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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated 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: CONSTITUTIONAL FOUNDATIONS, CONTEMPORARY CHALLENGES, AND THE PROTECTION OF FUNDAMENTAL RIGHTS¹

AUTHORED BY - JITHIN S

Abstract

Judicial independence is an indispensable component of democratic governance and the rule of law. The Indian Constitution, through an intricate framework of provisions, ensures the autonomy of the judiciary, empowering it to act as a guardian of fundamental rights. However, in contemporary India, this independence faces multifaceted challenges including executive interference, political pressures, and internal institutional concerns. This paper explores the constitutional provisions guaranteeing judicial independence, critically analyses emerging threats to this independence, and examines its pivotal role in safeguarding the rights enshrined in Part III of the Constitution.

1. Introduction

The doctrine of separation of powers is an integral element of the Indian Constitution. Though India does not follow a strict separation as in the United States, functional independence of the judiciary is enshrined and preserved to maintain the rule of law. Judicial independence implies that the judiciary must be free from any external pressures or interferences so that it can deliver fair and impartial justice. The framers of the Constitution envisaged a judiciary that would serve as the protector of individual rights and as the ultimate check against arbitrary actions by the State.

2. Constitutional Provisions Ensuring Judicial Independence

The Indian Constitution lays down a strong foundation for the independence of the judiciary. Some of the most important provisions under the Constitution of India includes:

- a. Security of Tenure: Article 124(2) and Article 217 of the Constitution stipulate that judges of the Supreme Court and High Courts are appointed by the President and can

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- only be removed by a rigorous process of impeachment under Article 124(4). This ensures their autonomy and shields them from arbitrary removal.
- b. Fixed Service Conditions: Articles 125 and 221 provide for the salaries and allowances of Supreme Court and High Court judges, which cannot be altered to their disadvantage during their tenure.
 - c. Separation of Judiciary from Executive: Article 50 under the Directive Principles of State Policy directs the State to separate the judiciary from the executive in the public services of the State, thereby reinforcing judicial independence.
 - d. Power of Judicial Review: Articles 32 and 226 empower the Supreme Court and High Courts respectively to issue writs for enforcement of Fundamental Rights, reinforcing their role as the protectors of the Constitution.
 - e. Contempt Power: Under Articles 129 and 215, the Supreme Court and High Courts are declared to be courts of record and have the power to punish for their contempt. This provision further ensures that their dignity and authority remain intact.
 - f. Appointment of Judges: Though the Constitution originally vested the power of appointment in the President, the Supreme Court through the 'Judges Cases' introduced the Collegium System to ensure judicial primacy in appointments.

Notable Cases coming under the Judicial Independence in India:

1. **S.P. Gupta v. Union of India**² Known as the First Judges Case, where it was held that the Executive had primacy in judicial appointments. The case which is also known as “First Judges Case” which is considered as a milestone legal judgment in India, which distorted the Judges appointments to the Supreme Court and High Courts. The case was verdicted in the year of 1981, where it set a benchmark precedent on the collegium system, where by a privileged bunch of senior judges, including the CJI will recommend the names of judges to the Central Government.³

The case was notable for the way the term “consultation” in the appointment of Judges was interpreted under Article 124 of the Constitution,. The Supreme Court, in a majority 4:3 decision, ruled that "consultation" does not mean "concurrence," effectively giving the executive (the President, acting on the advice of the Council of Ministers) the primacy in judicial appointments, although the judiciary's views should be given due weight. This ruling established a system where the executive's role in

² (1981) Supp SCC 87

³ <https://indiankanoon.org/doc/112850760/>, accessed on 22 May 2025 06:26 pm

appointments is dominant, but the judiciary's input is considered.

The First Judges Case also addressed the concept of public interest litigation (PIL) and relaxed the rule of *locus standi*, meaning that even individuals not directly affected by a particular issue could challenge the validity of executive actions that affect the independence of the judiciary. S.P. Gupta's legal actions in this case also established a precedent for PIL in the country

2. **Supreme Court Advocates-on-Record Association v. Union of India**⁴ The Second Judges Case reversed the earlier view, establishing the Collegium System. The 1993 Supreme Court case, Supreme Court Advocates-on-Record Association v. Union of India, is famously known as the "Second Judges Case". This case established the Collegium system for judicial appointments, primarily ensuring judicial independence by prioritizing the Chief Justice of India and the collegium's recommendations over executive influence. The case also affirmed that judicial independence is a fundamental feature of the Constitution⁵
3. **Re Presidential Reference (1998)**⁶: The Third Judges Case clarified the procedure for appointments. In *In Re Presidential Reference (1998)*, also known as the Third Judges Case, the Supreme Court of India, responding to a Presidential Reference, clarified the meaning of "consultation" as it applies to the appointment of judges under Article 124 and Article 217 of the Constitution. The court ruled that the Chief Justice of India (CJI) must consult with other judges, specifically a plurality of judges, when making recommendations for judicial appointments, rather than solely relying on his own opinion. This judgment further defined the collegium system for judicial appointments⁷
4. **The Supreme Court Advocates-on-Record Association v. Union of India (2015)**⁸: The Fourth Judges Case struck down the 99th Constitutional Amendment and the NJAC Act as unconstitutional, reaffirming judicial independence. It is also known as the Fourth Judges' Case, was a landmark judgment that addressed the constitutional validity of the National Judicial Appointments Commission (NJAC) Act, 2014. The Supreme Court, by a 4:1 majority, struck down the NJAC Act and the 99th Constitutional

⁴ (1993) 4 SCC 441

⁵<https://www.dhyeyalaw.in/supreme-court-advocates-v-union-of-india-1993#:~:text=The%20Second%20Judges%20Case%20fundamentally,judicial%20appointment%20process%20in%20India.,> accessed on 22 May 2025 at 06:35 PM

⁶ (1998) 7 SCC 739

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<https://lawbhoomi.com/third-judges-case-in-re-presidential-reference/#:~:text=steering%20that%20realisation.,Facts%20of%20Re%20Presidential%20Reference,guidelines%20for%20the%20collegium%20system.,> accessed on 22 May 2025 06:43 PM

⁸ (2016) 5 SCC 1

Amendment Act, 2014, which had sought to replace the existing collegium system for judicial appointments. This decision upheld the judiciary's independence and the principle of separation of powers, emphasizing the importance of the collegium system in judicial appointments.⁹

3. Challenges to Judicial Independence in Contemporary India

Despite strong constitutional backing, several contemporary challenges undermine judicial independence. Delays in Judiciary or Judicial making poses a significant threat to the courts in India, from lower judiciary to higher judiciary. Backlogging of ongoing cases and overworking courts are to be blamed for the delay in Justice. Significant volume of court proceedings, inadequacy of infrastructure and inadequate judicial resources are the significant reasons for the overburdening of legal system. The litigants have huge trust in the judicial system, but owing to these waiting times, the trust in the legal system and denial of justice erodes the faith litigants put on the legal system.

There are innumerable factors which contribute to the problem in these judicial procedures. The problems are not adequately addressed and there is a shortage of Judges availability. The number of judges compared to the no. of civilians shows a disproportionate amount, due to this inadequate available judge, there is a lack of.

- Some of the other reasons which contribute to this judicial independence includes
 - a. Executive Interference: Instances of delays in judicial appointments, transfer of judges without adequate explanation, and public criticism of the judiciary by political leaders suggest increasing executive influence.
 - b. Political Pressure and Public Perception: Certain judgments perceived as favourable to ruling governments raise concerns about the impartiality of courts. The perception of bias can erode public confidence in judicial independence.
 - c. Internal Challenges: The opaque nature of the Collegium System, lack of transparency in judicial appointments and promotions, and absence of an independent complaints mechanism within the judiciary are internal hindrances.

⁹ <https://privacylibrary.ccgmlud.org/case/supreme-court-advocates-on-record-ssn-vs-union-of-india#:~:text=The%20Court%20by%20a%20majority,it%20more%20responsive%20and%20transparent.,> accessed on 22 May 2025 06:38 pm

- d. **Post-Retirement Appointments:** The trend of judges accepting government posts soon after retirement raises questions about impartiality and independence during tenure.

Some of the notable Key Cases regarding Judicial Independency are :

1. **K. Veeraswami v. Union of India**¹⁰ Laid down that prior sanction of the Chief Justice is necessary before initiating any criminal investigation against a sitting High Court or Supreme Court judge. The Supreme Court held that a **judge** of any **court** is a **public servant** under **Section 2** of the **Prevention of Corruption Act, 1988**.
 - **Upholding independence of Judiciary:**
 - On a complaint filed, prior consultation of the Chief Justice of India (CJI) by the President is required before a criminal complaint (FIR) is 'registered' against a judge or Chief Justice of a High Court or a judge of the Supreme Court.
 - In case of a complaint against the CJI, the Government shall consult any other judge or Judges of the Supreme Court.¹¹
2. **R.C. Poudyal v. Union of India**¹² Demonstrated the judiciary's independence by upholding controversial political decisions without succumbing to political pressures. The case dealt with the issues regarding reservation in the then newly constituted Sikkim's Legislative Assembly. The verdict of this particular case, the learned judges opined that the judiciary possess substantial authority to scrutinize the terms of state admission, particularly when Parliament deviates from established provisions¹³
3. **Justice K.S. Puttaswamy v. Union of India**¹⁴ Reaffirmed judicial independence and the role of courts in upholding fundamental rights. the Indian Supreme Court affirmed the right to privacy as a fundamental right, inherent in Part III of the Constitution, encompassing Articles 14, 15, 19, and 21. The landmark ruling was a unanimous decision of a nine-judge bench, though individual concurring judgments recorded a plurality of opinions on the various facets of privacy. The case stemmed from a

¹⁰ 1991) 3 SCC 655

¹¹ <https://visionias.in/current-affairs/news-today/2025-05-20/also-in-news>, accessed on 23-05-2025 05:49 pm

¹² (1994) Supp (1) SCC 324

¹³ <https://www.drishtijudiciary.com/constitution-of-india/r-c-poudyal-v-union-of-india-1994-supp-1-scc-324>, accessed on 23 May 2025

¹⁴ (2017) 10 SCC 1

challenge to the Aadhaar scheme, and the Court's decision established the right to privacy as a constitutionally protected right.¹⁵

4. Judicial Independence and Protection of Fundamental Rights

The judiciary plays a vital role in enforcing the fundamental rights guaranteed under Part III of the Constitution. Judicial independence is central to this function. Without an autonomous judiciary, rights enforcement would be vulnerable to executive and legislative encroachments. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.¹⁶ The Judiciary shall verdict a matter before them impartially and considering the facts and the legal provisions involved without any unnecessary restrictions, improper influences, political pressure, other threats or interferences

Significant Judgments concerning the protection of Judiciary and Fundamental Rights:

1. **Kesavananda Bharati v. State of Kerala**¹⁷ Established the Basic Structure Doctrine, which went on to become a landmark judgment, of which judicial independence is a part.
2. **Maneka Gandhi v. Union of India**¹⁸: Expanded the scope of Article 21, illustrating the judiciary's proactive role in fundamental rights protection and also mentioning judiciary as the torch bearers in a democratic nation, where people rely on Courts
3. **Vineet Narain v. Union of India**¹⁹ Asserted judicial control over investigative agencies to prevent executive interference. Separation of powers is the one of the fundamentals of our Democratic Nation, unnecessary interference will led to a chaotic nation.
4. **Navtej Singh Johar v. Union of India**²⁰ Decriminalized Section 377 IPC, asserting the judiciary's commitment to constitutional morality and protection of minority rights.

¹⁵ <https://translaw.clpr.org.in/case-law/justice-k-s-puttaswamy-anr-vs-union-of-india-ors-privacy/>, accessed on 23 May 2025

¹⁶ <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary>, accessed on 23 May 2025

¹⁷ (1973) 4 SCC 225

¹⁸ (1978) 1 SCC 248

¹⁹ (1998) 1 SCC 226

²⁰ 2018) 10 SCC 1

5. Conclusion and Recommendations

Judicial independence is not merely a constitutional formality but a functional necessity in any democratic system. The Indian judiciary has consistently strived to protect fundamental rights, uphold the rule of law, and ensure checks and balances. However, contemporary challenges call for reforms:

- a. Institutionalising transparency in appointments through a reformed Collegium or a restructured NJAC that respects judicial primacy.
- b. Setting a cooling-off period for post-retirement appointments of judges.
- c. Strengthening judicial infrastructure and digital access to reduce pendency and improve efficiency.
- d. Establishing an internal accountability mechanism to address complaints against judges without compromising independence.

Judicial independence must remain a sacrosanct value, safeguarded not only by the judiciary but also by the legislature, executive, and civil society. It is the cornerstone for the protection of constitutional rights and the preservation of democracy.



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