



Independence of Judiciary and judicial accountability in India

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Abstract

The pursuit of justice is the fundamental goal of the law, and it ought to be applied impartially and without fear. The supreme power that maintains social order and national stability is the law. Justice is a broad phrase, and the court, which is primarily in charge of administering justice in all political systems, should guarantee its distribution. Since the judiciary is the primary means of settling disputes, its role is crucial if the country is to thrive and enter a new period of peace and prosperity. In addition to establishing the rule of law, the court defends the weak, defenceless, destitute, and downtrodden. Therefore, the expansion and development of a young democracy like India need a robust, independent, and powerful judiciary.

This paper expands upon research on Indian judicial conduct regulation schemes. It evaluates judicial accountability and independence from a regulatory standpoint. Internal judicial independence has been a disappearing point of jurisprudence in the jurisdiction, whereas the legal frameworks in India primarily emphasise institutional independence while undervaluing individual independence in the process.

Keywords: Independence of judiciary, judicial accountability, independent judiciary

Introduction

In India, the judiciary mostly uses internal procedures to impose judicial discipline. The fundamental rationale behind in-house systems is their essential role in maintaining judicial independence. Consequently, the High Courts' plenary supervisory power is briefly and severely evaluated below in order to draw attention to the insufficiency of the protections afforded to individual and internal judicial independence.

The High Courts have "total and absolute control" over the supervision and management of lower courts. The High Courts handle virtually all judicial appointments, promotions, transfers, removals, and other actions related to judicial service. It is seen necessary to oversee the High Courts, particularly with regard to judicial discipline, in order to protect the judicial independence of judges in lower courts. Furthermore, the Indian Supreme Court (SC) has ruled that the High Courts have total administrative authority over the lower courts. All employees attached to the lower courts are covered under the "control." The court noted that harmonious, effective, and efficient operation of the lower courts depends on administrative management. "Such control is effective in operation, comprehensive in scope, and exclusive in nature." To put it succinctly, "control" refers to all the disciplinary and administrative authority that the High Court needs to supervise the work of subordinate judges and employees. Planning, budgeting, record keeping, court infrastructure management, and human resource management are all included in the purview of the governing power. The High Courts of India have both "stick" and "carrot" at their disposal because of their extensive administrative and disciplinary powers, which also make them custodians or guardians of the subordinate judiciary.

The subordinate court judges are subject to the oversight and direction of their respective High Court throughout their tenure, from appointment to judicial office until retirement, demonstrating the High Courts' undisputed power over the

lower courts. The High Courts make recommendations to the corresponding state governments on issues pertaining to appointment, training, posting, appraisal, transfer, promotion, retirement, and removal. The High Court is also granted broad rule-making authority under the Constitution; hence, the High Courts are able to create any kind of regulatory framework they deem fit. However, to address a variety of matters concerning judges of lower courts, nearly all High Courts have established committees with members who are also judges of High Courts. The conclusions issued by these committees are final in certain cases, although they are primarily advisory in nature, and the Chief Justice or the entire court will have to make the ultimate decision.

The High Court committees are internal organisations that handle matters pertaining to the subordinate court judiciary and High Court administration. There is no room for the executive branch to participate, nor is there any involvement from the general public. The state government may enact regulations in certain areas, but the executive branch does not become involved in internal court matters. There are no official appeal procedures for decisions made by these committees. The party who feels wronged must challenge the administrative rulings of certain of the court's senior judges by utilising the writ jurisdiction of the same High Court. Strong internal review processes are absent.

The pursuit of justice is the fundamental goal of the law, and it ought to be applied impartially and without fear. The supreme power that maintains social order and national stability is the law. Justice is a broad phrase, and the court, which is primarily in charge of administering justice in all political systems, should guarantee its distribution. Since the judiciary is the primary means of settling disputes, its role is crucial if the country is to thrive and enter a new period of peace and prosperity. "The nation lives under the Constitution, but the Constitution is what the judges say it is," as justice C.E. Hughes puts it.¹ According to K.S. Hegde, the judiciary serves as the "balancing wheel" of the Constitution. Therefore, the court upholds the rule of law

and defends the poor, defenceless, destitute, and downtrodden. Therefore, the expansion and development of a young democracy like India need a robust, independent, and powerful judiciary.

Independence of Judiciary

Dr. Ambedkar had stated in the Constituent Assembly that the judiciary ought to be competent in and of itself, separate from the executive. "They (the judges) should be first class and seen to be first class," Nehru believed.

Freedom is the cornerstone of the rule of law. In order for the law to be equally applicable to every citizen of the nation, judges must use their independence when enforcing the law and making rulings. Threats and pressure from litigants, especially the criminal part of society, can be directed towards judges. The majority of democratic nations have accepted the idea of judicial independence.

Meaning of judicial independence

It is important to define the word "independence of the judiciary" before we can properly explore the idea of judiciary independence in India. Dr. V.K. Rao stated that "the judiciary's independence has three meanings:

1. The judiciary shall not have any other organs intruding upon its jurisdiction. It is known as the separation of powers in this sense. Our constitution grants the executive heads limited powers of remission, etc., but otherwise leaves the judiciary completely independent.
2. It refers to the independence of rulings and the absence of legislative intervention. Our constitutional system is unsatisfactory in this regard because the government has the power to partially override judicial decisions through legislation.
3. The judiciary should be free from both fear and favouritism from the legislative and executive branches in order to make decisions that are independent of them. India's constitution establishes an independent Supreme Court. As far as the constituent assembly was concerned, all had been anxious to see the court established as independently as possible. Austin stated that the members of the Constituent Assembly envisioned the court as a bulwark of justice and rights. The Assembly has taken care to avoid involving the judiciary in political matters.

"This is the institution which will preserve those fundamental rights and secure to every citizen, the rights that have been given to him under the constitution," stated a constituent assembly member. Therefore, it ought to be immune to any intervention on the part of the administration. The Supreme Court serves as democracy's guardian. In actuality, the judiciary's independence is necessary to preserve the integrity of justice within the social structure and to build public trust in the administration of justice.

"The psychological fact behind the principle of independence is not the immediate reaction of feeling in a man whose impulses are obstructed but the permanent result in his conduct of the destruction of some impulses and the encouragement of others," as stated by Graham Wallis. We establish a judge's independence not to protect him from public humiliation, but so that his official behaviour is guided by other incentives and not by some.

Need for judicial independence

The theory of "Separation of Powers" serves as the foundation for the idea of "independence of the judiciary." The doctrine discusses the judiciary's independence from the legislature and the executive branch because it has the authority to interpret the law and make decisions. Judge independence is also important for the proper operation of the court because it is possible for litigants or other criminal elements of society to improperly influence, induce, pressure, threaten, or interfere with judges. The judiciary serves as a barometer for assessing the state's real progress. If there is a single hand holding all the power, the judiciary's lack of independence is the first step towards a totalitarian system of governance and increases the likelihood that power will be abused. As such, it is imperative to address the question of what exactly qualifies as judicial independence. "The independence of judges from any external factors which interfere with the performance of their functions in an unbiased manner" is one definition of the idea of the judiciary's independence. As a result, the independence of the judiciary can be understood to include both the institution's independence and the independence of the judges who make up the judiciary. In order to maintain judicial independence—which serves the interests of the people rather than the judges' own interests—the constitution granted judges immunity. In conclusion, it might be claimed that these immunities grant unrestricted and limitless powers, which increases the likelihood that these fundamental rights, privileges, and immunities will be used arbitrarily and unfairly. However, there has been a clamour lately for the courts to be more accountable.

One significant requirement for the exercise of judicial review authority under a democratic constitution is the independence of the judiciary. Without a particular clause in the American Constitution, Marshall C.J. established the foundation for judicial review in *Marbury v. Madison* in 1803. However, Lord Coke had already expressed similar views in *Dr. Bonham's case* in 1608. Under Articles 13, 32, 136, 141, 142, 226 and 227 of the Indian Constitution, judicial review is allowed. In accordance with the ruling in *Keshavananda Bharti*, it is also acknowledged as a fundamental characteristic that constitutes an unbreakable component of the Indian constitution. The directive concept of State policy is outlined in Part IV of the Indian Constitution, whereby Article 50 requires the court to remain independent in order to fulfil its constitutionally mandated role as watchdog. Nonetheless, the judiciary is an institution where each judge is a public servant who answers to the political sovereign, just like every other branch of government and public institution in a democracy. The shape or type of the mechanism needed to ensure their responsibility is the only thing that differs. In conclusion, judicial accountability is a component of the judiciary's independence, and the means by which it is enforced ought to safeguard that independence as well. The foundation of democracy is the rule of law, which will suffer if the judiciary's independence is undermined by a decline in its integrity.

Judicial independence under Indian constitution

Most democratic countries around the world adhere to the "Independence of Judiciary" principle, yet no one ever explains what this means. Through the incorporation of provisions, our constitution guarantees judicial

independence; yet, the precise definition of judicial independence remains undefined. The following clauses in the Indian Constitution guarantee the independence of the judiciary:

1. The Directive Principles of State Policy mention Article 50, which establishes the division of the judiciary and executive. In the state's public services, "The State shall take steps to separate the judiciary from the executive." Securing the judiciary's independence from the executive is the goal of the Directive Principle.
2. According to Article 211 of the constitution, "no discussion with respect to the conduct of any Judge of the Hon'ble Supreme Court or of a High Court in the discharge of his duties shall take place in the legislature of a state." Similarly, Article 121 stipulates that "no debate in parliament regarding the behaviour of any Supreme Court or High Court judge while performing their duties may occur unless a motion is made to present an address to the president requesting the judge's removal." Thus, the Indian constitution grants the Hon'ble Supreme Court and the High Courts independence from political pressures and influence by separating them from political criticism.
3. The Hon'ble Supreme Court has the authority to penalise for contempt of itself under Article 129. In a similar vein, any High Court may penalise someone for contempt of court under Article 215.
4. In Article 125, the pay for judges is discussed. Given that judges' salaries and benefits are set, one of the things that demonstrates their independence is the fact that these amounts are known. The Consolidated Fund of India and the states, respectively, pay the salaries of the Honourable Supreme Court and High Court judges. "The Judges of the Supreme Court shall be paid such salaries as may be determined by parliament by law and, until provision in that behalf is made, such salaries as are specified in the Second Schedule," according to Article 125(1). Additionally, according to Article 125(2), "Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by parliament and, until so determined, to such privileges, allowances and rights as are specified in the Second Schedule: Provided that neither a judge's privileges or allowances, nor his rights in respect of leave of absence or pension, shall be varied to his disadvantage after his appointment."
5. Article 124(2) specifies that a Supreme Court judge must be 65 years old to retire, while Article 217(1) stipulates that a High Court judge must be 62 years old. A judge of the Supreme Court may not be removed from office without the president's order, according to Article 124(4), which also states that a proposal for removal on the grounds of proven misbehaviour or incapacity must be presented to the president in the same session by the majority of members of each house of parliament and supported by a majority of those members as well as by not less than two-thirds of those present and voting.
6. The Hon'ble Supreme Court's powers are unassailable by the parliament, according to Article 138 (1). The judiciary is independent of the legislative since Parliament may only expand the Supreme Court's authority and jurisdiction; it cannot reduce it.

Judicial Accountability

With tremendous power come great duty and accountability, and judicial independence and accountability go hand in hand.

1. **Judicial Corruption:** According to former Indian Chief Justice J. S.P. Bharucha, approximately 20% of judges may be corrupt. Although J. K.G. Balakrishnan denied that corruption at such a high rate actually occurs, he acknowledged that it does, with judges in higher courts being especially corrupt. The former Orissa High Court judge was detained by the CBI in relation to an alleged involvement of an Allahabad High Court judge in allowing a private medical college to admit students in defiance of a resolute Supreme Court prohibition. Following complaints from UP Advocate General Raghvendra Singh and a Dr. Abhay Krishna regarding the purported impropriety of orders issued by a bench led by J. Shri Narayan Shukla, the Chief Justice of India asked the concerned High Court judges for their responses. The Chief Justice of the High Court of India then established a three-judge inquiry committee to gather information. The panel is composed of Chief Justices Indira Banerjee of the Madras High Court, S.K. Agnihotri of the Sikkim High Court, and P.K. Jaiswal of the Madhya Pradesh High Court. The claims have merit, according to this internal investigation panel.
2. **Politicisation of the Judiciary:** It is true that, as members of the same society, judges each have their own personal political philosophy. Some judges even adhere to a specific political party's platform. The first occurrence occurred in May 1967 when K. Subba Rao, the Chief Justice of India at the time, was nominated by the opposition to run against Dr. Jakir Hussain for president. Retired judges were also offered positions as chairman of several commissions, members of the Parliament, etc. They would inevitably lean towards the government in the hopes of receiving similar perks after retirement.
3. **Re-employment of Retired Supreme Court Judges in Various Executive Positions:** This poses a threat to the independence of the judiciary since retired judges are frequently appointed to straightforward executive positions like governor of states, as in the cases of P. Sathasivam and Fatima Beevi.
4. **The 1975 L.N:** Mishra murder case is one example of a criminal trial that started and ended later than expected. Four convicts, ages 73, 66, 75, and 79, were given life sentences by the Sessions Court after 40 years of trial. What is the basis for these convictions? A woman filed a complaint against her brothers in 2009, alleging that they had taken her shop. This case also made it all the way to the top court. The Supreme Court expressed regret for the 13-year delay in the start of the criminal trial because of two contradictory orders that a High Court judge made on the same day in two unrelated but related cases. In one case, the order limited further investigation, while in the other; it permitted the investigation to continue. Shyam Lata, the female litigant in this case, has died away.

- 5. The politics involved in selecting judges and appointing less experienced judges to succeed the senior most judge as India's Chief Justice:** Traditionally, the Chief Justice of the Supreme Court was to be nominated by the most senior judge on the court. This convention was adhered to until 1973. However, this method was criticised due to lack of experience, merit, and competency; therefore, these issues should be addressed rather than seniority. However, this custom was violated for the first time in 1973 when J. R.N. Ray was named Chief Justice of India, succeeding three esteemed colleagues, J. M. Shelat, J. A.N. Grover, and J. K.S. Hagde. J. A.N. Ray's support of the government in the Kesavananda Bharti case was the cause. However, the administration argues that the president used his latitude in making this decision. J. M.H. Beg became Chief Justice of India in 1976, replacing J. H.R. Khanna, who was senior to him, because it was only Khanna who voiced disagreement in the A.D.M. Jabalpur case, often known as the habeas corpus case, which prevented many individuals from being misruled during the Emergency. He asserted that Article 21 is not something that our Constitution bestows upon us; rather, it predates it, and as such, it cannot be removed during an emergency.
- 6. Appointment of Additional/Ad-hoc Judges:** The Indian Constitution's Article 224(1) allows for the appointment of Additional Judges to share the burden for a maximum of two years. It is not necessary to appoint extra judges if there is a permanent judge position. Thirty percent of the judges of India's High Courts are additional judges, who are appointed as permanent judges after two years.
- 7. Pendency of Cases:** It is a well-known fact that Indian courts proceed so slowly that a grandson will often wind up suing his grandfather in court. As of 2015, there were over 3.15 crore cases pending in India. This implies that, if each court case involves three to five defendants, there may be over three crore plaintiffs, or petitioners, and almost nine crore defendants. Twelve crore litigants, that is. At any given time, 36 crore Indian residents are either directly or indirectly involved in litigation, assuming that each litigant has three family members. This indicates that, either directly or indirectly, every fourth member of our society is a litigator now, or that figure could rise to every two in 20 years, meaning that we are building a litigant nation.
- 8. The Collegium system and how it is used:** A 1993 and 1998 ruling by the Supreme Court established the collegium system. Our legal system is autonomous. This collegium system's appointment process is confidential. An estimate states that judges' families fill 80–90% of the openings in the Supreme Court and High Courts.

The Supreme Court invalidated the 99th Amendment to the Constitution, which established the National Judicial Appointment Commission to select judges for the Supreme Court and High Court. The Supreme Court claimed that the Commission's appointment of the Law Minister and two

distinguished individuals violated the judiciary's independence. When a decision is made to reject a law passed by parliament without specifying which part of the Constitution it violates, it will be deemed unconstitutional. The Constitution makes no mention of the collegium system, which the Supreme Court adopted after dismissing the NJAC. The late Justice Krishna Iyer declared in public that the collegium system was an institution unrelated to the Constitution. The principal author of the 1993 ruling, the late Justice J.S. Verma, made the following public statement: "My 1993 judgement, which holds the field, was very much misunderstood and misused." In 2002, J. Venkatchaliah, the chairman of the Constitution Review Commission, suggested creating a Commission to select judges.

Need of judicial accountability

Power with individual accountability is necessary to sustain any democratic system in a "democratic republic." Accountability needs to be universal, encompassing not only elected officials but also judges, bureaucrats, and everyone else with authority. In a democracy, authority and status are accompanied by accountability, and all public offices must continually answer to the people, who hold the ultimate say over political decisions.

The judicial system handles the administration of justice through the courts. The people who preside over the courts are called judges. They are actual, living representatives of the courts, not just their outward emblems. The way judges carry out their responsibilities shapes public perception of courts and the legitimacy of the legal system. Judges are highly respected in India and have been for ages. However, as a result of several unfortunate experiences recently, people are gradually losing faith in the legal system and turning to self-government. It is really abhorrent. Since the judiciary must protect our constitution, it is necessary to hold it accountable, making values violations there more unacceptable than in any other branch of the government. Judges' answerability and judicial responsibility are antiquated ideas. Numerous nations have provisions in their constitutions to guarantee the judiciary's responsibility. Its purpose is to prevent the consolidation of power in the hands of one state organ, particularly in nations like India where there is criticism that judicial activism meddles with and intrudes upon the purview of other organs. However, judicial independence is also necessary for all judges, whose oath of office mandates that they act impartially, without favouritism or malice, and to maintain the nation's laws and constitution.

Recent controversies on judicial independence

Many cases have brought up the subject of judicial independence, from Sakalchand to the National Judicial Appointments Commission Bill. The National Judicial Appointments Commission Bill, which attempted to alter the established collegiums method for judge nomination, has been the subject of controversy recently.

Three of the courts own rulings, collectively referred to as the "Three Judges Cases," form the foundation of the Hon'ble Supreme Court of India's collegium system for selecting judges to the country's constitutional courts. These three situations are:

1. S. P. Gupta v. Union of India - 1981 (AIR 1982 SC 149) (also known as the Judges' Transfer case)

2. Supreme Court Advocates-on Record Association v. Union of India – 1993, (1993) 4 SCC 441
3. In re Special Reference, 1 of 1998

The court developed the concept of judicial independence over the course of these three decisions, establishing that the legislative and the executive arm of government would not have any influence over the nomination of judges. The collegium system was established by the court and has been in operation since the Second Judges Case ruling in 1993. There is not a single reference to the collegium in the Indian constitution, not in the original text nor in any of the later amendments. Even though foreign legal scholars and jurists considered the establishment of the collegium system to be contentious, India's populace, particularly the parliament and the executive branch, have not taken significant action to replace it. The Hon'ble Supreme Court of India's ruling in the July 1998 Third Judges lawsuit is not a lawsuit, but rather an opinion addressing a legal query about the collegium system brought up by K. R. Narayanan, the country's president at the time, in the exercise of his constitutional authority.

Furthermore, the court dismissed a public interest lawsuit filed by the non-governmental organisation Suraz India Trust in January 2013 on the grounds of locus standi, which attempted to contest the collegium system of appointment. P. Sathasivam, the Chief Justice of India, came out against moves to alter the collegium system in July 2013.

The Constitution (120th Amendment) bill, 2013, was passed by the Rajya Sabha on September 5, 2013. It amends articles 124(2) and 217(1) of the Indian Constitution, 1950, and creates the Judicial Appointment Commission, whose recommendations the president will use to appoint judges to the higher judiciary. The criticism of the new arrangement is that the government wants to change the makeup of the judicial appointment commission, and the amendment bill places the burden of regulation on the parliament to do so through Acts, rules, regulations, etc. that are passed through the regular legislative process.

Establishment of National Judicial Appointments Commission

The Lok Sabha on August 13, 2014, and the Rajya Sabha approved the National Judicial Appointments Commission (NJAC) Bill, 2014 on August 14, 2014, respectively. This bill ends the collegium method of judge nomination. The Hon'ble Supreme Court invalidated the 99th Amendment and the NJAC Act. On December 31, 2014, the Indian president granted his assent to the National Judicial Appointments Commission Bill, 2014, which was subsequently renamed the National Judicial Appointments Commission Act, 2014. The Hon'ble Supreme Court knocked down the NJAC Act and the constitutional amendment on October 16, 2015, by a majority decision of 4:1, reestablishing the two-decade-old collegium system of judges appointing judges in higher judiciary. The Hon'ble Supreme Court ruled that NJAC is messing with the fundamental framework of the constitution, wherein parliament lacks the authority to alter the fundamental structure, and that this interferes with the judiciary's autonomy by the executive branch. Nonetheless, the Hon'ble Supreme Court has recognised that the collegial method of judges selecting judge's lacks credibility and transparency, and that this will be fixed or enhanced by the judiciary.

Conclusion

Judges do commit wrongdoings, such as biases and corruption. Therefore, such malice needs to be remedied in order to maintain an independent judiciary; otherwise, the independence would be in jeopardy. It is crucial to determine whether the Legislature or the Executive will handle the task. There will be ongoing pressure on the judiciary.

Since citizens in India rely on the judiciary to help them with many of their problems, it is crucial to maintain the continuous accountability norms that give the Indian judiciary its strength. A politically stable environment and a considerably more effective form of government are the only outcomes of a responsible judicial institution, whereas the credibility of the court is diminished by its absence. It is also recognised, though, that if judicial responsibility is overextended, it can negatively affect judicial independence, therefore finding the correct balance between the two is crucial. The conclusion drawn from the aforementioned talks is that the founders of the constitution understood the value of the judiciary's independence long ago, and the courts have recognised it as one of the document's fundamental principles. It is common knowledge that laws must adapt to reflect the changing needs of society. In a similar vein, judicial independence must also be considered in light of how society is evolving. To guarantee that the true goal of the judiciary's establishment is fulfilled, judicial independence and accountability must coexist together. The process of accountability helps to promote transparency. When one is answerable to the law, it is most easily attained. Therefore, judicial independence and accountability are the two most crucial factors that can help ease tensions between the legislature and the judiciary since they promote the smooth operation of government and guard against the emergence of judicial autocracy.

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