

INTRODUCTION TO JUDICIAL INDEPENDENCE

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ABSTRACT

Judicial independence constitutes a foundational pillar of India's constitutional democracy. Article 50 of the Constitution mandates the separation of the judiciary from the executive, underscoring the framers' intention to safeguard impartial adjudication and the rule of law. The Supreme Court, in *L. Chandra Kumar v. Union of India* (1997), reaffirmed that judicial review and an independent judiciary form part of the Constitution's basic structure, indispensable to democratic governance. This research critically examines the constitutional powers, functions, and responsibilities entrusted to the Indian judiciary, assessing its strengths as well as systemic limitations. By analysing constitutional provisions, landmark judicial pronouncements, and institutional dynamics, the study explores how the judiciary upholds fundamental rights, maintains checks and balances, and preserves constitutional morality. The work further evaluates contemporary challenges that may impede judicial independence and effectiveness, offering insights into potential reforms to strengthen the judiciary's role as a guardian of the Constitution.

Keywords: Supreme Court, Independence of the judiciary, Doctrine of basic structure, Amendment of constitution, precedents, rule of law, separation of powers and social justice.

Introduction

The definition of the judiciary's independence hasn't changed over the years despite its prolonged continuation. Articles 124 to 147 of our Constitution pertain to choosing judges for the Supreme Court, and Articles 214 to 231 work with choosing judges for the High Courts. However, our Constitution merely makes passing reference to the autonomy of the judiciary, while saying nothing regarding what this kind of autonomy actually involves. The arterial vein of the matter is:

- The judiciary's operation cannot be restricted by the executive or legislative branches of government to an extent where it cannot uphold the rule of law.
- The other branches of the State shouldn't meddle with a court's ruling.
- The judiciary must have the ability able to carry out their duties impartially.

Nevertheless, judicial independence is not synonymous with lack of responsibility or arbitrary decisions. India's democratic political system includes the judiciary. As a result, it must answer to the nation's citizens, the Constitution, and the norms of democracy. Although the idea of judicial independence is hardly novel, its definition is still vague. The theory of the division of authorities appears to be the notion's foundation and focal point. Thus, the term largely refers to the judiciary's independence from the executive and legislative branches.^[1] However, this solely applies in terms of the judiciary's institutional independence from any of the other two state institutions, disregarding the judges' individual independence when performing their judicial duties. In such situation, hardly much is accomplished. The

autonomy of the judicial branch goes beyond just establishing an independent body unencumbered from the oversight and sway of the government and the legislative.^[2] The fundamental goal of the judiciary's independence is to ensure that judges are equipped to resolve any disagreement they come across in accordance with the law, free from other influences.

An International Setting Comparison

In resolutions 40/32 and 40/146, the GA reiterated the BPIJ norms of judicial independence, which were assimilated by the 7th UN Congress on the Prevention of Crime and the Treatment of Offenders. Alongside major international human rights instruments, the International Covenant on Civil and Political Rights (Article 14) with the Universal Declaration of Human Rights (Article 10) also introduced the concept of judicial independence. A variety of UN norms are also in place, most notably the 2002 UN General Assembly-accepted Bangalore Principles of Judicial Conduct. Authorities in the participating element countries of the United Nations are obligated to take into account and uphold the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, the Organization and Administration of Justice in Every Country, the International Covenant on Economic, Social, and Cultural Rights, as well as other fundamental principles to assist the a member states in achieving their objective of ensuring and advocating the self-reliance of the judicial system.

The Hampden's Case, when seven out of twelve judges ruled in support of the crown's right to acquire revenue outside legislative consent, is the foremost representative instance illustrating this approach. Coke was relieved of his duties as the royal bench's Chief Justice in 1616. The Act of Settlement 1701, particularly stating that judicial tenancy was guaranteed through exemplary conduct while recognizing that a judge might be removed legally with the consent of both houses of Parliament, has protected the independence of the judiciary. Statutes currently protect this position with relation to the term of judges.^[3] Consequently, the premise of judicial review may be traced to the Marbury v. Madison decision (1803), whereby Chief Justice Marshall declared that the judiciary possessed sufficient ability to assess laws passed by the legislature. Many scholars, nevertheless, have questioned this notion for a number of motives, notably judicial dictatorship, an overreliance on judges, being anti-democratic and acting as a hindrance to a robust democracy.^[4]

Constitutional Provisions

Although the legal framework of India does not expressly mention it, the autonomous status of the judicial system is implicit in several of its stipulations. According to the Hon. Supreme Court in S.P. Gupta v. Union of India^[5] the supremacy of law and the independence of the judiciary constitute fundamental elements of the Constitution and are incapable of being overturned by constitutional alterations. Any additional legislation needs to be in compliance with and defer to the Constitution of India, which serves as the country's foundational legality. It is the genesis for every governmental and organizational authority, which must be exerted in accordance with the constraints and regulations that it lays out. The parliamentary system of government, which the Constitution allows, preserves a distinct division between the administration and legislature while maintaining a looser boundary regarding them in addition

to the judicial branch.^[6] The nation must segregate the court system from the executive in order to safeguard the public operations of the State. Beginning with the smallest tribunal all the way to the highest court, the Supreme Court has frequently invoked constitutional provisions in favor of the division of powers involving the judicial system and its two government sibling branches. A few provisions are:

Job Security

Career assurance has been conferred to the judges of the Supreme Court and the High Courts. They hold their seats till retirement- a duration of 65 years for Supreme Court Justices (Article 124(2) and a duration of 62 years for High Court Justices (Article 217(1)), respectively, after receiving their appointments. Judges may only be eliminated from the office they hold through a presidential decree, alongside cases of demonstrable misconduct and incompetence. The motion of this effect must be approved by the bare minimum of two-thirds of the individuals in attendance and voting, as well as the concurrence of every member in each parliamentary body.

Contempt Penalization

The Supreme Court is authorised to impose sanctions for its contempt under Article 129. Comparably, Article 215 mandates that every High Court ought to possess the power to penalise its own members for contempt.

Prevention of Post-Retirement Legal Practice

According to Article 220 of the Indian Constitution, we can deduce that with the exception of the Supreme Court and High Courts, no individual who has held service as a perpetual Judge of a High Court may plea or act in any court or before any authority in India. An inference can be drawn from Article 220 of the Indian Constitution showing that no person who has served as a permanent Judge of a High Court may plead or act in any court or before any governing body in India, with the sole exception of the Supreme Court and High Courts.^[7]

Executive and Judiciary as Two Distinct Entities

The national setting must implement steps to maintain the separation of powers between the judicial and executive departments in order to carry out Article 50, a component of the Directive Principles of State Policy. The Directive Principle seeks to safeguard the independence of the judicial branch from the executive.

Monetary Earnings and Perks

Another element which promotes the judiciary's autonomy is the recognition that their pay and benefits are predetermined rather than being put up for voting by the governing body. Justices of the Supreme Court have their salaries paid through the Consolidated Fund of India, whereas judges of the High Court have their salaries assessed through the State Consolidated Fund. The remuneration schemes may be adjusted, however not to their discrimination, unless there is an acute financial emergency as per Article 125(2).

Supreme Court's Strength

The power vested in the Supreme Court can only be increased by Parliament; it can't be decreased. The amount of the filing fee for civil lawsuits to the Supreme Court may be changed by Parliament. The appellate power of the Supreme Court may be increased by Parliament. It may grant the power for issuing orders, writs, or directions for any objective apart from the ones mentioned in Article 32.^[8]

Appointment of Judges

1. The NDA leadership suggested the creation of the National Judicial Appointments Commission in 2014 and additionally the Constitution Act and the National Judicial Appointments Commission Act of 2014 were passed. The CJI, two prominent judges, the Legal Affairs Minister, and “two distinguished individuals” designated by PM and Opposition leader will make up the Commission. Despite this, the Supreme Court invalidated the NJAC Act and Constitution (Ninty-Ninth Amendment) Act, 2014 in a challenge initiated by the Advocates-on-Record Association.
2. The First Judges case states that CJI recommendation for judicial postings and relocation may be denied for compelling reasons. The government had precedence over the legal system in appointing judges for the subsequent twelve-year term. The judicial branch had an ultimate voice in selecting judges, the Supreme Court ruled during the Second Judges case and eventually the Third Judges case as a confirmation.

Landmark Case Laws Revolving Around Judicial Independence

Alok Verma Case

In this instance, the verdict was postponed. Alok Verma, director of the CBI, had all authority removed by the government. A powerful entity was required to approve this in accordance with the Delhi Special Police Establishment Act. The Supreme Court looked at the specifics of the CBI director's allegations of misdemeanor deceit. Later, on the heels of all the punishments imposed by the designated committee, the Court ordered Verma's restoration in his position as CBI director. Still, the reappointment was mandated with only 21 days remaining on Mr. Verma's contract. Consequently, this sparked controversy yet again.

Aadhar Act case

Here, the question was whether the 2016 Aadhar Act was enacted as a money law. Once more, the greater part of the court decided that it constituted a money bill. According to Section 7 of the Act, which stipulates that the Aadhar-based verification may be utilised for perks or amenities invoiced to the Consolidated Fund of India, the act was approved by Justice A.K. Sikri as a money bill. As a result, the regulation could be employed as a money bill. In contrast, according to Article 110 of the Constitution, the Union Government may only utilize the money bill for services relating to spending and obtaining revenue. As a result, the decision was condemned, and Justice Chandrachud, who had voiced his disapproval of it, called it an imposition on the Indian Constitution.

The Bhima Koregaon case

Commemorations of the 200th anniversary of the Bhima Koregaon, India, conflict were cut short owing to rioting that resulted in one fatality and numerous casualties. A number of

activists were apprehended after an investigation by law enforcement, who claimed that their provocative comments contributed to the unrest. Consequently, a PIL was submitted asking for a SIT (Special probe Team) probe into the allegations made towards the activists detained under the Unlawful Activities (Prevention) Act. The plaintiffs claimed that the Mumbai Police's judgement was biased. The Supreme Court heard the case and, by a vote of 2:1, rejected it. The Mumbai Police probe was deemed satisfactory by the two Justices, Chief Justice of India Dipak Misra and Justice Khanwilkar, but not by Justice D.Y. Chandrachud. In his dissenting opinion, Justice Chandrachud said that the incarcerations were meant to quell political dissatisfaction

Rafale Purchase case

Here, the French and Indian governments signed an agreement for the Indian government to buy 36 Rafale combat planes from French manufacturer Dassault Aviation in 2015. A fifty percent offsetting provision additionally formed a part of the agreement, requiring the French business to spend 50% of the total amount of the contract on Indian products and services. The business and the Reliance Group declared their partnership for the next year. Dassault stated that it intended to make investments of \$115 million in order to satisfy a portion of its offset requirement. As a result, the case was brought before the Apex Court wherein the disputants asserted anomalies in the transaction. The Court rejected the corruption accusations on the rationale that defense cases were under a narrower purview of judicial review. The government had argued that the outcome of the case had certain statistical inaccuracies, which rendered it unsettling.^[9] The Parliamentary Accounts Committee report and the CAG report, both were presented to the judiciary by the government because they were deemed to be inaccurate, were taken into account in the judgement. The disagreement was resolved when the Supreme Court agreed to consider the merits of the petitions.

Is Judicial Independence In India Under Exigency For Reform?

On the rationale of having served political objectives, the judicial decisions described previously have drawn criticism. Even so, there have been cases where judges have benefited from particular circumstances after retiring. Ranjan Gogoi, formerly the Chief Justice of India, was elected to the Rajya Sabha upon leaving his position as CJI. Parallel incidents have happened in the recent past. Justice Ranganath Mishra retired from his position as Chief Justice of India in 1991 and subsequently became the Chairman of the National Human Rights Commission. The nation's Chief Justice, Justice M. Hidayatullah, retired in 1970. Following this, he was granted Vice Presidency. Furthermore, cases where parliamentarians have taken on judicial roles are also prevalent. The courts were closed as a result of the COVID 19 epidemic, and all court proceedings, in their physicality were conducted virtually.

As a result, the courts opted to provide rulings in matters which were of extreme urgency. The designation of urgent matters for perception, nevertheless, generated debate. In the context of Jagdeep Chokkar v. Union of India^[10] (2020), a petition was submitted asking for the houses of the migrant laborers who were left isolated and defenseless during the period of lockdown. While a plea submitted in the proceeding of Arnab Goswami v. Union of India (2020)^[11] for eliminating the FIRs involving him, was taken up the following day, the issue in

question was not dealt with right away. Therefore, it was debatable to decide the instance that the jury considered to be more significant. In addition, Jammu and Kashmir's broadband connection remained down for approximately six months. It took a while for the Court to deliberate on this case.

The inhabitants of the Jammu and Kashmir region were shut off from the remainder of humanity and denied access to internet access. There have been several landmark decisions that were seen as catering to political motivations, as the author briefly mentioned in the situations when the court was criticized for harboring them, but the judiciary resisted. Raj Narain, an activist, contested the nomination of former Prime Minister Indira Gandhi in the proceedings of *Indira Gandhi v. Raj Narain*^[12] (1975) on the allegations that it was flawed. The event in question occurred immediately prior to when the state of emergency was put in place. As a result of the Court's discovery that Indira Gandhi's nomination was flawed, she was told to vacate her position. This decision turned out to be to be among the most significant decisions in terms of judicial independence. Nevertheless, in the past few years, the judiciary has come under heavy fire for the cases they priorities and the judges' post-retirement employment.^[13] This demonstrates the need for improvement in the way the judicial system operates.

Conclusion And The Way Forward

Article 124 of the Constitution clearly stipulated that the President of India, in addition to the CJI, would nominate any judges to the Supreme Court before it instituted the idea of the collegium into existence. This suggests that the constitutional authors themselves believed that the government should be involved in the nomination of judges. It has been proven abundantly clear that the adoption of specific protections is necessary for all aspects of an administration that is democratic.

The author would like to convey a few humble observations and suggestions:

- The operation of the High Courts should fall under the immediate jurisdiction of the Supreme Court. At that point, the SC could be held accountable for legal management for the nation as a whole, as it ought to be, and the nation's highest court can become a reliable apical court.^[14]
- Judges must be exemplars for all high-ranking government employees, including federal and state ministries, representatives of the Parliament and state legislative bodies, and other judges.^[15]
- Judges are paid more prominently in nations beyond India's borders, which is a major factor in their pursuit for post-retirement employment.^[16]
- It frequently happens that topics with a lot of clout receive higher attention compared to those that are important for societal causes and actually need to be addressed. Enhancing the judicial mechanism's capacity can aid in resolving both important and really critical circumstances.

- A legislation must be implemented to prevent judges from taking employment after their retirement. Thus, there will be a guarantee for some consistency and dependability in how the courts operate.

Great caution must be undertaken to ensure that the judiciary's independence is not compromised by initiatives aimed at combating corruption.^[17] The real difficulty is in ensuring that judges maintain the independence they require in order for disputes to be decided honestly and without bias. The true challenge is in sustaining the harmonical scales of responsibility and autonomy.

Judges should be nominated fairly, be granted lengthy terms of service, be paid handsomely for their work and have job security. To enforce the law and defend individual rights, the judiciary must be independent.

Footnotes

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