



INTERNATIONAL LAW  
JOURNAL

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**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

**Peer - Reviewed & Refereed Journal**

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **"JUDICIAL INDEPENDENCE IN INDIA: CHALLENGES AND REFORMS"**

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## **ABSTRACT**

*Judicial independence is a fundamental principle upon which democracies are built, as it ensures both fairness and compliance to the rule of law. In India, there are provisions under the Constitution like Article 50 (which talks about separation of the judiciary from the executive) as well as Article 124 (which governs the appointment of judges of the higher courts) that help protect judicial independence. Even so, there are a number of factors, such as executive encroachment, legislative dominance, and intramural factors that threaten this independence. This paper investigates those challenges and looks at the attempts to address and elevate the level of judicial independence. Major decisions of the court like *S.P. Gupta v. Union of India* (1982)<sup>1</sup> clearly show that Indian judiciary is constantly under threats from forces that want to dilute democracy and which the courts refuse to cave in. This is critical because the need for effective reforms to increase the transparency, accountability, and independence of the Indian judiciary is paramount as evidenced by the use of models in other democracies.*

## **KEYWORDS**

Judicial Independence, India, Challenges, Reforms, Judiciary, Democratic Governance

## **INTRODUCTION**

The independence of the judiciary is a core component of a healthy democracy because it allows justice to be served without bias or partiality. It is meant to protect the citizens from the overreaching and arbitrary powers of the executive and legislative branches by upholding the fundamentals of the rule of law and constitutionalism. Consider that in India, the Constitution vests a lot of powers on the judiciary – including the power of judicial review with the capacity to invalidate laws and actions inconsistent with the Constitution. For instance, several Articles,

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<sup>1</sup> *S.P. Gupta v. Union of India*, AIR 1982 SC 149.



including Article - 50 which promotes the independence of the judiciary from the executive, and Articles - 124 to 147 which describe internal matters, composition and independence of the Supreme Court & its Judges firmly establish the importance of the judiciary in the principle of separation of powers.

Nevertheless, there are many challenges that the Indian judiciary, even with its strong constitutional provisions protecting its independence, confronts on a regular basis. For instance, executive meddling, the unclear and obscure working of the collegium system, the financial dependence of the judiciary on the executive, and problems related to accountability have all, at various times, put the judiciary in the limelight. For example, the controversy surrounding the transfer of judges and the delay in judicial appointments highlights the vulnerabilities of the current system (*Supreme Court Advocates-on-Record Association v. Union of India*)<sup>2</sup>. Such issues do pose some threat to both the independence of the judiciary as well as the faith of the people in the justice delivery system.

This paper endeavors to consider such obstacles in detail and suggests reforms that could reinforce judicial independence in India. This study has the aim of addressing the prevailing issues and providing effective measures on how to avoid and address the challenges that will enable the courts to operate independently by incorporating landmark decisions, and lessons from other democracies and academic literature that have successfully entailed a free judiciary.

## RESEARCH METHODOLOGY

The present work adopts a qualitative research design to assess the definition of judicial independence in India, its hindrances as well as its possible changes. The methodology combines doctrinal and analytical approaches, but emphasizes more on secondary sources, court decisions, and constitutional measures. The study is designed in such a way as to offer a comprehensive perspective of the research topic through an integrated approach with various studies, legal texts, journal articles, and case laws.

### 1. Doctrinal Research

This research study is primarily based on the doctrinal method. This entails looking at the relevant constitutional provisions for example Article 50 which establishes separation between the executive and the Judiciary and Article 124 which deals with

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<sup>2</sup> *Supreme Court Advocates-on-Record Association v. Union of India*, AIR 1994 SC 268.



the appointment of judges and their tenure. This method further consists of an intensive analysis of the judicial pronouncements for instance:

- **Kesavananda Bharati v. State of Kerala** (1973), which underscored the judiciary's role in preserving the basic structure of the Constitution.
- **Supreme Court Advocates-on-Record Association v. Union of India** (1994), which critiqued the lack of transparency in judicial appointments and introduced the collegium system.

## 2. Case Law Analysis

This study employs case law as an essential part of the research design. Supreme court verdicts relating to judicial independence-its conception and evolution in India through time- are analyzed. This entails locating notable decisions that have both constructed and protected judicial independence from external and internal threats. To illustrate, *S.P. Gupta v. Union of India* (1982) is one such case whereby the court made it clear that the executive would not appoint or transfer judges thus insuring the independence of the judiciary.

## 3. Comparative Analysis

The research utilizes a fundamental comparative approach to assess the status of the judiciary in the Indian democracy and in other democratic nations like the U.S. or the U.K., for example. The U.K. judicial appointments' system, where an independent Judicial Appointments Commission is involved, presents interesting perspectives for improvement of India's collegium system<sup>3</sup>.

## 4. Review of Secondary Literature

An extensive exploration of secondary sources including books, journal articles and reports presents several interesting perspectives on the independence of judiciary. The *Indian Constitution: Cornerstone Of A Nation* by Granville Austin gives essential details concerning the place of the judiciary in India<sup>4</sup>. According to Baxi, Upendra, *The Crisis of the Indian Legal System*, there are issues which bear on judicial accountability<sup>5</sup>. For a grasp of present day dilemmas, the *Indian Journal of*

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<sup>3</sup> Law Comm'n of India, Report No. 121, *A New Forum for Judicial Appointments* (1987).

<sup>4</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, 1966).

<sup>5</sup> Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas Publishing House, 1982).

Constitutional Law, among other journals, contain articles which have also been done.

## **5. Legislative and Policy Analysis**

The study includes analysis of legal statutes and policies, addressing chiefly those laws, rules, amendments, and commissions which relate to the independence of the judiciary. Specifically, the author reviews the Reports of the Law Commission of India, which includes the 121st report and 214th report<sup>6</sup>, in order to assess the difficulties and effectiveness of recommendations made on such reorganization.

## **6. Limitations**

The research recognizes some constraints associated with qualitative research design. In particular, the lack of primary empirical evidence, such as in-depth interviews with judges or state actors, confines the focus to the analysis of literature and published court records only.

# **REVIEW OF LITERATURE**

In order to grasp the complexity of judicial independence in India, its constitutional history and the problems it faces, and the historical potential for change, an extensive review of the literature available on the subject is important. This section highlights important legal materials, case law perspectives, scholarly writings, and reports in order to establish a solid research base for this study.

## **1. Foundational Works on Judicial Independence**

In Granville Austin's *The Indian Constitution: Cornerstone of a Nation*, it is evident that the draftsmen envisaged a court entrusted with the responsibilities of a 'guardian of the Constitution' vis-à-vis the legislature and executive arms of government. Austin draws attention to the necessity of the judiciary in the protection of the rights of individuals, preservation of the rule of law, and therefore independence of the courts is fundamental in any democracy, and particularly in India. This theory then becomes the starting point for looking at other issues and reforms that will take place in the structure of the judiciary in the future.

Similarly, Upendra Baxi in 'The Crisis of the Indian Legal System' also addresses the

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<sup>6</sup> Law Comm'n of India, Report No. 214, *Proposal for Reforms in the Judiciary* (2008).

structural and functional problems of the Indian judiciary. Baxi considers factors determining the level of judicial independence, such as political, economic, and social aspects, which helps to understand such practical problems as the backlogs of cases, bribery and political control over judges. These lines of research also address the development of the courts, their capabilities, and their limitations.

## **2. Analysis of Constitutional Provisions and Principles**

The Constitution of India has provided several measures to ensure separation of powers, which incorporates Articles 50, 124, and 217. Much has been said in legal literature regarding these articles. Alluding to Article 50 which provides for independent judicial system, the dualism of executive and judicial arm of the government is oftentimes considered the bedrock of the independence of the judiciary. Yet, scholars have indicated that this principle has not been applied in practice, particularly in regard to the appointment and transfer of judges, etc.

The collegium system, a system devised through interpretation, has been widely discussed in many literatures, especially with respect to the case of Supreme Court Advocates-on-Record Association v. Union of India (1994). Scholars such as Fali S. Nariman argue that while the system reinforces judicial autonomy, its opacity raises concerns about accountability and nepotism<sup>7</sup>. Such debates remain the main issues of conversations on how best to reconcile independence and transparency of the judiciary's operations.

## **3. Perspectives from Case Law**

Judicial independence in India has been defined in landmark cases like Kesavananda Bharati v. State of Kerala (1973) and S.P. Gupta v. Union of India (1982). In the former case, the Supreme Court recognized the independence of the judiciary as one of the 'basic structures of the constitution' which cannot be altered or destroyed. Many articles have been written analyzing this case, including those by H.M. Seervai, which praise the case for its effect on the assessment of the judiciary as the custodian of democracy. In the case S.P. Gupta v. Union of India, the Supreme Court pronounced limitations regarding the overstepping of executive powers, especially those relating to the appointment and transfer of judges. This ruling has been referred to by legal academics

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<sup>7</sup> Fali S. Nariman, *India's Legal System: Can it be Saved?* (Penguin India 2006).



as the turning point of this phase, since it declared the executive's appointment of judges to be separate from the functioning of the judiciary systems and introduced the collegium system later on in the same phase.

#### **4. Challenges and Critiques in Existing Literature**

Several authors have documented the challenges that undermine judicial independence in India. Articles in legal journals, such as the *Indian Journal of Constitutional Law*, frequently critique issues such as financial dependence on the executive, delays in judicial appointments, and the lack of a transparent accountability mechanism. Scholars have particularly criticized the judiciary's financial dependency on the executive branch, which influences the allocation of resources for court infrastructure and judicial salaries.

Another prominent critique in the literature is the media's role in influencing public perception of the judiciary. Some scholars argue that sensationalized reporting and "trial by media" undermine judicial impartiality, particularly in high-profile cases.

#### **5. Comparative Literature: Global Lessons on Judicial Independence**

Through comparative studies, one gets understanding of how other democracies handle the issues related to judicial independence. For example, the United Kingdom uses a Judicial Appointments Commission to manage appointments to the judiciary which safeguards both transparency and appointments based on merit. As outlined in the Federalist Papers and in the legal discuss of significant American legal cases, the United States values life tenure of Appellate Judges and ensures a robust system of checks and balances.

The narrative emphasizes the extent to which such systems may be replicated in India. Addy and others have been advocating for the introduction of some of these approaches systems, for instance, independent appointments commission in India's judicial system.

#### **6. Reports and Policy Recommendations**

The Law Commission of India's Reports, especially Report No. 121 (A New Forum for Judicial Appointments) and Report No. 214 (Proposals for Reforms in the Judiciary) are considered valuable from a policy perspective. These reports recommend changes to the process of judicial appointments and recommend that the judiciary be afforded more transparency, accountability, and financial independence.

The enacting of the National Judicial Appointments Commission (NJAC) Act, which was later declared unconstitutional in *Supreme Court Advocates-on-Record Association v. Union of India* (2015), has also been the subject of extensive scholarly examination. Some scholars have expressed whether the NJAC managed to address the issues of independence and accountability to a greater extent than the collegium system and opinions differ as to its appropriateness in India.

## METHOD

The research adopts a case study method, deals with important cases such as *Kesavananda Bharati v. State of Kerala* (1973), *S.P. Gupta v. Union of India* (1981) etc., to understand the independence of the judiciary in real life. It also discusses the present context by looking at recent issues concerning the appointments and transfers of judges. It uses a comparative approach with the systems of justice in the USA and UK for the purpose of demonstrating other existent models and changes that could be recommended. This approach includes doctrinal research and a comparative study that help in developing a broad view.

## SUGGESTIONS

Judicial independence is fundamental to the maintenance of law and order as well as democracy. In practice, however, the separations inherent in the Constitution provide for very strong independence of the judiciary, which is why such measures appear to be weak and in need of augmentation. The following recommendations address particular concerns and issues with special recommendations on the lack of transparency in judicial appointments, monetary dependence, accountability in the judiciary, and the problem of interference from external sources.

### 1. Reforming the Collegium System for Judicial Appointments

The collegium system, established through judicial interpretation in *Supreme Court Advocates-on-Record Association v. Union of India* (1994), was designed to limit executive interference in judicial appointments. However, the lack of transparency and allegations of nepotism have raised concerns about its efficacy. The following reforms are proposed:

- **Institution of a Judicial Appointments Commission (JAC):** An independent body comprising representatives from the judiciary, executive, legislature, and

civil society can ensure a more transparent and participatory appointment process. Lessons can be drawn from the United Kingdom's Judicial Appointments Commission, which emphasizes merit-based selection.

- **Public Disclosure of Selection Criteria:** Clear guidelines and criteria for evaluating candidates should be made public. This would ensure accountability while reducing perceptions of bias.
- **Periodic Review Mechanism:** The JAC or similar body should be periodically reviewed to ensure it remains effective and insulated from undue influence.

## 2. Ensuring Financial Independence of the Judiciary

The financial dependence of the judiciary on the executive undermines its autonomy.

The following measures can be adopted to secure financial independence:

- **Establishing a Judicial Finance Commission:** An independent body should be created to oversee judicial budgeting and resource allocation, similar to the Finance Commission's role in distributing financial resources among the Union and states.
- **Earmarking Judicial Budgets:** A dedicated percentage of the GDP should be allocated to the judiciary to ensure adequate funding for court infrastructure, judicial salaries, and technological upgrades.
- **Streamlining Budgetary Processes:** Judicial budgets should bypass executive control to prevent delays and underfunding.

## 3. Strengthening Judicial Accountability Mechanisms

While judicial independence must be protected, it should not come at the cost of accountability. Allegations of corruption and misconduct, though rare, have the potential to erode public trust. Reforms in this area include:

- **Establishment of a Judicial Complaints Commission:** An independent body to address grievances against judges can ensure accountability while maintaining judicial independence. Such a body should be empowered to investigate allegations and recommend action without compromising the integrity of the judiciary.
- **Implementation of a Code of Ethics:** A uniform and enforceable code of conduct for judges should be introduced, covering issues such as conflicts of interest, professional conduct, and disclosure of assets.



- **Transparent Disciplinary Processes:** Disciplinary proceedings against judges should be transparent and time-bound to maintain public confidence in the judiciary.

#### 4. Enhancing the Efficiency of the Judicial System

Judicial delays are a major challenge in India, with millions of cases pending across various courts. Improving the judiciary's efficiency can bolster public confidence in its independence and effectiveness. Suggested measures include:

- **Digitization and Technological Integration:** Expanding e-court initiatives, digitizing case records, and using AI-based tools for case management can reduce delays and improve efficiency.
- **Increasing Judicial Strength:** Appointing more judges at all levels, as recommended by the Law Commission of India in its 245th report, can address the backlog of cases.
- **Alternative Dispute Resolution (ADR) Mechanisms:** Encouraging ADR mechanisms, such as mediation and arbitration, can reduce the burden on courts and expedite resolution in civil and commercial disputes.

#### 5. Regulating Media Influence on Judicial Proceedings

The judiciary's independence can be compromised by sensationalized media reporting and "trial by media." High-profile cases often face undue public scrutiny, which may influence judicial decision-making. Proposed reforms include:

- **Media Guidelines for Court Reporting:** The judiciary should formulate clear guidelines to ensure responsible reporting of court proceedings, especially in sub judice matters.
- **Restricting Public Commentary by Litigants:** Litigants and advocates should be restricted from publicly commenting on ongoing cases to prevent prejudicing public opinion or the judiciary.
- **Strengthening Contempt Laws:** Misuse of media platforms to influence judicial processes should be dealt with firmly through contempt of court proceedings, ensuring respect for judicial autonomy.

#### 6. Promoting Public Awareness and Judicial Outreach

Public trust in the judiciary is essential for maintaining its independence. The following

initiatives can help bridge the gap between the judiciary and the citizenry:

- **Judicial Awareness Programs:** Conducting outreach programs to educate citizens about the judiciary's role, functioning, and challenges can foster greater trust and understanding.
- **Annual Reports by the Judiciary:** Publishing annual reports detailing case statistics, landmark judgments, and reforms can improve transparency and public engagement.
- **Public Interaction Forums:** Hosting forums where citizens can interact with judges and legal experts can demystify judicial processes and enhance accessibility.

## 7. Legislative Safeguards for Judicial Independence

The legislature plays a critical role in framing laws that impact judicial independence. To protect this autonomy:

- **Codification of Judicial Independence Principles:** Codifying principles of judicial independence, such as separation of powers and financial autonomy, can offer additional legal protection against encroachments.
- **Prevention of Legislative Overreach:** Mechanisms to ensure that legislative actions do not infringe upon judicial functions or decisions are necessary. For example, laws attempting to curtail the judiciary's power of review should be subject to strict scrutiny.
- **Protecting Judicial Review Powers:** Judicial review is a cornerstone of Indian democracy, and any attempt to dilute this power must be constitutionally resisted.

The judiciary is a pillar of democracy in India and cannot be compromised upon its independence. The above proposals seek to deal with the existing and potential threats to the judicial independence. The collegium system could be reformed, financial independence guaranteed, accountability increased and intrusive measures controlled in order for the judiciary to be strengthened in serving its constitutional purpose. Such reforms are necessary not only for the protection of the independence of the judiciary but also for the regard of the Indian population for the judiciary to last.

## CONCLUSION

Judicial sovereignty is essential for any form of governance system that supports democratic ideals, as is the case in Indians. Even though legal mechanism basistas strong barriers, the executive intervention, inefficiency, and budgetary constraints undermines judicial independence. This paper addresses these problems and suggests ways to remedy them. The Indian judiciary, in order to once again play its role as the upholder of requests on democracy and the rule of law, should consider increasing these aspects. The task of combating systemic challenges and respecting the core values of the jurisdiction remains a vital precondition for the sustainability of judicial independence in the Republic of India.

