

“Role of Supreme Court in Indian Judiciary”

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“The Judiciary was to be arm of the social revolution upholding the equality that Indians had longed for.”¹

Abstract:-

During this research on this topic we see a stupendous change of Supreme Court of India in its functioning. During this time there is a huge change like functions, role, and appointment of judges. As compare to earlier judiciary power now at modern time there is a tremendous change of Supreme Court in Indian Judiciary. Our Indian Judiciary is the independent Judiciary, there is no political involvement is exists. The research is about basically about the appointment of Chief Justice of India and who is the nominator of CJI and what are process for removal of Chief Justice of India. The researcher does a research on the related to the appointments of judges between Position before 99th Amendment of Constitution and Position after 99th Amendment of Constitution and researcher do a research on case of CJI Deepak Mishra and three Supreme Court Judges. The researcher research on the current scenario of role of Supreme Court of Indian Judiciary, according to today’s condition somewhere intrusion of political parties in independent judiciary, but according to our Constitution our judiciary is independent judiciary. The researcher gives suggestion on how to improve the condition of Supreme Court of India and suggestion about the appointment of judges so that we can filled the lack of judges and give a justice to the people of India. So we can make this quotes in working; “INJUSTICE ANYWHERE IS A THREAT TO JUSTICE EVERYWHERE”.

INTRODUCTION:-

The Supreme Court is the highest court of the India. It is the apex court of the Indian Judicial System. The Supreme Court is the guardian of the constitution. Supreme Court id the highest court and last appeal court under Constitution of India. The Supreme Court of India is the very important role under Indian Constitution. The government has divided in three organs are Legislature, Executive and Judiciary. The third organ of government is judiciary which is independent under Constitution of India. According to the political science the India Constitution has three types of organs legislative, executive and judiciary. In this the judiciary is an independent judiciary it means there is no enforcement between the decision of judiciary, but at

¹ Dr.J.N.Pandey Constitutional Law Of India 54th edition 2017

today's India in written it is given that our judiciary is independent but in reality we see that there is so much chimes in work of judiciary by political parties or political pressure. The guardian of constitution is the essence of federal constitution is the division of powers between the central and state government. The division is made by the written constitution which is the supreme law of the land.

Since language of constitution is not free, earlier due to interpretation of different authorities or powers in constitute of power, it may arise different disputes between centre and constitutes units and their powers. Therefore, in order to maintain the supremacy of the constitution, there must be independent and impartial authority to decide disputes between the centre and the states or the states inter se. This functions can only entrusted only to judicial body.

Historical Background and Formation of Supreme Court in India:-

The regulating act of 1773 established a Supreme Court at Fort William at Calcutta. This Supreme Court contents one Chief Justice and other three regular judges or Puisne Judges. The first Chief Justice of Supreme Court is Sir Elijah Imphey.² The Supreme Court first women judge was Justice M. Fathima Beevi was appointed at 1989. The seventh and the most recent woman judge in the court is Justice Indu Malhotra. The first Chief Justice of India was Justice Harilal Jekisundas Kania (H.J.Kania) of Republic of India.³ He was also become the acting Chief Justice of Bombay High Court. The Current Chief Justice of India is Justice Dipak Mishra. After 1773, at 1774 the letters of patent was issued on 26th March 1774 t established the Supreme Court at Calcutta with a full power of all authority and hear all types of crimes and complaints should be hear and determine any suits or actions against any of his like Bengal, Bihar and Orissa. The Supreme Court at Madras and Bombay was established by King George III on 26th December 1800 and on 8 December 1823 respectively. The India High Courts Act 1861 was enacted to create High Courts for various provinces and abolished Supreme Courts at Calcutta, Madras and Bombay and also Sadar Adalats in Presidency Towns.⁴ The high courts had give jurisdiction to solve the small diputes between provinces and state, because Supreme Court had the jurisdiction to solve the higher level case like the disputes between the government and public. After India get independence in 1947 the Constitution of India came into on 26th January 1950, and the Supreme Court of India also came first sitting was held at 28th January 1950. Supreme Court of India came into existence on 26th January 1950 and is located on Tilak Marg, New Delhi. The Supreme Court of India functioned from the Parliament House till it moved to the present building. It has a 27.6 m high dome and a spacious colonnaded verandah. For a peek

² GK TODAY , GK –Current Affairs- General Studies available at <https://www.gktoday.in/gk/indias-first-supreme-court-fort-william-calcutta/> last seen 08/07/18

³ <https://www.quora.com/Who-was-the-first-chief-justice-of-India> last seen 08/07/18

⁴Supreme Court of India's History, Origin & All you need to Know Legal Desire available on <http://legaldesire.com/supreme-court-indias-history-origin-need-know/> last seen on 08/07/2018

inside you will have to obtain a visitor's pass from the front office.⁵ After two days on 28th January 1950 India become a Sovereign Democratic Republic, the inauguration done on the parliament building with the council of states and the house of the people.⁶ The inaugural proceedings were simple but impressive. They began at 9.45 a.m. when the Judges of the Federal Court – Chief Justice Harilal J.Kania and Justices Saiyid Fazl Ali, M. Patanjali Sastri, Mehr Chand Mahajan, Bijan Kumar Mukherjea and S.R.Das – took their seats. In attendance were the Chief Justices of the High Courts of Allahabad, Bombay, Madras, Orissa, Assam, Nagpur, Punjab, Saurashtra, Patiala and the East Punjab States Union, Mysore, Hyderabad, Madhya Bharat and Travancore-Cochin. Along with the Attorney General for India, M.C. Setalvad were present the Advocate Generals of Bombay, Madras, Uttar Pradesh, Bihar, East Punjab, Orissa, Mysore, Hyderabad and Madhya Bharat. Present too, were Prime Minister, other Ministers, Ambassadors and diplomatic representatives of foreign States, a large number of Senior and other Advocates of the Court and other distinguished visitors. After inauguration the Supreme Court commenced its sittings in a part of the Parliament House, and then the court moved towards the new building at 1958, where the building is shaped in justice. The Central wings of the building are the centre of the building. In 1979 the two new wings attached to the complex are east wings and west wings and the Chief Justice's Court is the largest of the courts located in the centre wings. In all there are 15 courts rooms in the various corners of the building.⁷ The proceedings of the Supreme Court are conducted in English only. Supreme Court Rules, 1966 are framed under Article 145 of the Constitution to regulate the practice and procedure of the Supreme Court.

Collegium System: - The collegium system is a process related to appointments and transfer of judges in the Supreme Court and high court is taken by collegium which includes CJI, four senior most judges of Supreme Court and three members of high court. The collegium was a of the interpretations of constitutional provisions by the Supreme Court in the three 'Judges case'. Judges of the higher judiciary are appointed only through the collegium system. However, if the collegium decides on the same again the government is bound to appoint them as judges. The Supreme Court collegium is headed by the CJI. It contains four more senior most judges of the Supreme Court. The High Court collegium is led by its Chief Justice of the respective High Court. The collegium system of Supreme Court of India which appoint judges to the nation's constitution courts, has its genesis in and its own judgements which collectively called the three judges cases.

Judicial Provisions – Judges Case

First Judges Case: S P Gupta Vs Union of India

⁵ Ibid

⁶ See Legal Desire Article by Legal Desire available on <http://legaldesire.com/supreme-court-indias-history-origin-need-know/> last seen 09/07/18

⁷ Ibid

The primacy of the CJI in matters of appointment and transfers was questioned. The term consultation used in Articles 124 and 217 did not mean concurrence. This implied that although the President will consult the concerned persons as mentioned in the Constitution but he was not bound by their advice recommendation. The judgment made the Executive more powerful in the process of appointment of judges of High Courts.

Second Judges Case: The Supreme Court Advocates-on-Record Association Vs Union of India overruled the decision in First Judges Case. Devised the ‘Collegium System’ gave primacy to the CJI in matters of appointment and transfers and highlighted that the term consultation would not diminish the primary role of the CJI. The CJI should make recommendations in consultation with his two senior most colleagues.

Third Judges Case: Presidential Reference by President K R Narayanan

The purpose was to give meaning of the term “consultation” under Article 143. Supreme Court came out with the present form of Collegium System. The recommendation should be made by the CJI and his four senior most colleagues, instead of two.

Criticism of the Collegium System

It is non-transparent system without any official mechanism or secretariat lawfully enacted by the Parliament. There is no provision regarding the collegium system or such a body in the constitution. It lays down no prescribed norms regarding eligibility criteria or even the selection regarding its meetings, procedures and methods is there in the public domain. Lawyers also suffer from lack of knowledge whether their names have been considered for elevation as a judge. It is a system where the members of the judiciary are serving their own ends. Judicial primacy in making appointments is not a part of the basic structure. This method gives excess powers to the judiciary and does not give genuine broad minded lay persons to be a part of the process of selection.

Appointment of Chief Justice of India:-

The majority held that the appointment to the office of the Chief Justice of India should be on the basis of seniority means that the senior most judge of supreme court should be appointed for the post of Chief Justice of India. ⁸The Chief Justice of India appointed only when they are senior and with more experience because it is the post of very honorable post that’s why it is appointed by seeing the seniority of judges.

The important guidelines given by the court are as following:-

⁸ Dr.J.N.Pandey Constitutional Law Of India 54th edition 2017

- 1) Individual intention of high constitutional functionaries in the matter of judges appointments reduced to the minimum number of judges. It gave primacy to the Chief Justice of India but a rider that he must consult his two colleagues.⁹
- 2) Constitutional provisions must act together in judicial provisions.
- 3) Chief Justice of India has given the final or last saying in any transfer of Judges and Chief Justice of High Court.¹⁰
- 4) Transfers of Chief Justice and Judges of High Courts could not be challenge in High Courts.
- 5) Appointment of Chief Justice of India is done by only seeing the seniority of judges.
- 6) No Judge could be appointed by the Union of Government without consulting the Chief Justice of India.
- 7) Fixation of strength of High Courts is justifiable.¹¹

Chief Justice of India: - The Chief Justice of India is the supreme head of the Supreme Court of India. As the head of Supreme Court of India the CJI is responsible for the allocation of cases and appointments of constitutional benches of judges which deals with the important case law. The present Chief Justice of India is CJI Deepak Mishra, he is the 45th Chief Justice of India.

Appointment of Judges – Position Before 99th Amendment of Constitution: - The Judges was appointed by the President. The Chief Justice of the Supreme Court was appointed by the President with the consultation of such Judges of the Supreme Court and the High Court as he deemed necessary for the purpose. But in appointing other Judges, the President would always consult the CJI. Under Article 124(2) the President, in appointing other judges of Supreme Court the President took consult from the Chief Justice of India. But in appointing the CJI, he was not bound to consult anyone.¹²

Appointment of Judges – Position After 99th Amendment of Constitution: - The Constitution 99th Amendment Act, 2014 amended Articles 124(2), 127 and 128. According to the amended Article 124(2), every Judge of the Supreme Court shall be appointed by the President by warrant under his hand seal on the recommendation of the National Judicial Appointments Commission referred to in Article 124A. After this amendment no consultation is required by the President with the judges of the Supreme Court and High Court.¹³

Removal of Chief Justice of India:-

The procedure relating to the removal of Judge of Supreme Court is regulated by the Judges Inquiry Act, 1968. There are two types for removal of Judges is proved misbehavior or incapacity. A judge can be removed by the order of President. Under Article 124(4), A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supposed by a majority of the total

⁹ ibid

¹⁰ See Dr.J.N.Pandey Constitutional Law Of India 54th edition 2017

¹¹ ibid

¹² ibid

¹³ See Dr.J.N.Pandey Constitutional Law Of India 54th edition 2017

membership of that House and by a majority of not less than two-thirds of the members of the House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehavior or incapacity.¹⁴

The Step wise procedure for removal of judges is:-

1. A removal motion signed by 100 members in Lok Sabha or 50 members in Rajya Sabha is to be given to the Speaker/ Chairman. The removal motion can be submitted to any of this House.
2. The Speaker may approve or reject the motion of removal of judge.
3. If Speaker of House is admitted then it is forwarded to constitute a three member committee to investigate into the charges.
4. If the judges found guilty by committees on misbehavior or incapacity in the house of parliament then they can take consideration of the motion.
5. Once the house passes motion on the removal of judge, then it passes to the second house which has also pass it to with a majority.
6. After the motion passes by the both houses with special majority, then it is presented before the President for removal of judges.
7. Finally, the President passes an order removing the judge. So far, no judge of the Supreme Court has been impeached. The only case where an impeachment motion was initiated an inquiry committee found the judge guilty was of Justice V Ramaswami of the Supreme Court(1991-1993). But this motion was defeated in Lok Sabha.¹⁵

Case laws related to the appointments of CJI :-

Case Laws: - CJI impeachment notice rejected

On April 23, Vice President of India, Venkaiah Naidu rejected the impeachment notice against the CJI Deepak Misra signed by 64 opposition MPs. The ex-officio Rajya Sabha Chairperson rejected the notice on the ground that the petition does not suffice the conditions of proved misbehaviour or incapacity on the part of the judge.

Alleged ground of misbehavior. Senior Congress leader Kapil Sibal said on Friday that the notice mentions five grounds of misbehaviour for the removal of Chief Justice of India.

The grounds of misbehaviour mentioned in the notice are:

1. "Conspiracy to pay illegal gratification" in the Prasad Education Trust case and the denial of permission to proceed against a retired high court judge in the same matter.
2. The CJI allegedly listed the petition against the Prasad Education Trust before himself, even when he was heading the Constitution bench, which is against the convention.
3. "Antedating" (backdating) of an order for the listing of a petition related to the investigation against the Prasad Education Trust in the Supreme Court.

¹⁴ Universal Law Publishing, an imprint of lexis nexis, The Constitution of India, as amended by The Constitution (One Hundred and First Amendment) Act, 2016

¹⁵ <https://www.quora.com/What-is-the-procedure-to-remove-a-Supreme-Court-Judge-in-India> last seen 19/07/18

4. Misra allegedly acquired a piece of land by giving a "false affidavit" while he was an advocate. The plot was surrendered in 2012 when he was elevated to the Supreme Court, even though orders cancelling the allotment were given in 1985.
5. Abuse of exercise of power by the Chief Justice in choosing to send sensitive matters to particular benches by misusing his authority as Master of the Roster with the likely intent to influence the outcome.¹⁶

Case Laws: - Motion for removal of CJI Dipak Mishra delivered to Vice President Venkaiah Naidu

Rajya Sabha Members belonging to seven political parties have signed the notice for initiating impeachment proceedings against Chief Justice of India Dipak Mishra, Rajya Sabha Opposition leader Mr. Ghulam Nabi Azad confirmed at a press conference today. The parties that have signed the notice include Congress, NCP, CPM, CPI, SP, BSP and Muslim League. Addressing the conference, Mr. Azad further confirmed that the motion has been delivered to Vice President of India, Mr. Venkaiah Naidu. He informed those present that the impeachment is being sought to be initiated under five listed grounds of misbehavior. Also present at the conference were Congress Leader Mr. Kapil Sibal, Senior advocate and Rajya Sabha member Mr. KTS Tulsi, CPI Leader Mr. D. Raja and Senior leader and media in charge of the Congress Randeep Singh Surjewala. Chiming in, Mr. Sibal made reference to the unprecedented press conference held by four senior Judges of the Supreme Court. He was quoted as saying, "In their letter, the judges stated that administration of the court has not been proper. They said that time and again, they tried to collectively persuade the Chief Justice that certain things are not in order. They lamented that their efforts had failed and all four of them were convinced that unless the institution is preserved, democracy will not survive. We were hoping that the anguish of the judges would be addressed by the Chief Justice and that he would set his house in order. More than 3 months have passed, nothing has changed. The Chief Justice has not asserted the independence of the judiciary in the face of the pressure by the executive. Mr. Sibal brought up the medical college bribery case as well, to assert that the first charge relates to the "conspiracy to pay illegal gratifications". He, in fact, claimed that there exist several taped conversations with the CBI, in which a retired Orissa High Court judge is talking about some deals with other people. This conversation, he said, also mentioned the CJI. The second charge, he said, related to the CJI's exercise of administrative and judicial powers. Another charge related to the Chief Justice acquiring land when he was an Advocate. He then asserted that "majesty of law is more important than the majesty of any other office", and added that the "democracy can thrive only when the judiciary stands firm and exercise its powers honestly and independently".

¹⁶ India Today <https://www.indiatoday.in/education-today/gk-current-affairs/story/vp-venkaish-naidu-rejects-impeachment-notice-against-cji-all-about-the-appointment-qualification-and-removal-of-chief-justice-of-supreme-court-1218181-2018-04-23> last seen 19/07/18

Issue far from settled:-

Over the past few days, reports were rife that the Congress and the Nationalist Congress Party (NCP) led by Sharad Pawar had already signed the impeachment draft. Another report by The Economic Times had indicated that leaders of several opposition parties, including the Trinamool Congress, the NCP and the Communist Party of India (Marxist), actively discussed the matter over the past few days. The discussions were initiated soon after the unprecedented press conference held by four sitting Judges of the Supreme Court and the uproar that followed. The four Judges – Justice J. Chelameswar, Justice Ranjan Gogoi, Justice M.B. Lokur and Justice Kurian Joseph- had then asserted that the administration of the Apex Court is “not in order” and that many “things less than desirable” have been happening in the last few months. It was also revealed that they had written a letter to the CJI two months ago, airing their grievances. CJI Misra had also found himself in a soup in the medical college bribery case, which had even fuelled unprecedented drama at the Supreme Court with the Court annulling an order passed by a two-Judge Bench, after a rather forthright confrontation between the CJI and Advocate Prashant Bhushan. However, senior INC leader Mallikarjun Kharge had later confirmed that CJI Misra was off the hook and that the “issue is closed now”. But the matter seems to be far from over.¹⁷

CASE LAWS:-**Supreme Court judges vs CJI Dipak Misra: All you need to know about controversial RP Luthra case**

In this case the four judges write a letter to CJI related to the case of RP Luthra case. In this case four senior most judges recall about the case that the Chief Justice of India Dipak Misra gives the wrong judgement, in this case they raise the question on the memorderum on the assignment of the cases given to the benches of the case.

Conclusion & Suggestion: -

The researcher concludes on the topic on The Role of Supreme Court in Indian Judiciary. The Supreme Court plays a vital role in this India. It is the highest court in India Judiciary System. The Supreme Court deals with the case like what is important case or it deals with only the important case which deals with the States. The Supreme Court is the guardian of the Constitution. The researcher research on the appointment of judges or Chief Justice of India and the role of Chief Justice of India is that he is the head of the Supreme Court of India and CJI gives a work to the benches of the judges to do work on the important case laws. In this topic researcher concludes that under Article 124(4), it lays down the procedure of removal of judges of Supreme Court, the Chief Justice of India can removed in condition in impeachment or

¹⁷ Live Law.in All About Law <http://www.livelaw.in/motion-removal-cji-misra-delivered-vice-president-venkaiah-naidu/> by: apoorva mandhani april 20, 2018 2:01 pm last seen 19/07/18

misbehavior either retirement till the age of 65 years. Under Article 124(2), the appointment of CJI by the President with the suggestion of other three judges but after the 99th amendment act the President did not need suggestion with the judges for the appointment or removal of judges. The CJI also file the case related to the impeachment of removal of judges of any type of motion like this.