

CONCEPT AND HISTORY OF JUDICIAL INDEPENDENCE IN INDIA

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I. Introduction

Judicial independence is essential in every democracy. All developed and underdeveloped countries emphasises on ensuring judicial independence. The laws and constitutions of different jurisdictions are replete with provisions how to appoint judges to higher judiciary to make it independent. In India, independence of the judiciary has also been ensured through several constitutional and statutory provisions. The security of tenure of judges, payment of salary and allowances to them from consolidated fund of India and multi-layered procedure to remove judges are some of the significant safeguards given in the Constitution. However, it does not mean that safeguarding judicial independence has not been significant in pre-independence of India. In ancient Hindu period, Muslim period and British period, the issue of judicial independence has been central. In Hindu and Muslim periods, one can see how Hindu kings and Muslim emperors emphasised to ensure fair justice delivery mechanism. However, during initial years of British rule in India, no substantive efforts had been made to separate the executive from the judiciary. It was only in later years of British regime that efforts to ensure judicial independence had been made by separating judiciary from the executive. The objective of the present paper is therefore to discuss the history of independence of judiciary in India with reference to pre independence period where judicial independence had been significant. The paper throws light on the functioning of courts, appointment of judges and their removal in different historical periods. Besides, the paper discusses the concept of judicial independence, its kinds and need to establish rule of law.

II. Appointment of Judges vs. Judicial Independence

Judicial independence and transparent appointment of judges are interlinked with each other. Judicial appointment is vital to ensure and guard judicial independence. If the system or procedure to appoint judges would be opaque it is not expected that judges would impart justice fairly. Contrary to this, the transparent procedure of appointment of judges would help to ensure independence of judiciary.

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III. Concept and Meaning of Judicial Independence

Independence is most crucial concept to define. In common phraseology, 'Independence' means not depending on any authority or not depending on another for validity or on another person for one's opinion. According to dictionary meaning the word 'independence' means free from outside control; not subject to authority of other.² In context of independence of the judiciary, the word 'independence' would mean that the judge is independent in imparting justice. The expression 'independence of the judiciary' encompasses freedom not only from its sister authorities like the legislature and executive but also from the fellow judges within judiciary. Judicial independence refers to freedom from improper pressure in the decision making process from any quarter.³ The word 'judicial independence' embodies the concept that a judge decides cases fairly, impartially, and according to the facts and law, not according to impulse, prejudice, or fear, the dictates of the legislature or executive, or the latest opinion poll.⁴ The independence of judiciary is an integral part of democracy, intending to shield the judicial process from external influences and to provide full legal protection to all individuals going to courts for whatever reason.⁵

IV. Kinds of Judicial Independence

There are two types of judicial independence viz. (i) the independence of judiciary as an institution also known as collective judicial independence (ii) Individual independence of judges. Both differ from each other and hence an integral part of democracy.

(i) Institutional Independence

Institutional independence means that the judiciary, as an institution, must be protected from the interference of other institutions of the State namely the legislature and the executive. The executive and legislature should not meddle in judicial functioning. But it does not mean that judiciary is entirely immune from the control of the executive and the legislature. In India all three limbs of the State namely the legislature, the executive and the judiciary acts on the principle of checks and balances. The Constitution of India clearly demarcates the functions of all limbs of

² Oxford Dictionary (Oxford University Press 3rd edn., 2010); Bryan A. Garner's Black's Law Dictionary (10th edn., 2014).

³ Sandra E. Oxner, "Judicial Education for Judicial Reforms," 1 *Journal of National Judicial Academy Bhopal* 213 (2005).

⁴ Available at: <http://www.duhaime.org>. (Visited on November 9, 2016).

⁵ Poonam Kataria, "Judicial Independence in India: An Overview" 1 *International Journal of Applied Research* 397-400 (2015) available at: www.allresearchjournal.com (Visited on February 12, 2017).

the State and each organ should discharge their functions within those limits. The legislature makes laws or rules, the executive execute them and judiciary interprets them. Similarly, judiciary in matter of making of laws and rules to regulate its own procedure, in financial, supervisory and disciplinary matters must be independent and the executive and legislature should not interfere in them.

(ii) Judges' Personal Independence

Independence of an individual judge is required to ensure impartial adjudication of a dispute. Individual independence of judges means that a person as a judge is free to act and discharge his or her judicial functions. A judge should not be influenced by any extraneous considerations. They are free to discharge their functions without fear and favour. If a judge is threatened or imparting justice under the influence of their superiors, media, political leaders and criminal forces, judicial independence could not be secured. All these factors may put an adverse impact on the decision making power of a judge. In order to minimise all aforesaid possibilities, it is important that a judge must practice a degree of aloofness consistent with the dignity of his office or he shall not enter into public debate or express his views in public on political matters or on matters that are pending or are likely to arise for judicial determination. Therefore, a judge as individual must be personally and internally independent. There are several provisions given in the Indian Constitution which secures personal independence of a judge. They are terms and conditions of service, appointment and transfer of judges, salaries, remuneration which have been made available to judges. These constitutional safeguards ensure that an individual judge may exercise his or her functions without any fear or favour. Besides, an individual as a judge must be independent from his fellow judges.

V. Need of Judicial Independence

In all democratic constitutions, or even those societies which are not necessarily democratic or not governed by any constitution, the need for competent, independent and impartial judiciary as an institution has been recognised and accepted.⁶ Indian democracy is not an exception. In Indian democracy various functions and responsibilities have been assigned to courts. In fact, there is a well-built need to strengthen the capacity and independence of the judiciary as an influential institution in India. The judiciary is constitutionally responsible to dispense justice by interpreting

⁶ R.C. Lahoti, *Canons of Judicial Ethics* 13 (Universal Law Publishing Co.1st edn., 2005).

and applying the laws of the land.⁷ Due to following reasons independence of judiciary needs to be safeguarded in India.

(i) Judiciary as Defender of Constitution

There are several constitutional principles and goals such as rule of law, distributive justice, enforcement of fundamental rights, to establish egalitarian society and uphold integrity and unity of India which cannot be defended and achieved without judicial independence. Besides, there are various statutory and other human rights available for citizens which need to be defended under all circumstances. The protection and implementation of these rights depends on the proper administration of justice which in its turn depends on the existence and availability of an independent judiciary.⁸ Within Constitutional scheme, Indian judiciary performs a watch dog role, exercising power of judicial review over the acts of the legislature and the executive.⁹ As an independent judiciary, under the constitutional scheme, the Court has played its role without any fear and favour over the acts of the legislature and the executive. When it appears to it, that any law and action of legislature and executive respectively violates fundamental rights, it not only evolved laws to fill vacuum but also has issued several noteworthy directions to governments in public interests. The free, unbiased and impartial judiciary can back constitutional mandate to secure and provide to all the citizens of India justice-social, economic and political. The preamble of the Indian Constitution imposes upon the governments to provide justice to all which can only be secured through unbiased judiciary. Likewise, the protection and enforcement of fundamental rights as envisaged in part-III of Indian Constitution such as right to equality, right to personal liberty, right against exploitation, educational and cultural rights have been the responsibilities of the judiciary. The role and significance of impartial judiciary also becomes more prominent because India is a welfare state wherein overall welfare of the citizens needs to be achieved. Thus judiciary has emerged as defender of the constitution and the principles enshrined therein.

(ii) Judiciary as Interpreter of laws

Role of judiciary plays an important part in keeping the society as a dynamic one.¹⁰ Judiciary interprets the law according to the needs and

⁷ Livingston Armytage, "Judges as Learners: Reflections on Principle and Practice" 1 *Journal of National Judicial Academy Bhopal* 120 (2005).

⁸ R.C. Lahoti, *Canons of Judicial Ethics* 13 (Universal Law Publishing Co.1st edn., 2005).

⁹ R. C. Lahoti, "Quest for Judicial Excellence"1 *Journal of the National Judicial Academy Bhopal* (2005).

¹⁰ Sabita Bandyopadyay, "Reforms in Judiciary-A Loud Thinking," *Journal of All India Reporter* 23 (2000).

aspirations of the individuals. The judiciary should give up mechanical interpretation of social welfare laws and has to adhere to principle of beneficial interpretation to confer maximum benefits on individuals. The governments' are making social welfare laws such as Maternity Benefits Act, 1961, the Equal Remuneration Act, 1976, Child Labour (Prohibition and Regulation) Act, 1986, Bonded Labour System (Abolition) Act, 1976, Domestic Violence Act, 2005, Right to Information Act, 2005, The Consumer Protection Act, 1986 and The Immoral Trafficking Prevention Act, 1956, *etc.* Interpretation of these laws must be pro-citizen. It is needless to mention here that judiciary has exhibited great skill to interpret the horizon of art. 21 right to life and personal liberty and included right to move freely within territory of India, right to get uninterrupted education, right to health, right to live in pollution free environment and many rights. Only independent judiciary can do it. Besides, the socio-economic rights as spelt out in part IV are interpreted by judiciary in pro citizen manners.

Only impartial, independent, fearless and broadminded judges can discharge their duties with utmost sincerity. A judge well versed in the law can do the justice and confer beneficial interpretation on social welfare laws. Likewise, several constitutional provisions also need to be interpreted to confer maximum benefits on individuals. It became possible only through responsible and goal oriented judiciary that judiciary succeeded to evolve compensatory, human rights, prisoner rights and environmental rights jurisprudence in India. It did not hesitate to implement international treaties and agreements while deciding cases. Thus, judicial independence is essential for the creative interpretation of Constitution and social welfare laws.

(iii) Judiciary as Resolver of Disputes

The most basic role assigned to judiciary is to resolve disputes among individuals as well as between Central and State government. The resolution and avoidance of disputes is required to maintain peace in society. The courts also give advice to governments on several matters. Judicial independence is significant in ensuring impartial decision making, to resolve disputes, avoid disputes and to tender advice to governments. Even in the Constituent Assembly, judicial independence was seen as a necessary requirement in order to adjudicate impartially and insulate from political interferences.¹¹ The judicial independence also becomes significant because in most of the cases before courts, the governments' have been the parties. Only uninfluenced judiciary can decide cases where government is

¹¹ Quoted by Arghya Sengupta, *Judicial Independence and the Appointment of Judges to the Higher Judiciary in India: A Conceptual Enquiry*" *Indian Journal of Constitutional Law* 116 (2012) available at: nalsarijcl.in. (Visited on February 12, 2017).

party without fear and favour. If judges would not be appointed fairly and independently, there would be chance of favouritism especially in case where judges exclusively have been appointed by the government.

(iv) Judiciary as a Tool to ensure Good Governance

The Courts are mean of assuring good governance in India. Transparency, accountability, equality, rule of law and openness in government's functioning can be achieved through independent judiciary. The executive, legislature and even the judiciary comes within the purview of the RTI Act, 2005 and hence answerable for any act done towards the public. The executive and legislature is responsible for decisions taken. Similarly, judiciary is answerable to disclose to public the manner in which judges are appointed. Transparency is ensured by the openness and fairness of procedures adopted in matter of appointments of judges.

VI. History of Judicial Independence in India

The present judicial system of India did not emerge all of a sudden. It has been the result and outcome of slow and gradual process and bears the imprint of the different periods of Indian history. The history of judicial system has been studied into two important phases (i) pre-independence period (ii) post independence period.

(i) Pre-Independence Period

Administration was well structured in ancient Hindu and Muslim periods. The administration of justice has always been regarded the most pious and important function in this period. In ancient Hindu period, the king was the fountain of justice but the function of the judge was vested in the priest.¹² The King assisted by priest was bound to impart justice as per the principles of *Dharmashatras*.¹³ In the discharge of judicial functions, the king was assisted by Brahmans, the Chief Justice (*Pradvivaka*) and other judges, minsters and learned men.

In Hindu period, a man of integrity and high calibre could become a judge though selection was based on caste. According to *Shrimad Bhagvad Gita*, a judge is a person bestowed with 'excellence'.¹⁴ The merit, personal qualifications and character were the major basis for appointment of Brahmans as judges. There are adequate references in ancient Hindu

¹² O.P. Motiwal, *Changing Aspects of Law and Justice in India* 11 (Chugh Publications 1st edn., 1979).

¹³ S.D. Sharma, *Administration of Justice in Ancient India*, 72 (Harman Publishing House, 1988); S.P. Tripathi, *Indian and Constitutional History*, 9 (Central Law Publishing, 3rd edn., 2011); M.P. Singh, *Outlines of Indian Legal & Constitution History* 2 (Universal Law Publishing, 8th edn., 2006).

¹⁴ See, *supra* note 7.

literature where emphasises had been given on appointment of qualified Brahmans as judges. For example, Manu was in favour of appointment of a Brahman as the chief judge. In exceptional circumstances, it is permissible to appoint a *Kashatriya* or a *Vaishya*, but never should a *Shudra* be appointed as a judge.¹⁵

In ancient Hindu period at village level, an official known as headman was bound to impart justice in fair manner. The king was to appoint a headman over ten villages. Different village officers were paid good salaries. The headman received one kulas of land as salary, headman over twenty villages was enjoying five kulas of land, a headman over hundred villages was enjoying a village and a headman over a thousand villages was enjoying a town.¹⁶ The king had control over salary of village officers. Similarly, judges could hold offices during King's pleasure. Under such circumstances, it was difficult to maintain judicial independence nevertheless by and large judiciary was enjoying ample independence in matter of discharging judicial functions.

In Muslim period the responsibility of administering Muslim laws was vested in several officers such as *Qazi*, *Muftis* and *Chief qazi*, etc. For each province, district and *paragana*, *Qazis* were appointed to decide cases. The qualifications had not been prescribed for a person who could be appointed as *Qazi* but he was to be a man endowed with common sense. Regarding the qualification of *Qazi* Jadunath Sarkar states that "Though many of the *qazis* were very learned lawyers, yet the primary and indispensable qualifications of a qazi were, in theory at least, honesty, impartiality, virtuousness and pure detachment from the society of the place."¹⁷ These observations show that during Muslim rule the honesty and impartiality of judges was significant.

In each district (Sarkar), the courts of *Qazi*, *Fauzdar*, *Kotwal*, *Sadre* and *Amil* were imparting justice. These officers were under the control of emperor. Similarly, at each *parganah*, there were courts of *Quazi-e-parganah* and *kotwal*. The *kotwal* was the principal executive officer in the town to try petty criminal offences. The *kotwal* was acting on dual capacity. He was the executive officer and was also authorised to decide cases. The executive's and judicial functions thus had been placed in same hand which is against judicial independence. The head of the judiciary, the *Sadre Jahan* and the Chief Justice all were appointed by the Sultan. However, the *quazi* or judges of subordinate courts were appointed by *Sadre Jahan*. Though

¹⁵ V. Mehta, *Cosmic Vision:- Manu, in Foundations of Indian Political Thought* 23-39 (Delhi, 1st edn., 1992).

¹⁶ M. Rama Jois, *Legal and Constitutional History of India* 17-18 (N.M. Tripathi Pvt. Ltd. 2nd 1990).

¹⁷ *Ibid.*

Emperor had great control over judges nevertheless during the period of sultans, judges were impartially appointed on the basis of their high standard of learning in law. Judges were men of great ability and were highly respected in society. The judicial officers were famous for their independence and impartiality. A chief justice was liable to be dismissed from the post of a *Qazi* if the sultan found him incompetent and corrupt.¹⁸

During Mughal period the emperor was considered the fountain of justice. In order to impart justice, several courts were constituted in the Capital, province, district, *parganah* and at village level. The Mughals were great believers in merit. They prided themselves on being good judges of men.¹⁹ The Mughal emperors like Akbar, Shahajan and Jhanhangir showed a lot of concern for appointing quality judges to impart justice.²⁰ In discharge of judicial duties the judges enjoyed independence and autonomy despite of the fact that the judicial officers were appointed by the Emperor. The executive had the powers to appoint judicial officers. The executive and the judiciary were not separate from each other. The judiciary was not free from the executive's control nevertheless in matter of imparting justice the judiciary was independent. The corrupt judicial officers were not allowed to continue in offices and removed at several occasions.

After downfall of Mughal, East India Company took over Indian territories and established factories at several places in India. EIC constructed factories at Surat, Bombay, Madras and Calcutta. At three presidency towns namely Madras, Bombay and Calcutta, the EIC constituted courts. Initially at Madras, the Court of Agent and Council was administering justice to English people who was presided over by company's servants. For Indians, a native court known as Choultry court was functioning which was presided over by *Adigar* (a village headmen). After removal of court of Agent and council, High court of judicature was set up at Madras which was also presided over by Governor and Council. This judicial set up indicates that no concern had been shown to separate executive from the judiciary. The company's servants were imparting general administration and sitting as judges in court of Agent and Council. However, in third phase, i.e. during 1688-1726, the EIC established court of admiralty to try maritime offences. This court was presided over by persons

¹⁸ V. D. Kulshreshtha, *Landmark in Indian Legal and Constitutional History* 25 (10th edn., 1992)

¹⁹ Ishtiaq Husain Qureshi, *The Administration of the Mughal Empire* 253 (Janaki Prakashan Patna 1st edn., 1979).

²⁰ J.L. Mehta, *History of Medieval India: Mughal Empire 458-73* (Sterling Publishers Pvt. Ltd Delhi 1st edn., 1981); Muhammad Azhar, *Social Life of the Mughal Emperors* 95-109 (Gitanjali Publishing House New Delhi 1st edn., 1974).

learned in civil law.²¹ But this practice could not continue for long time and British showed reluctance to send trained persons to sit as judges in India.

Like presidency town of Madras, the Admiralty court was set up in presidency town of Bombay. A person learned in Civil Law, was selected by the Company at England to be appointed as Judge Advocated of the Admiralty Court, besides two other judge. It is true that persons well versed in law were appointed as judges in Admiralty courts at Madras and Bombay but the judges were appointed by the Executive and it had absolute say in matter of appointing judges. Similarly, at presidency town of Calcutta, the court constituted was presided over by company servants. The executive and judicial powers were vested in one hand at Calcutta namely the Collector of the Company.

In order to remove the defects in judicial set up, the EIC set up corporation in all three presidency towns through charter of 1726. The Mayor's courts were constituted in all three presidencies. These courts were presided over by Governor and five senior members known as the Justices of Peace. The justices of the peace were chosen by British crown directly. But, the Governor in Council in each of the presidency towns started to interfere in the working of Mayor's courts. The Mayor's courts in return tried to assert its independence which led to the perpetual tension between the two. The executive in India i.e. the Governor and Council was willing to keep its full control over Mayor's courts but it was not liked by the later. The constant tussle between the executive and judiciary had been the major problems at all three presidency towns. The attitude of judges of the Mayors' courts to work independently i.e. without bothering about Governor and Council was not liked by the company's servants. In order to weaken Mayor's courts, the upper hand was given to executive to appoint judges of the Mayor's courts at all three presidency towns under the Charter of 1753. Under the charter of 1753, the corporation and Mayor's courts were made subordinate to the government in each presidency towns. The courts of request constituted under the Charter of 1753 were presided over the company's servants in all presidency towns. Under the new scheme the entire plan was executive ridden. The government usurped the powers of appointing the Mayor and all the aldermen in the Mayor's courts. In this way, the judicial independence exerted by the Mayor's courts was put to an end. The government had become the makers and un-makers of the judges of the Mayor's courts and thus it got large measure of control over the corporation.

The Mayor's courts were replaced by Supreme Courts in all presidency towns. The British Parliament passed the Regulation Act of

²¹ For details see, S.K. Puri, *Indian Legal & Constitutional History* 44-46 (Allahabad Law Agency, 6th edn., 1983).

1773. This Act provided for the establishment of the Supreme Court at Calcutta. After establishment of Supreme Court at Calcutta, in 1801 and 1823, the Supreme Courts were constituted in Madras and Bombay respectively. All Supreme Courts enjoyed several powers and jurisdiction nevertheless were subject to government's control to great extent. All courts were, courts of record having civil, criminal, admiralty, ecclesiastical and equity jurisdiction. Each Supreme Court was to consist, a Chief Justice and three *puisne* judges. The judges were appointed by the King of England. Barristers of not less than five years standing could be appointed as judges. The judges after their appointment could hold office during the pleasure of the crown. The provision in the Regulating Act made it clear that security of tenure was not guaranteed to judges and the staying of judges was depended on the tenure of government. Though all Supreme Courts were authorised to make rules to regulate their own procedure but rule making powers of the Courts was subject to the provisions that the King in council could approve, reject or modify these rules. Thus judiciary was not enjoying administrative and financial liberty in presidency town which is important to enjoy complete judicial independence.

Parallel to the establishment of Supreme courts in all three presidency town, the Governor General had establish Adalat system beyond three presidency towns known as *Mofussil* areas. Warren Hastings in judicial plan of 1772 set up adalat system in Bengal, Bihar and Orrisa. In *Moufussil* areas, civil courts such as Sadar Diwani Adalat, Mofussil Diwani Adalat were constituted whereas from criminal side Sadar Nizamat Adalat and Mofussil Fauzadari Adalat were set up by him. The court of Sadar Diwani Adalat consisted of the Governor and two members of his councils. It shows that the executive and judicial powers were placed in one hand only. Under such circumstances, the judges could not act and decide independently. Likewise, the Mofussil Diwani Adalat in each district was constituted with collector as the judge. The collector was looking after general administration and judge sitting as judge in Mofussil Diwani Adalat. This sort of scheme had threatened judicial independence. The Sadar Nizamat Adalat was presided over by Daroga appointed by Nawab and was assisted by Chief Qazi, Chief Mufti and three Maulvis. Though some sort of judicial independence had been guaranteed to this court but as a matter of fact, this court functioned under the supervision of the Governor-in-Council. At district level, the Mofussil Fozdari Adalat was presided over by Muslim law officers such as Kazi and Muftis and the Collector had been given the general powers of supervision over this court. Thus neither the criminal courts nor the civil courts set up by Warren Hastings could exercise judicial powers independently.

After passing of the Indian High Court Act, 1861, British Parliament passed several laws to consolidate scattered Indian laws. One of

the significant laws was the Government of India Act, 1915. This Act made several changes in the jurisdiction of the High Court. The Act granted immunity to the Governor-General and other executive officials from original jurisdiction of the High Court for anything done by them in their official capacity. It shows that the executive tried its best to keep itself fully immune from the control of judiciary. The government's decisions could not be questioned and they were not subject to judicial review. It was under the Government of India Act, 1935 that some positive and effective steps had been taken to secure and guard judicial independence. Under this Act, the Federal Court was constituted which was above the High Courts. The Act made changes regarding security of tenure of High Courts judges. According to Indian High Court Act, 1861, judges could stay in their offices during crown's pleasure. However, under the Government of India Act, the High Courts' judges were entitled to hold office until the attainment of the age of 60 years. This security of tenure was valuable provision to ensure judicial independence.

Like High Courts' judges, the judges of the Federal Court established under Government of India Act, 1935 could hold office until they attain the age of 65 years.²²The judges and the Chief Justice of Federal Court were to be appointed by His Majesty.²³As per the Act a person was not qualified for appointment as a judge of the Federal Court unless he has been for at least five years a judge of a High Court in British India or in a Federated State²⁴ or is a barrister of England or Northern Ireland of at least 10 years standing or a member of the Faculty of Advocates in Scotland of at least ten years standing²⁵ or has been for at least ten years a pleader of a High Court in British India or of two or more such courts in succession.²⁶ The Judges of the Federal Court were entitled such salaries and allowances and to such rights in respect of leave and pensions, as were laid down by His Majesty from time to time.²⁷ His Majesty was empowered to remove any judge from his office on the grounds of misbehaviour or infirmity of mind or body, on the recommendation of the judicial committee of the Privy Council.²⁸ After discussing the provisions of the Government of India Act, 1935, it becomes clear that some sort of independence and autonomy had been given to judges to impart justice. They had been granted security of tenure, only qualified persons could be appointed as judges of the Federal Court and the procedure to remove judges has been kept

²² The Government of India Act, 1935, sec. 200 (2).

²³ *Ibid.*

²⁴ *Id.*, sec.200 (3) (a).

²⁵ *Id.*, sec.200 (3) (b).

²⁶ *Id.*, sec.200 (3) (c).

²⁷ *Id.*, sec.201.

²⁸ *Id.*, sec. 200(2)(b).

complicated. The Federal Court was replaced by Supreme Court when Constitution of India was adopted and enforced.

(ii) Post Independence Period

India adopted new Constitution in 1950. Under the Indian Constitution, different types of courts have been constituted to impart justice. A Supreme Court was established at the Apex of the judicial hierarchy which exercise different jurisdictions. The Supreme Court is followed by the High Courts' constituted in different states to exercise multiple powers. At the bottom of the hierarchy are the subordinate courts.

The Chief Justice and other judges in the Supreme Court are appointed by the Indian President. Special and particular qualifications have been prescribed for a person to be appointed as a judge of the Supreme Court. The Constitution provides that a person who is citizen of India can be appointed as a judge of the Court. In addition, he should have been a high court judge for the five years or an advocate of a high court for ten years or he is, in the opinion of the President is a 'a distinguished jurist'. These judges retire after the attainment of the age of 65 years.²⁹ The Apex court works extensively for the protection of the fundamental rights of the Indian citizens. It also settles the disputes within several governments of the country. It has an authority to review its own judgements and orders.³⁰ Besides, judges of the High Courts are appointed on basis of high qualifications. The experienced persons shall be appointed as judge of the High Court.³¹ In the Constitution, adequate provisions have been given to ensure judicial independence such as security of tenure to judges, allowances, remuneration to be paid from consolidated fund of India and multi layered procedure to remove judges are some of the safeguards aim to guarantee judicial independence.

VII. Conclusion

The brief survey of the ancient judicial system reveals that the appointment of fair and neutral judges in courts has been subject matter of paramount importance for all governments particularly in ancient Hindu and Mughal periods. There have been ample references in ancient Hindu period where judges and presiding officers of the Court were appointed on the basis of merit. Every care was taken that judges could act neutrally and independently while dispensing justice. The corrupt judges were subject to punishment and could be removed. The priests alone could be appointed as judges. This practice showed that judges were selected on caste basis.

²⁹ See, The Constitution of India, 1950, article 124(1),(2) and (3).

³⁰ *Id.*, art. 137.

³¹ *Id.*, art.217.

However under such circumstances, judges were independent to impart justice. Therefore, the independence and accountability of judges was well recognised in ancient Hindu period. During Mughal period, efforts had been made by some of the Mughal Emperors particularly by Akbar, Jhangir and Shahajhan to keep judiciary separate from the executive. Contrary to this, in initial years of British rule, the principle of separation of powers had not been followed in letter and spirit. The servants of East India Company were presiding over most of the English and Indian Courts in presidency towns as well as in Bengal, Bihar and Orrisa. The executive, the legislative and the judicial powers were concentrated in collector who could be only British servant. However, in later years of British rule, steps had been taken to separate the executive from the judiciary. Warren Hasting and several other Governor-Generals, who visited to India, had made efforts to separate, the judiciary from the executive. But the efforts and steps taken by them were not free from defects. It was only after the passing of the Government of India Act, 1915 and Government of India Act, 1935 that the status of judicial independence improved to great extent. Several provisions had been inserted in these two Acts to ensure judicial independence and fair appointment of judges. After independence, regular courts have been set up in India. In order to ensure their independence, several provisions have been inserted in Indian Constitution like security of tenure and allowances. A provision has been inserted in Indian constitution that salaries of the judges shall be paid from consolidated fund of India. Further, neither Judges can be removed easily from their chair nor their conduct can be discussed on floor of the houses of Parliament. Such provisions in Indian Constitution are enough to ensure independence of judges.

But despite of such salutary provisions in Indian Constitution to ensure judicial independence, the recent incidents of judges' involvement in scams and corruption charges, their reluctance to be governed as per the Right to Information Act, 2005 and declaring National Judicial Appointment Commission Act, 2014 unconstitutional, has raised several issues regarding independence of judiciary in India. Indian judiciary holds a very high pedestal in Indian democracy and rising incidences of corruption charges against the judges must be viewed a serious problem. It is therefore right time to review once again, the National Judicial Appointment Commission Act, 2014 to ensure accountability and transparency in judicial administration.