



## **Judicial system and Independence of Judiciary in India: A study**

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### **Abstract**

In spite of the fact that it does not subscribe to the principle of strict separation of powers, the Constitution of India guarantees a free and impartial justice system at both the national and state levels. It is astonishing that the Constitution did not take any similar precautions to protect the members of the judiciary and to vouchsafe the status and dignity of their but seemingly obvious position. While the Constitution did take precautions to protect the respective heads of the Executive and the Legislature and its members with clear enactment of provisions conferring immunities and privileges upon them and of safeguarding their dignity and honour in due proportions, it is astonishing that the Constitution did not take similar precautions to protect the members of the judiciary. “To aim, to provide justice, social, economic, and political, for the people while simultaneously not ensuring the infallibility of the dispensers of justice is a constitutional dilemma. The Constitution, on the other hand, does a sufficient job of guaranteeing the independence of the judiciary by stipulating that judges on the Supreme Court and High Courts have lifetime tenure and a salary that is not subject to negotiation. In point of fact, however, the independence of the judiciary is being undermined by a number of factors, including inadequate salaries and pensions, the allure of returning to work in a high-ranking government position after retirement, ad hoc appointments, and interference from the executive branch in the process of appointing and transferring judges.

**Keywords:** Independence, Judiciary, Constitution.

### **Introduction**

The evolution of society is significantly aided by the contributions made by the Judiciary. Even while the primary focus of interpretation is not on the creation of new laws via the use of this method, the judiciary is nonetheless in a position to impart a fresh perspective on pre-existing laws and effect the social transformations that are essential for progress. It is impossible to have a truly democratic and representative system of government without an independent



judiciary. A parliamentary democracy places a significant burden on the shoulders of an impartial and independent judiciary. The judicial authority is vested in a single integrated system that is formed of a hierarchy of judicial tribunals. This hierarchy is made of four cadres: the Supreme Court, the High Courts, the District Courts, and the other original courts that are subordinate to the District Court. Clear constitutional provisions ensure the separation of the judicial organ and its independence, and this position cannot be changed until the Constitution itself is amended via a different procedure than the one that was originally established. It is not possible for the elevated position that this organ now holds to be changed by either the actions of the Executive or the acts of the Legislature.

Although Entry 3 of the State List gives the State Legislature the authority to regulate the administration of justice, the constitution, and the organisation of all courts, with the exception of the Supreme Court and the High Court, this authority only extends as far as the creation of the forum, the setting up of the judicial tribunals, and the defining of the jurisdiction with regard to pecuniary, territorial, or subject-matter matters. It does not extend to the nomination and tenure of the judges who preside over them, nor does it cover the circumstances of their employment. In spite of the fact that it does not subscribe to the principle of strict separation of powers, the Constitution of India guarantees a free and impartial justice system at both the national and state levels. It is astonishing that the Constitution did not take any similar precautions to protect the members of the judiciary and to vouchsafe the status and dignity of their but seemingly obvious position. While the Constitution did take precautions to protect the respective heads of the Executive and the Legislature and its members with clear enactment of provisions conferring immunities and privileges upon them and of safeguarding their dignity and honour in due proportions, it is astonishing that the Constitution did not take similar precautions to protect the members of the judiciary.

To aim, to provide justice, social, economic, and political, for the people while simultaneously not ensuring the infallibility of the dispensers of justice is a constitutional dilemma. [Citation needed] It has been argued that our Constitution does not include any clauses that guarantee the judges' right to operate independently. The fact that the people who wrote our Constitution did not support the concept is demonstrated by a speech that Dr. B.R. Ambedkar gave in the Constituent Assembly during debates on the topic. In his speech, he said: I do not agree how five or six gentlemen sitting in the federal or Supreme Court examining laws made by the legislature and by dint of their own individual conscience or their bias or prejudices by trusted



to determine which law is good and which law is bad: I do not agree how five or six in the case of A.K. Roy v. Union of India, 3. 4.

### **Judicial accountability in India-**

The Legislative Branch, the Executive Branch, and the Judicial Branch make up the three branches of the Indian government. They are responsible for three crucial tasks, namely the formulation of rules, the execution of rules, and the interpretation of rules, respectively. The Separation of Powers is the guiding idea that underpins this division of responsibilities. This principle ensures that our rights and freedoms are protected by holding the government to account and preventing it from overstepping its bounds. The maxim Power corrupts man, and absolute power corrupts totally serves as the primary inspiration for this. According to Montesquieu, Constant experience has shown us that every man invested with power is apt to abuse it, and to carry his authority until he is confronted with limits. This idea can be found in his statement Constant experience has shown us that every man invested with power is apt to abuse it. In a nutshell, corruption is inevitable when there is no check or balance on total authority. The issue of corruption has never been far from the public eye in India.

In his preface to the United Nations Convention against Corruption, Mr. Kofi Annan, who was serving as the Secretary General of the United Nations at the time, said the following: Corruption is an insidious disease that has a broad variety of impacts that are corrosive on society. It destroys democracy and the rule of law, causes abuses of human rights, skews markets, lowers the quality of life, and makes it possible for terrorist organisations, organised crime, and other dangers to human security to thrive. However, as of late, what has caught our attention is the corruption allegations that have been levelled against judges. For instance, Judge Soumitra Sen of the Calcutta High Court has been found guilty of misappropriating large sums of money and making false statements regarding it, and P D Dinakaran, Chief Justice of the Karnataka High Court, has been accused of land grabbing and corruption. Both of these men are on trial. These events raise the question, who is judging the judges? (Who is Judging Those Who Judge?).

The separation of powers, often known as the concept of balance, is complementary to another notion known as checks and balances. The idea behind the checks and balances principle is that no one organ in a government should have unrestricted authority. The strength of one organ is monitored and limited by the power of the other two organs, which allows for a balance to be



maintained. After all, as the saying goes, power by itself might be the antidote to power. Therefore, we find that the executive branch in India is individually and collectively responsible to the legislature. However, in this country, the accountability has decreased as a result of an anti-defection law. According to this law, if a legislator voices even the slightest amount of dissent, he faces the possibility of being removed from office, which could result in his constituents not being adequately represented. As a result, the choices made by party leaders are now only given a stamp of approval by parliament. The laws that are approved by the legislature are reviewed by the judiciary, and if the court finds that the legislation violates the constitution, it deems the law to be invalid. In addition, members of the legislature are answerable to the general population, which elects them to office. As a result, it is abundantly obvious that the judicial system serves as the protector of basic rights and the defender of the constitution. Recent events have shown the institution's lack of accountability via the use of specific instances. This is significant because in the preamble we assign ourselves the responsibility of establishing JUSTICE on all fronts: social, economic, and political. In a democracy, the people have the right to demand accountability from every authority that wields even a little amount of public power. The reality of the matter is that in a Democratic republic, authority must be balanced with individual responsibility; this is important in order to prevent a catastrophe for any democratic government. It is important to keep in mind that judicial responsibility and judicial independence need to be studied simultaneously in order to have a complete understanding of the idea.

### **Meaning-**

The concept of judicial accountability might be seen as a sequel to the concept of judicial independence. In its most basic form, accountability refers to the act of accepting responsibility for one's deeds and choices. In general, it refers to being accountable to any external entity; nevertheless, some people claim that responsibility should be maintained to principles or to oneself rather than to any authority that has the power of correction or punishment. owing to the fact that Article 235 of the Constitution stipulates that one of the components of independence must be accountability. The creation of a reliable system that is able to ensure accountability is plainly shown by the fact that the High Court controls the lower courts in the judicial system. Therefore, maintaining the judiciary's independence necessitates entrusting jurisdiction over lower courts to the High Court, which is not answerable to either the executive



branch nor the legislative branch. This objective is also being pursued via the establishment of a stringent mechanism for impeachment of public officials.

The architects of the constitution believed that 'settled standards' and 'peer pressure' would operate as effective balances, therefore they omitted any mechanism for the higher judiciary from the document, with the exception of situations involving the most severe circumstances. On the other hand, everything did not go quite according to plan since the judicial branch is not democratically responsible to either the people or the other two organs of government. It was said correctly by the Honourable Supreme Court that A single dishonest judge not only dishonours himself and disgraces his position but also puts the integrity of the whole judicial system at risk. This prompts us to ask ourselves why we need responsibility in the first place. The phrase, the judicial system of the country far from being an instrument for protecting the rights of the weak and the oppressed has become an instrument of harassment of the common people of the country was mentioned in a campaign that was issued by the people's convention on Judicial Accountability and Reforms. The system is still unable to work properly for those who are disadvantaged and underprivileged... (and has been) demonstrating its elitist bias. Mona Shukla said three advancements were possible as a result of increased judicial accountability:

1. It discourages behaviour that might put the independence, integrity, and impartiality of the judicial system at risk, which helps to preserve the rule of law.
2. It helps to increase public trust in the judicial system and judges.
3. It encourages institutional accountability by making the judicial system responsive to the requirements of the public that it serves in its capacity as a distinct part of the government.

The procedure of accountability makes transparency easier to achieve. It is possible to do it most effectively when one is responsible to the law. Due to the fact that the current system of accountability is ineffective, an increasing amount of corruption is slowly but surely chipping away at the fundamentals of this facet of democracy. Pandit Jawaharlal Nehru lambasted the lack of accountability that existed in the system by stating that judges of the Supreme Court sit on ivory towers far distant from common men and know nothing about them. The judges are given the status equivalent to that of demi gods. After all, judges are also human beings, which means they are susceptible to making errors and engaging in bad habits. However, what went wrong here? The following discussion of the difficulty of holding the judiciary responsible will



help us comprehend the problem, which will then make it easier for us to uncover potential solutions to the problem.

### **Review of literature**

(Verma 2022) studied “study on independence of judiciary” discovered that, and The Indian Constitution, despite the fact that it does not recognise the rigorous idea of separation of powers, vouches for an independent judiciary both at the national level and in the States. It is astonishing that the Constitution did not take any similar precautions to protect the members of the judiciary and to vouchsafe the status and dignity of their but seemingly obvious position. While the Constitution did take precautions to protect the respective heads of the Executive and the Legislature and its members with clear enactment of provisions conferring immunities and privileges upon them and of safeguarding their dignity and honour in due proportions, it is astonishing that the Constitution did not take similar precautions to protect the members of the judiciary. To aim, to provide justice, social, economic, and political, for the people while simultaneously not ensuring the infallibility of the dispensers of justice is a constitutional dilemma. [Citation needed] The Constitution, on the other hand, does a sufficient job of guaranteeing the independence of the judiciary by stipulating that judges on the Supreme Court and High Courts have lifetime tenure and a salary that is not subject to negotiation. In point of fact, however, the independence of the judiciary is being undermined by a number of factors, including inadequate salaries and pensions, the allure of returning to work in a high-ranking government position after retirement, ad hoc appointments, and interference from the executive branch in the process of appointing and transferring judges.

(Annana kofi et al. 2006) studied “judicial accountability and judicial independence” discovered this and when we left off in the previous chapter, we spoke about the idea of judicial responsibility; now, as we go on to the next one, we're going to talk about the idea of judicial accountability in conjunction with judicial independence. Since we covered the idea of judicial accountability in the previous chapter, we will begin this one with talking about that idea, and then we will go on to talk about the notion of judicial independence in relation to judicial responsibility.

(consultative council of european judges (ccje) 2015) studied “Independence of Judiciary in India” determined that that "The rule of law is the cornerstone of our democracy, and that means we need to have an independent judiciary, judges who are able to make judgments



independent of the political winds that are blowing." In order for the judiciary to maintain its independence, the other branches of government, including the executive and the legislative, cannot interfere with the operation of the judicial branch in a manner that prevents it from dispensing justice. The ability to carry out one's duties without showing favouritism or fear is required of judges. The fundamental goal of ensuring that the judicial system is free from outside influence is to ensure that judges are able to provide decisions in accordance with the law and without being swayed by any other considerations. Montesquieu, a French Philosopher, is credited with popularising the concept of an impartial judicial system. He was a supporter of the idea that the legislative, executive, and judicial departments of the government should each have their own distinct roles and responsibilities. His thesis had a significant impact on the founding architects of the United States Constitution, and as a result, they mandated the establishment of an impartial judicial system in their nation. Before the year 1701, judges in the UK served at the pleasure of the monarch, and just like any other royal servant, they were subject to the monarch's right to fire them whenever he saw fit. The Act of Settlement of 1701 ensured the court system's autonomy and independence.

(Mani, Bhansali, and Trivedi 2017) studied “securing the independence of the judiciary-the Indian experience” discovered this and It is impossible to have either a free society or a constitutional democracy without an independent judicial system. It not only secures the prosperity and stability of a society, but also the rule of law and the fulfilment of human rights in that society. In most countries, the independence of the judicial system is guaranteed by the constitution. However, this independence may also be guaranteed by law, agreements, and other appropriate norms and practises. In imitation of the Constitution of the United States, almost all constitutions outline at the very least the basic components, if not the complete infrastructure, of an independent court system. However, the constitutions or the basic legislation on judiciary are only the beginning of the process of preserving the independence of the court; they are not the endpoint. In the end, the independence of the judicial system is contingent upon the entirety of a positive environment that has been established and is supported by all state organs, including the judicial system and public opinion. It is impossible to allow the independence of the court to be left unprotected because of its vulnerability to unforeseen occurrences and shifting social, political, and economic situations. The independence of the judiciary is too delicate to be left unguarded.





### **Need of judicial accountability**

It is necessary to combine the exercise of power in a Democratic republic with individual responsibility in order to keep any democratic system functioning properly. The accountability needs to be all-encompassing, including not just the politicians but also the bureaucrats, the judges, and anybody else who is endowed with authority. In a democracy, having power and position comes with responsibilities, and every public office must continue to be always responsible to the people. After all, the people are the ones who hold the political sovereignty. The administration of justice is handled by the judicial system via the many agencies that make up the court system. The courts are presided over by actual living, breathing humans known as judges. They are not only apparent representations of the courts; rather, they are genuine representatives that exist in the real world. The way in which judges carry out their responsibilities is a significant factor in determining both the reputation of the judicial system and its reliability. Since the beginning of time, India has always placed a great value on its judicial system. But in recent times, as a result of several upsetting events, people are gradually losing trust in the judicial system and increasingly taking matters of justice into their own hands. It is a really sad state of affairs. Because the judiciary is responsible for upholding our constitution, it is imperative that it be held to the same standards of accountability as the other branches of our government. If values are allowed to deteriorate in one branch of government, then they cannot be tolerated in any other. The idea that judges should be held accountable and answerable for their decisions is rather ancient". The constitutions of a number of nations include provisions for ensuring that the judiciary is held accountable. It is for the purpose of preventing power from being concentrated in the hands of a single organ of the state, particularly in nations like India, where judicial activism is criticised for interfering with and invading the domain of other organs. This is why it is important to prevent power from being centralised. However, at the same time, judicial independence is a pre-requisite for every judge. This is because the judge's oath of office compels him to act without fear or favour, love or ill-will, and to maintain the constitution and laws of the nation.

### **Conclusion**

The separation of powers between the executive and the judiciary is guaranteed by the constitution. For the goal of ensuring that justice is administered fairly, judicial independence is essential. In order for the judicial system to be able to provide a ruling that may be seen as





being fairly fair, the legislative and executive branches of government should stay out of its business and not intervene. In the event that intervention is necessary, there is a possibility that the judges may make a judgement that is not completely impartial. It is impossible to find any other approach to make the Indian courts more self-reliant and to keep them free from the influence of the other two organs in the Indian judicial system. The effective enforcement of the law in the society is one of the most important factors influencing the development of the society.

The sheer presence of a specific piece of legislation is not enough to address the issues that plague a society unless the judges interpret and apply it in a way that directs the benefits of the legislation to the appropriate sectors of the population. It follows that the administration of justice is a very solemn duty, which should not only be performed with clean hands but also with a clean conscience and should in no way be influenced by extraneous considerations. This is because the administration of justice is a duty that affects the lives of many people. The administration of law has to inspire trust in the people who are responsible for adopting or enacting it. It would be considered a dereliction of duty on the part of the judge to administer justice if the common people did not have faith in the way the law was being enforced.

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