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Independent Judiciary and Indian Constitution

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ABSTRACT

The concept of an independent judiciary is said to have originated in ancient Greece, where the role of judges was to interpret laws and act as impartial arbiters in disputes. This idea was later adopted by the Roman Empire and eventually became a cornerstone of the European legal tradition. The principle of an independent judiciary was further developed during the Enlightenment, when philosophers such as John Locke and Montesquieu argued for the separation of powers between the legislative, executive, and judicial branches of government. They believed that an independent judiciary was essential for protecting individual rights and ensuring the rule of law.

Keywords: *Independent Judiciary, the Constitution, Supreme Court, Judicial separation, Rule of law.*

I. INTRODUCTION

In India, the principle of an independent judiciary is enshrined in the Constitution, which was adopted in 1950. The Constitution grants the Supreme Court of India the power of judicial review, which allows it to examine the constitutionality of laws and executive actions. The Supreme Court has used this power to strike down laws that it has found to be unconstitutional, thereby helping to maintain the separation of powers and safeguard individual rights.

The independence of the judiciary in India is also protected by several provisions in the Constitution, including Article 50, which requires the State to separate the judiciary from the executive, and Article 124(4), which requires the President to consult the Chief Justice of India before appointing judges to the higher judiciary. Additionally, the Constitution provides for the security of tenure and remuneration of judges, so that they are not subject to political pressure or financial incentives.

Supreme Court judgments in India have played a critical role in shaping the country's legal and political landscape. For example, the Supreme Court's landmark decision in *Kesavananda Bharati v. State of Kerala* established the principle of the basic structure of the Constitution, which means that certain provisions of the Constitution are so fundamental that they cannot be

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amended, even by a constitutional amendment. This decision has been instrumental in protecting the independence of the judiciary and the rights of citizens in India.

In conclusion, the principle of an independent judiciary has its roots in ancient Greece and was further developed during the Enlightenment. In India, the principle is protected by the Constitution, which grants the Supreme Court the power of judicial review and provides for the security of tenure and remuneration of judges. Supreme Court judgments have played a critical role in shaping the country's legal and political landscape and ensuring the independence of the judiciary and the protection of individual rights.

II. SPECIAL PROVISIONS IN CONSTITUTION

Article 138²:

Powers of the Supreme Court: Parliament can expand the powers of the Supreme Court, but cannot reduce the jurisdiction and power of the Supreme Court.

Article 50³:

Separation of Judiciary from Executive Directs that steps shall be taken by the State to separate the judiciary from the executive in the public services of the State.

Article 121⁴:

There shall be no debate in the legislature on the conduct of the judges. There can be no debate in Parliament or the State Legislature with respect to the conduct of a Judge of the Supreme Court in the discharge of his duties, except where there is a process of impeachment.

Article 129⁵:

Power to punish for contempt: The Supreme Court has the power to punish any person for contempt of it.

Article 124⁶:

² Article:- Enlargement of the jurisdiction of the Supreme Court.—(1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer.

³ . Article 50:-Separation of judiciary from executive.—The State shall take steps to separate the judiciary from the executive in the public services of the State.

⁴ Article 121:- Restriction on discussion in Parliament.—No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided.

⁵ Supreme Court to be a court of record.—The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

⁶ Establishment and constitution of Supreme Court.—(1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, *until Parliament by law prescribes a larger number, of not more than [seven] other Judges. (2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal 2 [on the recommendation of the National Judicial Appointments Commission referred to in article 124A] and

Bar on practice after retirement: Prohibits retired Judges of the Court from practicing in and before any court or any authority in the territory of

There are several barriers to an independent judiciary, including:

Political interference:

One of the most significant threats to an independent judiciary is political interference, either through direct pressure from the executive branch or indirect pressure through the appointment of judges with political affiliations.

Lack of funding:

A lack of funding can also compromise the independence of the judiciary. If the budget of the judicial system is not sufficient to cover the costs of personnel, equipment, and infrastructure, the judiciary may be forced to rely on the executive branch for funding, thereby becoming susceptible to political pressure.

Corruption:

Corruption within the judiciary can also undermine its independence. When judges are susceptible to bribery or other forms of corruption, they may be influenced to make decisions that are not in the best interest of justice.

Media influence:

The media can also play a role in compromising the independence of the judiciary. When media outlets focus on sensational or high-profile cases, they can create public pressure that can

shall hold office until he attains the age of sixty-five years: 3 [* * * *] 4 [Provided that]— (a) a Judge may, by writing under his hand addressed to the President, resign his office; (b) a Judge may be removed from his office in the manner provided in clause (4). [(2A) the age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.] (3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and— (a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or (b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or (c) is, in the opinion of the President, a distinguished jurist. Explanation I.—In this clause "High Court" means a High Court which exercises, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India. Explanation II.—In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district judge after he became an advocate shall be included. (4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehavior or incapacity. (5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehavior or incapacity of a Judge under clause (4). (6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule. (7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.

influence the outcome of a case.

Lack of diversity:

A lack of diversity within the judiciary can also undermine its independence. When the judiciary is not representative of the broader society, it can create a perception of bias, which can erode public trust in the judicial system.

Principle of separation of powers

- The Judiciary shall decide the cases before them impartially, on the basis of facts and in accordance with law, without restraint, undue influence, inducement, and coercion, threats of interference, direct or indirect, from any side or for any reason.
- There shall be no unwarranted or unwarranted interference with the judicial process nor shall judicial decisions delivered by the courts be subject to revision. This principle is without prejudice to judicial review or mitigation or commutation by competent authorities of sentences imposed by the judiciary in accordance with law.

Basic principles

Covers several parts of the potential infringement of judicial independence, including the primary ingredients for adjudication, impartiality ; Freedom from external influences. Only where an independent judiciary exists can judges decide cases in a fair and just manner, as the "rule of law" requires that a judge not be subjected to backlash or retribution from outside influences.

Inadequate training:

Inadequate training and professional development opportunities for judges can also compromise their independence. When judges are not kept up-to-date with the latest legal developments and best practices, they may be more susceptible to political influence and less capable of making impartial decisions.

III. CONCLUSION

In conclusion, there are several barriers to an independent judiciary, including political interference, lack of funding, corruption, media influence, lack of diversity, and inadequate training. To ensure the independence of the judiciary, it is important to address these barriers and promote the impartiality and integrity of the judicial system.

Independent judiciary with judicial review refers to a system of government where the judiciary is separate from the legislative and executive branches and has the power to review laws and

executive actions to determine their constitutionality. This system is based on the principle of the separation of powers, which was first articulated by philosophers like Montesquieu and John Locke during the Enlightenment.

Judicial review is a key component of an independent judiciary and is intended to ensure that the judiciary can fulfill its role as a check on the other branches of government. When a law or executive action is challenged, the judiciary has the power to examine it and determine whether it is consistent with the Constitution. If it is found to be unconstitutional, the judiciary has the power to strike it down and prevent its enforcement.

Judicial asceticism refers to the idea that the judiciary should exercise its power of judicial review sparingly and with caution. This concept is based on the idea that the judiciary should only interfere in political matters when absolutely necessary, and that it should avoid getting involved in political disputes unless it is necessary to protect individual rights or ensure the rule of law.

Judicial asceticism is an important principle that helps to preserve the independence of the judiciary and avoid politicizing the judicial system. When the judiciary exercises its power of judicial review too frequently or in inappropriate circumstances, it can undermine its credibility and erode public trust in the judicial system. By practicing judicial asceticism, the judiciary can maintain its impartiality and ensure that it remains a trusted and respected institution.

In conclusion, independent judiciary with judicial review and judicial asceticism are important principles that help to ensure the impartiality and independence of the judiciary. The power of judicial review allows the judiciary to act as a check on the other branches of government and ensure that laws and executive actions are consistent with the Constitution, while judicial asceticism helps to preserve the impartiality of the judiciary and avoid politicizing the judicial system.

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