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Independence of Judiciary under Indian Constitution

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Abstract

The judicial branch of our government is tasked with defending the Constitution. The judiciary is scrutinised when other government apparatuses fall short in their duties. The Indian people's confidence and trust are essential for the judiciary to function effectively. Favouritism, nepotism, corruption, and bribery have slowly infiltrated the legal system over time and established a permanent home there, shielded by the legal defences of contempt of court and impunity. The constitutional jurisprudence governing our judicial power was established by the framers of our constitution, but the accountability laws were not created with a sense of pragmatic principles in mind.

The researcher of this paper has emphasised the concept of judicial accountability and the ways in which Indian Constitutional judges have attempted to evade their responsibility while donning the mantle of judicial independence. Additionally, a number of cases involving a lack of accountability and transparency that has led to nepotism, favouritism, and other issues in the nation's judicial system have been discussed. The issues and worries surrounding judicial independence have also been covered in the paper, along with potential solutions for maintaining the independence, integrity, and dignity of the legal system.

Keywords: Independence of Judiciary, Judicial Accountability, Independent Judiciary, Indian Judicial System.

Introduction

Among the three, the Indian judicial system holds the highest regard and confidence from the public. When other parts of the government apparatus fall short of expectations, the judiciary is seen as the last bastion of hope. The Indian people's trust and faith are essential for the judiciary to function effectively. But as time has gone on, this lofty pedestal we have placed the Supreme Men on has begun to waver. It's time for us to acknowledge that the men we revere as gods are actually just human beings chosen to carry out the important task of delivering justice, which is a fundamental human right that must be carried out with the highest honesty and equity. Favouritism, nepotism, corruption, and bribery have slowly infiltrated the legal system over time

and established a permanent home there, shielded by the legal defences of contempt of court and impunity. Legislators and activists have been considering judicial accountability among the many other issues pertaining to the judiciary. Because of the Indian Constitution's design, the Judiciary has been elevated to such a high and honourable position that its accountability is undefined, while the Executive is answerable to the Parliament and the Parliament to the People. The constitutional jurisprudence governing our judicial power was established by the framers of our constitution, but the accountability laws were not created with a sense of pragmatic principles in mind. The wisdom of the drafters was demonstrated in a number of provisions during the Constituent Assembly debates, but judicial independence was given such high priority during the drafting of the Constitution that judicial accountability was not given due consideration. It could be argued that judges were presumed to be morally upright, so fixing their accountability was unnecessary. Judges were expected to exhibit self-control and self-restraint. As a result, many of the misdeeds and crimes committed by judges remain unreported and unpunished. The robe and the cult must submit to democratic discipline's decree. It is functionally necessary to discipline judges in light of the recent events of increasing judicial corruption, sexual harassment charges against judges, and Chief Justice Ranjan Gogoi's rulings. This cannot be done in order to preserve judicial prestige alone.

Judicial Accountability

According to the Cambridge Dictionary, accountability is the capacity to accept responsibility for one's actions and to explain why or to what extent one does so.

Being accountable means accepting responsibility for one's deeds and performances and offering an explanation or avoiding consequences. Only when you owe someone something does accountability come into play. It is a term used in relationships between two people. Nevertheless, a crucial aspect of accountability is that the individual being held responsible is for a performance that he has completed or is expected to complete; in other words, a task or obligation to which he is entitled. This has to do with some kind of performance standard, whether it be one that he must meet or something else entirely. It becomes necessary to note that parties in an accountability relation have an obligation to provide or receive information in light of these accountability features. The fact that the judiciary is exempt from the Right to Information Act of 2002 and obscures transparency is a glaring example of its lack of accountability. The higher judiciary did not abide by the major legislative change brought about by this Act, which was intended to increase accountability and transparency. In the case of *Manohar s/o Manikrao Anchule v. State of Maharashtra & Anr*, the Supreme Court ruled that transparency is a necessary condition for democracy and that the likelihood of mistakes decreases when an authority is held accountable. The nation's courageous and independent judiciary has been tasked with upholding the Rule of Law, and in order to do so, it must be open, honest, and grounded in the Constitution. When the judiciary establishes moral and behavioural guidelines for others, it should also ensure that those guidelines are followed by the individuals themselves. For instance, in defamation cases involving public officials, the courts apply the *New York v. Sullivan* standards. If anything is said or done to damage the judiciary's reputation, the Indian judiciary has the authority to hold someone in contempt of court. This standard was established in a U.S. Supreme Court decision, which states that even a careless remark made against a public

figure will not be considered defamatory unless it is made with "actual malice" and total disregard for the truth. This New York Times standard, however, does not apply to the speech that implicates Indian Court judges. This standard is applied to everyone else, but when a judge is involved, the weapon of contempt of court is used without hesitation. The decline in the judiciary's credibility among right-minded individuals is one of the biggest threats to the judiciary's independence. And as Lord Lanning said, it's a sad day when right-wingers abandon the idea that the courts are biased.

Appointment of Judges and Judicial Independence

Another contentious issue on which the judiciary has long resisted openness is the appointment of judges. On the grounds of confidentiality, the RTI applications that were submitted for transparency were also denied. The Chief Justice of India, along with four other judges, appoints Supreme Court judges, and the President then acts upon their recommendation. The Constitution only specifies that the Chief Justice of India and any additional Supreme Court judges the President may think necessary will be consulted when choosing Supreme Court justices. Nevertheless, the Constitution says nothing about what the precise standards are for choosing judges or even about whose view will take precedence in the event of a disagreement. When we discuss the harm that comes to the independence of the judiciary, we must remember that this independence extends beyond that of the executive and political branches to the judiciary's own morality and jurisprudence. Everyone acknowledges that the judiciary needs to be kept independent and capable in order for democracy to survive, according to Dr. B.R. Ambedkar during the Constitutional Assembly Debates. But how can these two objects be secured, is the question. The judicial system must be competent in and of itself, but it must also be independent since it is the fundamental tenet of the system. Judicial independence does not serve as a justification for wrongdoing or the subjective nature of rulings. Only accountability and transparency in this system will guarantee its efficacy and competency.

However, the NJAC Bill 2014 challenged the collegium system and took its place. The Constitution (one hundred and one Amendment) Act was the catalyst for the change in the judiciary's appointment process. Because judges appointed other judges in violation of the natural justice principle, there was neither accountability nor transparency regarding the appointment process. Through the NJAC, increased government participation was guaranteed, improving the process' transparency. The Chief Justice of India, along with two of the most senior judges, the Law Minister, and two distinguished individuals selected by the Prime Minister, the Chief Justice of India, and the opposition leader, comprised the composition. NJAC bill 2014 would establish guidelines for the commission's process.

Judicial independence under Indian constitution

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1. Article 50 of the Directive Principles of State Policy outlines the separation of the executive and judicial branches. In the public sector, "The State shall take steps to separate the judiciary from the executive." The Directive Principle aims to protect the judiciary's independence from the executive branch.
2. In accordance with Article 211 of the constitution, "no discussion with respect to the conduct of any Judge of the Hon'ble Supreme Court or of a High Court in the discharge of his duties shall take place in the legislature of a state." In a similar vein, Article 121 states that "no debate in parliament regarding the behaviour of any Supreme Court or High Court judge while performing their duties may occur unless a motion is made to present an address to the president requesting the judge's removal." Therefore, by isolating the Hon'ble Supreme Court and the High Courts from political criticism, the Indian constitution grants them independence from political pressures and influence.
3. Under Article 129, the Honourable Supreme Court has the power to punish for contempt of itself. In a similar spirit, Article 215 permits any High Court to punish a person for contempt of court.
4. Article 125 talks about judges' salaries. The fact that judges' pay and benefits are known, even though they are fixed, is one of the things that shows their independence. The Honourable Supreme Court and High Court judges receive their salaries from the Consolidated Fund of India and the states, respectively. "The Judges of the Supreme Court shall be paid such salaries as may be determined by parliament by law and, until provision in that behalf is made, such salaries as are specified in the Second Schedule," in accordance with Article 125(1). In addition, Article 125(2) states that "Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by parliament and, until so determined, to such privileges, allowances and rights as are specified in the Second Schedule: Provided that neither a judge's privileges or allowances, nor his rights in respect of leave of absence or pension, shall be varied to his disadvantage after his appointment."
5. A Supreme Court judge must retire at the age of 65, according to Article 124(2), while a High Court judge must retire at the age of 62, according to Article 217(1). A proposal for removal on the grounds of proven misbehaviour or incapacity must be presented to the president in the same session by the majority of members of each house of parliament and supported by a majority of those members as well as by not less than two-thirds of those present and voting. Article 124(4) prohibits the removal of a Supreme Court judge from office without the president's order.
6. The parliament cannot challenge the authority of the Hon'ble Supreme Court, as stated in Article 138 (1). Since Parliament can only increase the Supreme Court's authority and jurisdiction-not decrease it-the judiciary is independent of the legislative branch.

Conclusion

When the subject of judicial independence is raised, worries regarding its potential risks always surface, underscoring the significance of "Judicial Accountability." The framers of the constitution understood the importance of the judiciary's independence long ago, and the courts have recognised this by designating it as a fundamental component of the document. It is

common knowledge that laws must adapt to meet the needs of a society that is changing. Judicial independence must also be considered in light of how society is evolving. The true goal of the judiciary's establishment must be ensured by the cooperation of judicial independence and accountability.

Since the judiciary is the most powerful branch and can administer justice as the people's first human right, it is asked for, if not demanded. The idea of judicial accountability carries a great deal of responsibility, as the judiciary must answer to the people.

From the above discussions, it can be concluded that the courts have recognised the judiciary's independence as one of the fundamental principles of the constitution, a value that the document's founders recognised long ago. It is a well-known fact that laws must change to accommodate the evolving needs of society. In a similar spirit, the Indian Constitution's guarantee of judicial independence must be weighed against the changing face of society. Judicial independence and accountability must coexist in order to ensure that the real purpose of the judiciary's establishment is achieved.

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