
THE THIRD PILLAR OF THE DEMOCRACY IS ON ITS LAST LEG

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“Law and order are the medicine of the body politic and when the body politic gets sick medicine must be administered “ - Dr BR Ambedkar.

There are four pillars on which a healthy democracy rests –the executive , the legislature , judiciary and the media.But in contemporary times , the third pillar , that is the judiciary is on its last limb and life of the democracy is in danger .Opaqueness in appointment of judges and the prejudice of the courts towards the ruling party is seriously worrisome.Serious reforms are required to revive the judiciary , which is already breathing its last.

INTRODUCTION

As India completes 75 years of Independence this August , the time is apt for us to revisit and analyze the various institutions which play an integral role in the functioning of our democracy. There are four pillars of a democratic society – Executive, Legislature, Judiciary and Media and even though there is no scope of differentiating between them, a special emphasis is laid on the Judiciary, as equal and impartial justice is the very foundation of a civilized society. It is the virtue of justice which upholds other virtues like equality and fraternity in a society.

Unfortunately, as India is heading towards establishing new milestones and achieving great progress in the world order, the third pillar (judiciary) of the democracy is on its last leg. It is in a complete disarray and it is not the same as our Founding Fathers had envisioned it to be.

Our founding fathers had fought relentlessly to gain independence from the colonial rule and they had envisioned a nation in which people from different faiths and background would live together in harmony and cooperate in the advancement of the nation. They had realized the importance of Judiciary in the good governance and therefore wanted to separate judicial system from the other two organs of the government, that is the Executive and the Judiciary .

An independent judiciary is indispensable in any democracy. It is vital that the judges are not subject to any pressure and influence and are free to make decisions based solely on fact and law. An independent judiciary inspires confidence in public that their cases will be decided fairly and in accordance with the law, and not shifting political climate. People keep a lot of faith in the judicial system and only knock at the doors of the court, when all other doors are closed to them and therefore it is important to keep their faith intact.

CONSTITUTIONAL PROVISIONS REGARDING INDEPENDENCE OF JUDICIARY¹

The theory of Doctrine of Separation of Powers was first given by **Montesquieu**, a French scholar in 1747. He is the principal source of this theory, which is implemented in many constitutions throughout the world. He strongly believed that to avoid a tyrannical form of government, one organ should not interfere with the other. He was of the opinion that a judge could replace the legislator, since there were no strict boundaries and hence the judge was capable of exercising arbitrary control. Therefore, it was jeopardizing one organ of the government to perform the functions of the other. Our Constitution makers also believed in the separation of powers for good governance and therefore created some provisions regarding the same.

ARTICLE 50 of the Constitution deals with the **separation of judiciary from executive**.

PART 5 of the Constitution deals with **the Union Judiciary**.

ARTICLE 124 to ARTICLE 147 deals with the **establishment and appointment of judges in the Supreme Court**. **Justice Harilal Jekisundas Kania** was the first Chief Justice of Independent India.

ARTICLE 214 to ARTICLE 231 deals with the **establishment and appointment of judges in the High Court**.

ARTICLE 233 to ARTICLE 237 deals with the Subordinate Courts. The highest subordinate court is that of the court of District Judge.

¹ <https://blog.ipleaders.in/independence-judiciary-modern-administrative-state-india/>

ARTICLE 124(4) of the Constitution lays down the procedure for the removal of the judges of Supreme Court which is applicable to the Chief Justice as well. The impeachment process is quite complex and difficult to initiate so as to ensure safe tenure to the judges who are imparting justice. **Justice V Ramaswami** was the first judge against whom removal proceedings were initiated in independent India.

There are certain landmark judgments where the Court has upheld the independence of the judiciary and has set a precedent, that an independent judiciary is a basic feature of the Preamble and it will never be compromised.

WHY THE THIRD PILLAR OF THE DEMOCRACY IS ON ITS LAST LEG?

Since, the time immemorial, Justice is considered as the very foundation of a civilized society. An impartial and efficient judiciary is very fundamental in the governance of a society, as it checks and keeps in control the arbitrary power of the ruling body and also ensures that the grievances of the citizens are redressed in a proper way and also, the citizens who create disorder in the society are punished.

Similarly, in Indian context too, Judiciary is deemed to be the most sacred pillar of the democracy, but unfortunately, in recent years, this pillar is being eroded and the sanctity of the institution is being diluted and compromised. There is no longer any separation of powers between the three organs of the government. Judiciary is now reduced to mere puppet in the hands of the ruling party. The present ruling party has assumed an authoritarian role and is using judiciary to achieve its electoral advantage. The excessive interference of the executive in the judiciary has left the people disenchanted and they are slowly losing their trust in this sacred institution. There is lack of transparency in the appointment of judges, and the elevation of judges is based on past favours and personal relationships. There is also an evident rise in the cases of judicial activism wherein the rulings are suspected to be based on political considerations rather than the existing laws. Judicial activism is the interpretation of the constitution to advocate contemporary values and conditions. The most recent case on judicial activism is the landmark case of **Aruna Ramchandra Shanbaug vs Union of India & Others**, wherein Aruna Shanbaug, who was working as a nurse in 1973, at a hospital in Mumbai, was sexually assaulted by a co-worker and had since then slipped into coma. She has been in a permanent vegetative state since the assault. In 2011, a petition was filed in the Supreme Court by a social activist claiming to be Aruna's friend. The petition contained that passive

ethanasia should be allowed to Aruna, considering that she had been in coma for the last 37 years. The Supreme Court turned down the petition, but in its landmark judgment, it allowed passive euthanasia that is the withdrawal of life support to a person in a permanently vegetative state, but it was subject to the approval by the High Court. The increasing encroachment by the judiciary into the domain of the legislature or executive will invariably attract strong reaction from opposition and public.

There is no transparency in the appointment of judges and the judges are elevated on the basis of past favours and political bias.²In 2014, the four senior most judges of the Supreme Court, Justices Kurian Joseph, Ranjan Gogoi, Madan Lokur and J Chelameshwar, held a first of its kind press conference against the then Chief Justice of India Dipak Mishra, and had alleged selective “assignment of cases to preferred judges” and “sensitive cases were being allotted to junior judges” by Justice Dipak Mishra. They claimed that the CJI was being controlled by the ruling establishment and the independence and sanctity of the Supreme Court was being jeopardized. The press conference which was first of its kind, exposed the ground reality and also raised a lot of questions in the people’s minds. People have a lot of respect and trust in this institution, but when the members of the institution, cast such serious aspersions on its working, then the public loses confidence and becomes disenchanted from the institution. The press conference raised a serious question on the credibility of the Supreme Court.

Another instance where the independence of the judiciary seems to have been compromised is the case of 46th Chief Justice of India, Justice Ranjan Gogoi. During his thirteen months long tenure as the Chief Justice of India, Justice Gogoi was part of several judgments that were seen to have worked out in the favour of the ruling government, in one way or the other. He delivered verdicts in three important cases, the Rafale review plea, Sabrimala review petitions and the Ayodhya Judgment, and all three cases had some electoral advantage for the ruling party. In the **Ayodhya Judgment**, the Supreme Court, in its unanimous verdict, determined that the disputed land should be given to the Hindus to build a temple for Lord Ram, while Muslims would be allotted a five-acre plot for the construction of a mosque in Ayodhya. The central government was asked to set up a trust within three months to manage and oversee the construction of temple. Ram Mandir in Ayodhya has been the at the core of the BJP’s Hindu nationalist politics for three decades. In the **Rafale Deal Case**, the ruling BJP government was given a clean chit over allegations of irregularities in India’s purchase of 36 Rafale jets from

² <https://www.ndtv.com/india-news/for-a-cause-justice-kurian-joseph-on-press-conference-by-4-judges-1956000>

France's Dassault Aviation. The court also dismissed a batch of review petitions seeking probe into the purchase.

Furthermore, Justice Gogoi, was nominated to the Rajya Sabha, within three months of his retirement and also given a Z-plus security cover. When a woman employee of the court had levied sexual harassment charges against him, he presided over his own trial and cleared himself of all the accusations. Justice Gogoi's nomination to the Rajya Sabha strengthens the notion that the reputation of the Supreme Court, for its institutional independence and integrity is on decline. However, this is not the first time that the ruling government has offered a post-retirement political job to a judge. In 2014, Former Chief Justice of India P Sathavisam was appointed as the Governor of Kerala soon after his retirement from the Supreme Court in lieu of the judgment he had delivered in favor of the current Union Home Minister and former BJP President Amit Shah. The case was regarding a first information report filed against Amit Shah in April 2013, in a fake encounter case; the judgment had subsequently quashed the first information report against him

Discrepancy in the listing of cases is also observed in recent years and due to this there is a great pendency and backlog of cases. Recently, a petition was filed in the Supreme Court in the case of ³**Jagdeep Chokkar vs Union of India 2020**, wherein the petitioner sought to allow the migrant workers who were helpless and stranded across the country, amidst the lockdown to return to their homes. The matter was not heard immediately and was postponed, whereas, a petition filed in the case of **Arnab Goswami vs Union of India 2020**, seeking to quash the FIR registered against him, was heard the very next day. It is to be notified that Arnab Goswami is quite biased towards the ruling party and his news channel is solely dedicated to support the policies and gimmicks of the ruling government. He is considered to be the ruling party's favourite for marketing their policies in his prime show.

Anand Teltumbde, who is an advocate for India's most disadvantaged communities, was recently arrested under the UAPA. The Supreme Court refused to grant him bail, as his actions were supposedly anti government.

CASE LAWS WHERE THE INDEPENDENCE OF THE JUDICIARY WAS CHALLENGED.

³ <https://blog.ipleaders.in/independence-indian-judiciary-demonstrated-relevant-rulings/?amp=1>

There are certain judgments, where the independence of the Judiciary was challenged and as a result, it created great outrage in the country.

In the ⁴**Rafale Deal Case**, the Indian government in 2016, had inked a Rs 590000 crore deal to procure 36 Rafale jets from the French aerospace major Dassault Aviation. The deal included a 50% offset clause to be executed by Dassault and its partners, which means that the firm needs to invest 50% of the money into the Indian manufacturing. Subsequently, HAL was replaced by the Reliance In Group as Dassault's industrial partner. It is to be noted that Anil Ambani, who is the major shareholder of the Reliance Group has close ties with Prime Minister Modi. Later, Dassault notified that it wants to invest 115\$ million to fulfill its offset obligation partially. Hence, the matter went to the Supreme Court, where the petitioners alleged that there were irregularities in the deal. The Court gave the ruling government a clean chit over all allegations of scam and corruption. The judgment stirred great controversy, as the Opposition alleged that the judgment has some factual errors and requested a probe by the Joint Parliamentary Committee into the deal. In 2019, it rejected to review its judgment and decided to review the petitions on merit.

In the ⁵**CBI – Alok Verma Case**, two petitions were filed in the Supreme Court, one filed by Alok Verma (CBI Director) and the other by NGO Common Cause, challenging the Central Government's order which had divested Director Verma of his powers, on the basis of corruption charges against him. The petitioners argued that that the Central Government's actions against Alok Verma violated the provisions of DSPE (Delhi Special Police Establishment) Act and the Supreme Court guidelines issued in **Vineet Narain** Case in 1997. The Supreme Court examined the details of corruption charges against the CBI Director and later reinstated Verma as the CBI Director on the grounds of lack of evidence. However, the judgement was delayed and raised great criticisms as the reinstatement was ordered when Mr Verma had just three weeks left for his tenure.

In the ⁶**Bhima Koregaon Case**, the Bhima Koregaon violence refers to the violence erupted during the celebrations to mark the 200th anniversary of the Battle of Bhima Koregaon. The violence and stone pelting by the crowd on the gathering resulted in the death of a 28 year old youth and five others. When the police investigated the case, they found that several

⁴ <https://blog.ipleaders.in/independence-indian-judiciary-demonstrated-relevant-rulings/?amp=1>

⁵ <https://blog.ipleaders.in/independence-indian-judiciary-demonstrated-relevant-rulings/?amp=1>

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provocative speeches were made, which eventually led to violence. Several activists including notable poet Varavara Rao was also arrested. A PIL was filed in the Court, seeking an investigation by the SIT (Special Investigation Team) over the UAPA Act (Unlawful Activities Prevention Act) charges against the arrested activists. The petitioners alleged that the Mumbai Police were biased in their investigation. The case went to the Supreme Court, which subsequently dismissed the case with a 2:1 majority. Two judges Justice Khanwilkar and Chief Justice Dipak Misra were satisfied with the investigation done by the Mumbai Police while Justice D.Y Chandrachud was in dissent, alleging that the arrests were made to target political dissent.

CASE LAWS WHERE THE INDEPENDENCE OF THE JUDICIARY WAS UPHELD.

There are certain landmark judgments where the Court has upheld the independence of the judiciary and has set a precedent , that an independent judiciary is a basic feature of the Preamble and it will never be compromised.

In the Case of ⁷ **SP Gupta Vs Union of India (1982)** The Court held that the judges should be fearless and should uphold the principle of rule of law. This is the basis of concept of judiciary in India.

In the Case of ⁸ **of Supreme Courts Advocates on Record Association & Anr. Vs Union of India (1993)** The Court observed that the independence of the judiciary is necessary for democracy to run effectively. The Court further concluded by stating that the powers and rights can never be hampered as long as the judiciary remains independent from the executive and legislature.

SUGGESTIVE MEASURES

- The collegium system needs to be reformed immediately to increase transparency and accountability in the appointment of judges. An attempt was made by the ruling NDA government in 2014 to reform collegium system , by establishing the NJAC (National Judicial Appointment Commission). The NJAC was introduced in the Parliament as the 99th Constitutional Amendment Act 2014 , and it proposed that the judges of the Supreme Court and the High Court shall be selected by a commission , which will be a

⁷ <https://blog.ipleaders.in/independence-indian-judiciary-demonstrated-relevant-rulings/?amp=1>

⁸ <https://blog.ipleaders.in/independence-indian-judiciary-demonstrated-relevant-rulings/?amp=1>

purely democratic body , comprising of the Chief Justice , two other senior judges of the Supreme Court , the Union Minister of Law and Justice and two other eminent persons.

However the NJAC was eventually declared unconstitutional by the Supreme Court as it found it to be violative of the basic structure of the Constitution and an infringement of judicial independence.

- Giving post retirement jobs to judges should be strictly prohibited as such offers often causes the judges to be biased towards one party . Judges often give biased decisions in lieu of such lucrative jobs.
- Further, court management should be improved and more fasttrack courts should be established to ensure fair and speedy trial to people as “**Justice delayed is Justice denied**”

CONCLUSION

When our Founding Fathers added the provision of separation of judiciary from the executive, they had envisioned a welfare society, supported by a robust judicial system, which would ensure fair and speedy justice to people. Imparting justice is a job which demands great prudence and extreme dedication towards the society. Judges are allowed to falter in their jobs, since they are also humans, but they should also review and rectify their faulty decisions, since it eventually becomes the law of the land. There have been many landmark cases where the judiciary has delivered exemplary judgments and set a precedent, regarding the independence of the judiciary. The case of ⁹**Indira Gandhi vs Raj Narain** (1975) is a landmark judgment in every sense of the term, since it was the first time in the history of Independent India, that a Prime Minister’s election was challenged . In the given case, Raj Narain, an activist, challenged the appointment of Prime Minister Indira Gandhi on the grounds that she had adopted malpractices to win the election. This case was just before, the emergency was declared. The Allahabad High Court declared Indira Gandhi’s election to be null and void and she was asked to vacate the office. This judgment is a landmark judgment, as it also conveyed a subtle message that the rule of law is above all. However, in recent times, the sacred judiciary is being grossly misused to satisfy the political agendas of the ruling party. An independent judiciary is the heart and soul of good governance and therefore reforms in the country’s judicial system is very important to maintain the integrity and sanctity of the institution.

⁹ <https://blog.ipleaders.in/emergency-indira-gandhi-v-raj-narain/>