

# ● ACCOUNTABILITY IN LEGAL PROFESSION AND CRISES IN EXISTING MECHANISMS

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## Abstract

*The Constitution of India accords to the judiciary an important role of constitutional umpire as well as legal mentor of nation. In administration of justice the role of legal professionals is also very important. The members of this noble and honorable profession are expected to maintain the high traditions, ideals and standards. From the judiciary's point of view independence from other organs of state is considered necessary and to maintain this independence there is urgent requirement of a sound mechanism. In major democracies of the World, judges are appointed by the Executive. The countries like South Africa and UK have set up Judicial Commission for the appointment of judges which consists of wide range category of members for appointment of the judges. In India, controversy has arisen between the different organs of the state. Both Legislative and Executive are trying their level best to get supremacy in the matter. Perhaps the solution exists in a practice where neither side enjoys supremacy. The present paper examines the present procedure of appointment of judges and analyses the National Judicial Appointment Commission (NJAC) Bill, 2014.*

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## Key words

*Legal Profession, Independence of Judiciary, Appointment of Judges and NJAC.*

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## I. Introduction

The Constitution of India accords to the judiciary an important role of constitutional umpire as well as legal mentor of nation, in which the role of legal profession is very important in the administration of justice<sup>1</sup>. It is one of the professions in our country which has found a place of pride in the Constitution of India and it is indispensable to society. No doubt, the member of noble and honorable legal profession has expected to maintain the high traditions, ideals and standards<sup>2</sup>. Legal profession, which consists of lawyers, judges, legal bureaucrats and jurists, play a vital role in maintaining the rule of law. They mediate between modernistic values held out by the constitution and the traditional values accepted by the society which helps in creating proper legal culture<sup>3</sup>. The judicial process is collaboration between the practicing lawyers' and the judges. It is

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<sup>1</sup>I. T. Commr. *Madras v. RMC Pillai* AIR 1977 SC at 497

<sup>2</sup>Ravi Karan Singh, *Dispensation of Justice Role and Accountability of Judges and Advocates*, Deep & Deep Publication 2004

<sup>3</sup>Peter Rowe, "Indian Lawyers and Political Modernization", 3 Law and Society Review, 1968, at 219

therefore, the present study on legal profession has called to expose the prevalent professional misconduct in Bar and deviant behaviour of Bench. Further in this article instances has been mentioned to examine the prevalent unethical practices and to scrutinize ambiguities among the errant legal professionals.

Keeping the past attitude of the lawyers towards social change including awareness of their societal role as social engineers was necessarily realised by the Apex Court in *S.P. Gupta v. President of India*<sup>4</sup> that lawyers had locus standi to challenge governmental action which was likely to interfere with independence of the judiciary. Justice Bhagwati observed that 'the profession of lawyers' is an essential and integral part of the judicial system and lawyers may figuratively be described as priests in the temple of justice. They assist the court in dispensing justice and it can hardly be disputed that without their help, it would be well nigh impossible for the court to administer justice<sup>5</sup>. It appears that legal profession has not only high depth of learning but also a sense of social responsibilities which call for the high and noble conduct, by virtue of the position he occupies, a lawyer is required and expected to maintain high professional ethics.

The word 'Ethics' means a science of morals or that branch of philosophy which is only concerned with human character and conduct. It is the body of rules and practices which determine the professional conduct of the members of the Bar and the Bench. The character of a lawyer should be beyond suspicion. It is therefore, necessary for a lawyer from the commencement of his career to cultivate truth, honesty, and moral excellence while practicing his profession. The fundamental aim of 'legal ethics' in the words of Marshal C.J., of the United States, is to maintain honor and dignity of the legal profession; to secure a spirit of friendly co-operation between the Bench and the Bar in promotion of highest standards of justice; to establish honorable and fair dealing of counsel with his client, opponent and witnesses; to established spirit of brother-hood with Bar itself; and to secure that lawyers discharge their responsibilities to the community generally<sup>6</sup>. To regulate the conduct of lawyers, adequate safeguard have been provided under sections 35 and 36 of the Advocate's Act 1961 and Chapter II of Part VI of the afore said rules deals with, Standards of Professional conduct and Etiquette. Bar Council of India by framing certain rules and State Bar Councils by establishing disciplinary committees has become custodian of the profession.

The Judges of High Courts and the Supreme Court are constitutional functionaries. Hence no statutory conduct rules are applicable to them. Judges are governed by the oath that they will act faithfully and without fear, favor, affection or ill will. However, in order to maintain probity in judicial life, higher judiciary has to formulate code of ethics for themselves, wherein morality and virtue of judges has to be re-stated. However, all the states in India have formulated separate rules governing conduct of judicial officers of the subordinate courts<sup>7</sup>.

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<sup>4</sup>AIR 1982 SC 149

<sup>5</sup>Id., at 195

<sup>6</sup>Krishana Swami Aiyer, *Professional Conduct and Advocacy* (New Delhi: Oxford University Press, Third Ed., 1960) at 92

<sup>7</sup>The U.P. Judicial Services Rules, 2001; the Punjab Superior Judicial Services Rules, 2007; the Haryana Superior Judicial Services Rules, 2007; and the West Bengal Judicial Services Rules, 2004 etc.

## II. PROFESSIONAL MISCONDUCTS BY ADVOCATES

The expression 'professional misconduct' has been explained long time back by the Privy Council in the case of *George Frier Grahame v. Attorney General Fize*<sup>8</sup>, that any attempt 'by any means' to practice a fraud or betraying the confidence of a client; empower on or deceive the court or the adverse party or his counsel and any conduct which tends to bring reproach on the legal profession or alienates the favorable opinion in which the public should entertain concerning it. In *P.D. Khandelkar v. Bar Council of India*<sup>9</sup>, the Supreme Court laying down test to be applied in case of 'professional misconduct' of advocates, said that 'the proved misconduct of an advocate is such that he must be regarded as unworthy to remain a member of honorable profession to which he has been admitted, and unfit to be entrusted with the responsible duties that an advocate is called upon to perform'.

Further, Supreme Court<sup>10</sup> classified that the word 'misconduct' though not capable of a precise definition, however, may involve moral turpitude, improper or wrong behavior, unlawful behavior, willful in character, forbidden act, a transgression of established and definite rule of action or code of conduct; but not a mere error of judgment, carelessness or negligence in performance of the duty; the act complained of must bear forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein term occurs.

It makes clear that misconduct has myriad forms, which are rampant in advocacy and entail the instances of lawyers accepting money in the name of a Judge or on the pretext of influencing him; or tampering with the court's record; or actively taking part in forged court orders; browbeating and abusing Judges and getting the case transferred from an inconvenient court; or sending unfounded and unsubstantiated allegation petitions against judicial officers and judges to the superior courts, are universally known. Unfortunately these examples are not from imagination. These things are happening frequently than we care to acknowledge<sup>11</sup>.

In this regard few landmark instances has been given below which provide for curbing menace of malpractices which lawyers have made an integral part of their legal practice.

### Lawyer's Strike

Prior the passing of Advocates Act 1961, an important question of law was raised in *Emperor v. Rajni Kanta Bose & ors*<sup>12</sup>, that whether strike and boycott of court by the pleaders would amount to professional misconduct under the Legal Practitioners Act? The court held that such an attempt by the Pleader's was to impede the administration of justice and amounted to deliberate failure in duty towards clients and courts. The court observed that strike and boycott of the court by pleaders has been included in professional misconduct within the meaning of s.13(b)(7) of Legal Practitioner's Act and

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<sup>8</sup>AIR 1936 PC 224

<sup>9</sup>AIR 1984 SC 110

<sup>10</sup>*Noratanmal Chourisa v. M.R. Murli*, AIR 2004 SC 2440

<sup>11</sup>*R.K. Anand v. Registrar Delhi HC*, 2009(10) SCALE 164

<sup>12</sup>AIR 1922 Cal. 515; See also, *In re Taravi Mohan Barari* AIR Cal. (FB) 21-23; and *In re Pleaders Case* AIR 1924 Rang 320

court was opened that it was a ground for debar or suspension of the Pleader. Again the question of right to go on strike or give call for boycott of courts by professionals was considered in *Ex-Capt Harish Uppal v. Union of India*<sup>13</sup> but this question has not been decided by the court. However, the court realized that the phenomenon of going on strike at the slightest provocation has been increasing, although strikes and call of boycott paralyzed functioning of the courts. Further, Supreme Court in *Indian Council of Legal Aid and Advice v. Bar Council of India*<sup>14</sup>.

Observed that "members of the legal profession have certain social obligations and since their duty is to assist the court in the administration of justice. They must strictly and scrupulously abide by the code of conduct and must not indulge in any activity which may tend to lower the image of legal profession in the society. The legal profession is a solemn and serious occupation. The honor as a professional has to be maintained by its members by their exemplary conduct both in and outside the court.

Legal and judicial system in this country is playing an important tireless role. Stalwarts of the profession has always taken their profession seriously and practiced it with dignity, deference and devotion, seeing the seriousness of the profession Supreme Court in *re Sanjeev Dutta*<sup>15</sup> observed that lawyers has no right to go on strike and that they shall be answerable for the consequences suffered by the party. Court further established that 'No service will be too small in making the system efficient, effective and credible'. Senior members of Bar are also of firm opinion that strike of advocates amount to professional misconduct. It is a threat to the administration of justice and undermines rule of law<sup>16</sup>. Study on lawyer's strike in the States of Delhi, Punjab and Haryana and some other part of India reveals that time spent by lawyers in court is lesser then protesting outside the court. Therefore, to nip this evil of advocate's strike, the legislature must come forward with express provisions in the Advocates' Act, 1961<sup>17</sup>.

## Misappropriation of Client's Property

In *Vikas Despande v. Bar Council of India*<sup>18</sup>, an advocate has obtained signature of his client on some blank papers and later on converted into forged documents of client property while, he was facing death penalty. There after he sold their land on the basis of forged power of attorney executed in his favor and adjusted the money in remittance of his fees. The court expressing distress and owing of such misconduct observed that the preservation of mutual trust between an advocate and his client is must otherwise the prevalent judicial system in the country would fail and collapse. Such acts apart from affecting the lawyers erode the confidence of the general public in the judicial system. Supreme Court, further, also comments on the nobility of the profession in the following words:

"Today hundred percent recruitment to the bench is from the bar starting from t h e

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<sup>13</sup>(2003)2SCC 45

<sup>14</sup>AIR 1995 SC 691

<sup>15</sup>1995 3SCC 619

<sup>16</sup>H.M. Seervai, F.S. Nariman, P.P. Rao and Rajiv Dhawan (All are senior Advocates); See supra note 2, at 84 and 85

<sup>17</sup>Supra note 2, pp. 12-87

<sup>18</sup>AIR 2003 SC 308

subordinate judiciary to the higher judiciary. We cannot find honest and hard working Judges unless we find honest and hard working lawyers. Time has come when the society in general, respective Bar Council of states and the Judges should take note of warning bells and take remedial steps and nip the evil or the curse, if we may say so, in the bud.”<sup>19</sup>

The court further realized that no judicial system in a democratic society can work satisfactorily unless it is supported by the bar that not only enjoys the unqualified trust and confidence of the people but also shares the aspiration, hope and ideals of the people whose members are monetarily accessible and affordable to the people.

### **Collusion of Legal Services**

In *R.K. Anand v. Registrar, Delhi High Court*<sup>20</sup> (known as BMW Hit and Run case) on May 30, 2007 through a programme by a news channel, New Delhi Television (NDTV), it was revealed that eye witness was being influenced by the defence lawyer in collusion with public prosecutor to shield the main accused. The Supreme Court admitted the facts of case to be a manifestation of the general erosion of the professional values among lawyers at all levels. Living aside many kinds of unethical practices indulged in by a section of lawyers, Court find that even some highly successful lawyers seem to live by their own rules of conduct. It was asserted that unless the trend was immediately arrested and reversed, it shall have very deleterious consequences for the administration of justice in the country. The Supreme Court also criticized the quantum of punishment<sup>21</sup> awarded by Delhi High Court as wholly inadequate, and issued a show cause notice to Mr. Anand (Sr. Advocate) seeking an explanation as to why his punishment should not be enhanced under the Contempt of Courts Act? Further Court opined that the right of the advocates to appear in courts is within the control and jurisdiction of courts<sup>22</sup>.

These are few illustrative judgments of the Supreme Court that provides stark reminders and stern warning to the deviant behavior of Advocates. The judiciary while acting reasonably against the errant Advocates has given some commendable judgments, of punishing errant lawyers, along with requisite directions to entire lawyer's fraternity and has attempt to bring back dignity of the legal profession and efficient administration of Justice.

For assessing role and functions of the Bar Council through its Disciplinary Committees in disposing of complaint cases in various capacities has been examined in depth and concluded by the study 'that the indulgence of the advocate in various serious professional misconduct may damage to the client heavily. Sometimes client may lose his livelihood while the advocate is let scot-free by their peer's group adjudication system. Study further showed that an attempt has always been made to save erring

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<sup>19</sup> *Id.*, at 309

<sup>20</sup> *Supra* note 11 at 199

<sup>21</sup> The High Court debarred R.K. Anand and IU Khan both Sr. Advocates from appearing in any court in Delhi for four months along with a fine of Rs 2000/- each.

<sup>22</sup> The Supreme Court Practice and Procedure Rule, and High Court Practice and Procedure Rule

advocates and put complainant into distress<sup>23</sup>. After considering the pros and cons of the problem it is submitted that peer group of adjudication system in the legal profession failed miserably to grant any effective relief to sufferers.

### III. MISCONDUCTS BY JUDGES

At present judges of the Supreme Court and of the High Court's shall be appointed by the President of India after consultation of chief Justice of India. He has to act or upon the advice of the Council of Ministers, which should be given in consultation with Chief Justice of India as required by Article 124(2) and 217(1). In this way President is appointing authority. In *Supreme Court Advocate on Record Association v. Union of India*<sup>24</sup> the Court has elaborated the expression 'consultation with chief justice of India' requires consultation with plurality of judges of the Supreme Court and held that the opinion of the Chief Justice of India has primacy in matter of recommendation for appointment to the Supreme Court and High Court Judges and to formed in consultation with a collegiums of Supreme Court judges.

On the other hand the existing machinery for removal of a judge of the Supreme Court or a judge of High Court's under Article 124(4) & (5) of the constitution is by way of impeachment. The President shall not pass such an order of impeachment unless an address by each House of Parliament has been presented to him for such removal on the ground of proved misbehavior or in capacity. Such an address must be supported by the two third majority of the House. Thus the existing process under the constitution for the removal of a Judge is sufficiently proved by the fact that hardly in any case, in which impeachment has been invoked since the commencement of the constitution and ended up in removal of judge in spite of support for the removal of a judge from the Bar, Media and the Parliamentarians.

The independence of the judiciary from the executive and the legislature as well as independence of each and every judge within the judiciary is considered as a necessary condition for a free society and constitutional democracy. The Supreme Court held more than once that the independence of judiciary is a basic feature of the Indian Constitution<sup>25</sup>. P.P. Rao, Senior Advocate in his article<sup>26</sup> rightly quoted Socrates to describe the quality of a judge. According to him, 'Four things belong to a judge; to hear courteously; to answer wisely; to consider soberly; and to decide impartially'. A dishonest judge cannot decide impartially. When a Lord Chancellor was asked as to what he would look in a candidate for judge-ship, he said 'honesty' and added if he knows some law, still better. Over the years there has been a growing concern about the deteriorating quality of judges. There was a time when corruption in the judiciary was unknown, but not any longer. In 1990, Nani A. Palkivalla spoke about public disenchantment with judicial administration. He rightly observed that 'if you lose faith in

<sup>23</sup>Ravi Karan Singh, "Legal Practitioners (Regulation and Maintenance of Standards in Profession) Bill 2010: A Critique", Pbi. U. LJ, 2011, at 81

<sup>24</sup>(1993) 4 SCC 441.

<sup>25</sup>*SP Gupta v. Union of India AIR 1982 SC 149; Indira Nehru Gandhi v. Raj Narain AIR 1975 SC 2299; Minerva Mills Ltd. v. Union of India AIR 1980 SC 1789 and Kihoto Hollohan v. Zachillhu AIR 1993 SC 412*

<sup>26</sup>P.P. Rao, "Working the Constitution- Delivered Lala Amar Chand Sood Inaugural Memorial Lecture", Pbi. ULJ, 2010, at 7

politicians, you can change them. If you lose faith in judges, you still have to live with them... corruption in the upper reaches of the judiciary is illustrative of the incredible debasement of our national character<sup>27</sup>. Chief Justice S.P. Bharucha, estimated that 20% of the judiciary has become corrupt, but mostly in the subordinate judiciary. Ram Jeth Malani, as Union Law Minister, said that the fatal combination of incompetence and corruption among police, prosecutors, witness and judges frustrated Justice<sup>28</sup>. Similarly senior lawyer Mr. Prasant Bhushan who was also member of the Committee on Judicial Accountability in an interview given to 'Tehelka magazine' in the year 2009 made a statement that 'half of the last 16 chief Justices were corrupt'. Not even this he also quote 'Transparency International Report' 2006 which states that judiciary in India is the second most corrupt institution after the police<sup>29</sup>. The allegation raised by Mr. Bhushan seems to have raised a heuristic challenge. How courts close its eyes and pretend to be asleep? Below mentioned are few instances which showed deviant behaviour of judges and malfunctioning of the constitutional courts. There are following instances of misconduct by Judges:

### **Justice K. Veeraswami Case**

The former Justice of the Madras High Court was found guilty of 'criminal misconduct' under S. 5(1)(e) of the then Prevention of Corruption Act 1947<sup>30</sup>. The matter reached before the constitution bench of Supreme Court. Court held that definition of 'public servant' is wide enough to include judges of higher judiciary. However, it created an embargo that a sanction from the Chief Justice of India shall be obligatory for registering a criminal case against a judge. The court held that, this restraint is necessary to protect the judges from harassment by the executive, who controlled the investigating agencies. Since the judgment has rather increased the impunity of judges who have now used to the feeling that they can get away with any kind of misbehavior.

### **Justice Soumitra Sen Case**

A letter dated Aug. 4, 2008 to the Prime Minister, the then Chief Justice of India asked for the impeachment of the Judge Soumitra Sen. The process had been started to impeach of Mr. Sen by the Parliament. Rajya Sabha passed the resolution for his removal but before the Lok Sabha could take up the matter, he resigned and his resignation was accepted by the President of India.<sup>31</sup>

### **Justice Y.K. Sabharwal Case**

The Central Vigilance Commission in Jan 2008, charged that Mr. Sabharwal misused his official position to promote the business interests of his son, by ordering for the demolition of commercial outlets in Delhi. This was criticized by media. It is interesting

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<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> *Tehelka Magazine*, Vol. 6 issue 35 dated Sept. 05, 2009, available at: [www.tehelka.com](http://www.tehelka.com) [Visited 20 June 2014]

<sup>30</sup> 'If any person on his behalf is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactory account, of pecuniary resources or property disproportionate to his known sources of income'.

<sup>31</sup> G.S. Pande, *Constitutional Law of India* (Pub. Uni. Book House Pvt. Ltd, 2012) at 468

to note that the Delhi High Court suo moto issued contempt proceeding against the press and others, despite their offering to prove the truth of all their allegations. The High Court declared that the truth of the allegation was irrelevant since they had brought the entire judiciary into disrepute and also tarnishes the image of Judiciary.<sup>32</sup>

### **Ghaziabad Provident Fund Scam**

This scam came into notice when an ex judge (vigilance) of Ghaziabad District Court reported to the Allahabad High Court that more than seven crores has been siphoned out of the Ghaziabad treasury by the District and Session Judges with the help of an administrative officer of the court, in the guise of Provident Fund advances to class III and IV employees. The High Court found the report, prima facie, having merit and directive to, the vigilance Judge to file FIR against the administrative officer of the court. Since the Ghaziabad police found it difficult to investigate the matter and it was transferred to CBI.<sup>33</sup>

### **Justice Nirmal Yadav Case**

Also known as 'Judge's door scandal' arose when a packet containing of Rupees Fifteen lakh allegedly meant for Justice Nirmal Yadav, but it was mistakenly delivered to other Justice Nirmal Kaur, of Punjab and Haryana High Court. The CBI was called upon to investigate and an in-house Inquiry Committee of three judges was also constituted by the CJI. The committee found that there is substance in the allegations and misconducts disclosed are serious enough for initiating the proceedings for removal of Justice Nirmal Yadav.<sup>34</sup> However, in November 2009, a clean chit was given to Justice N. Yadav and CBI filed a closure report before special court. But the Bar Association opposed CBI's request to close the case and filed a petition in High Court against the same. However, petition was rejected on 26 March 2010. Once again, permission was granted to CBI to prove upon allegations against Justice Nirmal Yadav.<sup>35</sup> It seems, such controversies are diminishing the image of the whole judiciary and depicted the noncredibility of the collegiums system, for investigating complaints against the judges, but also brought forth the focus on judicial appointments and transparency in the judiciary.

### **Justice V. Ramaswamy Case**

This was the first judge in Indian legal history which faced impeachment for immense financial irregularities committed during his term as a Punjab and Harayana High Court judge. However, impeachment could be successfully completed as the same was not supported by 205 congress MPs. An inadequacy of the existing mechanism was witnessed in K. Veeraswami case and the infrutuous impeachment proceedings in the

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<sup>32</sup> Available at: <http://www.judicialreforms.org> [Visited on 15 July 2014]

<sup>33</sup> Restriction imposed in the K. Veeraswamy Judgment restrained the police from investigating criminal offences by judge without permission the prior written permission of CJI. As per directions given by the then CJI, the police were not allowed to directly interrogate the High Court judges and could only send written question to them.

<sup>34</sup> Available at: <http://thehindu.com> [Visited on 15 July 2014]

<sup>35</sup> Ibid.

case of V. Ramasawami even after the adverse finding of the judge's committee under the Judges Inquiry Act, 1968, affirmed that impression.<sup>36</sup>

### Justice P D Dinakaran Case

A criminal misconduct<sup>37</sup> came into light when District Collector report was submitted to the Supreme Court and confirmed that Karnataka High Court Chief Justice Mr. Dinakaran had encroached upon public land illegally. The forum comprising of senior Advocates of Chennai wrote to the Supreme Court collegiums and also to the Committee on Judicial Accountability, conveying serious misgivings about the integrity of Justice Dinakaran. The process of impeachment against Mr. Dinakaran was started by the Rajya Sabha by constituting a committee to investigate corruption charges against him. He challenged the constitution of the committee and procedure thereto adopted by the committee. Dismissing the petition Supreme Court urged the chairman to nominate another jurist in his place. Due to this delaying tactics, he resigned from his post and Rajya Sabha wound up the committee.<sup>37</sup>

Recently, former Supreme Court Judge Markanday Katju, Chairman of Press Council of India<sup>38</sup> stirred a controversy by alleging that three ex Chief Justices of India had made improper compromised<sup>39</sup> in given extension to an additional judge of Madras High Court against whom there were several allegations of corruption, to continue in office.<sup>39</sup> These three former CJI's made improper compromises. Further Mr. Katju said the reason for all this was that at that time the UPA-I, Government was dependent on allies and one of them was a Tamil Nadu (DMK) party, whose leader was given bail by the additional Judge concerned. Hence, it is argued that the corruption cases against the judges has rather increased the impurity of judges in higher court, who have now got used to the feeling that they can get away with any kind of misbehavior, without fear of any criminal action or action for removal. Armed additionally with the power of contempt they also have little fear of public exposure.<sup>40</sup> Nevertheless, this requisite must be given a second thought in beginning pertaining to the prevailing circumstances as since the K. Veeraswamy Judgment etc. A Chief Justice of India has rarely given permission to investigate a sitting Judge of High Court or Supreme Court, obviously not because there has been no corruption in the Judiciary.<sup>41</sup> In retrospect, it would appear that the trust reposed by the framers of the constitution in Parliament in the matter of impeachment of a judge is misplaced. Member of Parliament is most ill-suited to judge the misbehavior of judges. It therefore need better method of easing out erring judge. Otherwise, corruption in the judiciary cannot be checked.

However, politicians are eventually accountable to the people. They have to go the public after five years and more often than not even sooner than five years. The bureaucrats are accountable to their Ministers, the Legislature, the Courts and the

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<sup>36</sup>Justice J.S. Verma, "Mechanism for Judicial Accountability", Available at: <http://www.judicialreforms> [Visited on 15 June 2014] <sup>37</sup>Justice P.D. Dinakaran v. Judges Inquiry Committee, AIR 2011 SC 3711 at 3748

<sup>38</sup>The Hindu, "Corruption and Bribery" New Delhi 21 July 2014.

<sup>39</sup>By supporting this controversy, the former SC Judge Ruma Pal had put her objection in writing on getting to know that a tainted Madras HC Judge Mr. Ashok Kumar was given extension in 2005 over looking the reservation of the collegiums. Then CJI Justice Lohati ignored my note on tainted Judge. *The Hindustan Times*, July 24, 2014, at 1

<sup>40</sup>Prashant Bhushan, The lack of Judicial Accountability in India, Available at <http://www.judicialreforms.org> visited 15 July 2014.

<sup>41</sup>*Ibid.*

watchdog bodies like the Central Vigilance Commission and the Central Bureau of Investigation. On the other only impeachment can be used against judges. It is acknowledged to the world that impeachment is a blunt and impractical weapon. They have not only depicted the non-credibility of the collegiums system, for investigating complaints against the judges, but also brought forth the focus on judicial appointments and transparency in the judiciary.<sup>42</sup> Manner of functioning of collegiums of the Supreme Court of India has drawn flak from all sections of the society and it is a matter of utmost concern and even a matter of shame for the members of the judiciary that the collegiums of the Supreme Court is blissfully remaining insensitive to public reaction.<sup>43</sup>

#### IV. CONCLUSION

The above said discussion reveals that the factors behind sabotaged credibility of the mechanism formulated to discipline errant lawyers and judges leading to strong voices demanding for a far more effective mechanism. However judiciary has already given some commendable judgment to punish errant lawyers and has also given directions to entire lawyer fraternity, in its attempt to bring back the dignity of the profession and efficient administration of justice. The Advocates Act, 1961, brought immunity from the High Courts in matters of professional misconduct and assigned this responsibility to the concerned Bar Councils through its Disciplinary Committees. The Disciplinary Committee consist of two members who are elected from bar and one member is co-opted from the local bar.<sup>44</sup> It is pertinent to note here that all members of the committee are regular practicing advocates. Elected members of the bar council have their political ambition to occupy high positions in public offices and to be retain in the near future. Hence one can easily say that the environment in which they function, society in which they live and their own inclinations lead compromise with impartiality and cast shadow on their judgments. It would be difficult to keep abuses out of it. By and large political alignment must be avoided because of the justice must not only be done but it must be done.<sup>45</sup> It is, therefore, submitted that the present composition of the disciplinary committee under the Advocates Act should be amended with a view to prohibit elected members of the bar therein. The functioning of the peer's group adjudication machinery under the Act must be made to an independent statutory authority.

In major democracies of the World, judges are appointed by the Executive. The countries like South Africa and UK have set up Judicial Commission for the appointment of judges which consists of wide range category of members for appointment of the judges<sup>46</sup>. In India controversy has arisen between the Executive and the Judiciary. Both Legislative and Executive were trying their level best to get supremacy in the matter. Perhaps the solution lying in a practice where neither side enjoys supremacy. To resolve this

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<sup>42</sup>Satya Prakash, "Collegiums System to be Scrapped?", Available at <http://www.hindustonnet.com> [Visited on 21 July 2014]

<sup>43</sup>Sujata V. Manohar, (Revised) *T.K. Tope's Constitutional Law of India* (Third Edition, E B C, Lucknow, 2010) at VIII

<sup>44</sup>S.9, Advocates Act 1961.

<sup>45</sup>Supra note 2; also see Ravi Karan Singh, Book review, selected judgments on Professions Ethics Pub. Bar council of Trust, MDU Law Journal Vol. 9, 357 (2004).

<sup>46</sup>Justice D.V. Shylendra Kumar, "Errant Judges and Secretive Collegiums of the Supreme Court", Available at: <http://judicialremorms.org> [Visited on 23 June 2014]

controversy recently, the Parliament by way of 121<sup>st</sup> Constitutional Amendment has passed National Judicial Appointment Commission (NJAC) Bill, 2014 which required ratification by more than half of the States, which is in process. The NJAC provides for an independent and impartial body, which is accountable to the public. Bill also provides manner of selection, promotion and transferring of Judge's from one High Court to another and elevation of Judges to the Supreme Court. This bill intends for creation for a Constitutional Authority reflecting the aspirations of all organs of the government. This is done in order to bring in harmony between the two conflicting wings of the Government.