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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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# **INDEPENDENCE OF JUDICIARY IN INDIA**

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## **Abstract:**

India is the largest democracy in the world. For any democracy to function successfully it requires **separation of powers** among the three organs of government i.e, legislature, executive and judiciary. Too much intervention from one organ of government to the other may not solve the purpose of distributing powers and each has to be given space so that they act independently.

This Article talks about the **Independence of judiciary** in India with relevant **constitutional** provisions that support the same.

**Key words:** Judicial independence, separation of powers, constitution

## **Introduction:**

Independence of the judiciary is the cornerstone of our Constitution. Maintenance of Separation of Powers has been held to be a part of the inviolable “basic structure” of our Constitution<sup>1</sup>. Independence means non dependence, in appointment control, supervision, security of tenure, salary and pension, removal, suspension and dismissal and liberty to discharge the duties in free, fearless and accordance with allegiance to the Constitution, institution and conscience. It does not include liberty to surrender office of judge for personal gains. In Democratic country like India, the system is managed by the representatives elected by the people. To ensure these representatives work effectively and to control misuse of powers by them, the government has three separate organs. The three main organs of the Government are Executive, Legislative and Judiciary. The Executive executes the law, the legislative makes the law and the Judiciary interprets the law. The main task of

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<sup>1</sup> Kesavananda Bharti vs State of kerala AIR 1973 SC 1461

the Judiciary is to deliver justice. Administration of justice is the primary function of the Judiciary. However the judiciary has other functions also which are non-judicial in nature. Judges have the responsibility to make decisions regarding fundamental rights of the people, their freedoms etc. The Judiciary has the responsibility to uphold the Constitution and assure that the rule of law envisaged in our Constitution will always prevail. Thus the concept of independence of judiciary was implemented in the Constitution so that it can discharge its duty effectively. The principle of independence of the judiciary has also been laid down in various human rights instruments, including the Universal Declaration of Human Rights.<sup>2</sup>

Before independence, judges were appointed by the Crown, yet they had independence from it. After independence, India adopted new Constitution in 1950. Under the Indian Constitution, different types of courts have been constituted to impart justice. A Supreme Court was established at the Apex of the judicial hierarchy which exercise different jurisdictions. The Supreme Court is followed by the High Courts' constituted in different states to exercise multiple powers. At the bottom of the hierarchy are the subordinate courts. The Chief Justice and other judges in the Supreme Court are appointed by the Indian President. Special and particular qualifications have been prescribed for a person to be appointed as a judge of the Supreme Court.

After establishing the Supreme court and its subordinate courts the principle of judicial independence was taken seriously and it became a part of the Basic Structure of the Constitution, which cannot be amended. The independence is guaranteed by the Constitution which holds that the judges of the Supreme Court and the High Court hold office till he attains 65<sup>3</sup> and 62<sup>4</sup> years of age. The parliament is authorized to prescribe the privileges, allowance, leave and pension of the judges of the Supreme Court.<sup>5</sup> The Constitution prescribes for high qualifications for the judges<sup>6</sup>. The concept of judicial independence continues to hold a remarkable place in all the modern democracies. An independent

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<sup>2</sup> Art 10 of Universal Declaration of Human Rights states that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in determination of his rights and obligations and of any criminal charge against him. Whereas Art 14 of the International Convention on Civil and Political Rights 1966, states that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

<sup>3</sup> Art 124(2) of the Indian Constitution

<sup>4</sup> Art 217(1) of the Indian constitution.

<sup>5</sup> Art 125 of the Indian constitution

<sup>6</sup> Art 124(3) of the Indian constitution



judiciary is guaranteed by the Indian constitution and is an inevitable element for a free society and constitutional democracy. It also aims at the stability of the society. The independence of the judiciary does not mean just the creation of an autonomous institution free from the control and influence of the executive and the legislature. The underlying purpose of the independence of the judiciary is that judges must be able to decide a dispute before them according to law, uninfluenced by any other factor. For that reason the independence of the judiciary is the independence of each and every judge. Today, an entirely judiciary-driven process of selection of persons for appointment to higher judiciary is in place in which the Executive has neither any say nor any veto power.

The Independence of the Judiciary helps to ensure the proper functioning of the organs of the Government and keep proper checks on them. It also helps the courts to interpret the provisions of the Constitution. The framers of the Indian Constitution ensured that there should not be misuse of powers in the future. Hence if the judiciary is not independent, the other organs may pressurize the judiciary to interpret the provisions of the Constitution according to them. Judiciary is given the power to interpret the judiciary according to the constitutional philosophy and constitutional norms. Judiciary is competent to interpret the Constitution. Lastly to deliver the effective justice courts must act in an unbiased manner. It should consider all the evidences, facts of the situation. Independence of Judiciary ensures that the Judge decides the matters applying the provisions of the Act and deliver justice accordingly without any fear.

### **Meaning of Judicial Independence:**

Independence is most crucial concept to define. In common phraseology, 'Independence' means not depending on any authority or not depending on another for validity or on another person for one's opinion. According to dictionary meaning the word 'independence' means free from outside control; not subject to authority of other. In context of independence of the judiciary, the word 'independence' would mean that the judge is independent in imparting justice. The expression 'independence of the judiciary' encompasses freedom not only from its sister authorities like the legislature and executive but also from the fellow judges within judiciary. Judicial independence refers to freedom from improper pressure in the decision making process from any quarter.<sup>7</sup> The word 'judicial

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<sup>7</sup> Sandra E Oxner "Judicial education for judicial reforms", 1 Journal of National Judicial Academy Bhopal 213 (2005)

independence' embodies the concept that a judge decides cases fairly, impartially, and according to the facts and law, not according to impulse, prejudice, or fear, the dictates of the legislature or executive, or the latest opinion poll. The independence of judiciary is an integral part of democracy, intending to shield the judicial process from external influences and to provide full legal protection to all individuals going to courts for whatever reason.<sup>8</sup>

### **Kinds of Judicial Independence:**

There are two types of judicial independence viz. (i) the independence of judiciary as an institution also known as collective judicial independence (ii) Individual independence of judges. Both differ from each other and hence an integral part of democracy.

#### **(i) Institutional Independence:**

Institutional independence means that the judiciary, as an institution, must be protected from the interference of other institutions of the State namely the legislature and the executive. The executive and legislature should not meddle in judicial functioning. But it does not mean that judiciary is entirely immune from the control of the executive and the legislature. In India all three limbs of the State namely the legislature, the executive and the judiciary acts on the principle of checks and balances. The Constitution of India clearly demarcates the functions of all limbs of the State and each organ should discharge their functions within those limits. The legislature makes laws or rules, the executive execute and judiciary interprets them. Similarly, judiciary in matter of making of laws and rules to regulate its own procedure, in financial, supervisory and disciplinary matters must be independent and the executive and legislature should not interfere in them.

#### **(ii) Judges' Personal Independence**

Independence of an individual judge is required to ensure impartial adjudication of a dispute. Individual independence of judges means that a person as a judge is free to act and discharge his or her judicial functions. A judge should not be influenced by any extraneous considerations. They are free to discharge their functions without fear and favour. If a judge is threatened or imparting justice under the influence of their superiors, media, political leaders and criminal forces, judicial

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<sup>8</sup> Poonam Kataria "Judicial Independence in India" An Overview

independence could not be secured. All these factors may put an adverse impact on the decision making power of a judge. In order to minimise all aforesaid possibilities, it is important that a judge must practice a degree of aloofness consistent with the dignity of his office or he 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. Therefore, a judge as individual must be personally and internally independent. There are several provisions given in the Indian Constitution which secures personal independence of a judge. They are terms and conditions of service, appointment and transfer of judges, salaries, remuneration which have been made available to judges. These constitutional safeguards ensure that an individual judge may exercise his or her functions without any fear or favour. Besides, an individual as a judge must be independent from his fellow judges.

### **Need of Judicial Independence:**

In all democratic constitutions, or even those societies which are not necessarily democratic or not governed by any constitution, the need for competent, independent and impartial judiciary as an institution has been recognised and accepted. <sup>9</sup>Indian democracy is not an exception. In Indian democracy various functions and responsibilities have been assigned to courts. In fact, there is a well-built need to strengthen the capacity and independence of the judiciary as an influential institution in India. The judiciary is constitutionally responsible to dispense justice by interpreting and applying the laws of the land. <sup>10</sup>Due to following reasons independence of judiciary needs to be safeguarded in India.

(i) **Judiciary as Defender of Constitution:**

There are several constitutional principles and goals such as rule of law, distributive justice, enforcement of fundamental rights, to establish egalitarian society and uphold integrity and unity of India which cannot be defended and achieved without judicial independence. Besides, there are various statutory and other human rights available for citizens which need to be defended under all circumstances. The protection and implementation of these rights depends on the proper

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<sup>9</sup> R.C. Lahoti, *Canons of Judicial Ethics* 13 (Universal Law Publishing Co.1st edn., (2005).

<sup>10</sup> Livingston Armytage, "Judges as Learners: Reflections on Principle and Practice" 1 *Journal of National Judicial Academy Bhopal* 120 (2005).

administration of justice which in its turn depends on the existence and availability of an independent judiciary. Within Constitutional scheme, Indian judiciary performs a watch dog role, exercising power of judicial review over the acts of the legislature and the executive.<sup>9</sup> As an independent judiciary, under the constitutional scheme, the Court has played its role without any fear and favour over the acts of the legislature and the executive. When it appears to it, that any law and action of legislature and executive respectively violates fundamental rights, it not only evolved laws to fill vacuum but also has issued several noteworthy directions to governments in public interests. The free, unbiased and impartial judiciary can back constitutional mandate to secure and provide to all the citizens of India justice-social, economic and political. The preamble of the Indian Constitution imposes upon the governments to provide justice to all which can only be secured through unbiased judiciary. Likewise, the protection and enforcement of fundamental rights as envisaged in part-III of Indian Constitution such as right to equality, right to personal liberty, right against exploitation, educational and cultural rights have been the responsibilities of the judiciary. The role and significance of impartial judiciary also becomes more prominent because India is a welfare state wherein overall welfare of the citizens needs to be achieved. Thus judiciary has emerged as defender of the constitution and the principles enshrined therein.

(ii) Judiciary as Interpreter of laws:

Role of judiciary plays an important part in keeping the society as a dynamic one. <sup>11</sup>Judiciary interprets the law according to the needs and aspirations of the individuals. The judiciary should give up mechanical interpretation of social welfare laws and has to adhere to principle of beneficial interpretation to confer maximum benefits on individuals. The governments' are making social welfare laws such as Maternity Benefits Act, 1961, the Equal Remuneration Act, 1976, Child Labour (Prohibition and Regulation) Act, 1986, Bonded Labour System (Abolition) Act, 1976, Domestic Violence Act, 2005, Right to Information Act, 2005, The Consumer Protection Act, 1986 and The Immoral Trafficking Prevention Act, 1956, etc. Interpretation of these laws must be pro-citizen. It is needless to mention here that judiciary has exhibited great skill to interpret the horizon of Art. 21 right to life and personal liberty and included right to move freely within territory of India, right to get uninterrupted education, right to health, right to live in pollution free environment and many

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<sup>11</sup> Sabita Bandyopadhyay, "Reforms in Judiciary-A Loud Thinking," Journal of All India Reporter 23 (2000).

rights. Only independent judiciary can do it. Besides, the socio-economic rights as spelt out in part IV are interpreted by judiciary in pro citizen manners. Only impartial, independent, fearless and broadminded judges can discharge their duties with utmost sincerity. A judge well versed in the law can do the justice and confer beneficial interpretation on social welfare laws. Likewise, several constitutional provisions also need to be interpreted to confer maximum benefits on individuals. It became possible only through responsible and goal oriented judiciary that judiciary succeeded to evolve compensatory, human rights, prisoner rights and environmental rights jurisprudence in India. It did not hesitate to implement international treaties and agreements while deciding cases. Thus, judicial independence is essential for the creative interpretation of Constitution and social welfare laws.

(iii) Judiciary as Resolver of Disputes:

The most basic role assigned to judiciary is to resolve disputes among individuals as well as between Central and State government. The resolution and avoidance of disputes is required to maintain peace in society. The courts also give advice to governments on several matters.

Judicial independence is significant in ensuring impartial decision making, to resolve disputes, avoid disputes and to tender advice to governments. Even in the Constituent Assembly, judicial independence was seen as a necessary requirement in order to adjudicate impartially and insulate from political interferences. The judicial independence also becomes significant because in most of the cases before courts, the governments' have been the parties. Only uninfluenced judiciary can decide cases where government is party without fear and favour. If judges would not be appointed fairly and independently, there would be chance of favouritism especially in case where judges exclusively have been appointed by the government.

(iv) Judiciary as a Tool to ensure Good Governance:

The Courts are means of assuring good governance in India. Transparency, accountability, equality, rule of law and openness in government's functioning can be achieved through independent judiciary. The executive, legislature and even the judiciary comes within the purview of the RTI Act, 2005 and hence answerable for any act done towards the public. The executive and legislature is responsible for decisions taken. Similarly, judiciary is answerable to disclose to public the manner in which judges

are appointed. Transparency is ensured by the openness and fairness of procedures adopted in matter of appointments of judges.

### **Constitutional Provisions:**

- I. Jurisdiction and powers of the Supreme Court – (Article 32 and 226) - Powers of the Supreme Court cannot be taken away. The Supreme can issue orders or writs in particular cases as mentioned in Article 32 of the Constitution and the High Court under Article 226. Any citizen who finds his fundamental rights are infringed can go to the Supreme Court under Article 32. This makes the judiciary independence.
- II. Salaries and allowances (Article 125(2)) - The salaries and allowances of the Judges are fixed and not subject to alter in any situation. Moreover the judges of the Supreme Court are charged from the Consolidated Fund of India and the judges of the High Court are charged from the Consolidated Fund of the State. Under Article 125(2) it is mentioned that the salaries of the judges cannot be altered to their disadvantage except in case of emergency.
- III. Tenure- the Judges of the Courts have been given the security of the tenure (Article 124(2) and 217(1)). - The Judges remain in the office till their retirement. They cannot be removed from the office unless an order from the President of India under proven misbehavior and incapacity. Article 124(2) says that judges of the Supreme Court can remain in the office till the age of 65 years. Article 217(1) says that judges of the High Court can remain in the office till the age of 62 years. A judge can be removed from his office only through the process of impeachment.
- IV. Restriction on discussion in the Legislature (Article 211) - No discussion shall take place in the Legislature of a State with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties. It lays down that no discussion shall take place in Parliament with respect to the decisions made by the judge of Supreme Court or High Court in the discharge of his duties.
- V. Power to punish for contempt (Article 129 and 215) - In this provision it has been laid down

that the Supreme Court is the court of record and has the powers to punish for contempt of itself. Article 215 says that the High Court has the power to punish for the contempt of itself.

- VI. Separation of Judiciary from Executive (Article 50) – Under Directive Principles of State Policy, Article 50 says that the State should take steps to separate the judiciary from the executive in the public services of the State.<sup>2</sup>This makes Judiciary Independence.

## CONCLUSION

In a democratic country like India, the judiciary plays a vital role. The judicial system has a duty to deliver justice. Their decisions are final and cannot be questioned. A Judge has a moral as well as legal duty. Sometimes in some circumstances, a judge has to decide a case with the help of moral principles or ethics. Judges have the duty to interpret the laws and Acts correctly and use it wisely. Independence of the Judiciary ensures the rule of law. The Judges have the duty to deliver justice. Any interference with their work can disturb the justice delivery system. Independence of the judiciary is a basic feature of Indian Constitution and it holds a very high pedestal in Indian democracy.

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