Justice Kumar was a sitting judge at the time of the alleged incident and also the apogee court must look into the complaint as per Vishaka guidelines. Justice Kumar, who is at the present heading the National Green Tribunal (NGT), has described the allegations as "incredulous and false" and "some quite conspiracy." In earlier complaint, according to him on one occasion Justice Kumar place his hand on her lower back when she was stepping out of his office room then she braid absolutely uncomfortable and disturbed but she flick it aside. Later, on another occasion, when she visited to the judge's room to apologize for a mistake she had pledged.<sup>xx</sup>
3. It is the newly case of the Chief Justice of India **Ranjan Gogoi** accused of sexual harassment by a Supreme Court woman employee.<sup>xxi</sup> She said that her worst fears have come true and all her hopes of justice have been demolished. On this a three-judge in-house committee delving; the allegations of sexual harassment against CJI Ranjan Gogoi gave a clean chit to the Chief Justice of India, saying it found "**no substance**" in the sexual harassment allegations after the statement of woman. She also said that she is not just "highly disappointed and disheartened" to learn that the in-house committee appointed by the Supreme Court it found "no substance" in her sexual harassment complaint against CJI Ranjan Gogoi but it also felt that the "**gross injustice**" has been done. In the allegation of her, "She was a woman claimant, and a former Supreme Court employee, and she was not just highly disappointed and crestfallen to learn that the In-House Committee 'has found no substance' in my complaint, but ambience that the gross injustice has been done to me as a woman citizen of India."<sup>xxii</sup> At a special hearing in Supreme Court CJI Ranjan Gogoi denied the allegations, saying the charges were part of a "larger conspiracy to destabilize the judiciary"

## SOME RECENT SCANDALS

- 1. Punjab & Maharashtra Co-operative Bank Limited (PMC):** A multistate Punjab & Maharashtra Co-operative Bank Limited (PMC) is began activity in 1983. There are the 137 branches circulating in many states in India and nearly 100 branches are in Maharashtra. It is directed by the Reserve Bank of India and registered under the Cooperative Societies Act.<sup>xxiii</sup> PMC is one of the beneficial co-operative banks in India and had earned a total revenue of ₹1,297 crore (US\$182 million) and profits of ₹99.69 crore (US\$14 million) in the financial year 2019.<sup>xxiv</sup> The RBI enforced it activity restrictions for six months on 23 September 2019. So, the bank account holders are not allowed to withdraw more than ₹1,000 from their accounts during this period of restrictions.<sup>xxv</sup> The restrictions have been eased on 26 September and a total of Rs 10000 could be withdrawn by the customers.<sup>xxvi</sup> The managing director of the PMC bank Joy Thomas, was suspended. He conceded the exposure of the bank to the troubled realty company HDIL and also stated that the company had been violating the RBI rules for 5-6 years now. Of the comprehensive loan fiction of 8300 crores, PMC bank loans to HDIL stood at Rs.6226 crore, about 73% of total loans of the bank.<sup>xxvii</sup> A committee has been appointed by the High Court to solve this situation and oversee the business of assets of Housing Development Infrastructure Limited (HDIL) to pay the depositors of PMC Bank. Mr. Rakesh and Sarang Wadhawan, and their some former officials of the promoters of HDIL are accused of committing a fraud on PMC Bank. The interest of public to lawsuit register in the high court, contrive the setting up of a committee to speed up the auction of HDIL's assets to pay the depositors, has claimed that the immovable firm owed? 4,635 crore to the bank. The court said if the proceeds from the business were inadequate to pay the dues, the committee would identify and dump of the properties of other companies owned by the Wadhawans which were contract with the PMC Bank, but with paripassu charge of other financial agencies.<sup>xxviii</sup>
- 2. Dewan Housing Finance Corporation Ltd. (DHFL):** It is a deposit-taking housing finance company in India. The headquarter of DHFL is in Mumbai and his branches in major cities across the India.<sup>xxix</sup> The perspective of the establishment of DHFL was authorize admittance to economical housing finance to the lower and middle income



groups in semi-urban and rural parts of India. It is (DHFL) the second housing finance company to be established in the country.<sup>xxx</sup>

DHFL stopped their payment of bonds and defaulted on its loan obligations in 2019. This caused its stock to fall over 97% and a government intervention in the company.<sup>xxx</sup> Later, in August 2019, as efforts to draft a verdict plan by restructuring DHFL debt into integrity, a few of the DHFL bond holders moved to the debt recovery bench, which could influence the verdict process.<sup>xxxii</sup> The company meantime offered to repay all investors in full with due process of inter-creditor-agreement.<sup>xxxiii</sup> And after October 2019, the prosecution authority conducted raids at several places of DHFL offices and promoter residences and found links of money laundering activity in loans given to firms intimately affiliated to the promoters of the company.<sup>xxxiv</sup> Furthermore the trail of the loan given by DHFL to Sunblink real estate in 2010 led to gangster Iqbal Mirchi, an associate of the organized crime mastermind Dawood Ibrahim.<sup>xxxv</sup> The Indian Central Bank removed the board of directors of Dewan Housing Finance Corporation Limited (DHFL) On November 20<sup>th</sup>, 2019, under the Section 45-IE (I) of the Reserve Bank of India Act, 1934. The banking regulatory alluded to the reason for the adjournments of the DHFL board of directors were: inadequate governance and the several defaults on its payment obligations.<sup>xxxvi</sup>

The promoter of DHFL, Kapil Wadhwan was arrested on January 27, 2020, under the Prevention of Money Laundering Act (PMLA). The apprehension was connected to his firm's alleged captivation in providing loans to the organized criminal enterprise of Dawood Ibrahim.<sup>xxxvii</sup> And the PMLA court granted bail to Kapil Wadhwan on February 22, 2020. The high court of Bombay upheld the bail decision by PMLA court; deny Indian Enforcement Directorate requests to stay the bail application.<sup>xxxviii</sup> The Enforcement Directorate has linked Yes Bank for several fraud and transactions amounting to 3700 crores as bond in DHFL. A authority has appointed by the central bank at DHFL has ordered a transaction audit at the non-banker after declarations of money laundering surfaced in the aftermath of the regulatory action on Yes Bank.<sup>xxxix</sup>

- 3. The INX Media case:** It is related to the high-profile money laundering investigation in India. In 2007 the accusation of irregularities in foreign exchange clearances given to INX Media group for receiving abroad investment. At this time the union finance minister was P. Chidambaram, and the investigating agencies implicated His son Karti Chidambaram.<sup>xl</sup>



The CBI and Enforcement Directorate issued a notice to appear before them in August 2019. On 21 August, it was noted that P. Chidambaram went missing on the same day after his anticipatory bail appeal was refused.<sup>xli</sup> Around 24 hours later at the Congress Party headquarters he appeared and made a statement to the media that he has "not pledged any crime in INX Media case" and "will respect the law".<sup>xlii</sup> His appeal for an anticipatory bail in INX Media case was dismissed by the Delhi High Court on 20 August 2019.<sup>xliii</sup> On the next day he was arrested by the CBI at his house, the media described as "dramatic" in a sequence of events. Eventually they were allowed into the house and the arrest was executed.<sup>xliv</sup> On 5 September 2019 he was sent to Tihar Jail for a two-week judicial custody and he was again sent to jail on 3 October 2019 up to 17 October.<sup>xlv</sup> The Times of India assert that the arrest marked "a symbolic point in the ever-escalating fight between the opposition party Congress and BJP".<sup>xlvi</sup> The Supreme Court granted bail to P Chidambaram against the case registered by the CBI on 22 October 2019.<sup>xlvii</sup>

4. **Doddalahalli Kempegowda Shivakumar** : The D. K. Shivakumar is an Indian politician who is currently assisting as the President of the Karnataka Pradesh Congress Committee (KPCC) and the state minister of irrigation in the cabinet of H. D. Kumaraswamy.<sup>xlviii</sup> Previously under the Siddaramaiah Government, he assisted as the Minister of Energy in the Government of Karnataka.<sup>xlix</sup>

Shivakumar's residence and office in Bengaluru were raided by the Income Tax Department in connection with alleged tax irregularities on 2 August 2017.<sup>1</sup> In year of 2015, the Karnataka High Court issued a notice to Shivakumar and some of his family members, and related few granite mining companies on a PIL alleging their role in illegal mining activities in Kanakapura and Ramanagara sub-districts on the **Illegal mining case**.<sup>li</sup> After that the **Alleged involvement in shanthinagar housing society scam** land activists accused Shivakumar and his brother D. K. Suresh of capturing 66 acres of land, meant for the housing of the poor and underprivileged, in Shanthinagar, Bengaluru. On this matter HS Mahadev Prasad, the minister of cooperation, issued a clean chit for Shivakumar, since they found no proof to enact the Shivakumar's engagement in the scam.<sup>lii</sup>

In 2019, they **Imprisoned by Enforcement Directorate (ED)** under the Money Laundering case to Delhi and assemble for an enquiry of him. He was challenged the 9 days long enquiry and was presented to the ED court. The ED requested the court for issuing him into their custody, accusing that Shivakumar was non cooperative in the enquiry.<sup>liii</sup> The court hence granted Shivakumar to its custody, and was arrested on 3 September 2019 later he was shifted to Tihar jail from the ED office. The Congress leaders accused this arrest as a political altercation by the BJP.<sup>liv</sup> Shivakumar submit an application for bail, which got rejected twice. Later the ED court granted him bail on 23 October, saying that tampering of proofs by the accused is not possible and released him under certain conditions set of the bond amount was 25 lakhs Indian rupees.<sup>lv</sup>

## **IMPORTANCE OF JUDICIAL INDEPENDENCE**

We all know that independence of judiciary is the cornerstone of our constitution. It is a fundamental feature of our Constitution. In point of independent judiciary our Constitution has made a deliberate and conscious departure from other constitutions of the world - indeed, even from the Government of India Act, 1935. In officials of independent judiciary, the appointment, transfer, discipline and all other service conditions of the subordinate judiciary was placed entirely in the hands of the judiciary; the executive was relied upon to make or issue formal orders only. As a consequence, the superior judiciary is concerned, the power of appointment was vested in the President but it was conditioned by the requirement of consultation with judiciary. A council was developed according to which the recommendation always and constantly originates from the Chief Justice of the High Court and Supreme Court of India. The case related to appropriate Court.

It has one of the essential features of the democratic republic established by the Indian Constitution is division of power between the three important wings of the State. The three wings are expected to operate in their respective fields so that democratic governments, both at the Centre and the States can function to fulfill the noble objectives enshrined in the preamble to the Constitution. As early as in 1951, in *re Delhi Laws case*,<sup>lvi</sup> the Supreme Court noted that though there are no specific provisions in the Constitution vesting legislature papers exclusively in the legislature and the judicial power in the judiciary, the heart of the doctrine

of separation of powers was implicit in the constitutional scheme. Later in *Indira Gandhi case*<sup>lvii</sup> in 1975 "separation of powers" was treated as a part of the basic structure of the Constitution and the detailed provisions were made to insulate the judiciary from the executive and to secure the independence of the judiciary for distributing the powers.

Some of the criticisms have clarified that the framers of the Constitution were overly and unequal concerned with what they perceived as unnecessary details of the judicial system - with its administrative aspects, the tenure, allowances and salaries and retirement age of the Judges, the mechanism of choosing Judges and appropriately. However, the concern of the framers for these finer details must be viewed against their larger concern that the people be provided with "a judiciary of vestal inapproachability which shall always tend the hallowed blaze of justice."<sup>lviii</sup>

A single integrated judiciary, along with a uniform system of laws was essential to maintain the unity of the country in the view of the framers and apart from being the conscience-keeper of the Constitution and the savior of fundamental rights of the people, the framers wished to adorn the judiciary with powers which would enable it to "be loyal the charter of Government ongoing with the times and not permit to become primitive or out of chorus with the needs of the day." The Judicial provisions were being drafted, there was general agreement on the issue that if independent India were to achieve a social revolution, the judiciary would have a vital role to perform and would therefore have to be well equipped for the purpose.

It is worthwhile to mention here that the Federal Constitution provides for division of powers between general or Central Government and regional or State Governments. On account of it there may be disputes between the Central and the State Governments. Independent Judiciary is required to determine such dispute. The judiciary, thus, should not be under the control of the Central Government or the State Governments. The Government having the Control over the judiciary may compel it to decide the dispute in its favour. The independent judiciary is, thus, necessary to maintain the Federal Nature of the Constitution. Various methods are adopted to maintain the independence of judiciary, e.g. appointment of the judges by the head of the executive or through independent Commission, difficult procedure for their removal, no variation in conditions of their services to their disadvantage after their appointment, prohibition of any discussion with respect to the conduct of any judge etc.

Independence of Judiciary becomes all the more important and essential in a modern welfare state where there is a vast increase in the range and detail of government regulation of privately owned property or enterprise. There is the direct accessory of services by government to individual members of the community, and there is increasing government ownership and application of industries and businesses, which at an earlier time would have been operated for profit by private hands. The public power becomes an instrumentality for the achievement of these purposes naturally, and inevitably, there is a broad increase in the frequency with which ordinary citizens directly encounter the wielders of power. It is this dramatically increased numbers of encounters that sets the task of the rule of law in a welfare society and it should be the goal of the rule of law that these assorted and diverse encounters are fair, just and free from capricious, and it is, therefore, necessary to structure and regulate the power of the executive so as to prevent its abuse or misuse of arbitrary application or exercise.

For this purpose, it is a view to enabling the judiciary to carry out this important and delicate task, that the power of judicial review has been conferred on the judiciary. The judiciary seeks to protect the citizen against violations of his constitutional or legal rights by exercising this power of judicial review. The judiciary concedes between the citizen and the State as a fortress against executive excesses of misuse or abuse of power or the transgression of constitutional or legal limitations by the executive as well as the legislature and there are also certain human rights which need affirmative state action for their enforcement; and where the State fails to do so, the judiciary has to step in and constrain such affirmative state action in order to make these human rights effective.

*It is, appropriately, without a doubt essential that the judiciary must be totally free from executive pressure or influence and must be fiercely independent. Of course, Independence is a quality which must come from within the heart. It must be a distinction which is part of the very fabric of the judge's existence; but even so, judges must not be exposed to executive threats, inducements or blandishments and must remain absolutely independent and fearless.<sup>lix</sup>*

***There are the few important points have given the Indian Constitution for great importance to the independence of the judiciary system-***

- Judicial Independence means that it should be free from influence or control of either the legislature or the executive.
- The Indian Constitution creates an impartial environment where judges have the freedom to deliver their decision without pressure.
- Even if the United States, there is separation of powers to ensure independence of the judiciary, in India the doctrines of Parliamentary and constitutional sovereignty coexist together.
- The Indian Constitution has diversified appliance to ensure judiciary's independence which are as follows.
- Early, Supreme Court and High Court judges take testimony before assuming office that they will defend the Indian Constitution and its laws. Appreciation of concept of constitutional sovereignty is given in this testimony.
- Judges of Supreme Court and High Court are appointed by the President in consultation with highest judicial authorities.
- The Constitution also builds conditions comparable qualifications for such appointments so that they are not biased by political considerations.
- A "good behavior" avails by the Supreme Court and High Court judges and not during the pleasure of the President.
- The Judges can be removed from office through impeachment.
- Hierarchy of the Indian judicial system plays an analytical role in judicial independence.<sup>lx</sup>

## **CONCLUSION**

A comprehensive and clear understanding of the concept of independence of judiciary also results in the conclusion that the destination of independence of judiciary, which has several milestones to be crossed, can be reached only with the consistent and attentive efforts of all stakeholders. Legal institutions play a pivotal role within the distribution of power and rights and in the overall development of the country. They also bear the forms and functions of other



institutions that deliver public services and regulate market practices. Justice is primed for the prevalence of the social order in society. Our rich culture, heritage and traditions have evolved from time immemorial and have centered on 'justice.' They also underpin the forms and functions of other institutions that deliver public services and regulate market practices. But inequitable justice system may perpetuate inequality traps. Consequently, building a more decent justice system is very important. In every country, there had been a struggle for judicial independence and an appropriate justice system. "The Judges, of the Supreme Court and their subordinate courts, inferior courts shall dominance their offices during good behavior and shall, at stated times, receive for their services, a compensation which shall not be curtail during their continuance in office." Providing constitutional and legal safeguards to secure independence of judiciary is only the first step, of course very symbolic, in that direction and a lot more is needed to be done, which depend largely on judges themselves. The appreciation is the need of the hour.

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