

## INDEPENDENCE OF JUDICIARY IN INDIA

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### ABSTRACT

*Constitutionalism demands that the judiciary be independent. It is the litmus test for a functioning democracy, since it provides checks and balances on the executive's absolute power. Instances from the Supreme Court of India's illustrious history demonstrate the passion and bravery with which the judiciary defended and maintained democracy through difficult times. A quick examination of comparable circumstances in other democracies confirms the view that the judiciary's independence is essential, and its role in the preservation of democracy is enormous. In recent months, inaction on the part of the higher courts and executive meddling have been seen in India's socio-political landscape, leading one to question whether the judiciary is still independent after all. The effect of an independent judiciary on the preservation of independent rights is examined in this essay.*

**KEYWORDS:** *Constitution, Democracy, Independence, Judiciary, Supreme Court.*

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### 1. INTRODUCTION

Power separation between the three branches of government is essential for a healthy democracy. Montesquieu is credited with the idea of separation of powers between the legislative, the executive, and the judiciary. He was a French enlightenment political philosopher. He argued that the court must be totally independent of the "state's conflict of interests." It was then included into the constitutions of democratic countries.

The judiciary's independence is a precondition for a democratic republic to be free of all forms of external influence. The Supreme Court is the guardian of basic rights and the interpreter of the Constitution. Article 142 of the Indian constitution allows for any legislation enacted by lawmakers to be ruled invalid due to arbitrariness. The Supreme Court protects the people of India's freedom from unjust arbitrary laws by declaring them extra vires the constitution via judicial review under Article 323[1].

When the judiciary is free of executive and legislative influence, the Supreme Court's conclusive power to determine the fortuity of the challenged legislation may be successfully used. Article 50 of the Indian constitution mandates that the state take measures to separate the judiciary from the executive in the state's public services, guaranteeing the judiciary's independence. The constitutional protections seem to help the cause in theory, but reality differs. Constitutionalism demands that the judiciary be independent.

## 2. DISCUSSION

### *2.1 Judges' Appointments and Removal:*

The President appoints Supreme Court judges in consultation with the Chief Justice of India and a collegium of other Supreme Court judges as deemed appropriate by the President. The government's judicial branch is involved in the appointment of judges but not in their removal. The President could only remove Supreme Court judges with the support of at least two-thirds of the members of the house present and voting on the grounds of proven misbehavior or incapacity. The President has limited choice after the resolution has been approved by both Houses. He issues the order for the judge's dismissal. The State's standard is that judges are appointed based on seniority. The administration has broken this rule when the most senior candidate seems to be a danger to its political philosophy. During the emergency years of 1977, the Indira Gandhi administration defied convention and appointed Justice M. H. Beg as Chief Justice of India instead of Justice Hans Raj Khanna. The administration at the time was unhappy with Justice Khanna's dissent, which upheld the basic right to life and liberty during an emergency, notwithstanding the government's submission[2].

The founding fathers attempted to divide the three branches of the government. The legislature's authority to select and remove Supreme Court and High Court judges undermines the judiciary's independence, which the constituent assembly sought. Justice K. M. Joseph, the former Chief Justice of the Uttarakhand High Court, was eventually promoted to the Supreme Court judgeship in 2018. The collegium supported his promotion, but the administration refused to accept it. This arises as a consequence of the government's unhappiness with Justice Joseph's decision to quash president's rule in Uttarakhand by the Uttarakhand High Court in 2016.

The judiciary's reliance on the executive obstructs the separation of powers. As a result, the judiciary's independence has deteriorated significantly in recent years. It has impacted the general populace. The Parliament has enacted a number of arbitrary legislation in recent years. The Supreme Court affirmed the constitutionality of the challenged legislation.

### *2.2 Article 370 Abrogation Is an Attack On Federalism:*

The Indian government repealed Article 370 on August 6, 2019 via a Constitutional Order. The state of Jammu and Kashmir was granted special status under Article 370. On October 27, 1947, the princely state of Jammu and Kashmir was annexed to India's dominion. Nothing in the Instrument of Accession was intended to bind the state of Jammu and Kashmir to "adoption of any future constitution of India." The Indian constitution's Article 370 was written with the intention of preserving the state of Jammu and Kashmir's autonomy. "The President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify: Provided, however, that the recommendation of the State's Constituent Assembly referred to in clause (2) shall be required before the President issues such a notification," according to Article 370[3].

The Constitutional Order of 1954 was enacted to apply certain of the Indian constitution's provisions to the state of Jammu and Kashmir. The state's Constituent Assembly was likewise dissolved. As a result, the state of Jammu and Kashmir's unique status and Article 370 are now

permanent. By modifying the terms of Article 367, it was feasible to repeal Article 370. Article 367 was amended by a constitutional directive dated August 5, 2019. It said that while interpreting Article 370, the Governor of Jammu and Kashmir acting on the advice of his Council of Ministers is included in the administration of the state of Jammu and Kashmir.

The ruling further declared that the Legislative Assembly of the State, as defined in article 370 (2), is to be interpreted as the Constituent Assembly of the State. As a result, the state's governor was equated with the state's former constituent assembly. Article 370 was officially changed based on the recommendation of the stated Governor, who is basically a representative of the President. Later, a law was enacted that divided Jammu and Kashmir into union territories of Jammu and Kashmir and Ladakh.

The people of Jammu and Kashmir were enraged by such an assault on the state's autonomy, and they protested. The Supreme Court has received petitions questioning the constitutionality of the abrogation. The state of appealed for a delay of the restructuring process. The Supreme Court, on the other hand, dismissed it. The state was divided into two union areas after the reorganization.

Parliament ignored the wishes of the people of the state while undermining the state's autonomy. The federal government enforced a media blackout to silence critics of the abrogation. To preserve peace and order, the state's internet was turned down for 145 days. Prominent leaders like as Omar Abdullah and Mehbooba Mufti were arrested, as were other protesters. The absolute mayhem of the basic freedom to free expression and peaceful assembly indicates democracy's demise. The Supreme Court, as the guardian of basic rights, remained silent. Six months after the executive extremism, the Supreme Court issued an order requesting that the government reconsider the limitations[4].

However, the Supreme Court is currently debating the legality of the law. The judiciary's deteriorating morals are reflected in the lack of sensitivity and haste with which the Kashmir problem should have been addressed. The Supreme Court's silence and inaction in this matter is concerning. In the state, draconian measures were enacted that violated basic liberties and severely violated human rights. In response, the Supreme Court turned a deafening.

Abrogation seems to be intended towards undermining the country's federalism. Our state is a quasi-federal one, with a federal framework but a unitary mentality. According to the principles set forth in the landmark Keshavnanda Bharti case, federalism is a component of the fundamental framework. Striking at the federal structure with the use of amendments is contrary to the spirit of the Constitution. It's also a breach of the Accord's Instrument. The Supreme Court has a responsibility to the people of the United States to protect the Constitution.

### *2.3 The Mayhem and the Attack on Secularism Delhi is the capital of India:*

The government enacted the notorious Citizenship Amendment Act, 2019 in response to the turmoil in Jammu and Kashmir. "Any person belonging to the Hindu, Sikh, Buddhist, Jain, Parsi, or Christian community from Afghanistan, Bangladesh, or Pakistan, who entered India on or before the 31st day of December, 2014 shall not be treated as an illegal migrant for the purposes of this Act," according to a proviso added by the 2019 amendment.

The amendment's vague and arbitrary character, which excludes other persecuted religious minority from other geographical neighbors from obtaining Indian citizenship and makes

religion a criterion for citizenship acquisition, goes against the spirit of the constitution. It infringes on the right to equal treatment under the law, as provided by Article 14 of the constitution. It also goes against the constitution's secular framework. The Citizenship Amendment Bill of 2019 was approved by both chambers of Congress and signed by President Trump. The 2019 Citizenship Amendment Bill became an Act on December 12th[5].

In Assam, protests arose over the potentially dangerous consequences of the Citizenship Amendment Act (CAA) 2019 and the National Register of Citizens (NRC). The movement gathered traction, and demonstrations spread to New Delhi. Jamia Millia Islamia students protested against the discriminatory Act by exercising their basic right to peaceful protest under article 19(1)(b). To bring the demonstration to a close, police stormed the JMI campus. Both sides pelted each other with stones. Police fired pepper spray and tear gas on students, stormed the reading area, destroyed property, and arrested protestors. Everyone slammed the cops for terrorizing students who were peacefully demonstrating. Students demonstrated throughout the nation. Protesting students were assaulted at Aligarh Muslim University and Jawaharlal Nehru University in similar instances.

The Supreme Court, on the other hand, handled the matter with the same carelessness with which it handled the Jammu and Kashmir problem. The Supreme Court has been petitioned to take urgent action against the Delhi police's brutal abuse of authority. It was also requested that the discriminatory CAA be put on hold.

The Supreme Court declined to hear appeals against the police actions during the demonstrations at Jamia Millia Islamia and Aligarh Muslim University. Petitioners were directed to contact their respective High Courts to prove facts, according to the Supreme Courts. It made it illegal for High Courts to rule on the constitutionality of the CAA. It also turned down a request to establish a committee to investigate police violence. The Supreme Court ruled that appointing a single committee to investigate issues in various states may not be possible... If it is deemed suitable by the High Courts after hearing the parties, interference will be made by contemplating establishing relevant Committees[6].”

Protests were conducted all across the nation for three months, from December 2019 to February 2020. To quell anti-government protests and the executive's abuse of authority, the central government implemented a slew of limitations throughout the nation. Parts of Delhi, Assam, and Uttar Pradesh were cut off from the internet. In portions of Uttar Pradesh, Delhi, Mumbai, and Bengaluru, Section 144 was enforced. Ramchandra Guha, Tehseen Poonawalla, Umar Khalid, and Yogendra Yadav, among others, were arrested for nonviolent protesting. When the Supreme Court declined to hear a case against police violence, it sanctioned flagrant violations of basic and human rights.

High Courts, on the other hand, exhibited character and protected people' basic rights. The lower judiciary was able to maintain the constitution's democratic character and bring the nation out of the abyss of anarchy. The recovery of Rs. 2.22 lakhs from individuals accused of causing property damage during the CAA protest was declared illegal by the Allahabad High Court. The Uttar Pradesh government was ordered to remove hoardings of individuals accused of destroying state public property by the High Court, which termed it "undemocratic government agency operating." The act of identifying and shaming accused individuals is characterized by the High

Court as "nothing but an unlawful intrusion into people's privacy," and therefore breaches Article 21 of the Constitution[7].

The basic right to peacefully assemble to protest was affirmed by the Bombay High Court. The Court said that such individuals cannot be labeled as traitors or anti-nationals just because they reject a single legislation. It will be a protest against the government and solely for the purpose of the CAA.

The government has been ordered by the Guwahati High Court to restore internet services. After the situation was violent, the court supported the suspension of internet services, but the continuance of the restriction when the situation has calmed down and people are demonstrating peacefully was condemned. When the period of severe public emergency that required the suspension of mobile internet services has mostly passed, we would respond by noting that it is about time to issue an interim order restoring all Mobile Service Providers' mobile internet services[8].

A majority leader spoke out against the CAA protesters during a demonstration in February 2020. The next day, pro-CAA demonstrators disrupted a CAA rally. Protesters then fought with police officers. Violence occurred in North-East Delhi as the scuffle escalated into a communal uproar. People were murdered and property was damaged. The Delhi Police made no proactive efforts to de-escalate the situation and restore normality. The Delhi Police Department was severely chastised for their inaction.

Activists have petitioned the High Court to have the perpetrators of violence arrested. After hearing the pro-CAA leaders' hate statements inciting violence, the High Court panel of Justices S. Muralidhar and Talwant Singh heard the case and ordered Delhi police to register FIRs. "Why aren't you registering it for these speeches?" Justice Muralidhar questioned the cops. Do you refuse to recognize that a crime has occurred?" He went on to say that the time it takes to file a FIR is important. He was moved to the Punjab and Haryana High Court overnight after being censured by Justice S. Muralidhar. When the judiciary attempts to uphold the rule of law, the administration removes them and strips them of their authority, ensuring that conformists occupy the top posts in the judiciary.

In 2019, former Chief Justice of India Ranjan Gogoi issued significant decisions in favor of the government of India's political philosophy, including the Ayodhya Ram Janm Bhoomi dispute and the Rafael trade controversy. He was nominated to the Rajya Sabha by the President four months after he retired. The judiciary's independence was questioned, and he was chastised for a quid pro quo deal with the administration. This confirms people's fears that the judiciary's independence is being eroded. He was also accused of sexual harassment by a Supreme Court female cleric. When he was in charge of the committee looking into the sexual harassment allegations against him, he disobeyed fundamental rules of natural justice.

Legislative changes alone will not guarantee a free judiciary. The importance of judicial activism and judges' integrity cannot be overstated. In the past, the Supreme Court of India was known for its judicial activism in upholding the spirit of the constitution envisioned by the founding assembly[9].

The supremacy of the constitution was maintained in the landmark case of Keshavnanda Bharti v. State of Kerala, which limited the parliament's unlimited authority to alter the constitution. A

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thirteen-judge constitutional panel led by Chief Justice Sikhri upheld the parliament's right to modify the constitution as long as it did not change the fundamental structure of the document.

The fundamental framework is built on the people's dignity and independence. It also limited parliament's ability to alter fundamental rights if doing so would jeopardize the constitution's core framework. The Constitution's supremacy, the Republican and Democratic forms of government, the Constitution's secular nature, the separation of powers between the legislature, the executive, and the judiciary, and the Constitution's federal character are all part of the basic framework.

Justice P. N. Bhagwati's judicial activism paved the way for the idea of Public Interest Litigation (PIL) to be introduced into the Indian legal system. It weakened the notion of locus standi in terms of injured persons' liberation. It gave NGOs and other activists the ability to file a lawsuit in front of the Supreme Court and the High Courts. The Supreme Court granted activist Kapila Hingorani's petition on behalf of Hussainara Khatoon, who has been imprisoned in Bihar without being brought before a magistrate. The case was accepted by Justice P. N. Bhagwati, who acknowledged the right of inmates to a quick trial[10].

### 3. CONCLUSION

Constitutionalism requires the judiciary to be independent in order for the rule of law to prevail in a democracy. The judiciary in India is entrusted with the enormous task of becoming the ultimate interpreter of the constitution. When significant efforts were made to silence the Indian court in the past, it sailed through. The judiciary has achieved significant progress via exceptional judicial activism and has frequently stood alone in protecting India's democracy. The Indian constitution was written with the lofty goal of ensuring that the executive's absolute power and arbitrariness would be maintained by the court. However, the higher judiciary's inability to deal with issues of national significance, as well as its inability to prevent assaults on the Constitution, has resulted in the execution of the judiciary.

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