

THE EVALUATION AND PROCEDURES OF INDIAN JUDICIAL SYSTEM: A POLITICAL PERSPECTIVE

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ABSTRACT

The purpose of my article is to bring attention to the political aspect of the judicial process as well as the independence of the judiciary as outlined in the Constitution of India. The division of powers in our constitution between the Legislative Branch, the Executive Branch, and the Judicial Branch exemplifies the principle of the separation of powers quite clearly. The Indian judiciary serves as a watchdog and is responsible for ensuring that both the executive and legislative branches are operating within the bounds established by the constitution. This mission is not considered finished until the judiciary attains its own independence; therefore, the primary objective of this investigation is to determine whether the Indian judiciary is independent and to what degree the political environment influences the judicial process. An investigation on the necessity, benefit, issues, and challenges related to the independence of the court that is based on secondary data. The findings of this study will assist in gaining a better understanding of the importance of both independence and restrictions placed on the judicial system for a democracy to operate effectively. This study is most likely the first of its kind to analyse the political aspect of the judicial process as well as the independence of the judicial system.

Keywords: - Supreme Court of India, Constitution of India, Independence, Judicial System, Political System, and Selection of Judicial officials.

INTRODUCTION

When we talked about having a democratic country, we had to talk about having liberty. When we discussed the importance of liberty, we noted that the country's judicial system must be free from outside influence.

According to Dr. Ambedkar, "there can be no difference of opinion in the House that our judiciary must be independent of the executive and must also be competent in itself. This is a matter on which there can be no disagreement in any form." The question that arises next is how these two things may be safeguarded.

The constitutional framework of India takes the shape of a federal system. We can also say that India's government is split into two parts: the Central government, and the individual state governments. And both governments are further divided into three different organs such as the executive, the legislative, and the judiciary. The idea of separation governs how each of the three organs execute their work. Despite the fact that the Indian constitution does not accept the principle of separation of powers in its purest form, the functions of each organ have been carefully

apportioned to ensure that no one may be sidetracked. The judicial system was given a significant amount of authority by the constitution of India. The judiciary is also tasked with analysing the political system and providing interpretations of the constitution. The judicial system serves not just to defend the rights of the general population but also to defend the constitution. The independence of the judicial system is crucial to the existence of a constitutional democracy and a free society. It is essential that the entire judicial system, including each and every judge, be free from both the influence of politics and political interference in judicial matters. Therefore, the judicial system needs to be autonomous and unaffected by political power or any other influence.

RESEARCH OBJECTIVES

1. In order to bring attention to the political element of the judicial process and the independence of the judiciary as outlined in the constitution of India.
2. to determine whether or not the Indian judicial system is independent, as well as the degree to which the political climate affects the judicial process.

RESEARCH METHODOLOGY

The purpose of this study, which is based on secondary data, is to shed light on the political aspect of the judicial process as well as the independence of the judiciary as outlined in the Constitution of India. Research on doctrine is restricted to secondary sources only.

INDEPENDENCE OF THE JUDICIARY AND THE INDIAN CONSTITUTION

1. The appointment of judges: The methods of appointing the Chief Justice of India and the other judges of the Supreme Court are outlined in Article 124, Clause 2, of the Indian Constitution. Similarly, Article 217, Clause 1, of the Indian Constitution outlines the methods of appointing the Chief Justice of India and the other justices of the High Courts in India. The President of India holds the primary responsibility for making appointments to the Supreme Court and High Court, including those of the Chief Justice and other judges. However, a thorough reading of the text revealed that the President is the one who is responsible for appointing each judge of the Supreme Court. Additionally, the President is required to consult with the judges of the High Court and the Supreme Court of each state before making the appointment. The President of India, in collaboration with the Chief Justice of India and the Governor of the relevant state, is responsible for appointing each and every judge of a High Court in India. In addition, the President is required to confer with the Chief Justice of the High Court prior to the appointment of any additional judges to the High Court. As a result, the ability to designate judges will no longer rest solely with the executive branch. When it comes to the appointment of judges, the organ of the judiciary is a crucial consideration.
2. The terms of office of the judges: The terms of office of judges on the Supreme Court and in high courts are protected and fixed. Judges are allowed to remain in office so long as they do not reach the maximum age allowed by the Constitution. The age restriction for supreme court judges is set at 65 years old in Article 124(2), while the age limit for high court judges is 62 years old in Article 217(1). They can only be removed from office for being incapable of performing their duties or for engaging in inappropriate behaviour. After a

resolution has been presented against a judge in both houses of parliament, the President has the authority to remove that judge from office.

3. salary and allowances: The constitution specifies both the salary and the allowances that judges are entitled to receive. The Consolidated Fund of India and the Consolidated Fund of State each contribute to the payment of the salaries of the nation's Supreme Court judges and High Court judges, respectively. Unless there is a severe financial crisis, salaries are not subject to modification. The privileges and allowances of a judge should not be changed in a way that would be detrimental to his position, regardless of whether he is on leave, receiving an allowance, or retired.
4. The ability to administer punishment: Both the Supreme Court and the High Court have the authority to administer punishment for willful disobedience of court orders. Courts now have this authority because of Article 129.
5. Restrictions on the ability to discuss the behaviour of judges: The provisions of Article 121 state that the behaviour of judges serving on the Supreme Court or on a high court may not be the subject of discussion in parliament. According to Article 211, judges in the state legislature are likewise afforded the same privilege as other members of the legislature.
6. The separation of the judiciary and the executive branch Article 50 states that "the state shall take steps to separate the judiciary from the executive in the public services of the state." This provision addresses the separation of the judiciary and the executive branch. The impartiality of the judicial system is intended to be protected by the implementation of this article's provisions.
7. The power and jurisdiction of the Supreme Court: The power and jurisdiction of the Supreme Court cannot be limited by Parliament. It is only the parliament that has the authority to alter the monetary limits for filing an appeal with the Supreme Court, impose supplemental powers on the Supreme Court, and confer the authority to issue directions, orders, or writs for any reason that is not specifically mentioned in Article 32.
8. The Power of Judicial Review: The Indian Constitution's Articles 13, 32, 226, 131–136, and 143 all deal with the power of judicial review that both the Supreme Court and the

High Court have. Both the Supreme Court and the High Court have the authority to strike down any laws passed by the legislature that are found to be unconstitutional and in violation of basic rights. Because of the expansive nature of this power, both the Supreme Court and the High Court have invalidated constitutional amendments on the grounds that they violate the fundamental structure.

PRESERVING THE JUDICIARY'S SELF-DETERMINATION AND INDEPENDENCE

The independence of the judiciary was called into serious question throughout the first two decades of the Supreme Court, which ran from 1950 to 1973. It was demonstrated that the decisions of the Supreme Court on property, aggression, and economic reform differed in a number of important respects. However, the judicial system moved into a new period of human rights, civil rights of citizens, and communal rights after the year 1973. Following the emergency that occurred in 1977, the Supreme Court was asked to maintain the independence of the judiciary in light of the negative experiences that the executive branch had had with relation to intervention in judicial appointments and arbitrary transfers of judges. This phase was demonstrated in three extraordinary cases that are together referred to as the First, Second, and Third Judge's cases.

The Argument of the First Judge

In the case known as S.P. Gupta vs. Union of India 4 (also known as the First Judge's Case), which was heard in 1982, a panel of five judges from the Supreme Court of India examined the process by which judges of the Supreme Court and the High Court are appointed.

The appointment of a judge to the Supreme Court is laid out in Sub-clause (2) of Article 124. Specifically, the following is stated: 124: Establishment and constitution of the Supreme Court of the United States (2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose, and shall hold office until he attains the age of sixty-five years; provided, however, that in the case of the appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted.

The process of selecting judges for the High Court

is laid out in detail in Clause 1 of Article 217, which reads as follows: "217. The appointment of a Judge of a High Court and the terms and circumstances of that office.

The President of India, after consultation with the Chief Justice of India, the Governor of the State, and, in the case of the appointment of a judge other than the Chief Justice, the Chief Justice of the High Court, shall appoint every Judge of a High Court by warrant under his hand and seal. The judges of the Supreme Court and the High Court are required to be appointed by the president in accordance with Article 124(1) and Article 217(1), respectively. When we talk about the President, we're referring to an executive body, which has a completely political component. One of the conditions that can work in favour of the judiciary is that appointments must be made following "Consultation" with the Chief Justice of India and the other functionaries that are listed in the article. In the issue at hand, the court decided that "concurrence" is not a suitable synonym for the word "consultation," as that word is more often understood. In a separate ruling, the Supreme Court decided that the President is not obligated to take the counsel of those he consults, but he is not allowed to disregard anyone whose consultation is mandated by the Constitution. And if there is any reason for the President not to accept the advice of those whom he is required to consult, then he is free to ignore that advice.

The argument put forward by the Second Judge is as follows

Since 1982, there has been no unequivocal proof that the Executive Branch abused its power of nomination. In 1993, after ten years had passed, the Supreme Court of India heard the case Advocates on Record Association vs. Union of India. The nine-judge Bench of the Supreme Court of India had overruled the principle laid down in S.P. Gupta's case by a majority of 7 to 2 and held that in the matter of the appointment of judges of the Supreme Court and the High Courts, the President is bound to act in accordance with the opinion of the Chief Justice of India, who would tender his opinion on the matter after consulting his colleagues. This decision was made by the nine-judge Bench of the Supreme Court on May 5. The court went on to rule that the appointment of the Chief Justice of India must be based on seniority, which was another one of its rulings. The majority of the justices agreed that the Chief Justice of India

should be the one to initiate proposals for the appointment of judges to the Supreme Court and the High Courts, as well as proposals for the transfer of judges from one High Court to another. This was the consensus of the majority of the justices. Mr. Justice J.S. Verma, who along with A.N. Ray, A.S. Anand, and S.P. Bharucha gave the majority opinion, made the following observation in this context: "The executive aspect in the selection process has been reduced to a minimum and political influence is abolished. It is for this reason that the phrase 'consultation' was used instead of the word 'concurrence' in the constitution; nonetheless, this was done solely to show that absolute discretion was not given to anyone, not even to the Chief Justice of India as an individual, much less to the executive. Therefore, it can be said that the Supreme Court has determined that "consultation" is synonymous with "concurrence."

The Argument of the Third Judge

The Case Before the Third Judge Regarding the consensus viewpoint of the Chief Justice and his senior colleagues, the outcome of the case involving the Second Judge has been left up in the air. The presumption was made that the Chief Justice would confer with his senior colleagues and that the Chief Justice's recommendation would be widely agreeable and free of controversy. What would happen if the Chief Justice did not consult his senior colleagues or if it became clear that the majority of the currently serving justices on the Supreme Court did not support the Chief Justice's appointments? During the eight months that Chief Justice Punchhi served as Chief Justice of India, a number of controversial recommendations for appointments were made, and the Law Ministry accused Chief

Justice Punchhi of failing to confer with his colleagues as required by the Second Judge's case. In the case referred to as Presidential Reference 6, a nine-judge bench of the Supreme Court came to the conclusion that "It is desirable that the collegium should consist of the Chief Justice of India and four senior most puisne judges of the Supreme Court." Consultation with a "collegium of judges" is required prior to the formation of the Chief Justice of India's view, which has primacy in the subject of recommending candidates for nomination to the Supreme Court.

CONCLUSION

The rule of law and the fundamental assurance of a fair trial both require judicial independence. Judicial independence is a prerequisite for judicial independence. Therefore, the independence of the judicial system was elevated to a preeminent position in the context of the institution of the judicial system. The article of the constitution demonstrates that the heads of the courts are appointed either directly or indirectly by the President, who serves as the executive head. The President is an influential figure in American politics. It has also come to the attention of the Judiciary that the Executive Branch plays a significant role in the selection of the Judicial Branch and that this role, along with the Executive Branch's participation in the selection process, constitutes an essential component of the Constitution. The judicial system must be able to differentiate between cases that are solid and legal and cases that are weak or motivated by politics. Judicial Accountability and Judicial Independence are two concepts that have to go hand in hand in order to guarantee that the Constitution will serve its intended purpose.

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