A CRITICAL DISCOURSE ON THE MULTI-DIMENSIONAL FACETS OF INDEPENDENCE OF JUDICIARY IN INDIA

Tanmoy Roy*

Abstract

Independence of the Judiciary is multi-faceted. It begins with ensuring that the legislature, executive and the judiciary function in conformity with the cardinal norm of Separation of Powers. However, real judicial independence flows from a system wherein its independence is coupled with judicial accountability, transparency and various other multidimensional aspects. The present researcher realizes that in a country like India, the appointment, transfer and tenure of judges are not suffice to address and ensure the independence of judiciary in its entirety. Therefore, the present researcher, through this research work, highlights the other multi-dimensional facets like judicial accountability, reflective judiciary, post-retirement appointment or engagement of judges, lack of financial and administrative autonomy of the judiciary, uncritical reliance of IB reports in the matter of appointments in higher judiciary, omission of distinguished jurists, that continue to pose a serious and grave threat in the process of ensuring the cherished principle of independence of judiciary in its real terms. The author, in this paper, concludes by observing that independence of the judiciary which is very essential for a nascent democracy can be achieved in its real terms by addressing all those aspects and thereby can promote an all-round development of society, otherwise the concept would be a mere illusory and ornamental one.

Keywords: Grundnorm, judicial accountability, collegium, decisional independence, institutional independence.

* *Student-LL.M.* @ Department of Law, University of Calcutta, Kolkata (W.B.); Email: tanmoyroya2y@gmail.com; Contact: +91- 9674847089

INRODUCTION

"We are under a Constitution, but the Constitution is what the judges say it is, and the judiciary is the safeguard of our liberty and of our property under the Constitution."[1] Judiciary is often referred as the watchdog of our Constitution and the fundamental values underlying it. It is also termed as the lifeblood of constitutionalism in almost all democratic societies. Since the epoch making decision of *Marbury* v. *Madison*[2], the authority of courts' functioning and working under a written democratic constitution takes within its ambit the power to declare unconstitutional even laws made by the legislature. This is a formidable authority and thereby necessarily implying an important responsibility. A wide exercise of such power requires an efficient and independent judge as well as judicial system.[3] "Since administration of justice is the main task of judiciary, its independence is considered essential for smooth functioning of it. No democracy can flourish without an independent judicial system, a system free from fear or favour, a system isolated from the other branches of the government. It enhances the prosperity and stability of social order"[4]. Today it is no longer in dispute that, "the independence of judiciary and the confidence of the public in the judiciary is of supreme importance for democracy to survive", without which democracy will certainly fail. As it has been recently observed by apex court that, an independent judiciary is the *sine qua non* to protect rule of law in any civilised society. Its independence was rightly described as *"integral to the scheme of the constitution without which neither primacy of the constitution nor Federal character, social Democracy nor Rights of Equality and Liberty can be effective."*[5]

MEANING OF INDEPENDENCE OF JUDICIARY

The notion of judicial independence is not a new concept but its exact meaning is still imprecise and not clear to the legal fraternities. It may well turn out that judicial independence is easier to protect than to define[6]. Different dictionaries have attributed different meanings to the word "independent". It has been meant as 'freedom from outside

[1] CHARLES EVANS HUGHES, speech before the Chamber of Commerce, Elmira, New York, May 3, 1907; Addresses and papers of Charles Evans Hughes, Governor of New York, 1906-1908, at p.139 (1908).
[2] 5 US 137 (1803)
[3] *Supreme Court Advocates-on-Record Association* v. *Union of India*; AIR 2015 SC (Supp) 2463; [per Jasti Chelameswar, J.]
[4] Zia Mody, *10 Judgements That Changed India*, SDE Penguin, 1st Ed., p.163,
[5] *Supra* note 3; [per Adarsh Kumar Goel, J.]
[6] Steven Lubet, *Judicial Discipline and Judicial Independence*, p. 59, 61 LAW & CONTEMP. PROBS

control', 'not influenced or affected by others', 'impartial' and 'capable of thinking or acting for oneself'. Independence in all these senses must be complete, unimpaired and uncorrupted and that means first ---- that independence is antithetical to corruption and second ---- that it is ensured by accountability.[7]

Apparently this concept is based on the *doctrine of separation of power* as propounded by *Baron De Montesquieu* in his book *"esprit des lois"* (spirit of laws) in 1748. It will appear that the cornerstone of the independence of judiciary in every country laid its base upon this doctrine. Therefore primarily it means the independence of the judiciary from the other two limbs of the state. But that amounts to only the independence of the judiciary as an institution from the other two institutions of the state without regard to the independence of judges in the exercise of their functions as judges. In that case it does not achieve much. The underlying object of the independence of judiciary is that judges must be able to adjudicate a dispute before them according to legal principles, uninfluenced by any other consideration. Owing to that, the independence of the judiciary is also the independence of each and every judge. In this aspect one would like to borrow the words of *Shimon Shetreet*, a leading jurist, wherein he had asserted that the independence of the judiciary means and includes the independence of the judiciary as a collective body or organ of the government from its two other organs as well as independence of each and every member of the judiciary i.e; the judges in the performance of their roles as judges. Without the former the latter cannot be secured and without the latter the former does not serve much purpose.

Thus judicial independence can be categorized as (1) *decisional independence*, the independence of a judge in deciding the case before hand and (2) *institutional independence*, the independence of the court or the judiciary as an organisation.

Decisional independence provides an independent status to the judge with the autonomy in deciding cases without political or popular pressure and without any fear of intimidation. This freedom protects the integrity of the judges, fairness and impartiality at every stage of decision making process.

On the other hand, *institutional independence* provides freedom from improper influence and interference in the governance and the management of the judiciary's own affairs. This aspect

[7] Speech delivered by Justice Ruma Pal in the Fifth VM Tarkunde Memorial Lecture; *CHOOSING HAMMURABI - Debates on judicial appointments*, p. 16, (1st Edition, 2013), Lexis Nexis

covers the selection of judicial officers, their evaluation, judicial discipline, judicial compensation, the proper funding and budgeting of the judiciary, freedom from interference with personnel, facility or internal financial management of the judiciary.[8]

INDIAN EXPERIENCE OF INDEPENDENCE OF JUDICIARY

In tune with the other countries of the world community and in accord with the international instruments and declarations concerning the independent judiciary, an independent judiciary was also considered as the sine qua non of a vibrant Indian democratic system. Our constitution framers perceived that 'only an impartial and independent judiciary can stand as a bulwark for the protection of the rights of the individual and mete out even handed justice without fear or favour'[9]. They also perceived that for Rule of Law to prevail, judicial independence is of prime necessity. Therefore they thought it necessary to incorporate certain values, principles as well as prohibitions in the 'Grundnorm' of our country i.e; Constitution of India, so that the Indian Judiciary especially the Supreme Court and High Courts can work in an atmosphere of independence of action and judgement and so that they can be insulated from all kinds of pressure, political or otherwise. Today the activist Indian judiciary adjudicates disputes as diverse as river water distribution between states, the legality of a Governor's proclamation of President's rule in a state and even matters involving allegations of corruption by high-ranking public officials including the prime minister and members of parliament. In fact in the context of the Indian democracy, citizens disillusioned with the political system often resort to the Supreme Court as their last hope. In such circumstances it is imperative to safeguard the independence of the judiciary so that it continues to play a proactive role in our democracy[10]. *But is the Judiciary in India really independent?*

Apart from the appointment and transfer of judges and other several issues which constitute a direct threat to the independence of the judiciary and its judges, there are some other seminal factors which requires particular focus and sensible discourse for upholding the legitimacy of the court and its decisions and thereby ensure the independence of the judiciary in the long run. The following issues thus require a particular mention and are therefore required to be undertaken in this research work:

---

[8] Dr. T Vidya Kumari; J*udicial discipline is an integral part of judicial independence"*, Published in Constitutional Development Through Judicial Process by G.M.RAO, p.160

[9] M.P.JAIN; *Indian Constitutional Law*; p. 292; 7th edition, Lexis Nexis,

[10] *Supra* note 4 at p. 163

VARIOUS FACETS OF INDEPENDENCE OF JUDICIARY

Reflective Judiciary

As has been rightly observed by *Shetreet* that, an important duty lies upon the appointing authorities to ensure a balanced composition of the judiciary, ideologically, socially, culturally and the like. This is based on a doctrinal ground of the principle of fair reflection. The judiciary is a branch of the government, not merely a dispute resolution institution. As such it cannot be composed in total disregard of the society. Hence, due regard must be given to the consideration of fair reflection."[11] Reiterating the same at another place, Shetreet observed: *"If the judiciary is not reflective of society as a whole, the adjudication may be based on background understandings strongly coloured by a narrower set of values."*[12]

One of the judges in the Second Judges case explicitly supported the stand while the entire Court acknowledged its relevance in the Third Judges case. Thus, in the Second Judges[13] Case, Justice Pandian stated: "It is essential and vital for the establishment of real participatory democracy that all sections and classes of people, be they backward classes or scheduled castes or scheduled tribes or minorities or women, should be afforded equal opportunity so that the judicial administration is also participated in by the outstanding and meritorious candidates belonging to all sections of the society and not by any selective or insular group".

Similarly in the *Third Judges Case,* taking note of the fact that merit is the 'predominant' consideration in the appointment to the Supreme Court, the Court held thus: "When the contenders for appointment to the Supreme Court do not possess such outstanding merit but have, nevertheless, the required merit in more or less equal degree, there may be reason to recommend one among them because, for *example*, the particular region of the country in which his parent High Court is situated is not represented on the Supreme Court bench."[14]

---

[11] Shimon Shetreet, *Judicial Independence: New Conceptual Dimensions and Contemporary Challenges*, in JUDICIAL INDEPENDENCE: THE CONTEMPORARY DEBATE (Shimon Shetreet & Jules Deschanes Ed., 1985) p.635

[12] Shimon Shetreet, *Judging in Society: The Changing Role of Courts*, in THE ROLE OF COURTS IN SOCIETY (Shimon Shetreet Ed., 1988), p.480

[13] *Supreme Court Advocates-on-Record Association* v. *Union of India*; AIR 1994 SC 268 at p. 442-443

[14] In *Re : Presidential Reference (Special Reference No. 1 of 1998)*, AIR 1999 SC 1 at p. 18[per Justice S.P. Bharucha J.]

S.P. Sathe, has also focused on this aspect by observing that "..... A constitutional court has to be representative of all sections of society. We may not call it reservation, but some representation of the most disadvantaged sections has to be on the court in order to make it a real national court.....The legitimacy of the Supreme Court depends upon the reflection of Indian pluralism in its composition. Women as well as members of the Scheduled Castes and Scheduled Tribes ought to be appointed to the court in larger number"[15]

Judicial Accountability

Another most important facet of judicial independence is judicial accountability. "Simply put, accountability refers to taking responsibilities for one's own actions and decisions. It generally means being responsible to any external body; some may insist accountability to principles or to oneself rather than to any authority with the power of punishment or correction".[16] Judicial Independence derives from a system wherein its independence co-exists with Judicial Accountability. Therefore, independence of judiciary lies in the working of the judiciary in a manner which is in harmony with the doctrine of the Separation of Powers, while being accountable for its actions, amenable to rectification for its misconduct and not acting beyond the scope of its powers vested in it. However, the problem actually lies in the understanding of independence; it should be understood as independence from executive and legislature and not independence from accountability. The factum of independence has been highlighted very aptly by *Lord Woolf*. His Lordship opined, *"the independence of the Judiciary is not the property of the Judiciary, but a commodity to be held by the Judiciary in trust for the public."* To protect the judiciary from dangers within, our Constitution framers considered it sufficient to provide for removal of a judge of a High Court or the Supreme Court in extreme cases of 'proved misbehaviour' or 'incapacity' under Articles 217 and 124 respectively; and to vest the control over the subordinate judiciary in the respective High Court under Article 235. In this manner, our Constitution enumerates judicial accountability preserving the independence of the judiciary.

Since long, the judiciary had put a sacrosanct spell around it, such that the judges were considered demi-gods who could not commit any wrong; their decisions were unquestionable. However, it is not easy to turn a blind eye from what is happening across the

[15] S.P.Sathe: *Judicial Activism in India: Transgressing Borders and Enforcing Limits*, p. 297-299, 2nd Ed, Oxford India Paperbacks

[16] David Pimentel, *Reframing the Independence versus Accountability Debate*, p.15, Available at: http://www.clevelandstatelawreview.org/57/issue1/Pimentel.pdf

country in the guise of dispensation of justice. In the present scenario, taking note of the increase in the rate of corruption charges one is prompted to ask the question *'who is judging the judges'?* It can easily be realized that because of lack of accountability all these are happening. With a power like contempt of court they could deter anyone who would criticize the court. It is the need of the hour to strike a balance between accountability and independence. Just for the sake of independence, if we do not adhere accountability, then 'we will only see the crumbling of a very important organ of the government – the judiciary'.

Justice J.S.Verma has also opined, *"A serious debate is now raging about the inadequacy of the existing mechanism for enforcing the judicial accountability of any erring judge in a High Court or in the Supreme Court. There is now a general consensus that some recent incidents involving a few in the higher judiciary has exposed the inadequacy of the existing provisions to deal with the situation; and it calls for an effective mechanism to enforce the judicial accountability of the higher judiciary, in case of need"*. However, Justice Verma was of the opinion that *"self regulation is dignified while outside imposition is demeaning"*.

That's why it obviously comes to the mind of a prudent person of our civil society that our Apex Court might have forgotten what it had itself preached in the case of *Indira Nehru Gandhi* v. *Raj Narain*[17], that accountability is an integral part of a democratic polity; it implies the people's right to know the manner of working of the government; accountability improves the quality of governance; secrecy, on the other hand, promotes nepotism and arbitrariness. This view has been reiterated in *S.P Gupta* v. *Union of India*,[18] *Secretary, Ministry of I&B, Govt. of India* v. *CAB*[19] and again in *Dinesh Trivedi, M.P & Others.* v. *Union of India*[20] and many others. Therefore, it is reasonable to assume that the Supreme Court will practice what it had preached and made the law of the land.

It is no doubt true that the existing systems of accountability have failed, and the growing corruption is eating away the vitals of this branch of democracy. The demigod's image has to be replaced, after all judges are also humans capable of committing mistakes and vices. Just for the sake of maintaining independence, if we forsake accountability, then we will only see the crumbling of a very important organ of the government – the judiciary.

[17] AIR 1975 SC 2299
[18] AIR 1982 SC 149
[19] AIR 1995 SC 1236
[20] (1997) 4 SCC 306

POST RETIREMENT APPOINTMENT AND BEHAVIOUR

Presently a wide based discourse has come to the forefront that how far such post retirement appointment of those judges is compatible with the concept of independence of the judiciary? The constitution framers were also aware that post-retirement benefits and entitlements of the judges could potentially be employed as a carrot and a stick to influence the judicial demeanour of our judges. However, the only ban imposed by the Constitution on a Supreme Court Judge is that he should not plead or act in any court or before any authority after retirement.[21] And so far as High Court judges are concerned, they are debarred from pleading or acting in any court or before any authority in India except the Supreme Court and the other High courts.[22] Initially at the time of the formulation of the Constitution, to provide a check against this, *Prof. K. T. Shah* had suggested that the pension of the judges should be similar to their salary while they are in office. He was in favour of a post-retirement prohibition on a retired Supreme Court or High Court judge against holding 'any executive office'.[23]

The first Attorney General of India, *M. C. Setalvad* shared an exactly similar concern. In his autobiography he discussed the incident of post-retirement appointment of Justice Fazl Ali as Governor of Assam. He raised the issue of 'constitutional propriety' i.e., *"...whether a Judge of the Supreme Court should be appointed the executive head of a State. The separation of the judiciary and the executive at all levels was an old and healthy demand which had been widely accepted and given effect to in many parts of the country. Was not the appointment of a Supreme Court Judge to a Governorship a clear negation of that principle?"* and answered in the affirmative ....*"I thought that there could be only one answer. Such appointments were also bound to impair the independence of the highest judiciary....."*[24]

The Law Commission of India also observed that, "The practice of Judges looking forward to or accepting employment under the Government after retirement was undesirable as it could affect the independence of the Judiciary".

However, *Dr. Ambedkar* rejected most of the suggestions and amendments concerning post-retirement prohibitions and restrictions. Ambedkar observed: "*The judiciary decides cases in which the Government has, if at all, the remotest interest, in fact no interest at all. The*

[21] Article 124(7) of the Constitution of India
[22] Article 220 of the Constitution of India
[23] Constituent Assembly Debates, Vol. VIII, at p.236-239
[24] Motilal C. Setalvad, *My Life – Law And Other Things*, at p. 190-191

judiciary is engaged in deciding the issue between citizens and very rarely between citizens and the Government. Consequently the chances of influencing the conduct of a member of the judiciary by the Government are very remote....."[25]

With due respect to the architect of our constitution, this seems to be a flawed logic. The Fundamental Rights are enforceable against the State the definition of which includes both the Executive and Legislative branches of the government.[26] When the Constitution itself provides for a machinery of constitutional courts for the purpose of enforcement of Fundamental Rights against the State itself, it cannot be maintained that the judiciary would be engaged 'very rarely' in deciding cases between the citizens and the State. As it turned out, the government is the biggest litigant in India. Dr. Ambedkar's insistence therefore seems to be not logical one.

Prof. M.P. Jain has rightly highlighted that the dangers in accepting a political office, like that of a State Governor, are very tellingly revealed by the case of Fatima Beevi. Fatima Beevi, a retired SC Judge, was appointed the Governor of Tamil Nadu. She reinstated Jayalalitha as the Chief Minister. Jayalalitha was at that time disqualified to be a member of the State Legislature. Annoyed by the action of the Governor, the Central Executive recalled her from her office.

Prof. S.P. Sathe has also expressed his concern on this issue. He observed, *"How far is such post retirement engagement of the judges as arbitrators compatible with their independence? Further, judges are appointed to the National Human Rights Commission, the National Commission or state commissions under the Consumer Protection Act, the Environmental Appellate Authority under the National Environment Appellate Authority Act, 1997, and various other administrative agencies and tribunals.[27] How are such appointments made? Will a judge not compromise his independence by looking forward to such post-retirement appointment by the government?.....*"[28]

The Law Commission of India, has also criticised the prevailing practice of re-employing the retired judges. It observed that, "*It is clearly undesirable that Supreme Court Judges should look forward to other government employment after their retirement. The government is a*

[25] *Supra* note 23 at p. 259-60
[26] Article 12 of the Constitution of India
[27] S.P. Sathe, The Tribunal System in India (Tripathi, 1996)
[28] *Supra* note p. 299-300

party in a large number of cases in the highest court and the average citizen may well get the impression, that a Judge who might look forward to being employed by the government after his retirement, does not bring to bear on his work that detachment of outlook which is expected of a Judge in cases in which government is a party. We are clearly of the view that the practice has a tendency to affect the independence of judges and should be discontinued."[29]

In *Nixon M. Joseph* v. *Union of India*;[30] a very pertinent and significant question was raised before the Kerala High Court through a PIL, viz: should the retired Supreme Court and High Court judges take any job, or contest election for the legislature. There is no explicit bar in our Constitution against this. Nevertheless, *K. Narayana Kurup, J.* has expressed a firm opinion against this practice by observing thus: *"The judiciary should continue to merit the exalted position it occupies in the minds and hearts of the people as the "saviour of democracy". It cannot be gainsaid that the one necessary condition for this is its independence. Independence in the sense free from the executive, meaning the bureaucracy and politician's interference and influence of every type. And fundamental to freedom from such influence and pressures on the judiciary is to eschew active politics and acceptance of positions by judges after retirement."*

During the impeachment of Justice Soumitra Sen, *Arun Jaitley* in the Rajya Sabha said, "*the desire of a job after retirement is now becoming a serious threat to judicial independence*".[31] *Rajeev Dhavan*, was of the view that "*India needs a policy on embargoing post-retirement jobs for judges whilst increasing their retiring age*."[32]

Therefore, *Prof. M.P. Jain* has rightly suggested that "*the solution of the problem appears to lie in increasing the age of retirement of a Supreme Court Judge from 65 to 70 years, to make liberal pension provisions for the retired judges, to put a legal ban on a Supreme Court Judge accepting an employment under any government after retirement and to use his judicial talent in an honorary, and not in a salaried capacity*."[33]

FINANCIAL AND ADMINISTRATIVE AUTONOMY

[29] Law Commission of India; Report XIV, p.46
[30] AIR 1998 Ker 385
[31] Satya Prakash; *Objection, Your Honour*, Hindustan Times, 27/09/2011
[32] Rajeev Dhavan; *Judicial Propriety and Tehelka*, The Hindu, 29/11/2002
[33] *Supra* note 9, p. 295

Financial and administrative autonomy is also necessary if the judiciary is to be really effective, vibrant and independent. Former CJI A.S. Anand, in his Singhvi memorial lectures delivered at Delhi, has urged that financial dependence on the executive, to an extent, impinges upon the independence of the judiciary because judiciary is required to negotiate every time with the State, which is evidently the largest litigant. Such financial dependency has the tendency to compromise the cherished norm of independence of judiciary.

OMISSION OF THE DISTINGUISHED JURISTS

Although this issue has no direct nexus with the independence of the judiciary, but it has its indirect bearing on a vibrant and effective judiciary and thereby helps to ensure true independence of the judiciary. Our Constitution permits jurists to be appointed as judges of the Supreme Court of India.[34] It appears that in the US, Justice Felix Frankfurter was appointed to the Supreme Court straight from the Harvard University Law School. In Canada, Justice Laskin was appointed to the Supreme Court from the Toronto University Law School. Both of them proved themselves as great judges. In India, appointment of a jurist has not been made as yet. The 42nd Amendment, 1976, had provided that jurists shall be eligible for appointment as judges of the High Court, perhaps on the ground that experience at the High Court might prove useful before a jurist is appointed to the Supreme Court. But that provision was dropped by the constitution 44th Amendment Act, 1978. It is hard but true that good lawyers are unwilling to accept judicial appointments. Lawyers such as Nani Palkhivala, Seervai, Shanti Bhushan, Soli Sorabji, F.S. Nariman and the like have not made themselves available for judgeship. At this juncture, jurists as law professors or researchers might be considered for judicial appointments. This will in the long run benefit our legal education and ensure a truly effective, vibrant and independent judiciary.

UNCRITICAL RELIANCE OF IB REPORTS

Over the years, the uncritical assessment of the Intelligence Bureau report played vital in the appointment process of our higher judiciary. Uncritical assessment of IB reports is detrimental to judicial independence and also accountable democracy itself. In the appointment process, the inputs of the government come in the form of reports. These reports can cast a stigma forever on the potential candidates. Time and again the use of the IB reports by the government has been a subject of serious concern. The final arbiter on the integrity

[34] Article 124(3) of the Constitution of India

and character of a potential candidate of the judgeship is the IB, which incidentally is not a statutory body. 'The lack of transparency combined with no legislative accountability makes their intelligence reports vulnerable to political manipulation, be it in the case of Gopal Subramanium or Ashok Kumar'.[35]

Recently the Executive using the Intelligence Bureau reports came in sharp focus with regard to the appointment of *Mr. Gopal Subramanium* which the government was determined to scuttle.

In his article, titled *"Some Judgment Please!", Pratap Bhanu Mehta* criticised the blind reliance on the IB report which is worthy of quoting: ".....This shadowy institution, whose own functioning is beyond all accountability, whose own norms are unclear and whose competence is doubtful, is now paraded as the final word on the suitability of candidates.....So let us put it gracelessly. Inputs from the IB can be important. But if they are accepted uncritically, if no one has the courage to ever overrule them, Indian democracy will be in great danger....."[36]

Thus it can be said with certainty that these reports are being misused as a formidable weapon from the armoury of the government to suppress the names of the independent minded persons from entering into the fray for consideration of judgeship, probably for their adverse political inclination and thereby seriously constituting a threat to the notion of independence of judiciary.

CONCLUSION

One jurist has said that, *judges can be fully independent provided they are prepared to face the prospects of a promotion less career*. Therefore independence of the judiciary is a difficult task to achieve. The notion of judicial independence includes several aspects like – appointment, posting, tenure, promotion, discipline and other forms of informal scrutiny of judges. However the above examined other multi-dimensional facets, which continue to pose a serious threat in the process of achieving judicial independence, are required to be addressed at length in order to ensure real independence. The time speaks of, that constitutional provisions pertaining to the judiciary alone are not suffice to secure the

[35] Available at: http://www.firstpost.com/india/subramanium-to-katju-the-dangerous-elevation-of-the-ib-report-1631981.html

[36] Available at: http://indianexpress.com/article/opinion/columns/some-judgement-please

independence of the judiciary. Our constitution has failed miserably to address those multi-dimensional threats and thereby independence of judiciary is seriously compromised in India. The other factor which is destroying the faith of our people in the judiciary and constitutes a serious threat to its independence is the allegation of widespread corruption among the judges' at all three levels. Independence and corruption in a judge or judiciary are self-contradictory and cannot co-exist. Therefore, a holistic and clear understanding of the concept of independence of judiciary also leads to the conclusion that the destination of independence of judiciary, which has several milestones to be crossed, can be reached only with the consistent and conscious efforts of all stakeholders.[37] Judicial independence is meant to empower the judiciary as the guardian and protector of rule of law. It is not merely for its honour, but essentially to serve the public interest and to preserve the rule of law. Providing constitutional and legal safeguards to secure independence of judiciary is only the first step, but lot more is required to be done, which depend largely on judges themselves. Apart from these, one thing must also be borne in mind by the judiciary itself that *"The independence of the judiciary is therefore not the property of the judiciary, but a commodity to be held by the judiciary in trust for the public."* The present researcher concludes, by observing that, modern democracies are still struggling to achieve the independence of the judiciary to its fullest extent and in its real terms. Therefore a conclusion with an optimistic note is needed.

[37] Poonam kataria, *Judicial independence in India: An overview*, International Journal of Applied Research, 2015; 1(11)pp. 397-400