



## ACCOUNTABILITY AND CORRUPTION IN INDIAN JUDICIARY: A CRITICAL EVALUATION

**Dr. Rajinder Verma**

*Assistant Professor, Department of Laws, H.P. University, Shimla.*

### **Abstract**

*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. 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.*

### **Introduction**

In the democratic set up the judiciary plays an important role of interpreting law and adjudicating upon various controversies. An independent judiciary is earnestly required for deciding the matters between one citizen and another and citizen and state. It is the main function of the courts to maintain rule of law in the country and to assure that the government runs according to law. In a country with a written Constitution, courts have an additional function of safe guarding the supremacy of the Constitution by interpreting and applying its provisions and keeping all authorities within the constitutional framework. The judiciary stands between the citizen and the state as a bulwark against executive excesses and misuse or abuse of power.<sup>1</sup>

Nearly two decades ago, the Supreme Court had set exacting standards for judges. In *All India Judges Association v. Union of India*<sup>2</sup>, 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.

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 1911, have successfully avoided impeachment due to their victory or pre-emptive resignations, none is found guilty for their malicious verdicts under section 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.

### **Laws in India: Privileges and Immunities**

A judge of the Supreme 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 Article 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 of 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 unfavorable 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 this 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

<sup>1</sup> *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

<sup>2</sup> (1992)1 SCC 119



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 under section 2(b) and 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 pre judicial or interfering to the court proceedings.

Independence of judiciary is a part of the basic structure of the Constitution as held in Supreme Court Advocates-on-Record Associate v. Union of India<sup>3</sup>. It is further strengthened by adopting stringent selection procedure for the Judges of High Court and Supreme Court. In re Special Reference No. 1 of 1998<sup>4</sup>, 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 Collegium for the purpose of consultation.

#### **Laws in India: Constitutional and Statutory Accountability**

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 an 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 a '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<sup>5</sup>. 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 under section 235(2) CrPC. However, a guilty person can be let off by simple censure, pardon, reprimand, reprieve or remission or can be punished severely to deter others, depending on the circumstances and the theories of punishment, such as Retribution, Deterrence, Incapacitation, Rehabilitation, Denunciation, Reform and Prevention as also explained in Bishnu Dev Shaw v. State of West Bengal<sup>6</sup>.

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 victims also denied to public servant as the offences committed by Public Servant 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<sup>7</sup>.

Judges of Supreme Court and High Courts are "public servant" within the meaning under section 21(Third) of IPC as held in K. Veeraswami v. Union of India<sup>8</sup>. They can be punished under section 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 under section 166 and 217 IPC framing incorrect documents or records under section 167 and 218 IPC and for their unlawful trade or for

<sup>3</sup> AIR 1994 SC 268 or (1993) 4 SCC 441

<sup>4</sup> AIR 1999 SC 1

<sup>5</sup> (AIR 1997 SC 1125)

<sup>6</sup> (AIR 1979 SC 916)

<sup>7</sup> 2007 (4) CTC 769

<sup>8</sup> (1991) 3 SCC 655



unlawful buying or bidding property under section 168 and 169 IPC etc. However, none of the 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 voting on 18.8.2011. He was found guilty<sup>9</sup> by the Inquiry Committee for misappropriating sale proceeds to the tune of 24 lakhs 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 52 lakhs by the High Court. He had allegedly unauthorizedly taken out 25 lakhs 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<sup>10</sup>, 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 sanctioning five Housing Board plots, benaami 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 a 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 an initiative of Central Government, exists against their let off from the criminal prosecutions. Moreover, Judges (Protection) Act 1985, bars the 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 forum for inviting complaints against the misconduct of Judges.

### Laws in other States

In United States of America, judicial misconduct or public misfeasance by judges is strictly taken care of by inviting complaints against judges under United States code<sup>11</sup>. Accordingly, any person alleging that a judge has been 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 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<sup>12</sup> of the United Kingdom, Office for Judicial Complaints (OJC) was set up to handle complaints and provides 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, and Magistrates etc.

In Canada, complaint about the conduct of a Supreme Court judge may be filed before the Canadian Judicial Council<sup>13</sup>, provided the complaint is about judicial conduct, not a decision made by the judge in court.

<sup>9</sup> From the letter of the then Chief Justice of India Hon'ble K.G. Balakrishna to the Hon'ble Prime Minister of India published at <http://www.hindu.com/nic/chief%20letter%20to%20pm.html> accessed on 01.12.2011.

<sup>10</sup> [Manu/SC/0983/2011](http://www.manu.org/Manu/SC/0983/2011)

<sup>11</sup> <http://www.ca1.uscourts.gov/circuitexec/files/misconduct.pdf> accessed on 01.12.2011.

<sup>12</sup> <http://www.legislation.gov.uk/pa/2005/4/contents> accessed on 02.8.2011.

<sup>13</sup> [http://www.cjc-ccm.gc.ca/english/conduct\\_en.asp?selMenu=conduct\\_complaint\\_en.asp#wcymaca](http://www.cjc-ccm.gc.ca/english/conduct_en.asp?selMenu=conduct_complaint_en.asp#wcymaca) accessed on 02.8.2011



In Australia, a complaint about judicial conduct is made to the Chief Justice<sup>14</sup>, 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.

### **Corruption: Nature and Scope**

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 could be registered against a serving SC or HC Judge without prior permission of CJI, as held in *K. Veeaswami v. Union of India*<sup>15</sup>. The matter is, however, being reconsidered in the Supreme Court as per Order dated 1.8.2008 in multi-core 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*<sup>16</sup>. Similarly, the Conference of Chief 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 and 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*<sup>17</sup>. 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.

### **The conduct of judges may be categorized as under:**

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

In India under Chapter-III of the Prevention of Corruption Act, 1988 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 offence where gratification is not restricted to pecuniary gratification alone.

In United Nations Office for Drug Control and Crime Prevention (UN-ODCCP) Report of March 2001, Petter Langseth<sup>18</sup> 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 stations; 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 post-retirement placements.

<sup>14</sup>[http://www.familycourt.gov.au/wps/scn/connect/FCOA/home/about/Feedback/FCOA,complaints\\_](http://www.familycourt.gov.au/wps/scn/connect/FCOA/home/about/Feedback/FCOA,complaints_) accessed on 3.8.2011.

<sup>15</sup> *Supra note 8 at 129*

<sup>16</sup> *AIR2010 Del. 159(FB)*

<sup>17</sup> *Manu/SC/0395/2003, para 2 & 3.*

<sup>18</sup> Presented "Strengthening Judicial Integrity Against Corruption" on 20.12.2000 before UN- ODCCP, Vienna.



### Judicial Response

When a case of corruption is cast upon a judge by an ordinary person, the contempt of court proceedings are attracted, though it is duty of State alone to investigate every alleged offence, as every offence is an offence 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 Venkataraniah*<sup>19</sup>, the retired 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*<sup>20</sup>, Chief Justice AM Bhattacharjee of Bombay High Court 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. D.C. Saxena v. Chief Justice of India*<sup>21</sup> 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 contemptuous and awarded imprisonment with fine.

The Apex Court in this case also considered the contemnor’s fundamentals 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 up pleasant and 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 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. Bonafide 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 are alike; therefore, they are 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 a 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 slander.

The Apex Court, thus, held that the criminal contempt as defined under section 2(c) 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 imputation the occasion of making the imputation 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

<sup>19</sup> (1990) CrLJ 2179 Bom.

<sup>20</sup> Manu/SC/0771/1995

<sup>21</sup> Manu/SC/0627/1996



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 suo 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 Sharmeeet Mukherjee of Delhi High Court was compelled to resign on 31.3.2003 in the matter of Azad Singh v. DDA<sup>22</sup> when his unsigned corrected draft order dated 20.2.2003 and other official documents and records of court were recovered by CBI in a 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. He was prosecuted under section 120-B IPC read with sections 7,8,11 and 12,13(1) and 13(2) of Prevention of Corruption Act,1988.

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. Disclosure of the inquiry report was later denied in Indira Jaising v. Registrar General, Supreme Court of India<sup>23</sup>, 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 becomes 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 a leading case of 2010, it has been held in Secretary General, Supreme Court of India v. Subhash Chandra Agarwal<sup>24</sup> 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 the 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.

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 bias or corrupt intentions, the role of jury becomes in separable part of the judicial system and acts as a check on the absolutism and tyranny of the individual Judges. India needs to reconsider it once again. The enlightened citizens, now-a-days have become intolerant to the error in judgment that corrupt judges are encashing under the doctrine of judicial immunity.

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<sup>25</sup> 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 and 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

<sup>22</sup> Suit No.1493/2000 of Delhi High Court, as reported in Sharmeeet Mukherjee v. CBI MANU/DE/0863/2003

<sup>23</sup> Manu/SC/0395/2003

<sup>24</sup> AIR 2010 Del. 159 (FB)

<sup>25</sup> AIR 2002 SC 1771



the respective courts under their power of review either under Articles 137 of the Constitution or under section 114 of 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. Switra*<sup>26</sup> and “Even 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*<sup>27</sup>, 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*<sup>28</sup>, where appeal was dismissed with costs. 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 and per incuriam, both of which mandate that if a decision sanctions an illegality or is contrary to law or to some 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 rule or technicalities.

With the application of principle of res judicata on an 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, the judges usurped the role of jury in deciding the questions of facts, whereby the incidence of error in judgment and scope for corruption is widened. Considering that the Supreme Court ought to entertain only questions of law, the High Court owes an additional responsibility to rectify every aspect of error in facts, either suo motto or by calling commissions. The questions of fact ought to be settled in the High Court itself without any error therein.

Considering most of the litigations arising 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.

### Concluding Observations

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 intuitional accountability compelled the Lok Sabha to introduce the Judge (Inquiry) Bill 2006, which was renamed as the Judicial Standards and Accountability Bill, 2010, for replacing the Judges (Inquiry) Act, 1968.

<sup>26</sup> 30 Ch. 239, as quoted in MANU/SC/0217/1966

<sup>27</sup> AIR 1967 SC 1440

<sup>28</sup> Manu/DE/1476/2009, para 15 & 28



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.

Claiming it to be a cleverly disguised Bill, Justice Ajit Prakash Shah<sup>29</sup>, 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.

The previous UPA government introduced the Judicial Accountability Bill in the Lok Sabha to complain against misbehaviour and incapacity of judges. It also required judges to disclose their and their family member’s assets and liabilities. The bill also established a National Judicial Oversight Committee to advise and warn judges and also recommend to the Parliament in case the situation demands their removal. The bill was passed by Lok Sabha in 2012, but it faced resistance in Rajya Sabha. The bill had several issues such as the Oversight Committee had non-judicial members which could affect the independence of judiciary; the bill required complaints to be confidential and had penalties if confidentiality is breached etc. The bill eventually lapsed in May 2014 due to the dissolution of 15<sup>th</sup> Lok Sabha. The new government in 2016 said that the new bill would be introduced in the Parliament only after the National Judicial Appointments Commission (NJAC) bill notified. However, National Judicial Appointments Commission (NJAC) Act related to appointment of judges in the High Courts and Supreme Court was created but it was struck down by the Supreme Court.<sup>30</sup> Recently, Law Minister hints at bringing afresh bill on judges’ accountability in the Lok Sabha. He said any decision would be taken after taking suggestions from Stakeholders.

Corruption in judiciary is a menace to 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, 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 a deterrent for the corrupt Judges, as the process can be aborted by resignation, retirement or by gaining sympathy of the Parliament. Criminal liability under section 219 IPC for passing corrupt or malicious 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, 1968 none has disclosed 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, 1985. 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 checks 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

<sup>29</sup> <http://indialawyers.wordpress.com/2011/03/30/judicial-standards-accountability-bill/accessed on 12.9.2011>.

<sup>30</sup> *Supreme Court Advocates-on-Record Association v. Union of India*, AIR 2016 SC 117.





litigation, as there would be lesser chances of grounds for making an appeal. The role of jury system could bring that accuracy and over a period would also 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 in curium, particularly due to inconsistent decision on the question of facts in comparison to factual scenario that ought to have been scrutinized, discovered or investigated by the court. The Constitutional status of the judge 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 in appropriate cases, the citizen must be allowed to exercise their right to recall the guilty Judge for his public misfeasance.