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Ma’am urges the young researchers to focus on the topics which are innovative and most importantly any field which interests their legal acumen.

Ma’am says that that research is at a very nascent stage in India, especially in the field of law and wishes to students that they should start focusing on improving their research skills and publishing quality papers.”

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We are here to provide you with a lucid way of learning law with the help of daily blogs pertaining to the latest/other legal issues going on in the country.

We also provide legal advice and needed legal awareness to the masses with a pioneering objective of reaching the underprivileged and serving the idea of Free Legal Aid to them. (Article 39A of the Constitution of India).

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**INDEPENDENCE OF INDIAN JUDICIARY – A CRITICAL ANALYSIS OF THE JUDICIAL SYSTEM**

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**MR. NILANG AMIT SONI**

*Student, United World School Of Law, Karnavati University, Gandhinagar*

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***Abstract:*** *The independence of the Indian judiciary is essential for the country's democratic system. Alongside the executive and legislature, the judiciary is one of the three pillars of Indian democracy. The Constitution of India mandates an independent judiciary that is free from external influence, be it from the government, political parties, or other factors. Various mechanisms are in place to maintain the independence of the judiciary, including a strict appointment process, fixed tenure, financial autonomy, and constitutional safeguards against removal except in extreme circumstances. Additionally, the judiciary has the power of judicial review, enabling it to invalidate any unconstitutional law or executive action.*

*In recent years, concerns have arisen about the independence of the Indian judiciary, such as accusations of a biased appointment process and delays in filling higher judiciary vacancies. Corruption and nepotism allegations have also led to a decline in public trust in the judiciary. Despite these challenges, the Indian judiciary has been instrumental in upholding the rule of law and safeguarding citizens' rights. The Supreme Court has delivered landmark judgments in environmental, human rights, and social justice issues, among others. The judiciary has also held the government and other powerful entities accountable. In conclusion, the independence of the Indian judiciary is a fundamental aspect of the country's democracy. While challenges to maintaining its independence exist, the judiciary's critical role in upholding the rule of law and protecting citizens' rights necessitates its independence and impartiality.*

## INTRODUCTION

### THE THOUGHT OF INDIAN JUDICIARY

*“If impartiality is the soul of the judiciary, independence is the lifeblood. Without independence, impartiality cannot thrive. Independence is not Independence for judges to do what they like; but the independence of judicial thought.”*

Ensuring the independence of the judiciary is a crucial aspect of democracy, particularly in countries like ours. To achieve this, it is necessary to prevent interference from the government, including the legislature and executive branches. Only an impartial and independent judiciary can uphold the rights of individuals and administer justice without bias or prejudice. Therefore, it is vital that all levels of the judicial system, including the Supreme Court, High Court, and District Court, are allowed to function without any external pressures. In India, the judiciary serves as the guardian of citizen's rights in a democratic society.<sup>1</sup> Consequently, the framers of the Indian Constitution were mindful of the type of judiciary that our country required.<sup>2</sup>

Dr. B.R. Ambedkar responded to this concern of the constituent assembly members, stating, “There can be no difference of opinion in the House that our judiciary must be both independent of the executive and must also be competent in it. And the question is how these two objects can be secured.”

In countries with composed constitutions, particularly in India and the US, the doctrine of partition of Powers acquires significance. In such countries, the independence of judiciary is expected to work successfully and unbiased to guarantee an arrangement of governing rules for different organs. If not, a majority rules system is simply a delusion. Without an autonomous independence of judiciary, a vote-based system would be overpowered and obliterated. There is a need to investigate in the event that the independence of judiciary can assume such a vital part with practically no obstacle or interference.<sup>3</sup> Be that as it may, keeping up with judicial independence is a huge undertaking, all the more so in a nation like India where the governing body, leader and legal judiciary perform covering functions. Independence of the legal judiciary relies on a few factors like the predominant world of politics, the unbiased stand of the judges, and individuals and their confidence in the court system and so on. The facts confirm that there can be no restraint equation to quantify judicial Independence.

The Constitution of India ensures independent judiciary.<sup>4</sup> Nonetheless, safeguarding judicial independence starts with the Constitution administering the court. Eventually, the freedom of judiciary lays on the creation and backing of a by and large on climate by all state establishments, including the independence of judiciary and the overall population. Judiciary's independence should likewise be constantly safeguarded against unanticipated conditions and moving social, political, and monetary conditions; it is too delicate to be in any way left unprotected.<sup>4</sup>

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<sup>1</sup> UOI v. Sankalchand Himatlal Sheth (1997) 4 SCC 193 at 212.

<sup>2</sup> S.P. Tripathi, “Indian and Protected History” (Focal Regulation Distributing, third Edn., 2011).

<sup>3</sup> M.P. Singh, “Frameworks of Indian Legitimate & Constitution History” (Widespread Regulation Distributing, eighth Edn., 2006).

<sup>4</sup> Ishtiaq Husain Qureshi, The Administration of the Mughul Empire (Janaki Prakashan Patna, 1<sup>st</sup> Edn, 1979) 253.

The independence of the judiciary is crucial for maintaining the rule of law and for ensuring that the judiciary can act as a check on the power of the executive and legislature. However, in India, there have been concerns about the independence of the judiciary. One of the main issues is the appointment process for judges, which is seen as lacking transparency and being influenced by the executive.<sup>5</sup> This has led to accusations that the judiciary is not truly independent. Furthermore, there have been allegations of bias and lack of impartiality in the decision-making of judges. Some have suggested that judges may be influenced by political considerations, which can undermine the independence of the judiciary.

In conclusion, while the independence of the judiciary is protected by the Indian Constitution, there are challenges that need to be addressed in order to ensure that the judiciary is truly independent and can maintain its credibility. Steps need to be taken to address the concerns about the appointment process, the slow pace of justice delivery, and the impartiality of judges. By doing so, India can strengthen its democracy and protect the rights of its citizens.

### STATEMENT OF PROBLEM

An independent judiciary is essential for a free society and a constituent majority rules government. It guarantees law and order and acknowledgment of basic liberties and furthermore flourishing and solidness of the general public. The Independence of the judiciary is ordinarily guaranteed through the Constitution, yet it might likewise be guaranteed through regulations and other reasonable standards and practices. Following the constitution of US, practically all constitutions set down essentially the establishment in the event that not the whole structures of an independent judiciary. The constitutions or the fundamental regulations on Independence of judiciary are notwithstanding, just the beginning stage during the time spent getting Judicial Independence. At last, the Independence of judiciary relies upon the entirety of a positive climate made and upheld by all state organs including the Independence of judiciary and the general assessment. The independence of legal judiciary likewise should be continually prepared for the startling occasions and the evolving social, political, monetary circumstances; it is too delicate to possibly be left unguarded.

India has given itself a liberal constitution in the Euro-American practices, which targets laying out a free and popularity-based society. It additionally focuses on flourishing and wellbeing of the general public and mass. Its creators accepted that such a general public could be made through the assurance of principal privileges and an independent judiciary to watch and uphold these privileges. In this way the drafters of the Indian Constitution managed these two viewpoints with greatest and indistinguishable vision. All these above issues led the researcher to take up this particular topic wherein an effort has been made to adumbrate.

### OBJECTIVES OF RESEARCH

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<sup>5</sup> S.P. Gupta v Union of India, AIR 1982 SC 149, (1981) 2 SCC 365.



The main objective behind this research is to understand why the independence of judiciary is important and what constitutional measures are available to protect its independence, and to find issues related with why our judiciary is not able to be independent even after having many provisions in the law as well as in the constitution.

The primary objectives of this dissertation are as follows:

- a. To discuss and analyse the constitutionality of the Independence of Indian Judiciary.
- b. To understand the Constitutional perspective of judicial system.
- c. To understand the important character of independent judiciary in India and glance through the American and British system.
- d. To study about the scenario of the independence of the judiciary Constitutional retrospection.
- e. To examine this applicability of the administrative safeguards for judicial independence available in India.

The objectives are proposed to be secured primarily by analyzing the judicial behaviour and trends based on the judgments by the Hon'ble Supreme Court as well as the Hon'ble High Courts.

### RESEARCH QUESTIONS

1. Analyze the constitutionality of the Independence of Indian Judiciary?
2. Explain the Constitutional perspective of judicial system?
3. Explain the important character of independent judiciary in India?
4. What do you understand by the scenario of the independence of the judiciary Constitutional retrospection?
5. Examine the applicability of the administrative safeguards for judicial independence available in India?

### HYPOTHESIS

The Indian system of judicial independence is based partly upon the experience of the foreign judicial systems and partly on the exigencies of our own system. But the concept of independence of judiciary has not been attained in its fullest form in our system of justice. As observed from the constitutional provisions, the statutory enactments and judicial decisions, the state action is mostly responsible to achieve the concept of independence of judiciary.

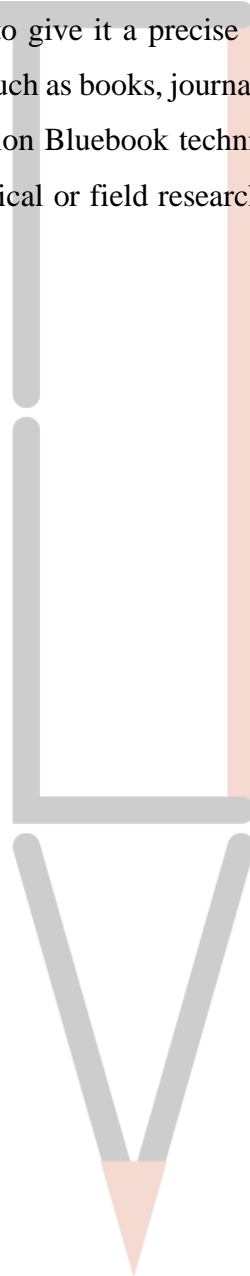
Based on the preliminary examination the initial hypothesis is formulated as follows:

- i. The concept of Independence of Judiciary has not been maintained in its fullest spirit and courage of Indian Constitution.
- ii. The excessive intrusion of executive and legislature is impairing and completely overlapping the basic concept of independence of judiciary.

The independence of judiciary emerged as the basic structure towards achieving equality and justice, but it failed to achieve its object in its true spirit.

### RESEARCH METHODOLOGY

This research falls under this ambit of research is divided into different types such as analytical and descriptive method. This research is based on information which has been already available and analyzed those facts to make an evolution of this research. This research involves secondary data. In this research, the researcher mostly used books, articles, journals, etc. Since the research is largely based on these secondary and electronic sources and no empirical method or field research has been done while making this dissertation. In order to get a better understanding of this topic, scholar will adopt historical analysis of this right to trace its evolution. Doctrinal research will be used for completion of this venture to give it a precise and productive structure. Mostly these materials will be collected through secondary sources such as books, journals, reports, articles and from many other online as well as printed sources. The Twentieth Edition Bluebook technique is utilized for citations. The study acknowledges the limitations of not conducting empirical or field research, but aims to provide insights through the analysis of available data.



## UNDERSTANDING INDIAN JUDICIARY & ITS CHALLENGES

### MEANING OF INDEPENDENT JUDICIARY

It is widely recognized that the independence of the judiciary is fundamental to creating a society that is free and just under the rule of law. An impartial judiciary is essential to ensuring good governance, and the doctrine of Separation of Powers, which delineates the roles and responsibilities of the legislative, executive, and judicial branches of government, entrusts the judiciary with the responsibility of serving as a watchdog. The judiciary must check that the executive and legislature operate within their constitutional limits and refrain from interfering in each other's functions. However, the judiciary cannot fulfil this role if it is not independent. An independent judiciary is crucial to upholding the doctrine of Separation of Powers.

Although the Indian Constitution provides for the independence of the judiciary, the practical realization of this objective requires creating a favourable environment that fosters cooperation among all state organs. The provisions introduced by the framers of the constitution serve as an initial step towards achieving the independence of the judiciary.<sup>6</sup> However, it is essential to safeguard the independence of the judiciary against changing economic, political, and social circumstances.<sup>7</sup>

Despite existing for many years, the meaning of the independence of the judiciary remains unclear. Although the Indian Constitution includes provisions addressing the independence of the judiciary, it does not provide a clear definition of the concept.

The doctrine of separation of powers, which has existed for several years, is the primary source of discussion on the independence of the judiciary. According to this doctrine, the judiciary should operate independently of the executive and the legislature.<sup>8</sup>

Additionally, scholars who have researched the topic have attempted to define the independence of the judiciary through the "constituent mechanism," which refers to what constitutes the judiciary. Scholars often define the judiciary by discussing the independence of the judges who make up the judiciary. Therefore, the independence of the judiciary refers to the unbiased exercise of functions by judges, free from any external factors. Thus, the independence of the judiciary encompasses both the independence of the judiciary as an institution and the independence of the judges who are part of the judiciary.<sup>9</sup>

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<sup>6</sup> UOI v. Jyoti Prakash (1971) 1 SCC 396.

<sup>7</sup> For this situation *Bhagwati J.*, conveys the judgment, 'Equity is a unique idea with numerous viewpoints, and it cannot be "cribbed, cabined and bound" inside the customary and dogmatic points.' According to a positivistic perspective, correspondence is contradictory to discretion, and as a matter of fact balance and mediation are nemeses; one has a place with law and order in a republic. Where a demonstration is erratic, it is certain in it that it is inconsistent both as per political rationale and established regulation and is along these lines violative of Article 14.

<sup>8</sup> Common Cause v. Union of India, (2018) 5 SCC 1.

<sup>9</sup> Arghya Sengupta, "Judicial Independence and the Appointment of Judges to the Higher Judiciary in India: A Conceptual Enquiry" (2012) 6(1) Indian Journal of Constitutional Law 116.

## ROLE OF INDIAN JUDICIARY

The Indian judiciary plays a crucial role in maintaining the rule of law and safeguarding the fundamental rights of citizens. It serves as a counterbalance to the powers of the executive and legislative branches, ensuring that justice is dispensed impartially and equitably to all, regardless of their social, economic, or political standing. However, the judiciary has been criticized for its sluggish and overburdened justice delivery system, lack of diversity, and occasional instances of corruption and political interference. Consequently, continual efforts are necessary to reform and reinforce the judiciary's integrity to maintain its status as a key component of democratic governance and justice in India.

Some other roles are as follows:

- a) To balance the due distinction to the desires of the designers of the constitution.
- b) Attaining the administrative standard of keeping up with the harmony between the different organs of the government or among the states.
- c) Watching and safeguarding the basic freedoms of the citizens.
- d) Applying and Judiciary the regulations made by the legislature.
- e) To check and adjust the authoritative or leader activities of the government.
- f) Under Article 32 and 226 the Supreme Court and the High Court separately has the power to give writs or orders for accomplishing the targets of those articles.

Judicial Independence expects that the Judges ought to be safeguarded against the assaults on their lead in court. This is gotten from two parts of regulation. First and foremost, judges are safe from individual activity for harms in regard of their own activity. Anything said by in the court by judges, is totally special and immune against an activity of criticism and defamation and to this degree is like parliamentary privilege.

The Indian judiciary has the important role of interpreting laws, upholding the constitution, and ensuring justice for all citizens. However, it has been criticized for being slow, inefficient, and having a backlog of cases, resulting in delayed justice and inequality for those without access to expensive legal representation.<sup>10</sup> Additionally, there are concerns about political influence, corruption, and nepotism undermining the judiciary's independence and impartiality. The lack of diversity in the judiciary is also a concern, as it can lead to biased judgments and systemic discrimination against underrepresented groups. Overall, while the judiciary is essential for protecting citizens' rights, addressing these challenges is necessary to improve its efficiency, independence, and accessibility to all citizens.<sup>11</sup>

Inside Established plot, Indian judiciary plays out a guard dog role, practicing force of legal survey over the Acts of the governing body and the executive. As an autonomous judiciary, under the sacred plan, the Court plays had its impact with next to no trepidation and favour over the Acts of the council and the chief. At the point when it

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<sup>10</sup> S.K. Puri, Indian Legal & Constitutional History 44-46 (Allahabad Law Agency, 6th Edn., 1983).

<sup>11</sup> See J.S. Verma, "The Constitutional Obligation of the Judiciary" 1 (7) SCC Journal (1997).

appears to it, that any regulation and activity of council and leader individually abuses key privileges, it not just developed regulations to fill vacuum yet additionally has given a few important bearings to states out in the open interests. The free, fair and fair judiciary can back established order to get and give to every one of the residents of India Judiciary social, monetary and political.<sup>12</sup>

The introduction of the Indian Constitution forces upon the state-run administrations to give Judiciary to all which must be gotten through unprejudiced judiciary. Similarly, the security and requirement of essential privileges as imagined to a limited extent III of Indian Constitution like right to correspondence, right to individual freedom, right against abuse, instructive and social privileges have been the obligations of the judiciary. The role and meaning of fair-minded judiciary likewise turns out to be more unmistakable on the grounds that India is a government assistance state where in generally speaking government assistance of the residents should be accomplished. In this manner judiciary has arisen as protector of the constitution and the standards revered in that. Henceforth the role of judiciary has a significant impact in keeping the general public as a dynamic one. Judiciary deciphers the law as indicated by the requirements and goals of the people.<sup>13</sup> The judiciary ought to surrender mechanical understanding of social government assistance regulations and needs with comply with standard of gainful translation to give greatest advantages on people.

### CHALLENGES OF JUDICIARY

The Indian judiciary confronts various difficulties, such as a backlog of cases, insufficient infrastructure, insufficient funding, and a shortage of judges and support staff. These obstacles lead to extended delays in administering justice and erode citizens' trust in the judiciary. Moreover, there are concerns about corruption, political intervention, and favouritism that can undermine the independence and impartiality of the judiciary. The lack of diversity in the judiciary is also a significant challenge as it can result in biased verdicts and discrimination against marginalized communities. Additionally, the judiciary needs to adapt to changing societal, economic, and technological developments to stay relevant and efficient. Addressing these challenges will require a coordinated effort by the government, judiciary, and civil society to enhance the functioning of the Indian judiciary.<sup>14</sup>

Judiciary does not go under the ambit of the Right to Information scrutiny. In the working of the Indian judiciary system, the significant issues like the nature of justice and responsibility are not known to the residents appropriately. There is likewise a requirement for straightforwardness in the arrangement of the appointed authorities. Right to know is a piece of the right to speak freely of discourse and articulation, as given by the Constitution, in any case, the current situation disregards this crucial right. The citizens all in all correct to know

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<sup>12</sup> M. Krishna Swami v Union of India [1992] 3 SCC 647.

<sup>13</sup> Indira Jaising, "Independence of the Judiciary in India: A Critical Appraisal" (2014) 56 JILI 1.

<sup>14</sup> S.P. Sathe, *Judicial Independence: The Contemporary Debate* (Oxford University Press, 2002).

is additionally a worldwide pattern likewise upheld by the judicial choices. At the present time we do not have a straightforward and biased proof arrangement of judges.<sup>15</sup> These likewise lead to delays.



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<sup>15</sup> Supreme Court Advocates-on-Record Association v. Union of India, (1993) 4 SCC 441.

## GLOBAL JUDICIAL SYSTEM

### INTERNATIONAL FRAMEWORK

The Basic Principles on the Independence of the Judiciary were adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Milan from 26 August to 6 September 1985. The General Assembly endorsed these principles through resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

The principle of judicial independence has been enshrined in various human rights instruments such as Article 10 of the Universal Declaration of Human Rights and Article 14 of the International Covenant on Civil and Political Rights. Additionally, there are several UN standards, including the Basic Principles on the Independence of the Judiciary endorsed by the United Nations General Assembly in 1985 and the Bangalore Principles of Judicial Conduct of 2002. In the European framework, the right to an independent and impartial tribunal is guaranteed by Article 6 of the European Convention on Human Rights. Other detailed texts, such as the Council of Europe Recommendation on Judges: Independence, Efficiency and Responsibilities adopted by the Committee of Ministers in 2010, also exist.<sup>16</sup>

The commitment to ensuring the independence of the judiciary is included in various international documents such as the Copenhagen Document (1990), the Moscow Document (1991), and the Istanbul Document (1999) in the OSCE region. The importance of this commitment was further highlighted in the Brussels Declaration on Criminal Justice Systems and the Ministerial Council's Brussels Decision on Organized Crime. The Helsinki Ministerial Council meeting in 2008 urged participating States to strengthen their efforts to uphold the rule of law, particularly in relation to judicial independence. The OSCE/ODIHR's Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia were created based on these international standards. Additionally, the basic principles outlined in the Charter of the United Nations, UDHR, ICCPR and ICCSER, and Organisation and Administration of Justice in every Country should be respected by governments and brought to the attention of judges, lawyers, members of the executive and legislature, and the general public. These principles primarily apply to professional judges but are also applicable to lay judges where they exist.

### THE WESTERN WAY

The European Court made a ruling in 2016 on the case of *Baka v. Hungary*, which dealt with the dismissal of the applicant from the position of president of the Hungarian Supreme Court and the National Council of Justice due to criticism of legislative reforms affecting the judiciary. The Court found that the applicant's right to freedom of expression was violated, stating that it is the duty of judges to promote and protect judicial independence, and that

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<sup>16</sup> International Commission of Jurists, 'The Independence of the Judiciary, Human Rights and the Rule of Law' (ICJ, 2018) <https://www.icj.org/the-independence-of-the-judiciary-human-rights-and-the-rule-of-law/> accessed 1<sup>st</sup> April 2023.

they should be consulted and involved in the preparation of laws related to their status and the functioning of the judicial system.

The Council of Europe Parliamentary Assembly has taken up the issue of the rule of law, including judicial independence, in its resolutions. In its 2017 resolution, it focused on the rule of law in Bulgaria, Moldova, Poland, Romania, and Turkey. In a more recent 2019 resolution, the Assembly expressed concern over the appointment of judges and magistrates by the Prime Minister in Malta and called for a reform of the justice system that would preserve the independence of the judiciary.<sup>17</sup>

GRECO, the Group of States against Corruption, has also shown concern regarding threats to the independence of the judiciary and its impact on the anti-corruption standards of the Council of Europe. They expressed their unease regarding Romania, due to new legislation that contained amendments related to the appointments and dismissals of senior prosecutors, functional independence of prosecutors, personal liability of judges and prosecutors. GRECO concluded that the amendments pose significant threats to the independence of the judiciary. In Poland, they reached a similar conclusion, noting that the various elements of the reform had a cumulative effect that significantly weakened the independence of the country's judiciary. In Turkey, GRECO observed fundamental structural changes that weakened judicial independence and made the judiciary appear even less independent from the executive and political powers than before.

The European Union institutions have been addressing the issues related to the rule of law, democracy, and fundamental rights, and they have taken unprecedented steps to defend these values. The European Parliament expressed its concern regarding the threats to judicial independence and called on the Council to determine the risk of a serious breach of the EU's founding values by Hungary in 2018. The Parliament was also worried about the situation of the rule of law and the independence of the judiciary in Romania. The European Commission has initiated infringement procedures against Hungary and Poland, citing legislation that undermines the independence of the judiciary.

### THE UNITED STATES & THE UNITED KINGDOM

A proficient Judicial framework that is equipped for resolving questions and punishing conduct thought about freak with sureness, velocity and reasonableness, comprises one of the groundworks of a po democratic society and is viewed as significant for the smooth working of the judiciary. In a vote-based arrangement, a Judicial framework alludes to a sacred body<sup>18</sup> revered with the capability of giving Justice while being free of the public authority. The primary role of the judiciary is to safeguard law and order and guarantee matchless quality of regulation. It shields

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<sup>17</sup> R. Venkata Rao, "Judicial Independence in India: Need for a Constitutional Amendment" (1994) 29 EPW 1863.

<sup>18</sup> M. C. Yadav and A. Kumar, "Independence of Judiciary in India: A Comparative Study with USA and UK" (2012) 1 International Journal of Scientific and Research Publications 1.



privileges of each and every person, resolves debates as per the law and guarantees that majority rules system does not surrender to tyranny.<sup>19</sup>

The arrangement of judiciary is fundamental for the general public as its essential capability is debate goal and admittance to Justice for all. Judiciary is an adjudicative measure for Independences and wrongs. It thus gives preventive measures against any unlawful movement that somebody would enjoy.<sup>20</sup> Nonetheless, to have the option to do this, it is essential that the judiciary is free of any political tensions.

An extrajudicial framework includes foundations that are liable for Law and order and legitimate security.<sup>21</sup> It involves in forestalling and battling crimes, exploring wrongdoing, implementing sentences, and offering help to casualties of wrongdoing. Mature Judicial frameworks have profoundly expressed rules of strategy overseeing the connections between courts. Aside from these, a legitimate Judicial Framework is likewise essential for learning individuals confidence in regulation by forestalling any out of line utilization of force. In this way, it is broadly said that “*Judiciary is the way into a Pandora's Case of misery and shameful pervasiveness in the general public.*” Special emphasis has to be supplied on the, *Marbury v. Madison*<sup>22</sup> (1803) as it is a landmark case in the United States that solidified the concept of judicial review, which is the power of the courts to declare a law or executive action unconstitutional. The case involved William Marbury, who was appointed as a justice of the peace by President John Adams in the final days of his presidency, but his commission was not delivered by the Secretary of State, James Madison. Marbury sought a writ of mandamus from the Supreme Court to force Madison to deliver his commission.

Chief Justice John Marshall, in his opinion, held that Marbury had a right to his commission, but the Court could not issue a writ of mandamus in this case. The ruling established that the Constitution designated the Supreme Court as the final authority on the Constitution and that the Constitution was the supreme law of the land. As a result, if a law conflicted with the Constitution, the Court had the power to declare the law unconstitutional and strike it down. This case remains a vital part of American government, as it checks the power of the other branches and ensures that the Constitution and the rule of law are respected.

Consequently, the *R (Miller) v Secretary of State for Exiting the European Union*<sup>23</sup> case is a landmark case that addressed the question of whether the UK government had the power to trigger Article 50 without approval from Parliament. The UK Supreme Court held that the government could not use its royal prerogative powers to change domestic law and that an Act of Parliament was needed to give effect to the decision to leave the EU. This case

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<sup>19</sup> T.R.S. Allan, “Judicial Independence in Europe: An Ideal Worth Defending?” (2015) 76 Modern Law Review 1.

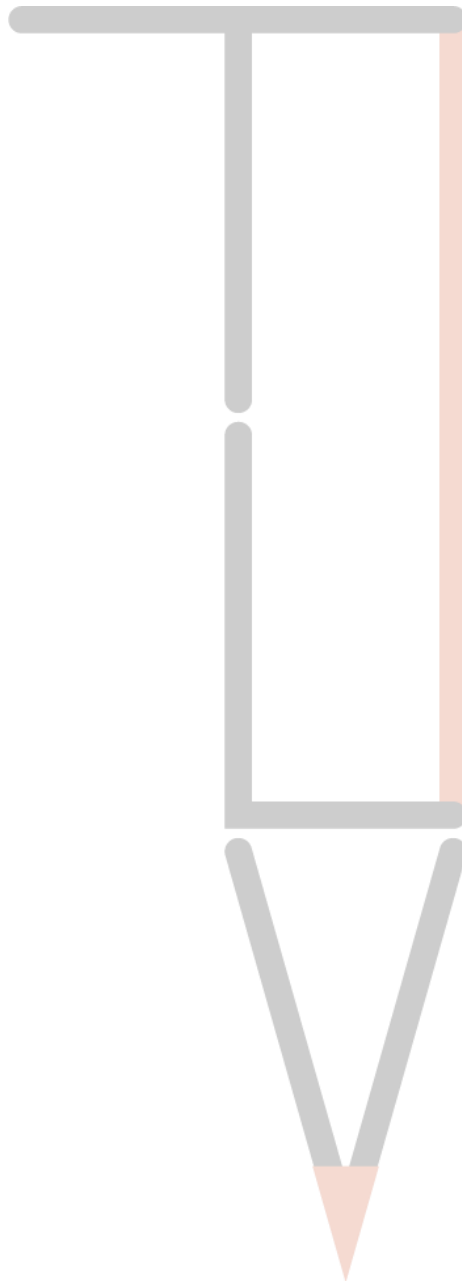
<sup>20</sup> T. Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (Cambridge University Press, 2003).

<sup>21</sup> J. H. Jackson, “The Doctrine of Judicial Independence” (2011) 58 American Journal of Comparative Law 127.

<sup>22</sup> *Marbury v Madison* [1803] USSC 5; 5 US 137.

<sup>23</sup> *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5; [2017] 2 WLR 583.

highlighted the importance of the independence of the judiciary, the separation of powers, and the role of Parliament in scrutinizing and holding the government to account.



## **INDIAN JUDICIARY – A PROTEAN CONCEPT**

### **THE INDEPENDENT COMPOSITION**

Ensuring the independence of the judiciary is a continuous and dynamic process that cannot be achieved through a single act. While it may not be possible to establish all the conditions in advance, there are some fundamental conditions that are essential for the independence of the judiciary. Some of these conditions relate to the collective independence of the judiciary as an institution, while others are related to the independence of individual judges. It is important to continuously review and update these conditions to maintain and protect the constitutional provisions that secure the independence of the judiciary.<sup>24</sup>

The constitutional position of the judiciary is the most crucial aspect in ensuring its independence. The constitution should provide for the composition, powers, and jurisdiction of the courts, as well as the appointment, term of office, and tenure of judges. The judiciary should have a position of dignity and administrative independence, including control over administrative staff, budget preparation, and maintenance of court buildings. Ad hoc tribunals should not be prohibited, and the natural judge principle must be ensured. The judiciary must be separate from civil services, and judges' service conditions must not be diminished. While some of these matters may be addressed by legislation, the constitution must provide sufficient assurance to ensure that the judiciary commands respect and can attract the most capable judges.

### **THE HON'BLE SUPREME COURT**

The Constitution of India contains several provisions that imply the independence of the judiciary, particularly with respect to the Supreme Court. These provisions can be found in Articles 124 to 127 in Chapter IV of Part V of the Constitution. The ultimate objective of all these provisions is articulated in Article 50. This article will explore each of these implicit provisions that guarantee the independence of the judiciary.

The Supreme Court of India is crucial in protecting the independence of the judiciary in India. The Constitution of India provides for the independence of the judiciary, and the Supreme Court is responsible for interpreting and enforcing these provisions. The Supreme Court has the power of judicial review and can strike down any law or executive action that it deems unconstitutional. This power serves as a check on the other branches of government and ensures that the Constitution and the rule of law are upheld.

The Supreme Court also has the power to appoint judges to the higher courts, including its own members. This ensures that appointments are made based on merit and qualifications rather than political considerations, further bolstering the independence of the judiciary.

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<sup>24</sup> P. S. Narasimha and S. Chakravorty, "India's Judiciary and Its Independence: Historical Analysis and Contemporary Issues" (2018) 37 Boston University International Law Journal 207.

Moreover, the Supreme Court has issued several landmark judgments protecting the independence of the judiciary. In 1993, the Supreme Court issued a landmark judgment in the case of *Supreme Court Advocates-on-Record Association v. Union of India*<sup>25</sup>, which established the principle of judicial independence and autonomy. The Court held that the judiciary must be free from any interference or influence from the executive or legislative branches of government, and that the appointment, promotion, and transfer of judges must be based on objective criteria and made by an independent body.<sup>26</sup>

In recent years, the Supreme Court has also taken a strong stance against any attempts to undermine the independence of the judiciary. For example, in 2018, the Court intervened to resolve a public dispute between four senior judges and the Chief Justice, reaffirming the independence of the judiciary and the need to protect it from any internal or external pressures.

In summary, the Supreme Court of India plays a vital role in protecting the independence of the judiciary in India. Its power of judicial review, appointment of judges, and landmark judgments have all contributed to ensuring that the judiciary remains independent and free from interference from other branches of government.

### SUPREME COURT JUDGE

Under Article 124 (2)<sup>27</sup>, the appointment process of judges in the higher Judiciary is closely linked with the independence of the Judiciary. It is not reasonable to expect an independent Judiciary when the executive has the power to appoint judges, as the central and state governments are parties to a significant number of cases where the Judiciary serves as an adjudicator. Therefore, it is unlikely that the drafters of the constitution would have entrusted the power to appoint judges of the Supreme Court and High Courts to the executive. To maintain an independent Judiciary capable of meeting all challenges and upholding the imperatives of the constitution at all times, the person appointed as a judge must have an impeccable reputation for independence, uncommitted to any prior interest, loyalty, or obligation, and willing to pay any price and bear any burden to uphold the principles of the constitution and the rule of law. If the appointed judge has a particular agenda to change the course of decisions to appease their appointing authority, then the independence of the Judiciary cannot be guaranteed<sup>28</sup>, even with guaranteed tenure of office, rights and privileges, safeguards, conditions of service, and immunity. The mandate of Article 50 is significant in this context, as it places an obligation on the government to refrain from interfering in judicial appointments.

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<sup>25</sup> Supreme Court Advocates-on-Record Association v Union of India (1993) 4 SCC 441.

<sup>26</sup> D. Sharma, "Judicial Independence in India: A Conceptual and Empirical Analysis" (2016) 1 South Asian Journal of Law and Policy 73.

<sup>27</sup> Constitution of India, art 124(2).

<sup>28</sup> S. S. Kulkarni and S. P. Hegde, "Judicial Independence in India: Issues and Challenges" (2013) 4 IOSR Journal of Humanities and Social Science 53.

Judges may show partiality due to their race, sex, political views, background, associations, and opinions. However, while adjudicating, they must remain impartial and neutral. This means that the judge should pay equal attention to each side and base the decision solely on the arguments, regardless of his personal opinion. In addition, the judge should aim to uphold the community's shared values instead of any individual values he may hold. The meaning of 'bias' has been unclear and inconsistent in some cases, such as in *R v. Gough*. Two tests were proposed by the opposing counsel to determine bias: the 'reasonable suspicion' test and the 'real likelihood' test. The House of Lords ruled that the actual test was the 'real likelihood' test, where the judge himself feels he has been biased against one party. In *Ex Parte Church Scientology of California*, Lord Denning disqualified himself from hearing the case after the council for the church requested it due to his previous adjudication in eight cases involving the church, which they believed he showed bias against them.

### JUDICIAL ACTIVISM AND REALISM

The Supreme Court of India recognized Art. 142 of the Constitution as an inexhaustible source of power, which allowed the Judges to meet the demands of justice as they saw fit. From the 1980s onwards, the court embarked on a path of unprecedented judicial activism, especially in aiding the poor, illiterate and disadvantaged sections of society.<sup>29</sup> This made the court a hub of political power, as activist lawyers and Public Interest groups frequently approached it for intervention. Consequently, there was no sphere of political or social action where the Supreme Court did not deliver its verdict. Its craftsmanship enabled it to achieve objectives that even the government was unable to accomplish. It dealt with a range of issues, including illegal mining, pollution in the Ganges<sup>30</sup>, guidelines for adoption of Indian children abroad, forced prostitution, extreme poverty and starvation in Kalahandi, elimination of injurious drugs, employment of children in match factories, and sexual harassment of women in the workplace<sup>31</sup>, among others.

In countries with written constitutions, there exists the concept of Judicial Review. This means that the constitution is the ultimate law of the land and any law that conflicts with it is considered invalid. The responsibility of the courts is to interpret the provisions of the constitution and declare any law or administrative action that contradicts it as unconstitutional and therefore void. The purpose of this function is to ensure that the government adheres to the constitution and to prevent it from exercising powers that are not authorized by the constitution.

In India, it is the responsibility of the judiciary to keep all branches of government within the limits of the law, to resolve disputes between the government and private individuals, as well as between different levels of government. It is also the duty of the judiciary to safeguard the fundamental rights of individuals that are guaranteed in Part III of the constitution. Over time, the courts have expanded the scope of judicial review to encompass issues

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<sup>29</sup> S. S. Shrivastava, "Judicial Independence in India: The Role of the Judiciary in Upholding the Rule of Law" (2014) 1 Journal of Law, Policy and Globalization 26.

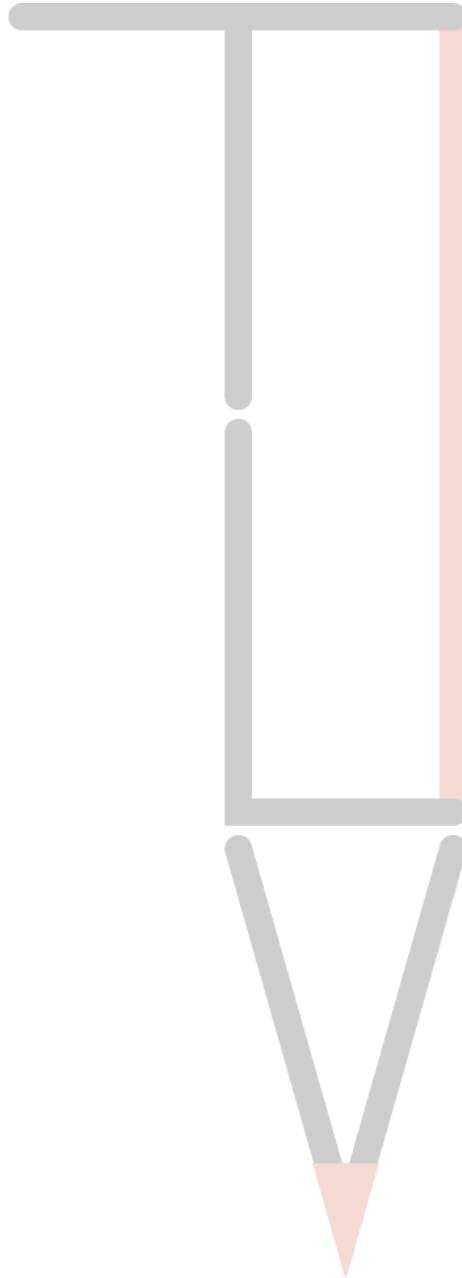
<sup>30</sup> MC Mehta v. Kanpur tanneries (1984) 4 SCC 463.

<sup>31</sup> Vishakha v. State of Rajasthan (1997) 6 SCC 241.

related to social, economic, and political justice. Therefore, it is crucial for the judiciary to remain independent from any pressure or influence from the executive branch in order to maintain the integrity of the judicial process.

Henceforth the review power has two essential roles:

1. Legitimizing state action.
2. To protect the Constitution against any under encroachments by the state arbitrarily.



## CONCLUSION

The independence of the judiciary is a crucial aspect for ensuring fair justice as guaranteed by the constitution. It is imperative that there is no interference by the legislature or executive in judicial proceedings so that impartial judgments may be made. Any such intervention could potentially lead to bias on the part of the judges and hamper the decision-making process. Currently, there are no alternative measures to ensure the self-reliance of Indian courts and to prevent external influence from the other two organs of government.

The Independence of Judiciary does not mean only formation of an independent establishment liberated from control and impact of the governing body and the leader. The hidden reason for Independence of Judicial executive is that judges should have the option to choose questions before them, as indicated by the law, uninfluenced by some other element.

The Judiciary cannot stay a simple observer or observer however it should turn into a functioning member in the Judicial cycle prepared to utilize regulation in the help of civil rights through a supportive of dynamic objective situated approach. Yet, this cannot be accomplished except if we have Judicial units who share the battling confidence of the constitution and are pervaded with established values.

It is widely recognized that a judge must not be swayed by any orders or instructions from third parties, whether internal or external to the judiciary. The hierarchical organization of the judiciary that would subordinate judges to court chairpersons or higher instances in their decision-making process would clearly violate this principle. To ensure that judges are free from external influence, the law should provide penalties against any external actors attempting to influence judges in any way.

It is evident that the importance of judicial independence was acknowledged by the drafters of the constitution and has been recognized by the courts as a fundamental aspect of the constitution. It is well understood that the law must adapt to the evolving demands of society, and judicial independence must also be examined in light of changing social dimensions. In order to achieve the true purpose of establishing the institution of judiciary, judicial accountability and independence must work together in tandem.

The autonomy of the judiciary is a crucial aspect of a fair and just legal system. One of the essential components that support this autonomy is the concept of irrevocability, which implies that judges should be appointed permanently until their retirement. This ensures that judges are not subject to external pressures or influence that could compromise their independence. Additionally, judges must be protected from involuntary transfers and be provided with adequate remuneration to maintain the dignity of their office.

Another critical element in preserving the independence of the judiciary is finding the right balance between accountability and autonomy. While judges must be held accountable for their actions, this should not extend to the content of their verdicts or judicial errors. The body responsible for initiating disciplinary proceedings against judges should not be the same as the one adjudicating them. To ensure a fair and transparent process, judges facing disciplinary action should enjoy procedural safeguards, and the disciplinary hearings must be fully transparent.

In conclusion, upholding the autonomy and independence of the judiciary is crucial in ensuring a fair and just legal system. To achieve this, it is essential to establish measures such as irrevocability of judges, protection from involuntary transfers, adequate remuneration, and a balance between accountability and autonomy, with procedural safeguards and transparency.

