



ISSN Print: 2394-7500  
ISSN Online: 2394-5869  
Impact Factor: 5.2  
IJAR 2015; 1(11): 397-400  
www.allresearchjournal.com  
Received: 12-08-2015  
Accepted: 14-09-2015

**Poonam Kataria**  
Dept. of Law, Kurukshetra  
University, Kurukshetra,  
India.

## Judicial independence in India: An overview

**Poonam kataria**

### Abstract

The concept of independence of judiciary has always been a very passionate topic for discussion, which had gained more momentum recently. Independence of judiciary, to state precisely, means a fair and neutral judicial system, which can afford to take its decisions without being influenced by any external or internal agencies or forces or by irrelevant considerations. The independence of the 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 court for whatever reason. Courts are expected to act as protectors of the law, who independently exercise their judicial power without any functional or individual interference. Such interference usually comes from executive and legislative officials, political parties, the military, paramilitary and intelligence forces, criminal groups and the judicial hierarchy itself. The inevitability of human error, especially when human interest comes into conflict with the claims of others, requires that a judiciary should interpret the law, and the assumptions, which underlie it, which is as far as possible independent of the Executive and the Legislature. Providing constitutional and legal safeguards to secure independence of judiciary is only the first step, of course very significant, in that direction and lot more is required to be done, which depend largely on judges themselves. The awareness is the need of the hour.

**Keywords:** Judicial, Independence, India

### Introduction

The concept of independence of judiciary has always been a very passionate topic for discussion, which had gained more momentum recently. Independence of judiciary, to state precisely, means a fair and neutral judicial system, which can afford to take its decisions without being influenced by any external or internal agencies or forces or by irrelevant considerations. The independence of the 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 court for whatever reason. Courts are expected to act as protectors of the law, who independently exercise their judicial power without any functional or individual interference. Such interference usually comes from executive and legislative officials, political parties, the military, paramilitary and intelligence forces, criminal groups and the judicial hierarchy itself. The inevitability of human error, especially when human interest comes into conflict with the claims of others, requires that a judiciary should interpret the law, and the assumptions, which underlie it, which is as far as possible independent of the Executive and the Legislature.

There is hardly any society on the planet today that does not, in one or other fashion, cherish or call for more independence of the judicial organ of state. This is so because there is a growing recognition and acceptance that, in order for people – as individuals, communities, organisations and even nations – to live in harmony, there ought to be a set of rules and regulations that are agreed upon, accepted and adhered to uniformly and with a fair degree of predictability. In addition, it is accepted that, in order for peace and equilibrium to exist, which in turn guarantee fairness and justice, there ought to be an arm of society that is equipped to interpret the rules without fear or favour. This reality recognises and calls for the institutions of justice, the courts, to assume an independence to interpret the rules without fear or favour.

**Correspondence**  
**Poonam Kataria**  
Dept. of Law, Kurukshetra  
University, Kurukshetra,  
India.

### Areas of Concern

The independence of the judiciary from the influence and control of political actors is one of the hallmarks of a constitutional democratic system. Yet there are contradictions and challenges in all systems that aspire to adhere to the principles of an independent judiciary. The challenges are there due to –

- The interlocking of state organs and their functions
- The human factor, since judges and juridical officials remain part of the community with all its vicissitudes, and
- Systems not all being the same in terms of what they hold dear, and in terms of their attitudes towards the law when it matters to them directly.

The independence of the judiciary is an integral part of a constitutional democracy. As it is clear above, the first difficulty associated with establishing this independence involves the judiciary inevitably being part of the political process: the political environment produces the leaders, who in turn appoint the members of the judiciary. In this sense, it is to be expected that there are fundamental relationships between the political actors and those who are assigned by these actors to execute the responsibility of interpreting the laws independently.

The second difficulty is the human factor. Although professionally trained jurists pledge to be impartial in their interpretation of the laws, and to be true to the intentions of the lawmakers but their human bias and preference may stand in the way of true impartiality.

The third difficulty comprises historical, traditional, cultural and experiential differences towards the concept of the law and its bearing upon all, without exception. In other words, there are cultures where the law is supreme, whereas in others, the person in the lead is more supreme than the law.

A cardinal feature of a democratic system is the doctrine that the judicial branch is independent, and that judges, as officers of the courts, are protected from political influence or other pressures that might affect their judgements. The remuneration packages of judges and the attendant social prestige that accompanies their jobs are meant to give them financial independence cum immunity from economic and social temptations. Hence, in real democracies, members of the judiciary, especially of the higher courts, are held in higher esteem than their peers in the political branches of the system. In this context, a democratic system is to all intents and purposes that government which is informed by laws and not so much by the whims of people.

### Judicial Independence in India

In India, in so many provincial States, there was independent and well-knitted judicial system. Though the judges were appointed by the Crown in many States, the judges were allowed to act independently free from any interference from the Crown. When the people of India adopted the Constitution, all these principles were expressly taken into consideration and the judicial independence is protected by various provisions of the Constitution. The independence of the judiciary is guaranteed by the Constitution of India which enacts that every Judge of the Supreme Court will hold office until he attains the age of 65 years and that every Judge of the High Court until the age of 62 years. The Parliament is authorized to prescribe the privileges, allowance, leave and pension of the Judges of the Supreme Court, subject to the safeguard that these cannot be varied during the course of

tenure of the judges to their disadvantages. No Judge shall be removed from his office by the President except upon the presentation to him of an address by each House of Parliament for such removal on the ground of proved misbehaviour or incapacity. A Judge of the Supreme Court or the High Court is appointed by the President of India in consultation with the Chief Justice of India and such of the Judges of the Supreme Court and the High Court as he may deem necessary.

The Constitution of India insulates the Supreme Court and the High Courts from political criticism, and thus ensures their independence from political pressures and influence, by laying down that the conduct of a Supreme Court or the High Court Judge in the discharge of his duties can be discussed neither in parliament nor in State Legislature. The independence of judiciary is further protected by treating the superior courts as the 'court of record'. The members of the subordinate judiciary are also protected by the provisions of the Judicial Protection Act.

In *S.P. Gupta vs. Union of India*, the court held 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." However, one must appreciate that the immunities provided to ensure judicial independence are intended for the benefit of the litigants in particular and the citizens in general.

The size and complexities of the judiciary has increased so many times in a modern welfare State. Public information campaigns and enhances the independence and accountability of the courts, by increasing public confidence in and commitment to the system. The society has got a right to demand better governance from the judiciary. Citizens now want judges to be accountable as they feel that there are no avenues for them to remedy the minor misbehaviour and mal-treatment of witnesses or litigants at the hands of the judges. They sometimes feel that these minor misbehaviour and mal-treatment are not corrected by superior courts and that the superior courts would protect their own men and it is useless to make complaints. Therefore, accountability and transparency are the very essence of democracy. Like every other institution dealing with the public, the judicial arm of the government also is accountable. But the accountability of the judiciary is different from the form of accountability that is expected from the executive or any other public institutions. Expectation of independence and impartiality is much higher from the judiciary than any other organ. Deciding the cases before them in expeditious and fair manner and giving reasoned orders is another aspect of such accountability. Judiciary should not feel that adhering to the standards of accountability is inimical to its independence. The strength of any judicial institution must depend on the standards of accountability that it sets. Higher the standard, the more respect it will draw from the citizens as well as the international community.

In many commonwealth countries judicial accountability has assumed importance and the judiciary in many countries can no longer use judicial independence as a defence for providing accountability. It is also held that one method of

ensuring judicial accountability is to ensure speedy and relatively transparent method of dealing with complaints against judiciary. One must realize that while in countries like India where the judiciary is relied upon by the citizenry to solve many of their difficulties, it is the consistent standards of accountability that give the Indian judiciary this strength. The moment this judicial accountability wavers, political forces and vested interests would not hesitate to use it as a tool to reduce the credibility of the judiciary. Whereas, a strong judicial institution can often lead to a stable political atmosphere as well as better governance by the State. We must also recognize that maintaining the highest standards in terms of judicial work and justice delivery is also inherent to the idea of judicial accountability. This essentially requires that the judiciary at all levels is not only highly skilled but is also kept abreast with the latest development in the law and practice. Thus constant training and up gradation of skills must be part of any judicial officer's schedule. Such training modules must necessarily include a study of the international legal scenario, including subjects, such as, international human rights, humanitarian, refugee law, intellectual property law and environmental law. A judicial officer must also be aware of the social and economic reality of his country to ensure that his judgments are practical as well as acceptable to the public. It is only when a judicial officer is equipped with such knowledge that he can match the high standards of expectations that most countries have from the judiciary, as opposed to other arms of the State. As has been evident, a mismatch of expectations and delivery from all organs of the State is sometimes the recipe for large-scale human suffering. At the same time, we need to remind ourselves that perhaps the worst form of injustice in any civilized society is injustice perpetrated through the judicial process. The judiciary in every polity has been provided with several immunities under their respective Constitutions to ensure their smooth and impartial functioning. However, it is well understood that if the judiciary by its 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. It is, therefore, of utmost importance that a Court or a Tribunal should be perceived as independent, as well as impartial in the performance of its duties, and the perception of the public in general is as important a test as that of experts. However, it is also acknowledged that judicial accountability if stretched too far can seriously harm judicial independence and thus it is essential that we strike the right balance between the two. Relying on the strong tradition of sharing of ideas and experiences amongst the judiciary across the commonwealth is perhaps one of the optimum methods of arriving at such a balance.

### **International Principles that Secure the Independence of the Judiciary**

There is a common opinion that an independent judiciary is the strongest guarantee to uphold the rule of law and the protection of human rights. The necessity of strengthening justice was considered a priority when drawing up the United Nation Charter in 1945, which at that time determined: "to establish conditions under which justice and respect for obligations arising from treaties and sources of international law can be maintained" International human rights instruments corroborated this by requiring that everyone

should be given a fair trial by an independent and impartial tribunal, thus obliging the respective signatory states to implement this and other standards inherent in those conventions into their domestic legislation. Full implementation of such human rights law into domestic legislation guarantees that judiciary organs are independent in performing their functions. The United Nations has addressed this issue more specifically by adopting its Basic Principles on the Independence of the Judiciary. The principles in question impose an obligation on the States concerned to secure and promote the independence of the judiciary within their jurisdiction by incorporating the necessary safeguards into domestic legislation and bringing this to the attention of the judicial organs, and to members of both legislative and executive organs. In addition, no inappropriate interference, no improper influence, pressure or threat to the judiciary should be allowed. Following the United Nation policy of promoting the independence of the judiciary, the Council of Europe issued a set of documents which involve the relationship between justice and society. It determines the role of judges in a society by emphasising judicial ethics necessary for strengthening the rule of law and protecting individuals from extra-judicial activities. The Council of Europe Recommendation on the Independence of Judges contains principles, which, contrary to basic human rights instruments, address the issue of the independence of judiciary more specifically. It recommends that the executive and legislative powers of the respective governments of member states adopt and undertake all measures to ensure that judges are independent and act without restriction, improper influence, inducements etc. In addition, the provisions enshrined in the European Charter on the Statute for Judges provide rules which best guarantee the independence and impartiality of judges.

### **Conclusion**

A holistic and clear understanding of the concept of independence of judiciary also leads to the conclusion that the destination of independence of judiciary, which has several milestones to be crossed, can be reached only with the consistent and conscious efforts of all stakeholders.

Legal institutions play a pivotal role in the distribution of power and rights and in the overall development of the country. They also underpin the forms and functions of other institutions that deliver public services and regulate market practices. But inequitable justice system may perpetuate inequality traps. Therefore, building a more equitable justice system is very important. In every country, there had been a struggle for judicial independence and a proper justice system. In the United Kingdom, from where we borrowed our system had a long history of struggle between the Parliament and the Monarchy as both of them wanted to control the judiciary. The independence of the judiciary in America is enshrined in Article III of the American Constitution which says that "The Judges, of the Supreme and inferior courts shall hold their offices during good behaviour and shall, at stated times, receive for their services, a compensation which shall not be diminished during their continuance in office."

Providing constitutional and legal safeguards to secure independence of judiciary is only the first step, of course very significant, in that direction and lot more is required to be done, which depend largely on judges themselves. The awareness is the need of the hour.

## Reference

1. International Covenant on Civil and Political Rights (ICCPR) (Article 14 (1)), European Convention on Human Rights (ECHR) (Article 6 (1)), American Convention on Human Rights (ACHR) (Article 8 (1)), African Charter on Human Rights (ACHR) (Article 7 (d)).
2. The Basic Principles on the Independence of the Judiciary 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 and endorsed by General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.
3. Recommendation No. R (94) 12 of the Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges, 13 October 1994. 19 Para 2 (d) of Recommendation No. R (94).
4. Para 2 (d) of Recommendation No. R (94).
5. The European Charter on the Statute for Judges was adopted by the participants of a second multilateral meeting organized by the Council of Europe, held in Strasbourg on 8-9 July 1998.
6. Adopted in 1982 and available on the website of the International Bar Association: [www.ibanet.org/aboutiba/IBA\\_Resolutions.cfm](http://www.ibanet.org/aboutiba/IBA_Resolutions.cfm).
7. [http://www.esil-sedi.eu/sites/default/files/Murati\\_0.PDF](http://www.esil-sedi.eu/sites/default/files/Murati_0.PDF) (Visited on September 1, 2015).
8. Guidance for Promoting Judicial Independence and Impartiality, Office for Democracy and Governance, Bureau for Democracy, Conflict, and Humanitarian Assistance, pg.5, U.S Agency for International Development, Washington, DC 20523-3100, Revised Edition, January 2002.
9. Marsh, Norman S. The rule of law in a free society: A report on the International Congress of Jurists, New Delhi, India, January. Geneva: International Commission of Jurists. 1959; 5-10:279.
10. [http://www.kas.de/upload/auslandshomepages/namibia/Independence\\_Judiciary/diescho.pdf](http://www.kas.de/upload/auslandshomepages/namibia/Independence_Judiciary/diescho.pdf) (Visited on September 12, 2015).
11. [http://www.supremecourtfindia.nic.in/speeches/speeches\\_2007/judicial\\_independence--23\[1\].11.07.pdf](http://www.supremecourtfindia.nic.in/speeches/speeches_2007/judicial_independence--23[1].11.07.pdf) (Visited on September 18, 2015).
12. See paper prepared by Daniel C. Prefontaine Q.C. & Joanne Lee for the World Conference on the Universal Declaration on Human Rights, Montreal, December 7, 8, 9, 1998.
13. See the Preamble of the UN Charter.