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“JUDICIAL IMPROPRIETY: THE PLAGUE OF INDIAN DEMOCRACY.”

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I. ABSTRACT:

“The research paper attempts to analyze various aspects of judicial impropriety in India. India has had a hard time striking a balance between judicial independence and ensuring judicial conduct. The paper mainly analyses judicial impropriety in respect of Article 124 of Indian Constitution, identifying the importance, interpretation and the setbacks of the Article. The term ‘misbehaviour’ used in Article 124 of the Indian Constitution as a ground for removal is very ambiguous in nature, and justice can only be served right with the broadening of the interpretation of the term.

The research paper also formulates some forms of judicial impropriety relating it to the Indian as well as the international scenario. Thereafter, the paper discusses the accountability of these judges, relating it to the introduction of the Judges Inquiry Bill, 2005. The need for and implementation of accountability of the judges has been focused on. The current situation and implementation of Article 124 of the Indian Constitution have been criticised in light of precedents and their effect on the working of the judiciary.

Furthermore, there is a comparative analysis drawn between the removals of judges in international codes with that of India. Finally, the research paper ends with suitable suggestions and recommendations that will lead to much better regulated and accountable judicial system, in the opinion of the researcher.”

II. RESEARCH OBJECTIVES:

The research paper aims to fulfil the following objectives:

- *The research paper aims to understand judicial impropriety as a drawback of judicial independence and how it can be curbed;*
- *The research paper aims to analyse the requirement and the success of Article 124(4) and 124(5) of the Indian Constitution;*
- *The research paper aims to provide a broader interpretation of the term 'misbehaviour' as mentioned in Article 124(4) of the Indian Constitution;*
- *The research paper aims to understand the concept of accountability and the ways in which it can control judicial misconduct;*
- *The research paper draws a comparative analysis between the Indian and International scenario in case of the removal of judges;*
- *The research paper sorts to recommend ways to ensure judicial conduct and accountability.*

III. LITERATURE SURVEY:

III.1 "JUDICIAL ETHICS AND CONDUCT OF JUDICIAL OFFICERS"- JUSTICE V. K. BIS:

The research paper focuses on judicial ethics and the code of conduct that the judges are required to follow and the effect of improprieties on the justice system of India. The paper is made in light of the case of **K.P. Singh vs. High Court of H.P. & Ors.**¹ The integrity of the entire judiciary is compromised when judges fail to adhere to this code of conduct. It discusses the importance of judicial discipline, the need for maintenance of integrity, the impact of the dishonesty of the judges and the binding value of the decision of the enquiry committee.

The research paper fails to provide information about the steps taken to curb such improprieties and the disciplinary measures in case the code is not followed.

¹K.P. Singh vs. High Court of H.P. & ors, 2011(3) KLJ 1.

III.II 'MEANING AND SCOPE OF 'MISBEHAVIOUR' IN THE REMOVAL OF JUDGES: A CRITIQUE"-

JAYANT SINGH:

The research paper presents a critical analysis of Article 124(4) and (5) of the Indian Constitution and focuses on the interpretation of the term 'Misbehaviour'. It criticises the present process of removal of judges in light of precedents and the ineffectiveness of Article 124 of the Indian Constitution, as it fails to bring about a disciplinary change in the judiciary.

The paper fails to discuss the reasons why the removal process is not effective and the possible ways to ensure the regulation of the conduct of judicial officers.

III.III "ACCOUNTABILITY OF THE HIGHER JUDICIARY IN INDIA"- MEDHASRIVASTA:

The research paper draws a comparative analysis between the provisions in the international countries and India. It suggests methodologies to ensure higher accountability, putting the special focus of the judicial performance evaluation. The paper also discusses the challenges in front of the legislature in implementing provisions that will lead to curbing of judicial impropriety.

The research paper fails to discuss the removal process and the challenges faced by the legislature once it has substantially been proved that there was misconduct. It merely talks about the evaluation and not the post effect of such evaluation.

IV. INTRODUCTION:

"An independent and honourable judiciary is paramount to justice in any society"

Inherent in the rules of every country are the precepts that judges must respect and honour a judicial office and thrive to maintain and enhance the confidence of the public in the legal system. It is indispensable that the judges must personally observe and maintain high standards of judicial conduct.² There is a direct relationship between the expected ethical standards, confidence of the public and judicial independence. The deference to the rulings of the Courts depends upon the confidence of the public in the integrity and independence of the

² Canon 1, The 1990 model code.

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judges.³ This integrity coupled with the independence of judges depends upon their acting without fear or favour. Now although it is a requirement for the judges to be independent, they must also impartially comply with the law and avoid judicial impropriety to the best of their capacity. The position of the judicial officers are at par with the political executives as going by the nature of the duties discharged by judges, they are the decision-makers of the country and their decisions by way of orders are binding on all throughout the territory. Therefore, their conduct, behaviour, tolerance and temperament should be at par with the constitutional position they hold.⁴ Therefore, considering their constitutional position and the nature of duties that they are discharging, their conduct and accountability are imperative. The trust and confidence of millions in a country lies in the judiciary. Therefore, it is imperative to adopt measures that seek to promote accountability and transparency in the justice delivery system. To ensure that there is no appearance of impropriety in the judiciary, disciplinary and deterrence measures must be adopted coupled with the creation of incentives for the self- improvement of the judges. Article 124(4) of the Constitution of India,⁵ read with proviso (b) to Article 124(2)⁶ and proviso (b) of Article 217(1),⁷ provides a procedure for removal of judicial officers in case of ‘proved misbehaviour or incapacity’.⁸

V. BACKGROUND:

“With great power, comes great responsibility.”

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.⁹ Judicial impropriety has been defined as any act of a judicial officer that violates the law, violates the Court rules, and violates specific provisions of the code of judicial conduct.¹⁰ The Constitution of India provides the concept of rule of law which came to be an accepted and a developing law of the land. Article 50 of the Indian Constitution, prescribes the guidelines of separating the executive of the State from the

³Tarak Singh vs. Jyoti Basu, (2005)1SCC 2011.

⁴ Rajesh Kohli vs. High Court of J. and K. and Anr., (2010)12SCC783.

⁵INDIA CONST. art.124, cl. 4.

⁶INDIA CONST. art.124, cl. 2.

⁷INDIA CONST. art.271, cl. 1.

⁸Mrs. Sarojini Ramaswami v. Union of India, 1992 (4) SCC 506.

⁹ Justice G. S. Singhvi, *Judicial Ethics*, Journal of Delhi Judicial Academy, 7(2), 93 – 106 (2011).

¹⁰ Canon 2A, Ethical Standards for Judge, Rule 1.2, , 1999.

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judiciary from.¹¹ It is pertinent for the judges to recognise their constitutional duties to uphold the rule of law in any circumstances and under any condition. Maintaining this rule of law undoubtedly demands a high standard of conduct of the judges which cannot be equated with that to ordinary members of the executive class.

It has been established through case laws that even though there is nothing criminal about a judge having a personal ambition to achieve something, but if such ambitions are achieved by compromising the divine judicial duty of the judge, then such conflict of personal interest and judicial duty shall be discouraged through essential measures being taken against the judicial officers.¹² Article 124(4) of the Indian Constitution was introduced to cause deterrence to such improprieties. The legislative intent of ensuring a check on the judiciary was made very evident with the passing of the *Judges Enquiry Act, 1964*. The committee formulated for the passing of the Act had elaborate discussions on the same, prominent members of the parliament were Sri M.C. Setalvad, former Attorney General and Attorney General, Sri C.K. Daphtary, and gave a joint report on 13th May 1996. Finally, the *Judges (Inquiry) Act, 1968* was passed providing for procedure for the investigation and proof of misbehaviour and incapacity of Judges throughout the country. The main purpose behind passing the bill, 1964 was to ensure judicial accountability.¹³

There is a remarkable development observed in the actions taken against judicial impropriety, from impeachment to the introduction of 'minor measures'. Therefore, the law commission sort to recommend provisions empowering the judicial council to them self-impose minor measures, so the proven impropriety or incapacity of the judges will not warrant a direct removal under Article 124 of the Indian Constitution such minor measures would include requests for retirement, issuing advisories, warnings, stoppage of assignment of judicial work for a limited time and censure or admonition, public or private.¹⁴ The constitutional validity of such minor measures has been questioned in a lot of countries including the US and Canada.¹⁵ Nevertheless, as judicial self-regulation or in-house measures were considered to

¹¹INDIA CONST. art. 50.

¹²Tarak Singh vs. Jyoti Basu, (2005)1 SCC 201.

¹³C. Ravichandran Iyer v. Justice A.M. Bhattacharjee, 1995 (5) SCC 457.

¹⁴The National Commission Report (Review of the Constitution of India), 2001.

¹⁵Chandler v. Judicial Council, (1970) 398 US 74.

be a part of the “administration of justice” and derived force from the general power of the Judicial Branch to improve its efficiency, such measures was considered to be constitutionally valid.¹⁶

VI. ANALYSIS ON ARTICLE 124:

The Constitution of India provides for the establishment and constitution of the Supreme Court which acts as the interpreter and the guardian of the Constitution. Article 124 of the Indian Constitution covers aspects related to the Supreme Court, starting from the appointment to the removal of the judges. Clause 4 provides the removal of a judge of the Supreme Court by an order of the President passed by each house of the parliament, supported by the majority of the total membership of the House. The grounds of such removal as mentioned under clause 4 are proved *‘misbehaviour or incapacity of the judges’*. Clause (5) lays down the procedure for presentation of an address for the investigation and proof of misbehaviour or incapacity of a judge shall be determined by the Parliament, by Law. The process of removal is a complicated one; this process had started by the *Judges Inquiry Act, 1968*.

The notice of removal is first handed over to the Speaker of Lok Sabha or Chairman of the Rajya Sabha. Once the motion is admitted, the speaker constitutes a committee constituting of three members to investigate the charges alleged against the judge of the Supreme Court. Finding of guilt is done by the enquiry committee subject to judicial review in case of an aggrieved judge.¹⁷ Up until now, the judge does not receive a copy of the report of the enquiry committee for challenging it in the Court.¹⁸ However, before the motion for the removal of the judge is taken up in the parliament, the Speaker of the Lok Sabha provides a copy to the judge, to give him a fair chance to rebut the charges against him as required by the *Judges (Inquiry) Act, 1968*. Thereafter, the impeachment order shall be passed with a special majority of more than two-third sitting members of the house and the assent of the President. As held in the case of *Sub-committee on Judicial Accountability v. Union of*

¹⁶John H. McBryde v. Committee to Review Circuit Council Conduct and Disability Orders of the Judicial Conference of US, (2001) 264 F. 3d. 52.

¹⁷Mrs. Sarojini Ramaswami v. Union of India, 1992 (4) SCC 506.

¹⁸SubCommittee of Judicial Accountability v. Union of India, 1991 (4) SCC 689.

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India¹⁹ on a harmonious construction of all clauses of Article 124 of the Indian Constitution, the procedure shall be followed to prove misbehaviour or incapacity, starting with the investigation on the allegations being made against the judicial officer, this machinery has to be outside the Parliament, the interference of the parliament is seen only after the alleged misbehaviour or incapacity has been successfully proved. *The Judges (Inquiry) Act, 1968* enacted under Article 124(5) of the Constitution being made for this purpose, the provisions thereof have to be construed in that light. It is pertinent to note that the process of removal of judges is a parliamentary one and shall not be subjected to judicial intervention unless it has culminated into the removal of the judge.²⁰

In my opinion, Article 124(4) and (5) of the Indian Constitution has not made a significant difference in the judiciary as no serious examples have been set by it up till now as no judge has been impeached by the process so far. There are only three reported cases where the tedious process was initiated against one Supreme Court judge and Two High Court judges that also were never successful, as either the majority did not vote for the motion or the judges themselves resigned. Therefore, there was no as such occasion where a corrective measure could have been applied or deterrence could be established. It is safe to say that impeachment being a politically driven process is not in the best interests of the judiciary.

VI.I INTERPRETATION OF THE TERM 'MISBEHAVIOUR':

As given in the Constitution of India, Article 124(4) mandates the removal of judicial officers in case of proven misbehaviour or incapacity, clause 5 requires the enactment of a parliamentary regulation to investigate and prove such misbehaviour or incapacity under clause (4).²¹ The term 'misbehaviour' in itself is very debatable and subjective. Inclusion of the term 'misbehaviour' was inspired by the Australian Constitution. Furthermore, the Constitution nowhere defines it; the term finds its mention only in Article 317, clause 1 which is with regards to the dismissal of a member of a Public Service Commission.²² In the sixty-nine years of the formation of the Constitution, there are only three reported cases that 'misbehaviour' that too on the grounds of financial misdoings. It is very clear that either there

¹⁹SubCommittee of Judicial Accountability v. Union of India, 1991 (4) SCC 689.

²⁰ C. Ravichandran Iyer vs. Justice A.M. Bhattacharjee and Ors., (1995)5SCC457.

²¹Mrs. Sarojini Ramaswami v. Union of India, 1992 (4) SCC 506.

²²INDIA CONST. art.317, cl. 1.

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is a flaw in the process or there is a flaw in the interpretation of the statute itself. Nevertheless, the case of Justice Asok Kumar Ganguly involving allegations of sexual advancements and the famous judgment of Allahabad High Court in Raja Khan v. U.P. Central Sunni Waqf.²³ indicate that there is some discrepancy in the current understanding of the term, which is why a lot of judicial officers are never charged for their conduct.

Therefore, a re-examination of the interpretation of the Article is the demand of the situation. In the opinion of the researcher, the present understanding of the term ‘misbehaviour’ with respect to the removal of judicial officers needs to be broadened to include other forms of misconduct within its scope such as sexual harassments and favoritism. Therefore, a relook at the current provisions and formulation of properly cut guidelines would be a great place to start. Thus, the researcher has attempted to broadly identify some other forms of Judicial Impropriety that can be included within the scope of the term ‘misbehaviour’.

VII. FORMS OF JUDICIAL IMPROPRIETY:

Judicial impropriety includes “all of the judge’s activities” and “at all times”, in other words, to both the professional and personal conduct of a judge. The Supreme Court reaffirmed that judicial officers shall have double standards, one in the Court and another outside the Court; in fact, they are expected to maintain the single standard of rectitude, honesty and integrity.²⁴ Therefore, impropriety can take various forms concerning the overall conduct of the judicial officer; therefore it was important to devise a test for the appearance of such impropriety. The test confirms whether or not the conduct of the judge reflects dishonesty, partiality, the bad temperament of unfitness, in the mind of a reasonable and prudent man.²⁵ The forms of impropriety are as follows:

VII.I FINANCIAL IRREGULARITIES:

One of the established grounds of removal of the judges under Article 124(4) of the Indian Constitution is misbehaviour of the judges. Up until now, all reported cases demanding impeachment have been of financial irregularities where the judges have put their economic

²³ Raja Khan v. U.P. Central Sunni Waqf, 2001 (4) SCC 201.

²⁴ Daya Shankar vs. High Court of Allahabad, (1987) 3 SCC 1.

²⁵ Ethical Standards for Judge, 1999, Rules 1 & 2.

interests over the interest of the public and departed from justice. The first-ever reported case in the 1980s was *Justice. V Ramaswami v. Union of India*, inconsistencies up to 107 were caught in an audit done regarding the purchases made for the High Court. Sufficient evidence was also framed against Justice Ramaswami in the report. Unfortunately, he was still not impeached as the party in power went against the motion of impeachment. Second instance of such economic interests came into picture in 2009, it was alleged that the Former Chief Justice of the Sikkim High Court, *P.D. Dinakaran Case*, accumulated disproportionate assets and was also involved in land acquisitions in his hometown, Arrakonam, this land was more than the one fixed by the Tamil Nadu Land reforms.

The most recent instance of misbehaviour which caught the public attention was that of *Soumitra Sen Case*, a former judge of the Calcutta High Court. It was alleged that Justice Sen had misappropriated rupees thirty-three lakhs. The enquiry committee opined that Justice Sen was guilty of corruption and hence misbehaviour under Art. 124(4) read with proviso (b) to Art. 217(1), the Constitution of India. Unfortunately, Sen himself put his resignation.

In the opinion of the researcher, there shall be disciplinary measures taken against the Judges who indulge in such financial activities, promoting their own economic interests. It is very clear that even though Article 124(4) of the Indian Constitution, as initiated against these judges, but no satisfactory results were observed. Therefore, not only shall there be an impeachment process against such Judges but there should be some stricter action taken as it is in a way, misuse of their judicial office in order to hide behind the allegations of corruption.

VII.II MISUSE OF OFFICE:

A judicial officer shall not abuse the prestige of his judicial office to advance his private interests. Also, the officer is in no capacity of allowing his family, social, political, or other relationships to influence the judge's judicial conduct or judgment. Misuse of the office can range anywhere from warning a traffic police officer to not take action against him,²⁶

²⁶In the Matter of Winkworth, Determination (New York State Commission on Judicial Conduct September 21, 1992.

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presenting himself as a witness,²⁷ using his position to influence the institutions of his family,²⁸ to communicate with the executive officers in to protect his family members.²⁹ The judges respect and dignify their office and acting even remotely unworthy of the office by misusing it, will amount to a serious case of impropriety.³⁰

In the case of *Sarojini Ramaswami vs Union of India Ors.*³¹, Justice Ramaswami faced charges of irregularity, a high-profile three-judge inquiry committee, under the Act, declared him guilty of wilful and gross misuse of his office. The case gave rise to numerous constitutional issues, which were finally decided through the harmonious construction of Article 124 of the Constitution of India and the Judges (Inquiry) Act, 1968 read with the Judges (Inquiry) Rules, 1969 framed thereunder, in the background of the law declared in *Sub-Committee on Judicial Accountability v. Union of India*³². In essence, the context of the proceedings is the removal of Mr. Justice V. Ramaswami from the office of a Judge of the Supreme Court of India on grounds of misconduct and misuse of his judicial position.

In my opinion, the judgements in the above cases were perfectly correct. Considering that the judicial system enjoys a high level of independence, it becomes the responsibility of the judicial officers to not abuse their position and independence. The maintenance of such a strong check on the judiciary is very important for the fair functioning of society. Also, it can be established that for any removal, the combined reading of Article 124 of the Constitution of India and the Judges (Inquiry) Act, 1968 is very essential.

VII.III COURTROOM DEMEANOR:

Judges to be courteous, patient and dignified with the litigants, jurors, witnesses, lawyers, Court staff, Court officials, and others with whom the judge deals in an official capacity. Moreover, judges must be discouraged from commenting or criticizing the jury for its verdicts but may express appreciation to jurors for their service to the judicial system and the community. Most judicial misdemeanour cases revolve around the misuse of the contempt

²⁷Inquiry Concerning Fogan, 646 So.2d 191 (Florida 1994).

²⁸In the Matter of Mosley, 102 P.3d 555 (Nevada 2004).

²⁹The Matter of Rivera-Soto, 927 A.2d 112 (New Jersey 2007).

³⁰Daya Shankar vs. High Court of Allahabad, (1987) 3 SCC 1.

³¹Mrs. Sarojini Ramaswami v. Union of India, 1992 (4) SCC 506.

³²Sub-Committee on Judicial Accountability v. Union of India, (1991) 4 SCC 699.

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power, rude and abusive behaviour, biased comments and ill-treatment of Court staff, including cases of sexual harassment.³³ The rude and abusive behaviour of the judges that violates the dignity of the judicial system includes getting angry,³⁴ passing vulgar comments or making such inappropriate gestures,³⁵ using an intimidating or demeaning tone³⁶ etc. Also, a judge shall not perform his duties in a way which manifests bias, harassment or prejudice based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.³⁷

In the case of *C Ravichandran Iyer vs Justice A M Bhattacharjee*³⁸, a detailed analysis was sort on the effect of such bad Courtroom behaviour and who will judge the same. It was argued that the Bad behaviour of one judge will have a rippling effect on the reputation of all of the judiciary and will shatter the public confidence leading to extreme damage to the entire structure of the Constitution. Also, the Supreme Court recognised that the lawyers are best placed to comment on a judge's Courtroom, which even the parliament is barred from discussing as a mark of respect for judicial independence.

In the opinion of the researcher, an appropriate judicial demeanour is the basic requirement of a civilised and organised judicial system. If a judge is patient, courteous and dignified, the confidence of the litigants' increases, they are more likely to believe that the judge's decision has been rendered with integrity and fairness. Also, the judges conveniently find an escape by the virtue of the procedure of removal, which involves the voting of the Lok Sabha, In the famous case of *K. Veeraswami v. Union of India*,³⁹ the allegations of financial irregularities and misbehaviour on part of the judicial officer attracted Article 124 of the Indian Constitution, but the judge escaped consequences as the party in power decided to abstain from voting on the motion.⁴⁰

³³ Canon 3B(4)/Rule 2.8(B).

³⁴ In the Matter of Rice, Determination (New York State Commission on Judicial Conduct January 31, 1997).

³⁵ Re Wright, 694 So. 2d 734 (Florida 1997).

³⁶ In the Matter of Jenkins, 503 N.W.2d 425 (Iowa 1993).

³⁷ Kennick v. Commission on Judicial Performance, 787 P.2d 591 (California 1990)).

³⁸ C Ravichandran Iyer vs Justice A M Bhattacharjee (1995) SCC (5) 45).

³⁹ K. Veeraswami v. Union of India, (1991) 3 SCC.

⁴⁰ M. Mitta & Z. Agha, Congress' Albatross, INDIA TODAY.

VII.IV SEXUAL HARASSMENT:

The term ‘misbehaviour’ shall take ‘sexual harassment’ within its scope. A judge must refrain from any conduct, gesture or speech which could reasonably be perceived as sexual harassment. The term ‘harassment’ includes sexual advances, any physical or verbal conduct of a sexual nature, or any inappropriate requests that might be indicative of requests for sexual favours.⁴¹ Most instances reported against the judicial officers in India are either of misappropriation of the funds and land grabbing, but other activities of the judges such as offensive language and sexual harassment are being overlooked.

As for in the case of a retired judge of Supreme Court, Justice A.K. Ganguly, he was accused of sexually harassing a female intern alleged, while serving as the Chairman of West Bengal Human Rights Commission. Though the fact-finding committee, which consisted of three sitting judges of the Supreme Court, headed by Justice Sathasivam found some amount of truth in the allegations which prima facie disclosed that Justice Ganguly showcased an unwelcomed sexual behaviour, even then he escaped any further proceedings in the Supreme Court as he had already retired and the judiciary had no administrative control on a retired judge. Unlike in India, most countries take serious cognizance of such activities and behaviours of the judges that might be perceived as inappropriate. For example, commenting on the physical attributes of a female attorney,⁴² individually inviting female assistants for drinks,⁴³ hugging and kissing female employees as a form of greeting,⁴⁴ etc, called for disciplinary actions against the judges and in some cases led to impeachments.

In the opinion of the researcher, it is dismaying to see any citizen of the country, irrespective of the position they hold, to walk away with a crime so serious such as sexual harassment, attributing to the influence exercised by such a person by the virtue of him being a Supreme Court Judge. Also, such unwelcome sexual advances must fall within the purview of Article 124 of the Indian Constitution and lead to removal as India is bound to ensure the protection

⁴¹ Canon 3B(5). Comment 4 to Rule 2.3(C).

⁴² In the Matter of Collazo, 691 N.E.2d 1021 (New York 1998)

⁴³ Fitch v. Commission on Judicial Performance, 887 P.2d 937 American Judicature Society Page (California 1995).

⁴⁴ In the Matter of Brenner, 687 A.2d 725 (New Jersey 1997)).

of women and has also actively signed various treaties to that effect, such as Convention on the Elimination of Discrimination against Women.

Therefore, it is very ironical that the persons responsible for upholding the most fundamental rights of the citizens of the country, are the ones grossly violating these basic rights and getting away with it with such ease. The researcher proceeds on the belief that the government needs to take such crimes into serious cognizance and ensure that justice is served right, that too against the people who are responsible for serving it.

VII.V POLITICAL ACTIVITIES:

The engagement of the judiciary in any sort of political activity or any matters which are outside the scope judicial review of the Court is highly discouraged as it casts an impression on the public that the verdict of the judge is in consistence with the political party and the case has been viewed impartially on merits.⁴⁵ The doctrine of Political Thicket provides that the judiciary shall not interfere in political matters unless and until it concerns the public interest of the citizens of the country.

The doctrine of the political thicket is an aspect of Judicial Discipline which refrains the judiciary from venturing into the topics that they have no jurisdiction to adjudicate upon. As in the case of *Harish Chandra Singh Rawat vs Union Of India And Another*, the floor test ordered was a complete political matter nevertheless, it was held that “the Courts will be chary to interfere in his 'discretion' or formation of the 'opinion' about the 'situation' but if there be no basis or justification for the order under the Constitution, the Courts will have to perform their duty cast on them under the Constitution. While doing so, they will not be entering in the political arena for which appeal to the electorate is provided.”⁴⁶

In the case of *Pandit M.S.M. Sharma U. Sri Krishna Sinha*, the Supreme Court stated that no Court shall interfere in the procedural matter which is within the special jurisdiction of the legislature itself, especially when the legislature has the power to conduct its own business.⁴⁷

⁴⁵State vs. Chief Editor, Manabjain and others, Supreme Court of Bangladesh, LEX/BDHC/0113/2002.

⁴⁶Harish Chandra Singh Rawat vs Union Of India And Another.

⁴⁷ Pandit M.S.M. Sharma U. Sri Krishna Sinha, AIR 1960 SC 1186.

Also, In the case of *Ram Pratap Sharma v Daya Nand*⁴⁸ it was held that a judge shall not accept any invitation and hospitality of any business or commercial organization or of any political party or of any club or organization run or sectarian, communal or parochial line.

According to the researcher, exceeding the jurisdiction of judicial review shall not qualify as grounds for removal of a judge. But in a case where the judge shows a misleading support in favour of a specific political party, he shall be penalised for the same through minor measures if not removal, because, in the end, the trust of the public on the judiciary is paramount for the smooth functioning of not just the judicial system but for the government as a whole.

VIII. ACCOUNTABILITY:

“Accountability is the sine qua non of democracy”

Judiciary is a very important wing of the government and it is paramount that it enjoys some level of judicial independence. One of the hallmarks of a good democratic system is the independence and impartiality of the judiciary. Judicial independence ensures that the judges can freely provide justice without any fear or favour, which in turn protects the rights of the citizens of the country. Within the Constitution itself, many privileges are provided to maintain this judicial independence. However, there is a limit to this independence, in order to ensure checks and balances some amount of overlapping of the forms of government is essential. That is how judicial accountability comes into the picture. When the faith of the individuals in the efficiency and quality of the government is eroded, judiciary appears to be the ultimate bastion of hope.

The judiciary is responsible for dealing with the administration of justice, and because the judicial officers are the human stuff of the system, it is expected for them to act in good faith and maintain the prestige of the judicial system. This power comes with great responsibility; therefore judiciary like every other public office must constantly be accountable to the citizens of the country as they are the sole repositories of political sovereignty.

Accountability of the judges for serious judicial impropriety is ensured by the Constitution itself, as it provides for the removal of judges in case of proven misbehaviour or incapacity.

⁴⁸Ram Pratap Sharma v Daya Nand.

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The impeachment process is a parliamentary process ensuring checks and balance of one form of the government on the other. Legal luminaries including prominent judges such as D.A. Desai, S.Venkataramaiah and Chennappa Reddy have also expressed their views on judicial accountability and were of the opinion that, for correct implementation of the concept of accountability, it is necessary to follow a code of conduct, also called as the ethics for judges. Accountability can either be achieved by taking disciplinary actions and suspending judges or by removing judges for misconduct.

Unfortunately, the Judicial Accountability concept sounds very promising in theory, but in reality, it is a complete failure. The fact remains that even though an account of misconduct has been taken in a few cases, still no punishment has been sort against these judges for their conduct. As in the case of Veeraswami, the problem of judicial accountability was increased further. The case of Justice Soumitra Sen highlighted the actual problem to a very large extent; there was a complete lack of seriousness observed on part of the government when it comes to enforcing judicial accountability. Accountability shall not only have a post effect but also a pre effect, if the records of an officer are not in consistence with the judicial conduct, then such a person shall not be appointed in the first place. As seen in the case of Justice Ashwini Kumar Mata it is better to not appoint Mr. Mata as a judge, than facing consequences later. Therefore, in the opinion of the researcher, considering the distance that exists between the common person and the judiciary, performance evaluation would help in increased public faith in the transparency of the judiciary. Additionally, the appointment process shall be put equal focus on as is put on the evaluation process to avoid any misconduct and dissatisfaction of the public in the first place.

IX. DRAWBACKS OF ARTICLE 124:

The researcher has attempted to critically analyze the present scenario of judicial impropriety and the discrepancies in the laws to that effect. Undoubtedly, there is a clear legislative intent of removing judges on grounds of misbehaviour and incapacity to ensure the maintenance of trust of the citizens in the justice system, but there are no as such well set precedents to prove the practical application of the same. Currently, the concept of impropriety faces a lot of challenges. Firstly, the term ‘misbehaviour’ which happens to be a ground for removal of

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judges as required by Article 124(4) of the Indian Constitution, wasn't been defined anywhere in the Article. Also, there is no as such code that clearly features certain activities as 'misconduct'. It is because of the subjectivity of the term that only very serious cases of financial irregularities were reported in India, leaving all other types of misconducts unnoticed. Though there was an effort made to include sexual harassment within the scope of misbehaviour, but with no success at all. This can all be attributed to the lack of clear guidelines as to what constitutes misbehaviour.

Secondly, the process of impeachment in itself supports the fact that no judge in the history of India has ever been removed. It is a complete parliamentary process, where every constituent of the lengthy procedure is required to be fulfilled within the same Parliamentary session; this makes the successful completion of the proceedings even tougher. As seen in the case of K. Veeraswami, the only reason that he was never charged for his misconduct was because of the nature of the process followed, where the majority voted against the motion, knowing that his behaviour called for impeachment. Also, unfortunately, this is the only process that has to be followed in order to impeach a judge.⁴⁹

Thirdly, Judges sitting on such High posts exercise a high level of powers which makes it very difficult to prove charges against them. They have enough power to bury the evidences against them, and it would require a great deal of seriousness to prove any such allegations, considering the dignified status they hold.⁵⁰ Additionally, false allegations against judges can lead to contempt of Court, which further demotivates people to speak against these judges. Therefore, practically it is very difficult to take any disciplinary action against judges, leave aside proving it.

Fourthly, an individual takes an oath to maintain impeccable character when he is administered to such a high office. Therefore, these practices of the judges undermine the public confidence in the justice delivery system; the situation gets even worse when they get away with such misconducts. The respect for *lex loci* gets lowered in the eyes of the public. Finally, these activities lead to complete loss in the administration of justice which compels

⁴⁹Union of India v. Mohd.Ramzan Khan, (1991) 1 SCC 588.

⁵⁰ Rajendra Singh Verma (Dead) Through LRs. vs. Lieutenant Governor ,(2011) 4 SCC 232.

the individuals to take law in their own hands and the fear of being penalised in courts reduces.

X. INTERNATIONAL PROVISIONS:

The Indian definitions, grounds of judicial impropriety and processes of impeachment are very similar to those followed in most common law countries, Australia, UK and United States of America. A major chunk of all these concepts relating to impropriety has been adopted from these international constitutions with some amount of change. Therefore, the researcher sorts to analyze the difference between the provisions followed internationally and those followed in India, to provide suitable suggestions for amendments in the Indian Law.

X.I UNITED STATES OF AMERICA:

American judicial system provides code of conducts for the judges on both federal as well as State level, any breach of these codes calls for disciplinary actions. The existence of clearly formulated rules and codes make it very easy for the judges to observe any appearance of Judicial Impropriety.⁵¹ The Model Code of Judicial Conduct has been adopted by the American Bar Association in 1972 and was further revised in 1990 and 2007. The jurisdictions are allowed to modify the model before they adopt it into their judicial system. The code of judicial conduct is made up of canons and rules. This model code provides that the judges shall avoid impropriety,⁵² avoid the appearance of impropriety⁵³ and comply with the law.⁵⁴

Furthermore, The US judiciary claims that good behaviour while holding office provides special insulation to the judges when the removal is on the grounds of treason, bribery, or other high crimes and misdemeanours.⁵⁵ In a famous case, Impeachment proceedings were initiated against Justice William O. Douglas for misdemeanours and high crimes. It was observed that forms of misbehaviour amounting to judicial impropriety are important grounds

⁵¹ Cynthia Gray, *Ethical Standards for Judges*.

⁵² (Canon 2/Rule 1.2).

⁵³ (Canon 2/Rule 1.2).

⁵⁴ (Canon 2A/Rule 1.1).

⁵⁵ JAMES BRYCE, *AMERICAN COMMONWEALTH* 233 (1995).

of impeachment, keeping in mind that the good behaviour of a judge during the tenure is terminated by bad behaviour.⁵⁶

Grounds for removal of judges are very similar to those in India, *Art. 18 of the United Nations Basic Principles on the Independence of the Judiciary* provides that judges shall be subject to impeachment only for incapacity or bad behaviour which renders them unfit to discharge their judicial duties.⁵⁷ Also, the impeachment process in the US is very similar to that of India, like in the Indian scenario we have an enquiry committee and the Judges Inquiry Act for regulation of this process, similarly, in the US, there are inquiry commissions that are constituted in order to look into the allegations against a judge and prove them. Additionally, the researcher is of the opinion that the procedure of impeachment shall be similar to the one that has evolved in the United States without compromising the independence of the federal judiciary. The paper says that the independence of the judiciary and the security of tenure of the Judges are not a licence for deviant or capricious behaviour.

X.II UNITED KINGDOMS:

In the United Kingdoms, tenure during good behaviour was terminated by misbehaviour. Earlier the Common law did not define the term ‘misbehaviour’, instead, it laid down various grounds for forfeiture of a judicial office. Sir Edward Coke specially mentioned three possible reasons for the impeachment of a judge or seizure of the office of a highly placed public official, the three grounds were -abusing, not using or refusing. Currently, the procedure followed for removal of judges of the Supreme Court of the United Kingdom is provided in the Constitutional Reform Act, 2005. The relevant sections provide an occasion for the impeachment of a judge who may have lost the confidence of both the houses of Parliament due to his proven acts of misbehaviour. The judge holds his position during good behaviour as against the crown and in relation to the Parliament.⁵⁸ Therefore, the grounds and process of removal provided by the Constitution of the UK are very much similar to the Indian Constitution.

⁵⁶ R. Berger, Impeachment of Judges and “Good Behaviour” Tenure 79(8) THE YALE LAW JOURNAL 1475, 1476 (1970).

⁵⁷ United Nations Office of the High Commissioner, Basic Principles on the Independence of the Judiciary (1985).

⁵⁸ Constitutional Reform Act, 2005, § 33. (Eng.).

X.III AUSTRALIA:

India has adopted the concept of ‘misbehaviour’ from the Australian Constitution. The provisions of judicial impropriety followed in Australia are very similar to that of India where the judges of the Apex Court are impeached on grounds of misbehaviour. There as well the judges are removed by the Governor-General in Council, after taking a vote in both the Houses of the Parliament on grounds of proved misbehaviour or incapacity.⁵⁹

XI. RECOMMENDATIONS:

After thorough research on judicial impropriety and its application in India, the researcher sorts to put forward a few recommendations, understanding that fostering a culture of judicial independence, impartiality and accountability among the judicial officers is vital to ensure the overall integrity of the judiciary.

XI.I FORMULATION OF THE JUDICIAL PERFORMANCE EVALUATION SYSTEM (JPE):

The JPE system originated in the US, it is a process that determines questions related to elevation in the judiciary. It is a practice of evaluating the performance of judges and Courts on a regular basis to understand judicial behaviour and other fine aspects of the working. Several other jurisdictions have adopted it to achieve different objectives. In India, there are Annual Confidential Reports which evaluate judicial performance, but the system is not very effective. In the Indian scenario, the JPE system can be implemented in a way that will promote transparency and accountability in the judiciary, drive efficiency in the delivery system and moreover create incentives for self-improvement.

XI.II THE IMPOSITION OF MINOR MEASURES:

There are certain cases where the misconduct does not warrant to the removal of the judge, in such cases it is best to impose “minor measures” as a disciplinary measure.⁶⁰ The imposition of minor measures was also advocated by the former Chief Justice of India, Justice M.N. Venkatachaliah in the Report of 2001 by the National Commission for Review of the Constitution of India. According to which, minor measures shall include requests for

⁵⁹ Australian Constitution s 72(ii).

⁶⁰ C. Ravichandran Iyer v. Justice A.M. Bhattacharjee, 1995 (5) SCC 457.

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retirement, issuing advisories, warnings, stoppage of assignment of judicial work for a limited time and censure or admonition, public or private.⁶¹ The same has been permitted by various other countries such as US and Canada, where it was also proved that these measures are constitutionally valid⁶² and best suited for a society where removal of judges is a challenging task.⁶³

XI.III CODES:

It is recommended that a clear and formal code shall be structured as in the United States of America.⁶⁴ The code of judicial conduct will serve as a guide and measure to determine the implementation of removal. Breach of such code shall be investigated by the sanctioned judicial inquiry body. The code will also provide guidelines to lawyers, police, media, prosecutors to report suspected or breaches of the code of conduct, corruption by judges etc.

XI.IV ENSURING JUDICIAL DISCIPLINE:

It is very important to ensure judicial discipline as the faith of the whole country lies on the judiciary. In the opinion of the researcher, strict disciplinary rules shall be established and rigorous investigation shall be carried out against all allegations. The body investigating these complaints shall be independent and impartial and shall give proper reasons for its decisions. An independent body must investigate complaints against judges and give reasons for its decisions.

XI.V REMOVAL MECHANISM:

It is an undisputed fact that the interference of the parliament is necessary in order to ensure checks and balances on the judiciary. Nevertheless, the process shall be made a bit less complicated. The definition of ‘proof’ as required by the Judges Inquiry Act, shall be re-checked to ensure the possibility of collecting such evidences against high profiled judges. The removal mechanism shall be fair and transparent, giving the judge the right to a fair hearing, legal representation and an appeal in any disciplinary matter.

⁶¹ The National Commission Report (Review of the Constitution of India), 2001.

⁶² Rees v. Crane, 1994 (1) All ER 833.

⁶³ Chandler v. Judicial Council, (1970) 398 US 74.

XII. CONCLUSION:

Judicial independence and integrity have always formed an important element in the functioning of the democracy of India. The judiciary commands respect in every territory not because of its sword of fear but because of the high standards of integrity that the occupiers of judicial offices maintain. To ensure a healthy democracy, it is important to ensure that the citizens are content with the working of all forms of the government, especially the judiciary, because the judicial is the final resort of the individuals of a country. The wrongdoings of one judicial officer will not only malign the trust of these citizens but will sabotage the entire institution of the government. As it is rightly said, judicial impropriety has a rippling effect and will end up taking within its sweep the progress of the entire government. Therefore, it is important to control these improprieties for the sake of every citizen who has faith in the justice system of India.

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