
ANALYSIS OF INDEPENDENCE OF THE JUDICIARY

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Introduction:

Only when the judiciary and its members are free from the influence of both internal and external forces can individuals and organization's feel confident that their cases will be handled fairly and in accordance with the law in a functioning democratic country¹. It is imperative that the judiciary is not influenced by the executive or administrative branches of government, the media, or any other individuals, self-interest, or other judges, such as senior judges. Only by retaining one's country's independence can the rule of law and constitutional provisions be preserved. The framers of India's constitution had to deal with a slew of issues, one of which was the need for judicial independence.²

India's constitution is aimed at creating an independent democratic society that is free from the interference of the state. Fundamental constitutional rights, as well as an independent judiciary, were seen by the framers as necessary to create such a society².

Objective:

It is the objective of this study to understand why the independence of the judiciary is important, and what constitutional measures are available to protect its independence, and to investigate why our judiciary is unable to be independent despite having many provisions in the law and the constitution.³

Factors that contribute to the judiciary's independence include:

Judiciary independence can be achieved through a variety of methods, such as the following:

1. Mode of appointment of judges

Articles 124 and 217 of the Constitution of India govern the appointment of judges. These articles state that the President of India appoints judges for the high court and Supreme Court

¹ Judiciary.uk. n.d. Judicial Accountability And Independence. [online] Available at: <<https://www.judiciary.uk/about-the-judiciary/the-judiciary-the-government-and-the-constitution/jud-accind/independence/>> [Accessed 5 October 2020].

² M.P. Singh, n.d. Securing The Independence Of The Judiciary-The Indian Experience. Ind. Int'l & Comp. L. Rev, Vol. 10:2.

³ Livingston Armytage, "Judges as Learners: Reflections on Principle and Practice" 1 Journal of National Judicial Academy Bhopal 120 (2005).

after consulting the Chief Justice of India and other judges. This process evolved into a collegium system in India, where the Supreme Court's four senior judges and the Chief Justice recommended judge transfers and appointments. Three judges' case developed this system in three stages. These three cases occurred between 1982 and 1998 and changed the process of appointing judges in India. ⁴

S.P. Gupta v Union of India (1982), ⁵where the court stated that the President of India can reject the Chief Justice's recommendation for "Cogent Reason". This decision shifted the balance of power in judicial appointments and transfers. In selecting or transferring judges, the president of India may choose not to consult the chief justice of India or other judges, creating an enormous power imbalance between the judiciary and the executive. After 12 years, in 1993, "SC. Advocates on record Association vs Union of India" came along. This case required the Chief Justice of India to appoint judges in a "primal" role due to "justiciability" and "primacy". That judge's decision in S. P. Gupta v Union of India was reversed. Because appointing judges is a judicial family matter, the executive and judiciary cannot have equal powers and roles.

This decision reversed the 1993 executive-judicial imbalance in judicial nominations.

In 1998, the Supreme Court ruled in Civil Advisory Jurisdiction.

The Supreme Court was asked to interpret the term "consultation" as used in Articles 124, 217, and 222 of the Indian Constitution. However, did the CJI consult the judges or was it solely his? The Supreme Court of India established the collegium system in the third judge case. As a result of the Supreme Court's 1998 ruling, a proper collegium system based on the 9 guidelines was established.

2. Long tenure

In order to ensure that the judiciary is truly independent, judges must have a long term of service. There will be negative repercussions if the judges' terms are too short. In the event of a short term, the judge will continue to work on his re-election campaign. If the judge's term is too short, he or she will not be able to grasp all of the complexities of the law.

3. Security of Service:

For judicial independence, judges must be protected from dismissal by the executive branch and must be able to serve without fear of being removed at any time. It's impossible for judges

⁴ Charles Evans Hughes, Addresses and Papers, Pg. 139 (1908)

⁵SP Gupta vs. UOI AIR 1982 SCC149

to rule against the executive (government) if they're constantly afraid of losing their jobs. As a result, the constitution and basic human rights will be unprotected.

4. Adequate salary for the Judges:

There must be a sufficient amount of money for the judges to maintain a decent standard of living in order to make them truly independent. Judges will be drawn to the profession because of the respect and dignity they enjoy as a result of a competitive salary and benefits package.

5. High Qualification of the Judges:

To ensure the independence of the judiciary, it is essential that the judges have the ability to make correct decisions and freely express their opinions. As a result, judges who lack competence are swayed by arguments made by the lawyers and end up making erroneous decisions.

6. Separation of Judiciary from the Control of Executive:

Montesquieu emphasized the importance of separating the judiciary from the executive in order to ensure its independence. The judiciary was under the control of the executive in the ancient and Middle Ages. People's liberty was utterly forfeited. As a result, efforts are currently being made to free the judiciary from executive control so that judges can make decisions without fear

7. No legal practice after retirement:

The Article 220 of the Indian Constitution states that "No person who has held office as a permanent Judge of a High Court shall plead or act in any court or before any authority in India except the Supreme Court and the other High Courts." The judge should not be allowed to practice law after retirement.

Relevant rulings where the independence of the Indian Judiciary has been challenged

The Rafale deal case:

Dassault Aviation, the French manufacturer of the Rafale fighter jet, announced a deal with the Indian government to purchase 36 of the aircraft in 2015. An offset clause of 50% meant that the French company was required to invest 50% of the contract value in India by purchasing Indian goods and services. The Reliance Group and the company announced a partnership for the following year. According to Dassault, the company intends to invest \$115 million to

partially meet its offset obligations.⁶ As a result, the case ended up in the Supreme Court, where the plaintiffs argued that the deal was tainted. Corruption charges were dismissed by the court due to the limited scope of judicial review available in defence cases. The government objected to the Court's decision, claiming that it contained factual errors. The government presented the court with two reports, one from the Comptroller and Auditor General and the other from the Parliamentary Accounts Committee, both of which the court deemed to be "misinformation." The Court ruled that the petitions should be examined on their merits, thus resolving the debate.

The Bhima Koregaon case:

Several people were injured and a person was killed during celebrations for the bicentennial of the Battle of Bhima Koregaon in 2018. Activists were targeted by the police after they were accused of inciting violence with inflammatory speeches. Consequently, a petition for an investigation by the SIT (Special Investigation Team) was filed to investigate the Unlawful Activities Prevention Act charges against the detained activists. " They claimed that the Mumbai Police were biased in their decision-making, which the plaintiffs countered. The Supreme Court ruled in favour of dismissing the case with a two-to-one majority. In contrast to the Chief Justice of India, Justice Dipak Misra, and Justice Khanwilkar, who were both pleased with the Mumbai Police's investigation, Justice D.Y. Chandrachud was not. As Justice Chandrachud argued, the arrests were politically driven.

Aadhar Act as a money bill case:

In this case, the question was whether the Aadhar Act of 2016 was a money bill. A majority of the court agreed that it was a money bill. According to Section 7 of the Aadhaar Act, which states that Aadhar-based authentication can be used for benefits or services that are charged to the Consolidated Fund of India, the act is a money bill and can be used for such purposes. However, Article 110 of the Constitution stated that the money bill could only be used for services related to the Union Government's spending and receiving of money. Consequently, the decision was criticized, with Justice Chandrachud, who dissented, calling it a fraud on the Indian Constitution.

The CBI-Alok Verma case:

Judgment was postponed in this case. Alok Verma, the director of the CBI, had been stripped of all his authority by the government. Under the Delhi Special Police Establishment Act, a

⁶ <https://www.jurist.org/commentary/2020/05/arpit-richhariya-indian-judiciary-independence/>

high-ranking committee had to approve this. The Supreme Court scrutinized the CBI director's corruption charges. The court later ordered Verma's reinstatement as CBI director based on the selected committee's penalties. Although Verma had only three weeks left on his contract, reinstatement was ordered. As a result, this sparked another round of criticism.

Conclusion:

There can be no democracy without an independent judiciary, which serves as the foundation of fair justice. As a result of judicial independence, judges are free to carry out their responsibilities without fear of interference from the executive or legislative branches of government. In the event of intervention, the judges may be unable to make an objective decision or may be biased in their decision-making. Judges should be appointed in a manner that is fair, their dismissal should be extremely difficult, their terms of service should be long, and they should be compensated. Judiciary independence is critical to upholding the law and protecting individual rights. People's fundamental rights are protected by the judiciary, which serves as a guardian of their constitution. The judiciary's independence is critical to its performance in this role.