

Dr. B. R. Ambedkar, Constitution and Independence of Judiciary.

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Abstract

Dr. B. R. Ambedkar played a central role in shaping the Constitution of India, and one of the foundational pillars he emphasized was the independence of the judiciary. He viewed an independent judiciary as indispensable to safeguarding democracy, constitutional supremacy, and citizens' rights. Article 50 of Indian constitution create an independent judiciary separated from executive and legislature.

Keywords: Ambedkar, Constitution, judiciary, Articles, Supreme Court, Basic structure.

Introduction:

"All rights secured to the citizens under the constitution are worth nothing, and a mere bubble, except guaranteed to them by an independent and virtuous judiciary".

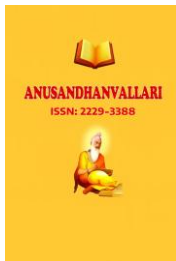
– Andrew Jackson, 7th U.S. President

The nation commemorated the birthday of Dr. B.R. Ambedkar on April 14th of every year. Known as the architect of our Constitution, Ambedkar remains a prominent figure in contemporary India. Beyond being the mastermind behind the world's largest written constitution, Dr. Ambedkar is revered for introducing the principles and aesthetics of democracy to the whole world.

As a recipient of the Bharat Ratna, India's highest civilian award, Dr. Ambedkar not only championed democracy but also astounded the world with his profound understanding of political democracy, social democracy, presidential democracy, parliamentary democracy, representative democracy, secular democracy, egalitarian democracy, constitutional ethics, federal and unitary constitutions, human rights, and the roles of constitutional institutions. His insights were articulated in his seminal works such as 'The Caste in India: Its Mechanism, Genesis and Development', 'Annihilation of Caste', and 'Buddha and His Dharma'.

Dr. Ambedkar's legacy is further enriched by his involvement in the Mahatma Satyagraha of 1925, his submissions to the Simon Commission in 1928, his speeches at the Second Round Table Conference in 1931, his contributions to the Poona Pact, his leadership as the Chairman of the Drafting Committee of the Constitution, his tenure as the first Law Minister of independent India, his authorship of the Hindu Bill Code, and his conversion from Hinduism to Buddhism. He tirelessly advocated for social justice and representative democracy, establishing organizations like the 'Bahiskrutha Hithaharani Sabha', the Independent Labour Party, and the Scheduled Caste Federation to uplift marginalized communities such as Scheduled Castes, Scheduled Tribes, women, and workers in society.

His greatest ambition was for Indian society to live in accordance with the ethics of the Constitution. Constitutional ethics is not just a passing feeling; it must be nurtured in our minds. In 1950, he lamented that our people had not yet grasped this concept, stating that "democracy in India is only a superficial layer, beneath



which lies undemocratic practices". Unfortunately, even after 75 years, little progress has been made to improve the situation.

For a decade, we have been witnessing undemocratic actions from the ruling fascist regimes. Those entrusted with the responsibility of upholding the Constitution are now actively working against it. Ambedkar's ideals are disregarded by those who oppose democracy. These forces have historically undermined movements like Mahatma Satyagraha, diluted proposals like the Poona Pact, and thwarted initiatives like the Hindu Bill Code. They even defeated Ambedkar in the elections of 1952 and 1954. Ambedkar, who embraced Buddhism for its principles of truth and non-violence, was criticized by very the same individuals who opposed the Mandal Commission Report aimed at implementing Ambedkar's vision of representative democracy. These divisive forces perpetuate caste and religious tensions, leading to violence against marginalized Scheduled Castes and Scheduled Tribes, who make up 20% of the population.

The governments at the centre and in some states actively support these divisive elements, fueling hatred and discord among the people. It is imperative that we recognize and resist these destructive forces to uphold the values of democracy and equality that Ambedkar fought for. When individuals partake in such activities, they are essentially undermining the democratic principles campaigned by Ambedkar. The removal of Ambedkar's portrait from the Delhi Chief Minister's office is a clear example of their undemocratic behaviour.

In times where the secular state, the principle of equality, and the federal structure of the Constitution are under immense pressure, the words of Ambedkar in a speech made in the Parliament in 1955 hold true. He compared the situation to building a temple for God, only to have it overrun by demons before God could be consecrated.

The crucial question at hand is whether the Indian Constitution and the institutions supposed to be functioned in accordance with the constitutional principles are being manipulated. Unfortunately, the answer seems to be in the affirmative. As a result, both the Indian Constitution and the democratic system are currently facing significant challenges.

Judicial independence, an inherent part of basic structure doctrine, has remained significant to uphold the public perception of judiciary as 'unbending before any economic or political power.' The major tenet of institutional independence is impartiality, the construction of which mandates that the judges base their decision solely on facts of the case and the law applicable, away from other temptations.

Explaining the meaning of 'independence', the Supreme Court in the case of *S.P. Gupta v. Union of India* [AIR 1982 SC 149], emphasised upon the importance of public faith in judiciary. The Court observed, "Judges should be of stern stuff and tough fibre, unbending before power, economic or political, and they must uphold the core principle of the Rule of Law which says – 'Be you ever so high, the law is above you'."

The judiciary draws its legal authority from the Constitution, but its credibility is derived from the trust and faith of the people. The constitutional courts are considered as 'judicial sentinel' and the perception of judges being impartial and detached from any influence is essential to maintain this public trust in the judiciary.

The genesis of judicial independence is grounded in the notion of Separation of Powers. The French jurist Montesquieu, following attempts by Aristotle and John Locke, provided the theoretical framework in his doctrine of Separation of Powers. He was concerned with the preservation of political liberty. He recognized that power has a tendency to be abused; Therefore, government should be checked internally by the creation of autonomous centres of power. He conceived that there are three main classes of government functions: the legislative, the executive, and the judiciary, each of which performs a specific function. The role of legislature is to enact laws, of the executive to ensure security and make provisions against invasion, etc. and of the judiciary simply to pass judgment upon disputes.



This article seeks to examine the meaning of the concept of the independence of the judiciary followed by a critical exposition of the constitutional provisions to safeguard judicial independency and a brief appraisal of the independence of judiciary in countries like the USA and England.

Meaning of Judicial Independence:

Traditionally, judicial independence means that the judiciary and individual judges are left free to operate without any undue pressure or interference from either the legislature or the executive. D. Harris succinctly expressed this in the following words: “The primary meaning of ‘independence’ is independence of other organs of government in the sense of separation of powers; in particular a judge must not be subject to the control or influence of the executive or the legislature” (12). This, definition obviously needs several modifications.

The concept of impartiality requires a judge to be free of personal biases and prejudices. He must not be committed to a political party or to one side in the litigation or to his race, class, caste, community, tribe or religion when he comes to judgment. Therefore, independence of the judiciary includes “independence from political influence whether exerted by the political organs of the government or by the public or brought in by the judges themselves through their involvement in politics” (13) Judges are parts of the machinery of authority within the state and as such cannot avoid performing political functions. Their principal function is to support institutions of government as established by law. In supporting the institutions and the system of government, the judges do perform a political function. The judiciary is not only a legal but also a government institution and therefore political in nature.

At times, threats to individuals’ rights may come from influential individuals or private groups in society, or powerful economic interests may try to influence judges to invalidate statutes which are not to their liking. This then requires that the judiciary must also be free from pressures from private powers.

Constitutional Provisions to Safeguard Judicial Independence:

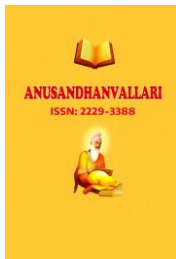
Sir Kenneth Roberts Wray has said:

To the question how the independence of the judiciary is preserved, I suggest a fourfold answer: First, by appropriate machinery for appointment of judges; secondly, by giving judges security of tenure of office; thirdly, by such general acceptance of, and respect for, judicial independence that the members of the judiciary can rest assured that it is not likely to be challenged and has not continually to be fought for; fourthly, by the terms of service of members of the judiciary.

1. Appointment of Judges

In all cases the head of the state is empowered by the Constitution to appoint the Chief Justice. But the method of appointment of judges varies. The idea is to insulate the appointment process from the touch of the executive hand and political consideration. But this system is also not perfect. Much depends upon the composition of the judicial service commission. If the commission is executive controlled then the justification for its establishment disappears. On the other hand, if the commission is under the control of judges, some undesirable features may develop. It may enable the judiciary to be self-perpetuating and will result in emphasis of its elitist class character. It even permits judicial nepotism.

It may be seen that appointment of judges is an executive function but proper checks and balances are provided. Firstly, appointments are to be made in consultation with the chief justice, governor, or judicial service commission. In some jurisdictions, the head of the executive can act only on the advice of the cabinet. Second,



clear rules governing qualifications, professional experience and training, and calibre of persons appointed to the bench are embodied within the constitution.

2. Security of Tenure

It is important to insulate judges from pressure during their tenure of office so that they can act impartially and without any fear of reprisals. Most of the constitutional states therefore prohibit arbitrary removal of judges by the executive. Practically, all constitutions stipulate that judges cannot be removed from the office except for proven misbehaviour or incapacity, and only by following the procedure prescribed by the constitution.

In some countries, judges hold office during good behaviour and can only be removed on an address from Parliament. In others, a judge can only be removed after an inquiry and report by a tribunal especially appointed for the purpose. Also, in many countries there are express constitutional provisions to appoint ad hoc or expatriate judges for a certain period of time.

3. Transfer and Other Assignments

A judge may sometimes be transferred from one jurisdiction to another. In many countries, prior consent of the judge whose transfer is proposed is not necessary. But any transfer by way of punishment is not permitted. Transfer with an oblique motive or for an oblique purpose, such as not toeing the line of the executive amounts to punishment. Such transfers are likely to be struck down by the courts, because they amount to interference with the independence of the judge concerned or of the judiciary.

However, it cannot be said that transfer without consent would always amount to an interference with the independence of the judiciary. Often, transfer may serve the public interest. First, it may be necessary for the fulfilment of broader national goals such as national integration. Second, where services of a competent judge are needed in an area where local talent is scarce. Third, where a judge in his early years is transferred from place to place to enrich his judicial experience. Finally, where there is a danger that justice will not appear to be done, and the prevailing environment is linked with the person of the judge concerned.

However, safeguards, such as consultation with the chief justice, transfer only in public interest and judicial review may insulate against the arbitrary use of the power to transfer by the executive. Sometimes judges are assigned other functions such as membership of a commission of inquiry or of administrative tribunal. It is better if assignment of such functions is made with the consent of the concerned judge.

4. Other Protections

There are also other rules that protect judges. Judges are insulated from politics and are encouraged to do their work professionally. They are given immunities against legal proceedings for acts done in their official capacity. They have power to punish for contempt of court. Judges' salaries and remunerations are fixed by the Constitution or statute and are charged permanently on the consolidated revenue fund. The sub judice rule prohibits publications which may affect the course and the outcome of pending cases. The legislatures cannot debate matters pending before the courts. The conduct of judges cannot be raised or debated in the legislature except on a substantial motion. These safeguards are aimed at making it possible for the judges to perform their function without fear or bias.

Independence of Judiciary in U.S.A.

The American politician. James Madison, better known as the 'Father of the American Constitution' also believed the same and articulated the following, "The accumulation of all powers, legislative, executive and judicial, in the same hands whether of one, a few, or many and whether hereditary, self-appointed or elective, may justly be



pronounced the very definition of tyranny (16)". The motto of the U.S. Supreme Court, "Equal Justice Under Law," embodies the objectives of the judiciary in a democratic society. Article III of the United States Constitution establishes the federal courts as part of the federal government. The Constitution provides that federal judges, including judges of the Supreme Court of the US, are appointed by the President "by and with the advice and consent of the Senate." Once appointed, federal judges: both 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. Federal judges vacate office only upon death, resignation, or impeachment and removal from office by Congress; only 13 federal judges have ever been impeached. The phrase "during good behaviour" predates the Declaration of Independence.

The President is free to appoint any person to the federal bench, yet typically he consults with the American Bar Association, whose Standing Committee on the Federal Judiciary rates each nominee "Well Qualified," "Qualified" or "Not Qualified." State courts deal with independence of the judiciary in many ways, and several forms of judicial selection are used for both trial courts and appellate courts (including state supreme courts), varying between states and sometimes within states. In some states, judges are elected (sometime on a partisan ballot, other times on a nonpartisan one), while in others they are appointed by the governor or state legislature.

Independence of Judiciary in England

Founding Fathers of the US Constitution used England as their dominant model in formulating the Constitution's Article III, which is the foundation of American judicial independence. Where British national law had previously impacted the international development of judicial independence, the British Constitutional Reform Act 2005 marked a shift, with international law now impacting British domestic law. The Constitutional Reform Act dramatically reformed government control over the administration of justice in England and Wales; importantly, it discontinued the position of the Lord Chancellor, one of the country's oldest constitutional offices, who was entrusted with a combination of legislative, executive, and judicial capacities.

Conclusion

This article has been an attempt to explore the parameters of the independence of the judiciary. In our attempt to explore the meaning of judicial independence we have argued that the concept of independence of the judiciary is not merely independence from other organs of government, but it embraces also independence from political and private pressures and influences. We have also argued that judicial independence can only be within the constitutional framework and accepted legal values. We find that in most of the countries, effective constitutional safeguards are provided (at least in theory if not in practice) so that the judiciary is free from the executive control that could be exercised through appointment, removal, suspension, transfer, salary reduction or administrative retirement.

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