

The Conundrum of Judicial Independence

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Abstract

Judicial Independence is the essence of a democratic setup and is crucial for retaining faith and integrity in the legal system. The present state of Indian Judiciary seems to be affected by the Political winds posing threat to its independence. Judicial independence lies in free exercise of powers in an unbiased manner without political influence and dependency on external factors. The vital task of judiciary is administration of justice that to without fear or favour. The independence of Judiciary lies in both individual and institutional independence. In the present scenario the Judges who uphold the 'constitutional morality' uphold the risk because it is not a virtue for political wings. The fate of Independent and impartial Judges is being sacrificed for appealing the political Stalwarts. The craving of having a committed judiciary is gaining more prominence leading to erosion of judicial independence. The compromised judicial independence is itself a threat to security of Constitution.

This paper is an attempt to analyse whether Judiciary itself is abiding by its Charter "Restatement of Values of Judicial Life," adopted by the Supreme Court in 1999 also known as judicial ethics in relation to maintenance of judicial independence and integrity or is being influenced and affected by the political turmoil and becoming compromised judiciary.

It further tries to access the impact of judicial commitment towards the government in reducing the constitutional democracy to dictatorship of majority. The appointment of the former Chief Justice of India (CJI), Justice P Sathasivam, as Governor of Kerala; the press conference done by four senior Judges of Supreme Court and Justice Thakur's emotional appeal, Justice Loya's death mystery are the core issues addressed in this paper.

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Introduction

Judicial Independence refers to freedom of judges where they are free to make decisions or pass fair judgments without being committed towards the government or other political or powerful stalwarts. Judicial independence guarantees individual freedom and retains common man's faith in Judiciary instead of getting flattered. Every democratic country adopts various means to ensure freedom of the judiciary and thereby to ensure individual freedom through judicial independence. The Constitution and its executors have made genuine attempts to make Indian judiciary independent and impartial. However certain occasional attempts to deviate from this practice leads to the conundrum of independence of judiciary Vis a Vis compromised or committed judiciary.

The constitution of India has assigned due importance to independence of Judiciary under various provisions, such as:

1. Article 124 provides Security of Tenure and they cannot be removed from office except by an order of the President by adopting the set procedure laid down in the constitution.
2. As per Article 125 Salary of Judges fixed are not subject to vote of Legislature.
3. As per Article 138 Parliament can extend but cannot curtail the jurisdiction and power of the Supreme Court.
4. Article 121 restricts discussion in Legislature on the conduct of Judges.
5. Article 129 and 215 empowers the Supreme Court and High Court respectively to punish for its contempt.
6. Under Article 50 States have been directed by the constitution through to take steps to separate the judiciary from the executive in the interest of public service of the State.
7. Under Article 124(2) Judges of the Supreme Court are appointed by the Executive with the consultation of Legal experts.
8. Article 124(7) Prohibits practice of a judge of Supreme Court after retirement.

Besides the above provisions the judges of the Supreme Court and the High Courts have to take an oath before entering office that they will faithfully perform their duties without fear, favour, affection, ill-will, and defend the constitution of India and the laws. Recognition of the doctrine of constitutional sovereignty is implicit in this oath. The hierarchy of judicial system in India too plays a vital role in maintaining the independence of judiciary.

The complete code of the canons of judicial ethics is provided under the Charter, "Restatement of Values of Judicial Life", which was ratified and adopted by Indian Judiciary

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in the Chief Justices' Conference 1999 serves as a guide to be observed by Judges, it is essential for independent, strong and respected judiciary, indispensable in the impartial administration of justice. Some core ethics include:

1. Justice must not merely be done but it must also be seen to be done. The behavior and conduct of members of the higher judiciary must reaffirm the people's faith in the impartiality of the judiciary. Accordingly, any act of a Judge of the Supreme Court or a High Court, whether in official or personal capacity, which erodes the credibility of this perception, has to be avoided.
2. A Judge shall not enter into public debate or express his views in public on political matters or on matters that are pending or are likely to arise for judicial determination.
3. A Judge is expected to let his judgments speak for themselves. He shall not give interviews to the media.
4. Every Judge must at all-time be conscious that he is under the public gaze and there should be no act or omission by him which is unbecoming of the high office he occupies and the public esteem in which that office is held.

Necessity of Judicial Independence

Judiciary is the most vital organ of a democracy, entrusted with core functions of protecting rights and freedoms of the people. Judicial independence refers to independence of a judge individually as well as institution as a whole from external pressure. The independence is essential to retain faith and confidence among the people that they will be justified in fair just and reasonable manner. Every single Judge while deciding the case before him must rely not only on facts and evidences but inner conscience free from executive or Bureaucratic pressure. Judiciary as an institution must be free to interpret the laws independently without any undue influence. Independent judiciary acts as check and balance over arbitrary exercise of powers by other organs of Government; against the spirit of the Constitution.

Deviation from the Original Concept of Independent Judiciary

The present upheavals in the judicial system are compelling the common man to think whether the original concept of judicial independence is deviating towards compromised or committed judiciary.

Many eyebrows were raised when the former Chief Justice of India (CJI), Justice P Sathasivam, was appointed as Governor of Kerala days after giving a favorable judgment.

Former Supreme Court Judge K T Thomas commented that "this could erode the public's confidence in the judiciary". Justice FaliNariman opines that, "Judges seeking jobs or a seat

in Parliament from the Executive gravely affects the concept of independence of the judiciary”. Justice Sathasivam defended his actions and made political statements, ignoring the ethics of the charter ‘Restatement of values of judicial life’. The whole episode gives the impression of committed Judiciary.

Justice T.S. Thakur’s emotional appeal for increasing the number of judges forced us to think about how overburdened our judiciary is with pending cases. He said, “A judge in India on an average handles 2,600 cases a year compared with 81 cases on an average that nine judges in the US Supreme Court handles every year”. According to estimate of 2013, 30 million cases are pending in Indian courts some of which are pending since the adoption of the constitution.²In order to overcome the problem there is dire need to induct more Judges both in Supreme Court as well as High Courts; the responsibility of induction and payment of judges lies with the central government as it needs prior sanction.

The crucial concern here is whether the appointment procedure of Judges secures their personal independence. The Supreme Court struck down the National Judicial Appointments Commission Act and the 99th Constitution (Amendment) Act as unconstitutional, and declared that the judiciary cannot risk being caught in a “web of indebtedness” towards the government. This caught public attention towards the process of judicial appointment in Supreme Court and High Courts. NJAC sought to give politicians and civil society an ultimate say in the appointment of judges to the highest courts, diluting its independence. This was indeed a welcome move on part of Apex court to protect judiciary from political interference and maintaining its independence. The distrust between the executive and the judiciary is at the root of the stalled appointments. Judges cannot hope to have an absolute power in the matter of appointment of Judges. Can judicial independence be secured by retaining the Collegium system alone? If the answer is yes, then why there is upheaval in Supreme Court and its Collegium system as well. Four members of the Collegium namely: J. Chamleshwar, J. Rajan Gagoi, J. Kurien Joseph, J. Madan B Lokur, rebelled publicly against the Chief Justice of India Justice Deepak Mishra through a press conference, apprehending that the highest court of the land is being intruded into by some kind of influence, and nothing is being done on that. They said that they are committed towards the people and not towards the government. This move of senior Judges was in the form of protest against the Collegiums’ recommendations regarding the judicial appointments, ignoring senior judges of

²Ankit Panda, *30 Million Pending Cases: Fixing India's Overburdened Judiciary*, THE DIPLOMAT (April 15, 2018, 12:38 PM), <https://thediplomat.com/2016/04/30-million-pending-cases-fixing-indias-overburdened-judiciary/>.

the court, allocation of cases and several other issues. Judicial independence is both an individual as well as collective responsibility. This Press conference demeaned the judiciary's image; Chief Justice of India's authority was undermined by questioning the settled issue of the CJI being the master of the roster. J. Misra's actions reveals that judges don't trust other judges to safeguard the institution of the judiciary, and, hence people too are losing faith in impartiality of Judiciary.

Justice Gogoi told journalists that the press conference was prompted by issues surrounding the death of special CBI Judge B.H. Loya.

Justice Loya's Death - Murder of Judicial Independence

In 2014 Special CBI judge Loya, who was hearing the high-profile Sohrabuddin Shaikh encounter case, died under mysterious circumstances; and it was contended by the opposition party that the case which he was probing involved a renowned who was discharged from the matter after Justice Loya's death and later the case was transferred to another judge. The late Judge Loya's family alleged that that the former Chief Justice of India, Mohit Shah, had offered a bribe of Rs 100 Crore to Loya to rule in favour of accused in Sohrabuddin case. Several petitions were filed demanding a fair probe in mysterious death of J. Loya. The case was assigned before a bench headed by a judge who is 10th in terms of seniority and thus, the four senior judges of Supreme Court opined that the matter as serious and must be transferred to someone who is more senior. Attempts are made by other organs of government to manipulate probes, bribe and influence Judiciary in various ways; compelling Judiciary to compromise.

Finance Act of 2017: A Death Knell to Judicial Independence

Section 184 of the Finance Act, 2017, empowers the Central government to make rules for qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service for judges appointed to 19 tribunals. The manner in which these rules have been drafted gives the apprehension that the judicial independence of these 19 tribunals will be compromised due to government influence.³

The selection process is entrusted to the Executive; though the functions of the Tribunal are judicial this impairs judicial independence.

³Prashant Reddy Thikkavarapu, *Has the government signed the death warrant for the judicial independence of 19 tribunals*, SCROLL (April 15, 2018, 7:03 PM), <https://scroll.in/article/839588/has-the-government-signed-the-death-warrant-for-the-judicial-independence-of-19-tribunals>.

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As per Rule 8, a written complaint against any judge on the tribunal is to be scrutinized by the “ministry or department of the government of India” under which the tribunal has been constituted⁴.

Foreseeing the conflict of interest present in this situation, the Supreme Court has recommended that the administration of all tribunals must be handled by the Law Ministry⁵.

Conclusion

Only an impartial and independent judicial system can protect the citizen’s rights against the arbitrary exercise of powers by the executive or legislature. Attempts to manipulate probes by investigative agencies and influence the outcome of court cases by Indian governments are not unusual. However, as far as the Supreme Court is concerned, its judges have stood bravely before government pressures and have maintained exemplary transparency and independence by refusing to succumb to any political pressure whatsoever in number of cases. However occasional attempts to deviate from this practice cannot be over ruled.

Judges are solely responsible for their actions, the claim are raised that the institution of the judiciary is too precious, too fragile, and too important, but it is high time that Judges must be made accountable in case of miscarriage of justice.

Suggestions

Judicial independence is vital for realization of the Rule of Law and protection of freedom and rights of individuals. This concept of independence is a complex embodies within itself several other concepts like impartiality, accountability, efficiency and respect for other institutions of governance. These factors need to be measured at the time of judicial appointments. More members must be included in the Collegium and it should try to bring in more transparency in matters of appointment by giving preference to merit instead of seniority. A judge’s personal independence must go hand in hand with institutional independence. The institution must be committed towards complete independence instead of committed or compromised independence. Judges must adhere to the code of ethics adopted under the Charter.

The mergers of tribunals in Finance Act will have adverse impact on independent functioning; therefore judiciary must have primacy in matters relating to appointment and removal of Judges in tribunals.

⁴*Ibid.*

⁵*Ibid.*