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CONCEPT OF INDEPENDENCE OF JUDICIARY: CONSTITUTIONAL MEASURES TO MAINTAIN THE INDEPENDENCE OF JUDICIARY

AUTHORED BY - ARINDAM CHAKRAVARTY

ABSTRACT

In this new regime, the state has stepped down from its authoritarian role and different bodies now have a regulatory role and the judiciary is one of them¹. The idea of judicial independence was founded by the French philosopher Montesquieu. He favored the separation of powers between the executive, legislative, and judicial departments of government. The executive and legislative branches should refrain from meddling with the judiciary because of its independence, and judges should be allowed to discharge their tasks without hindrance. The Indian Constitution supports the independence of the judiciary at both the state and federal levels, despite not limiting itself to the separation of powers. Ironically, the honor and dignity of the judicial branch are not protected, even though the legislative and executive branches are. In India, the constitution safeguards the judiciary because it is thought to be a crucial part of doctrine and cannot therefore be. Millions of people look to the honorary courts when their rights are violated, and if that temple of justice is under any influence and is unable to provide accurate and prompt judgment to its people, then democracy will perish. The judiciary is the most important part of the Indian federal system. It is the sole bearer of justice. Ensuring social, political, and economic justice is considered under the constitutional arcade supreme court and High Court judges are given security and fixed salaries, but in practice, factors like insufficient pay and pension benefits, the incentive to return to a senior government position after retiring, ad hoc appointments, and executive involvement in the appointment and transfer of judges are having an impact on the judiciary's independence².

¹ "Rai, Sheela. "INDIA'S TRYST WITH INDEPENDENT TRIBUNALS AND REGULATORY BODIES AND ROLE OF THE JUDICIARY." *Journal of the Indian Law Institute*, vol. 55, no. 2, 2013, pp. 215–27"

² "Singh, Pritam. "JUDICIARY AND CONSTITUTIONAL EVOLUTION IN INDIA: A SELECT BIBLIOGRAPHY." *The Indian Journal of Political Science*, vol. 34, no. 3, 1973, pp. 362–74."

CHAPTER 1

1.1 INTRODUCTION

“The judiciary's independence is being impacted by factors like inadequate compensation and pension benefits, the incentive to return to a senior government position after retiring, ad hoc appointments, and executive involvement in the appointment and transfer of judges.”

Judiciary's independence is one of the main features of India and this feature puts India on a different ground from other countries but as seen, this Independence has been questioned many times, be it through external pressure or political winds, this interference has made many people doubt the doctrine of separation of power, which provides no interference from one of the three pillars into the area of others but all these political pressure tells us that the doctrine of separation of powers is losing its essence and the judiciary is getting influenced there are claimed that our Constitution does not have any protections for judicial independence. The words of Dr. B.R. Ambedkar during discussions in the Constituent Assembly make it quite obvious that the notion was rejected by those who drafted our Constitution.

The court acts as a sole defender of the law to safeguard the interests of people and to put the rule of law above all and has the authority to invalidate any unconstitutional decisions taken by the legislative and executive departments. The judiciary must be protected from outside interference for this to happen, and the proper standards must be upheld for the judiciary to function independently. The independence of the court must also be regularly defended against unforeseen occurrences and shifting social norms.

The meaning of judiciary can be said to be -

The independence of the judiciary means that –

1. The other two organs of the government should show zero interference in the field of the judiciary as it may hamper the judiciary from giving decisions
2. The executive and legislative should not interfere with the judiciary's decision-making power
3. The judges should be kept away from any fear and the government must ensure that they perform their duty wisely and not get influenced by any factor

The doctrine of separation of powers forms the basis of every country, it divides the powers into three different levels and orders them to work independently and not dwell in each other's work. They should all work together rather than fight each other. This independence does not only mean that the judiciary be protected from the influence of the executive and legislation, it

means that the judges can make their decisions based on law and not any other external factor. Our constitution through articles 127 to 147 deals with Supreme Court judges and 214 and 231 deal with the High Court judges and their appointment, it tells us about the independence of the judiciary but doesn't define it anywhere, we can understand that the independence that is being talked about is the the independence of judges. However, this independence does leave room for arbitrariness hence judicial independence does not mean that the judiciary will not be held liable for their wrongful acts.

1.2 LITERATURE REVIEW

- 1) JUDICIAL ACCOUNTABILITY: AN OVERVIEW OF THE LEGISLATIVE AND JUDICIAL TRENDS IN INDIA** by Harikrishna Pramod and Arunima, this law paper deal with the topic of judicial accountability and sheds light on how the judiciary should be held accountable for the decision they give, the main purpose of this paper is to provide an information about how judicial accountability helps in maintaining judicial independence.
- 2) Independence of Judiciary in India by Vishnu Prasad³**, this law journal deals with the aspects of an independent judiciary in india and how india has evolved in the field of independent judiciary
- 3) Judiciary in India by Sukaram Dam⁴**, The purpose of this article is to provide a brief description of the judicial organisation that exists in our country under the Indian Constitution, as well as some related observations.
- 4) Securing Judicial Accountability: Towards an Independent Commission by Prashant Bhushan⁵**, the present paper tell us about the enormous power the judiciary holds and how they misuse that power, the paper advocates for judicial accountability and make sure that the power given to judiciary isn't misused
- 5) Constitution of India and judicial review by P SHARAN⁶**, the present paper deals with the power of judicial review under Article 13 given to the courts and how the

³ "Parshad, Vishnu, and Vishnu Prasad. "Independence of Judiciary in India." *The Indian Journal of Political Science*, vol. 25, no. 3/4, 1964, pp. 307-12."

⁴ "Dam, Sukumar. "Judiciary in India." *The Indian Journal of Political Science*, vol. 25, no. 3/4, 1964, pp. 276-81."

⁵ "Bhushan, Prashant. "Securing Judicial Accountability: Towards an Independent Commission." *Economic and Political Weekly*, vol. 42, no. 43, 2007, pp. 14-17."

⁶ "SHARAN, P. "CONSTITUTION OF INDIA AND JUDICIAL REVIEW." *The Indian Journal of Political Science*, vol. 39, no. 4, 1978, pp. 526-37."

constitution protects this power as judicial review is considered to be a basic structure doctrine

1.3 RESEARCH QUESTIONS

The present study deals with several important aspects of the independence of the judiciary, the questions to be answered are –

- 1) The constitutional provisions that are provided for the independence of the judiciary
- 2) The doctrine of judicial review and its scope in the Independence of the judiciary
- 3) To analyze judicial accountability and how it assists in the independence of the judiciary

1.4 RESEARCH OBJECTIVES

- The study will provide an analysis of the doctrine of judicial review and will use various relevant case law examples to give a brief about how through the use of this theory the judiciary protects the rights of people.
- The study will critically evaluate how the legislative and executive branches have interfered with the judiciary. It will also look at the provisions in the constitution that guarantee an independent judiciary.
- Critically examining judicial accountability with relevant case laws and providing suggestions on it

CHAPTER 2

2.1 ANALYSIS OF THE PROBLEMS

1. The independence of the judiciary is a fundamental component of the Constitution and is also regarded as a fundamental right. For a nation to function properly, the judiciary must be free from outside interference. Judges are protected from outside interference and protected from shifting political currents by various provisions in the Indian Constitution.

To look into the independence of the judiciary we will dive deep into these processes that seek to protect the judiciary and analyze them

1. Appointment of judges –

Article 124, which has had several interpretations, deals with the appointment of judges to the Supreme Court, whereas Article 217 deals with the nomination of judges to the High Court. A massive movement of judges by the executive during the emergency compromised the

independence of the judiciary and sparked a chain of events that eventually resulted in the creation of Article 124. While Articles 214 to 231. The High Court in each state deals with the High Court's constitution, its authority, and the qualifications for and working conditions of High Court judges. The President has the authority to choose judges for either the Supreme Court or the High Court.

Every Supreme Court judge should be appointed by the president following consultation with other Supreme Court judges and high court judges, according to Clause 2 of Article 124. The article specifically states that the chief justice should be taken into consideration if any judge other than the chief justice is appointed. According to Article 217 Clause 1, the chief justice of India, the governor of the state, and the chief justice of the state should all be consulted before appointing a high court judge. Reading both sentences reveals that the central government is fully responsible for the nomination process and that they only contact the CJI if they think it necessary then only they consult the CJI, the governor of the state, and the CJ of the state. The security of tenure has been granted to both the high court and Supreme Court judges. They hold their positions after being appointed until they reach retirement age, which is 62 years for High Court judges and 65 years for the bench of Supreme Court justices (Article 124(2)).

S.P Gupta vs. Union of India⁷ (First judge case)

It was held that the consultation in Article 235 is not binding on the president, it was held that The chief justice was also an ordinary man who might not be able to give correct judgments sometimes so making his judgments binding on the higher authorities might be risky. According to the Supreme Court, consultation is only a suggestion, not concurrence, and is not binding on the President.

Supreme Court Advocates on Record v. Union of India⁸ (1993) is the second judge's case.

In S.P. Gupta's Case, the court's decision that the Chief Justice's opinion should bind the President because he is better qualified than other constitutional machinery to determine a candidate's merit has now been overturned. The court was of the decision that the CJI's view would not only take precedence over the President's but also be decisive in the event of a disagreement between the two on the appointment of judges. The SC not only reclaimed its authority from the government in the 1993 decision, but it also established itself as the supreme

⁷ "S.P Gupta vs. Union of India (AIR 1982 SC 149)"

⁸ "Supreme Court Advocates on Record v. Union of India AIR 2015 SC 5457"

court, ruling above the other two branches.

Judge 3's case

Regarding the consensus opinion of the Chief Justice and his senior colleagues, the Second Judge case left some room for doubt. It was thought that the Chief Justice would consider the judges above him. According to the Chief Justice's opinion, the appointment of a Supreme Court judge must be recommended by four of the Supreme Court's senior-most puisne judges, and for appointments to the High Court, the recommendation must be made by the collegium. Additionally, it was noted that the Chief Justice of India's recommendations would not be binding on the Indian government if they were made without adhering to the rules and specifications of the consultation process.

4. Fourth Judge's Case:

With a two-thirds majority, the 121st Amendment was passed by both houses of parliament and created the National Judicial Appointment Commission (NJAC). After being submitted to the states for ratification, the amendment was ultimately sent to the president for signature after receiving the blessing of 16 states. The Supreme Court (SC), in the Supreme Advocates on Record Association & Anr. V Union of India⁹ case, also known as the Fourth Judge's Case, rejected the amendment before it could fully take effect because it went against the independence of the judiciary.

Interpretation of Judicial Appointments by the Supreme Court

Naturally, judges have the authority to render judgment against a statute's requirement but not the legal right to do so. They can go beyond the restrictions placed on innovation by the judiciary by precedent and tradition, but they do not have the legal right to do so. However, they break the law by abusing their position of authority. The Supreme Court recognized the importance of the division of powers as the foundation of the Constitution as far back as 1951 in the Capital Laws case. In *Indira Nehru Gandhi v. Raj Narain* 10, the Court elevated this power separation principle to the Constitution's fundamental framework.

2. Tenure

Security of tenure is guaranteed to every judge, it mainly includes that the judges serve their

⁹ “Record Association & Anr. V Union of India (AIR 1994 SC 868)”

full tenure and their tenure should be based on their decision-making power and good behavior rather than on the liking of the president. They are not subject to arbitrary dismissal by the President. Only by being impeached are they subject to being removed from office. Only when the special majority of both Lok Sabha and Rajya Sabha passes a resolution against the judge, then only the judge can be removed from their post

Judges Transfer Case 3

“When the CJ nominated the names for appointment in 1999 without seeking input from other judges, controversy erupted once more. The president requested advice from the SC (re Presidential Reference 1999), and a 9-member bench ruled that the government was not bound by the CJ's advice if it was delivered without adequate consultation with other justices.”

3. Salaries

Under consolidated funds, the salaries of the judges are charged and the salaries of the judges cannot be reduced during their tenure.

Article 112(3)(d)(i) states that the government should provide a budget that should contain the salaries of the judges.

4. Retirement

Judges of the Supreme Court must retire at age 65, whereas judges of the High Court must retire at age 62. The judges' extensive experience enables them to work impartially and independently.

5. Qualifications

Article 124(3) provides for the qualifications for the supreme court judges

- 1) has at least five years' worth of continuous service as a judge on a High Court or on two or more High Courts;
- 2) has served as an advocate on a High Court or two or more High Courts consecutively for at least ten years;
- 3) in the President's view, a renowned jurist.

Article 217(2) deals with the qualification for a judge to be appointed to a high court

- 1) a person needs to be an Indian Citizen and must have held for 10 years any judicial position in any high court

2) Must have also served as an advocate for 10 years in a high court

The independence of the judiciary has long been a goal for courts, and they have consistently stated that it is a fundamental element of the Constitution. Courts have ruled this because they believe that the autonomy of the judiciary is necessary for the United States Constitution to operate as intended and for the realization of a society that is democratic and founded on the rule of law.

Shivkant Shukla v. ADM Jabalpur¹⁰

The Supreme Court in this case was essentially forced to rule favourably by the government in power at the time. When Justice Beg was appointed Chief Justice despite Justice Khanna's seniority, Justice H. R. Khanna was the one who disagreed with the majority and had to pay the price.

Justice Bhagwati, who dismissed the argument offered, recently acknowledged that it was his largest error in judgment to dismiss the argument made in the current case.

2. The Indian court has been using the judicial review power for more than 50 years, and the Supreme Court's seminal rulings have changed how this power is understood throughout time. Judicial review is considered a tool to protect people's fundamental rights as its main goal. The Marbury v. Madison case, which the U.S. Supreme Court concluded provided the courts the authority to invalidate unconstitutional legislation, can be considered as the forerunner of judicial review. The Indian Constitution includes provisions for the higher judiciary's ability to review legislative, executive, and administrative decisions taken by the Parliament and the Legislature. This important principle is incorporated into the Constitution's fundamental framework. Article 13 in the constitution provides us with judicial review

According to **Article 13(1)**, any legislation passed before the Constitution is null and void to the degree that it conflicts with the Fundamental Rights.

Article 13(2) forbids the state to pass any law that violates fundamental rights, if done so it can declare the law to be null and void

According to **Article 13(1)**, any legislation passed before the Constitution is null and void to a degree as it conflicts with the Fundamental Rights.

Article 13(2) expressly forbids the State from passing any legislation that restricts or decreases

¹⁰ Jabalpur v. Shivkant Shukla AIR 1976 SC 1207

the rights granted by Part III of the Constitution. If such a law is passed, it will be unenforceable to the extent of the violation.

By way of the famous "**Kesavnanda Bharti**¹¹" case, the idea was officially confirmed to be a part of the fundamental framework of the Indian constitution; the 42nd Amendment later placed limitations on it. The modification restricted the reach of the judges of the High courts and the Supreme Court's authority to conduct judicial reviews. It was held that judicial review is a basic structure and cannot be amended

The judicial review doctrine is a tool to promote an equitable society and social security, and the judiciary cannot arbitrarily use such authority. The decision in **Record Association v. U'nion**¹² of India by the Supreme Court Advocate makes it plain that judicial review extends to the boundaries of examining laws in light of basic rights. In his concurrence in the 2021 decision of "**Madras Bar Association v. Union of India**¹³," Justice Hemant Gupta stated that a tribunal should not invalidate laws passed by the legislative branch simply because they conflict with the directives or rules established by the court. In light of Justice Gupta's remark, the court should conduct a judicial review to see if the act enacted violates fundamental rights or not. So it can be seen that the doctrine of judicial review ensures judicial independence as through this doctrine, the separation of power is maintained and the judiciary is given the role of checking whether the acts and statutes introduced by the legislature violate the fundamental rights of citizens, if they do, then the judiciary makes those acts unconstitutional

The court system must apply a narrow interpretation of the laws and select the best principle. The vast majority of the autonomy of the Indian judiciary, a pillar of the constitution, comes from the ability of judicial review. To take that authority out of the body would move outside the bounds of justice and pave the path for the creation of illegitimate legislation and discriminatory legislative provisions. The Indian court must also use some judicial restraint to protect the independence of the other pillars of the constitution.

3. Judicial Accountability is the idea that judges should be held accountable for their decisions, the main objective of the judiciary is to provide justice and that process should be transparent, if there is any action of a judge that violates the transparency of the judicial system, then that judge should be held responsible for their act. Judges are solely responsible for the decisions they make, the judicial branch is not held accountable in the same way as the executive or the

¹¹ "Kesavanad Bharti v. State of Kerala, AIR 1973 SC 1461"

¹² "Record Association v. Union, AIR 1994 SC 868"

¹³ "Madras Bar Association Vs. Union of India, 2021 Latest Caselaw 273 SC"

legislature is held, hence judicial accountability seeks to draw a balance between judicial independence

The constitutional provision that guarantees judicial accountability –

Judges of the Supreme Court of India and the High Courts may be impeached under Articles 124 and 217 of our Indian Constitution, respectively, for misbehavior and incompetence. The High Court has "control" over the lower courts, as stated in Article 235 of the Constitution.

Making the court responsible for their acts is very important as the courts are considered the protectors and guardians of our constitution, if they breach their duties and work with a made intention then, then democracy would be breached. Judges' accountability and judicial responsibility are not novel concepts. The constitutions of several countries already provide for the judiciary's accountability. Particularly, this is done in countries where judicial activism encroaches on the realm of other organs, Every person holding a public office in a democracy is seen as bearing duty and being held enduringly accountable to the people.

For the nation's working class to receive competent justice administration, judicial independence is necessary. Judges are required to enforce the law and correct injustices without taking into account their interests or safety. Legal responsibility, as previously mentioned, both ideas advocate legal supremacy, one tells us about how the judiciary should be kept away from external influence and the other one tells us to hold the judiciary accountable for what they do. Both of these can be seen to complement each other as both work to make the judicial system effective and remove all the restrictions on the path that hampers justice.

K Veeraswami vs. UOI¹⁴

As a result of the Supreme Court's decision that the chief justice must submit a written request before the Supreme Court or the appropriate high court to conduct a civil or criminal inquiry, the issue of judicial accountability was made more challenging in this case. It is claimed that as a result, judicial accountability was ultimately eliminated.

Sarojini Ramaswami vs. Union Of India & Ors¹⁵

Justice Ramaswami was found guilty of misappropriation of funds when he was justice in Chandigarh and Haryana High Court, this case was one of the most politically motivated cases

¹⁴ "K. Veeraswami vs Union Of India And Others, **1991 SCR (3) 189**"

¹⁵ "SAROJINI RAMASWAMI Vs UNION OF INDIA & ORS, 514 of 1992"

as the ruling party did everything in their power to prevent the impeachment of Justice Ramaswami, after the Narasimha Rao government did nothing to constitute the committee that would hold trials for the justice leading to numerous petition, including the apex court bench, this led to the formation of a committee that found the judge guilty, The highest court's impeachment order failed miserably due to the lack of a majority vote from the Houses of Parliament. Justice Ramaswamy was accused of squandering court funds but was not impeached because one of the parties refused to vote. This case demonstrated the legal system's shortcomings and the need for stringent judicial accountability to avoid repeating the same issues.

The above cases highlight the importance of judicial accountability, these tell us how the judiciary protects the common rights and how the protector of the constitution should be protected from external influence although holding them accountable if a wrong decision is given, this is done through constitutional provisions of impeachment hence it can be said that judicial accountability also plays an important role in judicial independence

2.2 Critical Analysis

The doctrine of separation of powers is the driving force behind the independence of judiciary, Indian constitution provides that all three, executive, legislature, and judiciary should be kept away from each other and they should not dwell in each other's work, even though there are provisions that protects the judiciary and ensures their independence but in the end in some or the other way, the executive and legislature encroach into judiciary's field, be it Ramaswami case where the executive tried to influence the judiciary and succeeded when the motion of impeachment of a judge who was found guilty on the grounds of misappropriation of funds failed because the ruling party did not vote. The independence of the judiciary has been challenged a lot, whereas the constitution tried to protect the judges by providing them their fixed amount of salaries and a fixed term, the appointments of judges have been seen to be a debatable topic, through the decisions in the first, second, third and fourth judges cases, the appointment of judges has been seen struggling, the question has surfaced that whether the president's assent is required or does the president need to consult the CJI of India, in the fourth judge's case, a collegium system was constructed that made it vital for the appointment of any judge to be done by the collegium but this collegium system has also been questioned and rightfully so, the collegium system rather than being impartial to anyone can become partial and lead towards a particular judge, hence leading the appointment of the judge to be based on

a preference factor rather than a merit factor. the whole system is done behind closed doors and lacks transparency. Some problems faced by the judiciary –

1. People criticize the judiciary for the lack of transparency in the appointment of judges, as fellow judges play an important part in the selection of new judges, it is argued that these judges may make a biased decision
2. The executive tries to interfere with the judiciary many times, the executive tries to influence the judiciary through their power, they try to control the appointment and impeachment of judges, and after a judge retires they are given a high government position proving the fact that executive influence is present there
3. The courts have been overburdened with so many cases that the public is losing its confidence in them, there is no transparency in the judicial processes, money is controlling most of the cases, and judges get influenced somehow independence of judiciary, doesn't mean that the judiciary is entitled to do anything, the judiciary should also be held accountable for what decision they give, in the **Rafael deal case**¹⁶, the plaintiff argued that the deal for purchasing the aircraft's was tainted as it didn't meet the requirements mentioned, the corruption charges were limited because in a defense case the judiciary has limited scope of judicial review, later on the government rules that the petitioner should be examined based on merit. In the **Bhima Koregaon case**, activists were targeted by Mumbai police on the ground that they were giving violent speeches, the case went to court and it was argued that the police was biased in its decision making, the court dismissed the case with a two to one majority where justice Deepak Misra and justice Kanwalikar were pleased with the Delhi police decision making, Justice DY Chandrachud was resented and said that the decision was very politically motivated. Through these cases we can see that how the judiciary can also be wrong and give a politically influenced decision. Judicial accountability makes sure that the judges are held accountable for the decision they give as these decision later on go to become precedents and will be used as a deciding factor for another case and if that is only a tainted judgement then it being used for future cases is completely dangerous in the Indian context.

¹⁶ “Manohar Lal Sharma v. Narendra Damodardas Modi & Others, **WP (Crl.) 225/2018**; RP (Crl.) 46/2019”

CHAPTER 3

CONCLUSION AND SUGGESTION

The effective application of the law to society is crucial to the advancement of society. Simply having a piece of legislation in place won't make a difference in society's problems unless judges interpret and implement it correctly to guarantee that the proper people benefit. Therefore, it follows that dispensing justice is a highly serious obligation that must be carried out without any interference from outside factors and with clean hands and a clear conscience. The people for whom a law is adopted or passed must have faith in its administration. The judge will be in breach of his duty to dispense justice if the legal system fails to garner the trust of the average citizen.

In India, the Supreme Court is the sole protector of rights and in many instances, it has shown why it is called so as seen **In State of Maharashtra vs Naresh Shridhar Mirajkar**¹⁷, The Supreme Court has argued that because it is a court of record, the Apex Court has jurisdiction over every subject even in the lack of any clear constitutional provisions. If there are any questions, the court has the authority to assess its jurisdiction., the judiciary should remain impartial to everyone, and the constitution has provided so many constitutional provisions to ensure that the jury is protected and works independently, but still, there is a huge gap between what is supposed to happen and what happens, the jury needs to be protected from the political influence, the selection of the judges should be a transparent process, not a process that is done behind closed door and the decision is taken by a selected number of people, there should be a third party that watches over the process and this party should also be out of the bounds of external influence. The appointment of any judge should be based on merit and not on how many people know him in the deciding panel, the judiciary should be free from any influence and be independent of any guidelines, or authoritarian directions given to them by the executive or the fellow judges and there should be provisions that provide judges with adequate amount of reinforcements after they retire, they should be financially secured to avoid any in-term partiality.

¹⁷ “State of Maharashtra vs Naresh Shridhar Mirajkar, 1967 AIR, 1 1966 SCR (3) 744”