

“INDEPENDENCE OF JUDICIARY UNDER INDIAN CONSTITUTION”

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1. Abstract

“Independence of Judiciary” and the “Separation of powers” both are essential features of Indian Constitution. Independence is a defensive wall for Rule of Law. If Judiciary is not independent, we cannot expect that it will be able to enforce our rights. If a society is not governed by Law, there would be Rule of Jungle. The weaker and the poorer will not be able to survive in the society. The Darwin's principle i.e “The survival of the fittest” will be made applicable in the society and there will be problems of law and order. No society can progress unless and until there is proper administration of law and order in the society. Hence, for the proper progress and development of the society, Independence of Judiciary is must. It is a recognized principle adopted by most of the democratic countries. In the same manner, the main object of the 'distribution of powers' is that there must be governance of law instead of whims and fancies of the officials. The “Independence of Judiciary” denotes independent working of Judiciary and discharge of duties in an unbiased manner. If the Judiciary is not independent, we can't expect that the weaker and the poorer will be able to get proper Justice and there will be misuse of power. Hence, for creating a fair Government and to have proper justice delivery system in the society, Independence of Judiciary is must. This paper will analyse the concept with the help of relevant provisions enumerated in the Constitution of India.

2. Independence of Judiciary:- its meaning

Our Constitution just talks of it but has not defined it in exact words. We can say that the “Independence of Judiciary” is the autonomy in its functioning. It has two facets:

(i) Institutional Independence

(ii) Independent individuals who form Judiciary

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The term 'Independence of Judiciary' is required for proper delivery of Justice in the society and smooth functioning of various organs of the State. Independence of Judiciary puts a continuous check on the arbitrary actions taken by the executive. If one person suffers due to wrong or arbitrary actions of Executive, the judiciary provides relief. It acts as guardians of our Fundamental Rights. Equal treatment is given by Judiciary to all. Hence, one of the essential aspects of the Independent of Judiciary, is "Equality before Law and Equal protection of Law".

The Independence of Judiciary is also vital in a democratic set up. The Independence of Judiciary has two important aspects:

- (a) There must be independence in the working of the Judges and they should be free from any outside interference.
- (b) There must be independence in appointment process. Hence, the procedure of recommendations and appointments has also close connection with the autonomy of Judiciary. Let us say, If the appointed person is of doubtful integrity, such a person will succumb to the internal or external pressure in delivering verdict. Such type of actions on the part of tainted Judges will ruin and corrupt the justice delivery system. Hence, it has to be ensured that deserving persons are appointed and the Independence of Judiciary must be secured at all costs for smooth functioning of the democracy.

3. 'Independence of the Judiciary' and Framing of the Constitution

The superior Courts are responsible for keep in galive the trust and faith of citizens of India. Hence, even during the time of framing of the Constitution, significant consideration was given to appointment making process of Judges to higher courts, 'Independence of Judiciary' and 'separation of powers'. The Independence of Judiciary is required to maintain peace and progress in the society. The Judges are supposed to be neutral, firm and fair and wise. If a Judge is not independent in his/her functioning, we cannot expect Justice from such a Judge. In the background of this Sardar Ballabh Bhai said:

"The Judiciary should be above suspicion and should be above party influence. So that none may have the complaint to say that higher courts are right because they are superior."

The "Independence of Judiciary" and the "Separation of powers" were on top agenda of the members of the Constituent Assembly. They had a firm belief that independence of the Superior Courts is essential after independence. It was thought that our judiciary should be free from any external pressure and political influence also. When the Constitution was being framed a number of committees were constituted to make recommendations regarding these aspects.

The Constituent assembly members were eager to keep the Judiciary Independent and were in favour of providing a non-political mechanism of appointments. The Independence of Judiciary was considered to be essential for protecting the liberty of individual rights for upholding dignity of the system. The doctrine of 'Independence of Judiciary' has been appreciated under several recommendations given by various Committees constituted during the time of Constitution framing.

4. Constituent Assembly Debates on Independency of Judiciary

The members of Constituent assemble were in favour of independence of Judiciary but not in favour creating favoured bodies. The opinion of T. T. Krishnamachari are relevant in this regard which are given below:

"The Independence of Judiciary should be maintained and that the Judiciary should not feel that they are subject to favors that the Executive might grant to them from time to time and which would naturally influence their decision in any matter they have to take where the interests of the Executive of the time being happens to be concerned. At the same time, Sir, I think it should be made clear that it is not the intention of this House or of the framers of this Constitution that they want to create specially favored bodies which in themselves becomes an Imperium in Imperio, completely independent of the Executive and the legislature and operating as a sort of superior body to the general body politic".

Finally, Dr. B. R. Ambedkar clarified that there will no control of executive on judiciary but judiciary will be independent in its working. He further said that there was no intention to create 'imperium in Imperio'. The main object was to give independence to judiciary so that it may work without any fear or favour. It was asserted that a middle course has been proposed to be adopted in which neither president nor 'CJI' has any discretion. It was asserted that independence of judiciary is needed for administering justice in society.

5. Provisions of Independence of Judiciary under Constitution

It has been declared by courts that "Independence of Judiciary" and "Separations of Powers" are basic features of our Constitution. Keeping this fact into consideration, several provisions to ensure independence of judiciary have been made in Constitution of India. These provisions are as under:

- **Appointment of Judges:- Procedure**

President appoints Judges after "consultation" with the 'CJI'. The relevant provisions are given in from Art.124 and 217 of the Constitution. The Constitution framers were not in favour of giving any absolute authority to President or to 'CJI' in this regard. They were not in favour of maintaining a proper balance in this regard. Hence, provision of 'consultation' was incorporated in the relevant Arts. If the Judiciary is under dominance of the executive, it is not expected that Judiciary will deliver verdict in an impartial and unbiased manner. Thus in the matter of appointment necessary precaution has been taken care of by the Constitution framers.

- **Transfers of Judges:**

The transfer of judges is governed by Art 222. Before issue of orders of transferring of judges by President, consultation with CJI is required. In S.P. Gupta vs. Union of India it has been laid down by Supreme Court of India that for transfer "...prior consent of the concerned judge of High Court is not needed..." However, in Union of India vs. Sankal Chand Supreme Court held that "...transfer is to be made in Public interest and not as a way of punishment of the

Judge..." These views were reiterated by the Supreme Court in subsequent decisions. The transfers should not be made on the whims and caprice of the executive.

- **Security of tenure:**

The judges of the Supreme Court and the High Courts have security of tenure. A Judge can be removed from his office on 'proved misbehavior' or 'incapacity' for which procedure of impeachment is prescribed. The procedure is very lengthy and cumbersome. A Judge can be removed by President after following a prescribed procedure. The procedure for removal is given in Art 124(4).

- **Conditions of service:**

The salary and other conditions of service of Judges can't be changed to their disadvantage once they are appointed. They are not subject to vote of legislature (Arts 125 and 221). Further, as per Art 121, the conduct of Judges can't be discussed in Parliament. After appointment, there can't be interference of any organ in the working of the Judges and they are able to discharge their functions properly.

- **Administrative Powers:**

Arts 146 and 229 states that the administration and recruitment of the staff are to be made by 'CJ' of Supreme Court and High Courts or such other Judges as may be directed. Art 235 provides High Courts the supervisory authority and control over the Subordinate Courts. Hence, High Court and Supreme Court enjoy administrative powers over the Subordinate Courts in matter of recruitment of staff, working of the Subordinate Courts and their functioning, to be ensured proper discharge of duties by Staff. The Inspecting Judge of High Court has power to give adverse comments regarding the functioning, honesty and integrity of a Judge of Subordinate Courts. Such types of adverse remarks are detrimental in future promotions. In cases of serious allegations, High Court may take disciplinary actions against the erring Judges and the staff.

- **Power to punish for its contempt:**

Supreme Court and High Courts have such power. The relevant provisions are given in Arts 129 and 215 of the Constitution. This power is important for the purpose of maintaining Independence of Judiciary. If Superior Courts are not vested with such powers anybody could have criticized the working of the Judiciary and any type of allegations may easily be leveled by any one against any Judge. So, to keep a check upon such type of elements and for proper working of the Court such power was considered to be necessary by the Constitution framers.

- **Restrictions on Power of Parliament:**

As per Art-138 of the Indian Constitution, Parliament can extend jurisdiction of Supreme Court but Jurisdiction of the Supreme Court cannot be curtailed by Parliament. This provision has been incorporated to put a control upon the exercise of the powers arbitrarily by the Parliament. The Politicians may desire that the Supreme Courts should follow their line of action in delivering verdicts. Such a situation will result in chaos and people will have no faith in the judiciary.

- **Separation of the Judiciary from the Executive:**

Art 50 provides for taking steps to make separation between Judiciary and the Executive by the State. The Constitutional framers were in the favour of such arrangement. The spheres of different organs of the State have been demarcated. If the executive will have interference in the functioning of Judiciary, the Independence of Judiciary will be in danger.

- **Prohibition on practice after retirement:**

After retirement Judges of Hon'ble Supreme Court after their retirement are prohibited from practice in any Court as per Art 124(7) of the Constitution. A judge who has worked as a permanent Judge of a High Court, after his retirement he is also prohibited from practice except the Hon'ble Supreme Court and the other High Court as per Art 220 of Constitution.

- **Power of Judicial Review:**

The legislature is authorized to make law yet the law made by the legislature ought not to be in strife with the provisions of the Constitution. Similarly, Administrative action of the Executive should not be arbitrary. If the executive acts in an arbitrary manner it will not be good for the smooth functioning of democracy. The High Courts along with the Hon'ble Supreme Court wield judicial review power. If the law made by the legislature is violative of Constitution, such law be declared as ultra vires by Courts. Arbitrary actions of the executive may also be set aside by the judiciary.

Therefore, it can be concluded that Independent Judiciary is essential for smooth operation of judiciary. We can't expect any Rule of Law if judiciary is not independent. The Judiciary has played a very important role in putting a check upon the working of the legislative as well as executive. It has exercised the power of judicial review on several occasions and maintained its Independence.

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