

SECURING AN INDEPENDENT JUDICIARY IN INDIA

Sai Kalyani S,

Student at Christ (Deemed to be University), Bangalore.

Best Citation - Sai Kalyani S, SECURING AN INDEPENDENT JUDICIARY IN INDIA, 2 ILECR 19, 2022

ABSTRACT

The three primary pillars of the government are the Legislature, the Executive, and the Judiciary. The legislature, often known as Parliament, is in charge of enacting legislation. The Executive carries out the laws passed by Parliament, while the Judiciary interprets them. As a result, the Indian judiciary works as both a law interpreter and a watchdog for the country's Constitution, which demands an independent and integrated judiciary. The three pillars of Indian democracy are interrelated and operate together to maintain the government's proper and orderly functioning. The court, on the other hand, has broad powers to review and overturn executive and legislative decisions and actions if they are determined to be in violation of the Constitution. The power of "judicial review" of legislative and executive action is widely seen as a necessary tool for upholding the notion of separation of powers and the rule of law. An independent judiciary ensures that the justice system is not influenced by other branches of government or political authorities, and that it is accountable to the Constitution. This independence also assures that no part of the government abuses its authority. The Act of Settlement 1701 guaranteed judicial independence. Though there is no clear provision in the Indian Constitution, the independence of the judiciary and the rule of law are fundamental characteristics of the Constitution that cannot be changed, as the Hon'ble Supreme Court stated in *S.P. Gupta v. Union of India*. This research paper will dwell into the constitution provisions on an

independent judiciary and various cases where the independence of the judiciary was challenged. The aim of this research is to discuss whether India's judicial independence is at stake. The paper would also provide suggestions to instill the independence of the judiciary in India among other things.

KEYWORDS

Constitution, independence, judiciary, rule of law

INTRODUCTION

A functioning democratic system requires an independent judiciary. Only an impartial and independent judiciary can serve as a bulwark for the protection of individual rights and administer justice fairly and without fear of retaliation. Because the court is the guardian of the Constitution, it may be required to overturn executive, administrative, and legislative acts of the federal government and the states. Judicial independence is essential for the rule of law to flourish. The judiciary's independence is usually guaranteed by the Constitution, although it can also be guaranteed by law, conventions, and other appropriate norms and practices. Constitution or foundational laws on the judiciary, on the other hand, are only the beginning of the process of ensuring judicial independence. Finally, the judiciary's independence is contingent on the creation and support of a positive environment by all state institutions, including the judiciary and the public. The judiciary's independence must also be regularly safeguarded against unexpected events and changing social, political, and economic conditions; it is far too fragile to be left unprotected. The issue of judicial independence has been a source of passionate public debate in India for many years. It has piqued the interest of legislators, jurists, politicians, and the general public. Both proponents and opponents have compelling arguments in their favour.

MEANING OF INDEPENDENT JUDICIARY

Simply put, the judiciary's independence means that the other branches of government, including the executive and legislature, must not obstruct the judiciary's ability to do justice. The government's other organs should not interfere with the judiciary's ruling. Judges must be able to carry out their duties without fear of reprisal or favour.

However, judicial independence does not entail arbitrariness or lack of accountability. The country's democratic political structure includes the judiciary. As a result, it is responsible to the Constitution, democratic traditions, and the people of the country. Although judicial independence is not a new concept, its definition remains ambiguous. The notion of separation of powers appears to be the concept's starting point and central point. As a result, it largely refers to the judiciary's independence from the executive and legislative branches. However, this solely refers to the independence of the judiciary as an institution from the other two state institutions, not to the independence of judges in the performance of their duties as judges. In that situation, it isn't very effective. The judiciary's independence does not simply imply the establishment of an autonomous institution devoid of executive and legislative control and influence. The primary aim of judicial independence is for judges to be able to settle a matter before them based on the law, without being affected by any other element. As a result, the judiciary's independence is the independence of each and every judge. However, one of the major concerns in identifying and comprehending the meaning of judicial independence is whether such independence will be guaranteed to the judge exclusively as a member of an institution or regardless of it.

The Supreme Court of India held in *S.P Gupta v Union of India*⁶⁷ (1982) that judges should be fearless and uphold the rule of law. This is the foundation of the concept of judicial independence.

The Supreme Court observed in the case of *Supreme Court Advocates-on-Record Association & Anr. v. Union of India*⁶⁸

(1993) that the judiciary's independence is required for democracy to work properly. The court went on to say that the judiciary's powers and rights will never be hampered as long as it is apart from the government and legislative.

NEED FOR AN INDEPENDENT JUDICIARY

There was always a concern about how India's court should function due to the long British Raj and then a freshly constituted democracy. As a result, the answer to this question was an independent judiciary. For the prosperity and stability of the country, the rule of law is very important. An independent and impartial judiciary can establish a stable rule of law. Independence of judiciary means, the power of upholding the rule of law, without any fear or external influence, and maintaining effective control over the actions of the government. The independence of the judiciary is part of the basic structure of the Constitution. The judiciary's independence guarantees that the powers of the Parliament, the State legislatures, and the Executive are correctly distributed, and that there is a balance between individual demands and societal norms. The judicial system is often rendered neutral because it lacks any philosophy or political goals⁶⁹.

In any society, individuals, groups, and the government are all destined to have disagreements. All such issues must be resolved by an independent authority following the rule of law premise. The concept of the rule of law implies that all people — rich and poor, men and women, forward and backward castes — are bound by the same set of rules. The judiciary's primary responsibility is to uphold the rule of law and preserve its supremacy. Individual rights are protected, disagreements are resolved according to the law, and democracy does not give way to individual or group rule. To be able to achieve all of this, the court must be free of political influence.

HISTORICAL ASPECT

⁶⁷ SP Gupta v. Union of India, AIR 1962 SC 149

⁶⁸ Supreme Court Advocates-on-Record Association & Anr v. Union of India, AIR 1994 SC 268

⁶⁹ MP Singh, Securing the Independence of the Judiciary – The Indian Experience, 10 (2) MCKINNEYLAW, p 245.

Montesquieu, the famed French philosopher, was the first political philosopher to advocate for an independent court. He believed in the separation of powers principle, which states that the three branches of government—legislature, executive, and judiciary—each have their own set of powers. His theory wowed the founding fathers of the United States of America. In their country, they formed an autonomous judiciary. The American people have a strong belief in the judiciary's independence. They believe that if the independence of the court is fettered, the people's rights and liberties will be jeopardised. The Parliament, on the other hand, is supreme in the United Kingdom. There is no separation of powers between the legislative and the judiciary. In actuality, the House of Lords serves as the highest court of appeal in the United Kingdom. Though the judiciary in the United Kingdom is not autonomous or supreme, its judges have made rulings without fear or favour on situations that have come before them. They have made decisions that are both independent and impartial. Even though the United Kingdom does not have a written constitution, its citizens enjoy the same level of freedom as Americans. So far, no major clashes between Parliament and the judiciary have happened in the United Kingdom. In England, the concept of judicial independence took decades to develop. Judges served at the leisure of the crown prior to 1701, and like any other crown servant, they might be dismissed by the monarch at any time. As a result, the judges were subordinate to the executive. As a result of their subservience, the judges favoured the royal prerogative. The Hampden's Case is the most famous illustration of this mentality, in which seven out of twelve judges ruled in favour of the crown's right to collect money without parliamentary approval. One of the judges even went so far as to say that rex is lex. Coke was removed from his position as Chief Justice of the King's Bench in 1616. The Act of Settlement 1701 established judicial independence by declaring judicial tenure to be for good behaviour only, and that a judge may be removed only with the consent of both houses of parliament. This viewpoint on judicial tenure

security has now been established. The judiciary of the United Kingdom does not have the authority to declare a law approved by their parliament unconstitutional. However, the judiciary in the United States and India has been given the authority of judicial review. They have the power to declare a law passed by the legislature unlawful and overturn it. In India, a statute is only struck down by the Supreme Court if it breaches the Constitution's core framework⁷⁰.

CONSTITUTIONAL PROVISIONS

The independence of the judiciary is imbibed in the letters of numerous articles of the Constitution of India, despite the fact that there is no stated provision in the Constitution. As the Hon'ble Supreme Court stated in *S.P. Gupta v. Union of India*, the Constitution's core elements of judicial independence and rule of law cannot be repealed even by constitutional modifications. However, because India has a codified Constitution, the judiciary's independence is explicitly stated, making this notion much more significant. The term "judicial independence" refers to the legal community's ability to make judgements without being influenced by outside forces. The judiciary is crucial not only in dispensing justice but also in resolving disputes between States.

This can only be accomplished if the judiciary is free of any external influences. One of the most significant functions in the legal system is that of judges. The independence of the judiciary extends to the judges as well. This means that judges have complete independence in submitting reports and making decisions; they are not reliant on the government or any of their superior judicial officers. The Union Judiciary is addressed in Part 5 of the Constitution. The judiciary's independence begins with the nomination of judges to the courts. The Supreme Court judges are appointed under Articles 124 to 147, while the High Court judges are appointed under Articles 214 to 231 of the Constitution. In addition, the Constitution mentions the Subordinate Courts

⁷⁰ Shaila Arora, Independence of Judiciary in India, 4 (2) IJLMH Page 714 - 720 (2021)

in Articles 233 through 237. The court of District Judges is the highest subordinate court. The Constitution's founders divided the judiciary, legislature, and executive into three different organs in order to ensure that each organ performs its functions independently and without interfering with the functioning of the others, as well as to assist support the Preamble's ideals⁷¹.

RELEVANT CASES WHERE THE INDEPENDENCE OF THE JUDICIARY HAS BEEN CHALLENGED

THE RAFALE DEAL CASE

In this case, the Indian government announced in 2015 that it had reached an agreement with the French government to purchase 36 Rafale combat jets from Dassault Aviation. A 50 percent offset provision was also added in the contract, requiring the French company to invest 50 percent of the contract value in India by acquiring Indian goods and services. The business and Reliance Group announced a joint venture next year. Dassault has stated that it plans to invest \$115 million to partially meet its offset requirement. As a result, the case was taken to the Supreme Court, where the litigants claimed that the deal was flawed. The Court dismissed the corruption charges on the basis that it had limited judicial review authority in defence cases. The government claimed that the judgement contained some factual errors, making the Court's decision controversial. The CAG (Comptroller and Auditor General) report and the Parliamentary Accounts Committee report, both submitted to the Court by the government and labelled as misleading, were included in the ruling. The Court opted to evaluate the petitions on their merits, effectively putting an end to the dispute⁷².

AADHAR ACT AS A MONEY BILL CASE

The question was whether or not the Aadhar Act, which was passed in 2016, was passed as a money bill. With a majority,

the court ruled that it was once again a money bill. The act was approved as a money bill by Justice A.K. Sikri, who cited Section 7 of the Act, which stipulates that Aadhar-based authentication can be used for benefits or services invoiced to the Consolidated Fund of India, and so it can be utilised as a money bill. Article 110 of the Constitution, on the other hand, states that the money bill can only be used for services relating to the Union Government's expenditure and receiving of funds. The decision was challenged, and Justice Chandrachud, who dissented from the decision, called it a constitutional fraud⁷³.

THE CBI – ALOK VERMA CASE

In this case, the decision was postponed. Alok Verma, the director of the CBI, had all of his powers taken away by the government. The Delhi Special Police Establishment Act required approval from a high-powered body. The Supreme Court looked at the specifics of the CBI director's corruption charges. On the basis of the punishments imposed by the appointed committee, the Court later ordered Verma's restoration as CBI director. Mr. Verma's reinstatement was ordered with only three weeks left on his contract. As a result, this sparked new criticism⁷⁴.

IS INDIA'S JUDICIAL INDEPENDENCE AT STAKE?

The above-mentioned judicial decisions were criticised for having political motivations. However, there have been occasions where judges have reaped rewards after retirement. After standing down as Chief Justice of India, Ranjan Gogoi was elected as a member of the Rajya Sabha. Similar incidents have occurred in the past. Justice Ranganath Mishra resigned as Chief Justice of India in 1991 and was afterwards appointed Chairman of the National Human Rights Commission. The Chief Justice of India, Justice M. Hidayatullah, retired in 1970. He went on to become India's Vice President. Members of Parliament have also held the position of judge in the past. The courts are

⁷¹ Ishan Arun Mudbidri, Independence of Indian Judiciary, BLOGIPLADERS, 2021.

⁷² Rafale Deal Case, WP (CrI.) 225/2018

⁷³ Justice KS Puttaswamy & Anr. v. Union of India & Ors., (2019) 1 SCC 1

⁷⁴ Alok Verma v. Union of India, WP (Civil) No. 1309/2018.

closed due to the COVID 19 epidemic, and all physical hearings are conducted online. Because there is already a large backlog of cases, this has made things harder. As a result, the courts have opted to rule on issues that are extremely urgent. The designation of urgent matters for hearing, on the other hand, has sparked debate. In the matter of *Jagdeep Chokkar v. Union of India*⁷⁵ (2020), a plea was made for the repatriation of migrant labourers who were stuck and helpless during the lockdown to their homes. This case was not heard right away, but a petition in the case of *Arnab Goswami v. Union of India*⁷⁶ (2020), in which he sought to have the FIRs against him quashed, was heard the next day. As a result, the court had to decide which case was more essential. Throughout addition, the internet was turned off in Jammu and Kashmir for over six months. This case took a long time to be heard by the Court. People in Jammu and Kashmir were shut off from the rest of the world and denied access to the internet. Many landmark rulings have been thought to have political interests, as we have seen in the situations when the court has faced accusations for having political interests. However, the judiciary has stayed firm. Raj Narain, an activist, contested the appointment of then-Prime Minister Indira Gandhi on the grounds that it was flawed in the case of *Indira Gandhi v. Raj Narain*⁷⁷ (1975). This occurred shortly before the emergency was declared. Indira Gandhi's appointment was judged to be flawed by the Court, and she was obliged to resign from her position. This decision proved to be one of the most significant in terms of judicial independence. However, in recent years, the court has come under fire for the cases it prioritises and the judges' post-retirement stints. This demonstrates that the judicial system's functioning need improvement.

SUGGESTIONS

- Judges in India are paid less than their counterparts in other countries, which is one of the main reasons why they seek post-retirement work.

- It is frequently seen that very prominent cases are given precedence over cases with a social purpose and which are truly important to be heard. The poor strength of the judiciary might be the explanation for this. Increasing the power of the judiciary can aid in the resolution of both important and truly urgent matters.
- There is a need to enact legislation to ensure that judges do not work once they retire. This will bring some consistency and stability to the courts' operations.

CONCLUSION

The task of the legal system is quite challenging. As a result, the judiciary has been granted judicial independence, as stated in the Indian Constitution. The judges do an outstanding job of providing individuals with fair and unbiased justice. However, there will inevitably be others who are dissatisfied with the decision. As a result, the judiciary's independence is called into question. No one can ever show that there is any kind of influence on India's legal system. However, the above-mentioned case laws, as well as cases of judges obtaining positions after leaving the judiciary, point to the need for major reforms in the country's judicial system.

⁷⁵ *Jagdeep Chokkar v. Union of India*, WP (Civil) No. 10947/2020.

⁷⁶ *Arnab Goswami v. Union of India*, (2020) 14 SCC 12

⁷⁷ *Indira Gandhi v. Raj Narain*, 1975 AIR 865