



IS THE INDEPENDENCE OF JUDICIARY AS A PILLAR OF DEMOCRACY UNDER THREAT

By *Neelesh Meena*
From *National Law University Odisha*

Abstract

Independent Judiciary is a concept that the judiciary should be politically isolated from executive and legislative branches of the government. Judicial Independence is a quintessential characteristic of a democracy to work in a flawless manner. Firstly, the threats to judicial independence were identified which are prevalent in the society and then the methods to secure the judicial independence of the country as a pillar of democracy were identified. A questionnaire was drafted and the opinion of the people from different culture and ideologies were recorded. It helped to understand that whether all the methods to secure judicial independence were applied efficiently or not. The analysis of various cases such as emergency of 1975, NJAC and Collegium helped to assess the fact that whether the independence of the judiciary as a pillar of democracy under threat in India. The results of the research were that people indeed think that there were some threats to judicial independence that were not taken of initially but as the time passed and as people became much more aware, the methods to secure the Judicial Independence were applied judiciously the judicial independence to a much greater extent is achieved.

Keywords: Independent Judiciary, Judicial Independence, Branches of Government, Threats to Judicial Independence, Methods to secure Judicial Independence.

Research Methodology

The questionnaire provided in Appendix - I require information about the development of the independence of the judiciary and current status of it. It also has questions related to 1975 emergency and public opinion related to Kesavananda Bharati v. State of Kerala. The description of the current status of the Judiciary was given by Law Students from all walks of life.

Introduction

The separation of branches of government were result of the efforts channelized towards preventing the concentration of power under one authority. These branches were judiciary, executive and legislative¹. Every branch was to keep a check on each other. Judiciary was to be consisting of the judicial authorities of a country and judges collectively. Its objective was to ensure that the government is efficient and the rights of the citizens are protected at any cost. Through Independence judiciary, the formulators of the constitution wanted to intercept other branches of government, or the people themselves, undermining the judiciary's decisional impartiality². It is a

¹JOHN HAMILTON, Branches of Government 22 (ABDO Publishing Company 2004)

²JOHNSON F, The Role of the Judiciary with Respect to the Other Branches of Government 455 (1977)



quintessential to preserve the rights of every individual, his life, his property.

Judicial Independence is a concept that the judiciary should be politically isolated from the executive and legislative branches of the government. That is, courts should not be subject to improper influence from the other branches of the government, groups or any groups of person. According to Dr. V.K. Rao, “Independence of judiciary has three meanings:

(i) The judiciary must be free from encroachment from other organs in its sphere. In this respect, it is called separation of powers. Our Constitution makes the judiciary absolutely independent except in certain matters where the Executive heads are given some powers of remission etc.,

(ii) The decisions of the judiciary should not be influenced by either the Executive or the Legislature—it means freedom from both, fear and favour of the other two organs.”

The Constitution of India envisages an independent Supreme Court. In fact, every member of the Constituent Assembly had been eager to see that the Court was made independent, as it could possibly be. In the words of Austin, “The members of the Constituent Assembly envisaged the judiciary as a bastion of rights and of justice. The Assembly has been careful to keep judiciary out of politics.”

According to a member of the Constituent Assembly. “This is the institution which will preserve those fundamental rights and secure to every citizen, the rights that have been given to him under the Constitution.

Hence, it must naturally be above all interference by the Executive. The Supreme Court is the watchdog of democracy.”

In the words of Graham Wallis, “The psychological fact behind the principle of independence is not the immediate reaction of feeling in a man whose impulses are obstructed but the permanent result in his conduct of the destruction of some impulses and the encouragement of others. We make a judge independent not in order to spare him personal humiliation but in order that certain motives shall not and certain other motives shall direct his official conduct.”³

Threats to Independence of Judiciary

“All the rights secured to the citizens under the Constitution are worth nothing, and a mere bubble, except guaranteed to them by an independent and virtuous Judiciary.” --- Andrew Jackson⁴

In late 1940's there was huge waves of change was flowing as world's biggest democratic nation was taking birth, and the responsibility to make India a fully democratic nation was on our great drafters of constitution of India which is led by Bharat Ratna Shri Bhim Rao Ambedkar, huge responsibility was there on the team as they are drafting rule book of a nation that will be socialist, secular, sovereign and democratic republic⁵ and for that equality and justice is a quintessential concepts. And for unbiased and fair justice systems

³GRAHAM WALLAS, Human Nature in Politics 154 (Transaction Publishers 1920)

⁴Andrew Jackson, 7th President of USA, in his remark on judiciary in congress

⁵ Preamble, Constitution of India 1976



separation between judiciary, executive and legislative is must, in the word's of Bhim Rao Ambedkar

“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 itself. And the question is how these two objects can be secured”⁶

That clearly shows that makers were in the opinion to separate the judiciary from executive and legislature and article 50⁷ in Indian constitution clearly reflect the independent nature of judiciary but definition of independence of judiciary is still not clear that creates many tussles several times between legislature, judiciary and legislature.

In landmark case of S.P Gupta vs Union of India⁸ apex court made it clear that “The concept of independence of the judiciary is a noble concept which inspires the constitutional scheme and constitutes the foundation on which rests the edifice of our democratic polity. If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the rule of law under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law thereby making the rule of law meaningful and effective.”

⁶Supreme Court, High Court judges get around 200 per cent salary hike, THE ECONOMIC TIMES(2018), <https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-24-high-court-judges-get-around-200-per-cent-salary-hike/articleshow/62712248.cms> (last visited Oct 7, 2018).

⁷ Article 50, Constitution of India

⁸S.P. Gupta vs Union Of India & Anr, (1981) SCC 87

So“bacially if the judiciary by their performance and conduct does not meet the expectations for which such Constitutional protection has been provided, the judiciary will be reduced to any other organ of the State which we have come to distrust in recent times.”

4 Judges Conference

Unprecedented' seemed to be the word of the day that Indians see in wee hours of 12th January 2018. Disputes and clashes in the Supreme Court burst unbar for the first time after four senior most judges also sobriquet as collegium minus chief justice of India, came out publicly against the Chief Justice of India, a supreme office that have paramount responsibility to safeguard the right and deliver justice to every particular that comes under the jurisdiction of India.

In India's history, many tantamount events happened but they were either very general or kind of off records like Justice J S Verma's remarks in late 90's on things ailing the judiciary that were so general that no hype controversy was created at that time. Even in the Indira Gandhi Regime when plethora of attempts were made to control judiciary like Justice A N Ray's⁹ upliftment as Chief justice of India, Raj Narain Controversy¹⁰ at Allahabad High Court. So even when attempts to tarnish the

⁹Two hours given to Justice A N Ray to decide on CJI post?, THE ECONOMIC TIMES(2018), <https://economictimes.indiatimes.com/news/politics-and-nation/two-hours-given-to-justice-a-n-ray-to-decide-on-cji-post/articleshow/65007659.cms> (last visited Oct 7, 2018).

¹⁰The State of Uttar Pradesh v. Raj Narain(1975) SCR (3) 333



temple of justice were made but no on record and official statement were given by any Judges.

But things are different in today's 21st century. Supreme court of India where whole collegiums excluding CJI, is taking stand against master of roster¹¹ i.e. Chief justice of India Mr. Dipak Mishra and all the four most senior judges who presented their issues in front of the country which has been never done before as CJI is someone who in declining and ignoring the particular methodology and procedures that are customarily followed from decades, like the roster procedure in which there is a custom to allot sensitive cases to senior and experienced judges and also cases which are given according to the specialization. A particular judge have all these roster procedures under the power of CJI which are later on said by Supreme court in a reply to a public interest litigation that clearly states that CJI is the master of the roster¹².

There is also a different approach and view towards this particular issue i.e. it includes Justice Dipak Mishra's past judgment on Lucknow based Medical college¹³ in which charges of corruption were levied and subsequent SIT probe and CBI inquiry¹⁴ is going on. Several allegations were framed against Justice Dipak Mishra that arose negative waves against him. Another such

wave came from Justice Loya Murder case¹⁵ in which allegation on CJI being supportive of the government and kind of ignorant towards this particular issue was raised. This created ambiguity towards Justice Mishra in apex court and subsequent atmosphere. These are some assumptions that media, intellectuals and we have analysed.

Methods to secure judicial independence

Appointment

Appointment of the judges is one of the most important characteristics for Judicial Independence. Appointment by an institution which is not connected to any other branches of the government is quiet essential for the achievement of judicial independence¹⁶. The Judiciary should be above suspicion and above any influence from the political parties of the country. Hence, Judiciary should be appointed by an impartial Institution.

Denial of Political Office to the Judges

The temptation of creating a base for becoming a political leader or gaining some political advantage through the help of the legislatures will make the judges do things which will ultimately hamper the

¹¹Campaign for Judicial Accountability and Reforms v. Union of India, (2017) S.C.C. 589

¹²Campaign for Judicial Accountability and Reforms v. Union of India, (2017) S.C.C. 589

¹³ Medical council Of India vs GCRG Memorial Trust and Ors, (2017)

¹⁴ Medical council Of India vs GCRG Memorial Trust and Ors, (2017)

¹⁵Death of a Judge: What We Know, What We Don't Know, THE WIRE, <https://thewire.in/politics/judge-loya-death-questions> (last visited Oct 7, 2018).

¹⁶Stefan Voigt, *Economic growth and judicial independence: cross-country evidence using a new set of indicators* 906 CESifo512 (2003)



Independence of the Judiciary¹⁷. Therefore, the judges should not be allowed to contest election or hold any political offices after the Retirement.

Immunities

The decisions and actions of the judges are immune from criticism. Even if the ratio behind a judgment may prove illogical but a judgment can not be wrong, but they are subject to the critical academic analysis. The court has been given power to initiate contempt proceeding against anyone who disrespects the court in order to maintain the dignity of the court¹⁸. The court is also authorized to stop any act that might prejudicially affect its arriving at an impartial decision.

Security of Tenure

The Judges of Supreme Court should enjoy security of tenure. They can not be easily removed from the office of the judges except by an order of the president passed after an address by each house of parliament which should be supported by majority of the total number of house and by majority not less than two-third of the house of parliament.¹⁹

Handsome Remuneration

To maintain status and dignity, every judge is paid a high salary. From 1986 when the salary of the Chief Justice of India was 10,000 rupees to 2018 when it is 2,80,000 rupees. In addition, they enjoy different kind of perquisites such as residential accommodation, free electricity, many servants, etc. This helps the judges of the supreme court and high courts of India to maintain a decent standard of living²⁰. This will ensure that any judges do not resort to bribe as an option to earnings.

Right to Information

According to K.G. Balakrishnan, Judges are constitutional functionaries, hence they are not covered under right to information act. According to former Chief Justice of India.

The report of the Parliamentary Standing Committee which was presented to the Rajya Sabha on April 29, 2008 stated, "Except judicial decisions making, all other activities of administration and persons included in the judiciary are subject to the RTI Act."

Results of the Findings

¹⁷JODI S FINKEL, *Judicial Reform as Political Insurance* 7 (University of Notre Dame Press 2008)

¹⁸Bright SB, *Political Attacks on the Judiciary: Can Justice be Done Amid Efforts to Intimidate and Remove Judges from Office for Unpopular Decisions* 72 YALE L.J. 308 (1997)

¹⁹Kaufman IR, *Chilling Judicial Independence* 88 YALE L.J. 681 (1979)

²⁰Supreme Court, High Court judges get around 200 per cent salary hike, THE ECONOMIC TIMES(2018), <https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-24-high-court-judges-get-around-200-per-cent-salary-hike/articleshow/62712248.cms> (last visited Oct 7, 2018).



After doing all the research and analysis we find various things that are there in our judicial system as from British era when judiciary in India start establishing some problems were there and in different periods problems used to come and go as we have talked major issues in the project that was there in history of judiciary of India. We infer from this project that there were always major threats to judiciary in every regime, but judiciary on its own managed to get out of every such evils. For getting this particular findings of our project we thank students of our own National Law University Odisha who helped us in surveying and data analysis. In the analysis we find that in India still only 74.9% people know the meaning of independence of judiciary, only 35.6% Indians know about judiciary at the time of independence, a chunk of people accepts that supreme court came into importance in last decades 1900's, 81.91% people accepts that judiciary was under threat during Indira Gandhi regime, and the major finding in our survey is that 95.1% Indians have full trust and faith in our judiciary system.

and 1970s, the position of Judicial Independence improved as Indira Gandhi at several times tried to suppress the Independence of Judiciary through her conduct of Introducing Article 13(4) of Indian Constitution. In the year of 1973, the supreme court in the case of Kesavananda Bharati vs State of Kerala held that there is a Basic Structure of the Constitution that the parliament can not amend it. Further, the government still tried to snatch its independence by introducing article 24(1) but Supreme court held this amendment as unconstitutional. Thus, Justifying its stature as a Pillar of democracy. People believe that the judgment of supreme court are still sometimes subject to influence but Judiciary has been successful in achieving Judicial Independence to a great extent.

Conclusion

The whole study of Judicial Independence and its importance as a pillar of democracy was assessed. Different threats to Judicial Independence and methods to secure it was identified through various sources. It shows that how well these methods are applied to those threats and what is the current status of the Judicial Independence of the country. The analysis shows in 1950s, Judiciary had very less judicial independence as judiciary was very submissive at that time. In 1960s



Appendix-I

05/10/2018

Questionnaire on Judicial Independence

Questionnaire on Judicial Independence

1. What is Your Name ?

2. Do you the meaning of Judicial Independence ?

- Yes
- No

3. What was the status of Judiciary at the time of Independence ?

- No Independence of Judiciary
- Independence was very less
- There was Independence of Judiciary

4. What was the Position of Independence of Judiciary in 1950s and 1960s ?

- Improved Fully
- Improved considerably
- Didn't Improved at all

5. Was there a Threat to Independence of Judiciary in the regime of Indira Gandhi.

- Yes
- No

6. Was the stance of Supreme Court of India in the case of Kesavananda Bharati v. State of Kerala correct to secure Independent Judiciary ?

- Yes
- No

