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# Judicial Independence in India

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## ABSTRACT

*India being the largest democratic country of the world has its various organs like Executive, legislative and the judiciary working in sync. Even though the executive is responsible to the legislature in the Indian form of parliamentary democracy, the judiciary is integrated and independent of the other organs. In Independence of Judiciary the judicial system is independent and exclusive without any restraint and interference from the other organs of the government, i.e. the executive and the legislature. It is an important pillar for the functioning of a healthy democracy where judges are able to perform their functions without any fear and favor.*

*In India an independent judiciary and rule of law holds much significance and has been upheld as basic feature of the constitution and cannot be abrogated by any constitutional amendments. Due to this feature the people of India has immense faith in the judicial system where their rights are being safeguarded.*

## I. INTRODUCTION

Independence of Judiciary is absolutely necessary in the functioning of a healthy democratic system of governance. Since the establishment of the democratic form of Governments in the world there is a worldwide arbitration on the issue that the Judiciary should be independent from any type of influence and prejudices, from within and outside. The Independence of Judiciary has got utmost significance in the countries having a Written Constitution. The Government has been empowered with powers to run the Government, under the written constitution. But where the Constitution contains the welfare philosophy there the government has to make policies for the upliftment of the people socially and economically and in that process the Government may at times misuse the political power in such functioning. Independent Judiciary is required to maintain the balance between the government and interests of individuals and society and keep a check on any arbitrary actions of the government.

### **Some case laws which explain the concept of Independence of Judiciary:**

- In the case of **S.P Gupta v. Union of India (1982)**<sup>2</sup>, the supreme court held that the judges should be undeterred and should uphold the principle of rule of law while giving

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<sup>2</sup> AIR 1982 SC 149

judgements. This is the basis of the concept of independence of judiciary.

- In the case of **Supreme Court Advocates-On Record Association & Anr. V. Union of India (1993)**<sup>3</sup>, supreme court held the opinion that the chief justice along with the collegium will take part in the requirement of the judges and their opinion shall be binding on the president.

## II. CONCEPT

The term independence has neither been defined in the constitution of India nor in the General Clauses Act. A dictionary meaning defines the state of being not dependent on another persons or things for support or supplies. In a literal sense, independence means a freedom from being governed or any other external control. In other words, it signifies something that is not dependent on or controlled by any other agency or authority. In legal meaning Independence of Judiciary means the power of upholding without fear or favor, the Rule of Law, personal freedom and liberty, equality before law and impartial and effective judicial control over executive and administrative actions of the government. Hence, the judiciary should not be in a position of subordination to another organ or branch and be completely independent establishing Separation of power which is a basic constitutional feature. In this sense the judiciary is allowed to exercise their power without executive interference and it is independent and free from the control and subordination of the legislature and the executive.

## III. NEED FOR THE INDEPENDENCE OF THE JUDICIARY

- ***To check the functioning of the organs:*** Judiciary is the guardian of the constitution and watchdog who ensures that all the organs of the state function within their scope and in adherence to the provisions of the constitution. It also aids in securing the doctrine of separation of power.
- ***Interpreting the provisions of the constitution:*** It was well known to the framers of the constitution that in future the ambiguity will arise with the provisions of the constitutions of the constitutions so they ensure that the judiciary must be independent and self competent to interpret the provisions of the constitution comprehensively without any confusion.
- ***Disputes referred to the judiciary:*** The judiciary is expected to deliver judicial justice instead of a partial justice. Which means that a judge should not emphasizes on a

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<sup>3</sup> (1993) 4 SCC 441

particular aspect while giving justice and consider all the aspects involved in a particular situation in an unbiased manner.

#### **IV. IMPORTANCE OF INDEPENDENCE OF THE JUDICIARY**

- To secure the stability and prosperity of the society and such could be created only by guaranteeing the fundamental rights and the independence of the judiciary to guard and enforce those fundamental rights.
- Rule of law is essential to have a healthy relationship between the government and the population. It is responsible for good governance of the country by keeping a check on arbitrary laws of the government which can be secured through unbiased judiciary.
- To check whether the legislative and the executive bodies are functioning within their limits under the constitution and not interfering in each other's functioning.

#### **V. CONSTITUTIONAL PROVISIONS ON AN INDEPENDENT JUDICIARY**

The independence of judiciary has been a matter of debate across the whole world. The independence of judiciary is mentioned in writing, as India has a written constitution, so this concept is important. This concept means that the legal fraternity is empowered to make decisions without any external influence. Judiciary acts an important role in solving the disputes arising between the States, and they can do so if they are free from all outside pressures. Also, in the legal system the Judges play a very important role, therefore independence of judiciary also means independence of the judges. This means that without any influence the judges can submit their report and has the right to take decision without depending on the government or any of the superior judicial officers.

In the Indian Constitution part V deals with Union judiciary. The independence of judiciary starts with the procedure of the appointment of the judges in the supreme court (article 124 to 127) and high court (article 233 to 237). The judges are selected initially by a procedure known as the collegium system where a group of five judges including the Chief Justice of India selects the desired candidates which is then referred to union government and appointment is made by the president.

- ***Security of Tenure and Appointment:***

The appointment although made by the president, the tenure of the judges is not based on the pleasure of the president. For supreme court judges a fixed tenure of 6 years or up to 65 years fixed whichever is earlier and 62 years for high court judges.

In the case of ***Supreme Court Advocates-On Record Association & Anr. V. Union of India***

(1993), Supreme court held that the chief justice along with the collegium will take part in the recruitment of the judges and their opinion shall be binding on the president. The judges of Supreme Court and the High Court have been provided with the security of tenure where they remain in office till the age of 65 years in case of Supreme Court and in 62 years in case of High Court respectively.

- ***Salaries and Allowances of the Judges:***

The salaries, pensions, and allowances of the judges are charged upon the Consolidated fund of India and Consolidated fund of the states. Hence, their salary cannot be lowered or it cannot be used to their disadvantage during the period of their service.

- ***No Discussion on Conduct of Judges:***

The activities of the judges are prohibited for discussion by the executive or the legislature in the Parliament or the state legislature except at times when the procedure for removal of the judges is ongoing. (Article 121 for Supreme Court and 211 for High Court.)

- ***Rigid process for Impeachment of Judges:***

The procedure for the removal of a judge is a tedious process which includes raising and acceptance of the motion in either of the houses of the parliament. After that it is set for enquiry by a special bench and later to be presented to the president. Judges can be removed on grounds of proved misconduct and incapacity.

In the case of *K. Veeraswami v. Union of India*<sup>4</sup> A bench of five judges held that the Judge of a High court and Supreme court can be impeached in case of proved criminal misconduct. Parliament has enacted the Judges Inquiry act 1968 to regulate the procedure for investigation for removal of Judges.

## VI. CONCLUSION

India being such a large a diverse democracy of the world and which has the lengthiest written constitution the judiciary is the most significant body that guards the provisions and ideologies of the constitution safeguarding the rights and interest of the people against unfavorable government action. Judicial independence holds a significant position as far as the institution of judiciary is concerned. It is evident from the historical overview that judicial independence has faced many obstacles in the past especially about the appointment and transfer of judges which we can make out from the various Judges Cases. The courts have always tried to uphold

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<sup>4</sup> (1993) 3 SCC 855: 1991 SCC (Cri) 734

its independence and have always said to proclaim that the independence of the judiciary is a important component of the basic structure doctrine of the constitution where most of the actions by the government is justiciable in nature. It has said so because the independence of the judiciary is the pre-requisite for the smooth functioning of the constitution and a realization of a democratic society where there is equality of law for each an every citizen of the country and equal protection of laws, hence, establishing rule of law.

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