



Independence of Judiciary

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Unique position of Judiciary in Administration of Justice

- Role of courts and judges in modern times
- Need for maintaining independence of judiciary
- Need to respect status and decisions of judiciary
- Duty of all authorities in India to assist the courts in executing their orders
- Full faith and credit clause in the Constitution
- Possibility of willful disobedience of courts' orders
- Tendency to lower image of judiciary



Indian Judiciary at a Glance

- Higher Judiciary & Subordinate Judiciary
- Constitutional Courts & Constituted Courts
- Higher Judiciary-Supreme Court ,High Courts
- Subordinate Judiciary-District Courts downwards



Supreme Court of India

[Art.124-147,32 etc]

- Highest Court in India-successor to Federal Court
- Supreme Interpreter of Constitution, Guardian of F.Rts, Ultimate Court of Appeal & Final Interpreter of Law
- Chief Justice & 30 judges
- Appointment – by President in consultation with CJ & other judges [position before & after 1993]
- Two alternatives are available to the Government of the day. One is to seek a reconsideration of the three judgments aforesaid before the Hon'ble Supreme Court. Otherwise a law may be passed restoring the primacy of the Chief Justice of India and the power of the executive to make the appointments. [L.C.**Report No. 214 November 2008**]



Supreme Court of India [Art.124-147,32 etc]

■ Jurisdiction – Court of Record

[Art.129], Original [Art.131], Appellate [132-134], SLP [136] F.Rts [32], Advisory [143], Review [137] Complete justice [142]

- Contempt Power - Civil & Crl - of SC [Md. Aslam v. UOI, 1994, SC], of HC [In re V.C. Misra, 1995, SC] of Subordinate Judiciary [Delhi Judicial Service Assn v. Gujarat, AIR 1991 SC 2176]
- *"justice is not a cloistered virtue; she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men"* – Lord Atkin



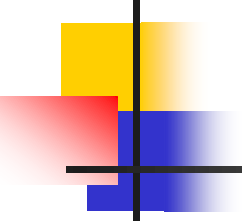
Constitutional Provisions Rel.to Independence of Judiciary

- Restriction on discussion in Parliament -with respect to conduct of any SC/HC judge in discharge of his duties except in impeachment proceedings-Art.121
- Salaries etc of judges-drawn from Consolidated Fund of India & not subject to vote of Parliament –Art.112(3)
- Neither privileges nor allowances of SC Judges.....shall be varied to his disadvantage after his appointment [Proviso to Art.125]



Constitutional Provisions Rel.to Independence of Judiciary [contd..]


- SC to be a Court of Record –Art.129
- Law declared by SC to be binding on all courts- Art.141
- SC's power to pass decree/order....necessary **for doing complete justice** in any case or matter pending before it& such order shall be enforceable as if it is a law passed by Parliament..until provision in that behalf is made - Art.142 - [Ref. to Curative Petition & Visakha Guidelines]
- **Difficult procedure to remove SC judges** – Art.124 (4) & (5)
- Rulemaking power of SC – Art.145

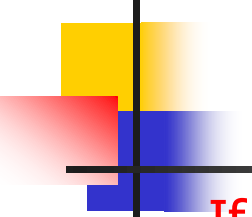
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- HC to be a Court of Record –Art.215
 - Neither privileges nor allowances of HC Judges.....shall be varied to his disadvantage after his appointment [Proviso to Art.221]
 - Restriction on practice by retired HC judges- Art.220
 - Power of Judicial Review
 - Self-assumption of power to appoint and transfer of SC/HC judges – Post 1993 scenario



The Judicial Standards and Accountability Bill, 2012

- The Judicial Standards and Accountability Bill, 2012 –passed by the Lok Sabha on 30 March 2012 (pending in RS)
 - to replace the Judges (Inquiry) Act 1968
 - will empower people to lodge complaints against erring judges, including the chief justice of India and chief justices of the high courts.
 - At present, there is no legal mechanism to deal with complaints against judges, who are governed by 'Restatement of Values of Judicial Life', adopted by the judiciary as a code of conduct without any statutory sanction

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- **On receiving a complaint, the committee will forward it to a system of scrutiny panels**
 - **In the case of a complaint against a Supreme Court judge, the scrutiny panel will consist of a former chief justice of India and two sitting Supreme Court judges**
 - **in the case of a complaint against a high court judge, the panel will have a former chief justice of the high court and two of its sitting judges. Members of the Supreme Court panel will be nominated by the chief justice of India, and that of the high court panels by the chief justice of the concerned high court.**
 - **Scrutiny panels will have the powers of a civil court. For instance, they can call for witnesses and evidence. They will be required to give their report within three months to the oversight committee.**
 - **In the case of a complaint against a chief justice, the oversight committee itself will conduct the scrutiny.**
 - **On receiving the report from the scrutiny panels, the oversight committee will set up a committee to further investigate the case. Like the scrutiny panels, the investigation committee will have the powers of a civil court: it will have the power to frame definite charges**

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- If the charges are not proved, the investigation committee can dismiss the case.
 - Otherwise, it will give a report to the oversight committee, which can issue an advisory or warning if the charges are not too serious.
 - If the charges are serious, the committee can request the judge concerned to resign. If the judge does not do so, the oversight committee will forward the case to the President with an advisory for his removal
 - In such an event, copies of all relevant documents will be laid before Parliament and an impeachment motion moved. In the Lok Sabha, not less than 100 members will be required to move the motion; in the Rajya Sabha not less than 50 members will be needed.



Conclusion

- Independence of judiciary -an extension of doctrine of separation of powers
- Essential for effective administration of justice
- Independence is not devoid of accountability - they are supplementary and complimentary.

THANK YOU