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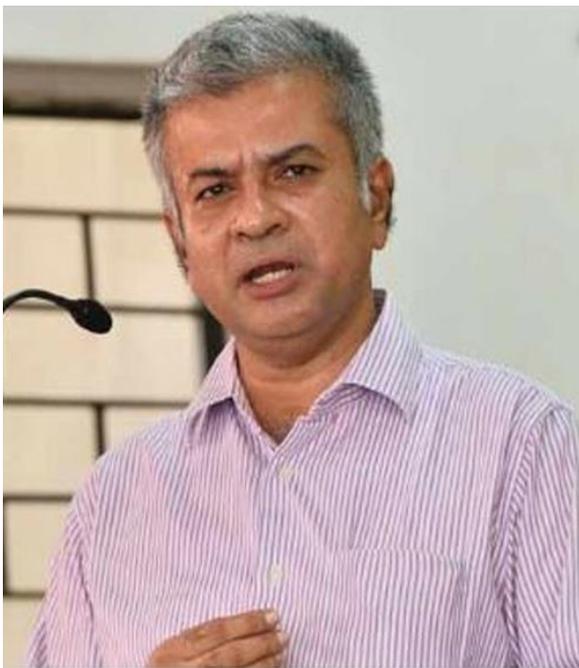
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire 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**

AUTHORED BY - VEDIKA SHRIVASTAVA & DHARUV SHRIVASTAVA

## ***Abstract***

*Judicial independence is the bedrock of a democratic legal system, ensuring impartiality, fairness, and the supremacy of constitutional values. This paper examines the concept of judicial independence, its constitutional safeguards, and the challenges it faces in India, including executive interference, legislative overreach, internal inefficiencies, financial dependence, and media influence. Drawing from landmark case laws, statutory provisions, and comparative studies of judicial systems in the United States, the United Kingdom, and Germany, the paper highlights the gaps in India's judicial framework and proposes reforms such as financial autonomy, transparent appointment mechanisms, and enhanced accountability measures. By addressing these issues, India can fortify its judiciary against external pressures and internal vulnerabilities, ensuring that the rule of law remains paramount.*

**Keywords:** *Judicial Independence, Separation of Powers, Indian Judiciary, Executive Interference, Collegium System, Judicial Reforms, Rule of Law, Constitutional Safeguards, Comparative Judicial Systems, Media Trials, Judicial Accountability, Transparency in Appointments, Supreme Court of India, Legal Reforms, Public Trust in Judiciary.*

## **I. Introduction**

### **A. Background and Context**

"Independence of the judiciary means that the courts should function independently, free from any influence or control by the government or any other external entity." Montesquieu, a famous French philosopher, was the first political philosopher to have put forward the idea of court independence<sup>1</sup>. His teachings maintain that the constitution of powers refers to the principle of separation of powers, which is understood as the fact that legislation, executive,

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<sup>1</sup> Montesquieu, *The Spirit of Laws*, Book XI, Chapter 6 (Thomas Nugent trans., Hafner Publishing Co. 1949) (1748).

and judiciary are provided with their distinct power domain. His thesis impressed the founding fathers of the United States of America.

In essence, this means that a judiciary is an independent political principle that lays down the claim that it should interpret law and Constitution of the land without any influence from above or whatsoever-in other words, an independent judiciary should be free from the clutches of the other branches of government or their attempts to interfere, political parties, public opinion, or any partisan interests.

Division of powers is a fundamental principle of independence of judiciary. In holding their judgment in a matter, judges should have the sole right to pass judgment impartially according to their interpretation of laws and factual knowledge. They should carry out their functions without fear, favor, coercion, or pressure.

Almost everyone will agree with the proposition that the independence of the judiciary is a sine qua non to ensure the vivacious democratic spirit of any country<sup>2</sup>. An independent judiciary becomes imperative for the progress of democracy. It is expected that the judiciary should be free from all external influences and interests of the government and the ruling party, and that the judiciary should not, under any circumstances, work on behalf of them. Judges in an independent judiciary ought to be free to exercise the judicial powers conferred on them, without being moved, pressured, or swayed by fear<sup>3</sup>. Judges completely untainted by personal motives are perhaps the most important forces to guarantee the independence of the judiciary and form the bedrock of a system of courts that is fair and impartial.

In this regard, a landmark judgment can be provided by the case of *United States v. Nixon* (1974), where after hearing the argument, the US Supreme Court unanimously decided against President Richard Nixon and ordered him to produce the tapes of the Watergate trial<sup>4</sup>. This is an example of the enforcement of the rule of law and states that even the President of the USA isn't above the law.

Another similar case is that of a *State Of U.P. v. Raj Narain & Ors* (1975), where the then

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<sup>2</sup> Tom Bingham, *The Rule of Law* (2010)

<sup>3</sup> United Nations Office on Drugs and Crime, *The Bangalore Principles of Judicial Conduct* (2002),

<sup>4</sup> *United States v. Nixon*, 418 U.S. 683 (1974)

Prime Minister of India, Indira Gandhi, was found guilty of electoral malpractices, and her election was, therefore, set aside by the Allahabad High Court<sup>5</sup>.

The birth of the main principle of independence for judges occurred in England and Wales with the passage of the Act of Settlement in 1701<sup>6</sup>. It was from this premise that the separation of powers was strongly supported by Montesquieu's thesis, which inspired the founding fathers of the United States.

The independence of the judiciary in India ought, constitutionally, to be assessed, and certainly not as a self-evident postulate. The idea is to guarantee that adjudication is free from such external political or governmental reference, and, the dimension of freedom accords only to the various judicial functions to the Courts and Tribunals as engendered in the Indian Constitution. The Indian Constitution concedes that what is dignified to the judiciary is a proper role in society.

In India, the independence of the judiciary is contained in the actual words of various articles of the Constitution, even though none of them expressly provide for it. Thus, in *Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala & Anr*<sup>7</sup>, the Hon'ble Supreme Court has ruled that even by constitutional amendments, the fundamental principles of independence from the judiciary and of the rule of law cannot be repealed away from the constitution.

The idea behind the separation of powers in the USA is to maintain the independence of the judiciary, while in other cases such as the UK or India, with their constitutional systems based on parliamentary sovereignty, that independence is hardly ever produced unless by way of judicial supremacy.

To ensure independence from the executive and legislative branches in India, judges in the High Courts as well as in the Supreme Court are appointed by very minimal means of interference from the other two branches of government. Once appointed as such, it is nearly impossible to remove a judge<sup>8</sup>.

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<sup>5</sup> *State of Uttar Pradesh v. Raj Narain*, AIR 1975 SC 865

<sup>6</sup> Act of Settlement 1701, 12 & 13 Will. 3 c. 2.

<sup>7</sup> *(Writ Petition (Civil) 135 of 1970)*

<sup>8</sup> *Constitution of India* » 124. *Establishment and constitution of Supreme Court.* (n.d. b). [http://constitutionofindia.etal.in/article\\_124/](http://constitutionofindia.etal.in/article_124/)

However, sometimes there may be situations where external factors and pressures by different influential quarters may compromise judicial independence. The paper will detail various ingredients of an independent judiciary, its necessity, and obstacles in its way, especially in the Indian context.

## B. Research Objectives

- To analyze the challenges faced by the judiciary in maintaining independence, including external and internal pressures.
- To explore and evaluate reforms needed to strengthen judicial independence in India by addressing institutional, procedural, and systemic issues.
- To examine the role of judicial independence in sustaining democracy and upholding constitutional values.
- To compare judicial independence in India with other jurisdictions to identify lessons that can be applied.

## C. Thesis Statement

*"Despite robust constitutional safeguards, judicial independence in India faces significant challenges, including executive interference, lack of transparency, and financial dependence, necessitating reforms to uphold impartiality and constitutional values."*

## II. Conceptual Framework

### A. Definition of Judicial Independence<sup>9</sup>

Judicial independence implies, in theory, the ability of judges and courts to decide only on the law, free of any undue influence or pressure from other branches of government, private interests, or, indeed, political considerations. This guarantees fair and impartial adjudication. In practice, judicial independence benefits from every factor that protects lengthy terms, rigorous and transparent appointment processes, and independent finances. Fixed terms with security mean that a judge is appointed for a fixed number of years and cannot be removed arbitrarily, thus giving him the freedom to act. A transparent and merit-based appointment process, often by independent commissions, preserves judicial independence by ensuring that only those selected have the necessary qualifications. Financial autonomy is also important, as

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<sup>9</sup> Wikipedia contributors. (2025, February 11). *Judicial independence*. Wikipedia. [https://en.wikipedia.org/wiki/Judicial\\_independence](https://en.wikipedia.org/wiki/Judicial_independence)

controlling budget and resources should not allow people outside the executive to influence the judiciary through funding constraints.

### **Distinction Between Individual/Decisional and Institutional Independence<sup>10</sup>**

Individual or Decisional judicial independence is the right of one judge to arrive at his own conclusions on a given matter based on his interpretation of the law, without external pressures or attempts that directly or indirectly try to influence the judge's decisions in specific cases. It thus ensures the proper functioning of justice, and a decision free from fear or any bias.

On the other hand, institutional independence has a wider incorporation in terms of the separation of the judiciary as a unit from outside influence. These include, but are not limited to, the structure and processes of the court system itself, procedures for appointing and removing judges, and the financial stability of the judiciary. Institutional independence would make sure that no one branch of government can exert any undue influence on judicial decisions, thus protecting the impartiality of the judiciary's role of an arbitrator.

### **B. Constitutional Provisions for Judicial Independence in India**

The Indian Constitution has established a clear structure for the independence of the judiciary as it is central to the rule of law and separation of powers. Some articles in the Constitution not only indirectly but directly assure the independence of the judiciary.

Article 50<sup>11</sup>, under the Directive Principles of State Policy, speaks about the separation of the judiciary from the executive in the state's public services. These provisions aim to ensure that executive influence will not tarnish judicial decisions, thereby reinstating impartiality and autonomy.

Article 124 provides for the constitution and composition of the Supreme Court of India. This lays down the regulations regarding the appointment and removal of judges and thus guarantees their free function without the executive or legislature's undue pressure. Removal of a Supreme Court judge can only take place through an impeachment process in terms of Article 124(4) on

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<sup>10</sup> Mahawar, S. (2022, September 12). *What is an independent judiciary - iPleaders*. iPleaders. <https://blog.ipleaders.in/what-is-an-independent-judiciary/>

<sup>11</sup> *Get a detailed understanding of the Directive Principles of State Policy-Articles 50*. (2022, March 1). Unacademy. <https://unacademy.com/content/nda/study-material/general-knowledge/directive-principles-of-state-policy-articles-50/>

grounds of proved misbehavior or incapacity, requiring a special majority in both houses of Parliament. Such severity is to ensure that the judges in judiciary cannot be removed arbitrarily, thereby fortifying its independence.

Article 217<sup>12</sup> covers the appointment and condition of service of judges of the High Court and Article 222<sup>13</sup> deals with their transfer. The direct transfers of High Court judges by the president on the advice of the Chief Justice of India have been a subject covertly debated. The aim is to reduce the familiarity of the judges with the local executive for the purpose of preserving their impartiality.

Article 121<sup>14</sup> and Article 211<sup>15</sup> restrain Parliament and State Legislatures from discussing the conduct of Supreme Court and High Court judges save in cases of impeachment; this prevents undue influence on judge conduct via a constitutional safeguard.

Article 32 and Article 226<sup>16</sup> empower the Supreme Court and High Courts respectively to issue writs for the enforcement of fundamental rights and other legal rights, thus enabling the judiciary to act as a vigilant protector of the Constitution against all extraneous aggressions.

Article 141<sup>17</sup> makes it clear that decisions of the Supreme Court are binding on all courts in India, thus permitting uniformity and consistency in judicial interpretation. Article 142<sup>18</sup> empowers the Supreme Court to comment or issue orders as may be necessary to do complete justice thereby empowering it with extraordinary authority to uphold fairness as well as constitutional values.

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<sup>12</sup>Constitution of India. (2024, June 13). *Article 217: Appointment and conditions of the office of a Judge of a High Court - Constitution of India*. <https://www.constitutionofindia.net/articles/article-217-appointment-and-conditions-of-the-office-of-a-judge-of-a-high-court/>

<sup>13</sup> Constitution of India (2024b) *Article 222: Transfer of a Judge from one High Court to another - Constitution of India*.<https://www.constitutionofindia.net/articles/article-222-transfer-of-a-judge-from-one-high-court-to-another/>.

<sup>14</sup> Constitution of India (2024a) *Article 121: Restriction on discussion in Parliament - Constitution of India*. <https://www.constitutionofindia.net/articles/article-121-restriction-on-discussion-in-parliament/>.

<sup>15</sup> Constitution of India (2024b) *Article 211: Restriction on discussion in the Legislature - Constitution of India*. <https://www.constitutionofindia.net/articles/article-211-restriction-on-discussion-in-the-legislature/>.

<sup>16</sup> Advocate, R., Punjab and Haryana High Court, Chandigarh, India (2022) *Constitutional remedies under article 32 and 226: An overview, International Journal of Law, Policy and Social Review*, pp. 1–5. <https://www.lawjournals.net/assets/archives/2022/vol4issue4/4-3-20-968.pdf>.

<sup>17</sup> Rai, D. (2023b) *Doctrine of precedent*. <https://blog.ipleaders.in/scope-and-application-of-the-doctrine-of-precedents-under-article-141-of-the-constitution/>.

<sup>18</sup> Supreme Court Observer (2024) *'Complete justice' under Article 142 of the Constitution - Supreme Court Observer*. <https://www.scobserver.in/journal/complete-justice-under-article-142-of-the-constitution/#:~:text=Article%20142%20is%20a%20unique,left%20entirely%20to%20the%20Court.>

Articles 146<sup>19</sup> and 229<sup>20</sup> provide operational independence to the Supreme Court and High Courts in regard to the appointments and conditions of service of their officers and staff. Such autonomy ensures no intervention from the executive in the internal administration of the judiciary.

The collegium system strengthens judicial independence, providing for the filling of vacancies in the higher judiciary according to these recommendations, free from executive control. All these constitutional provisions create a formidable legal shield for the judiciary from encroachments by political, executive, and legislative powers, permitting it to function as the repository of constitutional values.

Judicial independence reaches further strength because of the collegium system that came to develop through judicial precedents such as the Second Judges Case (1993)<sup>21</sup> to ensure that appointments to the judicial service take place without the executive's control. Collectively, these provisions create a solid constitutional dimension in keeping the judiciary free from undue political, executive, and legislative encroachment, thus preserving its status as the guardian of constitutional values.

### III. Challenges to Judicial Independence in India

#### A. Executive Interference

In India, the independence of the judiciary is often threatened and overshadowed by interference from the executive in judicial appointments and transfers. Despite the collegium system, there have been instances when the executive has sought to exercise influence over the selection and transfer of judges, which poses even greater questions of judicial independence. Perhaps one of the most ill-reputed instances of political interference was in 1973, during the era of Indira Gandhi, when, bypassing three senior judges- Justices J.M. Shelat, K.S. Hegde, and A.N. Grover-who had decided against the government in the Kesavananda Bharati<sup>22</sup> case, Justice A.N. Ray was appointed Chief Justice of India. It was an assault on the independent

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<sup>19</sup> Testbook (2024) *Article 146 of Indian Constitution: Officers and servants and the expenses of Supreme Court*. <https://testbook.com/constitutional-articles/article-146-of-indian-constitution>.

<sup>20</sup> Constitution of India (2024e) *Article 229: Officers and servants and the expenses of High Courts - Constitution of India*. <https://www.constitutionofindia.net/articles/article-229-officers-and-servants-and-the-expenses-of-high-courts/>.

<sup>21</sup> *Supreme Court Advocates-on-Record Association v. Union of India*, (1993) 4 SCC 441.

<sup>22</sup> *The Basic Structure Judgment - kesavananda Bharati Judgment* - <https://judgments.ecourts.gov.in/KBJ/?p=home/issues>

working of the judiciary.

During the period of Emergency (1975-77)<sup>23</sup>, other controversies erupted when judges were transferred for supposedly not bowing down to the whims of the government. The Supreme Court in *S.P. Gupta v. Union of India* (1981), popularly called the First Judges case, endorsed executive primacy in judicial appointments, which greatly enhanced government power on the judiciary.

After the promulgation of the NJAC Act<sup>24</sup> in 2014 intended to replace the collegium system with an executive participatory commission, the struggle between the executive and judiciary rose to the fore again. The Supreme Court, in the case of *Supreme Court Advocates-on-Record Association v. Union of India* (2015), declared the NJAC unconstitutional and therefore emphasized that judicial primacy in matters of appointments should be maintained.

Transfers between judges also serve as an avenue for encroachment by the executive. Recently, there is the example of Justice Akil Kureshi, transferred in 2018, who had initially been recommended for elevation as Chief Justice of the Madhya Pradesh High Court but was transferred to Tripura High Court, reportedly because of his judgments adverse to the government<sup>25</sup>.

These instances exemplify the continuing effort for the independence of the judiciary in India. While constitutional safeguards are there to act as a bulwark, executive interference still goes on and keeps the work of the courts active against such constant attacks.

## **B. Legislative Overreach**

Legislative measures may seek to undermine judicial autonomy by modifying the structure and functioning of the judiciary. Laws and amendments perceived as encroachments upon the judiciary's independence have always been a much-discussed concern. One such was the 42nd Constitutional Amendment of 1976<sup>26</sup>, during the Emergency, which curtailed judicial review

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<sup>23</sup> Wikipedia contributors. (2025, February 1). *The Emergency (India)*. Wikipedia. [https://en.wikipedia.org/wiki/The\\_Emergency\\_\(India\)](https://en.wikipedia.org/wiki/The_Emergency_(India))

<sup>24</sup> National Judicial Appointments Commission (NJAC) Act, 2014

<sup>25</sup> Supreme Court Observer. (2021, December 24). *Elevation of Justice Kureshi - Supreme Court observer*. <https://www.scobserver.in/cases/gujarat-high-court-advocates-association-elevation-of-justice-kureshi-background/?utm.com>

<sup>26</sup> Wikipedia contributors. (2025, February 13). *Forty-second Amendment of the Constitution of India*. Wikipedia. [https://en.wikipedia.org/wiki/Forty-second\\_Amendment\\_of\\_the\\_Constitution\\_of\\_India](https://en.wikipedia.org/wiki/Forty-second_Amendment_of_the_Constitution_of_India)

in that it restricted the power of courts to look into the validity of constitutional amendments. This was later corrected by the *Minerva Mills case* in 1980<sup>27</sup>, where the Supreme Court saw fit to reassert judicial review as one of the salient features of the Constitution.

Additionally, laws restricting judicial activism have also attracted concern. Such kinds of moves are usually perceived as legislative overreach in an attempt to congest the executive actions or other forms of legislation with a right vested unto the judiciary to review them, thus upsetting the balance of powers. Since neutral accountability to the law or judicial accountability is paramount, blatant judiciary interference from the legislature can undermine the principle of separation of powers.

### **C. Internal Challenges within the Judiciary**

#### **Issues Related to the Collegium System and Lack of Transparency**

Multiple issues have been raised about the collegium system, which now controls the appointment of judges in India, particularly due to its complete lack of transparency and inward accountability. Established through the Second Judges Case (1993) and reaffirmed in the Third Judges Case (1998)<sup>28</sup>, the system grants the judiciary full control over judicial appointments, with little to no executive or legislative oversight. While this provision ensures judicial independence, concerns about a lack of democratic legitimacy and internal favoritism continue to persist.

The collegium system in India has faced considerable criticism on innumerable counts. Among the more important of these are the inferred faults of its transparency. The reasons behind the appointment and transfer of judges are not made public, and hence the decision-making process remains opaque. The perpetuation behind vacancies in the judiciary always inflates the case-load or pendency. By August 2022, there still existed three vacancies in the Supreme Court and 380 vacancies in different High Courts in India; this showed inefficiency in practically dealing with the stalled judicial positions. Further, the issue of nepotism and favoritism has always stuck to the collegium system. The Law Commission of India, in its report in 2009, stated that nepotism and political privilege were rife during appointments, hence raising the issue of

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<sup>27</sup> Wikipedia contributors. (2024, September 13). *Minerva Mills v. Union of India*. Wikipedia. [https://en.wikipedia.org/wiki/Minerva\\_Mills\\_v.\\_Union\\_of\\_India](https://en.wikipedia.org/wiki/Minerva_Mills_v._Union_of_India)

<sup>28</sup> *Appointment of judges of High court*. (n.d.). Drishti Judiciary. <https://www.drishtijudiciary.com/editorial/appointment-of-judges-of-high-court>

meritocracy. Moreover, the collegium system is under criticism as it includes the exclusion of the executive from the process of judicial appointments-the most truly accused contravention of the principle of checks and balances. Scarcely less stands out the complete absence of women in the judicial hierarchy. Out of the 33 sitting justices in the Supreme Court, only four are women, whereas they represent merely 11.5% in the High Courts of India. This gender imbalance requires keen attention towards enhancing inclusive and representative judicial appointments. The method of transfer of judges has another thicket of controversy to it, as the reasons substantiating such transfers are not made public by neither the Supreme Court nor the government. This opaque procedure gives rise to fears of political executive influence and is a threat to judicial independence<sup>29</sup>.

### **Allegations of Corruption and Nepotism within the Judiciary**

Innuendos of corruption and nepotism created blemishes on the judiciary and its credibility. Several cases where the appointments and the promotions of the judicial officers appeared to be influenced more by personal or political considerations than merit had taken place. In Justice C.S. Karnan's case, 2017, the serving judge of the Calcutta High Court was found guilty of contempt of court after he had made allegations against several judges of the Supreme Court for corruption<sup>30</sup>. This case illustrated the internal conflicts within the judiciary.

In 2018, seven opposition parties, including the Congress, submitted an impeachment notice to Vice-President Venkaiah Naidu against Chief Justice Dipak Misra with signatures of 64 MPs, seven former MPs also signed the notice<sup>31</sup>. The motion accused Justice Misra of "misbehavior" and cited five grounds<sup>32</sup>, which were-

1. *The facts and circumstances relating to the Prasad Educational Trust case<sup>33</sup> show prima facie evidence suggesting that Chief Justice Dipak Misra may have been involved*

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<sup>29</sup> Ravi, V. &. (2024b, December 24). *Collegium system and appointments*. Vajiram & Ravi. <https://vajiramandravi.com/quest-upsc-notes/collegium-system-and-appointments/>

<sup>30</sup> *The curious case of Justice Karnan*. (2017, May 9). Economic and Political Weekly. <https://www.epw.in/journal/2017/18/web-exclusives/curious-case-justice-karnan.html>

<sup>31</sup> Impeachment motion: 64 MPs accuse CJI Misra of misbehavior, Jaitley calls it revenge petition. *India Today*. <https://www.indiatoday.in/india/story/impeachment-motion-64-mps-accuse-cji-dipak-misra-of-misbehaviour-jaitley-calls-it-revenge-petition-1216485-2018-04-20>

<sup>32</sup> Vishwanath, A. (2018, April 20). *5 reasons behind the historic impeachment motion moved against CJI Dipak Misra by Congress*. ThePrint. <https://theprint.in/india/governance/5-reasons-historic-impeachment-motion-cji-dipak-misra-by-congress/51244/>

<sup>33</sup> *Prasad Education Trust v. Union of India*, (SC) BS966185. (n.d.). <https://www.lawfinderlive.com/archivesc/966185.htm>

*in the conspiracy of paying illegal gratification, which at least warrants a thorough investigation.*

2. *That Chief Justice Dipak Misra dealt, on the administrative as well as judicial side, with a writ petition which sought investigation into a matter in which he too was likely to fall within the scope of investigation since he had presided over every bench which had dealt with the case and passed orders in the case of Prasad Educational Trust, and thus violated the first principle of the Code of Conduct for judges.*
3. *That Chief Justice Dipak Misra appears to have antedated an administrative order dated 6 November 2017, which amounts to a serious act of forgery/fabrication.*
4. *That Chief Justice Dipak Misra acquired land when he was an advocate, by giving an affidavit that was found to be false and, despite the orders of the ADM cancelling the allotment in 1985, surrendered the said land only in 2012 after he was elevated to the Supreme Court.*
5. *That Chief Justice Dipak Misra has abused his administrative authority as master of roster to arbitrarily assign individual cases of particular advocates in politically sensitive cases to select judges in order to achieve a predetermined outcome.*

Mr. Venkaiah Naidu, the Chairman of the Rajya Sabha, however, rejected this motion at the preliminary stage, concluding that there was hardly any merit in the allegations<sup>34</sup>. He stated "We cannot allow any of our pillars of governance to be weakened by any thought, word or action," the vice president said in his 10-page order. Sources said Mr. Naidu consulted several top legal and constitutional experts before he took the decision. This sparked an active debate on the mechanism available for judicial accountability and the tortuous process of investigating allegations of impropriety against the judiciary. Discussions were focused on the balance between ensuring independence for the judiciary and instituting effective accountability measures.

In response to these challenges, many suggestions have been put forward, including the Judicial Accountability bill<sup>35</sup> to lay down judicial standards and provide for accountability of Judges of

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<sup>34</sup> Gupta, M. D. (2018, April 23). Venkaiah Naidu rejects Opposition notice for CJI's impeachment, says it lacks merit. *Hindustan Times*. <https://www.hindustantimes.com/india-news/venkaiah-naidu-rejects-opposition-notice-seeking-removal-of-cji-dipak-misra/story-AUgpURlwNw2nz8fjdjRUHI.html>

<sup>35</sup> Gupta, S. (2023). *THE JUDICIAL ACCOUNTABILITY BILL, 2023*. <https://sansad.in/getFile/BillsTexts/LSBillTexts/Asintroduced/59%20of%202023%20as%20intro84202372846PM.pdf?source=legislation#:~:text=to%20lay%20down%20judicial%20standards,High%20Court%20and%20to%20regulate>

the Supreme Court or a High Court or a District Court and, establish credible and expedient mechanisms for investigating individual complaints for misbehavior or incapacity of a Judge of the Supreme Court or of a High Court and to regulate the procedure for such investigation, and for the presentation of an address by Parliament to the President for removal of a Judge and for matters connected therewith or incidental thereto.

Not only external threats such as executive and legislative overreach would threaten judicial independence, but also internal reforms in the judiciary should aim to maintain credibility and integrity of the institutions. A balance must be struck between independence and accountability for the judiciary to remain a bulwark of democracy and justice.

#### **D. Financial Independence**

The independence of the judiciary from any other authority is vital to maintain its autonomy and to deliver justice effectively. The budget of the judiciary in India is prepared by the Registrar General and forwarded to the Union Government's Ministry of Law before being sent on to the Ministry of Finance<sup>36</sup>. This process indicates a financial dependence on the executive branch, which can therefore influence the operational efficiency of the judiciary.

The budgetary restriction has resulted in infrastructural inadequacies, improper staffing of the courts, and delayed case disposal. The Fourteenth Finance Commission (2015-2020) recommended the establishment of 1,800 fast-track courts to deal with heinous crimes and civil disputes pertaining to vulnerable groups<sup>37</sup>. Notwithstanding these recommendations, many courts are averse due to shortage, preventing them from functioning effectively.

Such measures aim to ensure that the judiciary has adequate resources to maintain its independence and enhance its efficiency, thereby improving access to justice for all.

#### **E. Public Perception and Media Influence**

Judiciary functions under public scrutiny, with the media playing a key role in shaping public opinion. High-visibility cases that include but are not limited to prominent politicians, high-profile celebrities, and controversial issues often receive maximum media coverage. Good

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<sup>36</sup> Prakash, B. S. (n.d.). *BUDGETING FOR THE JUDICIARY*. [https://csja.gov.in/images/p1195/s\\_5\\_fiscal\\_and\\_budgetary\\_planning/2\\_surya\\_prakas\\_bs\\_budgeting.pdf](https://csja.gov.in/images/p1195/s_5_fiscal_and_budgetary_planning/2_surya_prakas_bs_budgeting.pdf)

<sup>37</sup> *Fast track courts (FTCs) | Department of Justice | India*. (n.d.). [https://doj.gov.in/fast-track-courts/?utm\\_](https://doj.gov.in/fast-track-courts/?utm_)

journalism enhances judicial transparency, whereas "trial by media," in which media reports shape public opinion before a final verdict by the courts, poses huge threats to judicial independence. The article entitled "Media Trials and Judicial Integrity: An Analysis"<sup>38</sup> highlights the concern raised about media trials that can shape or influence public opinion and judicial processes that risk undermining the fairness of a legal process.

The *Aarushi Talwar murder case* (2008)<sup>39</sup> is one prime example of the perils embedded within exaggerated media reporting. The extensive and often speculative coverage helped shape public opinion before the actual judicial conclusions. Critics maintain that these media trials can indeed skew the course of justice<sup>40</sup>.

In the case of *Sahara India Real Estate Corp. Ltd. & Ors. v. Securities & Exchange Board of India & Anr.* (2012)<sup>41</sup>, it was pointed out by the Supreme Court of India that such media reporting on sub judice matters was concerning. The aspect brought out clearly in this case was about the restraint on part of the media for fair trial while knowing that prejudicial media reporting could affect the trial.

The Law Commission of India's 200th Report, "*Trial by Media: Free Speech vs. Fair Trial under Criminal Procedure (Amendments to the Contempt of Court Act, 1971)*"<sup>42</sup>, considers the impact of media coverage on the right to a fair trial. The report emphasizes the necessity of balancing freedom of the press with the accused's right to an impartial judicial process. Therefore, the commission proposes legal provisions that restrict media reporting that could be prejudicial to investigations or court proceedings from the moment of the arrest until the conclusion of the trial so that no trial by media situations arise that could cause prejudice in public opinion or on a decision in a case.

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<sup>38</sup> Iplf. (2025, January 7). *Media Trials and Judicial Integrity: An analysis*. IPLF. <https://www.ipandlegalfilings.com/media-trials-and-judicial-integrity-an-analysis/?utm>

<sup>39</sup> Wikipedia contributors. (2025, January 29). *2008 Noida double murder case*. Wikipedia. [https://en.wikipedia.org/wiki/2008\\_Noida\\_double\\_murder\\_case](https://en.wikipedia.org/wiki/2008_Noida_double_murder_case)

<sup>40</sup> *Media trial in Aarushi Talwar case – Vartika Nanda*. (n.d.). <https://vartikananda.com/vn-ki-paathshala/media-trial-in-aarushi-talwar-case/>

<sup>41</sup> *Digital Supreme Court reports*. (n.d.). [https://digiscr.sci.gov.in/view\\_judgment?id=NzEzNw==](https://digiscr.sci.gov.in/view_judgment?id=NzEzNw==)

<sup>42</sup> LAW COMMISSION OF INDIA, & Rao, M. J. (2006). TRIAL BY MEDIA: FREE SPEECH AND FAIR TRIAL UNDER CRIMINAL PROCEDURE CODE, 1973. In *200th REPORT* [Report]. LAW COMMISSION OF INDIA.

<https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081057.pdf>

## IV. Case Studies and Examples

### Landmark Cases on Judicial Independence

**Union of India v. Sankalchand Himatlal Sheth (1977)** - The Union of India v. Sankalchand Himatlal Seth case has drastically altered the transfer policies of the judiciary in India. The Supreme Court noted that although the Constitution does confer the authority for transfer, in essence this power has to be exercised in the larger interest of the public and to do justice, not to inflict punishment on errant judges. The decision imposed strict limitations on arbitrary transfers and could not be worked out merely for administrative convenience or without sufficient justification. While consent was not an absolute prerequisite to any transfer, it was pointed out that transfer without consent must be justified by being of substantial public interest. This case trimmed down the executive leverage on judicial transfers and was a crucial step toward the collegium system that was later inaugurated by the Advocates-on-Record case in 1993. In this way, the Sankalchand case ultimately consolidated judicial independence by making transfer processes quite transparent, rational, and protective of the judiciary's right to free operation without outside interference.

**Indira Jaising v. Supreme Court of India (2017)** - The Supreme Court, in *Indira Jaising v. Supreme Court of India (2017)*, critically examined the shortcomings in the existing system of designating Senior Advocates and emphasized the need for greater transparency, fairness, and objectivity. In response to concerns over evaluative criteria, particularly the weightage given to various professional achievements, the Court introduced a structured framework with a point-based assessment system, ensuring a more balanced and transparent designation process. The Full Court retained the discretion to confer the Senior Advocate designation suo motu for particularly distinguished lawyers. While these reforms did not eliminate judicial discretion, they introduced clear procedural safeguards to prevent arbitrary decisions. Ultimately, the ruling sought to enhance trust in the system by promoting judicial accountability, maintaining professional merit as the primary factor for designation, and ensuring that qualified candidates received due recognition without bias.

**Madras Bar Association vs. Union of India (2015)** - The Supreme Court, in the case of *Madras Bar Association vs. Union of India (2014)*, decided on 25th September 2014 to declare the [National Tax Tribunal Act, 2005](#) (the '2005 Act'), which established a National Tax Tribunal, unconstitutional and struck it down. This case forms a part of a series of cases

(all titled, “*Madras Bar Association vs. Union of India*” in the years 2014, [2015](#), [2020](#) and [2021](#)) initiated by the Madras Bar Association, challenging all attempts made to create an executive-dominated tribunal system on the grounds that it impedes the independence and integrity of the judiciary and system of justice as well as the concept of separation of power in India.

## V. Reforms to Strengthen Judicial Independence

To further enhance judicial independence in India, several innovative reforms have been proposed:

### 1. Establishment of an All India Judicial Service (AIJS):

The aim of AIJS is to create a unified recruitment scheme for the sub-ordinate judiciary similar to those of other All India Services like IAS and IPS. The aim is to standardize the selection process to promote appointments on merit and remove regional imbalances concerning judicial standards. It is hoped that the AIJS will then improve the quality and functioning of the lower judiciary, thereby strengthening the base of the judicial system<sup>43</sup>.

### 2. National Mission for Justice Delivery and Legal Reforms:

Initiated in 2011, this mission is aimed at reducing delays and backlog in the judiciary while uniting it under structural mechanism reforms. Major initiatives under this mission include judicial infrastructure development and e-courts implementation, which helps in digitizing court processes for improved and transparent justice delivery<sup>44</sup>.

### 3. Standardization of Sentencing Guidelines:

The government seeks to create standard sentencing guidelines in response to concerns about arbitrary and inconsistent sentences. This move will reportedly allow punishments to be commensurate with the crime, which will enhance justice and predictability in court opinions. This endeavor will reportedly tighten public confidence in the judiciary while strengthening the rule of law<sup>45</sup>.

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<sup>43</sup> [Judicial Reforms In India: Transforming Accountability And Access To Justice- \(Part 02\) - PWOnlyIAS](#)

<sup>44</sup> Ravi, V. &. (2024, December 24). *Judicial reforms*. Vajiram & Ravi. <https://vajiramandravi.com/quest-upsc-notes/judicial-reforms/?utm>

<sup>45</sup> [Exclusive: India aims to curb judges' arbitrary sentences for criminals, sources say | Reuters](#)

The implementation of these reforms requires joint efforts of the judiciary, executive, and legislative branches and active engagement of civil society so that the ideals of justice and confidence in the legal system are upheld.

## VI. Comparative Analysis

Judicial independence remains a cornerstone for democracies across the world, but implementation varies from one jurisdiction to the other. In the United States, a presidential model of judicial appointment exists in which the president appoints judges of the Supreme Court and lower federal courts subject to the Senate's confirmation or denial. Although this provides a check against executive and legislative overreach, the political ideologies of the nominating president and the Senate often play a huge role in the selection of judges, as seen in the high-profile cases of Justices Brett Kavanaugh and Amy Coney Barrett<sup>46</sup>. The Constitution also assures the U.S. judiciary financial independence, for judges cannot have their salaries diminished during their continuance in office, and the safety of tenure is thus assured<sup>47</sup>.

In contrast, the United Kingdom follows a merit-based appointment system under the Judicial Appointments Commission (JAC), established by the Constitutional Reform Act, of 2005. Conversely, the United Kingdom employs a commission system based on the Judicial Appointments Commission (JAC)—which was established by the Constitutional Reform Act, of 2005. This JAC aims to promote the openness and independence of judicial selection and greatly reduce interference from the executive branch. The United Kingdom has a separated executive and judiciary that was enhanced with removal of the Lord Chancellor's judicial position and the subsequent establishment of the Supreme Court of the United Kingdom in 2009, taking over the judicial functions of the House of Lords<sup>48</sup>.

Judges in Germany are appointed through a mixed model, combining executive and legislative

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<sup>46</sup> Debusmann, B., Jr. (2024, July 2). *How the Supreme Court came to dominate the US political debate*. <https://www.bbc.com/news/articles/crg4rz6zedyo>

<sup>47</sup> Salarytracker. (2024, August 27). *Salary reductions*. Salarytracker. <https://www.ncsc.org/salarytracker/special-reports/salary-reductions#:~:text=The%20salaries%20of%20federal%20judges%20are%20protected,have%20also%20constitutionally%20insulated%20their%20state%27s%20judicial>

<sup>48</sup> Unit, C. (2022, April 26). *The Constitutional Reform Act 2005 led to greater judicial independence: politicians and parliament must continue to support it*. The Constitution Unit Blog. [https://constitution-unit.com/2022/04/27/the-constitutional-reform-act-2005-led-to-greater-judicial-independence-politicians-and-parliament-must-continue-to-support-it/?utm\\_](https://constitution-unit.com/2022/04/27/the-constitutional-reform-act-2005-led-to-greater-judicial-independence-politicians-and-parliament-must-continue-to-support-it/?utm_)

participation. Judges of the Federal Constitutional Court (Bundesverfassungsgericht) are elected from both houses of Parliament, where there is assured political consensus. But then, judicial appointments in Germany are quite strictly made on the basis of clear professional qualifications, hence limiting political bias.

### **B. Lessons for India**

India can learn some noteworthy lessons from other jurisdictions which would really be instrumental in strengthening its judicial independence. One of the important takeaways of the United States is the financial independence of the judiciary, where the salaries of judges are constitutionally guaranteed. India may well consider a one-off measure of establishing a National Judicial Budget Commission, thereby granting financial independence to the judiciary and preventing encroachment by the executive on its territory.

Another lesson from the U.K. that India could learn is the need for an independent body to appoint judges. In India, the establishment of a Judicial Appointments Commission, with representation from the judiciary, the executive, the legislature, and civil society, is likely to ensure better transparency and credibility in judicial appointments and address criticisms of the collegium system.

In addition, India may further strengthen tenure security through fixed tenure for Chief Justices, which is already adopted in some democracies, to keep administrative oscillations at bay. Stronger judicial accountability mechanisms, for example, the establishment of independent ethics committees or an ombudsman system, would also help in addressing allegations of favoritism and misconduct by the judiciary and enhance public trust in the institution.

Finally, it is suggested in the 200th Law Commission Report, to protect judicial neutrality, that media trials ought to be regulated by statutory guidelines. In many democracies, contempt laws exist to shield against undue influence in sub judice matters; India can further retouch its framework.

Through these great reforms, India could ensure a more transparent, accountable, independent judiciary, and reinvigorate the rule of law, thereby strengthening democratic institutions.

## VII. Conclusion

Judicial independence is the bedrock of democracy, enabling impartial functioning of the courts without any influence from outside sources. Well-laid down provisions for judicial independence in the Indian Constitution are thwarted by executive involvement, overreach by the legislature, lack of transparency in appointments, and funding constraints. Issues such as nepotism and corruption, among others, stain and corrode the legitimacy of the courts. A comparative study of the judicial experiences of the U.S., U.K., and Germany refers to measures that can be adapted in India: financial autonomy, transparency in appointments, and accountability of the judges. In these reforms, India's judiciary, its rule of law, and the system of public confidence shall be accessed inward and strengthened. Judicial independence must not only be upheld in principle but must be secured through systemic reforms. So active steps must be taken in that direction.

### References/Bibliography

#### 1. Constitutional Provisions and Statutes

- The Constitution of India, 1950 – Articles 50, 124, 217, 222, 121, 211, 32, 226, 141, 142, 146, and 229.
- The Act of Settlement, 1701 (United Kingdom) – Establishing judicial independence in England and Wales.
- The National Judicial Appointments Commission Act, 2014 (Struck down by the Supreme Court in 2015).
- The Contempt of Courts Act, 1971 – Legal provisions related to judicial accountability.
- The Legal Services Authorities Act, 1987 – Governing legal aid and justice delivery.

#### 2. Case Laws

- United States v. Nixon (1974) – Judicial independence in the U.S. Supreme Court.
- State of Uttar Pradesh v. Raj Narain & Ors (1975) – Landmark case on government accountability.
- S.P. Gupta v. Union of India (1981) (First Judges Case) – Discussing executive interference in judicial appointments.
- Supreme Court Advocates-on-Record Association v. Union of India (2015) (NJAC Case) – Striking down NJAC to protect judicial independence.

- Kesavananda Bharati v. State of Kerala (1973) – Establishing the Basic Structure Doctrine.
- Minerva Mills v. Union of India (1980) – Reinforcing judicial review.
- Sahara India Real Estate Corp. Ltd. v. SEBI (2012) – Addressing media trials and judicial integrity.
- Justice C.S. Karnan Contempt Case (2017) – Judicial accountability and contempt proceedings.

### 3. Books and Journal Articles

- Montesquieu, "The Spirit of the Laws" – Theory of Separation of Powers.
- Granville Austin, "The Indian Constitution: Cornerstone of a Nation" – Judicial independence in India.
- Upendra Baxi, "Crisis of the Indian Legal System" – Analysis of judicial reforms and independence.
- H.M. Seervai, "Constitutional Law of India" – Interpretation of Indian constitutional provisions.
- Law Commission of India, 200th Report: "Trial by Media: Free Speech vs. Fair Trial" – Media influence on judicial independence.

### 4. Reports and Official Documents

- Fourteenth Finance Commission Report (2015-2020) – Recommendations on judicial infrastructure.
- Judicial Appointments Commission Reports (UK, 2005) – Study on transparent appointment procedures.
- National Mission for Justice Delivery and Legal Reforms (2011) – Indian judicial reforms.
- Law Commission of India, 2009 Report on Judicial Accountability – Issues of corruption and transparency in the judiciary.

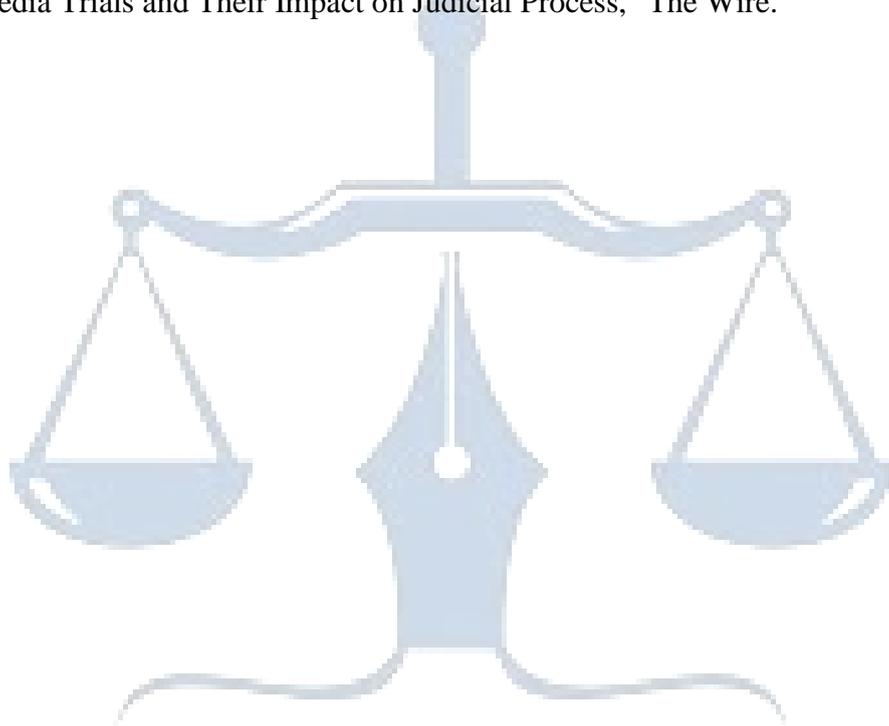
### 5. Comparative Studies on Judicial Systems

- Judicial Appointments in the United States – Role of the Senate and political considerations.
- The Constitutional Reform Act, 2005 (UK) – Establishment of an independent judicial appointment body.

- German Federal Constitutional Court System – Appointment process and independence mechanisms.

#### 6. Media Reports, Commentaries, and Expert Opinions

- "Judicial Independence and Executive Overreach," The Hindu (Various Articles on Collegium System and NJAC Debate).
- "Challenges to the Indian Judiciary," Indian Express.
- "The Supreme Court and Public Trust," Live Law and Bar & Bench.
- "Media Trials and Their Impact on Judicial Process," The Wire.



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