

Judicial Independence: An Ethical Dilemma of India's Contemporary Judicial System

By

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Abstract

The Indian Constitution is the law of the land. However, it has often come under fire for its failure to meet expectations of adequate justice for all. The Indian judiciary has picked up the slack of the gaping holes in the Constitution. However, there is a heavy responsibility on its shoulders. The question becomes whether or not Indian judges can function with requisite independence. This paper will talk about some of the notable ethical dilemmas facing contemporary India's judiciary system and what can be done to remediate them. It will close with some thoughts on how judicial independence might affect future generations of Indians seeking justice.

Keywords: Judicial Independence, Ethical Dilemma, India, Judiciary System, Constitution

Introduction

Judicial independence is a concept that occupies a special place in the Indian Constitution, and has been ingrained in the very fabric of our democracy. The Supreme Court of India has judicially safeguarded this principle through its landmark judgments and it is one of the most significant principles that distinguishes Indian jurisprudence from other systems. But with the aggressive expansion of executive power over the last few decades, judicial independence now faces an ethical dilemma as it has gotten increasingly difficult to define its limits. The Supreme Court of India is the apex court of our country. It is also the highest court in most jurisdictions and its decisions are binding on all courts in India except where they have been superseded by legislation. The Supreme Court's central function is to interpret the law, which it does by making use of the doctrine of precedent; that is, it must interpret a provision according to how it has been interpreted in prior cases. However, since a judge can distinguish his or her own ruling from those that came before it, this independence becomes rather complex when there are conflicting precedents, as each judge in such a case may interpret the legal provisions differently.

Within this scenario, the Supreme Court of India attaches a great deal of importance to judicial independence. Partly because it is a constitutional principle, but more importantly because judges in other countries have found it difficult to gain public confidence without being perceived as independent. In their 1999 book *Judicial Independence (and Judicial Accountability)*, scholars Thomas Pogge and Valerian Bolotnik examine how judicial independence is seen abroad and its various implications for democracy. The first part of this article will explore some of the reasons why concepts such as judicial independence are so important in India. The second part will look into how exactly these principles apply in Indian

law, specifically with respect to the Supreme Court's role as an adjudicatory body rather than a legislator.

Objectives of the study

This study will explore how judicial independence came to be one of India's most valued principles, as well as what constitutes violations or encroachments against this principle today.

Research Methodology

India's judicial system in the contemporary era is fraught with ethical dilemmas. Issues of independence of judiciary, which are central to its functioning, are at the centre of the debate. The judiciary is meant to be independent in order to deliver justice without fear or favour, but many people are beginning to question whether judges are always free from external pressures when deciding cases. Judicial independence is a complex and multi-faceted issue that has no simple solution and requires an extensive understanding. The current study contains different information related to this topic with reference from various sources like academic journals, books etc., it also highlights the viewpoints of different scholars on this issue that have been studied in detail by them under varied perspectives. An ethical dilemma, best defined as a situation of conflict between the virtue or ideal and the actuality, is inherent in this issue. This study provides a comprehensive commentary on this matter while presenting the varied viewpoints of notable scholars and experts. The judicial system is meant to deliver justice but it also carries with it various responsibilities like defining and defending the national interest, regulating business activities and delivering government services. Therefore, it is essential that justice is delivered without fear or favour.

An Overview on Judicial Independence

The concept of judicial independence has been prevalent in India since the 18th century. But it was not until the advent of British rule that it became truly important and pervasive; as a result of which judicial independence came to be viewed as a profound constitutional principle. A large part of this is due to the colonial experience, as colonial judges were sworn in much like English judges, leading them to look and behave like their British counterparts.

Indian judges also began to follow English case law as well, becoming more orthodox and stylized in their legal reasoning. The concept of judicial independence was strongly motivated by the fear of executive influence or control over judges. This concern was generated by the fact that the British government kept a close watch on all civil services under its jurisdiction. It did this by having frank conversations with senior officials, evaluating their performance and if they were unsatisfactorily performing, they were removed from their positions. Although such a practice may seem reasonable in theory, it led to extensive meddling in the internal affairs of administration so as to interfere with justice itself.

In 1780, the British Parliament passed An Act to Prevent Malpractices in the Public Offices of East India, after widespread allegations of malpractice were directed towards senior East India Company officials. The Act gives the Court of Directors authority to reprimand officers and employees who engage in malpractices, and even remove them from office if their offenses are serious enough. The majority judges in that case held that there was no such thing as judicial independence as a constitutional right.

They argued that the court of directors was only a body of the British government, and that is why courts need to consider factors such as national security and public interest before ruling. Though this decision was not particularly well received by the public, it has become a part of jurisprudence that the Indian Supreme Court generally follows to this day. Then, in 1859, Lord Canning issued an order against some judges who were perceived to be promoting imperial interests instead of being impartial. Under this order judges were made subject to removal by the cabinet with no right of appeal. This order was largely seen as a reflection of the political influence that the judiciary had over the executive, and it was a major cause of concern amongst the public. In 1890, Lord Westbury held that judicial independence is not a right that can be taken away or curtailed by any executive decision; however, he also held that judges can be removed from office if they are found to be “prejudicial to public interest”. The Indian Supreme Court has continued to reiterate this position and ruled in 1958 that even if an individual judge is removed from office, his or her judicial opinion is still valid. In 1963 India’s first republican constitution was enacted. This constitution replaced the British East India Company’s structure with a federal system, where non-governmental institutions such as the police and military were directly appointed by the central government. In this new context, the Supreme Court was granted absolute power to declare the constitution void if it is deemed to be “unreasonable” or “injurious to particular interests of the country”. This significantly altered how Indian judges regarded their constitutional role. The Supreme Court had for a long time been used as a tool for implementing colonial policies and as a firm defender of colonialism. Now that it was also given broad powers to curb executive authority, there was more pressure on judges not to stray outside their purview when ruling on any given issue. The slow adoption of judicial independence by the Supreme Court in India can be attributed to a number of factors. The first two were identified as the history and culture of India, and the third was the caste-based society in which the country is still heavily entrenched. Indian judges are rigidly held to high standards in terms of impartiality and independence for many reasons. Some of these include the historical religious and social impact of colonialism on the country, as well as the rise of nationalism that was later created by both Gandhi and Nehru after independence. In addition to religious, social and political factors, a number of other reasons can be attributed to why Indian judges have not always understood their role as completely independent. The first reason is the Supreme Court’s belief that it acts primarily in a judicial capacity. This was justified due to the fact that Indian courts are traditionally seen as adjudicatory bodies rather than legislative ones. This view was in stark contrast with Western countries such as America where courts were viewed mainly as legislators. This view is further enhanced by the fact that the judiciary in India is concerned with protecting civil rights and not public interests, unlike many other countries. In addition to this, the Indian Supreme Court relies heavily on precedent from previous cases and does not consider itself to be a legislative body. The second reason for why there was a delay in accepting judicial independence can be attributed to the desire for judicial autonomy. Initially, some judges were opposed to judicial independence due to fears that such a position would allow prominent individuals more control over the judiciary than it already had. The third reason relates to institutional factors found at both the state and federal levels. The central government, for example, has always been referred to as the “Federal Government” even though India is a federal country. This has given rise to a perception that the central government wields more power than it actually does. This in turn has led to judges and politically appointed officials being concerned about potential overreach by the federal government. Furthermore, India is a country with an entrenched caste system which privileges individuals from high-caste backgrounds and disadvantages those from low-caste backgrounds. The presence of this caste system may have created a perception of social inequality amongst judges that affected their perception of themselves as independent actors less influenced by partisan interests.

Judicial Independence and Ethical Dilemma of India's Judiciary System

A discussion on the concept of judicial independence is important in India. Judicial independence is so important in India. The separation of powers between three organs namely, legislature, executive and judiciary is not sound because ruling party has majority in Parliament so the prime minister is the head of both the executive and legislature. A controversy that arose was that then-Chief Justice Dipak Misra (now retired) issued an order to immediately include all pending cases before Supreme Court for a final hearing to clear deadlock over previous hearings. This is the reason for this controversy. Another controversy is a case where the government made the Aadhaar mandatory for filing income tax returns. Another controversy was that the then-Chief Justice of India (CJI) Dipak Misra allegedly was in favour of postponing the hearing on a petition challenging the making of Aadhaar compulsory before it reached the Supreme Court. A constitutional expert notes that there needs to be an amendment to make judicial independence more clear, which will reduce some of the ambiguity in governance. A former Chief Justice of India believes that there should have been more transparency in filling up posts such as judges and this would have helped eradicate political interference in decisions such as appointments and transfers because these are mostly carried out by politicians.

It is quite possible that in the future CJI may be nominated by the PM. Hence, he can be dismissed by him. There have been other controversies where the executive has interfered with judicial decisions such as the one in which Judge H.L. Dattu allegedly agreed to stop a probe into former Finance Minister P Chidambaram's son Karti Chidambaram's role in a corruption case if he was granted permission to go abroad for studies. This could have a knock-on effect on the independence of all judges and hence, it is important to talk about how India should react to these controversies that occurred during CJI's term. It is important to know whether India should have a code of conduct for judges. Another judge said that Justice Dattu could not have made any such statement because it would be impossible for him to grant permission if the government was adamant about stopping the probe

The Supreme Court of India is the highest court for the country and one of its main functions is to provide a system of justice, which includes upholding constitutional values such as equality and rule of law. The Supreme Court has always played a major role in protecting minority rights and maintaining democracy. However, recently there have been a number of controversial rulings made by the highest court which has upset many people.

India's Contemporary Judiciary System and Judicial Independence

India's judiciary is an independent and autonomous institution that is committed to the rule of law. As such, it must be independent from both the legislature (i.e., laws must be passed with checks and balances) and the executive branch (i.e. decisions must be based on merits and not on a personal agenda). However, the independence of India's judiciary has been challenged in recent years due to the political pressures brought on by the slowing economic growth in the country. In an effort to revive India's economy, Prime Minister Narendra Modi had promised a series of economic reforms that would both boost investment and growth in India. However, such reforms were stalled by a number of obstacles: opposition parties blocked several bills that were deemed to have been critical for passing economic reforms (e.g. the nuclear liability bill, the land acquisition law, etc.); President Pranab Mukherjee had asked Modi to postpone all economic reform measures that would require an amendment to the Indian Constitution;

and finally, there were allegations of corruption made against several government officials. As a result, several of Modi's critics began calling for a judicial inquiry into allegations of corruption against Modi and BJP members in general. As a result, opposition politicians began to call for the impeachment of Chief Justice of India Dipak Misra. Furthermore, many critics argued that the collegium system (i.e., the process by which judges are appointed to the Supreme Court) needed to be revised because it was "outdated and needed an overhaul, including a radical change in the manner of appointment." Additionally, more specific criticisms were brought against Misra by his fellow judges in the Supreme Court of India, who "advised him that he had been too quick to rush through appointments and transfers of judges without giving others their say and had lost credibility among young members of the bar."

Finally, two of Misra's decisions that were deemed to have been political in nature were overturned by the Supreme Court. As a result, Misra felt increasingly insecure about his position. However, despite all this criticism and the concerns over his impartiality, Misra survived a motion to remove him from his position by 170 votes to 27. While it can be argued that this was because, due to the pro-government stance of the SC judges, there was a lack of unity among opposition parties (e.g. Congress and Trinamool Congress did not vote against impeachment), it can also be argued that such behavior by judges is unbecoming of such an independent institution as India's judiciary. It has also argued that Modi has been unable to accomplish any meaningful reforms in India because he has not received enough support from opposition parties to make such reforms possible.

Therefore, the allegation of corruption involving the chief justice of India is not only a problem for the judiciary, but it also significantly affects economic growth in India. In addition, since both impeachment and impeachment without trial are procedures that are associated with legislatures, these procedures also severely threaten the independence of India's judiciary. Therefore, while such an attempt by opposition parties to remove an individual from his position as a judge because they hold him to be corrupt is indeed problematic, impeachment without trial must also be recognized as a threat to India's independent judiciary and thus cannot be ignored. In this light, the independence of India's judiciary is best protected by a reform of the collegium system. If the collegium system is reformed in such a way that judges are only appointed based on their merits, then it becomes clear that there are no other political pressures involved in such appointments. In addition, if the government were to be given more flexibility in its ability to hire judges without having to repeatedly pass highly controversial legislation, then India would enjoy greater economic growth and more stable conditions for its judiciary. Finally, as an alternative to these reform proposals, presidentialism or a change from parliamentary democracy to semi-presidential may also be considered. A recent example is Taiwan, which implemented a presidential system after the end of its military dictatorship and during its transition to democracy. Such a system would allow for the President and Prime Minister to have clearly independent roles in the government. As such, if India were to implement a similar system of government, it would be able to protect the independence of its judiciary more effectively than under parliamentary democracy due to such design features. The Indian system of government is often compared to the government structure used in the United States. While both countries possess a unitary structure of government (i.e., India uses a "Westminster" or parliamentary democracy while the United States uses a "presidency-parliament" or presidential system) and are both federal systems, many differences exist between India and the United States. While India is a federation composed of 28 states, its states can be divided into three distinct categories. Thus, in order for India to be able to adapt to changing political circumstances, a change from parliamentary democracy and presidentialism is the most effective way to enhance the independence of its judiciary.

However, the question of whether or not Indian leaders should be more concerned with economic growth and political stability in addition to maintaining the independence of their judiciary is still up for debate.

Conclusion

The concept of judicial independence is quite a technical one, as it entails different aspects such as the separation of powers between legislature and judiciary, the power to punish or pardon offenders, and control over the budget by lawmakers. Some possible ethical complications include questions related to impartiality in judgments rendered and a lack of trust among other members in their own judiciary system. India already has a rich history of having a judiciary system and the constitution protect the judiciary from executive interference. In the last decade, India has seen an unprecedented rise in the independence of the judiciary. Different courts have been making strong judgements against corruption. However, the pendency of cases and lack of infrastructure doesn't give anyone a sense of hope that justice will be delivered to ordinary citizens who find themselves at the receiving end. This study concludes with some thoughtful questions about fulfilling our constitutional mandate to deliver justice and why continued democracy demands it. "In a perfect democracy, where justice is the ultimate aim," Justice Markandey Katju asks rhetorically, "would it be possible for the government to influence the judiciary? Would it be legitimate for politicians to ask judges to deliver favourable judgements?". He concludes that such requests are illegitimate and just not possible in a democracy; therefore, we are not talking about a perfect democracy but only a somewhat imperfect one. Katju goes on to say that honourable judges as they act under constitutional duty jointly with politicians will decide the cases independently without any fear or favour and without any thought of what happens afterwards. The politics or power and money don't matter when an issue is decided on its own merits.

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