INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 2

2021

Independence of Judiciary in India

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ABSTRACT

"The bedrock of our democracy is the rule of law and that means we have to have an independent judiciary, judges who can make decisions independent of the political winds that are blowing".

Independence of judiciary means the other organs of the government, the executive and legislature must not restrain the functioning of the judiciary in such a way that it is unable to do justice. Judges must be able to perform their functions without fear or favour.

The underlying purpose of the independence of the judiciary is that judges must be able to decide a dispute before them according to law, uninfluenced by any other factor.

Montesquieu, a French Philosopher, propounded the idea of an independent judiciary. He believed in the theory of separation of powers of the three branches of the Government – Legislature, Executive and Judiciary. The fathers of the American Constitution were very much impressed by his theory, therefore, established an independent judiciary in their country. In UK, before 1701, judges held their office during the pleasure of crown and like any other crown servant they could be dismissed by the king at will. The judicial independence was secured by the Act of Settlement 1701.

Though, in India, there is no express provision in the Constitution but the independence of Judiciary and rule of law are the basic features of the Constitution and cannot be abrogated even by constitutional amendments as observed by the Hon'ble Supreme Court in S.P. Gupta v Union of India, AIR 1962 SC 149.

I. INTRODUCTION

"*The bedrock of our democracy is the rule of law and that means we have to have an independent judiciary, judges who can make decisions independent of the political winds that are blowing*."

An independent judiciary is the *sine qua non* of a vibrant democratic system. Only an impartial and independent judiciary can stand as a bulwark for the protection of the rights of the individuals and mete out even handed justice without fear or favour. The judiciary is the

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protector of the Constitution and, as such, it may have to strike down executive, administrative and legislative acts of the Centre and the states. For Rule of law to prevail, judicial independence is of prime necessity. The independence of the judiciary is normally assured through the Constitution but it may also be assured through legislations, conventions and other suitable norms and practices. The constitutions or the foundational laws on judiciary are however, only the starting point in the process of securing judicial independence. Ultimately the independence of the judiciary depends on the totality of a favorable environment created and backed by all state organs including the judiciary and the public opinion. The independence of judiciary also needs to be constantly guarded against the unexpected events and the changing social, political, economic conditions; it is too fragile to be left unguarded. In India, the question of independence of the judiciary has been a subject of heated national debate over the last many years. It has exercised the minds of legislators, jurists, politicians and the laymen. Both the supporters and the opponents have cogent arguments in support of their views. This question assumes great importance whenever the Supreme Court holds a particular Act or particular Clause of an Act passed by Parliament ultra vires of the Constitution.

Meaning of Independence of Judiciary

Simply stated independence of judiciary means that:

- The other organs of the government, the executive and legislature must not restrain the functioning of the judiciary in such a way that it is unable to do justice.
- The other organs of the government should not interfere with the decision of the judiciary.
- Judges must be able to perform their functions without fear or favour.

Independence of the judiciary, however, does not imply arbitrariness or absence of accountability. Judiciary is a part of the democratic political structure of the country. It is therefore accountable to the Constitution, to the democratic traditions and to the people of the country. The independence of the judiciary is not a new concept but its meaning is still imprecise. The starting and the central point of the concept is apparently the doctrine of the separation of powers. Therefore, primarily it means the independence of the judiciary from the executive and the legislature. But that amounts to only the independence of the judiciary as an institution from the other two institutions of the state without regard to the independence of judges in the exercise of their functions as judges. In that case it does not achieve much. The independence of the judiciary does not mean just the creation of an autonomous institution free from the control and influence of the executive and the legislature. The underlying purpose of

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the independence of the judiciary is that judges must be able to decide a dispute before them according to law, uninfluenced by any other factor. For that reason the independence of the judiciary is the independence of each and every judge. But whether such independence will be ensured to the judge only as a member of an institution or irrespective of it is one of the important considerations in determining and understanding the meaning of the Independence of the judiciary.

Need of Judicial Independence

In any society, disputes are bound to arise between individuals, between groups and between individuals or groups and government. All such disputes must be settled by an independent body in accordance with the principle of rule of law. This idea of rule of law implies that all individuals — rich and poor, men or women, forward or backward castes — are subjected to the same law. The principal role of the judiciary is to protect rule of law and ensure supremacy of law. It safeguards rights of the individual, settles disputes in accordance with the law and ensures that democracy does not give way to individual or group dictatorship. In order to be able to do all this, it is necessary that the judiciary is independent of any political pressures.

II. HISTORICAL ASPECT

The first political philosopher, who propounded the idea of an independent judiciary, was Montesquieu, the famous French philosopher. He believed in the theory of separation of powers of the three branches of the Government- Legislature, Executive and Judiciary. The fathers of the American Constitution were very much impressed by his theory. They, therefore, established an independent judiciary in their country. The American people have great faith in the independence of the judiciary. They are convinced that if any fetters are placed on the independence of judiciary, the rights and liberties of the people might be endangered. In U.K., however, the Parliament is supreme. The judiciary, there, has not been separated from the legislature. In fact, there the House of Lords acts as the highest Court of appeal. Though in U.K., the judiciary has not been independent or supreme, yet its judges have been giving decisions without fear or\ favour on matters coming up before them. They have been independent and impartial in their judgements. The U.K. does not have a written Constitution but still its people enjoy no less liberty than the Americans. In the U.K. no major clash between the Parliament and the judiciary has occurred so far. The concept of independence of judiciary took time to grow in England. Before 1701, judges held their office during the pleasure of crown and like any other crown servant they could be dismissed by the king at will. The judges were thus subservient to the executive. This subservience naturally led the judges to favour the

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royal prerogative. The most typical example of such an attitude is to be found in the Hampden's Case in which seven out twelve judges gave an award in favour of crown's prerogative to collect money without parliamentary approval. One of the judges even propounded the view that rex is lex. In 1616, Coke was dismissed from the office of the chief justice of the king's bench. The judicial independence was secured by the Act of Settlement 1701, which declared the judicial tenure to be during good behaviour, and that upon the address of both the houses of parliament, it would be lawful to remove a judge. This position regarding security of judicial tenure is now secured by statutes. The judiciary in the U.K. is not competent to declare a law passed by their respective legislatures as unconstitutional. But in the U.S.A. and India, the judiciary has been vested with the power of judicial review. They can hold a law passed by the legislature as unconstitutional and strike it down. In India, the Supreme Court strikes down a law only if it violates the basic structure of the Constitution.

III. OBJECTIVE OF INDEPENDENCE OF JUDICIARY

Independence of Judiciary is *sine qua non* of democracy. In a democratic polity, the supreme power of state is shared among the three principal organs. The constitutional task assigned to the Judiciary is no way less than that of other functionaries, legislature and executive. Indeed it is the role of the Judiciary to carry out the constitutional message and it is its responsibility to keep a vigilant watch over the functioning of democracy in accordance with the dictates, directives, and imperative commands of the constitution by checking excessive authority of other constitutional functionaries. Our Constitution does not strictly adhere to the doctrine of separation of powers but it does provide for distribution of power to ensure that one organ of the government does not trench on the constitutional powers of other organs. The concept of distribution of powers assumes the existence of judicial system free from external as well as internal pressures. Under our constitution, the Judiciary has been assigned the onerous task of safeguarding the fundamental rights of our citizens and upholding the Rule of Law. Perhaps the most important power of the Supreme Court is the power of judicial review. Judicial Review means the power of the Supreme Court (or High Courts) to examine the constitutionality of any law if the Court arrives at the conclusion that the law is inconsistent with the provisions of the Constitution, such a law is declared as unconstitutional and inapplicable. The term judicial review is nowhere mentioned in the Constitution. However, the fact that India has a written constitution and the Supreme Court can strike down a law that goes against fundamental rights, implicitly gives the Supreme Court the power of judicial review. Together, the writ powers and the review power of the Court make judiciary very powerful. In particular, the review power means that the judiciary can interpret the Constitution and the laws

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passed by the legislature. Many people think that this feature enables the judiciary to protect the Constitution effectively and also to protect the rights of citizens. The practice of entertaining PILs has further added to the powers of the judiciary in protecting rights of citizens.

Since the courts are entrusted the duty to uphold the constitution and the laws, it very often comes in conflict with the state when it tries to enforce orders. Therefore, the need for an independent and impartial Judiciary manned by persons of sterling quality and character, underlying courage and determination and resolution impartiality and independence who would dispense Justice without fear or favor, ill will or affection, is the cordial creed of our constitution and a solemn assurance of every Judge to the people of this great country. The Judiciary cannot remain a mere bystander or spectator but it must become an active participant in the judicial process ready to use law in the service of social justice through a proactive goal oriented approach. But this cannot be achieved unless we have judicial cadres who share the fighting faith of the constitution and are imbued with constitutional values.

IV. CONSTITUTIONAL PROVISIONS

Though, in India, there is no express provision in the Constitution but the independence of Judiciary is imbibed in the letters of various provisions of the Constitution. Independence of judiciary and rule of law are the basic features of the Constitution and cannot be abrogated even by constitutional amendments as observed by the Hon'ble Supreme Court in S.P. Gupta v Union of India; AIR 1982 SC 149

The Constitution of India is the fundamental law of the land from which all other laws derive their authority and with which they must conform. All powers of the state and its different organs have their source in it and must be exercised subject to the conditions and limitation laid down in it. The constitution provides for the parliamentary form of government which lacks strict separation between the executive and the legislature but maintains clear separation between them and the judiciary. The Indian Constitution specifically directs the state "to separate the judiciary from the executive in the public services of the State. The Supreme Court has used this provision in support of separation between the judiciary and the other two branches of the state at all levels, from the lowest court to the Supreme Court. Although the nature of the Indian Constitution-whether it is federal or unitary-is doubtful, basically it provides for a federal structure of government consisting of the Union and the States. The Union and the States have their distinct powers and organs of governance given in the constitution. While the Union and States have separate legislatures and executives, they do not

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have a separate judiciary." The judiciary has a single pyramidal structure with the lower or subordinate courts at the bottom, the High Courts in the middle, and the Supreme Court at the top. For funding and some administrative purposes, the subordinate courts are subject to regulation by the respective States, but they are basically under the supervision of the High Courts. The High Courts are basically under the regulative powers of the Union, subject to some involvement of the States in the appointment of judges and other staff and in the finances. The Supreme Court is exclusively under the regulative powers of the Union. Subject to territorial limitations, all courts are competent to entertain and decide disputes both under the Union and the State laws. The unitary character of the judiciary is not an accident but rather a conscious and deliberate act of the constitution makers for whom a single integrated judiciary and uniformity of law were essential for the maintenance of the unity of the country and of uniform standards of judicial behavior and independence. The members of the constituent assembly were very much concerned with the question of independence of judiciary and accordingly made several provision to ensure this end. Hon'ble Supreme Court has itself laid emphasis on the independence of judiciary from time to time and has observed that the constitutional scheme aims at securing an independent judiciary which is the bulwark of democracy.

The constitution of India adopts diverse devices to ensure the independence of the judiciary in keeping with both the doctrines of constitutional and Parliamentary sovereignty. Elaborated provision are in place for ensuring the independent position of the Judges of the Supreme Court and the High Courts.

- Firstly, the judges of the Supreme Court and the High Courts have to take an oath before entering once that they will faithfully perform their duties without fear, favour, affection, ill-will, and defend the constitution of India and the laws. Recognition of the doctrine of constitutional sovereignty is implicit in this oath.
- Secondly, the process of appointment of judges also ensures the independence of judiciary in India. The judges of the Supreme Court and the High Courts are appointed by the President. The constitution of India has made it obligatory on the President to make the appointments in consultation with the highest judicial authorities. He, of course, takes advice of the Cabinet. The constitution also prescribes necessary qualifications for such appointments. The constitution tries to make the appointments unbiased by political considerations.
- Thirdly, the Constitution provides for the Security of Tenure of Judges. The judges of the Supreme Court and the High Courts serve "during good behavior" and not during

the pleasure of the President, as is the case with other high Government officials. They cannot be arbitrarily removed by the President. They may be removed from office only through impeachment. A Judge can be removed on the ground of proved misbehavior or incapacity on a report by both Houses of the Parliament supported by a special majority.

- Fourthly, the salaries and allowances of judges are charged upon the Consolidated Fund of India. Further, the salaries and allowances of Judges of Supreme court and High courts cannot be reduced during their tenure, except during a financial emergency under Article 360 of the Constitution.
- Fifthly, the activities of the Judges cannot be discussed by the executive or the legislature, except in case of their removal.
- Sixth, the retirement age is 65 years for Supreme Court judges and 62 years for High court judges. Such long tenure enables the judges to function impartially and independently.

V. CONCLUSION

The constitution provides for a judiciary, which is independent. Independence of judiciary is important for the purpose of fair justice. There should be no interference by the legislature or the executive in the proceedings of the judiciary so that it may pass a judgment that seems reasonably fair. In case of intervention, there may be an element of bias on the part of the judges in taking a fair decision. It is difficult to suggest any other way to make the Indian courts more self-reliant and keep them away from the influence of the other two organs.

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