



Ensuring Judicial Autonomy: An Examination Of India's Constitution Provisions

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Abstract:

The concept of judicial independence has varied interpretations among individuals and has evolved over time, including among the members of the constituent assembly. The constitution, through the Articles, addresses the concept of judicial independence. However, it does not provide a clear definition of what exactly is meant by judicial independence. The central discourse on the independence of the court is rooted in the principle of separation of powers, which has been in existence for many years. The principle of separation of powers emphasises the autonomy of the judiciary as a distinct entity from the executive and legislative branches.

Key terms: Judicial Agronomy, Indian Constitution, Constitutional Provisions, Judicial Review, Separation of Powers, Fundamental Rights, Supreme Court of India, Constitutional Amendments, Rule of Law, Indian Judiciary

Overview:

The concept of judicial independence is not novel, however its specific definition remains unclear. The fundamental basis of this philosophy is evidently the principle of separation of powers. Thus, it largely signifies the autonomy of the court from the parliamentary and executive branches of government. However, this solely pertains to the autonomy of the judiciary as a separate entity from the other two branches of government, without considering the individual judges' independence in carrying out their duties. In such a scenario, there is minimal accomplishment. The concept of judicial independence extends beyond the mere establishment of an autonomous institution that is not subject to the authority or influence of the legislative and executive branches.

Judicial autonomy

The fundamental objective of judicial independence is to ensure that judges have the ability to make decisions on cases based solely on the law, without being affected by any other factors. The independence of the judiciary is synonymous with the independence of every individual judge. One of the key factors in identifying and comprehending the concept of judicial independence is whether the judge's independence is guaranteed just as a member of an institution or regardless of it.

Judicial independence holds varying interpretations among individuals and has evolved in significance throughout time, including among various members of the constituent assembly. The constitution, through the Articles, addresses the concept of judicial independence, although it does not provide a clear definition of what this concept entails. The basic discourse on the independence of the court is grounded on the principle of separation of powers, which has been in existence for many years. The principle of separation of powers refers to the autonomy of the judiciary as a distinct entity from the executive and legislative branches.

Another interpretation of judicial independence refers to the autonomy of judges in carrying out their duties impartially, without being influenced by external factors. The concept of independence of the judiciary refers to both the autonomy of the judicial institution as a whole and the autonomy of the individual judges who comprise the judiciary.

Constitutional provisions that ensure the independence of the judiciary.

The attainment of judicial independence and the safeguarding of its constitutional provisions are not accomplished through a singular action, but rather through a prolonged and ongoing battle that occurs within the framework of a dynamic and evolving process. Thus, it may not be feasible to establish all the prerequisites in advance, whether in the constitution or otherwise, that would guarantee and safeguard the enduring autonomy of the court. These conditions will need to be periodically examined and updated. Several factors are essential for the existence of judicial independence, without which it cannot be maintained. Some of these factors may pertain to the overall autonomy of the Judiciary as a whole, while others may pertain to the individual judges' autonomy.

The Constitution implicitly guarantees the independence of the judiciary, including the Supreme Court, through a series of articles (Articles 124 to 127) in Chapter IV of Part V. The purpose of this conflict provision is clearly stated in Article 50, as mentioned above. Our constitution has numerous safeguards to safeguard the autonomy of the judiciary. Below, we will discuss the constitutional provisions.

1. ARTICLE 50: It establishes the division between the judiciary and the executive. The text states that the government must implement measures to ensure the separation of the judiciary from the executive branch in the public services of the state.

2. According to Article 124(2), the President appoints the Chief Justice after seeking advice from the justices of the Supreme Court and the high courts. Additionally, it is necessary to contact the Chief Justice (CJ) when selecting other justices. Hence, the constitution explicitly aimed to restrict the president from possessing absolute discretionary authority in the selection of judges.

3. According to Article 124 (2) (b), a Judge can be removed from their position as outlined in clause 4 of the same Article. According to Clause 4, a Judge of the Supreme Court can only be dismissed from their position through an order from the President, following an address.

A resolution for the removal of the President, based on proven misbehaviour or incapacity, has been presented to the President by both Houses of Parliament. This resolution is supported by a majority of the total membership of each House, as well as a majority of not less than two thirds of the members of each House present and voting in the same session.

4. According to Article 124(7), those who have served as judges in the Supreme Court are prohibited from representing or practicing law in any court or before any authority in India.

5. According to Article 125, the judges' remuneration is protected and cannot be reduced after they have been appointed. The section's proviso stipulates that the privileges, allowances, and rights of a Judge, including those related to leave of absence and pension, cannot be altered in a way that would put the Judge at a disadvantage after their appointment.

6. ARTICLE 129 declares that the Supreme Court is designated as a court of record. It specifies that the Supreme Court possesses all the authorities of a court of record, which includes the authority to penalise individuals for contempt of the court.

7. Article 121 imposes limitations on discussions in Parliament. It specifies that discussions regarding the actions of any Judge from the Supreme Court or a High Court in the performance of their duties can only occur through a motion to present an address to the President, which requests the removal of the Judge as outlined in the subsequent provisions.

8. Article 145 of the constitution discusses the authority of the Supreme Court to establish rules for the practice and procedure of the Court. It states that the Supreme Court, with the President's agreement, has the power to create rules to regulate the overall functioning of the Court.

9. According to Article 146, the Chief Justice of India or any designated Judge or official of the Supreme Court is responsible for appointing officers and servants of the Court.

The constitutional position is the most crucial factor in ensuring the independence of the judiciary. Just as the constitution outlines the structure and authority of the legislature and executive branches, it should likewise include provisions for the judiciary. Alternatively, the constitution can establish the structure and authority of the courts, as well as the process for appointing judges, their length of service, and the conditions under which they hold their positions. The constitution should guarantee a constitutional status of dignity to the judiciary.

The constitution must also guarantee the autonomy of the Judiciary in administrative matters, including the ability to oversee and manage the administrative personnel, create its budget, and maintain court buildings. The system should allow for the establishment of ad hoc tribunals and the diversion of cases from regular courts. It should also guarantee the principle of having a judge who is impartial and independent, and ensure that judges are apart from civil services. Additionally, it should forbid any reduction in the working conditions of judges. Certain issues can be delegated to legislation, but it is crucial for the constitution to provide sufficient guarantees to ensure that the judiciary is respected by the people and can attract highly qualified individuals to serve as judges.

Judicial Immunities

Judicial independence necessitates safeguarding judges from any assaults on their behaviour within the courtroom. This is protected by two branches of law.

Firstly, judges are protected from being held personally liable for any damages resulting from their official actions. Any statements made by judges, advocates, or witnesses in court are fully protected from legal prosecution for defamation, just like parliamentary privilege. To ensure the autonomy of judges, it is customary for there to be no criticism directed towards them by members of the executive branch, however this does not apply to the legislature. Parliamentary protocol forbids the criticism of judges, except in the form of a resolution explicitly expressing criticism or initiating the process of impeaching a judge.

Judges are protected from legal action if they have acted within their jurisdiction or exercised their powers. The current state of affairs remains ambiguous. If a superior court exceeds its authority, it is protected from legal action until it becomes aware of the jurisdictional violation. However, if the magistrate exceeds his jurisdiction, whether unintentionally or intentionally, he is not protected from a lawsuit. The judiciary's immunity is also granted to other participants in court proceedings. This pertains to the legal principle of defamation, wherein any statements made in a court of law are granted absolute privilege. They also benefit from specific safeguards. They are exempt from providing justifications for their decision and will not face any consequences for abstaining from reaching a decision.

Significance of Judicial Independence

Judicial review is the process by which a court examines the actions of a government body or official to see if they are in accordance with the constitution or laws. The notion of Judicial Review is prevalent in many countries that have a written constitution. The constitution is the highest law of the country, and any law that goes against it is considered invalid. The

courts have the responsibility of interpreting the constitution and have the power to declare any law or administrative action that contradicts the constitution as unconstitutional and therefore invalid. This judicial function is necessary because a system based on a written constitution cannot effectively function without a trusted, independent, and fair judge of constitutional matters. It is also important to limit the powers of government bodies to prevent them from acting outside the boundaries set by the constitution. Judicial activism refers to the tendency of judges to interpret and apply the law in a way that goes beyond the literal meaning of the text and takes into account broader societal implications and values.

The Supreme Court recognised Article 142 of the Constitution as an unrestricted authority that it might utilise as needed to fulfil the requirements of justice, exactly as stated. The post-1980 court embarked on a road of unprecedented judicial activism, reaching out to the impoverished, illiterate, and marginalised segments of society. It emerged as a hub of political influence. Activist lawyers and Public Interest groups called upon its jurisdiction.

The constitution establishes a judiciary that operates autonomously. Judicial independence is crucial in ensuring equitable administration of justice. The judiciary should be free from any intervention by the legislature or the executive in order to render a judgement that is perceived as just and equitable. If intervention occurs, there is a possibility that the judges may exhibit bias when making a fair decision. It is challenging to provide alternative methods to enhance the self-sufficiency of Indian courts and prevent their susceptibility to the influence of the other two branches of government.

Article 124 ensures the preservation of the independence of the judiciary. According to Article 124(2) of our constitution, it is recognised that in the current condition of the country, it would be risky to allow the executive branch to have sole authority in appointing judges. This could result in appointments being made based on political reasons, which would undermine the importance of considering merit in potential cases. Therefore, it is essential for the Executive to seek guidance from individuals who possess expertise and qualifications in order to make informed decisions on these issues. However, it does not grant exclusive authority to the Chief Justice to appoint his colleagues, acknowledging the limitations and biases of an individual, regardless of their high status.

The president is not obligated to adhere to the counsel of those whom he seeks guidance from. The President's authority to appoint Judges is primarily ceremonial since they operate on the advise of the Council of Ministers in this regard. In the Indian Constitution, the President does not have the authority to select Judges based only on their own discretion. Instead, the President makes appointments based on the advice and evidence provided by the Council of Ministers. Therefore, the Constitution places importance on the requirement to consult individuals who are inherently well-qualified to provide appropriate guidance on the selection of Judges.

Consultation typically refers to agreement or consensus. The consultation process, in which the President seeks advice, should not be dismissed as a meaningless or pointless exercise, but rather as a significant and important procedure that carries weight and importance. The phrase "shall always be consulted" is used in the initial provision of Article 124(2), while the phrase "shall be appointed" is used... The phrase "after consultation" is used in Article 217(1) to indicate that consultation is required and must be followed as a legal obligation.

Article 124(2) discusses two forms of consultation. One is subject to the President's discretion, while the other is obligatory according to proviso 6. According to Article 217(1), the President is required to engage in a process of "consultation," and this article does not mention any optional or discretionary consultation.

Article 217

According to Article 217(1), the President is responsible for appointing every Judge of a high court. This is done through a warrant signed and sealed by the President after consulting with the Chief Justice of India, the Governor of the State, and, in the case of appointing a Judge who is not the Chief Justice, the Chief Justice of the high court. The appointed Judge will serve until the age of sixty-two, unless they are an additional or acting Judge, in which case their term is determined by Article 224.

The issue of selecting and appointing judges is essential for preserving the autonomy of the judiciary. If the ultimate authority in this matter is vested in the administration, it is conceivable for the government to undermine the autonomy of the judiciary by selecting compliant judges. In 1991, the Supreme Court, in the case of *Subhash Sharma v. Union of India*, highlighted the need of a three-judge panel.

An impartial judiciary that is not influenced by politics is essential for maintaining our preferred political system. The strength of the democratic process, the principles of social and economic equality, the necessity of a socio-economic change as outlined in the Constitution, as well as the principles of the Rule of Law and the fundamental values of freedom and fairness all rely on the attitude and behaviour of the court. The procedure of selecting judges has a direct impact on the quality of the judiciary.

Conclusion,

The Indian Constitution includes the principle of separation of powers, which mandates that the court must maintain independence from the other two branches of government. Nowhere is it explicitly stated that the judiciary is independent. Several measures exist to uphold the autonomy of the judiciary. One of these sections is Section 124, which pertains to the appointment of judges. The appointment of judges upholds the autonomy of the judiciary by deeming the NJAC and the 99th Constitutional Amendment Act as unlawful. The Judiciary in India is required to function as an unbiased entity in order to minimise conflicts between the Government and private individuals, as well as between different government bodies. Furthermore, it is essential to safeguard the fundamental rights of individuals as established in Part III of the

constitution. The courts in the country have broadened the extent of judicial review by including social, economic, and political justice within its jurisdiction. In light of the increasing scope of judicial review, it is crucial that the Judiciary remains free from any form of executive coercion or manipulation.

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