

1st national law and governance essay competition

[Law](#), [Constitution](#)



1st National Law & Governance Essay Competition Judicial Accountability Bill
— Needs “ Power tends to corrupt a man, and absolute power corrupts man absolutely. ” -Lord Acton In India Government has basically three organs with itself that is the Legislative, Executive and Judiciary at its both State and the Centre level and there is a separation of power among the three which means the functions of the Government bodies are independent of each other and separated from each other in order to keep checks and balances in a democratic form of nation which India is which is Partly Federal and Partly Unitary . The reason why the functions of the Government are divided into three different organs so as to ensure that these representatives work effectively, and to control misuse of power and authority by them, These are legislative, executive and judiciary branch. The legislative branches makes the laws, that defines rights and obligations of the people and of various arms of government, and defines rules of conduct of various actions and functions affecting the well being of the collective good of the society. The Executive branch is responsible for managing the affairs of the country in accordance with the laws passed by the judiciary branch, this includes among other things collecting taxes, and operation of common services in the society such as roads, water supply, policing, and defence. The judiciary branch is responsible for interpreting the laws passed by legislative branch, and settling disputes between people and between people and government regarding correct application of law. It also awards appropriate punishment for violation of law. Indian Judiciary is the most powerful judiciary I the world after USA. It is considered as the strongest pillar of the democracy because the highest power is vested in the people of the Nation. Judiciary in India has

been given the Supreme powers by the legislature to which has further lead to the non-accountability of the judiciary to anyone. Judiciary in India enjoys judicial independence but this independence at times, results in the misuse of the powers and privileges by the Judges. That is why, the concept of Judicial Accountability is in question these days and various Conferences and discussions are taking place all over the world so as to find whether the Judiciary can be held accountable for its actions or not. The word 'accountable' as defined in the Oxford Dictionary means 'responsible for your own decisions or actions and expected to explain them when you are asked'. Accountability is the sine qua non of democracy. Judiciary has always been associated with the higher cause of truth and justice and the Judges and the judiciary have been able to record a distinct position. What the Constitutional provisions provide for is that "there should be an impartial and independent judicial body to adjudicate upon the matters and to act as the interpreter and guardian of the Constitution." It is also a laid down modern day principal that an authority which derives the existence from the source of the origin, from the Constitution or from the more importantly people of the nation there the authority cannot claim to be unaccountable and absolute. All the organs of the Government belong to the people and both the Executive and Legislative is accountable, hence the Judiciary too cannot subject to be unaccountable and absolute. It is similar to the provision "No person, howsoever high is above the law" vis-à-vis no institution howsoever consecrated is can claim to be unaccountable. Ultimately, every institution is accountable to the people in every democratic polity like ours. Many countries in their constitutions have already provided for ensuring

accountability of judiciary. This is done to prevent concentration of power in the hands of a single organ of the state especially in countries where judicial activism interferes with and invades into the domain of other organs. But at the same time Judicial independence is a pre-requisite for every judge whose oath of office requires him to act without fear or favour, affection of ill-will and to uphold the constitution and laws of the country. Thus, here arises a tension between judicial independence and Judicial Accountability. Hon'ble S. H. Kapadia, Chief Justice of India, said: " When we talk of ethics, the judges normally comment upon ethics among politicians, students and professors and others. But I would say that for a judge too, ethics, not only constitutional morality but even ethical morality, should be the base. " The basic code of ethics is the principle that no man can be judge in his own cause; it means that the Judge should not adjudicate upon those cases in which he has any interest. Judges should follow a motto of " Fiat justitia, ruat Caelum" that is " let justice be done though the heavens fall". A judge should guard against intimidation of powerful outside interests, which often threatened the impartial administration of justice and keep him free from application of crude pressure, which may result in manipulation of the law for political purposes at the behest of the government in power or anybody else. A judge is the judge of all people and he does not belong to any person, or any section of society and they should follow the principle of treating every individual and parties at dispute with equity and justice. The Supreme Court said in the celebrated case " No man's right should be affected without an opportunity to ventilate his views". The Supreme Court in Ram Pratap Sharma v Daya Nand issued a note of caution to the effect that it is proper

for a Judge not to accept any invitation and hospitality of any business or commercial organization or of any political party or of any club or organization run or sectarian, communal or parochial lines . Lord Widgery, Lord Chief Justice of England since 1971 to 1980, said that “ the best judge is the man who should not court publicity and should work in such a way that they don’t catch the eyes of the newsmen”. Lord Hailsham said that the “ best judges are those who do not find their names in the The Daily Mail and still, who abhor it” Constitutional provisions for making the Judiciary Accountable is necessary because among the constitutional limitations on the Judges the most important is the ‘ removal’ of the Judges from the High Court and Supreme Court by address of the Houses of Parliament to the President on the ground of ‘ proved misbehaviour or incapacity’. This is provided in Constitution of India, art. 124 (2) and (4) in respect of judges of the Supreme Court and in view of art. 217, that procedure is attracted to the ‘ removal’ of judges of the High Court also. In pursuance of the provisions of Article 124(5) of the Constitution the Judges (Inquiry) Act, 1968 was enacted to regulate the procedure for investigation and proof of the “ misbehaviour” or incapacity of a Judge of the Supreme Court or of a High Court and for the presentation of an address by Parliament to the President and for matters connected therewith. Later, came the Judicial Accountability Bill, 2010 it replaced the Judges (Inquiry) Act, 1968. It seeks to create enforceable standards for the conduct of judges of High Courts and the Supreme Court, change the existing mechanism for investigation into allegations of “ misbehaviour” or incapacity of judges of High Courts and the Supreme Court, change the process of removal of judges, enable minor disciplinary measures

to be taken against judges, and require the declaration of assets of judges. Questions raised against the Bill..... - Whether the balance between independence and accountability is maintained by the proposed mechanism in the Bill? - It is not clear whether the power of the Oversight Committee to impose minor measures is constitutionally valid? - The Bill does not mention whether a judge has the right to appeal to the Supreme Court against an order of removal issued by the President after Parliament finds him guilty of " misbehaviour"? The issues of Judicial Standards must be seen in the context of Art 124(4) of the Constitution which provides for the process of impeachment of a judge on the grounds of proved " mis-behaviour" or incapacity. " Art 124(5) empowers Parliament only to make laws to regulate the procedure for presentation of address of impeachment, and for the investigation and proof for the " mis-behaviour" or incapacity of a judge. Article 124(5) does not empower Parliament to create any other forum for recommending impeachment proceedings, or allow complaints to be made by any person, or to make a judge liable for minor penalties. What can be done only by a hundred or more members of the Lok Sabha or fifty or more members of the Rajya Sabha (i. e. initiation of impeachment proceedings) can now theoretically be done by only one person. Loopholes in the Bill - The Bill seeks to provide a straight definition of " mis-behaviour" in Clause 2(j), but by laying down a strict definition, the concept loses its elasticity and becomes both under-inclusive and over-inclusive. - The Bill also provides a list of standards of judicial conduct to which all judges are expected to adhere. The very idea of statutorily providing for judicial standards, irrespective of their content, is violative of judicial independence. - Under the

Bill, " any" person may file a complaint in a prescribed format. This is likely to lead to a multiplicity of complaints and even though the Bill proscribes false and vexatious complaints under Clause 53, this is unlikely to prove much of a deterrent, and since each of them will have to be checked by the Scrutiny Panel, it is also likely to result in a huge waste of time. - The Attorney-General has the responsibility of regularly appearing on behalf of the government before the court. The possibility of his appearing before a judge against whom a complaint has been filed cannot be ruled out. In such a circumstance, there is clearly a conflict of interest since the Attorney-General will be a member of the Oversight Committee to look into the complaints made against the former. - The Scrutiny Panel is to consist of three members, two of whom will be judges sitting in the same court as the judge against whom the complaint is made. Since these judges would be colleagues sitting in the same court, it is likely that this will, either way, influence their conduct. - The idea of " minor" punishments is unworkable and has the potential to seriously undermine judicial status. - The Bill completely excludes the operation of the RTI. This establishes an atmosphere of total secrecy more regressive than the present system, and for which, there does not appear to be any rational reason to make a change. - The Bill makes no mention of whether a judge who has been removed has a right to appeal to the Supreme Court. The Standing Committee had stated that there should not be any provision for appeal as the finality of a Presidential order should not be challenged. Thus, it is totally impermissible for the legislature to strike upon the independence and fearlessness of the judiciary. A judge of a superior court cannot be treated as

an employee of the government. The present Bill is incapable of salvage and must be rejected in totality. In a system where half the litigants must necessarily lose their cases, and where most of the complaints against judges are frivolous and made by disgruntled litigants, this bill, if implemented, would mark the beginning of the end of the judiciary. Judicial Accountability in Other Nations of the World United States of America Article III of the Constitution establishes the Judiciary as an independent third branch of the Government. Article III gives the power to the Judiciary to hear all the cases and to adjudicate them which arise out of the constitution and laws of the USA with impartiality. Article III also states that federal judges can only be removed through impeachment by the House of Representatives and conviction by the US Senate for “ treason, bribery or other high crimes or misdemeanours”. . Short of removal, federal judges can be disciplined for violations of Code of Conduct for United States Judges due to which a set of guidelines and directions is adopted by the Judicial Conference of the United States of America. Most states of USA have adopted the Model Code of Judicial Conduct which is compiled by the American Bar Association in 1990, which governs judges’ conduct during judicial proceedings, as well as speech, business activities, civic, charitable, political and other associations. The detail of the actual complaints procedure at federal district level is set out in the Judicial Councils Reform and Judicial Conduct and Disability Act. To bring a complaint, individuals submit written statements to the clerk for the chief judge of the relevant court. A chief judge can also initiate a proceeding based on informal complaints received. Complaints about the behaviour of state court judges can be filed as a grievance with the state’s judicial

conduct organization referred to above. In Canada the independence of the federally appointed judiciary is guaranteed by the Canadian Constitution (namely sections 96 to 100 of the Constitution Act, 1867) which provides for the appointment, security of tenure and financial security of superior court judges. This provision makes it extremely difficult for the removal of the judges due to the political and other reasons. After the amendments of the 1971 to the Judges Act, it created the Canadian Judicial Council and gave it statutorily authority to investigate complaints was established against federally appointed judges. Judicial Independence is also guaranteed by the Canadian Charter of Rights and Freedoms, Schedule B to the Constitution Act, 1982. Under section 63(2) of the Judges Act, any member of the public (including a provincial attorney general or the federal Minister of Justice) may make a complaint about a federally appointed judge by writing to the Canadian Judicial Council. In South Africa issue of the Judicial Accountability have been on a legislative agenda since the late 1990's and it is even a subject to the public debate. During the Parliamentary term (May to January 2007) Parliament's Portfolio Committee on Justice and Constitutional Development it has deliberated two versions of two Judiciary Bills-The Judicial Services Commission Amendment Bill B-2007 it deals with judicial discipline and ethics and the South Africa Judicial Education Institute Bill B 4-2007 it deals with Judicial education. Presently, is in the process of adopting the new laws on judicial ethics and discipline, financial disclosure and judicial code of conduct and training for judges. Australia The federal judiciary enjoys the constitutional protection in terms of appointment and removal of the Judges by virtue of Section 72 of the Federal Court of

Australia Act Removal and it occurs only through proved misbehaviour or incapacity. Removal can be made effected only on an address from both houses of parliament in the same sitting on either of the two grounds listed above by the Governor General. A more formal mechanism for considering complaints was established to address the Judicial Commission of New South Wales. The New South Wales statute requires the Commission to dismiss complaints in a number of specified circumstances: including where there is a right of appeal, where the complaint is frivolous or trivial, or where further consideration is unnecessary or unjustifiable. In India corruption is hampering the Rule of Law and it is the primary duty of the Government to ensure that the rule of law is followed. Whenever a law is broken, corruption and injustice will flourish. Every unpunished crime will give birth to a thousand new crimes, creating conditions of anarchy. Corruption corrodes the values people cherish and projects the State as predatory and unjust. Corruption tends to undercut the legitimacy of the State and make a mockery of the rule of law. Corruption, which springs from the basic human tendency of greed, distorts the whole process of law. The basic defect in the manner in which the candidates are elected to the legislature has its impact on the law making. Corruption distorts not only the composition of the legislatures but also the process of law making and implementation. Due to corruption, the very constitutional institutions which are suppose to protect and uphold liberty, turn against them. Therefore to the majority of Indians, the only way left is resorting to the local mafia, who are more than willing to dispense rough and ready justice for a price, leading to criminalisation of Indian society. Rule of law and access to justice are the very essence of a

modern democracy and without them we cannot call ourselves a great democracy in any sense. ----- [1]. AIR 1977 SC 809 [2]. Definition of " misbehaviour": According to Black's Law Dictionary: Ill-conduct; improper or unlawful behaviour.