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TITLE OF THE THESIS - **JUDICIAL ACTIVISM AND JUDICIAL ACCOUNTABILITY IN THE
CONTEXT OF DEMOCRATIC GOVERNANCE**

ABSTRACT

A Constitution may be briefly defined as a document having a special legal sanctity which sets out the frame work and the principle functions of the organs of the Government and declares the principles governing the operation of these organs. The Constitution of a country is the basic or fundamental document and contains the basic and fundamental principles. It is the supreme law of the land and all the laws in the country are enacted under this document.¹

The preamble of our Constitution begins as *We the People of India* i.e. the representatives are elected with the mandate of the people. The governance of the country is carried on under the principle doctrine of *theory of separation of powers* between various organs of the Government, namely legislature, executive and judiciary

Today, people look to the Judiciary, perhaps more than ever before, to remove the maladies in public life. One of the reasons for this may be the general

Dis-enchantment people have developed for the other organs of the Government. A situation has arisen where the common man finds it difficult to get things done by the Executive. This may be due to lack of commitment on the part of the bureaucracy or governance or may also be due to some other reasons. The judiciary has to fulfil its constitutional role as the sentinel of rights.

The purpose of an independent and active judiciary is to ensure that the organs of the government remain in their limits and Supremacy of the Constitution prevails. As Roscoe Pound says *the real foe of absolutism is law, it presupposes a life measured by reasons, a legal order measured by reasons, and a judicial process carried on by applying a reasoned technique to experience developed by reason and reason tested by experience*. It is that juristic realism and reasoned technique that result in the *Judicial Activism*

¹ Narender Kumar (Prof.); *Constitutional Law of India*; Allahabad Law Agency, 2008

It is observed by the researcher during the course of the study that the Supreme Court has changed in its outlook and functioning, drastically in the last about 60 years of its existence. This change has been in consonance with the changes taking place in the role and status of the judiciary in other modern democratic countries in the world. However, following are some suggestions which will make the judicial functioning more effective and transparent:

1. For an efficient and effective judicial system Judiciary should be well equipped with required staff so that justice can be expedited and arrears of cases may not pile up.
2. To avoid too much of Judicial Activism, the recommendations in the 229th Law commission report suggested three additional Supreme courts to be set up in the cities of Kolkata, Chennai and Mumbai. This suggestion of the Law Commission needs to be taken up seriously by the Law Ministry² as the number of cases pending in our courts are a staggering three crore.
3. It is also recommended the setting up of a federal or constitutional Court in Delhi that would hear cases only on matters of grave Constitutional importance.
4. The present method of Judicial Accountability is not very effective. The existing procedure of impeachment of judges created by the Constitution for dealing with judicial misbehaviour is impractical, as to introduce the impeachment motion in Parliament it should be signed by at least 100 members of Parliament, which is an impossible task, unless the charged Judges already have unimpeachable documentary evidence to prove his guilt (which is not possible unless some investigative body investigates the charges and collect the evidence). Thus the judiciary has effectively become a law in itself unaccountable to any person by declaring itself as *sui generis*. By not being accountable to anyone the judiciary has got extended its functions by taking over the Parliament and weak and corrupt executive.
5. The Judicial Standard and Accountability Bill 2010 which provides for the Constitution of a National Judicial Council to enquire into the complaints against errant judges may be a welcome step for accountability of higher judiciary, but the provisions of the Bill it seems are drafted more to create an illusion of accountability. In practice it will hardly change the existing status quo. It requires some mechanism which is unbiased and impartial.
6. At present judiciary is suffering with corruption, judicial reforms in India will take place only if there is, a strong people's movement and campaign which puts democratic pressure on the Government and shames the judiciary.

² Times News Network: *Fast Track to Justice: Supreme Court in four Metros would considerably aid Judicial Process.* (Editorial) 26th Jan 2010, The Times of India, New Delhi.