



Judicial Independence and Appointment of Judges

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ABSTRACT :

Judicial independence is an important principle that ensures that judges can make decisions in accordance with the law, without external interference such as government interference or personal or political pressure. This freedom is essential for upholding the rule of law, safeguarding human rights, and boosting public trust in legal systems. It can be based on institutional democracy, where the judiciary operates independently of other branches of government, or individual democracy, where all judges have the right to try when there is no justice. The principles are the legal process that governs the selection of judges. The selection process must be transparent, effective, and free from political interference to prevent unfair decisions. In the United States, judges are selected by the president and require approval from the Senate, establishing a system of checks and balances. Instead, India uses a collegial system, in which appointments are made based on the approval of senior judges and is designed to protect the judiciary from outside influence. A strong and independent judiciary is essential to the delivery of justice and the preservation of democratic standards, and is a significant constraint on government authority and the protection of the rights of the same.

1. INTRODUCTION :

Judicial freedom is an important part of Indian democracy and one of the key things that distinguishes India from other countries. However, this freedom is sometimes undermined by external interference and political interference, raising concerns about the separation of powers. This article examines a few recent cases in India where judicial independence has come under scrutiny. It must be recognized that the protective order comes from the courts themselves. Ultimately, the preservation of judicial independence relies on the atmosphere fostered by all branches of government, including the judiciary itself, as well as on public perception. Freedom of decision making must be mindful of the need for such protection against unforeseen circumstances and changes in social, political and economic conditions.¹

1.1.1 Meaning of Judicial independence

The Founders recognized the important role of independent and impartial judges in upholding the rule of law. While laws provide a framework for our rights, they are worthless without the free will to protect them. This concept, referred to as judicial independence, enables judges to make rulings based on legal principles without the worry of political pressure or personal consequences, such as job loss or pay reductions.

1.1.2 Definitions of Judicial independence

1. Alexander Hamilton

“The judiciary has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither force nor will, but merely judgment.”

2. Roscoe Pound

Legal scholar Roscoe Pound defined judicial independence as the “power of judges to make decisions based on their interpretations of law without external pressures.” He emphasized that this independence is crucial for the maintenance of justice.

3. William H. Rehnquist

Former U.S. Supreme Court Chief Justice Rehnquist described judicial independence as the ability of courts to “decide cases without interference from other branches of government or external pressures,” asserting that such independence is vital for the credibility and effectiveness of the judiciary.

4. Justice Ruth Bader Ginsburg

Ginsburg highlighted the importance of judicial independence in maintaining democracy:

¹ M.P Singh, “Securing the Independence of the Judiciary-The Indian Experience” 10 Ind. Int'l & Comp. L. Rev 246 (2000).

“A truly independent judiciary is vital to a democracy and to the rule of law. It ensures that justice is applied fairly and equally, free from political or social pressures.”

2. RULE OF LAW AND INDEPENDENT JUDICIARY (RELATIONSHIP)

It is necessary to discuss Dicey's views because he is known as the pioneer of the concept of law. According to Dicey, there are three foundations of law based on the principle that "the government should obey the law, not human rights":

1. Law is the best;
2. Everyone is equal before the law
3. The spirit of law prevails. He believes that courts are enforcers of the law and therefore must protect justice and external interference. The law provides two important safeguards against government action or discrimination. It shows that the rules that will apply to a particular situation must be well estimated.

3. NEED OF JUDICIAL INDEPENDENCE :

Freedom of the judiciary is the essence of democracy. In democracies, the ultimate power of the state is divided into three main branches. Important judges, such as legislators and administrators, are given legal responsibilities. Any action that is not required by the law in force.² The principle of separation of powers ensures that the judiciary operates without both internal and external interference. As outlined in our constitution, the judiciary is tasked with safeguarding citizens' fundamental rights and promoting the rule of law. One of its key powers is judicial review, which allows the courts to invalidate any law that contradicts the Constitution. Although the term "judicial review" is not explicitly mentioned in the Constitution, the written laws of India and the Supreme Court's authority to strike down laws that infringe on fundamental rights implicitly grant this power to the judiciary. This combination of legislative authority and review capability positions the judiciary as a significant institution, as it can interpret laws enacted by the legislature.³

4. CONSTITUTIONAL FRAMEWORK FOR INDEPENDENCE OF JUDICIARY :

India promotes constitutional governance through the rule of law. The legislature, executive and judiciary are established by the Constitution of India in 1950. Under this democratic structure, the judiciary acts as an impartial arbiter, adjudicating disputes in accordance with the provisions of the written constitution and distributing constitutional powers among the various institutions, including the parliament, state legislatures and the executive. An independent judiciary is not only a fundamental expectation and fundamental right of every citizen, but also represents a critical component of the basic structure of the constitution. The independence of the judiciary is recognized as a fundamental aspect of the Indian Constitution and is also recognized as a human right in international conventions. The Constitution defines three branches of government, each of which must act independently, despite their interdependence. The pursuit of justice is deeply rooted in the preamble of the Indian Constitution.

5. INDEPENDENCE OF JUDGES :

Functional or decisional independence refers to a judge's capacity to make rulings free from internal or external pressures. Personal independence ensures that a judge is not influenced by the government in a way that could affect their decisions in specific cases. Collective independence encompasses the judiciary's institutional, administrative, and financial autonomy from other branches of government, particularly the executive and legislative branches. Internal independence means that judges are free from the influence of their superiors and colleagues, so that they are not subject to instructions, suggestions or pressures from the judiciary or their colleagues when hearing cases.⁴

Unlike the US Constitution, the Indian Constitution explicitly grants judicial review powers to the Supreme Court of India through Article 32 and to the state high courts through Articles 226 and 227. It is the guardian of the constitution and the rights of citizens, who have the power to set aside any act of the executive, administrative decision or legislative act that is deemed unconstitutional. An independent judiciary is necessary to maintain the rule of law.

6. INSTITUTIONAL INDEPENDENCE

The quality of justice depends on the autonomy given to judges. Courts must operate in an independent and politically uninhibited environment. Therefore, Article IV of the Constitutional Framework states that the state must do everything to ensure that it can separate itself from politics. Freedom essentially means the freedom of judges. Therefore, judges must hold themselves accountable and ensure that their actions are transparent and legal. There are many laws in the Indian Constitution that protect the independence of the judiciary. ⁵These rules include:

² Shaila Arora, "Independence of Judiciary in India" 4 *International Journal of Law Management and Humanities* 714 (2021).

³ Martin Shapiro, "Judicial Independence: New Challenges in Established Nations" 20 *Indiana Journal of Global Legal Studies* 258 (2013).

⁴ Martin Shapiro, "Judicial Independence: New Challenges in Established Nations" 20 *Indiana Journal of Global Legal Studies* 258 (2013).

⁵ Encj," Independence and Accountability of the Judiciary: ENCJ Survey on the Independence of Judges" available at: encj.eu (Last visited on Oct 19,2024)

6.1 Judicial Appointments

Independent decision-making and justice are crucial components of government policy. The foundation of judicial independence starts with how judges are selected. Section 4 of Title V, covering the "Federal Judiciary," outlines the structure and composition of the Supreme Court, detailing the appointment process, powers, authority, jurisdiction, and conditions of service for judges. Similarly, Articles 214 to 231 in Section 5 of Title VI, titled "Supreme Court of the United States of America," describe the rules, procedures for appointment, and terms of office for Supreme Court judges, including the transfer of judges. The President holds the authority to appoint judges to both the Supreme Court and High Courts. It is required that the Chief Justice of India be consulted during the appointment of judges, except for the Chief Justice, and this consultation may include experts when deemed necessary by the Supreme or High Courts. The Prime Minister, representing the Central Government, also has the power to appoint High Court judges. Additionally, Article 217(1) gives the Central Government the authority to appoint Supreme Court judges in consultation with the Chief Justice of India, the Chief Governor of a State, and the Chief Justice of the High Court. The Chief Justice of India stated that consulting the Chief Justice of the Supreme Court and judges from other High Courts and Central Courts is essential for carrying out their legal responsibilities. After their appointment, judges serve until they reach the retirement age of 65 for Senior Judges in the Supreme Court (Article 124(2)) and 62 for Senior Judges in the High Courts (Article 217(1)). According to Article 235, High Court judges, appointed by the State Governor in consultation with the High Court, adjudicate matters related to the state and resolve disputes between individuals and states, as well as conflicts between states.⁶ These critical functions can only be effectively performed in an honest, free, and fair environment.

a) First Judge Case

The first case decided by the Supreme Court was *S.P. Gupta v. Union of India* (1982)⁷ which laid down that the process of negotiation should be treated as an agreement rather than a forced agreement. The court held that this discussion did not constitute an impediment to the President. It also said that the Chief Justice of India was human and imperfect and his views should not be considered binding on the President and the Prime Minister because it amounted to voluntary compromise.

b) Second Judge Case

Two Cases: *Supreme Court Advocate v. Union of India* (1993),⁸ *S.P. Gupta*. The Court held that the opinion of the chief justice must be considered authoritative and binding on the president because the chief justice has more authority than any other law in evaluating qualified candidates.

c) Third Judge Case

The case involving the second judge created confusion in the meeting of the Chief Justice and his senior colleagues. The Chief Justice has to consult his senior colleagues and their recommendations are generally accepted without discussion. However, in the eight months that Chief Justice Poncha has been the Chief Justice of India, many of his appointments have given rise to proper controversies. In view of these developments, the Central Government in July 1998 preferred to seek the opinion of the Supreme Court on Article 143(1) of the Constitution. Judge of the Supreme Court. It is advisable that the senior most judge of the Supreme Court (College Bench) should also be consulted regarding appointments to the Supreme Court. The Court also held that if the Chief Justice of India makes recommendations without following the established norms and arguments, the Government of India is not responsible for making those recommendations.⁹

d) The National Judicial Appointment Commission 2014

On 11 August 2014, the National Judicial Appointments Commission Bill, 2014 was tabled in the Lok Sabha by the Minister of Law and Justice, Mr. Ravi Shankar Prasad. This bill was introduced along with the Constitution (121st Amendment) Bill, 2014, which provides for the establishment of the National Judicial Appointments Commission (NJAC). The Act specifies the procedure to be followed by the NJAC while recommending candidates for the Chief Justice of India, other Judges of the Supreme Court and the Chief Justice and Judges of the High Courts.

e) Fourth Judge Case

The 121st Constitutional Amendment Act, which established the National Judicial Appointments Commission (NJAC), was passed by both Houses with a two-thirds (special) majority. The amendment was then sent to the states for approval. After receiving approval from 16 states, it was sent to the President for approval. However, before the amendment could be fully implemented, the Supreme Court declared the amendment unconstitutional and violated the independence of the judiciary, which is the essence of the constitution, in the case of *Bar Association and Anr Supreme Court v. The case of the Union of India* is commonly known as the Fourth Assembly.

6.2 Qualification of Judges

The next issue affecting the independence of the judiciary is the quality of the persons appointed to the courts. The performance of a judge depends on the standards laid down for his appointment.¹⁰

The candidates must be citizens of India and must fulfill one of the following:

- a) Be a Judge of the High Court for five years,
- b) or have practiced as an Advocate in a legal institution. Have practiced in the High Court for at least ten years, have practiced regularly in one or more courts.

The criteria for appointment are as follows:

- a) "Candidates cannot be appointed as Judges. Unless they are citizens of India, they must have held a judicial office in the High Courts

⁶ Shalila Arora, "Independence of Judiciary in India" 4 *International Journal of Law Management and Humanities* 714(2021)

⁷ AIR 1982 SC 149

⁸ AIR 1994 SC 268

⁹ Stephen B. Burbank, "The Architecture of Judicial Independence" 72 *Legal Scholarship Repository* 319 (1999).

¹⁰ Shaila Arora, "Independence of Judiciary in India" 4 *International Journal of Law Management and Humanities* 714 (2021).

b) and have held a judicial office in India for at least ten years. or have practiced as an Advocate in the High Court or in two or more chambers and have practiced litigation for a continuous period of at least ten years.¹¹

6.3. Salaries and Allowances

The salary and benefits given to judges play an important role in ensuring their independence as they are decided in advance and do not require approval by law. While judicial judges receive their salaries from the Consolidated Fund of India, court judges receive their salaries from the Consolidated Funds of the states. According to Article 125(2), there can be no deduction in their salaries except in cases of serious financial crisis. While provisions are made for the payment of salaries, allowances and pensions to the High Court judges, Article 202(3)(d) also provides for the same for the High Court judges.

6.4 Removal of Judges

In India, the appointment of judges of the Supreme Court and High Court is the responsibility of the President under Articles 124 and 217. These judges are appointed for a fixed term and are removed from office under Articles 124(4) and 217. Violation or failure to testify is accepted by a decision of both the Courts of Parliament which must be supported by a majority. This framework for employment and removal is based on the independence of judges. Such decisions can only be made when both the Courts are in session. The motion must be supported by a majority of all the members of both the houses and two thirds of those present and voting. The law addresses the procedure for investigating allegations of misconduct or incompetence by the Supreme Court or the High Court, as well as the authorities to address senior management.¹²

6.5 Transfer of Judges

Article 222(1) grants the President the authority to transfer a judge from one High Court to another, following consultation with the Chief Justice of India. The Constitution includes provisions for providing compensatory allowances when a judge is reassigned between High Courts. It is important to note that the President's power to transfer judges is not absolute; it is exercised with careful consideration of two key factors: (i) the public interest and (ii) thorough consultation with the Chief Justice of India.

6.6 Power to punish for its Competent

Criticisms of the court are based on the fact that the court must have the authority to ensure compliance with its decisions, which is essential to the administration of justice. Contempt of court covers both civil and criminal cases. Legal basis for imposing reasonable restrictions on freedom of expression. Article 129 designates the Supreme Court as the "court of record", while Article 215 provides for the appointment of the Supreme Court in a similar manner.¹³

6.7 Prohibition on Practice After Retirement

The Act prohibits a High Court judge from representing or appearing before any court, tribunal or tribunal in India after retirement. Similarly, a senior Supreme Court judge is not allowed to practice in the court in which he previously practiced. However, under the provisions of Article 220, a High Court Judge may practice in the High Court or Supreme Court in which he was not a judge after retirement. The Supreme Court ruled that his application for election or membership as a Member of Parliament is not eligible

6.8 Condition of Service

Another important aspect of independent decision making that needs to be considered is the conditions of service. These conditions directly affect the daily work of judges and cover all aspects of postretirement security. By "conditions of service" we mean the terms and conditions that judges have to abide by during their service and after retirement. The Judges of the Supreme Court (Service Act), as amended in 2009. conditions of service, pension, housing allowance, transport, allowance, allowance, family pension and post-retirement health facilities.¹⁴

6.9 Establishment of Courts

Judicial independence does not depend solely on the independence of judges; this office refers to the administrative structures that support the functioning of the court. The Constitution of India makes special provisions for the courts. The Chief Justice of India has the authority to appoint the

¹¹ Stephen B. Burbank, "The Architecture of Judicial Independence" 72 *Legal Scholarship Repository* 319 (1999).

¹² Frans Van Dijk and Geoffrey Vos, "A Method for Assessment of the Independence and Accountability of the Judiciary" 9 *International Journal for Court Administration* 5 (2018).

¹³ Stephen B. Burbank, "The Architecture of Judicial Independence" 72 *Legal Scholarship Repository* 319 (1999).

¹⁴ Stephen B. Burbank, "The Architecture of Judicial Independence" 72 *Legal Scholarship Repository* 319 (1999).

Chief Justices of the Supreme Court. Similarly, the Chief Justices of various High Courts have the authority to appoint the staff of their respective courts. The Supreme Court is also responsible for the appointment of members of the lower courts. The Constitution also guarantees the salaries and allowances of the assistant courts and provides that their salaries are drawn from the Consolidated Fund of India. These provisions, along with the independence of the judges, are based on the principle of independent decision-making.

7. CLASSIFICATION OF JUDICIAL INDEPENDENCE

Judicial independence can be categorized into various types, each representing distinct dimensions and aspects of this Independence:

1 Institutional Independence

This concept refers to the independence of the judiciary as an institution. It involves separating judges from lawyers and administrators to ensure that judges and courts operate without interference from other branches of government.

2 Personal Independence

The freedom of the individual will protect the judge from external forces. It includes safeguards to prevent judges from being dismissed without cause and adequate compensation to prevent corruption or oppression.

3 Functional Independence

This definition refers to the judge's ability to make decisions based on the law and material evidence without outside influence. The process of independence ensures that the judiciary is fair and complies with the law.

4 Decisional Independence

Judicial independence refers to the right of a judge to make decisions without outside interference or involvement from organizations such as the government, political parties or interest groups. He emphasized the importance of independent judges.¹⁵

5 Structural Independence

The democratic structure is linked to how judicial decisions are made, encompassing the judicial process, budget independence, and court autonomy. This independence allows the judiciary to effectively oversee its operations and resources.

6 Judicial Review Independence

This category focuses on the judicial function of reviewing the legality of laws and action of other branches of government. Independent judicial review is essential to maintaining checks and balances in the political process.

8. CONCLUSION :

Consequently, the independence of decision-making processes and the appointment of judges are of great importance for the effective administration of justice and the rule of law. The right to a voice and the judicial system not only upholds the rule of law, but also protect human rights and increase public confidence in the justice system. To ensure independence in decision making, it is important to balance accountability with protection against external influences to ensure that the appointment process is transparent, useful and inclusive. Open selection of judges can increase public confidence and reduce corruption. Merit based selection ensures that judges are selected based on their qualifications and integrity rather than their political views. Strengthening internal processes, such as judicial independence, can protect judges from political pressure and enhance their independence. The planning process should be continually evaluated and modified to address emerging issues and make it more effective and appropriate. Furthermore, continuous training and resources for judges are important for their professional development and ultimately for improving the quality of the judiciary and the law.

¹⁵ Frans Van Dijk and Geoffrey Vos, "A Method for Assessment of the Independence and Accountability of the Judiciary" 9 *International Journal for Court Administration* 5 (2018).