JUDICIAL INDEPENDENCE and ACCOUNTABILITY

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CHAPTER 1
INTRODUCTION TO JUDICIAL INDEPENDENCE AND ACCOUNTABILITY IN INDIA

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ABSTRACT:

Justice should be administered fairly and without favoritism as its fundamental goal. The supreme authority of law is what gives the nation and society stability. Justice is a broad concept, and the court, which is primarily in charge of administering justice in all political systems, should guarantee that it is distributed. The judiciary is crucial because it is the mechanism for settling disputes if the country as a whole is to grow and bring in a period of peace and prosperity. According to Judge C.E. Hughes, "The Constitution is what the judges say it is, but the nation lives under the Constitution." As K.S. Hegde notes, the judiciary "function as the balancing wheel" of the Constitution. As a result, the court upholds the rule of law while also defending the vulnerable, the helpless, the poor, and the oppressed. Therefore, it is essential for the growth and development of a fledgling democracy like India that there be a strong, independent, and powerful judiciary.

KEYWORDS:

Accountability, Conflicts Interests, Justice, Judicial Independence, Rule of Law.

INTRODUCTION

Given that it is charged with the enormous responsibility of delivering justice, one of the fundamental necessities of the populace, the institution of the judiciary is perhaps one of the most significant institutions in a democratic system. The court is charged with achieving constitutional ideals to the utmost extent possible as the guardian of citizens' rights, advancing the goal of the Constitution Makers. All of its residents should be guaranteed social, economic, and political fairness, according to the Preamble of the Constitution. When justice is not administered fairly, it endangers the interests of civil society and undermines the notion of the rule of law. A democracy's cornerstone can be said to be an independent judiciary. The judiciary was described as a "watching tower above all the big structures of the other limbs of the state from which it keeps a watch like a sentinel on the functions of the other limbs" byUntwalia J. in the case Union of India v. SankalchandHimmatlal Seth. Because it is a well-established principle of natural justice that justice is not only to be done but should be clearly seen to be done, the existence of a strong, independent, and efficient judiciary, both in letter and spirit, is an absolute necessity to achieve the laudatory goals ingrained in the Constitution[1].

It goes without saying that the judiciary and judicial rulings have significantly influenced Indian politics throughout the years. The judiciary's contribution to upholding impartiality in the political and administrative processes has been crucial. Therefore, whether it is through the pragmatic interpretation of Article 21 or the proclamation of equality concepts, court rulings in India have permeated every level of society. While many of these choices are admirable, there have recently been a growing number of charges that call into doubt the honesty of this venerable organization. The spirit of democracy is in jeopardy due to a lack of accountability and alleged widespread corruption, which raises concerns about the moral rectitude of those who uphold the law. As a result of ongoing public discussions and scrutiny, the court is now held to a higher standard of accountability in order to strengthen the judicial system's transparency and regain the people's trust. However, the court has resisted calls for greater accountability because it is concerned that the independence of the judiciary may be compromised.

In the context of its narrow focus, this study seeks to assess the validity of the rhetorical opposition between judicial independence and accountability, particularly in light of the recently passed Judge's (Declaration of Assets and Liabilities) Bill, 2009 (hereinafter Bill). We aim to make the case that judicial independence and accountability strengthen one another and should not be seen in isolation from one another while critically analyzing the Bill's contentsa self-control mechanism that preserves the independent aspect.It is really important to observe that the call for holding the court accountable has only recently been a topic of public discussion and deliberations in all regions of the world, making it a worldwide phenomenon.The judiciary is "no longer a sacrosanct and inviolable sanctuary of its occupants," as Justice Sir Moti Tikaram of Fiji states.

The necessity for judicial accountability has been a topic of discussion frequently, even if the argument has acquired substantial traction in recent years thanks to civil society and the media acting as vigilant watchdogs. The Committee on Judicial Accountability observed in its Comments on the Judges Enquiry Bill 2006 that the judiciary's excessive self-assurance to the point where they declared themselves exempt from any type of investigation into their acts is the root cause of the urgent need for an accountability system. As it is vital to emphasize that the judiciary is about the law and not above the law, it becomes all the more difficult to ensure that an accountability mechanism is in place and functioning. Accountability is essential since, among other things, judges are often appointed in most nations, giving the general people no power to influence them. In addition, there aren't many rules for punishing judges, which is closely related to what Rowat refers to as "arrogance of office," which causes courts to arbitrarily hold people in contempt. He also points out that an accountability system is essential given how difficult it is to remove a judge through the traditional process of impeachment[2].Judiciary ethics, one of which is accountability, and the concept of judicial independence are inseparably linked. The two are frequently believed to be diametrically opposed to one another and so cannot coexist. This problem has received a great deal of scrutiny because it is a favorite topic for legal experts to discuss the majority of scholars have recognized that there is a continuum between responsibility and independence, and that weighing one in the total absence of the other is fatal to the existence of the other. Nevertheless, there appears to have been a consensus regarding the same.

We further argue that judicial independence cannot be seen as existing in a vacuum because public confidence can only be placed in an accountable judiciary. Establishing the institution's supremacy necessitates the component of accountability. This creates a vicious loop that makes it difficult to understand the complex relationship between corruption and independence. It also aims to further the idea of independence. The main claim we make in this essay is that the conflict between judicial independence and judicial accountability is unwarranted because judicial independence is largely dependent on public perceptions of the judiciary as an impartial institution that upholds the law. It is obviously incorrect to claim that responsibility and independence are at odds because it is necessary to preserve this aspect of justice. Dispelling the misconception regarding the dichotomy between the two is urgently needed because it appears that the two are rather overlaid. According to us, the demand for accountability is the first step in eliminating the occurrence of any act of misfeasance because an untrustworthy Judge should not be sitting on the Bench.

As a result, Prashant Bhushan recently noted in an interview that it is welcome that a stronger demand for accountability, if at all, compromises with the requirement for independence as a means to avert any negative effects of allowing an unreliable adjudicator to decide on the fate of the people. Ironically, while being one of the few countries in the world with an effective Right to Information law, the judiciary seeks protection from public scrutiny in order to maintain its independence. However, the reality is that judicial institutions would be acting with complete naivete if they avoided holding themselves accountable because the demand for integrity is a method of accomplishing the cherished ideal of judicial independence.Instead, the question was whether judges of the High Court and Supreme Court were abiding by the Code of Conduct that had been enacted by the Chief Justice's Conference in 1997. The Chief Justice-endorsed public information officer of the Hon'ble Supreme Court responded by stating that the data was missing

from the Supreme Court registry. The Central Information Commission (hereafter CIC) was then asked to look into the situation, where it was discovered that the Hon'ble Supreme Court had been distinguishing between the information held by the Chief Justice's office and the information held by the Supreme Court. The CIC flatly rejected this distinction and instructed the information officer to request the data from the CJI's office and provide it to the RTI applicant. The Honourable Supreme Court then petitioned the Honourable Delhi High Court to overturn this CIC judgement.

The Supreme Court stated that this would open the door to people demanding actual disclosure of assets under the RTI whereas the CIC only ordered the publication of information regarding whether judges were declaring their assets or not. Due to the judges' "fiduciary relationship" with the CJI and the fact that this information was "personal information having no relationship to public interest and would cause an unwarranted invasion of privacy," it claimed exemption from asset disclosure under the RTI Act. Furthermore, it asserted that the CJI was not a "public authority" as defined by the RTI Act and was not able to consider RTI requests[3]. Despite posting a declaration of assets on the court's website, the Honorable Supreme Court continues to hold to this position.

The decision to post the judges' asset declarations on the website was overruled by the Hon'ble Court, which stated that it would not be withdrawing its writ petition. The argument that the Chief Justice of India was not a public authority and that his office was not subject to the RTI Act was categorically denied by Hon. Justice Bhat. It additionally ruled that the CJI was required to give to the applicant any information he has regarding asset declarations made by judges. The court believed that there could be no claim of a fiduciary connection because the Code of Conduct was established by the judges themselves. According to him, unless the information officer or the CIC determined that the public interest in disclosure outweighs the judge's interest in privacy, the information was personal information of judges that was protected under clause 8(1)(j) of the RTI Act exemptions[4]. The question of whether the public interest in knowing about judges' assets outweighs the public interest in protecting their privacy was left open because the petitioner in this instance did not request actual asset disclosures; instead, she just requested confirmation of compliance.

Additionally, because the CIC is a constitutional body, it is not permitted to be a party to the case and can only be joined by the RTI applicant. The Supreme Court registry said in its appeal before the Delhi High Court that Justice Bhat had failed to understand that information on the judges' "voluntary" declaration of their assets to the CJI could not be requested under the RTI Act. The appeal sought to overturn the single-judge judgment. The Supreme Court Registry argued that there was no law requiring the CJI to declare assets. Only information that was held by or under the control of a public authority in accordance with a legislation or other law might be requested under Section 2(j) of the Act. It is significant that the Hon'ble Delhi High Court's decision placed judges under the control of public authorities. The registry argued that Justice Bhat erred by concluding that "all" information received by the CJI was under the ambit of the Act and by applying a "unnecessary" and "illogical" interpretation of the Act's provisions. The ruling, it was further argued, failed to take into account the vast amount of material that was accessible to the judiciary but could not be made public. There have been numerous firsts associated with this topic that will be remembered in history. In an effort to preserve the institutional integrity of the SC, former judges have entered the field. This is the first instance in which the SC has been a party to a dispute before a High Court. A High Court judge has also spoken out against the established opinion of the SC judges, though not in his official capacity as a judge because doing so is improper. The decision, which has received both harsh criticism and a considerable amount of praise, is unquestionably a standard in Indian law[5]. The Court's reserved decision from November 12, 2009, was delivered on January 12, 2010. It was decided that steps taken to ensure accountability would protect the judiciary's independence. According to the Court, "well-defined and widely accepted standards and procedures complement, rather than weaken, the idea of judicial independence. Openness is what democracy demands, and a free society inevitably involves openness.

DISCUSSION

In addition to information acquired by a public authority, the RTI Act covers all information that authority receives, uses, or intentionally retains while performing its official duties. The right to information would be useless under any other interpretation. The declarations provided to the CJI are made in fulfillment of the constitutional duty to uphold higher standards and judicial life's integrity, and are done so in the broader public interest rather than in a private or trust capacity. As a result, the Court reiterated the importance of ensuring accountability and declared that the CJI did not hold the asset information supplied with him by the SC judges in a fiduciary role and that disclosing it would not constitute a breach of any obligations[6].

Interesting about the ruling is the Court's emphasis on treating the right to information as a fundamental right rather than just a paper tiger by declaring that the Chief Justice of India's office was not immune from the transparency framework. The overreaching goal of having the right to information is to promote democracy by assisting in making sure that people have the knowledge necessary to engage in meaningful democratic participation and to hold government officials responsible to the governed. The Court further expanded the reach of the statute by ruling that every public authority is required to furnish information. The Court has determined that notes, jottings, and draft judgements do not constitute information because they are provisional and subject to revision. This ruling has been of a decisive character thus far. This has clarified any ambiguity regarding the information's scope. Including draft decisions would impede decision-making and result in frivolous lawsuits, undermining its independence. Concerns have also been voiced about the outcomes of adding the judiciary to the list of "public authorities." In accordance with the statute established in the Second Judges Appointment case, questions have been raised regarding the existence of a right to acquire the notes taken by the CJI and the collegium of judges during the appointment of the judges to the Supreme Court and the High Courts. Greater worries exist if the Collegium expresses an honest view on the worth of particular judges in the event that such notes are made public. In order to solve the conundrum, we think the legislature's responsibility should be to address these crucial aspects in the suggested law.

The Delhi High Court emphasized the accountability-independence continuum by stating that "the greatest strength of the judiciary is the faith people repose in it," which is very adorable in light of all these worries. We believe that understanding the need of accountability as a way to promote independence is a crucial corollary to ensuring the proper operation of an effective judiciary. As judicial corruption is now a reality, the ruling appears to be a new ray of hope in the dark waters of fighting corruption in light of the proposed Bill on asset declaration.Union of India v. S.C.A.O.R., AIR 1994 SC 269. A law needs to be passed in order to ensure that proper steps are made to prevent rampant judicial delinquency, which has occurred recently. Greater questions appear to be emerging now that the Apex Court is handling the case. Can the court make a decision on a case in which it has an interest? We believe it is crucial that specific rules on the makeup of the Bench to hear the matter be framed in light of the accusations made against numerous members of the Bench. Such policy problems should be given additional consideration as the government moves forward with its plan to adopt the proposed law so that it is more thorough in both form and content.

An accountability structure is still required in light of the recent issue surrounding Justice P.D. Dinakaran's appointment to the Supreme Court. The Collegium recommended Justice Dinakaran, who is currently the Chief Justice of the Karnataka High Court, for promotion to the SC on August 28, 2009. A Chennai-based organization called Forum for Judicial Accountability then wrote a letter to the Chief Justice of India arguing that Justice Dinakaran's appointment to the Supreme Court should be reevaluated in light of his corrupt actions and misuse of office. In its fourteen-page presentation, the Forum outlined numerous instances of Justice Dinakaran accumulating wealth, misappropriating public property, issuing some unwarranted judicial orders, and abusing his position to the point of mounting a license plate on his car in violation of the Motor Vehicles Act. It is very concerning that the Collegium charged with making recommendations for judges to be elevated to the Supreme Court was unaware of such important information regarding one of its recommended appointments[7].

Judges have the option to decline posting asset information online despite the resolution. Since there is now no regulatory framework in place, voluntary asset disclosure could result in simple forum-hopping or even harassment from dishonest litigants, which is the main fear of all judges. In addition to the court's contempt authority and the standard remedy for both civil and criminal defamation, safeguards must be put in place.

The Election Commission mandated that all candidates provide a summary of expenses related to their political campaigns during the campaign period in a Compendium of Instructions. They post these statistics on the returning officers' notice boards. Every Member of Parliament and State Legislator is expected to submit an annual statement of the assets that they and their dependents own to the presiding officer of the parliament after being elected. Normally, these materials are not released to the public. The RTI Act has also not permitted access to such records[8]. A number of states have enacted subsidiary laws allowing (a) elected representatives and (b) all people entitled to vote in these organizations' elections the right to access the records and papers of Panchayat and municipal authorities. For instance, Section 9 of the Punjab Panchayati Raj Act 1994 mandates that village-level panchayat officers proactively submit a statement of income and spending at the village body's yearly meetings.

At a full court meeting on August 26, 2009, presided over by Chief Justice K.G. Balakrishnan, the judges of the Apex Court decided to make their assets public. They passed a resolution stating that the specifics of their assets, which are already available with the office of the CJI in various formats, would be tabulated in a uniform format and posted on the court website as soon as possible. Several other High Courts have followed their example and made it essential for judges to disclose their assets.Committee recommendations are simply advisory in nature and the legislature is not required to heed them. But Clause 6 has unquestionably become the weak link and demands immediate repair. Even though the future of Clause 6 is still up in the air, we believe that such a stance on the part of the legislators can seriously cast doubt on the transparency and objectivity of the legislation as a whole because the contentious provision, without a shadow of a doubt, seeks to protect the judiciary, undermining the argument for public accountability[9]. It would be difficult for the legislature to revisit the provisions in order to alter them because the legislation is meant to codify what it intends to accomplish.

The South African Judicial Commission Amendment Bill 2007 (hereinafter SA Bill), which deals with judicial conduct and ethics, was introduced in the South African Parliament in 2008 and was scheduled for enactment as a law shortly after. We seek to suggest improvements in the Bill in accordance with the discussions surrounding the aforementioned provision. The novel constitutional structure of South Africa, which grants the Parliament the right to establish legislation to deal with complaints against judicial personnel under Section 180, was one of the main factors in the country's decision to use its laws. We would like to suggest that incorporation of provisions from such legislation would be easier and more advantageous than blindly adhering to the "look west" policy where the constitutional framework per se is significantly different because similar provisions in the Indian Constitution imply a similarity between the two. In the case of India, the experience of colonialism and the violence of partition preceded the birth of the constitution, and in the case of South Africa, the experience of apartheid[10]. Both countries' constitutional backgrounds are predicated on a history of extreme inequality and violence. These are what Upendra Baxi refers to as "transformative constitutions" that have a responsibility to history as seen by the promises made in the chapters on individual rights and the acknowledgement of collective rights.

CONCLUSION

The elimination of corruption is the aim that is hoped to be accomplished through highlighting the increased necessity for accountability and transparency. As the judiciary is a cornerstone of Indian democracy, doing this will ensure and preserve public confidence in the judiciary. As previously noted, the judiciary's accountability component needs to be firmly protected in order to guarantee its independence. Therefore, accountability must be viewed as an enhancement of independence rather than a barrier. While the majority of nations, adhering to common law traditions, do not impose asset declaration or interest declarations of any kind for members of the court, several nations are currently thinking about doing the

same as there is a broad movement towards asset disclosure by public workers. Regulations pertaining to asset disclosure aid in preventing conflicts of interest for those holding public office. Additionally, it makes a significant contribution to the transparency of the decision-making process, establishing the groundwork for the judges' accountability. However, we believe that without free public access or monitoring, this information will have little to no influence. While the Delhi High Court's decision offers some optimism in the gloomy world of lax accountability, it is important to make sure that the planned legislation for asset disclosure reflects this in both letter and spirit.

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CHAPTER 2
ISSUES AND CHALLENGES OF JUDICIAL ACCOUNTABILITY IN INDIA

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ABSTRACT:

Judicial accountability is primarily responsible for the proper administration of justice, which is an important value of the rule of law and constitutional governance. Despite being highly evolved in accordance with international judicial standards, Indian constitutional law still lacks basic requirements for judicial accountability and a Code of Ethics. Despite widespread suspicions of unethical and corrupt acts among the judges, the system's weakness and inefficiency are clear from the scant cases reported against judges. Due to an apparent failure of the constitutional protections against judges in India, there is a tendency for instances to go unreported that is both high and highly complex. The situation has worsened as a result of long-standing judicial reforms in the nation and recent constitutional indiscipline on the part of Supreme Court of India judges who used this as a means of venting their frustration with how the nation's highest court was operating. This uncouth constitutional practice has raised doubts about the effectiveness of constitutional governance in fostering propriety and probity in the country's judicial system. In this context, this essay analyzes the nation's judicial accountability framework and pinpoints its legal shortcomings. According to the study, the Indian legal system needs to be substantially simplified to reflect international best practices.

KEYWORDS:

Constitutional Governance, Ethics, Human Rights Doctrine, Judicial Accountability, Judicial Reforms.

INTRODUCTION

It is amazing how important the judiciary will be in articulating and advancing fundamental ideas like justice, equality, and democracy. The complex relationship between liberty and sovereignty is a major topic in global politics today. A State, as a Sovereign, has the full right to restrict and limit an Individual's Freedom through the exercise of Sovereign Power. Political ideologies and constitutional ideas have long sought to strike a compromise between these two extreme extremities. In actuality, a State that can provide the essential legal order is the only place where man may find freedom. The civilized society has developed a number of measures to check the authority of the State and guarantee adequate protection for individual rights against the backdrop of expanding political theories and State activities. The intra-organ test, which refers to the control of the authority of one organ of the State by the other organ, is one of the tools used by States all over the world to organize and regularize the sovereign power[1].

The key tenet of the intraorgan theory of governmental authority is that the judiciary is an essential organ of the state. This principle requires the judiciary to hold the other State institutions accountable for upholding the liberty, freedom, and fundamental rights of the individual. The liberties of the person could be significantly distorted by unrestricted governance over land and people. It is necessary for a proper constitutional watchdog to be in place to prevent its operation. In a constitutional sense, the judiciary is required to uphold the rule of law from a thick and thin perspective and to defend the individual against the material tyranny of the state. Under the constitutional system, the court has taken enormous importance in the framework of rule of law and human rights doctrine.

The potential outcome of the judiciary depends on how well-established and organized it is. The organization of the judiciary is woven with fundamental principles of good governance, such as transparency, accountability, and responsibility, which play a critical role in creating the favorable environment necessary for the fundamental freedom and individual liberty guaranteed by Articles 19 and

21, respectively, of the Constitution. The fundamental tenets of good governance in the judiciary, as recognized by the international community, include independence, impartiality, honesty, propriety, equality, competence, and diligence. The Constitution's authors were greatly concerned with these ideals and heavily included them into the document after realizing the significance of a strong judiciary. The Constitution's groundbreaking provisions on an independent judiciary have withstood the test of time and may have achieved the goals of its founders by promoting constitutional ideals and averting potential constitutional crises[2].

This is categorically demonstrated by the increased number of constitutionality cases that the Indian Supreme Court has ruled on. The Indian political practices and responses demonstrated the inadequacy of the system in disciplining the judiciary per se, despite the inspirational role played by the judiciary as a result of its constitutional commitment. Therefore, a thorough awareness of the nuances affecting the effectiveness of the nation's legal system is fundamentally necessary. The very consciousness of the people has been jolted by a number of complicated issues, including the partiality, groupism, bias, corrupt practices, ineffectiveness, and lack of confidence of the judiciary. In order to preserve the regal reputation of the Indian court and to advance the constitutional culture of the system, these issues that are hurting the judiciary's very vitality must be resolved. In truth, accountability is the cornerstone of judicial independence and the mark of effective administration. The Supreme Court Advocates on Record v. Union of India, 2015, p.99, states that "judicial independence could not stand by itself, there was something like judicial accountability also, which had to be kept in mind."

However, recent changes in the Indian judiciary have increased the level of concern about the nation's judicial accountability. A debate concerning the judges' accountability has been sparked by the BJP government's nomination of Ranjan Gogoi to the Rajya Sabha on March 16, 2020. In light of Ranjan Gogoi's rulings in the AyodhyaRamamandir Case, Rafale Review Case, Kashmir Habeas Corpus Case, Bank Employees Case, and NRC Case, the claim came to light. Critics claimed that the central government's goal was protected by these decisions and that a political regime approach was purposefully used to resolve these cases.

The ugly side of the Indian judicial system is exposed by the involvement of a current judge of the Allahabad High Court and a retired judge of the Orissa High Court in a case involving bribery to obtain favorable rulings and to override a Supreme Court of India judgment. The news conference held by the Supreme Court of India's four judges in January 2018 is a remarkable example of where the Indian judicial system is at a crossroads. Though the press conferences of the judges of the nation's highest court regarding the functioning and order of the Supreme Court of India have been covered, they should not be disregarded from the perspective of the Indian judiciary's accountability[3].

Despite the fact that the letter sent by the Supreme Court of India's four judges to the Chief Justice of India (CJI) was ambiguous and vague in both content and substance, the judges' historic decision to write the CJI a letter and hold a press conference to reveal the Supreme Court's unusual stance has led some people to lose faith in the judicial system [4]. The Supreme Court is not the only institution in disarray, as the justices of the Supreme Court have shown; the High Courts of the nation are also dealing with similar issues. In this regard, the first section of the study conceptualizes judicial accountability by taking into account its various aspects and fundamental components. The second section of this essay discusses theoretical facets of the interaction between judicial independence and accountability, noting their parallels and differences. The latter half of the paper examines the Indian legal system on judicial accountability, followed by a critical study of the same, with a focus on the current statutory and constitutional position of judicial accountability. This is done with the use of descriptive and analytical techniques. The Indian judicial system has made a significant contribution to the growth of constitutional government and the rule of law during the past few decades. However, several fundamental problems and difficulties are compromising the basic integrity and reputation of the Indian judicial system[5].

The goals of this study in this context are to first determine whether the current legal and constitutional framework is capable of attaining the basic goals of judicial accountability. To examine the legislative shortcomings in addressing the fundamental problems and difficulties with judicial accountability in India, Finally, the report will offer potential suggestions for eradicating the barriers to the idea of judicial accountability in India.

DISCUSSION

Since the beginning, judicial accountability and independent judicial governance have been crucial for society in achieving the goals of the State. It refers to the government's techniques for governing the area and its citizens through established institutional mechanisms and developed tactics in the most detailed and practical sense. the State's own efforts to accomplish its goals based on good governance-oriented policies. The incorporation of the numerous governance proposals is done in an efficient manner. In the literature on governance, accountability is a subject that is receiving more and more attention. Accountability is primarily founded on responsibility of the powerholder (Government) to the power addressee (Citizen) under a constitutional system based on the principal (Citizen) and agent (Government) relationship[6].

In its most basic sense, according to Normanton, accountability is a responsibility to reveal, to justify, and to explain what one does, how financial or other responsibilities are derived from many sources that may be political, hierarchical, or contractual. It is the duty-bound defense and persuasive justification of a person or people in a position of authority for their prior deeds, substantiating the legitimacy of their activities and the degree to which they are prudent and wise. The line-up of judicial accountability is based on the traditional theory of accountability, or the command and control relationship theory, which requires a subordinate to account to his superior for his actions or omissions as a result of his subordinate position, followed by a sanction if power is used arbitrarily and without regard for the law (Sueur, International Journal of Governance and Public Policy Analysis (IJGPPA), 2020 Research Centre for Gov Although it can also be used to refer to responsibility, its own meaning is significantly different from that of ideas like responsibility, responsiveness, and control Judges are bound by intrinsic responsibilities to the State, the rule of law, the legal community, the prosecution, the court officer, the parties to the case, and witnesses. Their contribution to drawing the chariot of the administration of justice is immeasurable.

The term "judicial accountability" is frequently used to denote the importance of these responsibilities. The goal of the judicial accountability regime is to encourage effective justice delivery and to establish the criteria needed for such a system. It is assumed that any improper or unprofessional behavior on the part of the judge will have a major negative impact on the judiciary's punctuality. Under any developed legal system, judicial accountability has an expanded range that includes not only the evaluation of judicial performance, the relationship between judges and the staff of the judiciary, the role of the media and civility society in observing the judicial process, and the role of academia in fostering judicial accountability. Therefore, it won't just govern how judges behave on a personal level; it will also apply to any instances of judicial abuse that run counter to the Court's business, constitutional requirements, and sober legal principles.

Judicial independence is a very trustworthy indicator of the existence of the rule of law in a democratic system of government. It is a requirement for running the justice system. It serves as the cornerstone of the legal system, the foundation of the restricted Constitution, and the requirement for public confidence national and international entities have given considerable consideration to emphasizing the judicial independence in concrete terms. The ideals of judicial independence, seen as a set of protective protections, and judicial impartiality are crucially linked. Judicial accountability and judicial independence go hand in hand and complement one another. The following language from Article 22 of the Delaware Declaration of Rights (1776) illustrates how closely these two judicial concepts are related. The impartial administration of justice and the protection of people's rights and liberties depend heavily on the independence and integrity of judges.

There are numerous academic works that separate the connections between these two ideas, nevertheless. According to the author, "Judicial accountability focuses on the intimate connection between the governors and the democratically governed, while judicial independence emphasizes the effective isolation and separation of the judge from society." According the study, the fundamental fabric of judicial independence is under jeopardy because accountability mechanisms for the judiciary could endanger the rule of law itself. Therefore, it is necessary to balance these fundamental judicial concepts. Even while judicial independence is unavoidable, judges shouldn't use the legal system as a means of self-protection from their immorality and criminality. People who seek courts in search of justice may experience horrible circumstances as a result of this unsuitable method. If the people who have been given independence can't handle it, promoting independence is profoundly illogical and irrational.

Following the observations of Pannick, “The value of the principle of judicial independence is that it protects the public interest in the administration of justice," But judicial independence was not designed as, and should not be allowed to become a shield for judicial misbehaviour or incompetence or a barrier to the examination of complaints about injudicious conduct on apolitical criteria that a man who has an arguable case that a judge has acted corruptly or maliciously to his detriment should have no cause of action against the judge is quite indefensible [7]. It is essential in all courts that the judges who are appointed to administer the law should be permitted to administer it under the protection of the law, independently and freely, without favor and without fear," the Supreme Court of the United States of America stated in Bradley v. Fisher (1871). The public, whose interest it is that judges should be free to exercise their roles independently and without fear of repercussions, is served by this legal provision rather than protecting or benefiting corrupt or malevolent judges (Bradley v. Fisher, 1871).

India's current judicial accountability framework

The 1950 Indian Constitution contains more explicit clauses dealing to the upkeep of judicial accountability. These constitutional provisions give both chambers of parliament the power to request a member's removal on the basis of shown misbehavior or incapacity, which is then followed by a presidential order. This is the corresponding section of the Government of India Act of 1935 that gave his majesty the authority to dismiss judges for cause, misbehavior or a mental or physical defect. The legislature has been given permission under the constitution to begin the removal process as well as to draft legislation that will govern how the president of India will deliver his or her address and how cases of misbehavior and incapacity will be investigated. In order to clarify and rationalize the nation's judicial responsibility, the Indian Parliament passed the Judges Enquiry Act in 1968.

This Act articulates procedural fairness for judges who are the targets of impeachment proceedings and illustrates the usefulness of the accountability system. According to the Act's structure, a motion for impeachment must receive support from 50 members of the Rajya Sabha and 100 members of the Lok Sabha. Due to the democratic significance associated with this constitutional institution, it is important to stress that the constitutional framework exclusively grants authority to parliamentarians[8]. This authority aims to put the checks and balances principle into practice. The Act has said that in order to encourage the arbitrary removal of judges from their positions, the removal procedure should be difficult. The following words are represented by this notion of an accountability plan. "There is a good reason why removing a judge is cumbersome and challenging. Judges should not be subject to impeachment at the whim of the electorate or by anyone else just because of a disagreement with the judge's judicial philosophy or a specific decision made in a particular case.

Bill on Judicial Accountability and Standards

The Indian government is making various efforts to reshape the system set up for judicial accountability in India in light of the new developments in the legal system. The idea of the Indian government to change the current system is such a wise endeavor to breathe fresh life into the nation's judicial accountability. Since its initial iteration as the Judge Enquiry Bill in 2006, the Judicial Standards and Accountability Bill (2012) has been around for approximately 12 years. You could think of the Judges Enquiry Act of 1968 as the

Parliament's response to establishing the process for an inquiry and presenting a request to the president to have judges removed[9]. The Act had gotten around the accountability system's main idea. In the years that followed, a need for reform of the current scheme's accountability framework garnered a lot of attention. By emphasizing enforceable judicial standards and ethical rules, the Bill seeks to revitalize India's judicial accountability system. The Indian Parliament's initiative to expand a comprehensive package of changes resulting from the work of the Law Commission of India is excellent. It complies with global standards and promotes best practices. The concept of misconduct and incapacity, which was left unclear by the 1968 Act, is now made clearer by the Judicial Standards and Accountability Bill, 2012.

By allowing him to file a complaint with the oversight committee, the Bill appears to give the individual the utmost consideration for his or her ability to take part in the accountability regime. The Bill establishes the institutional framework, which publishes the International Journal of Governance and Public Policy Analysis describes judicial accountability.

Institutions serve as the organizational framework for carrying out the tasks that have been delegated to them[10]. The institution creates particular techniques or processes appropriate to its particular purpose for the fulfillment of the specific task assigned to it. The National Judicial Oversight Committee, which is the centerpiece of the new scheme, will be established under the new Bill in order to put the goals of the new legal system into practice.

CONCLUSION

The preservation of judicial accountability is essential for the advancement of constitutional morals and culture. By integrating judges and judicial power with official and informal monitoring procedures, it could control and limit arbitrary despotism and capricious tyranny of the court. The people who drafted the Constitution were fully aware that a vibrant and dynamic judiciary with principles of responsibility, accountability, and independence is necessary for the new constitutional regime, which is focused on great ideological and constitutional values through which the nation is to be governed. As a result, the component power institutionalized the current pattern of power control mechanism after becoming shocked by the abuse of the judicial authority.The fundamental conclusions include judicial standards, subpar academic scholarship, the doctrine of proportionality, statistical concerns, individual participation, an ineffective intra-organ control mechanism, judicial evaluation, and accountability through appeal. While these findings are not in opposition to one another, each of them highlights a different aspect of judicial accountability. By adopting new rules or changing existing provisions in accordance with judicial standards and the code of ethics demanded of judges, the constitutional and legislative framework of the nation must address these challenges as soon as possible. Such drastic changes to the judicial system reflect the belief that the Constitution's ideal objectives and a fair and impartial judiciary are interwoven.

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CHAPTER 3
DOCTRINE OF PROPORTIONALITY AND JUDICIAL ACTIVISM IN INDIA

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ABSTRACT:

The main topic of debate in administrative law has been the extent of judicial scrutiny of administrative action. The idea of Wednesbury reasonableness was initially embraced by common law nations, particularly India, to assess administrative conduct. However, over time, under the influence of civil law systems and Strasburg jurisprudence, common law nations have begun to increasingly accept the notion of proportionality as the benchmark for judicial scrutiny. The British Model, or the state limiting notion of proportionality, and the European Model, or the optimizing thought of proportionality, are the two models of proportionality. The European approach is favoured over the other since it is more objective. In the year 2000, the Supreme Court of India approved the proportionality principle. However, the Indian legal system is still struggling to accept the idea. There are very few instances where the doctrine has really been put into practice. Applying the proportionality principle to administrative action reviews in India is urgently needed.

KEYWORDS:

Administrative Actions, Judicial Scrutiny, Proportionality Principle, Strasburg Jurisprudence, WednesburyUnreasonableness.

INTRODUCTION

One of the most significant advancements in public law over the past century has been the judicial review of legislative and executive action. Although the idea of judicial review was conceived in the famous Marbury v. Madison case back in 1803, it didn't become widely used until the latter decades of the 20th century. Democracy became the dominant political principle throughout the majority of the world in the 20th century, following the conclusion of World War II. Since that time, one of the primary topics of debate in the field of administrative law has been the extent and application of judicial review[1]. The judicial review of executive action (administrative action), which is one of the two types of actions executive and legislative has accumulated the most content enrichment during the past two decades. The legislative has given the administrative authority a lot of latitude and even delegated many of its powers and duties as a result of the modern welfare state's expansion and technical advancements. As a result, the modern bureaucrat is now incredibly powerful. This frequently results in him abusing the power granted to him, necessitating regular judicial intervention. The judiciary shouldn't, however, intrude into the executive's domain as a result of this action. As a result, the reach and scope of judicial review must be constrained to the minimum level required to stop the executive branch from abusing its discretion.

Common law systems and civil law systems reacted differently and established distinct mechanisms to achieve this judicial review's restricting purpose. To accomplish this restricting role of judicial review, the secondary review idea was developed in common law regimes. Under the theory of secondary review, administrative orders would only be overturned by the courts if they committed the crime of wednesbury unreasonableness, which requires that the order be so ludicrous that no sane person could ever imagine that it was within the administrative authority's purview. On the other hand, the civil law jurisdictions created the idea of proportionality-based review (primary review), which is a far more thorough type of judicial review. The administrative measure must not be more extreme than necessary to achieve the targeted effect, according to the proportionality principle . Even though common law nations favor secondary review, they

were unable to disregard proportionality-based review for very long. This was due not just to the benefits of proportionality-based assessment but also to the creation of a European court and the ensuing development of a distinct pan-European jurisprudence that was primarily based on civil law principles[2].

In India, administrative action and the proportionality principle always thought it was preferable to decide domestic cases in accordance with English precedents. In India, the development of administrative law has essentially followed this pattern. Even though the Indian Constitution's Article 226/Article 32 read in conjunction with Article 13 gives constitutional courts much more latitude to challenge presidential directives, Indian courts have opted to use the English notion of Wednesbury Reasonability. The Indian legal system could not remain closed for long, though, as the doctrine of proportionality is quickly gaining traction throughout the world, including in common law nations, and in the case of Omkumar v. Union of India, the Indian Supreme Court accepted the doctrine of proportionality as part of Indian law[3]. The goal of this essay is to examine the theory of proportionality's theoretical underpinnings and the extent of the Indian legal system to which it can be applied.

Judicial Review: Proportionality vs. WednesburyUnreasonability.

Lord Diplock defined the broad parameters of the external structure of judicial review as "illegality," "irrationality," and "procedural impropriety"6 in the case of Council of Civil Service Unions v. Minister for the Civil Services. This three-part classification delineates the external framework of judicial review. However, neither is it exhaustive nor are the reasons it divides into categories mutually exclusive.7 Nevertheless, this classification system is utilized by all significant authors of works on judicial review. The concept of judicial review has undergone several changes, including the loss of prerogative powers and immunity, the emergence and collapse of the notion of jurisdiction, and the formalization and growth of legitimate expectation. However, Lord Diplock's tripartite classification can handle and cleanly contain all of these alterations[4]. The three structures that make up Lord Diplock's classification—illegality, irrationality, and procedural impropriety have all been very well stated by him, but in this study, the concept of irrationality is crucial.

Unreason and Wednesbury Irrationality

Irrationality, according to Lord Diplock's definition, is "wednesbury unreasonableness"10. Wednesbury unreasonableness is a term that was introduced in the case of Associated Picture House v. Wednesbury Corporation11, hence the name. Simply put, it indicates that administrative discretion should be used responsibly. A person who has been given discretion must therefore exercise it wisely. He must draw his attention to issues that he is required to think about. He must not take into consideration anything that is unrelated to the subject at hand[5]. He is said to be acting unreasonable if he disobeys those regulations. Wednesbury unreasonableness is defined by Lord Diplock in a lovely way as a principle that applies to decisions that are so irrational in their rejection of morality or logic that no reasonable person who devoted their minds to the issue at hand could have arrived at them. Wednesbury unreasonableness is, quite obviously, a very nebulous concept that cannot be accurately assessed. Wednesbury unreasonableness hence cannot be described in terms of universally applicable standard tests.

DISCUSSION

The Appreciation-Margin

The doctrine of proportionality's proponents have consistently asserted that judicial review conducted in accordance with it is distinct from an appeal. The appellate body may revisit the entire issue after receiving an appeal18. Because of this, it entails a complete reevaluation of the entire decision19, whereas judicial review just looks to ensure that legal requirements are met20. By determining whether the decision-maker has chosen the least restrictive course of action and has maintained a proper balance between the possible adverse effects of the decision on the rights, liberties, and interests of the persons affected by the decision, the proportionality form of judicial review accomplishes this. This is not a full-fledged merits review. The decision-maker is also provided a range of options or a discretionary area. The subject matter21 and the

kind/nature of the rights at stake determine the scope of the discretionary area. The courts would typically not question the decision maker's judgment if they act within their power of discretion and choose among the different options available[6]. M. Jaganatha Rao J. correctly points out that the court can still consider whether the decision made violates the rights in an unreasonable manner or not. The Margin of Appreciation is the term used by Strasburg law (European Court) to describe the decision-maker's range of options. It alludes to the ability of the contracting states to exercise some discretion in balancing national objectives with individual rights as well as in resolving conflicts that arise as a result of differing moral views.

There was general agreement that there needed to be a domestic equivalent of the margin of appreciation when the Human Rights Act of 1998 became operative in the United Kingdom. The European Court is an international tribunal that monitors independent legal systems with legislative, executive, and judicial branches, so the domestic "margin of appreciation" cannot be the same as the European one. In contrast, the domestic counterpart deals with how the court interacts with other parts of the government and calls for consideration of their judgment of proportionality at some point. On the other hand, an International Court must do so in a way that is improper for the courts of a single political community because to the cultural diversity of states' ideas of human rights[7]. The term "margin of appreciation" is therefore avoided by English judges and academic writers, who instead favor terminology like "margin of discretion" or "discretionary area of judgment."

Julian Rivers claims that this margin of discretion has two components, "judicial deference" and "judicial restraint," both of which together define the margin's width. The idea of institutional competence of non-judicial agencies to assess the appropriateness of restrictions placed on citizens' rights is the foundation of the concept of judicial deference. The courts frequently lack the knowledge necessary to assess whether an act is proportionate or not, and in these cases, they will accept the decision-maker's judgment. The legality component of judicial review is related to judicial restraint, on the other side. If there are two or more reasonable options available in a given situation and the decision maker genuinely makes one selection, the court will not intervene with that decision in that case not out of deterrent, but rather out of restraint. There is no inherent reason a judge couldn't make a decision as well, but such decision would be invalid. Their job is to ensure legality, not accuracy.

It seems clear from the study of the aforementioned phrase that it is institutionally neutral. It is not specified to assist judges in figuring out how it interacts with other government entities. More crucially, it focuses on maximizing or striking a balance between the rights, which are considered to be protected interests and are being restricted by the proposed action, and the public interest or goal, which the proposed measure tries to achieve. The optimizing conception of proportionality is the name given to it as a result.Even under this approach, the court must give room for the decision-maker's margin of discretion.

i) Judicial restraint: This latitude is only taken into account during the fair balance step, which is the final stage of the proportionality review. Depending on the issue at hand and the specifics of the rights involved, this range of discretion can vary. When there is a lot of restriction, the court will be very reluctant to reject the decision-maker's belief that what is required to attain a particular level of public interest is also balanced. When there is a moderate amount of restraint, the court will want to confirm that the advantages and costs are truly roughly comparable[8]. The court will need to be persuaded that the judgment, regulation, or policy in question, even while essential, really is the best approach to optimize the relevant rights and interests. A modicum of restraint will minimize the set of necessary decisions to a minimum.

ii) Judicial deference: This component of the margin of discretion is much more complicated since it involves a discussion of institutional competence relative to other institutions and the court's admission that its decision is more likely to be accurate if it relies on the judgment of another authority regarding a pertinent issue. Therefore, depending on the topic, the nature of the affected right, and the court's confidence in the competence of the decision-making body involved, this freedom may be accommodated at any or all phases of the proportionality analysis. The court could simply accept the allegation made by

the public authority, compel such assertions to be made under oath, or insist that the authority disclose the facts supporting its rulings, among other options. The court's demand that the authority devote procedural resources to reliably responding to the pertinent questions and subject that process to judicial review is referred to as the degree of deference. The European model should be preferred above the British model, according to Julian Rivers, who conducted a thorough comparison of the two models. This is because the European model has a higher level of impartiality.

Indian View of the Doctrine of Proportionality

In the case of Union of India v. G. Ganayutham, the Indian Supreme Court intentionally explored the use of the notion of proportionality for the first time. In that case, the Supreme Court decided that the "wednesbury" unreasonableness will be the guiding concept in India, so long as basic rights are not at issue, after carefully examining the law relating to wednesbury unreasonableness and proportionality that was in effect in England. The court did not, however, rule on whether the idea of proportionality should be applied in circumstances when basic rights are violated. The Supreme Court's momentous ruling in Omkumar v. Union of India followed. The Supreme Court approved the proportionality doctrine's use in India in this particular case. Strangely enough, the Supreme Court in this case unexpectedly learned that Indian courts had routinely used the doctrine of proportionality since 1950 when addressing the legality of legislative actions in relation to laws violating the fundamental freedoms listed in Article 19 (1) of the Indian Constitution when determining the validity of legislative actions.

The Supreme Court claims that Indian courts have had ample opportunities in the past to evaluate whether the limits were reasonable given the circumstances and were not the least restrictive option. The same is true of laws that violate both Article 14 of the Indian Constitution (which prohibits discrimination) and Article 21. The Supreme Court reached a similar decision regarding the applicability of the doctrine of proportionality in administrative action in India after carefully examining the situation in England. Even though it has not been explicitly stated that the proportionality principle is being applied, the Supreme Court held that administrative action in India affecting fundamental freedoms (Articles 19 and 21) has always been tested on the anvil of proportionality.

The Supreme Court of India came to the conclusion that when an administrative action is contested as discriminatory, the courts will conduct a primary examination utilizing the proportionality theory. However, the Wednesbury concept of secondary review is used where an administrative action is deemed to be arbitrary. The Supreme Court further decided that only secondary review based on the Wednesbury principle would be applicable because punishment under service law is typically contested as being arbitrary under Article 14 of the Constitution. This is because, according to the Supreme Court, neither a fundamental freedom issue nor a discrimination under Article 14 apply in situations where service law punishments are concerned. However, even ten years after Omkumar's case ruling, no new developments have occurred. India's proportionality laws are still in effect as they were in Omkumar's case. The ambiguous assertion in a few later rulings that the notion of unreasonableness is giving way to the doctrine of proportionality may be the only development.

As a result, the Supreme Court's declaration of the current status of the law in India indicates that the scope of the proportionality evaluation of administrative action is somewhat narrow. This is due to the fact that in India, a large portion of administrative activity is contested in court largely on the basis of arbitrariness, which can only be contested on the basis of wednesbury unreasonableness. As a result, the scope of judicial review in India has not actually been greatly expanded by the decision in Omkumar's case. In Omkumar's case, the Supreme Court offers no specific justification for why the doctrine of Wednesbury Unreasonableness alone should be applied to disputes involving arbitrariness. However, this could be due to at least two factors. First of all, the Supreme Court was only adopting a classification used in England, according to which the Wednesbury Principle alone applied where non-conventional rights were at issue and proportionality review was only applicable when such rights were covered by a convention[9]. Second,

the Supreme Court might have feared a docket explosion when the threshold of review was decreased, just like Lord Lowry.

The two justifications cannot and can never be used as justification for refusing to permit a greater and more thorough standard of review. The number of cases may initially increase, but when the decision-makers realize that the judiciary is adopting a much stricter standard of review, they will reevaluate their decision-making process and adjust it to conform to the new standard of review. Regarding the first argument, the distinction between rights protected by conventions and those that do not is rapidly fading. Furthermore, the distinction made by the Supreme Court based on arbitrariness lacks conceptual heft. First off, the classification is based on the presumption that arbitrary administrative orders are rarely discriminatory or infringe upon basic rights.

In most instances, this is obviously incorrect. For instance, if a government employee were to be discharged from employment due to the fact that they attended a religious gathering, the decision would not only be arbitrary but also violate at least two of his fundamental rights, namely his right to freedom of religion and his right to peaceful assembly. Similar to the last example, it will be per se discriminatory in addition to being arbitrary for an administrative act to reject promotion to a government employee with sufficient experience while simultaneously advancing others in a similar position. Second, a petitioner with proper locus standi may only challenge an administrative action as arbitrary if one or more of his fundamental, statute, or common law rights have been infringed upon. The first duty for the court is to identify which sort of right has been affected if the Supreme Court's classification is accepted. This is a difficult assignment because there cannot be clear-cut distinctions between fundamental and non-fundamental rights, especially in light of the Supreme Court's own interpretation of Article 21 of the Indian Constitution[10]. When one takes into account the fact that an administrative act typically violates more than one right, this task becomes considerably more challenging. Therefore, a significant amount of judicial time would be lost on determining the type of right. Alternately, the court's time could be well spent assessing how well the decision-maker balanced their priorities when making the choice. Obviously, depending on the issue and the type of rights at stake, a different level of proportionality review can be used, one that is founded on the ideas of judicial deference and constraint.

CONCLUSION

It is abundantly obvious from the study above that wednesbury unreasonableness is in a state of terminal collapse on a global scale. The doctrine of proportionality, a considerably more rigorous kind of evaluation that checks whether the decision-maker has appropriately balanced the numerous elements he must take into account before making a choice, is quickly replacing it. Additionally, there are two rival proportionality models the British model and the European model. The European approach is the more effective and impartial of the two. Even while proportionality was incorporated into Indian law as early as 2000, there is scarcely any meaningful use of doctrine there, as is abundantly obvious in the Indian context. The theory, as adopted by the Supreme Court, not only has a narrow scope of applicability, but it has also scarcely ever been applied. However, courts in India will eventually have to actively consider applying the idea of proportionality in all matters that come before them, regardless of whether they involve basic or commonplace rights of individuals.

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CHAPTER 4
A CRITICAL EXAMINATION OF APPOINTMENT OF JUDGES IN HIGHER JUDICIARY IN INDIA

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ABSTRACT:

Since democracy, a written constitution, and the separation of powers are frequently viewed as depending on one another, an independent judiciary is typically regarded as the most crucial component of any democratic system. It is the independent judiciary that upholds the spirit of constitutionalism. The degree of judicial independence in any country is determined by the process used to nominate judges. India, the largest democratic republic in the world with the longest constitution, has its own judge appointment process. The President of India shall appoint the judges of the High Courts (hereinafter referred to as HC) and the Supreme Court (hence referred to as SC), in consultation with the Chief Justice of India, according to the plain wording of the Constitution. What precisely the Constituent Assembly meant with relation to the judicial selections has been questioned after three decades of Constitutional enforcement. The Judges Case and Advocates-on-Record Association v. Union of India (NJAC judgement) decisions offered the Indian legal system a new perspective. The issue of who should have the last say in judicial appointments—the judges themselves through collegium or the President of India has persisted since the First Judges case in 1981 and the NJAC judgement in 2015. The Hon'ble SC plainly interpreted articles 124 and 217 in a broad sense, giving the CJI and the collegium the upper hand, but this did not resolve the conflict. The current process is criticized for its lengthy appointment process and lack of transparency. This chapter tries to propose a process of appointment that will best facilitate an independent, effective, and transparent judiciary, coupled with prompt appointments to fill open seats and lessen the number of cases that are still outstanding around the country.

KEYWORDS:

Constitutionalism, Judges Transfer Cases, Judicial Independence,NJAC Judgement, Rule of law.

INTRODUCTION

The most significant and essential foundation of a democratic system is an independent judiciary. The written constitution, democracy, and separation of powers all depend on one another. The judiciary is responsible for maintaining the aforementioned ideas in both theory and practice. The process of judicial appointments has a significant impact on the judiciary's independence. Thus, a transparent and effective appointment process is crucial for this institution with a high standard of integrity. According to the Indian Constitution, the Chief Justice of India and the President of India shall discuss before appointing judges to the Supreme Court and High Courts. This gives the President of India the power to appoint judges to the higher court. However, the Supreme Court flipped the interpretation on its head by introducing the collegium through the justices' case and giving the Chief Justice the upper hand. The collegium system is undoubtedly not perfect[1].

Since the First Judges Case in 1981 and the NJAC decision in 2015, it has been unclear who should have priority in appointing judges to higher courts: the judges themselves through the Chief Justice of India or the government through the President. Although the Honorable Supreme Court has clearly construed Articles 1244 and 2175 to give the Chief Justice of India and the collegium supremacy, the debate has not yet been resolved. The question that arises is whether the Supreme Court, as the ultimate interpreter, can construe constitutional provisions to the point where, by a more expansive interpretation, the text's intended meaning is altered.

The government has been attempting to create a Judicial Appointments Commission since 1991, but in October 2015, the Supreme Court struck down the NJAC Act and the 99th Constitutional Amendment Act. A new hope has been sparked by a compromise reached through a Memorandum of Procedure (MOP) with the approval of the government and the judiciary, as well as the initiative taken by the supreme court to publish the justifications offered by the collegium when considering candidates for judicial appointments and accepting or rejecting the names[2].

The current system needs to be restructured in order to give the executive's perspective some weight. The conflict between the judiciary and executive will now be over. The dissertation seeks to offer a number of recommendations for better, transparent, and effective appointment processes in the higher judiciary. The process and development of judicial appointments in India since the debates in the constituent assembly, as well as the differences between the system before and after the judge's case, will be covered in the first chapter. In this chapter, the judge's cases would be critically examined[3].

The members of the constituent assembly carefully considered the social, economic, political, and legal implications of each clause as they drafted the Indian constitution, and after reaching agreement in the assembly, it was ratified on behalf of "WE THE PEOPLE." There were some substantial talks regarding the criteria for choosing judges, and there was a definite agreement on the selection and appointment process. According to Jawaharlal Nehru, judges should be "highest integrity" individuals who "can stand up against the executive, the legislature, or whomever might come in their way." The assembly decided that the judiciary's "insulation" was not as crucial as its independence.

In a speech that perfectly encapsulates the risks of this proposal, Dr. B.R. Ambedkar expressed a similar opinion and strongly opposed a proposal to make the Chief Justice of India's opinion in the matter of appointing judges binding on the executive: "It would be dangerous to leave the appointments to be made by the President, without any kind of reservation or limitation, that is to say simply on the advice of the executive of the day. Additionally, I don't think it's a good idea to require legislative approval for any appointments the president intends to make, in my opinion. Regarding the issues surrounding the Chief Justice's concurrence, it appears to me that those who support that idea appear to implicitly rely on both the Chief Justice's objectivity and the accuracy of his judgment[4]. Personally, I believe that no nomination of judges should actually shift power from the President or the current government to the Chief Justice. Therefore, in my opinion, that is also a risky notion.

These discussions resulted in Articles 124 and 217 (for the appointment of judges to the Supreme Court and High Court, respectively), which embody a consultative system of judicial appointment. Under this system, the executive branch could only appoint judges after consulting with the Chief Justice of India for Supreme Court appointments and the Chief Justice of the High Court for appointments to the High Court[5]. It was believed that having a variety of high constitutional authorities, some of whom were apolitical, would guarantee the appointment of judges of the highest caliber.

DISCUSSION

Following consultation with the Chief Justice of India, the Governor of the State, and, in the case of the appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, every Judge of a High Court shall be appointed by the President by warrant under his hand and seal.These constitutional provisions were included following a thorough discussion of the basic problem of judicial independence in the constituent assembly on May 24 and 27, 1949. After much deliberation, the constituent assembly decided to adopt the practice of the president appointing judges after consulting the Chief Justice of India. It was done with the goal of creating a check on politically motivated appointment selection that the Chief Justice of India was given the constitutional responsibility. Speaking to the group, Dr. Ambedkar was cautious to emphasize that consultation did not equate to a veto because doing so would give one individual limitless power[6].

In this way, the Constituent Assembly envisioned a careful inter-institutional balance in the appointment of judges a multiplicity of authorities across the wings of government, checking and balancing each other to ensure that the judiciary's dignity was preserved and judicial independence remained sacrosanct. The Law Commission of India expressed worry about the constitutionally mandated system of appointment in its 14th report, "Reform of Judicial Administration," noting that the influence of the administration, particularly in the state, was eroding the judiciary's independence. This was probably the seed of the idea that the court itself, through its representatives, was best suited to determine its own makeup and ensure judicial independence.Four conflicts between the government and the judiciary occurred between 1950 and 1973, and with each conflict, the court became more and more distant. In a thin majority of six to five, the court ruled that Part III of the Constitution, which contains the Fundamental Rights, could not be restricted in any way. There were rumors that the administration wanted to fill the court to overturn the Golak Nath ruling. This opened the door for the fourth and most significant conflict, KesavanandaBharati v. State of Kerala13, which occurred in 1972–1973. In this case, an unusual 13-judge Supreme Court bench decided, by a narrow seven–six majority, that the Constitution had a "unamendable" or entrenched "basic structure." The norm of seniority observed by the Court since its founding was effectively destroyed the day after All India Radio declared that AN Ray, the fourth-most senior Supreme Court judge at the time, would be the next Chief Justice.14

The Gujarat High Court overturned a 1976 order to transfer sixteen judges from other high courts because the Chief Justice of India had not been consulted. In the meantime, a 5 Judge Bench of the Supreme Court ruled in the Habeas Corpus case (ADM Jabalpur), in what is arguably the lowest point in India's constitutional history, that the writ of habeas corpus would not be available to anybody who were unjustly detained and arrested during the emergency[7]. The only daring dissent was written by Justice HR Khanna, who suffered as a result of the Government's decision to nominate Justice MH Beg as Chief Justice rather than Justice Khanna, who was the next most senior judge, when Justice AN Ray retired.This opened the door for the trio of lawsuits, known as the three Judges cases, whereby the Supreme Court totally usurped the authority to nominate judges.

A seven-judge constitution bench led by Justice P.N. Bhagwati concluded, in the 1981 case of S.P. Gupta v. Union of India, commonly known as the First Judge's case, that the recommendations of the Chief Justice of India were not legally obligated to be followed by the government. In the consultation process, the majority refused to consider "primacy" and its ramifications. In the First Judges Case, each of the seven members of the bench provided a unique view, resulting in rulings that totaled almost 500,000 words18 and partially masked the statute governing judicial appointments and transfers.Only those who had been wronged or whose legal rights had been violated could file writ petitions before the Supreme Court and high courts up to the late 1970s. The PIL, however, established itself in the First "judges Case. The locus standi was permanently extended.The Supreme Court ruled that the cause of justice cannot ever be allowed to be impeded by any procedural technicalities, refusing to follow its rigorous criteria of "standing."

The dynamics of power between the government and the judiciary in the appointment of judges was the most significant question on which the court made its decision in the First Judges Case. The court ruled that the CJI's opinion should not take precedence when choosing justices for the Supreme Court and High Court. The CJI lacked a veto power over judge appointments. In actuality, the majority granted the government ultimate discretion in choosing candidates for the higher judiciary. Interestingly, despite claiming that the law minister's circular had "no constitutional or legal sanction," the majority also refused to overturn it [8].The First Judges Case gave the executive the initiative from a situation where the appointment power was evenly split between the executive and the judiciary. One wonders why the court compromised its independence by not upholding convention given that this occurred so soon after the Emergency, where the government had seriously undermined judicial independence by abusing the very same power of judicial appointments.

This had prepared the stage for the case of the Second Judge.

Judges Case: In Supreme Court Advocates-on-Record Association v. Union of India (Second Judges Case), the Supreme Court's nine-judge bench received the questions regarding judicial nominations and transfers. The majority of the court's five distinct opinions overturned the Supreme Court's earlier ruling in the First Judges Case. In terms of judicial appointments, the Second Judges Case accomplished the following: first, it overturned the First Judges Case ruling and gave the judiciary final say; second, it decentralized the power granted to the CJI by transferring it to a group of judges known as the collegium.

With the introduction of the decentralized, collegium system, the Supreme Court sought to diminish political influence in judicial selections and the individual discretion of the chief justices of the Supreme Court and high courts. The Supreme Court effectively transitioned from one extreme where the government appointed judges to the other, where judges now hold the reins of power. Why? Maybe it was an overreaction an overly aggressive corrective action to make up for the'self-inflicted wound'brought on by the Supreme Court's ruling in the First Judges Case.

The second dispute over judicial appointments between the judiciary and the president occurred in 1997–1998. Five candidates were suggested by Chief Justice of India Justice M.M. Punchhi for nomination to the Supreme Court. The executive rejected, stating that they did not believe the suggested candidates were qualified to serve as Supreme Court justices. As a result, President K.R. Narayanan requested the Supreme Court's opinion under Article 143 on nine questions that addressed three major issues: (1) the CJI's consultation with his brother judges when choosing who to appoint to the High Courts and the Supreme Court; (2) judicial review of the transfer of judges; and (3) the significance of high court judges' seniority when choosing who to appoint to the Supreme Court.

The Supreme Court's nine-judge panel responded to the queries with a unified opinion.The only change the court made was that for the appointment of judges to the Supreme Court, the collegium would consist of the CJI and four (as opposed to two) senior most colleagues. The court emphasized that judicial appointments would have to take place in accordance with the principles outlined in its decision in the Second Judges Case. The verdict did not significantly alter the collegium system of judge appointments other than to reiterate, support, and perpetuate it.

The executive interfered with the system's functioning in 1973 when it selected Justice A. N. Ray as India's Chief Justice, replacing three senior judges with him. However, Justice Khanna was succeeded as Chief Justice of India in 1975 by another Justice, H.M. Beg. As a result of this abuse of authority, the judiciary had three chances to put things right in 1981, 1993, and 1998. The three judges' cases led to the creation of the collegium system. The executive's influence and jurisdiction over appointments to the upper judiciary has almost completely disappeared. For this, the Indian judicial system has succeeded in terms of judge appointments. No other judiciary in the world has that freedom to choose judges. The National Judicial Appointments Commission had its origins in this.

The National Judicial Appointment Commission Act and the Ninety-Ninth Amendment have both been criticized for going against the fundamental principles of the Constitution. By a vote of 4:1, the Supreme Court invalidated the Amendment on October 16th, 2015, finding that it went against the basic structural concept [9]. Whether the judiciary needed to have a significant role in the selection process in order for there to be judicial independence was the central question in this ruling before the Supreme Court.

The opinion of Kehar J., which includes a thorough history of the evolution of the judiciary's independence in India and of discussions about the hiring process, provided a solution to this topic and underlined three crucial elements. First, he made the error of characterizing the collegium system as granting judges sole authority. He drew attention to memos for the appointment process created by the Ministry of Law, Justice, and Corporate Affairs in 1999 after monitoring three judge's cases, which amply demonstrated that the political administration did have a role in deciding who became a judge.

Second, Kehar J. recommended a thorough examination of constitutional history, taking into account Dr. B. R. Ambedkar's main concerns that "judiciary must have independence from executive" when it came to

judicial selection. Kehar J. claimed that the word "consultation" in Articles 124 and 217 was intended to indicate that appointments were not made at the executive's discretion. Thirdly, according to Kehar J., the NJAC's makeup and organizational design have eliminated the judiciary's supremacy. It emphasizes the need for two members of the appointments commission who are not from the judicial or executive branches. The Union Minister for Law and Justice was only able to serve in a consultative capacity due to the requirement of judicial independence under the constitution[10]. Therefore, including "the two eminent citizens" goes against the basic foundation of the constitution.

The main worry of the Constituent Assembly, according to Lokur J.'s alternative opinion, was that a single individual would control the appointment process, highlighting Ambedkar's objection to the executive having priority over the selection process. Before the Ninety-Ninth Amendment, the process was participatory in two ways, according to Lokur J. It was made up of the Chief Justice and a few other Supreme Court justices at the pre-recommendation stage. It was participative during the post-recommendation stage.Because the executive could voice its disagreement with a specific set of suggestions or with any other viewpoint. Even Lokur J. noted that the Government of India Act of 1935 established the constitutional convention of judicial supremacy in appointment procedures. Both the constitutional language and constitutional history make reference to the NJAC and its membership. The honorable Lokur J and Kehar J both criticized the decision made by the NJAC. The two 'eminent members' effectively controlled the whole judicial system.

The supremacy of the judiciary in the nomination process, according to Goel J., is a feature of the Constitution's fundamental design. Without it, the executive and legislative branches would have complete control over the procedure. Joseph J., another judge, placed emphasis on the division of powers and the structural effects of the contested Amendment. Nevertheless, Chelameswar J did not contest the value of judicial independence or its status in India. The supremacy of the judiciary in the selection process, he argued, could not, however, be the only step taken to establish an independent judiciary. He distinguished between the fundamental elements and the fundamental framework of the Constitution in his opinion on KesavanandaBharati and the instances that followed. The Constitution's fundamental elements made up its basic framework. The fundamental structure of the Constitution may not necessarily be destroyed if one fundamental aspect is altered. Chelameshwar J made the case, using an example, that while democracy was a fundamental aspect of the Constitution, a small modification in the voting age would be lawful. based on fundamental features The main element of the Constitution, according to Chelameshwar J, was with the executive in the selection process without exclusive and total power, not with the Chief Justice of India or the Collegium. This fact was constitutional because it was unaffected by the amendment.The Collegium method of appointment, which completely separates the court from the executive, has some drawbacks. Commissions, committees, and notable individuals have opposed to the collegium system for the reasons listed below in brief:

1. The collegium system's selection of judges was utterly opaque, and the screening process was unreasonable for appointment.
2. The judiciary failed to hold itself accountable.
3. The main cause of the vacancy in the courts and the ensuing pendency of cases was a lack of implementation.
4. The collegium system was generally seen as unlawful because the Constitution called for the President to select judges after consulting with them, not the other way around.

During the Internal Emergency from June 1975 to January 1977, the Chief Justice of India's primacy, which is the foundation of the whole independent court system under the Indian Constitution, had terrible results. Chief Justice A. N. Ray had ordered the transfer of judges from one high court to another during that time, not because of their work in one high court or the other, but rather because these judges had decided certain significant cases that were politically unfavorable to the federal government or the relevant state government. 'Punitive' transfers were what they were called. Even while it is not desirable that judges

are or are not chosen to the Supreme Court through the collegium process, sometimes more qualified justices are passed over or ignored.

Therefore, over the years, a majority of the collegium's five recommendations have been "good," while others have fallen short or could have been far better. Since neither the system of appointments between 1981 and 1992 nor the system of appointments after 1993 worked successfully, there are weaknesses in the collegium system. In England, the previous lord chancellor had floated plans for greater "people participation" in the selection of judges.

In England, people who are requested to accept are no longer the only ones who can be chosen on the basis of merit for the higher judiciary. The best appointment system in India does not necessarily depend on the quantity or nature of the candidates. The appointment of judges to the higher judiciary must be done with more transparency in both the technique and the process. The Supreme Court of India is the ultimate interpreter of the Constitution and of laws, just as it is under our Constitution. By "method and procedure," it is meant that once a system is in place, the justices must be allowed to determine the method and course of appointment within the judiciary.

CONCLUSION

By the time the Indian Constitution had been in effect for 50 years, a study of how it was functioning was necessary. It was advised that a 5-member National Judicial nominations Commission be established in place of the collegium for judicial nominations because the most contentious section needed to be reviewed. The NJAC model for judge appointments was adopted to the Indian legal system following the publication of this report, and this is the turning point in the dispute. For the first time, the Indian government attempted to replace the collegium system with the NJAC law, but it was unsuccessful. Later in the following years, the nation witnessed the identities of certain top high court judges who had engaged in corruption, which reopened the discussion about the collegium's ineffective and incompetent appointments. Since the impeachment process requires such a drawn-out process, not a single judge has been removed from office to date, the parliament has always had to watch the situation as an ineffective institution. As a result, the judiciary was placed in total seclusion from the other organs. Who will watch the watchers was the point that was brought up. A second attempt by the government to introduce the NJAC act in the parliament was unsuccessful. The government finally had success in 2014–15 in getting both the NJAC legislation and the 99th constitutional amendment act passed by the parliament. The act was announced in the months of April and May 2015, but within a short period of time, the Supreme Court's constitution bench was asked to rule on the constitutionality of both the statutes and the NJAC model. In October 2015, the five-judge court ruled that both the acts and the NJAC model were invalid, restoring the collegium position. This decision was controversial, and since the Supreme Court's basic structural concept was cited as the basis for the unconstitutionality, it is now necessary to review the 42-year-old doctrine.

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CHAPTER 5
RELATIONSHIP BETWEEN LEGISLATURE AND JUDICIARY IN INDIA

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ABSTRACT:

The doctrine of separation of powers examines the interactions between the three branches of governmentthe legislative, the executive branch, and the court. This idea first appeared during the time of Plato and Aristotle. Aristotle was the first to divide governmental duties into the three categories of deliberative, magisterial, and judicial. Locks divided the government's authority into three categories: federative power, intermittent legislative power, and continuous executive power. "Continuous executive power" denotes the executive and judicial branches of government, "discontinuous legislative power" denotes the ability to make laws, and "federative power" denotes the ability to manage international relations. The concept of separation of powers was first articulated by French jurist Montesquieu in his 1748 book L. Esprit Des Lois (Spirit of Laws). He is regarded as the modern proponent of this hypothesis because of this. In essence, Montesquieu's philosophy states that neither one individual nor group of people should exercise the legislative, executive, or judicial branches of government. In other words, each organ should keep to its own domain and avoid invading the territory of the other.

KEYWORDS:

Discontinuous,Legislative Power, Rule Law, Separation Powers, Spirit Laws.

INTRODUCTION

There can be no liberty if the legislative and executive branches are combined in one person, one body, or one magistrate. Once more, if the judicial power is not separated from the legislative and executive power, there is no such thing as liberty. The subject's life and liberty would be subject to arbitrary control where it combined with legislative power because the judge would then serve as both the legislature and the executive. The judiciary might act violently and oppressively where it cooperated with the executive power. If the same guy or the same body used these three powers, everything would come to an end [1].In Montesquieu's "Separation," mutual restrictions or what would later be referred to as "checks and balances" took the place of impenetrable walls and immovable borders. The three organs must work together, not only separately. Their respective roles should never interfere with one another. If this restriction is upheld and honored, "it is impossible for that circumstance to arise the monopoly, or disproportionate accumulation of power in one sphere, which Locke and Monstequieu regarded as the eclipse of liberty. The motivation underlying the principles is to defend the populace from the State's arbitrary, oppressive, and capricious powers. The United Kingdom Blackstone, a renowned English jurist, backed Montesquieu's philosophy. He asserted that there cannot be liberty "wherever the right of making and enforcing the Law is vested in the same man or in the same body of men." In England throughout the 17th century, Parliament used its legislative authority. The King exercised administrative and judicial authority, but with the advent of the cabinet system of government, or Parliamentary form of government, the notion is no longer valid. Constitutional expert Bagehot made the observation[2]. The legislative and executive branches of the government are connected by a hyphen, or buckle, called the cabinet.

The idea of separation of powers, in accordance with Wade and Phillips, indicates that:

(i) One individual should not serve in more than one government organ.
(ii) No one government organ should perform the duties of another government organ.
(iii) No one government organ should interfere with the work of the other two government organs.

The current concern is whether this idea is accepted in England. The King of England serves as both the executive and legislative branches of government. Members of one or more of the Houses of Parliament make up his cabinet. This approach goes against the notion that one person shouldn't serve in more than one government organ.

The House of Commons in England controls the executive branch. In terms of the judiciary, the House of Lords is the highest court in the nation in theory, but in reality, Law Lords and other individuals who have held judicial positions are appointed specifically to perform these duties. We might therefore conclude that the notion of separation of powers is not a fundamental component of the British Constitution.

The Donoughmore Committee correctly noted:

There is no such thing as an absolute separation of powers between the legislative, executive, and judicial branches of government in the British Constitution.

U.S.A.: Despite the fact that the Federal Constitution of the United States of America does not explicitly state the principle of separation of powers, it is common knowledge that it is well mentioned in the United States Constitution. Madison, a Federalist, made the following statement based on Montesquieu's doctrine: "The accumulation of all legislative, executive, and judicial powers in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." Hamilton articulated the same concepts in 1788.

The legislative, executive, and judicial branches of government are divided among independent bodies according to the American Constitution. "All legislative powers herein granted shall be vested in a Congress of the United States," Section 1 of Article states. The executive power shall be vested in a President of the United States of America, according to Section 1 of Article II. The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish, according to Section 1 of Article III.

Let's look at the current situation in America. The aforementioned clauses make it very obvious that the President of the United States of America is the chief executive. Additionally, the President has the authority to vote on laws passed by Congress; but these measures cannot become law unless they are re-passed by both Houses with a two-thirds majority. The President's veto power is strictly legislative in nature. Although it is true that the power is limited to negation, the history of its development reveals that it has legislative qualities even in its qualified form [3].In addition, the President uses his legislative authority to ratify international agreements. "The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations," John Marshall famously argued in the House of Representatives on March 7, 1800.

The Congress also interferes with the President's authority by voting on the budget. According to the presidential budget principle and practice established by the Budget and Accounting Act of 1921, the President is tasked with creating and delivering to Congress a comprehensive and thorough expenditure plan. Through its senators, Congress also plays a significant role in the ratification of treaties and in the nomination of officials. Legal authority also rests with Congress. Each house has the power to reprimand or expel members for "disorderly behavior" by a two-thirds vote. The primary authority on the justification for expulsion is Congress. Additionally, the only way to remove an American judge from their position is through impeachment proceedings brought before Congress.

Through judicial review, the Courts have oversight authority over both the Congress and the President in terms of the judicial organ. It is true that the legislature enacts the law, but it is equally true that the courts must establish the law in order to address brand-new issues for which the law is silent. The views of Chief Justice Hughes are particularly significant in this regard because he said bluntly that "The Constitution is what the judges say it isthe majority of the amendments that have been adopted into the American Constitution were done so by the American Supreme Court rather than by Congress itself. Thus, it might be claimed that a tight personal division of powers is likewise impossible in the United States.

France: France had a commanding presence in European politics under Louis XIV's dictatorial rule (1643–1715). James, I had unsuccessfully attempted to persuade the English populace to recognize the kingship of Louis XIV. Louis XIV believed that the subject should completely submit to the King without questioning or criticizing him. He had the reputation of being an autocrat due of his erratic behavior.

The most insightful political writer of the eighteenth century, Montesquieu, on the other hand, developed his theory of the separation of powers based on the British Constitution after being influenced by Locke's ideas. He emphasized that the independence enjoyed by Englishmen was because the legislative, executive, and judicial branches of government were not held in tandem, as they were in France. The laws were created by Parliament, the King put them into action, and independent courts oversaw their observance. He thought that as soon as these powers were under the hands of one person or group of people, the English would lose their liberty[4]. The French "Declaration of Rights of Man" also adopted his idea of the separation of powers. A constitutional or democratic government cannot exist without separation of powers, according to Article 16 of this statement, yet in actuality, this endeavor has failed.

India: The Indian Constitution does not explicitly mention the theory of the separation of powers, although it does describe the duties of the various government agencies.Prof. K.T. Shah, a member of the Constituent Assembly, put emphasis on the need to alter Article 40 to add a new section dealing with the theory of separation of powers. There shall be "complete separation of powers" between the legislative, executive, and judicial branches of government, according to this article.Kazi Syed Karimuddin, a member of the Constituent Assembly, endorsed Prof. K.T. Shah's proposal wholeheartedly.

A member of the Constituent Assembly named Shri K. Hanumanthiya disagreed with Prof. K.T. Shah's idea. According to him, the Drafting Committee had approved the parliamentary system of government as being appropriate for this nation, and Prof. Shah had supported the Presidential Executive in his modification. He added, "It is better to have a harmonic governmental framework rather than a conflicting trio. Conflicts would inevitably occur between the executive, judicial, and legislative branches of government if we entirely separate them. Conflicts are fatal for a nation's peace and development in any government or country. Therefore, it is vital to have "harmony" in a governmental system rather than this triple struggle [5].

In contrast to Prof. K.T. Shah's position, Dr. B.R. Ambedkar, one of the key architects of the Indian Constitution, argued as follows: "There is no question at all that the executive and judiciary should be kept separate. However, many Americans themselves were quite dissatisfied with the rigid separation between the executive and legislature embodied in the American Constitution. It is true that there is a separation between the executive and legislature in the United States Constitution. There isn't the slightest doubt in my mind or the minds of many political science students that the work of Parliament is so intricate and extensive that it would be very challenging for Members of Parliament to carry out the work of the Legislature unless and until they receive direct guidance and initiative from the members of the Executive who sit in Parliament.

DISCUSSION

Judiciary opinion and the separation of powers: The cases listed below explain the actual application of the separation of powers theory in our nation. It is evident that a legislature is constituted by the Constitution, and specific measures are made for forcing that legislature to make legislation, according to Hon. Chief Justice Kania, who made this observation in the inDelhi Law Act case15. Is it too much to state that, in accordance with the Constitution, the legislature has the primary responsibility for passing laws and exercising its own knowledge, judgment, and patriotism in doing so? Does it not indicate that other organizations, either executive or judicial, are not intended to carry out legislative tasks unless it is clear from other articles of the Constitution? In a similar vein, Chief Justice B.K. Mukherjea made the following statement in the case of Rai Sahib Ram Jawaya v. State of Punjab, which was published in AIR 1955 S.C. 549 at p.556: "Although there is no express separation of powers in the Indian Constitution, it is clear that a legislature is created by the Constitution, and specific provisions are made for making that legislature pass

laws. Is it too much to state that, in accordance with the Constitution, the legislature has the primary responsibility for enacting laws and for exercising its own knowledge, judgment, and patriotism in doing so? Does it not indicate that other organizations, either executive or judicial, are not intended to carry out legislative tasks unless it is clear from other articles of the Constitution? In a similar vein, another case is Rai Sahib Ram Jawaya v. State of Punjab, which was published in AIR 1955 S.C. 549 at p.556 and in which Hon. Chief Justice B.K. Mukherjea made the following observation: "The Indian Constitution has not indeed recognized the doctrine of separation of powers in the absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution[6]

In Ram Krishna Dalmia v. Justice Tendolkar, which was reported in AIR 1958 S.C. 538 at p. 546, Hon. Chief Justice S.R. Das stated that even though our Constitution does not explicitly provide for the division of powers between the legislative, executive, and judicial branches as the American Constitution does, some such division of powers is nonetheless implicit in our Constitution. In Jayanti Lal Amrit Lal v. S.M. Ram, AIR 1964 SC 649, the same opinion was presented[7]. The judiciary is a distinct branch of the government that operates independently. The daily operations of the judiciary are unimportant to either the government or the legislative. According to Francis Bacon's "Essay of Judicature," which highlights the significance of the "Temple of Justice," Solomon's throne was supported by lions on both sides. "Let them be lions, but still lions under the throne; being circumspect that they do not check or oppose any points of sovereignty," Bacon wrote in reference to the Biblical apologue. (Citation found at page 301 of S.C. Advocates-on-Record Association v. Union of India, AIR 1994 SC 268).

Here, the phrase "Solomon's Throne" denotes the majesty of our legal system, and the word "Lions" denotes the legislative and executive branches of government. It can be put succinctly as follows: "The Majesty of Justice system is backed on both sides by the Legislature and the Executive; nevertheless, these Legislature and Executive are under the jurisdiction of the Judiciary. Legislative and executive actions cannot conflict with any aspect of sovereignty. It suffices to say that "sovereignty" in a democracy is vested in the will of the people. The Supreme Court stated in the same case that "Under the Constitution, the judiciary is above the administrative executive and any attempt to place it on par with the administrative executive has to be discouraged," further demonstrating the judiciary's significance. (p.338)

The Supreme Court stated thus in Chandra Mohan v. State of U.P., AIR 1966 SC 1987 at p. 1993: "The Indian Constitution, albeit it does not recognize the strict idea of separation of powers, provides for an independent judiciary in the States. But at the time, the direct control of the administration. In fact, it is widely known that there was a vigorous movement in pre-independence India to separate the executive from the judiciary. This movement was based on the idea that without this separation, the independence of the judiciary at the highest levels would be a mockery. (See also South Carolina Advocates-on-Record Case, AIR 1994 S.C. 268 at p. 272).

In the modern era, the State has taken the role of the main litigant, and the superior courts, particularly the Supreme Court, have developed into hotbeds for contentious disputes, some of which have a flavor of political repercussions. The courts must contend with these storms because maintaining their viability is a national imperative. Therefore, under these conditions, the Government, as the main party to the dispute, may justifiably exercise entire control over the selection and appointment of its arbitrators[8]. The response would be unfavorable. If such a process is permitted to continue, the judiciary's independence will eventually vanish completely. (Air 1994 S.C. 268 at p. 344; S.C. Advocates-on-Record Case). The Indian Supreme Court ruled that "the American doctrine of well-defined separation of legislative and judicial powers has no application to India" in Udai Ram Sharma v. Union of India, AIR 1968 S.C. 1138 at p. 1152.

"Separation of powers between the legislature, the executive, and the judiciary is a part of the basic structure of the Constitution; this structure cannot be destroyed by any form of amendment," the Hon. Chief Justice Sikri noted in Kesavananda Bharti v. State of Kerala, AIR 1973 SC 1461 at p. 1535. The Honourable Justice Chandrachud noted in Smt. Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299 at

p. 2470, "The American Constitution provides for a tight separation of governmental functions into three main divisions: the executive, legislative, and judicial. The fundamental tenet of that Constitution is that no other department shall exercise any authority granted to one department. The arrangement of powers is similar in the Australian Constitution. The Indian Constitution, in contrast to these constitutions, does not explicitly assign the three types of authority to the three main State organs.

The three organs of the state cannot be kept outside the precise parameters of their roles by using the principle of separation of powers, though. "The Legislature cannot delegate its function of laying down legislative policy in respect of a measure and its formulation as a rule of conduct," it was stated in Hari Shankar Nagla v. State of M.P.16. The Legislature must specify the general direction of the legislation and the legal principles that will apply in any particular case, as well as lay out a framework to direct the individuals or group charged with carrying out the law. The crucial role of the legislature is to decide on the best legislative policy and formally incorporate it into a legally binding code of behavior.

Virtually, no type of government can achieve complete separation of powers. The legislator cannot predict or foresee all the instances to which a legislative measure should be extended and applied because of the variety of events. As a result, the legislature has the jurisdiction to assign certain of its duties to executive (administrative) authority. However, it should be noted that the legislature cannot transfer its fundamental legislative authority.

In Sita Ram v. State of U.P. Even though one may dislike the New Despotism of the executive, the complexity of contemporary society and the demands it places on its government have set in motion forces that have made it absolutely necessary for legislatures to give the executive ever-greater powers. This is how Honorable Hegde J. summarized the court's current position on legislative power delegation. The 19th-century doctrines included in textbooks have aged out[9]. There is no way out of the current situation regarding the delegation of legislative power, even though it may not be desirable.

In Asif Hameed v. State of Jammu and Kashmir, which was reported in AIR 1989 S.C. 1899, the Supreme Court made the following observation: "Although the Constitution has not explicitly recognized the doctrine of the separation of powers in its absolute rigidity, the Constitution makers have meticulously defined the functions of various organs of the State. The judicial branch, legislative branch, and executive branch all have specific responsibilities that are outlined in the Constitution. No organ may take over the duties put in the hands of another.

The Constitution relies on these organs' judgment to operate and exercise their discretion while scrupulously adhering to the rules outlined therein[10]. Each of a democracy's organs must be powerful and independent in order for it to function. To safeguard the conditions of laborers, public interest litigation suits were initially brought against human rights violations (such as in the Asiad Case, AIR 1982 SC 1473). Then the era of environmental lawsuits started. One of the top politicians and bureaucrats are being taken by the courts. The Supreme Court is starting to understand how delaying action on a topic of public importance could result in a situation of political chaos.

CONCLUSION

In a literal sense, no modern government, including those of the United Kingdom, United States, France, India, or Australia, can apply the principle of separation of powers. However, this does not imply that the principle is no longer applicable. An organic union is the government. It cannot be separated into compartments that are watertight. This is supported by history. A strict division of powers prevents the government from functioning efficiently. Only through cooperation and mutual adjustment between the three branches of government is efficient governance possible. "The doctrine is impracticable as a working principle of Government," Professor Garner correctly stated. The roles of the three branches of government cannot be categorized on a mathematical basis. In this regard, Frankfurter's observation is noteworthy. He asserted that "the impossibility of government would result from the enforcement of a rigid conception of separation of powers.According to me, Montesquieu's theory contains some truth in that each branch of

government should exercise its authority in accordance with the concept of "Checks and Balances," which refers to the idea that no branch of government should take over the other branches' fundamental duties. It is essential to have a separation of functions, which need not entail a separation of individuals, as Professor Laski rightly stated.

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CHAPTER 6
ROLE OF JUDICIAL POWER IN GOOD GOVERNANCE IN INDIA

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ABSTRACT:

In addition to complex and codified substantive and procedural legislation, we also received a well-established system of court administration from the British about 60 years ago. In general, these laws have weathered the test of time. As a result, we implemented them, making the necessary corrections as needed. We have adjusted the judicial system over time to fit the demands of shifting circumstances and the ambitions of contemporary India. The idea of governance predates the development of human civilization. What exactly is "Governance"? It simply refers to the decision-making process and the method used to carry out decisions. The indulgence displayed by the subjects has a significant impact on the effectiveness of governance. Some political scientists would use sarcasm to describe the form of government, basing their statements on observations from the Middle Ages and the era of colonial control, particularly in the continents of Africa and Asia. "The marvel of all history is the patience with which men and women submit to burdens unnecessarily imposed upon them by their governments," one such scientist observed. They [the government] continue in a weird paradox, decided only to be undecided, resolved to be irresolute, adamant for drift, firm for fluidity, and all mighty to be impotent, to use the blunt language of another.

KEYWORDS:

Council Ministers, Good Governance, Judicial Power, Public's Representatives.

INTRODUCTION

A society is said to practice good governance when its leaders create and make available the necessities of life, give its citizens security and the chance to improve their lot, instill hope in their hearts for a bright future, provide access to opportunities for personal growth on an equal and equitable basis, and allow participation and the ability to influence public decision-making. According to the United Nations Commission on Human Rights, involvement, accountability, openness, responsibility, and responsiveness to public demands are the essential characteristics of effective governance. Thus, good governance is associated with an environment that fosters the exercise of human rights, encourages growth, and fosters long-term human development[1]. Every civil society expects their government to uphold its pledges and foster an environment that supports the development of each person. A government must be completely answerable to the people it serves and transparent in how it spends tax dollars. Since dishonesty is antithetical to economic prosperity because it diverts publicly funded development funds unfairly into private coffers, depriving the populace of its use for their welfare, it enforces human rights, including economic, social, and cultural rights. It has no place for corruption of any kind.

Simply put, good governance requires active engagement in the formulation of public policy, the predominance of the rule of law, and an independent judiciary, in addition to a system of institutional checks and balances through the horizontal and vertical division of powers, and competent oversight institutions. Nearly equivalent viewpoints have developed inside the UN Economic and Social Commission for Asia and the Pacific. According to this, "Good governance has 8 key traits. It adheres to the rule of law, is participatory, consensus-oriented, accountable, transparent, responsive, effective, and efficient. It ensures that corruption is reduced, minorities' perspectives are considered, and the voices of those in society who are most vulnerable are heard while making decisions. Additionally, it responds to the requirements of society, both now and in the future.

All of these statements reflect hypotheses that are chock full of tried-and-true ideas. The availability of the subjects' "freedom of association & expression" on the one hand and the existence of "an organized civil society" on the other depend on the "participation" being informed & organized in order to be successful. There is a clear reference to "representative democracy" here. The prerequisites for "fair legal frameworks" that are applied consistently and "full protection of human rights," especially for the most vulnerable members of society, are inherent to the concept of "rule of law." Information must be readily available and choices must be made or enforced in a way that complies with laws and regulations in order for the factor of "transparency" to be present[2]. All governmental institutions and their procedures must work to "serve all stake holders within a reasonable time frame" in order to meet the requirement of "responsiveness".

Together, democracy, liberty, and the rule of law make up the trio that is now often regarded as the barometer of a civil society. A government of, by, and for the people is referred to as democratic. The defense of individual liberty is a logical extension of the idea of democracy. This necessitates the support of a methodical set of laws that will allow society to be governed and various competing interests to be as well reconciled as possible. Because of this, "the rule of law" is essential. It envisions the supremacy of the law over anarchy or arbitrary rules. It entails equal responsibility for everyone before the law, regardless of status.

Democracy has developed over centuries of experience among those who value human dignity, rights, and personhood as the best and most popular form of government. It is a principle that implies that all citizens have a right to take part in the deliberations that result in the development of laws that affect their societies.India was established as a democratic welfare state that would provide equal opportunity to everyone, regardless of caste, creed, color, sex, or any other type of prejudice. It was intended to be a place where everyone would have the same chance for personal development and to advance the interests of the country. A government that is "by the people, for the people, and of the people" has been described as a democracy 4. The forefathers of modern India developed this philosophy by interpreting the phrase "for the people" to mean that it is desirable to put up a system of government that functions "for the welfare of the people."

The Constituent Assembly's members were outstanding visionaries as well as skilled and dependable architects. Given the likelihood of conflicts of interest occurring among various groups in a free evolving society, they produced a document that showed a keen knowledge of the need to ingrain the concept of rule of law into the Indian polity. Parliamentary democracy was chosen as the type of government in which the State power is divided among the three main organs in order to further the solemn resolve to establish India as a sovereign, socialist, secular republic that assured "the dignity of the individual" and secured for all not only equality of status and opportunity but also justice in all its hues.

In Part III of the Constitution, India included a number of essential human rights that were safeguarded and expanded in every way. These basic rights are significantly more comprehensive than the American Bill of Rights. They did refer to the Universal Declaration of Human Rights published by the United Nations in 1948, but they also added some "Directive Principles of State Policy" to Part IV of the Constitution, which they believed would be essential for "good governance" in this nation.

The Fundamental Rights have been utilized to moderate the Directive Principles as fundamental governing principles. From time to time, changes have been made to the Fundamental Rights through legislative initiatives, presidential orders, or court rulings in order to advance the goal that the Directive Principles set out to pursue[3]. After all, the Directive Principles and Fundamental Rights both aim to create an environment that can ensure each person grows and develops in a dignified manner into a contributing member of society. The Constitution's authors included safeguards for the judiciary's independence in order to ensure that the rule of law would benefit everyone and that the Constitution's promises would be kept in practice as well as in theory.

As the guardian and keeper of the Constitution, the judiciary in India holds a very important position. In the words of James Medison, one of the founding fathers of the American Constitution, "truly the only

defensive armour of the country and its constitution and laws," the Indian judiciary is "truly the only watchdog against violation of fundamental rights guaranteed under the Constitution and thus insulates all persons, Indians and aliens alike, against discrimination, abuse of State power, arbitrariness, etc." The door would be wide open for nullification, anarchy, and convulsion if this armor were to lose its burdensome functions[4].

Due to the proactive role the Indian court has taken, liberty and equality have flourished and endured in India. Because of India's independent judiciary, which has been maintained in part thanks to the support and assistance of an independent bar that has been fearless in promoting the causes of the underprivileged, the deprived, and those sections of society that are ignorant of or unable to secure their rights due to various handicaps, as well as an informed public opinion, the rule of law, one of the most important characteristics of good governance, prevails.

The existence of constitutional restraints on the scope of governmental power is one of the most crucial tenets of legitimate democratic governance. The ability of citizens to seek protection of their rights and recourse against government actions is made possible by such restrictions, which also include regular elections, guarantees of civil rights, and an independent judiciary. These restrictions aid in establishing accountability between and among the various governmental branches. The most crucial component of successful governance is an independent judiciary since it is crucial for upholding the rule of law.

In the end, the legal system has a significant part to play in promoting improved public governance. Despite the abundance of laws, regulations, and processes, any disagreements must be resolved in a court of law[5]. No aspect of good governance, including the environment, human rights, gender justice, education, minorities, police reforms, elections, and restrictions on the constituent powers of Parliament to amend the Constitution, has not benefited significantly from Supreme Court decisions.

DISCUSSION

A modern parliamentary system of government envisions administrative accountability to Parliament, implying a broader political authority over the executive branch. Parliamentary control entails a thorough investigation of government actions, which may include ex post facto oversight after a policy has been put into effect as well as preliminary interventions, that is, before a policy is established. Parliaments' authority to regulate the executive comes from the Constitution or, in the case of the United Kingdom, from long-standing tradition, use, and convention. When the parliamentary system was in its infancy, for example in the United Kingdom, Parliament did not have such power and had to gradually establish it through control over taxation and spending over a period of centuries. However, this power has now fairly evolved and been established[6].

Depending on the type of Constitution each nation has enacted, the way that parliament exercises authority over the executive varies from one nation to the next. In contrast to a nation like India where the Cabinet is answerable to Parliament, the United States of America has parliamentary oversight over the executive. In the former scenario, ministers are exempt from having to defend their policies in front of the legislature. They also are not subject to being called to the floor of the house for an explanation or being 2 removed by a vote of the legislature. However, in a system like India, where ministers answer to Parliament, their survival depends on the approval of Parliament. In the latter instance, there is direct and precise legislative control.

Political analysts and constitutional theorists alike in Britain and elsewhere have been focusing on the issue of the connection between the administration and the Legislature. For instance, there has been a lot of discussion about how the British political system is changing, with Parliament playing a smaller role and the administration gaining more power. Critics have occasionally looked at present patterns and attempted to offer specific solutions; they frequently recall a purported "Golden Age" when the relationship between the executive and legislative branches was better understood. Others have come to the gloomy conclusion that there isn't much that can be done to change the situation[7].

The roles of parliament in relation to the executive can be broadly categorized into two categories. The first makes reference to parliamentary control, ministerial accountability, and parliamentary oversight. The second is about the government's accountability, the risk of political meddling with public officials, and the value of debate over control.

"Vertical" and "Horizontal" responsibility, according to Anthony Staddon, are two more ways to understand accountability. Elections are one way that citizens may hold the government to account vertically. Counterbalancing State institutions like the legislature, an independent judiciary, and other constitutional watchdogs is what horizontal accountability entails.

Staddon goes on to say that there are different types of parliaments, including those with powerful, moderate, or weak legislative branches. The majority of Commonwealth legislatures are thought to be reactionary in style. According to Norton, the external environment of the legislative branch—that is, elements like cultural, legal, and political factors determines the legislative branch's ability to restrain the executive branch. Even if it could be challenging to tell apart external factors from internal ones, this method can be used to evaluate the parliamentary system in the perspective of governmental accountability. Internal factors, such as legislative procedural rights, the Committee system, party and regional groups, are explored in the current study, particularly in the context of India, to gauge the level of governmental accountability.

It is not possible to compare one system to another or to detail the numerous parliamentary checks on the executive in other nations within the scope of this essay. This essay aims to highlight recent difficulties to the idea of parliamentary oversight of the executive with particular reference to India. The narrative is supported by empirical research. The Indian system truly combines the highest levels of executive and legislative power. The relationship between the administration and the Legislature is one that is very close and ideally does not allow for any conflict or dichotomy, both in terms of the Constitution and in actual reality. The two are seen as inseparable partners or copartners in the work of government rather than as conflicting centers of authority. In order to manage public affairs, a vast network of contacts connects the Government of India or State Governments with the Parliament or State Legislatures on a constitutional and practical level.

The council of ministers of the union government are collectively accountable to the Lok Sabha under article 75 (3) of the Indian Constitution, while the council of ministers of a state government are collectively accountable to the state legislature under article 164 (2). Parliament neither governs nor is designed to do so. The ideal that institutions strive for is a powerful executive branch restrained and controlled by ongoing, attentive, and representative criticism. The Indian Constitution more than lives up to this objective. In India, the Parliament and State Legislatures take use of several occasions to discuss, query, criticize, and debate governmental policies and administrative practices. As many executive policies require laws for proper implementation, legislation gives Parliament the chance to discuss the administration's program.

Parliamentary law is required for the authorization of taxes and appropriations. The members of Parliament can study and critique the policies and operations of each department during discussions on the annual budget, grant requests, etc. However, it has been observed that the legislative check on the executive branch does not function as well as it was intended to under many constitutions. "To a great and greater degree Parliament is becoming the House of Commons, the House of Commons is becoming the government majority, and the government majority is a rubberstamp for government," says Lord Hailsham in describing the British system.

In the contemporary system, it is frequently considered that the Executive controls Parliament rather than the other way around. It is possible to think of the council of ministers as a powerful executive body of Parliament entrusted with the honorable responsibility of managing the executive affairs of the government[8]. Its interaction with the legislature is what primarily defines how parliamentary control of the executive works.

How much the executive is actually held accountable to the legislature and how effective is parliament's influence over the administration is a moot point. Experience indicates that this control has decreased over the past few years, particularly in developing democracies. The control of the legislature over the government is negatively impacted by the difficulties of social transformation in a developing nation. Instead of bolstering legislative authority, the emergence of regional forces undermines it. A political regime with a local flavor has its own political imperatives that dictate how their government behaves in Parliament.

The Legislature is occasionally taken for granted by governments with absolute majorities. It is essential that the Members of the Legislature have thorough and accurate information regarding the activities of the government in order for Parliament to effectively supervise the executive. Information dissemination about governmental activity is the role of administration. Here, the government has the final say, and if it doesn't respect the power and responsibility of the Parliament, it will have a detrimental effect on the legislative oversight of administration. The following definitions of legislative power over the executive are provided for your convenience.

In the Indian context, question hour is frequently interrupted recently in both the Parliament and State Legislatures in order to call attention to some political issue in an effort to get political mileage in the media. The significance of this tool for regulating executive power by the legislature is waning as a result of this tendency. Responsible Indian lawmakers are growing increasingly alarmed by the disruptions of question period. Political parties in opposition disrupt the House as soon as it convenes in the high-voltage media age, cutting into the time given for question period. It is obvious that this trend has reduced the effectiveness with which India's Parliament operates. In order to maintain legislative accountability through questions and answers, a mechanism must be developed to halt this trend[9].

The Westminster model is the best one for democracies when different social groups have seats in the House but are not yet mature enough to understand the subtleties of legislative accountability. Ministers frequently lack the preparation necessary to adequately respond to questions, do not receive timely responses, or provide unclear or unfocused answers. This defeats the purpose of question time. One of the biggest problems facing developing democracies in the Commonwealth World is how to keep the question period and make it worthwhile. Since the middle of the 1960s, the usage of parliamentary questions has grown significantly, even in the British Parliament. Question time in the British Parliament has changed from being a platform for backbenchers to a weapon of conflict between the major parties and the administration.Another crucial committee that maintains budgetary restraint in the government's different public undertakings is the Public Undertaking Committee. Despite the committee's effective operation, there has been a delay in the resolution of audit objections, which has delayed the committee's impact on the state legislature's consideration of the government's financial accountability. A total of 1580 audit objections are still pending for the 18 committee's consideration. This delay in resolving financial expenditure concerns erodes executive financial control. This delay is brought about by the government officials' tardy responses, as well as the fact that the committee frequently does not convene as frequently as is necessary.

Generally speaking, financial committees work better and more successfully than other committees, and through them, the legislature is able to exert adequate oversight over the executive's financial responsibility. The main issue in developing democracies is that people from disadvantaged social groups do not comprehend or value the finer points and intricacies of financial problems. Their involvement and interest are therefore below what is ideal. It is obvious that the effectiveness and scope of the executive's accountability to Parliament is determined by the legislators. This is a problem for developing parliamentary democracies, particularly in those nations that are going through social change.

Two more committees oversee the financial aspects of governance in the state of Uttar Pradesh. Committee looking into the local bodies of the state's audit reports. The committee looks at the Local Bodies of the State's Audit Reports. It determines whether the Local Funds Account of the State and the Annual Audit

Report of the Auditor are routinely laid before the Legislature and reviews the report. Additionally, it looks into whether 19 concerned institutions used the government grants and loans that were approved by government departments and audited by the Auditor, Local Fund Accounts, in accordance with the same plans for which they were approved and that no financial irregularities had occurred in their use.

The Committee on Panchayati Raj determines whether or not the technical Annual Reports of the State Government, Cooperative Societies, Panchayats, and Comptroller General of India are presented to the Legislature on a regular basis and reviews the corresponding report. It also checks to see if the government grants and loans approved by government departments for Village Panchayat, District Panchayat, and Regional Panchayat have been used appropriately by the relevant institutions for the same schemes for which they were approved, and that there haven't been any financial irregularities in their use.

Legal Regulation:

The cornerstone of the parliamentary democracy system is the control that parliament has over the executive through the legislative process. Legislatively necessary policies and programs must be debated in the House. While discussing and debating a proposed piece of legislation, the opposition has the chance to point out its flaws. However, it has been noticed during the past ten years, particularly in the State legislatures of India, that both the volume and quality of debates about proposed laws have decreased. This tendency appears to be caused by constituents pressuring elected officials to address local issues with infrastructure and public amenities [10]. The fact that the public's representatives come from socioeconomically underdeveloped regions and sectors contributes to the lack of interest in discussing bills of legislation by failing to grasp their technical nature. This phase occurs in developing democracies where the process of socioeconomic growth is in flux. Hopefully, as legislators gain more knowledge, this will change. However, little discussion of new laws has a negative impact on governmental responsibility.

The right to introduce a No-Confidence Motion in the Council of Ministers is the most significant constitutional right that members of Parliament have. This is the key area where the legislative branch controls the executive. The Legislative Assembly of the State is the body that the "Council of Ministers" are "collectively" accountable to, according to Article 164(2) of the Indian Constitution. Political responsibility is the idea of responsibility being used here. The Indian Supreme Court has unequivocally ruled that the House floor must serve as a test for the majority of the government. There have been cases where state governors have dismissed administrations without using the floor test and instead basing their decision on their own subjective pleasure. All parties expressed harsh disapproval for the Governors' actions, and they were also contested in court. Currently, it is more or less accepted that the House floor is the only forum to address any questions regarding the majority of the government.

CONCLUSION

In a parliamentary system of government, like the one we have, the legislative branch's roles are to legislate, provide advice, offer criticism, and air public grievances, while the executive branch's role is to rule. A nation needs laws to maintain public order, facilitate social and economic processes, and guarantee a solid and effective administrative system. The majority of the time, the executive offers the legislation required for governance after careful consideration, debate, and whenever necessary, the suggestion of revisions. The unique prerogatives of parliament include control of finances, the ability to charge or amend taxes, the voting of supplies and grants, and the ability to air people's complaints. In the end, Parliament imposes the executive's accountability to the people and to itself through the use of these authorities. The criticism that occurs in the Legislature has an influence on the public consciousness and undermines the confidence of the administration, even if the ideas or issues brought by the opposition in the House are not implemented. To that extent, the Legislature indirectly, if not directly, controls the executive branch. The actions of the electorate give voice to the complaints expressed by various factions in the House, but it takes five years for it to happen. If this control is consistently used, the quality of governance will rise.

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CHAPTER 7
COMPARATIVE APPROACH AND JUDICIAL ACCOUNTABILITY IN INDIA: AN OVERVIEW

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ABSTRACT:

The judicial branch checks the other two branches of government, defends citizens' rights, and administers justice, among other duties. Every nation maintains a separate judiciary in order to protect its integrity and independence and ensure that the public has sufficient access to justice. In order to accomplish this, it is equally crucial that the judges are appointed fairly and that there is a proper constitutional procedure for their removal in the event of misconduct. It is also crucial to declare their personal assets in order to keep an eye on their financial development while serving as judges and prevent corruption. This essay addresses these three problems in India and compares the Indian legal system's description of appointment, removal, and asset declaration to the systems in the UK, Canada, and the USA. The author also uses provisions from other nations in this work to address some situations when there aren't any specific statues in the aforementioned nations. This paper also discusses the difficulties the Indian court system is having in ensuring judicial accountability and openness, and it eliminates a number of issues with the current system. Finally, the author offers a number of suggestions for resolving these problems in this study.

KEYWORDS:

Collegium System, Judicial Accountability, National Judicial Appointment Commission,Social Transformation.

INTRODUCTION

The judiciary is a component of the social transformation and revolution that upholds social security and equality for every Indian. In contrast to England, India's constitution is supreme, and in order to uphold that supremacy, a fair and impartial judiciary is necessary. The Supreme Court of India has been portrayed as a defender of the constitution and as a "guardian of social revolution. The accountability of the appointed judicial officers and the transparency of the appointment of judges to such institutions and other higher judicial authorities are both crucial. This was a historic decision that altered the direction of Indian history in addition to being a lengthy decision. This ruling is also regarded as the turning point in the struggle between the legislature and the judiciary for power[1].

In this ruling, the Supreme Court resolved any ambiguity surrounding constitutional amendments and determined that the Parliament has the authority to change any provision of the constitution, with the exception of those that pertain to the Constitution's fundamental structure, which includes provisions like secularism and fundamental rights, among others. It was repeated when Justice Khanna dissented in the ADM Jabalpur Case during emergency and was also overlooked to be the CJ, as the then-central government was unhappy with the ruling and changed the established convention of appointing the senior most judges as a CJI. Justice AN Ray was fourth in the order of seniority and gave the dissenting judgement.The President must consult the CJI when appointing other judges and the Chief Justice of the High Court, according to the aforementioned clause. The definition of "consultation" is the same as that of Article 222 of the Indian Constitution[2].

According to the Supreme Court's ruling, the phrase "consultation" refers to a comprehensive and thorough discussion, however the President is not required to follow it and may opt to do otherwise. In the First Judge Case, also known as the Judges Transfer Case it was determined that the central government has been granted "sole and exclusive" authority to select judges, upholding the primacy of the executive

branch. Justice PN Bhagwati urged in the same ruling that judges be chosen by a National Judicial Committee, similar to how judges are chosen in Australia by the Australian Judicial Committee.The constitutional bench of the Supreme Court determined that CJI should play a crucial role in the appointment of judges after examining the meaning of "Consultation" in Article 124(2). The same judgment noted the necessity of an impartial, nonpartisan independent judiciary for the socioeconomic reform of society and the defense of the Constitution and Rule of Law. The Supreme Court, however, overturned its own decision from the First Judge case and asserted that the phrase "consultation" was used instead of "concurrence" for a reason in the Second Judge Case.

With a vote of 9:2, the court ruled that the appointment must be made in accordance with the Chief Justice of India's opinion, after the CJI talks with the two other senior-most Supreme Court justices. As a result, it lessens political involvement, prejudice, and the nomination of judges who have a political agenda. The court further issued the directive that seniority should be taken into consideration when appointing the Chief Justice of India, as was customary before 1973. This important decision established the system of colleges. No appointment may be made unless it has received approval by the collegium and the CJI, and the President will only reject a recommendation in extreme circumstances[3]. The court further clarified the Chief Justice's position that it is not desirable to grant him or her complete veto power and that some authority should be reserved for the Executive body for check and balance purposes. The next paragraphs discuss the rules outlined in the aforementioned judgment

1. The CJI must insist on the appointment of judges to the Supreme Court. If the CJI's recommendation for an appointment is determined to be improper under unusual circumstances and the collegium rejects this disclosure, the appointment should nonetheless be made with all due regard.
2. In matters involving appointments, the CJI has the final say. All consultations should be documented in writing and should involve all the judges involved. This built-in check provides appropriate caution when using the power.
3. The CJI position must be filled by the senior judges. When appointing HC Judges to the SC, one should take into account the judges' seniority in their various HCs combined with their seniority on bases across India.

When addressing the collegium problems in the Third Judge case, the court made it clear that the CJI's unilateral opinion without consulting the other justices would not be enforceable against the government. The CJI is required to follow the majority of the others throughout the consultation.

In this ruling, the court increased the required number of judges to consult from two to four and stipulated that collegiums are not to provide recommendations if two of the four judges hold dissenting opinions.

1. The CJI and the collegium's other four senior justices should be consulted
2. The text should reflect their viewpoint.
3. Regardless of seniority, a High Court judge with exceptional and outstanding virtue and calibre may be nominated to serve as a judge on the Supreme Court.
4. A high court judge may be appointed for additional "good reasons," such as when the same court already exists in the province where the parent court is located and that high court does not have a representative on the Apex Bench.

The law commission concurred with Justice Bhagwati's position in the first judge case and made a similar suggestion in 1987. The Constitution's Articles 124(2), 127, and 128 were amended by the Parliament in 2014, and Articles 124A, 124B, and 124C were added. The National Judicial Appointment Commission (NJAC), which will choose the judges for the Supreme Court and the High Court, was established by this amendment in place of the system of collegiums. The problems with the collegium system were that there was no procedure in place to verify that the judges were being appointed in a reasonable manner, making the process completely transparent [4].The NJAC's goal was to increase judicial accountability. Additionally, it was suggested that the current approach fosters nepotism, lacks accountability and quick

implementation, and is less transparent.The CJI served as the commission's chairman, and the Law Minister and two of the SC's most senior justices served as ex-officio members. The CJI, the PM, and the opposition leader are three more members of this committee who were selected by the board. This NJAC's primary duties were the nomination and transfer of judges to the higher judiciary. By a vote of 4:1, the Supreme Court declared this amendment to be invalid and unconstitutional

The Apex Judicial body cited the potential appointment of politically motivated, unqualified candidates as the justification for rejecting the NJAC bill. The independence of the judiciary is at danger due to a reasonable significant misuse of power. The Supreme Court determined that the act violated the Constitution's fundamental principles. The Apex Court ruled that the statute enacted in the previous judgments violates Articles 124, 217, and 222 when the CJI's guidance is required.

The justification given for declaring NJAC invalid was that it gave the administration preferential treatment when it came to appointing judges, jeopardizing the independence of the judiciary because judges are more susceptible to bias, compromise, and partiality toward the political establishment[5]. The veto was decided by a vote, with CJI having equal weight to the other candidates. The NJAC Act's usage of the phrase "any other suitable criteria had its own share of ambiguity, opened doors for nepotism and favoritism, and also lacked sincerity. The appointment was made when a particular recommendation received the support of 5 out of 6 members, a majority greater than the special recommendation and one that would be extremely difficult to implement on a regular basis.

DISCUSSION

The independent Judicial Appointments Commission, established in 2006, is in charge of choosing judges for England and Wales. The Executive has the final say on the appointment. There are 15 Commissioners on the aforementioned commission. They are responsible for ensuring that the commission performs its duties in an efficient and open manner. These members must have never served on a commission, been a member of the legislature, or worked in the civil or judicial sectors. They are appointed for a period of five years, after which they lose their right to serve a second term as chair of the commission. The main task of this commission is to compile a list of qualified candidates, discuss them, and then make recommendations to the Executive for the choice [6]. Since the secretary can only reject these recommendations once, the panel now has some legally binding authority.

Canada:

In Canada's highest courts, judges are appointed rather than elected. There are nine justices on the Canadian Supreme Court, including the Chief Justice. Except for choosing the prime minister, Parliament has no influence over choosing the Supreme Court's judges and has no power to examine the court's recommendations. On the Prime Minister's suggestion, these Judge nominations are made. Shortlisted and recommended to the PM for final selection from a list of those qualified and deserving to serve as Supreme Court judges, by an impartial Judicial Appointment Committee. A panel of seven people composed of three laypeople, three attorneys, and one retired judge. In contrast to the UK system, their recommendation is not legally enforceable. The Advisory Board's seven incorporating members are listed below. The Ministry of Justice nominated three lay members, two of whom had to have no legal training [7]. Active attorneys chosen by the Canadian Bar Association for their remarkable achievements in the legal profession.Retired Justice of a higher court who is nominated by the Canadian Judicial Council; Jurists who are nominated by the Council of Canadian Law Deans; and Practicing Attorney with Outstanding Bar Merit who is chosen by the Federation of Law Societies of Canada.

USA

a) The US President appoints judges to the Supreme Court in the country after receiving permission from the US Senate. Senators play a far less role in the selection and election of the Supreme Court. Article 2 (Section 2) of the United States Constitution safeguards the President of the United States' authority to designate Supreme Court justices.

b) In contrast to the system used in India, the tenure of a Supreme Court justice is not fixed, nor is there a set retirement age. As a lot of authority rests in the hands of the President, the process used in the USA to nominate a Justice to the Supreme Court involves a fair degree of politics. There is no written and prescribed Statute or any eligibility requirements for Judicial Members in the Apex Court on in the federal court of the country, which further contributes to the less frequent appointment of judges due to the lack of judicial strength of judges in the Apex Court and the responsibility to appoint a judge to the Supreme Court occurring only once or twice during a President's term.
c) A judge may be expelled for misbehavior, misconduct, or incapacity that has been proven.
d) The court in this case has defined the term "misbehaviors" in the Daphtary's Case and noted in the "Power of Review" that even if a judge makes a mistake or makes a major error in their decision, it does not constitute as misbehavior.
e) The Apex Court extensively analyzed the term "misbehavior" in Article 124(4) and noted that it is unclear and vulnerable to several interpretations, leading to the formulation of numerous hypotheses
f) The Judiciary is autonomous, Judges' terms are safeguarded, and none of the Judge's actions or performance while carrying out his or her responsibilities can be judged through the prism of "misbehaviors".
g) The Judges Inquiry Act examines the process for impeaching a judge and removing him or her from office. This removal must be approved by either 50 or 100 members of the RajyaSabha, and it must be forwarded to the Vice President or Speaker of the lower house.
h) The speaker or chairman has the authority to accept or reject the motion, and in the event that it is accepted, they will appoint a three-person committee to look into the situation. In a judgment by the Sub-Committee of Judicial Accountability, the Apex Court further clarified that the impeachment procedure for judges does not expire with the dissolution of Parliament.
i) When the same board determines that the allegations are true, an impeachment motion is conducted, considered by the parliament, and then sent to the president for approval by a special majority. Finally, the president issues an order releasing the judge from their responsibilities.
j) The first impeachment proceeding in India involved Justice V. Ramaswami. Despite being found guilty of misbehavior by the inquiry committee, he was not impeached since the resolution did not receive a majority in the lower house of parliament
k) When the accused's wife, Sarojini Ramaswami, filed a writ petition, the court ruled that the speaker must give the accused the Inquiry Committee report. Although the accused may be deemed "guilty," Parliament has the authority to reject the report. If the Parliament does not adopt the said reports and does not proceed with a motion to remove the judge, the process will end there without further action being taken. It is also not covered by Judicial Review because it was deemed to be immature and unconstitutional
l) Justice Karnan of the Madras High Court was impeached once again in 2017 on the grounds of incapacity. This was the first instance of an active high court judge being impeached and receiving a 6-month prison term for contempt.
m) The Supreme Court ruled in the case of K. Veeraswamithat judges in higher courts may be charged with crimes and found guilty of them. The court further noted that the phrase "misbehavior" in Art. 124(5) incorporates and supports the phrase "criminal misconduct" as defined by PC Act.
n) However, a few aspects of this decision were also criticized, and those are covered in the section below.
o) The premise of a judge's dismissal is taken from the English Rule of Law, but in India, the procedure is more definite.
p) Unlike the UK, India need a special majority in both houses of parliament, but India does not.

The procedure developed in India for investigation of the topic of misbehavior, grounds before addressing the issue in Parliament is there, which is absent in English Law, and the grounds for removal are more explicitly outlined in the Constitution[8].

The US judiciary is free from the control of the legislature and executive, much like in other democracies across the world. In the United States, a dual court system is in use, allowing the federal government and the State to each have their own courts.

In India, judicial administration has shown to be inefficient and unable to produce the required results. One of the main reasons for this is the dearth of courts and judges, which leads cases to be resolved at a rate that is slower than the beginning of new ones. The following additional categories apply to this delay. The judiciary is being burdened by an increase in the number of cases that are pending. There are currently more than 3.3 crore pending cases, according to credible sources.

There are few judges: Justice is delayed as a result of the cases being handled slowly due to the judges' unfilled positions. In trial courts, there are about 6000 open positions for judges. The number at the Higher Judicial Authority is similarly below expectations, with 413 judge posts across 24 High Courts and six of thirty at the pinnacle level vacant

Struggles of those who are being tried: There are currently 4.2 lakh prisoners in India, and 2/3 of them are being tried. Poor prisoners cannot afford the bail on the non-bailable crimes and other serious accusations brought against them because they cannot get legal help. The Supreme Court recently issued a decision that provided much-needed financial relief by waiving the substantial financial bonds on the grounds of poverty and financial difficulties, but its true intent won't be realized until it is put into practice at the local level and by the lower judiciary [9]

Corruption: A major problem in contemporary India. Numerous Judges have been discovered accepting bribes in the past by the investigating authorities. For filing a FIR without the Chief Justice of India's consent against a judge, there is no statutory provision. Former Calcutta High Court justice JusticeSoumitra Sen was the first Indian judge to be impeached by the Rajya Sabha on grounds of financial embezzlement.

In the infamous Ghaziabad Provident Fund Case, a significant fraud involving the misuse of 49 crore in funds was uncovered. The main witness presented a thorough account of the fraud, which involved numerous judges from higher judicial levels. He was discovered dead in the prison under odd circumstances, but there was insufficient other evidence to conduct a thorough investigation. The problem of judicial accountability in India It has evolved into something akin to an opaque self-sustaining oligarchy. The higher court of justice has almost unlimited and unrestrained power[10].

The media is also reluctant to report on judicial misbehavior for fear of being found in contempt of court This ruling has stopped many investigations against judges who have engaged in unethical behavior. Even the judge who ruled in favor of declaring the NJAC Act unlawful now regrets that decision in light of the collegiums' lack of transparency. Its credibility has been questioned because the judicial body is external in the name of judicial independence.

CONCLUSION

While invalidating the 99th Amendment, the Supreme Court agreed to strengthen the current collegium. The current method is arbitrary because the entire proceeding takes place behind the judge's closed doors with no accountability. It goes against the "rule of law" and the "principles of natural justice." Only the collegium system of the entire Supreme Court administration should be brought under the purview of RTI and judicial scrutiny, as this will not be at odds with the ruling rendered by the Supreme Court. It will contribute to more accountability and openness, and the entire process will become more effective and credible. The positions should be made publically known so that anyone who is qualified can apply. A commission or independent body with the authority to assess applications, made up of retired judges, senior Supreme Court justices, and former civil workers. It will be excellent for the body to provide them with individualized input at the later stage when there will only be a small number of people left. The CJI will next assess the contenders and make the ultimate decision on who will be chosen. This approach will increase transparency while giving the CJI the final say and veto authority. The Collegium system will be preserved thanks to this dual method, which will also help choose deserving candidates for judgeship. After

conducting extensive research, I have come to the conclusion that the entire appointment and removal procedure for judges in India has its fair share of flaws that have permeated the system's foundation.

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CHAPTER 8
A HISTORICAL OVERVIEW OF THE INDIAN JUDICIAL SYSTEM

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ABSTRACT:

The constitutional standing of the judiciary is the most crucial factor in determining its independence. The judiciary should be covered by the constitution in the same way that the executive and legislative branches' makeup and authority are. Better still if the judiciary is given judicial authority by the constitution. Otherwise, the constitution may specify the judges' qualifications, periods of office, and tenure as well as the makeup of the courts and their areas of authority. The judiciary must have a constitutionally protected position of dignity, according to the constitution. The judiciary's administrative independence must also be guaranteed by the constitution, including authority over administrative personnel, budget preparation, and upkeep of courthouses. Ad hoc tribunals and the diverting of cases from regular courts must be prohibited, the natural judge principle must be upheld, court judgments must be respected and upheld by other branches of the government, judges must be kept separate from the civil service, and it must be forbidden to reduce judges' terms of service. Some of these issues might be dealt with by law, but the Indian Constitution needs to make it clear enough that the judiciary can still command the public's respect and draw the best candidates for judicial positions.

KEYWORDS:

Ad hocTribunals,Balancing ‘Representation, Federal Court, Manu Smrithi, Oldest Judicial System.

INTRODUCTION

Long before the early Vedic periods, in the Neolithic era (7000 BC to 3300 BC), India had a separate legal history. Through the Bronze Age and into the Indus Valley Civilization, a civil and criminal adjudication mechanism was in place. Ancient books including the Vedas, Smrithis, Upanishads, and Arthasastra provide the evidence. The fact that ancient Indian law was secular in nature and founded on the Dharma Principle (Natural Justice) was one of its most notable characteristics. At that time, the Indian public was acclimated to the idea of following the law and had access to both civil and criminal court systems.

India thus "has the oldest judicial system in the world." According to Justice S. S. Dhavan, "No other judicial system has a more ancient or exalted pedigree. According to Manu Smrithi, there are 18 main titles of law according to the ancient Indian legal system. The following categories of law were listed: non-payment of debt, deposit, partnership business, resumption of gift, sale of an item by someone other than the owner, non-payment of wages, breach of contract, obligations of a wife and husband, division of the inheritance, repentance after sale or purchase, boundary dispute, abuse, overly harsh punishments, theft, violence, adultery, gambling, and animal betting [1].

According to ancient Indian procedural law, a claim is made when someone who is being harassed in a way that is against the laws of Smrithi and use files a complaint. A court case typically consists of four parts: a complaint, a response, some supporting evidence, and a ruling. Responses are likely to fall into one of four categories: admission, denial, special argument, or reference to a prior ruling. Document, possession, and witness are the three sorts of evidence that are discussed.In ancient India, the Smrithis highlighted the importance of having a strong judicial system to carry out justice according to Dharma and that the King's main responsibility was to administer justice. King was in charge of upholding the law, defending the populace, and punishing wrongdoers [2].

“The ancient India had the highest standard of any nation of antiquity as regards the ability, learning, integrity, impartiality, and independence of the judiciary, and these standards have not been surpassed till

today ; that the Indian judiciary consisted of a hierarchy of judges with the Court of the Chief Justice (Praadvivaka) at the top, each higher Court being invested with the power to review the decision of the Courts below ; that disputes were decided essentially in accordance with the same principles of natural justice which govern the judicial process in the modern State today; that in criminal trials the accused could not be punished unless his guilt was proved according to law ; that in civil cases the trial consisted of four stages like any modern trial – plaint, reply, hearing and decree ; that such doctrines as res judicata (prang nyaya) were familiar to Indian jurisprudence ; that all trials, civil or criminal, were heard by a bench of several judges and rarely by a judge sitting singly ; that the decrees of all courts except the King were subject to appeal or review according to fixed principles ; that the fundamental duty of the Court was to do justice "without favour or fear.

Types of Tribunals:

According to KatyayanaSmrithi, the courts are ranked in order of hierarchy into six categories. As follows:

1. **Kula (Family Councils):** A group of elders educated younger members of the family how to settle disputes within their own family or among a group of related households.
2. **Shreni (Councils of Trade or Profession):** An assembly of senior citizens who are considered neutral by a group of businesspeople, professionals, and artisans to settle conflicts.
3. **Gana (Village Assembly):** This was a sizable gathering of village elders or gramas who are respected by the locals as knowledgeable, impartial, and honest.
4. **Adhikrita (Court appointed by the King):** These courts are authorized by the King to administer justice and have judges who are knowledgeable on the Sutras and Smrithis. These courts came in a variety of forms depending on their jurisdiction. They include
    a. Pratishtitha, which was founded in a certain village or town.
    b. Apratishtitha was a traveling court that would convene where the King requested it to hear a particular matter.
    c. Mudrita was a more prestigious court with permission to use the regal seal.
5. **Sasita (Kings Court):** This court served as the highest in the kingdom. The King himself oversaw proceedings. To support and help the King, there was a chief justice named Pradvivaka and a group of judges referred to as the Sabhyas.
6. **Nripa (the King):** The King was the supreme authority in the legal process of adjudication and was constrained by the Dharmic precepts, which he was unable to disregard.

All civil and criminal cases could be tried by Kula, Shreni, and Gana, with the exception of violent crimes (Sahasa). The Adhikrita, a court chosen by the King, will hear instances involving violence. The King must ultimately determine whether to administer corporal punishment after consulting with the Sasita (Kings Court).A Kula ruling can be reviewed by the Shreni, and a Shreni decision can be reviewed by the Gana. Likewise, the Adhikrita courts have the authority to review a Gana's judgment. The Law Commission had stated in its Fourteenth Report that although ancient writers had described a hierarchy of courts as existing in the distant past, the precise structure that existed cannot be determined with any certainty. However, later works by authors like Narada and Brihaspathi and others seem to imply that regular courts must have existed on a significant scale. Thus, it was thought that there was a judicial hierarchy in ancient India, with certain components of authoritative control over the courts below[3].

Studies on judicial behavior have long demonstrated that a judge's upbringing influences their decisions in significant ways.Shetreet does not advocate for a numerical or exactly proportional representation of the background in the courts. He just requests that it fairly represent society. Such contemplation, in his opinion, is essential for the independence of the judiciary [4]. He provides examples of nations that are leaders in judicial independence, including the United States, Canada, England, Germany, and a number of other nations that practice it either by statute or custom, to bolster his argument.Shetreet is not acting alone in this endeavor. He has genuinely summed up the opinions of a lot of people, including some international organizations. The Singhvi and Montreal declarations on the independence of justice are notable among the

conclusions of the international bodies because they both state, in nearly identical language: "The process and standards of judicial selection shall give due consideration to ensuring a fair reflection by the judiciary of the society in all its aspects."Balancing'representation' on bases of religion, geography, race, and sex," explains Henry Abraham, "has also played a major role in presidential choice of Supreme Court nominees" in the United States.In India, such a practice is not unheard of. Judges from India were included by the Judicial Committee of the Privy Council as a matter of law prior to India's independence[5]. Similar to how representation was given to specific communities in pre-independence India High Courts based on the strength of such populations within those High Courts' territorial jurisdiction.

DISCUSSION

Ancient scriptures provide specifics on the criteria for Judge selection and qualification. "The Sovereign should appoint as assessors of his Court persons who are well versed in the literature of the law, honest, and by temperament capable of complete impartiality between friend and foe," Yajanvalkya commands.The Rajadharma counsels the King to select Judges who possess particular qualifications. They are: The judge should be a person who was well versed in Vyavahara (laws regulating judicial proceedings) and Dharma (law on all topics), a Bahushrutha (profound scholar), a Pramananjana (well versed in the law of evidence), a Nyayasasthrevilambinah (law abiding) and has fully studied the Vedas and Tarka (logic) should be appointed to carry on the administration of justice [6].In addition, Katyayana states that a king should pick a judge who is "not cruel, who is sweet-tempered, kind, clever and energetic but not greedy. The ancient texts stipulate that judges must be fearless, impartial, and independent.

The Smrithis and Sastras established the lofty and honorable role of judges in the administration of justice. Even if their choices go against the wishes of the King, their high degree of bravery, impartiality, and independence is of immense importance to us and an inspiration. As the supremacy of Dharma was almighty and law gained its authority from the faith of the people and the King in Dharma, it was in accordance with the statement "Law is the King of Kings," and was therefore binding on the King as well. Thus, it is evident that the Smrithis had established a distinct and solid basis for a powerful independent court. The supreme necessity of judicial integrity is emphasized in every Smriti.

"The judges appointed by the king should be well versed in procedure, wise, of good character and temperament, soft in speech, impartial to friend or foe, truthful, knowledgeable about law, active (not lazy), free from anger, free from greed, or ill desire (for personal gain), and truthful," says Shukra-nitisara. The entire estate of a judge who was dishonest should be seized, argues Vishnu. Having private conversations with plaintiffs while a trial was ongoing was judicial misconduct. According to Brihaspati, "A judge or chief justice (Praadvivaka) who privately speaks with a party before to the case's being resolved (anirnite) was to be punished like a corrupt judge [7].In ancient times, the idea of attorneys representing parties and assisting the court was used. Niyogi (Lawyer) is the term used to describe such a knowledgeable lawyer who was chosen by one of the parties to a lawsuit.

According to SukraNeetisara, the Niyogi was entitled to fees and that "the person authorized to represent a party in court was entitled to get his remuneration to the extent of 1/16th, 1/20th, 1/40th, 1/80th, or 1/160th of the suit claim and the remuneration should be inversely proportional to the suit claimAncient courts operated on a carefully designed procedural framework. Anyone who has been harmed by someone else has the right to submit a Pratijna (complaint) with the court. Prati Vadin was the Defendant and Vadin was the Plaintiff. According to Dharma Rosa, a plaint should be succinct in language, rich in content, straightforward, free of irrelevant information, without incorrect justifications, exact, and not self-contradictory, and it should include a purposeful prayer against the defendant. The defendant was required to present his defense in an Uttara (written statement), which had to be consistent with the plaint. Asedha has the ability to impose a restraint when a plaint was submitted in the form of an interim injunction.

The plaintiff was required to pay an equivalent amount as court costs, while the judgment debtor was required to pay 5% of the judgment amount.

The trial was conducted in accordance with Dharma sastras and in a way that guaranteed the litigants' and the public's faith and confidence in the legal system. The individual who claims the offense has the burden of proof. The judge ordered a summons to the witness if the parties failed to present the witness. The ruling, known as a "Jayapatra" (document of triumph), was made with the expectation that one party would prevail. The Jayapatra should include the following: a succinct summary of the plaint and the written statement; evidence presented by the parties; framing and discussion of the issue; consideration of the parties' arguments; application of law; the separate opinions of the judges; final judgment; and the court's seal. The judge should exercise justice, equity, and good conscience in rendering the decision [8].

Regarding criminal justice, either on their own initiative or in response to a complaint from a third party, the King or his officers must recognize the offense. The offenses were divided into three categories: Chalas (offenses against the state and the public), Pathakas (more serious offenses), and Aparadhas (minor offenses).Punishment, according to the Mahabharata, "protects Dharma, Artha, and Kama. According to Dhanda Neat, which is widely acknowledged in the Sastras, without the King and his ability to punish offenders, people would have always been plagued by fear, insecurity, and threats to their lives and possessions. Finding people who are always pure in all ways is difficult, and the wrongdoer will always need to be stopped. The punishments were divided into five categories: admonition (Vagdanda), censure (Dhigdanda), fine (Dhanadanda), mutilation (Angaccheda), and death (Vadhadanda).

The Vedas, which contained codes of conduct and rituals and were collected in Dharma Sutras, served as the model for the concept of Dharma, or law, in ancient India. These codes were followed by various branches of the Vedic schools. Their main topics include legal issues, the rights and obligations of rulers, and the responsibilities of people at different periods of life. The Hindu Law was founded on these. The Artha Sastra of Kautilya, which dates to around 300 B.C., is the earliest text that sheds light on the idea of jurisprudence, which is a component of practical governance. The third chapter covers disputes or Vyavahara, or transactions involving two or more parties. Many Dharma sastras developed throughout the first seven centuries of the Christian period and dealt extensively with Manu, Yajnavalkya, Narda, and Parasharasmiritis, among other topics.

In medieval India, religious authorities tried to make Islam a law-based religion, but as the guardians of justice, the kings made the Sharia a court that was deferential to their absolute authority. Theoretically, the rulers had to uphold Sharia, but there have been instances in history where the monarchs acquiesced to the Qazi's ruling without hesitation. The ruling class was seated in a court called Mazalim (complaints). Ibn Battuta claimed that Muhammad bin Tughalaq, the head of the Tughalaq dynasty, heard grievances every Monday and Thursday. In the Sultan's absence, the secular Court was presided over by an officer known as Amir-i- Dad beginning in the 13th century. He was also in charge of carrying out Qazis' instructions and alerting the authorities to any instances of injustice.

The Muftis were the foremost authorities on Sharia law and issued formal legal judgements known as Fatwas on cases that were presented to them by the general public or qazis. The qazi -imamalik, also known as the qazi -ul- quzat, served as the sultanate's chief judge[9]. The secular judge of the Mughal era was called as Mir-adl. He served as the Emperor's representative in court. He was supposed to conduct impartial and in-depth research. He was also in charge of carrying out qazi's instructions. To oversee the obedience to the law, Emperor Akbar also appointed two officers, known as tui-begis, and set a minimal charge for their services. The same approach was used up until the British assumed control of Indian politics.

First to respond to these provisions was the then-Chief Justice of the Federal Court, Justice H. J. Kania, who focused his remarks on the judiciary's separation from the executive branch and emphasized that, when appointing High Court judges, "the Governor and the High Court Chief Justice should be in direct contact so that the provincial Home Ministry would not be a middleman in the proceedings. In order to maintain the independence of the judiciary, according to Chief Justice Kania, local politics must not be a factor in choosing judges. In a later conference, the judges of the Federal Court and the Chief Justices of

the High Courts, the provisions of the Draft Constitution regarding the judiciary were carefully scrutinized, and a memorandum was created[10].The memorandum, which emphasized the significance of judicial independence, expressed concern over the "political, communal, and party considerations" in the appointment of High Court judges since independence and, as a result, proposed an amendment to the relevant provision, which states that the President shall appoint a High Court judge "on the recommendation of the Chief Justice of the High Court after consultation with the Governor of the State and with the such a change, it was anticipated, would bar provincial executive involvement in the selection of judges. The memo recommended removing the language from the relevant draft article that required the President to consult the judges of the Supreme Court and High Courts in addition to the Chief Justice of India when appointing Supreme Court judges. It stated that it should also apply "mutatis mutandis to the appointment of the judges of the Supreme Court."

CONCLUSION

For modern legislators and the general public, the ancient Indian knowledge proved enlightening. The ethnic, cultural, and social awakening that India had experienced in the distant past had been utterly destroyed by the foreign tyranny that India endured for generations. India was able to lead the first revolution in human history, the agricultural revolution, due to its well-developed legal system, the judiciary's steadfast adherence to the Dharma principle, and the pious nature of its citizens. Because of its wealth and abundance, the Indian subcontinent drew foreign conquerors throughout recorded history. A social system of peaceful living, which in turn requires a proper and corruption-free law and order system and an active court, is necessary for a civilisation to attain this growth. As can be seen from the discussion above, the ancient judicial system established by India's great seers met all the criteria for a reliable and effective judiciary, and it was compatible with the current system as well.

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CHAPTER 9
A STEP TOWARDS MODERNIZATION IN THE INDIAN LEGAL SYSTEM: E JUDICIARY

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ABSTRACT:

The Indian legal system is being modernized thanks to the E judiciary: Although the ancient Indian legal system under many kings experienced mutation, its fundamental makeup remained mostly unchanged. Changes were made to create a contemporary judicial system during the time of the East India Company. The Indian Constitution's guiding principles allowed the old system to be maintained to a large part after independence, and the Indian judiciary evolved into a unified pyrimidicle structure. While the modern India retains the aforementioned framework, information and communication technology has essentially opened the door for a new way of thinking when it comes to modernizing the Indian judicial system. The use of artificial intelligence in the sentencing process will be taken into consideration as part of an overall examination of the progress made in the administration of justice up to this point and the goals that still need to be met. Some of the cutting-edge research, which will be described, involves video conferencing from the jail to the court, the court to the witnesses, and the court to the court. The impact of technology on the subject of legal education will also be covered. The study in the article will fall into three categories, such as a study of computerization in the past, computerization in the present, and computerization in the future. Ultimately, to conduct a scientific empirical analysis to examine how computerization in the judiciary has evolved into a powerful tool to lower case pending times and shorten processing times.

KEYWORDS:

Artificial Intelligence,Computerization, E Judiciary,Linguistic Aids**,** Pyrimidicle Structure.

INTRODUCTION

In India, the judiciary has a lengthy history. It may not be out of place to remark that India's system of justice has a nearly 5000-year history among the nations of the Asian continent. From time to time, several Rulers oversaw the business of the State and carried out justice by settling conflicts. The same trend persisted largely along the same pattern during the medieval era as well. The introduction of British control in India is directly responsible for the development of the present Indian judicial system. East India Company established the courts in Presidency towns, and the British Parliament adopted them later. Furthermore, the courts in the native states followed a similar pattern and operated under the supervision of the regional leaders.

Judiciary system in independent India:

After adopting the Constitution "for ourselves," independent India took steps to create a single or integrated judiciary with a pyramidal structure, with the Supreme Court serving as the highest court in the land with administrative total independence, the High Courts at the level of each State, and the subordinate judiciary, nay District Judiciary at the level of the Districts, all under the control and supervision of the corresponding High Courts[1].While the High Courts have both administrative and judicial authority over matters pertaining to the district courts, the Supreme Court is the highest court in the nation and has judicial authority. Both the Supreme Court and the High Court play the constitutional equivalent of two brothers. The Supreme Court is like an older brother, possessing certain plenary powers and capabilities of an extraordinary kind, despite the High Court's immense power.

In accordance with Article 142 of the Indian Constitution, the Supreme Court's judgement shall be binding upon all courts within India, including the High Courts. The Supreme Court and the High Court are both the court of record9 and have the authority to punish people for disrespecting the court.

The District Courts in the previously mentioned judicial hierarchy are further distinguished by having courts for both civil and criminal justice. The civil judge junior division occupies the lowest position in the hierarchy at the level of the civil justice system. The civil judge senior division is a court of original jurisdiction as well as an appellate court.

The district court, which sits above the civil judge, senior division, serves as a conduit between the High Court and the District Court's subordinate courts. In addition to having appellate and original jurisdiction, the District Court also has administrative control over courts below it, subject to the general supervision of the High Court. Similar to this, the criminal court is presided over by the Chief Judicial Magistrate and judicial magistrate of first class.

Any decision made by the lower court may be challenged in the High Court or Supreme Court. The decisions of the individual High Courts, to which the Supreme Court of India is subject, as well as the Supreme Court of India itself are binding on the subordinate judiciary[2].

In addition to the population expansion that has occurred since India gained its freedom, the number of cases still pending has increased in a variety of ways. The number of pending cases has increased, virtually overloading the judicial system. According to certain jurists and judges, an additional 320 years would likely be required to resolve the outstanding pendency.

India has 15,000 judges as opposed to the 17,641 authorized judges, including 630 High Court Judges. This results in a ratio of 10.5 judges for every million people. The growing backlog of cases in the courts, especially in the District Courts and High Courts, has been a major source of worry.The goal of reducing the amount of time it takes to resolve cases and to shorten the current period during which they are pending is of utmost importance.

According to Dr. M.N. Venkatachaliah, a former Chief Justice of India, the number of janadalats, or kangaroo courts, has dangerously increased across the nation as a result of public dissatisfaction with the legal system. It's time for the county to take a close, in-depth look at the entire judicial system, paying particular emphasis to how to address the backlog issue. An issue that jeopardizes the rights of plaintiffs and accused, harms the legitimacy of the judiciary, and undermines the basic foundation of the democratic order has gone unaddressed for far too long and with far too little effort[3].

The judges' duties include not only adjudicating disputes but also managing the affairs of their court and acting as administrators. It was practically impossible to facilitate judicial work in a timely way and lack of administrative capacity led to inadequate resource management[4]. According to Dr. Madhava Menon, the quality and productivity of the judiciary has degraded to an unacceptable level.Today, e-Governance is the buzzword in every aspect of life. It boosts productivity, improves accountability and transparency, and cuts down on administrative red tape and corruption.

A turning point in the development of human civilization has been created by information technology advancements and the invention of computers. It has caused a fundamental shift in all spheres of human endeavor. In every field of endeavor, it has led to increased effectiveness, production, and output quality. In the previous two or three decades, information technology has been promoted in western nations. The idea of using technology in the administration of justice raised worrisome ideas.

Regarding the use of technology in courts, the former president of India, who is also a technocrat, said: "Technology is unquestionably an essential element of change in all spheres of life." Another crucial part is the human component[5]. If technology is applied well, it can lead to significant improvements in all aspects of life. Any reform we consider is for a quick justice delivery system, keeping quality, transparency, and public accountability in mind.

DISCUSSION

Actions Taken to Carry Out the Computerization Policy at District Level Judiciary

A high-power committee was then established when Chief Justice Lahoti, the then chief justice of the Supreme Court of India, and the Prime Minister met jointly to conclude that some constructive initiatives should be made under the supervision of the Supreme Court. Therefore, it is likely that the Indian judiciary's computerization process can be divided into three phases, such as the selection of a location and acquisition of a site for computerization. The purchase of the necessary hardware and software for computerization is the main focus of the second stage. The third stage involved initiating additional development efforts to make computerization more accessible to the general public.

To carry out the work, the first e-committee was established. Justice Dr.G.C.Bharuka served as the chair of the aforementioned committee. The group worked on a military footing for a large portion of the mapping project. The locations were located, and up to 3500 complexes with 20,000 courts worth of subordinate courts were found. Working simultaneously at several sites was truly a mammoth task, but it was completed methodically.

The committee developed a comprehensive plan and roadmap for how the country should be computerized[6]. District judges and occasionally senior Civil judges (Senior Division) were chosen as nodal officers and placed with the title "Central project co-coordinator" at the level of the high courts. They served as a conduit between the High Court and the committee and were in charge of successfully carrying out the plan.

Software-related readiness Software development is a crucial activity that was carried out in collaboration with the National Informatics Center. Under the direction of an accomplished senior judge, the national informatics center of the Karnataka area had created specialized software named "litigation management system." The same has now been superseded with a more recent version, such as the "Case Management System" created by the National Informatics Centre, Pune. It makes use of the technical expertise of Indian software engineers.

Network and Rural Environment Expansion

The network and the internet are more crucial for the technology to work properly. If these things are missing, using a laptop or desk-top computer would simply serve to replace a manual typewriter. As a result, many courts in the State of Karnataka are taking steps to have dedicated lines. It is possible to use Indian telephone services. Wherever it is needed, the OFC is used to have rapid transmission. The most effective use of technology has been made in the development of local area networks, wide area networks, and state wide area networks[7].

Administrative Organization and Initial Steps

Every time a plaint is filed in a court, it is vital to record specific details such the parties' names, the case's specifics, the dispute's subject, the relief sought, the creation of order sheets, and the summons preparation. In the past, these procedures used to take a long time, resulting in significant manpower waste. The litigating public was not given the chance to learn the specifics of when consideration was required.

Documenting Evidence

Trial courts are essentially the courts that keep records of the evidence pertaining to disputed facts and provide rulings based on legal principles. It is crucial to accurately and transparently record the evidence. The outdated practice of writing down witness statements by hand and afterwards having them typewritten in public court has been replaced with a system that uses technology tools to record witness statements in public court[8]. In addition, high-end printers are now network-connected, making it quicker and easier for the public interested in legal proceedings and lawyers for the parties to obtain prints.

Delivering Custom Lap Tops

After the aforementioned stage had been completed to a large part, the purchase of hardware and software had begun, and as a result, not only had software been developed but also had been purchased standardized software. Each of the judicial officers received a laptop, a printer, and training to help them become more computer literate. Along with the judicial officers, the administrative and clerical employees received training on how to operate the computers on a network. The network was built at the LAN, WAN, and SWAN levels, and an effort was made to make the national grid have a data bank. Individual laptops with broadband access have made it possible to access the internet and have the window open to the world at large, allowing for a larger perspective and more effective case decision-making. In actuality, this is a portion of the National Informatics Center's initiative to introduce e-courts.

Information, Report, and Technology Initial:

When they have knowledge on the commission of a cognizable offense, police organizations in Bangladesh, India, and Pakistan will create a First knowledge Report. Usually, anyone who has social concerns reports it to the police. First Information Reports are discussed under Section 154 of the Criminal Procedure Code. The accused would always gain from the delay in submitting the First Information Report to the Magistrate since it would cast question on whether the document is tailored or not in the eyes of the court. Now, the procedures are followed to send First Information Report online[9]. In the State of Karnataka, the transmission of First Information Report to the court of District Judge is now being conducted as an experiment. By using the technical software, there won't be any delays that lead to pointless debates and would also stop any time loss. When the time is right, the necessary actions must be taken to transfer them from the local police station to the magistrate's court whose jurisdiction the offense was reported.

Considering Third Stage Development

The computerization of numerous stakeholder groups, including litigants in the public, judges, and court ministerial staff, advocates, and various other governmental organizations, has reached an essential point under the third stage. Each of the presiding officers, high court judges, and their personal aides are given access to the digital signature. The decisions are now digitally signed for authenticity. The practice of scanning judgements and archiving them has been abandoned in the state of Karnataka at the High Court level. On the other side, authentication is now used to store the digital copies.

Even at the level of the inferior courts, a similar procedure is to be implemented. Insisting that attorneys and the general public file their pleadings and documents electronically, ideally using PDF technology, is another crucial step that needs to be addressed. Without abandoning the current hard copy system, this should be insisted upon as additional information. Computers and technical advancement have definitely filtered down to India's rural areas. Once such a step is taken, it will be easier in the future to have efficient paperless courts. The cause list system is currently being phased out at the high court level. The Karnataka High Court has reduced its monthly paper usage to about a lakh sheets.

Access to online periodicals like All India Report and Supreme Court Cases is made available through the e-court project. The Supreme Court's rulings are accessible online. The decisions from 1950 up to the present day are now accessible with a mouse click. The decisions of several high courts are available online, but access to the decisions should be easier for users than the current approach, which is cumbersome and not conducive to individuals.

Linguistic aids

India is a diverse nation. A significant part is played by the local tongue. Reference to local or regional languages is frequently necessary for the compilation of judgments, reference to documents, and recording of evidence. The linguistic tools are utilized to assist the courts in having this functional system. This has

improved the efficiency and accessibility of the judiciary's work. You could utilize the software created by the Center for Development of Advanced Commuting.

It is now conceivable to do things that one had not previously considered. In light of technology advancement, the physical presence, brick and mortar, and cross-table conversations are increasingly making way for new things. Teleshopping and video conferencing facilities are now very common in today's society. The judiciary is unable to avoid these evolving phenomena.

In many locations around the United States of America since the 1970s, videoconferencing has been a common practice. Similar to a phone call, videoconferencing also includes a streaming visual image between participants. Any party to a lawsuit may seek videoconferencing in a courtroom. In its most basic version, a camera and microphone are placed on top of a television screen in front of which the courtroom party and the distant party are seated. After then, the audio and video are transmitted over phone lines or a broadband connection. The opposing party will appear on each viewer's screen. The speed and quality of videoconferencing also improve as the capacity to compress and transmit video and audio data grows. Early models had trouble with audio/video synchronization and had grainy images.The future is in videoconferencing, according to this technology is being used to some extent effectively. At first, certain cities and court complexes-built links between jail and courts.

ICT and legal education:

Without the right education, a person's inherent divinity will not manifest. Education, according to Swami Vivekananda, is a process of bringing out a person's hidden talents. Aspects of education have several facets. It goes beyond just reading, writing, or computer watching. It is a process of developing personality. The basic infrastructure for a nation's overall development is thought to be education. In fact, it is closely related to the development process[10]. The Government of India has designed its education strategy in the post-Independence era to guarantee free and required education to all children, at least up to the elementary level. A law student cannot ignore information technology in order to keep up with the rapidly expanding sector of information technology (IT), where employment opportunities seem to be endless.

Teaching law is one of the most honorable professions. Legal education entails more than merely studying legal texts; it also includes studying issues related to the economy, society, and politics. A lawyer may need to be knowledgeable in the nuances of engineering and medicine. The revelation of the truth is something that results from the various kinds of information a person has gathered. When information obtained at various points in time is used appropriately and in the right way, it develops into knowledge with wisdom.

The goal of legal education is to produce excellent citizens as well as good lawyers for the future of the country. They must be concerned about social requirements and human values. Students can communicate with those in need and learn new things thanks to ICT. The ICT develops a person's heart as well as his physical capabilities, and even the opposite. ICT is beneficial for fostering interdisciplinary research. The setting for students at law school would allow them to acquire knowledge from all spheres of life rather than limiting them to a bookish knowledge. The use of information technology with care and caution in the future and to conduct ICT research are the digital library and archives. The use of ICT has effectively turned the world into a village. In these days of technology and technical advancements, what was once impossible to even contemplate is now easily observable. Students, professors, and anybody else involved in the study of a body of information cannot live in isolation. This is more relevant to those pursuing law education, specifically.

The personality of managers, businesspeople, lawyers, judges, and even lawmakers are influenced by legal education. The study should be concentrated with the background of information technology to cater to the needs of everyone in a developing society. The future is promising for computer-related teaching and research, according to Professor Lakshminath. A significant exchange between legal academics and technologists would result from interdisciplinary research in the field of law and computers. Computers can help the legal profession in two different ways.

Branching logic can be used by computerized templates to guide clients through the process of analyzing their case and supplying the proper information to the court. Clients can be shown on video screens how to use the courtroom or even how to submit their case. Clients who cannot read due to illiteracy, a disability, or whose language is not English can access information through audio files in spoken form, such as Navajo. These services can be made accessible anyplace a client has access to the Internet, including libraries and courthouse kiosks. Even when the total quantity of resources available is relatively little, a comprehensive effort encompassing education, scholarship, resource development, and collaboration can act as a strong catalyst for change.

Artificial legal intelligence and the digital revolution:

The machine whisperers Dennis Ritchie (1941–2011) and John McCarthy (1927–2011) are responsible for a portion of the numeric souls of the gadgets of the digital age. When Mr. Ritchie and Mr. McCarthy first felt the impulse to communicate with machines, "digital" was still seen as anatomical jargon. If they no longer do, it is because of the new jargon created to manipulate automatons into carrying out human will. Mr. McCarthy created the list-processing language, or LISP, in 1958. It is the second-oldest high-level programming language that is still in use today. Compared to the machine code that early programmers had to utilize, it featured more incisive grammar and a wider vocabulary. About ten years later, Mr. Ritchie developed C. For the first form, C profoundly changed how computer programs were created since it made it possible for the same programs to run on several computers without requiring extensive alterations. Previously, programs had to be customized for certain models.

One of C's more advanced dialects is used to write a large portion of contemporary software. These include Java (the preferred language for many internet apps), C# (the language favored by rival Microsoft), and Objective C (the preferred language by Apple). Then, using C, Mr. Ritchie and his lifelong collaborator Ken Thompson created UNIX, an operating system whose potent simplicity won over users of the minicomputers that were beginning to proliferate in colleges and businesses in the 1970s. Today, its incarnations power the majority of mobile devices, whether they are based on Apple's iOS or Google's Android, and underpin the whole internet.

Mr. McCarthy always argued that the future lay in straightforward terminals connected remotely to a potent mainframe that would both store and analyze data. This idea has just lately been proven correct as cloud computing has gained popularity. UNIX sparked the development of mini and later microcomputers. LISP was purposefully created to start this discussion and with it, the discussion of "artificial intelligence," a term that Mr. McCarthy invented in an effort to raise money for the first conference on the topic at Dartmouth in 1956. He set himself the task of creating a thinking machine in ten years in 1962. Later, he would acknowledge how arrogant this was. It's not that technology couldn't handle it. The real issue was that "we understand human mental processes only slightly better than a fish understands swimming," according to one expert. He joked that it would take " Einsteins and one-tenth of the resources of the Manhattan Project" to build an intelligent computer. Neither came forward. At Stanford, Mr. McCarthy persisted in working on a machine capable of thinking. His dream was never fully achieved. Mr. Ritchie was luckier. He once said, "It's not the actual programming that's intriguing "It's what you can achieve with the outcomes,"

Bar and Its Function

Without Bar participation, a country's legal system would be lacking. Bench and Bar resemble two chariot wheels. The bar must protect the interests of its clients in addition to serving as a source of judges for the future. When computerization first began, the bar members were quite reluctant to utilize the technology, but things have changed gradually and are now openly stating that ICT should be seen as a part of daily life. In fact, Justice Ram Mohan Reddy of the Karnataka High Court bemoaned the inability of counsel to adopt cause lists that are delivered in electronic form and to object to the cessation of supply of cause lists in printed form. Some proponents have stopped using manual typewriters, while others use computers to undertake the work that was formerly done by the abovementioned typewriters. Each advocate's office

needs to be digitized, and the advocates themselves need to be comfortable with computers. They can now employ technology to have a cause list and to know where the display board is located. The nature of this is merely elementary. Naturally, the idea of having mobile libraries utilizing digital media has been introduced by the usage of laptops, I-Pads, e-books, and other devices, and as a result, the weight of ecological imbalance has decreased. However, this is not done frequently and has to be addressed.Each State's Bar Council, any necessary Barorganisations, and the Advocates Academy should provide members of the Bar with useful training so they can react positively to situations. Reorientation initiatives should be successful,

CONCLUSION

Information technology has paved the way and established a solid foothold in the nation's judicial system. While Article 14 of the Constitution ensures the right to equality, Article 21 places a moratorium on the taking of life and liberty outside of the just, fair, and reasonable channels set forth by law. In this regard, it is important to explore how far artificial intelligence research could be used to swiftly resolve cases using the right software and impose an acceptable penalty in a criminal case. As Prof. Lakshminath noted, In light of the difficulties, disruptive legal information technology and the newly developed Electronic Legal Information (ELI) could become the fourth cornerstone, joining the judiciary, lawyers, and the transmission of the law. Electronic Legal Information (ELI) includes (i) an integrated electronic law governing substantive civil law and procedural law, (ii) electronic filing of legal documents and evidence, and (iii) electronic information about the status of court cases. The current pillars are being transformed by ELI into their virtual counterparts, which have new capabilities to deal with the difficulties of high costs, delay, and complexity. For this reason, the time may come when we must translate all of our legal materials from whatever language they are currently written in into a digital language that computers and systems related to them can understand. To identify deviations and determine their severity, it is necessary to understand the law as a constant in digital form. To make the Rule of Law a reality rather than just allowing things to be ruled by law, when the deviation is too great, the person may be labeled a deviant and suitable rehabilitative step or even, if necessary, criminal proceedings in conformity with constitutional purposes may be adopted.

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CHAPTER 10
CRIMINAL JUSTICE SYSTEM AND ADMINISTRATION IN INDIA

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ABSTRACT:

Since the beginning of human life, crime has been a fundamental component of society. There were no laws in place to regulate behavior in the early days of human civilisation. Law and order problems emerged throughout time as a result of an increase in crime in a lawless society. As time went on, it became necessary to create standards of conduct for the administration of justice in order to stop and manage people's unlawful acts. Since the beginning of time, many methods and strategies have been used to dispense justice to the victims against whom crimes have been done in the form of Dharma or regulations established by the sovereign authority. The concept of the criminal justice system and its evolution in India are contextualized in this essay. This essay discusses the two types of criminal justice systems that are used around the globe, with a focus on the Indian system. The existence of the criminal judicial system during the ancient, Mughal, British, and post-independence periods is attempted to be studied. The major components of the criminal justice system, which include the judiciary, the criminal justice system, and the penal institutions, are examined along with their functions, and recommendations are made to strengthen and improve the current criminal justice system in India.

KEYWORDS:

Criminal Justice Systems,First Law Commission,Judicial Process, Indian Police Act.

INTRODUCTION

Police, courts, and jails are just a few of the separate organizations that make up the criminal justice system. This system works with preventing, detecting, prosecuting, and punishing criminal activity in human society. Such a judicial system's primary goals are to uphold tranquility, defend the righteous, and punish offenders. People in India have a wide range of rights to live with dignity. Every time a crime is committed, one or more fundamental human rights are infringed. Therefore, the main responsibility of the criminal justice system is to keep criminal actions in society under control by taking action and punishing those who are guilty in order to preserve the authority of the Indian Constitution and other laws. Four organizations the Investigating Agencies, the Prosecution, the Courts, and the Prison Authorities make up the criminal justice administration[1]. The function of each of the aforementioned elements is described to help comprehend the Indian criminal justice system:

1. **Investigating Agency:** The local police authorities under whose jurisdiction the crime is committed are informed whenever a crime is committed. According to the Code of Criminal Procedure, 1973, the police official's main responsibilities are to file a complaint, conduct an investigation, and provide a charge-sheet or final report for the competent magistrate. The establishment and operation of the police forces in India are governed by a number of state and federal legislation, including the Code of Criminal Procedure, 1973, the Indian Police Act, 1861, the Maharashtra Police Act, 1951, and the Delhi Special Police Establishment Act, 1946, among others.
2. **Prosecution:** Following the submission of the final report, the government-appointed prosecutor [1] has the responsibility of launching an investigation and establishing the defendant's guilt beyond a reasonable doubt.
3. **Court:** The appropriate courts will hear, try, and rule on the cases that the investigative agencies have filed. The Criminal Procedure Code has a list of the various courts' order of importance. The state's supreme court has appellate jurisdiction over its lower courts. Lower criminal courts were

established with the intention of trying to establish the guilty party's guilt, punishing him, and reestablishing justice in the community.

4. **Prison:** During their trials, suspects are housed in prison. However, after being found guilty, offenders are also sent to prison to serve their sentences. In addition to holding convicts in custody, it also offers them correctional services.

All of these entities aid the system in achieving its goal. [2] Every time a crime is committed by a person against another person or people, the need for a criminal justice system is felt. In India, there are two sorts of offenses:

1. **Recognizable:** A police officer may arrest a suspect for a recognized offense without obtaining a warrant if they are the subject of information or a complaint. Schedule I of the 1973 Code of Criminal Procedure lists this type of offense.
2. **Non-cognizable offenses:** For non-cognizable offenses, the accused cannot be taken into custody by the police without a warrant. Because these offenses are less serious in nature, magistrates are authorized to take cognizance of them.

Crimes are classified as either cognizable or non-cognizable when they are committed. The administration of criminal justice is started based on the type of crime that was committed. The first stage of a cognizable offense is crime detection, which is started by the complainant or victim filing a FIR. The concerned policeman then conducts an investigation and prepares a charge sheet. The Magistrate then starts the trial or refers it to the appropriate court, where it is conducted, evidence is presented, and facts are proven or refuted.

Finally, the appropriate court renders its decision. The police officer does not have the authority to look into a non-cognizable offense. The plaintiff is instructed to go to the Magistrate Court to seek redress, but he lodges the complaint anyhow. Based on the facts presented to the court, the trial is held and a decision is made by the court.

Criminal justice system's nature:

There are two different kinds of criminal justice systems:

The adventitious system

This system, which places more emphasis on the accused than the victim, is also known as an accusatorial system. The presiding officer hears both conflicting parties to the case in this method, where each is contesting the other party. Before a judge, who is an impartial and impartial party who makes the final decision in the case, the prosecutor and defense counsel present and defend their respective cases[2]. He is only expected to serve as a neutral umpire and not to investigate or examine the case. This approach is used in nations including India, England, and the United States.

System of Inquisition

The emphasis in this system is on the accused being guilty. The onus is on the accused to establish his innocence through proof. Under this system, there is a great deal of trust placed in the police and the prosecution.

In order to uncover the relevant facts, the judicial officer is directly involved in conducting the inquiry and investigation pertaining to the case. Such a government investigation's findings are regarded as conclusive and accurate. After that, the judge or magistrate's report is used to conduct the trial. The judge gathers the evidence, brings charges, and also interrogates the witnesses with the assistance of other agencies. As a result, he represents the prosecution himself. The accused has a chance to defend himself and demonstrate his innocence in front of a judge and jury. The inquisitorial system is actively supported by the State. Another method, known as the Inquisitorial method, is used in nations like France and Germany (and other continental nations).

The adversarial system is the foundation of India's criminal justice system. This system is accusation-focused. It doesn't concentrate on helping the victim. The prosecution and the police authorities have a responsibility to establish the defendant's guilt[3]. The system is predicated on the idea that, in the event of a crime, it is the responsibility of the police and prosecution to establish the accused's guilt beyond a reasonable doubt. The accused is not required to establish his innocence. It is the prosecution's sole responsibility to establish guilt. Police and the prosecutors must make a strong enough case because they cannot be trusted in India. Judges hear the case, consider the evidence, and render a decision in light of the prosecution's evidence. As a result, in this system, the judge must determine whether or not the accused committed the crime. The judge, who serves as an impartial umpire, decides whether to convict or clear a defendant. The guiding premise of this system is, "Let thousands of criminals go free, but not even one innocent person be punished."

In 2003, the Malimath Committee was established by the central government to consider changes that should be made to the Indian Criminal Justice System. After researching inquisitorial systems in other nations, the Committee came to the conclusion that some aspects of inquisitorial systems may be used to improve and enhance the adversarial system that now exists. The following recommendations were made: (a) The court should assume responsibility for seeking the truth; (b) The court should assign judges new responsibilities and work actively; (c) The court should provide guidance to the police officers looking into the matter and the prosecutors regarding investigation and the procedure of leading evidence in order to bring out the truth involved in the case; and (d) The court should place more emphasis on providing justice to the victims than penniless defendants It is necessary to shift the focus of the criminal justice system from the accused to the victim.

The development of India's criminal justice system:

The criminal justice system in India has a long history. It has had a methodical evolution since the Ancient Period. The various social, economic, and political circumstances that prevailed at different times have contributed to the evolution of the criminal justice system. The goal of criminal justice and how it is administered have occasionally changed as a result of the ongoing development in society[4].

Early Period the wrongdoers and the victims of early society disputes were resolved through retaliation and spiteful means because there was no state or other authority or government to regulate human behavior. Individual vengeance evolved into collective vengeance over time because men could only live and become strong in huge groups, and because doing so was essential to their survival. As human civilization began to develop into groups, it became apparent that creating guidelines for social behavior was necessary. To ensure that all people may live in peace and harmony, these laws served as the society's code of conduct. Inappropriate behavior by any member of the society was addressed by rules. This set of rules for behavior that governed and restrained people's behaviors in society became known as "Law or Dharma." People who had previously lived alone or in small groups gradually began coming together and creating large communities in order to coexist harmoniously.

Early civilization gave the Dharma a lot of importance during this time. There was no need for any authority to supervise or govern those who followed the guidelines because they were believed to be operating in accordance with Dharma. For a while, there were no crimes or bad deeds taking place in society, so there was no need for any external or sovereign authority to provide the people with justice. Such a perfect society, though, did not survive very long. The majority of the population was made up of atheists, and as a result, the state of society's affairs began to deteriorate. During this time, a small group of individuals who had no regard for the Dharma started taking advantage of and harassing the society's weaker members for their own benefit. Over time, "might became right" and the tyranny of the strong began to rule the weak. People were looking for solutions to bring Dharma back into society as a result of this chaotic law and order scenario. As a result, the King, who was seen as the society's sovereign head and the source of justice, came into power. The king's duties included protecting citizens and their belongings

as well as enforcing justice against offenders. The king put in place a structure to uphold the law and punish criminals. Criminal justice system is the name given to this system.

Even during the Vedic era in India, the evolution and development of the criminal justice system were visible. The practice of the King administering justice with the aid of ministers or advisors can be traced back to the Vedic era. According to the Rig Veda, the King was referred to as the defender of the people, whose responsibility it was to uphold law and order. The King had a responsibility to safeguard the safety and security of his subjects, even according to the Dharmasutras. The Mauryan, Gupta, and Chalukya dynasties all maintained this style of judicial administration. The criminal justice system in ancient India was highly well organized, with village councils made up of a small number of people who heard and decided on conflicts between villages and handed down judgments. With time, police authorities were also appointed, in contrast to village leaders, to uphold law and order as outlined in Kautilya'sArthashastra. It demonstrates that the king was assisted by organizations like the police even in ancient times. The sole distinction was that they were not known as "police," while performing duties akin to those of police agencies. In Pre-Mauryan times, the jail system was established alongside the police system [5].

The Mughal era

The development of the criminal justice system began in the Vedic era and continued under successive Hindu Kings in India. However, the fall of Hindu power as a result of an invasion by foreign invaders, particularly the Mughals, who controlled India until 1700 AD, rocked this criminal justice system. The Islamic laws served as the foundation for Muslim rule. The norm of equality for their own people was upheld by the Muslim monarchs. They were not aware of the caste system or the categorization of people into different castes. But during the Middle Ages, only Muslims were subject to this equality law. The Muslim monarchs used the Sunnah or Hadis and the Quran to decide cases.

The maintenance of law and order in the society, together with administering justice to the subjects, was the King's primary responsibility throughout this time. During this time, numerous courts were established to hear various cases. The courts where Kazis and Muftis heard and made decisions on criminal cases were known as Faujdari and NizamatAdalat. In addition, the Kotwal and Panchayat systems were established during the Muslim era. During the Muslim era, the panchayat system that existed during the Hindu era persisted unchanged. Both of these eras continued to use the panchayat system to decide local civil and criminal cases that were subject to the personal laws of the time. It carried on dispensing justice, and its judgements were final, binding on the parties, and not subject to appeal. The Kotwal system in cities and the Chowkidar system in villages were created and implemented by the Mughals. In order to uphold law and order within their respective territories, kotwals were given the authority to file reports of crimes and conduct criminal investigations. Those whose guilt was established received prison sentences and were housed in jails based on the types of crimes they had committed.

DISCUSSION

With the Charter of 1600, when Queen Elizabeth granted the East India Company permission to conduct trade and commerce in the East Indies, the Company first established its settlement at Surat before progressively expanding to Madras, Bombay, Bengal, Bihar, and Orissa. East India Company began gaining Indian Territory as well with the growth of the company. Until 1857, the Company kept expanding its sphere of influence.

Following that, the British Crown assumed direct control over India and returned the East India Company to England. Up until 1857, under the rule of the East India Company, various courts were established to hear matters involving its own citizens as well as those of foreigners and Indians. The British Crown ruled the nation from 1858 to 1947. The British overhauled India's already-existing criminal justice system in order to govern the massive population there[6]. When the British East India Company first arrived in India, the Mughals were in power. In addition to the Mughal emperor, Hindu Rajas and Nawabs ruled numerous Subbahs or Provinces. The Muslim monarchs upheld law and order based on Muslim personal

laws, and the Raja administered justice based on Hindu legal principles. The British did permit the continuation of Muslim criminal laws and processes after they established several courts in India. However, it was urged that the Muslim criminal laws be amended due to shortcomings because no civilized nation could implement such laws and processes in its court system.

Warren Hastings, the governor general, proposed judicial ideas to establish a reliable judicial system in the nation. Later, Governor General Cornwallis made significant suggestions for altering the current criminal justice system. The Crown Court and the Company's courts were the two sets of courts founded in India to administer justice. When making decisions in matters, the Crown Court typically follows English law; however, judges in Company courts follow common sense, equity, and good conscience. Mahommedan laws were employed in criminal situations. Due to this dual structure, the administration of the criminal justice system at the time lacked consistency and predictability.

The Crown established the First Law Commission in 1835 to create a consistent judicial process for the application of laws, both substantive and procedural legislation. Lord Cornwallis attempted to reform the police system during this time. Daroga was assigned as the police officer in each of the established police stations. Kotwal was the police officer in charge of the local police station[7]. The Indian Police Act, 1861 was created on the advice of a commission established in 1860 with the goal of reorganizing and improving the police system's capacity for crime detection and prevention. The prisons of the British era underwent little alteration, and the British kept the prisons from the Muslim era in operation. There was no considerable improvement made in prison conditions since the British had no intention of investing money on doing so.

The Company's Sadar courts and the Crown's courts were combined into one system after the codification to give the Crown power over the judiciary. There are many courts, including the Supreme Court, High Courts, Federal Courts, etc. After assuming control of India, the British deemed the three-thousand-year-old criminal justice system to be flawed and made attempts to drastically alter the existing justice system. Everywhere practicable, reforms were made. By revising and creating new laws, they brought about changes in the outdated laws. In order to advance India's criminal justice system, the management of the police, courts, and jails were also reorganized.

System of Criminal Justice Post-Independence:

The criminal justice system was created and used by Indian kings as a tool to control the populace since ancient times. Instead of defending the rights of the people, dominating them was always the priority. Our legal system was created by the British, but they also created the criminal justice system to oversee their colonial control in India. A key component of the criminal justice system is the police. It is a law enforcement organization whose job it is to keep society law and order. As previously said, the Indian Police Act, 1861 was passed to establish a unified police system that governs the composition and operation of the Indian police force. The Police Forces (Restriction of Rights) Act, 1966, which dealt with the performance of duty by police officers and upholding discipline, was afterwards created. Many state governments passed legislation during this time to oversee the operation of their own police forces, such the Bombay Police Act of 1951 and the Kerala Police Act of 1960.

State Police and Central Police are two divisions of the Indian police force. The Indian Evidence Act of 1872, the Criminal Procedure Code of 1973, and various state laws grant police authority the right to carry out their duties. Although the police system dates back to British times, attempts have been made to modernize it and enhance its operation and management. But in India, many outdated police working practices and methods are still in use. The bar, which includes the prosecution and defense, is essential to the administration of criminal justice. In India, there was no centralized legal profession structure in place before to independence. To oversee legal experts, it was deemed necessary to create the All-India Bar Council. The Advocates Act, 1961, was the law for legal professionals that the Law Commission of India recommended be passed. When a crime is committed in India, the State is considered to have been injured as well as the victim, making the State the complainant on behalf of the victim. Under Section 24 or

Section 24A of the Criminal Procedure Code, 1973, prosecutors or assistant prosecutors are appointed to conduct the trial and establish the guilt of the accused. The prosecutor's role is to present the case in the trial court and establish the defendant's guilt in light of the charge sheet submitted by the police authority. The prosecutors are in charge of handling the entire process of bringing justice to the victim[8].

One of India's three main governing bodies is the judiciary. Courts, a crucial component of the criminal justice system, are to administer justice. Under the Code of Criminal Procedure, there are numerous hierarchy courts whose purpose is to hold trials to unearth the truth regarding the commission of crime. The following list of criminal courts has been formed in India in accordance with the Criminal Procedure Code, 1973.Chief Judicial Magistrates Court; High Court; Sessions courts[9].

The goal of the criminal justice system's jails and correctional facilities is to change an offender's behavior for the betterment of society by punishing him as well as by correcting him and conducting investigations into his past. Establishing a correctional agency that includes prisons, a probation and parole system, and other facilities, becomes essential for this. The establishment of prisons is covered by the State list in the Indian Constitution's Seventh Schedule. The State Government is in charge of jail administration. The Prisons Act of 1894 and the State jail manuals govern how the prisons are administered. In the Sunil Batra case, the Supreme Court provided several directives for the operation and administration of jails in India. It suggested that in order to reform them and assist them in becoming better people, the State be required to uphold standards for housing, employment, and treating convicts with dignity. Jails have changed over time in terms of coordination amongst various criminal justice authorities[10]. To improve the operation of this system by addressing the shortcomings in the current jail system, numerous advisory boards and bodies have been established.

CONCLUSION

Without proper training at all levels and the coordinated operation of all three agencies involved in this process the police, the criminal courts, and the correctional administration made up of the prison service, the probation service, and the correctional agencies the purposeful administration of criminal justice cannot be carried out effectively. Only when this crucial coordination is secured at all stages and at all levels will it be possible to achieve the desired resultsThe suggestions from the Malimath Committee about the fundamentals of the criminal justice system need to be examined, argued, and modified to fit the current situation, as was previously addressed. The situation calls for is to investigate the human rights of the suspect, guilty party, victim, by the state authorities such as police, prosecutors, judges, and prison and attempt to create a reliable legal system in the nation. Perhaps it is necessary to remind the government of its responsibilities under the Indian Constitution and the Universal Declaration in order to ensure that people's human rights are upheld of Human Rights and the Covenant on Civil and Political Rights and make sure that our criminal justice system's officials don't undermine it. Much anxiety is on the importance of having a just and compassionate criminal justice system.

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CHAPTER 11
UNFINISHED SAGA OF INDIAN PRISON REFORMS: A JUDICIAL TREND

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ABSTRACT:

Every community consists of individuals who have various life ideologies and perspectives. There are many different perceptions, which frequently causes people to act differently to support each of their individual perceptions. However, these various behaviors could have a range of social effects, not all of which would be favorable. According to Roscoe Pound's notion of "social engineering," people's interests should be managed in a way that allows them to behave freely, but only to the extent that the common good of society is protected. To prevent individuals from acting in a way that harms society, the law is used to restrict their actions in this situation. The necessity to manage human behavior resulted in the development of a system for regulating individual behavior in order to safeguard the interests of society as a whole, and people were made accountable for their deeds. Additionally, as a form of punishment, it developed a system for isolating the offenders from society and holding them in facilities now known as prisons. The concept of "prisonization" has recently taken on a very broad scope, encompassing everything from deterrence when absolutely necessary to offering specific reformatory measures with the aim of reintegrating the inmates into society and allowing them to lead normal lives.

KEYWORDS:

Accountability, Judicial Trend, Prisonization, Prison Reforms, Social Engineering.

INTRODUCTION

The emphasis on dealing with criminals has switched from deterrent to reformative methods as a result of recent breakthroughs in human rights philosophy. Prisons, however, continue to play a crucial role in the criminal justice system because they can serve as both deterrents and testing grounds for reform. Prisons are important because they house those who are being tried yet whose presence is typically necessary for the trial[1]. But first, let's look at how the term "prison" is defined before we discuss the need for prisons or how to improve them. Prisons were formerly known as "jails," "goels," or "penitentiaries." In accordance with Pachauri, a prison is "a place properly arranged and equipped for reception of persons who by legal processes are committed to it for safe custody while awaiting trial or for punishment." It is a location where a person's liberty is violated and they are held under the control of the state by an appropriate law. The restriction of freedom in this way serves as a means of enforcing the legal punishment owing to the person's unlawful act or omission. Most frequently, these locations are utilized to house individuals who have been accused or found guilty of a specific crime. As a result, a prison was initially thought of as a location where criminals were held pending trial, judgment, and the successful implementation of that decision [2].

According to a fair interpretation of Article 246 and Schedule VII of the Indian Constitution, the Union List and State List represent the federal and provincial governments, respectively, and the State List represents state governments. According to a comparative research, prison administration in India underwent a significant transformation after independence when it was included to the state list of subjects and various states adopted various policies in accordance with their respective social and economic resources. When the independence fight was being repressed in pre-independent India, prisons, this stood in stark contrast. The second section of this essay examines the formation of the various committees and any following government initiatives to modernize Indian jails. Part III focuses on the government of India's most recent comprehensive reform, evaluation, and report, which was finished and released in 2007. The judiciary has

also actively participated in India's prison reform story. In some cases, it intervened to ensure better implementation, while in other others, it changed policy when there was no parliamentary will to do so. Part IV of the essay discusses these developments and crucial conclusions. Part V then identifies the significant psychological and human rights problems that prisoners deal with as a result of the prison system's slow rehabilitation. The analysis of legislative trends, executive recommendations, and judicial pronouncements in Part VI leads this paper to its ultimate conclusions and a few recommendations. A number of committees have been established that have outlined certain topics that must be investigated in order for prisons to serve as a setting for the reformation and rehabilitation of inmates while also preserving their human rights. The researcher will shed light on several such committees established in India after independence as well as the suggestions they made in this chapter.

Post-Independence Era

India after independence was a liberated country that adopted numerous laws supportive of human rights. The newly elected government was eager to enact several laws motivated by the spirit of the constitution. This also motivated the government to improve jail administration, and as a result, numerous committees were formed to examine the Indian prison system and make reform recommendations[3]. The main suggestions made by these committees and how they affected jail management will be covered in this section.

The founding of the Pakwasa Committee in 1949 was the initial step in this direction.

In the sense that they shouldn't be under strict control, it recognized a limited right to work for inmates (Lok Sabha Secretariat, 2017). This group proposed paying salaries to convicts who were working while also arguing for prisoners' early release from punishment for good behavior.

The following program attempted to bring Indian jails up to line with global standards. To provide recommendations for reforms to Indian jails, the government engaged Dr. W.C. Reckless, a technical expert on crime prevention and treatment of offenders. Lok Sabha Secretariat in accordance with the Technical Assistance Programme in India, the expert was requested. The Indian government unanimously embraced his recommendations for the reformation and rehabilitation of inmates (Reckless, 1952):

1. Establishing a Central Bureau of Correctional Service at the Central level and making correctional services a crucial component of each state's Home Department.
2. Using reformation techniques to reduce the jail population and ease the strain on the system, such as parole and probation.
3. The creation of aftercare facilities to help all recently released inmates begin new lives and integrate smoothly into society.
4. The elimination of solitary confinement as a form of punishment because it has a detrimental effect on a prisoner's mental health. 5. Classification of inmates to help with differential treatment to help them change.
5. Regularly updating the State Jail to address new issues relating to the reformation and rehabilitation of inmates in accordance with changing social norms.

The All India Conference of Inspector Generals was also influenced by these ideas, which resulted in the foundation of a committee in 1952 that later produced the Draft All India Manual and the establishment of the Central Bureau of Correctional Service in 1961.

Committee for the All India Jail Manual, 1957

This committee was constituted in 1957 by the Central government. It was created with the intention of creating a standard prison manual for all states to maintain uniformity in prison administration and guarantee that at the very least minimal reformative measures were implemented in all prisons across the country. As a result, the 1960 committee report that was submitted became the Draft Prison Manual[4].

The committee offered a long list of suggestions for corrective actions, such as the use of contemporary approaches to problems with prison administration, probation, after-care, juvenile, remand homes, certified and reformatory schools, borstals, suppression of immoral traffic, etc. (Commission on the All India Jail Manual, 1960). According to the research, India should implement a national policy for prison reforms. The document also included guidelines for grouping convicts according to their needs in terms of care. Sadly, none of the committee's recommendations have ever seen the light of day[5]. The government has also been under fire from the Supreme Court for restricting this report on papers and has been urged to do so.

DISCUSSION

Central Bureau of Correctional Services 1961

In 1961, the Ministry of Home Affairs of the Government of India developed the CBCS in accordance with the recommendations contained in the studies by Dr. W.C. Reckless (1952) and the All India Jail Manual Committee (1960). The bureau was established with the aim of formulating a common strategy to counsel state governments on the new difficulties surrounding the management of jails. The CBCS recognized 1971 as "Probation Year" all across the country. The goal of this initiative was to raise awareness among the key players in the criminal justice system of the reformatory features of probation that had the potential to change the system[6].

Furthermore, in accordance with the suggestions made in the All India Jail Manual, the government established a working committee in 1972. In 1973, this working group delivered its final report. It highlighted the requirement for a national policy on prisons. Its key recommendations include the following:

1. Using alternatives to incarceration as a form of effective punishment.
2. The importance of providing jail staff with sufficient training and improving their working circumstances was emphasized.
3. Using scientific classification and treatment methods, and establishing guidelines for follow-up and after-care treatments.
4. Establish a connection between the growth of prisons and the administration of corrections and the process of national development. These should be regarded as essential elements of the national planning process' social defense components.
5. Determined a hierarchy of importance for the advancement of prison administration.
6. Including specific jail management issues in the Five Year Plans.
7. Modifying the Constitution to add prisons and related institutions to the Concurrent List; passing appropriate prison laws at the federal and state levels; and updating State Prison Manuals.

In 1964, the Ministry of Home Affairs transferred the Central Bureau of Correctional Services to the newly established Department of Social Security, which is currently the Department of Social Justice and Empowerment under the Ministry of Human Resource Development. For a variety of issues relating to jail administration and reforms, the Bureau remained tethered to the Ministry of Home Affairs. Later, it was decided to make its director the Ex-officio Prison Advisor[7].

Under the direction of Justice A.N. Mulla, this group was established by the Indian government in 1980. Justice Mulla offered a number of reformist strategies to be used in the Indian jail system to address previous shortcomings and prepare for difficulties to come. One of the committee's main recommendations was to establish an all-India service called the Indian Prisons and Correctional Service for the purpose of hiring jail administration staff directly (AICJR, 1983).

The group focused on ending the diarchy of jail administration and thoroughly evaluated all Indian laws pertaining to prison administration. The 1983 report also shifted the focus to the long-standing practice of grouping seasoned criminals and juvenile offenders, arguing that the goal of the criminal justice system should not only be to punish people for their crimes but also to treat each accusation delicately, taking into

account factors like age, and that juveniles should be kept apart. (AICJR, 1983) The group also made the following recommendations:

1. Improving jail conditions by ensuring suitable provisions for food, clothing, cleanliness, ventilation, etc.
2. Appropriate training of the jail staff and division into various cadres. For the purpose of hiring prison guards, it suggested creating an all-India organization named the Indian Prisons & Correctional Service.
3. Rehabilitation, probation, and aftercare should be included as a standard component of prison service.
4. Periodic media and public visits to prisons and related correctional facilities should be permitted so that the public can learn firsthand about the conditions there and be willing to collaborate with prison officials to carry out rehabilitation efforts.
5. Less under-trails are being housed in jails. They ought to be kept apart from the criminally guilty inmates.
6. The government must provide sufficient funding and resources to carry out jail reform.

The reformatory objectives of the jail administration are also highlighted in this study. The committee's recommendations are as follows: . Because custody is a prison's primary purpose, proper security systems must be created in accordance with the necessity for graduated custody in various types of institutions. Firm and constructive discipline must be a hallmark of prison administration, but with due consideration for the upkeep of inmates' human rights.

1. The state must make every effort to safeguard prisoners' remaining rights.
2. Prisoners have long complained about the monotony of the prison diet and the caliber of the food provided. Diet takes on a special significance in the confined spaces of jails, where inmates aren't allowed to eat the cuisine they prefer. The prisoner's food is controlled using various scales outlined in the state jail regulations.

The All India Jail Reforms Committee Report (1980–1983) states that as a result, the prisoner community has engaged in significant protests and demonstrations. As a result, the Committee established stringent guidelines to ensure that the food prepared for the convicts was of high quality and nutritional value. Food purchases were to be made via government distribution centers rather than from specific contractors, and they were to be of "medium quality". The group recommended giving each batch of 200 offenders access to its own kitchen.

Therefore, the All India Jail Reform Committee had both benevolent and disciplinary effects on life behind bars. The committee suggested that the guilty inmates be provided with a "raw diet" and the necessary fuel to prepare their own food.

The All India Jail Reform Committee's inaction is evident in the fact that few of the specific suggestions it made never came to pass. The Supreme Court of India noted that "Ministers, now or before, who were no strangers to prison torments, have done so little to reform conditions in prisons" in the case of Hiralal v. State of Bihar

Justice Krishna Iyer Committee Report, 1987

In India, the creation of this committee represented a significant advancement in jail management and reform. This was the first time a committee was formed with the express purpose of addressing the situation of female prisoners[8]. The committee's top suggestion was to increase the number of female police officers so that the suffering of female and juvenile detainees might be handled more humanely. This group placed a strong emphasis on hiring women for non-combat professions that call for more endurance, restraint, and patience. They should also receive specialized training to deal with mob outbursts in a delicate and humane way.

Legal Trends Regarding Prison Reforms:

Certain fundamental human rights must be respected for inmates in order to achieve the goal of their rehabilitation. In support of this, the Indian Supreme Court has drawn attention to issues with the country's jail system and inmate treatment in a number of cases. It has also released a number of regulations and rules to modernize the jails and grant the convicts' fundamental human rights. This section reviews the Supreme Court's rulings, noting the issues with prisons and the recommendations the court made in this respect.

In State of Maharashtra v. Prabhakar (1966), the court had to decide whether or not inmates had the right to read and write. The court gave the prisoner permission to read and write while incarcerated by referring to Article 21 of the Indian Constitution, which safeguards the right to life and liberty.

In the historic case of Bhuvan Mohan Patnaik v. State of Andhra Pradesh (1974), the segregation of convicts was contested. The Indian Supreme Court ruled by a three-judge panel that no harsh measures may be used to sway the prisoners' political views. The case is particularly famous for its intriguing fact pattern, according to which the prisoner was a Naxalite who was receiving cruel treatment and torture from the guards. The Court did rule, however, that a prisoner may not protest the placement of a high-voltage live wire system on the jail walls in an effort to prevent escape[9]. The court claimed that it was a prisoner's "fundamental right to escape from lawful custody," but the legislation refused to explicitly acknowledge this.

In Sunil Batra v. Delhi Administration (1978), the issue was whether inmates also have access to all constitutional rights in addition to their basic rights. The question of when a prisoner could be placed in solitary confinement was brought before the court. According to the court's ruling, a prisoner should not be subjected to shackling’s continually during the day and night. According to the court, using such a restriction as punishment would be "curse to the spirit of the Constitution" because such treatment is so unique and cruel. It was decided that the Prisons Manual did not give the prison authority the right to put a prisoner with a death sentence in solitary confinement. A prisoner who had been given the death penalty wrote a letter to a Supreme Court justice in another significant case involving the inhumane treatment of inmates. Delhi Administration v. Sunil Batra, 1980. It described how a jail warden tortured another prisoner to get money from his visiting relatives. In order to determine whether the protection of the prisoner fell under its purview, the court heard the petition as part of its inherent authority granted by Article 32 of the Constitution. The court has a duty to emphasize that in the eyes of the law, prisoners are individuals, not animals. Punishing the corrupt "guardians" of the prison system who savagely abuse the human inmate's dignity has become vital[10]. The court determined that because prisons are a natural part of India, prisoners may use Part III of the Indian Constitution, which outlines their fundamental rights as citizens. Traumatized inmates cause a shock to the Constitution.

CONCLUSION

The idea that criminals should be subjected to suffering in order for them to recognize their guilt and the consequences of their actions gave rise to the concept of jail. The original plan was to let the offender experience the same amount of suffering that he did to the victim of the crime and to society's conscience. But as society changed and people's concern for "individual" human rights grew, the rights of prisoners were also acknowledged. There is a growing conviction that people should be treated with fundamental human decency and respect even after they have been found guilty or accused of a crime. Thus, the concept of using prisons as centers for reform, rehabilitation, and treatment of inmates so that they may be rendered capable of contributing to society and leading normal lives after being released from jail, arose. As a result, the jail received some basic amenities, correct standards were upheld, and the prison was kept from becoming "hell on earth," as was the traditional view of incarceration. The primary concern was to continue running the jail in a way that both fulfills the original intent behind its founding and can also accommodate growing societal expectations around how inmates should be treated.

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CHAPTER 12
A REVIEW OF HUMAN RIGHTS PROTECTION AND ROLE OF JUDICIARY IN INDIA

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ABSTRACT:

By enforcing various laws, the State upholds the framework of social order without which well-ordered social life would not be conceivable. According to a number of social contract theory thinkers, the goal of state formation is to uphold and defend individual rights. Aristotle claimed that the state was born out of basic human needs and endures now for the sake of a good life. According to Prof. Laski, a state is judged by the rights it upholds. Similarly, Locke believed that the goal of state should be to remove all barriers to an individual's growth. As a result, the basic goal of the state, the protection of individual rights and liberties, serves as evidence of its existence. The protection of an individual's dignity is crucial for maintaining social cohesion because its violation can have serious repercussions on both the individual and society as a whole. Some fundamental rights that come with being a person are due to each individual. These rights often referred to as human rights should not be violated on the basis of gender, race, caste, ethnicity, religion, etc. Basic rights, fundamental rights, natural rights, and inherent rights are other terms for human rights. 'Human Rights' is a twentieth-century word, although the idea behind it predates mankind itself.

KEYWORDS:

Accountability, Human Rights, Individual's Dignity, National Human Rights Commission, Public Interest Litigation.

INTRODUCTION

The safeguarding of an individual's dignity is one of the principles and goals of the Indian Constitution, which are written in the preamble. The right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, the right to cultural and educational rights, and the right to constitutional remedies are among the fundamental rights that are guaranteed to individuals under Part III of the constitution in order to achieve this goal. The central and state governments have a responsibility to ensure that each person has the necessary circumstances to exercise their human rights. The Directive Principles of State Policy, which are incorporated in Part IV of the Constitution, establish the obligations on the government to strive for the welfare of the people and the defense of their human rights[1]. These serve as the state's guiding principles when developing policies pertaining to distributive justice, the right to work, the right to an education, social security, just and humane working conditions, the promotion of interests of the weaker sections of society, raising the standard of nutrition and living, enhancing public health, protecting and improving the environment, enhancing ecology, etc., so that each person can fully exercise their rights.

The Judiciary's Function

The goal of "protecting the dignity of an individual" cannot be achieved just by providing for fundamental rights; instead, the rights must be freely enjoyed. The right to constitutional remedies, or the right to petition the Supreme Court to uphold fundamental rights, is so guaranteed by Article 32.

1. The protection of citizens' human rights is the judiciary's constitutionally mandated duty.
2. The Supreme Court and High Courts have the authority to act to uphold these rights.

The Constitution's Articles 32 and 226 also provide mechanisms for remedy. For the preservation of his or her fundamental rights, the redress of grievances, and the enjoyment of their fundamental rights, an aggrieved person may directly approach the Supreme Court or High Court of the concerned state. In certain situations, the court has the authority to issue the proper orders, directives, and writs of habeas corpus, mandamus, prohibition, quo warranto, and certiorari. The judiciary is ultimately responsible for defending citizens' human rights. In addition to defending the constitutionally guaranteed rights, it has also expanded the definition of the fundamental rights to include some unrecognized rights[2]. People consequently have access to both enumerated and unenumerated rights.

India's protection of human rights

In Maneka Gandhi v. Union of India, the Supreme Court construed the right to life in order to broaden its application and infer unlisted rights such the "right to live with human dignity." The Supreme Court developed the "emanation" hypothesis to give the existence of the fundamental right significance and purpose. After that, the State of Maharashtra and others were defendants in numerous court proceedings, including People's Union for Civil Liberties and another. The Administrator, Union Territory of Delhi ruled in Francis Coralie Mullin v. Francis Coralie Mullin that the right to life also includes the right to live with dignity. As a result, even though certain rights are not expressly stated in Part III of the Constitution, they have still been acknowledged through judicial interpretation.

The judiciary has loosened the locus standi rule, or right to move to court, which states that only those who have been wronged may do so to have their complaints heard. Public-spirited individuals can now file a writ petition for the enforcement of the rights of any other person or class through public interest litigation if they are unable to exercise the Court's jurisdiction owing to poverty or any other social or economic impairment. The Supreme Court ruled in S.P. Gupta v. Union of India and Others that any member of the public can approach the court to enforce the legal or constitutional rights of people who are unable to travel to court due to poverty or any other infirmities. A person may even complain in writing to the court about a rights infringement. The potential to give fundamental human rights to the underprivileged and vulnerable members of the community is provided through public interest litigation. Any public-spirited person can file a lawsuit in the name of injured parties who are unable to do so themselves because of their precarious circumstances in order to safeguard their rights and provide social, economic, and political justice for disadvantaged groups. In other decisions, including BandhuaMuktiMorcha v. Union of India, RamsharanAutyanuprasi and others Union of India and Others, and NarmadaBachaoAndolan v. Union of India, the Supreme Court has made similar remarks.

As a result, public interest litigation has evolved into a mechanism for safeguarding Indian citizens' human rights.In Sakshi v. Union of India, the Supreme Court emphasized the necessity to establish procedures that would enable the child victim to testify in court with ease and held that proceedings should be conducted in front of cameras. In Sheba Abidi v. State of Delhi, the Delhi High Court remarked that child victims had a right to a support person during the trial and established that they can testify outside of the courtroom. Our society views women as weak, which has caused women to be less advanced in every area. Women continue to be underrepresented and frequently denied fundamental human rights. They experience violence in society, whether it occurs at home or at the place of employment. They experience prejudice despite having a right to equality guaranteed by Article 14 of the Constitution. When it comes to the Indian labor market, gender is thought to be the most crucial variable. In India, wage discrimination against female laborers is a relatively prevalent occurrence. Women typically make less money than their male counterparts do. However, Article 39 of the Constitution ensures that men and women will both get equal compensation for equal effort. Despite the guarantees of equal rights for women, they still do not receive the same treatment as males.

In the case of Associate Banks officers Association State Bank of India, the Supreme Court defended the rights of women workers and ruled that such workers are not in any way inferior to their male counterparts and as a result, there should be no discrimination against women based on sex. In State of Madhya Pradesh

v. Pramod Bhartiya, the Supreme Court ruled that pursuant to Article 39, the State must focus its policies on ensuring that men and women receive equal pay for equal work[3].

The Supreme Court cited Article 21 the protection of life and personal liberty in the State of Maharashtra v. Madhukar Narayan Mandlikar case, holding that even a woman of simple virtue has a right to privacy that no one can violate. SubraChakarborty v. Bodhi Santa Gautam according to the Supreme Court, rape is a crime against fundamental human rights. The Supreme Court established measures to safeguard women from sexual harassment in the workplace in the event ofBoth Vishaka v. State of Rajasthan and Medha Kotwal Lele v. Union of India reaffirmed this principle. There are 31 guidelines for providing a safe workplace for women, and it is also required that employers accept responsibility when sexual harassment occurs at work. In BALCO Employees Union (Regd.) v. Union of India and Consumer Edu. & Research Centre v. Union of India, the Supreme Court upheld the rights of workers. The Supreme Court ruled in People's Union for Democratic Rights v. Union of India that releasing people from bonded labor required rehabilitation in order to provide a full remedy. The Supreme Court noted in Workmen v. Rohtas Industries that the right to equality had become crucial in defending workers' rights against arbitrary layoffs and discrimination in pension payments[4].

The legal system defends all citizens' rights, even those of convicts.The Supreme Court upheld and maintained the convicts' rights by interpreting Article 21 of the Constitution. In the matter of Prem Shankar v. the Delhi Government.The Supreme Court ruled that it is unconstitutional to handcuff and fetter inmates, violating their right to human dignity. A landmark decision in D.K. Basu v. State of West Bengal 37 safeguarded the rights of the detainees, established numerous rules for arrest and incarceration, and said that the right to life includes the right to live with dignity. Similar to how the court dealt with the issue of mistreatment of women in police stations in Sheela Barse v. State of Maharashtra38, the court established a number of rules for the protection of women's rights in detention and correctional facilities. In Citizens for Democracy v. State of Assam and Others, it was further stated The Supreme Court ruled that using handcuffs and ropes to tie someone up is inhumane and a clear violation of their human rights, which are protected by both domestic and international law[5]. The court ordered that prisoners who have been convicted or are awaiting trial cannot be forced to wear handcuffs or other fetters while being held in custody or even while being transported. Police and jail staff are not permitted to order the handcuffing of any inmates or to do so while they are being transported.

DISCUSSION

Human Rights Protection Act of 1993

The Protection of Human Rights Act, 1993, a law that specifically deals with protecting human rights, was passed in response to the need for such protection on both a national and international level. The Act's goal is to give the defense of human rights an administrative framework. In order to further defend human rights and issues related to them, the Act calls for the establishment of Human Rights Commissions at the national and state levels in each state, as well as district-level Human Rights Courts[6].

In Section 2(d) of the Act, "the rights relating to life, liberty, equality, and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India," are defined as "the rights relating to life, liberty, equality, and dignity of the individual." However, the National Human Rights Commission's ability to function is constrained by the aforementioned definition. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights were both ratified by India.

There should be laws in the nation that are in compliance with these agreements because international covenants cannot be defended in court. As a result, these international conventions are in compliance with the rights granted by the Constitution. The State has a duty to preserve the people's human rights from any infringement, as well as to avoid such infringements by ensuring that the necessary tools are available for realizing those rights and further promoting human development. The government handled this duty

through its institutions. In order to carry out this duty on a national level, the National Human Rights Commission was founded under the Protection of Human Rights Act of 1993.

The composition of the National Human Rights Commission is outlined in Section 3 of the Act. A Chairperson and four additional people make up the commission. In addition to these members, the chairs of the National Commissions for Minorities, SCs, STs, and Women are given ex-officio membership in the Commission in order to provide representation for the underrepresented and oppressed groups in society. Section 12 of the National Human Rights Act specifies the duties of the National Human Rights Commission. The following are some of the duties carried out by the Commission:

a. Inquire into allegations of human rights violations on his own initiative, in response to a petition, or at the court's instruction [7].
b. With the consent of the court in question, intervene in any case involving a claim of a violation of human rights.
c. Pay a visit to any jail or other facility run by the State Government where people are held or lodged for the purpose of treatment, reformation, or protection in order to observe the living conditions of those residents and offer recommendations to the Government;
d. Carry out a thorough analysis of the Government's human rights policy in order to identify areas that could use improvement with regard to the respect for human rights.
e. The National Human Rights Commission has been carrying out this duty by offering comments on proposed legislation, alerting the government to a gap in the law, and developing a national human rights policy that takes into account regional requirements.
f. Examine the factors including acts of terrorism that prevent people from exercising their human rights and suggest appropriate corrective action.
g. Research international human rights treaties and other legal frameworks, and offer suggestions about how to best put them into practice.
h. Conduct and encourage human rights-related research.

By using publications, the media, seminars, and other accessible tools, promote human rights literacy across diverse societal groups and raise knowledge of the protections provided for these rights.The Commission has the authority to perform civil court functions such as obtaining affidavit evidence, summoning witnesses, requiring their attendance, and interrogating them under oath. The commission may, with the consent of the Central Government or the State Government, as the case may be, use the services of any officer or investigation agency of the Central Government or any State Government for the purpose of conducting any investigation related to the inquiry. Making suggestions and guidelines to various authorities is another significant duty performed by the National Human Rights Commission.

It has frequently given numerous suggestions on a range of issues, including food security, violence against women, jail changes, police confrontations, and public relations for the police. Recently, the Commission made suggestions regarding leprosy, mental health, human rights defenders, and prison reform. The Commission has contributed significantly to the upholding of human rights. It took suomotu cognizance in some cases of human rights infringement and cognizance of the complaints brought before it. A few cases that are detailed below may be brought up in conversation:

Based on media reports, the commission took spontaneous action in the Gujarat Communal Riot's Case regarding violence that occurred in Gujarat at the beginning of 2002. Additionally, a request for the Commission to get involved was sent to it by email. Gujarat had been visited by a Commission team in March 2002, and they prepared a private report that was eventually made public. The Commission found that the State had not upheld its fundamental and unavoidable duty to safeguard the rights to life, liberty, equality, and dignity of all its citizens[8].

Bonded Labour Liberation said that 400 bonded workers had been injured at Bonded Laborers Working in Chauna Stone Mines, District Gwalior, Madhya Pradesh.They had been employed in the Chauna Stone mines in District Gwalior, but they hadn't received their wages, and they had also been abused and

harassed. The Commission requested that the government instruct the Labour Commissioner, MP, to guarantee that these establishments are inspected and that all labor regulations are strictly adhered to people were freed and relocated to other areas in accordance with their requests. The Labour Department of the Government of M.P. afterwards reported on the rehabilitation of freed laborers and the actions taken against the at-fault employers. The matter was closed by the Commission after considering the report.

A press article captioned "Kids thrashed for refusing insect-infested school meal" has prompted the Commission to suomotu take cognizance of Case No. 2432/4/39/201246. According to the story, kids at a school in the Mithani Milki hamlet of the Vaishali district near Patna were allegedly beaten by their headmaster till they passed out after refusing to eat khichdi for lunch that contained insects. The Chief Secretary of the Government of Bihar and the District Magistrate of Vaishali were given notice by the Commission to produce a report on the situation and the actions they had taken. The chargesheet against the school's headmaster has been filed with the court, according to a report from the SP of Vaishali, Bihar. The District Magistrate of Vaishali, Bihar, was additionally instructed to submit a report and proof of payment regarding the granting of interim financial relief to the victim SC students in accordance with Rule 12(4) of the SC/ST (PA) Rules 1995 within six weeks. The Commission is taking the responses received into account.

Is school main bachche helmet pehankarkartehhainpadhai, a story published in a Hindi newspaper, prompted the Commission to take suomotu cognizance of the case in Case No. 1155/35/5/201447. Children are reportedly required to wear helmets while in class at a school in the village of Doodhli, 25 kilometers from Dehradun, according to a newspaper story. It has been reported that the school's building is deteriorating and that plaster from the roof is constantly falling. Many pupils have suffered injuries as a result of the plaster falling from the roof. Therefore, the parents have given the kids helmets to use at school in order to protect the kids' heads from injury. The press report's information brought up the severe issue of schoolchildren's human rights being violated[9].

NGOs are essential to the planning, oversight, and evaluation of the human rights protection process. According to B.R.P. Bhasker53, "the role of NGO is particularly important in the field of human rights as Government or their agencies often become violators of the very rights they are committed to protect and promote vast sections of the people who are illiterate and ill-informed, and that makes it easy for rights violators to act with impunity." In light of this, the need of human rights education becomes apparent, and NGOs are principally responsible for carrying out this responsibility.

Even the government has acknowledged the significant role that NGOs play in a variety of disciplines. They are making a significant contribution in a number of areas, including those related to health, education, the environment, and the defense of the rights of different social groups. Saheli for women's rights, Youth of Voluntary Action for the abolition of child labor, BandhuaMuktiMorcha for the abolition of bonded labor, People's Union for Civil Liberties, and Citizens for Democratic Rights are some of the NGOs working in this field. They have also played a crucial role by bringing numerous cases of human rights violations before the Supreme Court of India.

NGOs have on numerous occasions been the first to alert the appropriate authorities to a human rights infringement. The National Human Rights Commission has responded to a number of complaints, mostly information provided by regional NGOs. NGOs are also playing a significant role in effectively enforcing the government's policies[10].

The Protection of Human Rights Act of 1993 recognizes the remarkable contribution that NGOs make to advancing human rights. In addition to this Act, the Vienna Declaration and Programme of Action of 1993 also acknowledged the function of NGOs in advancing human rights. In order to create favorable conditions for the exercise of human rights, this declaration emphasized the necessity of national cooperation with NGOs.

CONCLUSION

Human rights are basic, fundamental rights that are essential to a person's growth and without which they cannot live a life of dignity. The Indian Constitution safeguards people's basic rights, or human rights; provisions for this have been established not only in the Constitution's Articles, but also in the Preamble, which notably mentions fundamental freedoms and the preservation of human dignity. In order to better protect human rights, the Indian judiciary even loosened the locasstandi norm, which paved the door for the notion of public interest litigation to emerge. Various instances of human rights violations have been brought before the courts through public interest litigation.

The rights of women, workers, kids, prisoners, and other groups were upheld by the courts. Thus, the judiciary is acting as a defender of peoples' human rights so that each person can live in dignity. The protection of human rights is a significant global concern.To that end, numerous international instruments have been incorporated, and on the basis of their provisions, national efforts have been made, such as the adoption of the 1993 Protection of Human Rights Act. The Act includes provisions for the creation of the National Human Rights Commission as well as State Human Rights Commissions in various States. It also calls for the establishment of Human Rights Courts at the district level so that victims of human rights violations can receive justice at every level. Since its founding, the National Human Rights Commission has done an amazing job of defending the rights of the populace while also providing financial assistance to the victims and their families.

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