
INDEPENDENCE OF JUDICIARY: A MANDATE FOR PROTECTION OF RIGHTS AND PRIME NECESSITY TO PREVAIL JUSTICE – CRITICAL ANALYSIS

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ABSTRACT

The constitution and the Judiciary of India have laid down the working of the current legal system. Judiciary is one of the three pillars of democracy and hence, an impartial and independent judiciary can stand as the guardian for rights of the people and also to abound justice without any fear. In the history, when there was king's regime, it was observed that the judicial decisions were also embedded in the hands of the king and hence judicial independence was not espoused. For the prevalence of Rule of law, independence of judiciary holds a prime importance. Makers of the Indian constitution framed several provisions in the safeguard of judiciary and to secure judicial independence. Even in the judges transfer case and after passing of national judicial appointments commission bill, it was seen that judicial independence has faced many obstacles and threats time to time. Recently, higher judiciary and the senior jurists have shown inclination towards the executive in the latest judgements which made it clear that judicial independence is merely followed as there is huge presence of political interference in the judiciary.

Keywords: democracy, judicial independence, political interference, constitution, Judiciary.

“There are often no differences of opinion within the House that our judiciary must be both independent of the executive and must even be competent in itself. And the question is how these two objects can be secured”.

“Constitution is not a mere lawyer’s document, it is a vehicle of life, and its spirit is always the spirit of Age”.

- Dr. B.R. Ambedkar

INTRODUCTION

Judiciary is the most important organ of the State among all as it fancy our Constitution and has an absolute unique role in comparison to the other two organs of the democracy. The Judicial system of India is one of the oldest judicial systems in the world. India was under the colonial rule of Great Britain for more than 200 years and inherited the most of the legal system from Britain, and that is why it is obvious to see many similarities among Indian legal system and the English legal system.

The constitution and the Judiciary of India have laid down the working of the current legal system. The basic source of law is the Constitution of India which is supreme in the country. Judiciary has not just explains the working of the legal and judicial systems of the country under the constitution but also points out the specific importance of the directive principles which talks about the duties of the government and also fundamental duties and the rights of the citizens.

Judiciary is one of the most important organs in a democratic nation as it has the huge responsibility to deliver justice. The custodian for the rights of the citizens, judiciary has to be well exposed with the constitutional values. The Preamble, which summarizes the Constitution, states the ideas to accomplish social, economic and political justice.

The independence of judiciary is necessity for the judicial system to be the pillar of democracy. Various decisions given by the judiciary has changed the Indian political system at full extent. The role played by the Judiciary in ensuring the fairness in the governance of the administration is very crucial and only an impartial and independent judiciary can stand as a bulwark for the protection

of the rights of the individuals and can abound justice without any fear or favor. The judiciary in the protection of the constitution can strike down legislative and executive acts of the central and state government as it may set fit.

For the prevalence of Rule of law, independence of judiciary holds a prime importance. The independence of judiciary is not only guaranteed by the Constitution but it can also be assured through legislations, executive, bureaucracy, implementation, and other suitable practices. The constitution is the foundation or the starting point in securing independence of judiciary, it can only be possible if it will be backed or supported by all the other organs of the democracy. It is very important that all the other state organs such as legislative and executive work in the support of the judicial independence. The free judiciary is in very much need of constant protection as the changing nature of society can results in the destruction of the base of judiciary, the constant guarding is needed against the change in the political, social and the economic conditions of the society.

In India, the question of independence of the judiciary has been a subject of heated national debate over the last many years. It has exercised the minds of legislators, jurists, politicians and the laymen. Both the supporters and the opponents have cogent arguments in support of their views. Independence of the judiciary is one of the basic structures of the Indian Constitution and has also been recognized as a human right by international conventions.

“Justice Krishan Iyer” observed that judiciary has to draw a line between the individual liberty and social control. The objective of justice is deeply enshrined in the Preamble of the Constitution of India. In fact, judiciary does not only deliver justice between one individual and the other or between one group of people and the other, it also does justice in the conflicts arising between individuals and States or state and state. Hence, these responsibilities can only be discharged when the country has an authoritative, independent and impartial judiciary.

MEANING OF INDEPENDENCE OF JUDICIARY

The concept of independence of the judiciary is not new and has been followed since very long time and it can still be said that it is not yet clear to its full extent. This concept starts and focuses on the doctrine of the separation of powers. Where the judiciary is separated from the Legislative

and the executive, it already becomes independent without any regard to the independence of judges in the exercise of their functions and powers as judges.

The idea of judicial independence was just not create a separate institution free from the control or influence of the other organs, but the deep purpose of the independence of the judiciary is that the judges functioning under the scope of law must decide a conflict without the undue influence of any external factor. Therefore, the independence of the judiciary in simpler manner is only the independence of each and every judge. To understand the independence of judiciary it is also important to know the fact that such independence of judges will be assured only as the member of the institution or irrespective of this. Judicial independence means a neutral and free judicial system of a nation, and where the courts can take its own decision without any external interference of other two branches of the government. Hence, it is very clear that the judges should be free from any kind of restrictions, influence, threat and the pressure from legislative and executive hands of the state. There should be independence of judges from their co-judges and the superiors to attain the full scope of the idea. It can also be said that if the judges will be influenced or corrupted then there is no benefit or use of independence of judiciary and to be a separate institution. Ultimately, it would have also failed the concept of the doctrine of separation of power.

The word 'independence' has not been defined in the Indian constitution, and for a proper comprehension of the meaning of the word 'independence' it is necessary to examine its dictionary meaning and then its legal meaning. A dictionary meaning defines it as, "the state of being not dependent on another person or thing for support or supplies". In a simpler sense, independence means absence of external control or support. In other words, it signifies something that it is not dependent on or controlled by any other agency or authority.¹ In legal expression, independence of judiciary means the power of upholding without fear or favor, the rule of law, personal freedom and liberty, equality before law and impartial and effective judicial control over administrative and executives actions of the government.²

A judiciary can be independent only if the judges in these judicial authorities will be free from internal, external, political and also economical pressure. It is very important for judges to decide

¹ Oxford Advanced Learner's Dictionary of current English

² L.M.Singhvi- *Independence of Justice*, Indian Bar Review, 1987, vol 14

or give a verdict under the law.

HISTORY OF INDEPENDENCE OF JUDICIARY

There it has been evaluated the evolution of the judiciary during the ancient - Hindu, medieval - Muslim and British periods in India with the scope of Independence of judiciary. The main purpose is to look into the relationship between the history of judicial system and the judicial independence in India.

Judicial system in Ancient/Hindu Period

The judicial independence in India has been evolved through a long and gradual process. Hindu judicial system is a set example of the foundation roots of the idea of independence of judiciary. There was a beautiful time when everywhere was peace, kindness, harmony and happiness among people. At the earliest time, there was no evidences of the proper government was seen which can function and execute the laws of nature but as the time passes there was the degeneration of morality as no judicial system, king or court of law was there to keeps a check on it. People become greedy selfish and their covetousness began to sway their minds and the earthly paradise which they had been enjoying was soon converted into a 'living hell'.

“*Bramhadeva*” created a King to frame law to control society. The King was termed as the Apex authority of the State and was seen as the only “Idol for Justice” and all the justice or judicial decisions was done in the name of the King. As per the Natural law of justice, the king is given the equivalent status as god and he is the supreme law of the state. *Manusmriti* explains the importance of the King and declares that, the King is God in human form as it is he who gives full protection to the people against external enemies and internal wrongdoers and looks after their welfare. The *Smritis* greatly emphasized that it was the responsibility of the King to protect the people through proper and impartial administration of justice and that alone could bring peace and prosperity to the king as well as people. Though the King was the head of ‘the judiciary,’ he was not supposed to act single handedly. A King functions with the suggestions of Brahmins, experienced ministers, chief justice, and judges to decide the cases according to rules of *Dharmashastra*. The king’s court of appeal is the higher court of justice so he appoints the judges to the subordinate courts such as in the villages.

In contrary the judiciary was headed and judged by the King himself and he was free to make any judicial decision and change in the system or structure of courts. The king was also not obliged to answer for all the changes he did in his full capacity of supreme authority. Later, King also appointed Judges and their tenure of office is entirely dependent of his pleasure. As it can be seen that the freedom of the Judges appointed was totally subject to the King's authority, and were not independent at all to exercise their judicial functions and in delivering the justice whereas, they are more answerable or accountable to the king than people of the state.

Judicial system in the Medieval/Muslim Period

The Muslim age was started by the invading of Mughals in India. The object and motive of Muslim rule in India was its self-preservation and political domination over India. The Mughal Kings regarded themselves as God's humble servants. The Muslim laws were majorly based on the Sharia or Islamic law which is derived from the religious precepts of Islam, i.e., the Quran and the Hadith.

The judicial system is similar in both the ancient and medieval period as the doctrine of separation of power can be seen here as well. A systemic division of courts existed at the time of Mughals such as in the Capital of the state, all of the Provinces, Districts, Parganahs and villages, where judges were appointed in these courts to ensure justice to the public. The highest court was situated in the capital region of the state and it was presided over by the Sultan himself but in the assistance by legal experts which were known as Muftis. In 1540, Sher Shah came to power and he ruled for five years. He was famous not only for his heroic acts but also for his administrative and judicial abilities. He introduced various remarkable reforms in the administrative and judicial system of his kingdom but all the legislative, executive, judicial, and military power resided in the Emperor who was considered to be 'the fountain of justice'. The Judges with the high standard of knowledge in the field of law was only appointed in the court of law and if they were found corrupt or incompetent, then they were dismissed from their offices by the emperor. Similar to the Ancient or Hindu age, here also the prime authority for justice is the state's head, the Sultan or emperor who administers all the judicial action or decisions and again the judiciary was not independent as the judicial and the executive control was only in one hand.

RULE OF LAW

The doctrine of rule of law was given by British jurist *A.V. Dicey*. He explains that No man is above the law which means that the law is the supreme authority and every person is bound to follow the law and that every person, whatever be his rank or conditions, is subject to the jurisdiction of courts. Dicey wrote “every official from the Prime Minister down to constable or a Collector of taxes is under the same responsibility for every act done without legal justification as any other citizens”. In **Rupinder Singh Sodhi v. Union of India**³, court states that Rule of law required that no person shall be subjected to harsh, uncivilized or discriminatory treatment even when the object is the securing of the paramount exigencies of law and order.

A.V. Dicey propounded three meanings of the rule of law,

1. *Absence of Arbitrary power or supremacy of the law*- It means the absolute supremacy of law as opposed to the arbitrary power of the government. We can also say that a man may be punished for a breach of law but cannot be punished for anything else.
2. *Equality before the law* -Equality before law and equal subjection of all classes to the ordinary law of land to be administered by the ordinary law courts and this principle emphasizes everyone which included government as well irrespective of their position or rank.
3. *Pre-dominance of legal spirit*- In this point, Dicey says that the source of the laws or rights of the citizens is not the constitution instead rules and all the laws are enforced by the courts and the judges.

In India, only the first two aspects of dicey are applied to the Indian legal system i.e., supremacy of the law and equality before the law. As of the third aspect, it's not applied to the Indian legal system as the constitution is the foundation or the basic structure of law and also the law making function is done by the legislature. Article 14 of the Indian constitution guarantees the equal protection of laws to the every citizen of the country. The rule of law embodied in Article 14 is the

³ Rupinder Singh Sodhi v. Union of India AIR 1983 SCR(1) 841

“basic feature” of the Indian Constitution and hence it cannot be destroyed even by an amendment of the Constitution under Article 368 of the Constitution.⁴

ROLE OF JUDICIARY AND WHY IT HAS TO BE INDEPENDENT?

The Judiciary has a vital role in enforcing the law and its interpretation; it also resolves the conflicts between one individual and another, an individual and the state or state and the state. It is the responsibility of the Judiciary to maintain the rule of law in the country and to keep a regular check on the government that it works under the law. India, with the written constitution, the judiciary has another duty to maintain the supremacy of the constitution by interpreting and enforcing its provisions on all the authorities and organizations which comes under the constitutional scope. The most significant and eminent role of judiciary is to protect and enforce the fundamental rights of the citizens which are guaranteed to them by the Indian constitution.

India is an example of unified judicial system where Supreme Court is the apex court. Later, the High court comes under the Supreme Court and there are several subordinate courts which lie under the high court such as district court, session court, etc. Therefore, Supreme Court holds the highest or topmost position in the hierarchy of Indian judicial system and also it is the supreme interpreter of the constitution and protector of all the rights of the citizens. Supreme Court is the last or the ultimate court to appeal in all criminal and civil matters and said to be the final interpreter of law, thus helps in keeping the uniformity of law in the country.

But the question arises that why judiciary has to be independent?? As it is said above that judiciary has a very important role of maintaining law, order, peace and prevail justice in the country, therefore it's very clear that judiciary is in the position where it has to be independent, not just for the matter of fact but also as a need of the society, to take decisions without any pressure or fear of foreign interference.

In India where democracy form of government is present, the judiciary has a great significance. The courts resolve the disputes and works as a mechanism of law. The eager need of independence of judiciary is because of our written constitution which needs a constant protection and an

⁴ Dr.J.N.Pandey- *Constitutional law of India*, central law agency, 56th edition, 2019

authority for its interpretation and in the absence of such authority, the constitution will create more disorder instead of creating order in the society. It is mostly seen that the Nations with the written constitution have the doctrine of Judicial Review, which means that the judiciary has power to review any law in the country and if that law found to be inconsistent with the constitution or known to be unconstitutional, declare that law as void. The whole system based on a written constitution is not much effective in practice without an independent and impartial authority and also to control the all other organs of government in exercising powers which are against the constitution. Hence, judicial independence is not just necessary but also eminently important.

The Power of Judicial Review for all legislative and executive actions is mostly administered by the Judges of the Supreme Court or High court and to prevail the core idea of this doctrine it is very important that the Judges act independently without any fear of the external power. The Judges of the higher courts have the power to review all the state and center's legislative and executive actions with provisions of the constitution.

The Judicial independence plays a vital role in keeping all the arbitrary act of the government in control. The Importance of Independence of Judiciary is emphasized by the Supreme Court of in the **A.C. Thalwal vs. High court of HP's** case that "The constitutional scheme aims at securing an independent Judiciary which is bulwark of democracy".⁵

CONSTITUTIONAL PROVISIONS TO SECURE INDEPENDENCE OF JUDICIARY

Indian constitution has embedded with several provisions which secure the independence of judiciary and also be said that the makers of the constitution have been known with the fact that the need of judiciary to be independent is allot. So they framed several provisions in the constitution to guarantee it.

Article 50- The State shall take steps to separate the judiciary from the executive in the public services of the State to prevent any external interference in the judicial functions.

Article 121, 211- No discussion shall take place in parliament or in the Legislature of the state

⁵ A.C.Thalwal vs. High Court of Himachal Pradesh, AIR 2000 SC 2732

with respect to the conduct of the judges of Supreme Court or the High Court in the discharge of his duties, but in case of removal of the Judge, can be discussed upon a motion.

Article-124(2), 127- The judges will be appointed by the President after consultation with National judicial appointments commission.

Article 124- A judge of Supreme Court or High Court can only be removed by the President after an address presented to him by each house of Parliament on the ground of proved miss-behavior or incapacity.

Article 125, 221, 360- The salaries and allowances of the judge of the Supreme Court are fixed by the constitution and are not subject to vote of legislature. During the term of their office, salaries and allowances cannot be altered to their disadvantage except in grave financial emergency as stated under article 360 of the constitution.

Article 146, 229- Appointments of officers and servants of Supreme Court or a High Court shall be made by the Chief Justice of the India and the chief justice of that High Court or such other Judge or officer of the Court as he may direct. The administrative expenses including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court shall be charged upon the consolidated fun of India and the states.

Article 124(7), 220- It prohibits a retired judge of the Supreme Court to appear and plead in any court or before any authority within the territory of India.

Article 138- Parliament, in respect of its jurisdiction can extend but cannot curtail the jurisdiction and power of the Supreme Court.

Article 222- The transfer of judges also affects the independence and functioning of the judiciary but The President may, after consultation with the National judicial appointments commission, transfer a Judge from one High Court to any other High Court and that transferred judge will be entitled to receive in addition to his salary such compensatory allowance.

JUDICIAL REVIEW

What is judicial review and how does it play an important role to make judiciary independent???

And what makes this doctrine so eminent in the legal system???

The Doctrine of Judicial Review was for the first time propounded by the Supreme Court of America. The constitution of United States did not contain an express provision for judicial review but it was assumed by the Supreme Court of United States in the historic case of **Marbury vs. Madison**, that the constitution is the supreme law of the Nation and also asserts the power of judicial review to the judiciary. The Supreme Court found that the courts have the power to strike down any law or act which violate the Constitution. This case turns out to be the establishment of the doctrine of Judicial Review and the Judicial Supremacy in the United States of America.⁶

Judicial Review is the power of courts to pronounce upon the constitutionality of legislative acts which fall within their normal jurisdiction to enforce and the power to refuse to enforce such as they find to be unconstitutional and hence void. “*Justice Khanna*” in **Keshavananda Bharti’s case**, said that judicial review has become an integral part of our Constitutional system and a power has been vested in the High Court and the Supreme Court to decide about the constitutional validity of the provisions of statutes. If the provisions of the statutes are found to be violative of any of the articles of the Constitution which is the touchstone for the validity of all laws the Supreme Court and the high courts are empowered to strike down the said provisions.⁷ Under Article 368, Parliament cannot destroy the basic structure of the Constitution.

Judicial review not only just secures the judicial supremacy but it also plays an eminent role to secure the judicial independence.

JUDICIARY IN INDIA IS NO LONGER INDEPENDENT

□ **Sankalchand Sheth’s**

The threat to judicial independence was first majorly seen in the **Sankalchand Sheth’s** case where

⁶ Marbury vs. Madison 5 U.S. 137 (1803)

⁷ Keshavananda Bharti vs. State of Kerala, AIR 1973 SC 1461

the mass transfer of High Court judges was seen for the reason that these judges gave decisions which were not in the favor of the government at the time of 1975-1977 emergency. One of the transferred judges, Justice Sheth, who was transferred from Gujarat high court to the Andhra Pradesh high court, challenged his transfer on the grounds that that the transfer was not consensual and was taken without the consultation of the President and the Chief Justice of India. The court held that the transfers must not be given as punishment instead it should be in the Public interest. Court said that the transfer is a sort of new appointment and therefore the consent was necessary. It was also held that the word “consultation” meant full and effective consultation and on the basis of which the decision should be made.⁸

□ **S.P. Gupta vs. Union of India (Judges Transfer Case 1)**

In this case, the method of appointment of judges of the Supreme Court and High court was considered by the Supreme Court. Articles 124(2) and 217(1), explains the appointment of the Supreme Court and high court judges by the President after the consultation with the Chief Justice of India or other constitutional functionaries. The court held that the last word in the matter of appointment and transfer of judges will be of the executive and therefore, independence of Judiciary did not require the view of the chief justice of India in this matter. This means that the ultimate power to appoint judges was vested in the Executive from whose dominance and subordination it was sought to be protected. The Supreme Court had abdicated its power by ruling that Constitution functionaries had merely a consultative role and that power of appointment of judges was solely and exclusively vested in the Government. **Justice Bhagwati** said: *“This is not an ideal system of appointment of judges, but the reason why the power of appointment of judges is entrusted to the executive is responsible to the legislature and through which it is accountable to the people who are seekers of justice. The power of appointment of judges is not entrusted to the chief justice of India or to the chief justice of high courts because they do not have any accountability to the people and even if any wrong or improper appointment is made, they are not liable to account to anyone for such appointment”*. This case was in expression to state that the judiciary in India is no longer independent. It was the case which reflects the supremacy of

⁸ Union of India vs. Sankalchand Sheth, AIR 1977 SC2328

executive.⁹

□ **Supreme Court Advocates on record Association vs. Union of India (Judges Transfer Case 2)**

After the decision made in the Judges Transfer Case 1, the dissatisfaction led to the filing of another petition before the Supreme Court to the same issue. In this case, a nine judge bench of the supreme court by 7:2 majority overruled its earlier verdict in the S.P. Gupta's case and held that in the matter of appointment of the judges of the supreme court and the high courts, the chief justice of India should have primacy as he is in the best knowledge to seek the worth of a Judge. The then chief justice of India, **Justice Verma** along with other six judges observed that: *In order to prevail the basic feature of the Indian constitution i.e. the rule of law, it is necessary for judiciary to be independent which also is the basic structure of the Indian constitution. Thus the executive power in the appointment process has been reduced to minimum and political influence is eliminated. Therefore the word "consultation" instead of "concurrence" was used in the constitution.* The court laid down important guidelines for appointments and transfers of judges that the appointment of chief justice of India should be made by seniority. Later it was also held that the final say in transfer of judges should be vested in the hands of the Chief justice of India and such transfers can't be challenged in any court of law. The greatest significance should be attached in the view of the chief justice of India. Hence, this case led to the establishment of a collegium system in respect of appointment of the Judges and ensuring the independence of judiciary from the executive.¹⁰

□ **Re, Presidential Reference (Judges Transfer Case 3)**

After the verdict of Judges Transfer case 2, it was still unclear that how collegiums system would work, so a special reference was made by the president in this context. The court held that the consultation process to be adopted by the chief justice of India requires consultation of plurality of judges. The expression "consultation with the chief justice of India" in Articles 217(1) and 222(1) of the constitution of India require consultation with plurality of judges in the formation of

⁹ S.P. Gupta vs. Union of India, AIR 1982 SC 149

¹⁰ Supreme Court Advocates on record Association vs. Union of India, AIR (1993) 4 SCC 441

opinion of the chief justice of India; the sole opinion does not constitute in the meaning of consultation. The court held that the appointments of the judges to the Supreme Court under article 124(2), Chief Justice of India should consult a collegium of four senior most judges of the Supreme Court. The collegium is to decide in consensus way with the opinion of the Chief Justice of India and if the majority of collegium opposes the appointment and the chief Justice of India favors, then such appointment should not be made. If the recommended appointments found unsuitable by the executive, the collegium will reconsider the appointments. In the appointment of judges of high court the collegium must consist of the chief justice of India and the two senior most judges of the Supreme Court. In regard to transfer of high court judge the court held that the chief justice of India in addition with the four judges of the supreme court will form a collegium and is required to consult with the chief justice of both the high courts, one from which the judge is being transferred and the other receiving him but these appointments and transfers of the judges of high court can also be challenged on the ground of lack of consultation and less efficiency in the decision-making process.¹¹

□ National Judicial Appointment Commission Bill

The appointment method for the judges of the Supreme Court and High Court has been changed after this Bill came into existence. This bill was a threat to the independence of the Indian judiciary. According to this bill, the judicial appointments commission was formed which consists of the chief justice of India as chairperson (*ex-officio*), two other senior judges of the supreme court, the union minister in charge of law and justice, as members (*ex-officio*), two eminent members nominated by the committee consisting of the Prime Minister, the Chief Justice of India and the Leader of Opposition in the Lok Sabha. This commission recommends persons for appointment as Chief Justice of India, Judges of the Supreme Court, Chief Justice of High Courts and other Judges of High Courts and also recommends transfer of Chief Justices and other Judges of High Courts. The most disturbing and dangerous provision of this commission is that Central Government is in power to appoint the officers and employees of the commission, making its secretariat a government department. These are the certain features of the National Judicial

¹¹ Re, Presidential Reference, AIR 1999 SC 1

Commission which shows that the judiciary cannot be determined as independent because the major control is given in the hands of executive after this Bill.¹²

CRITICAL ANALYSIS

The judicial independence in India has faced many obstacles till now. In Judges Transfer case 1, the supremacy of executive was seen, whereas in judges transfer case 2 and 3, it results in judicial supremacy but again the appointment procedure for judges was changed after passing of the national judicial appointment commission bill. After coming of this bill, the situation was again same as it was seen in the time of S.P. Gupta's case as the upper hand was of executive and the Judiciary had less say. The involvement of members outside the Judiciary in the collegium system has not only failed the idea of the basic structure of the constitution to separate the Judiciary from the other organs of the government but also corrupted the whole system.

Where the government itself is the largest litigant in the country, it would definitely be ironic that government itself appoints the judges for the Supreme Court and the High Court. Therefore it would automatically amounts to the biasness in the judgement given by the courts.

Judges plays a very important role in the independence of judiciary, but where judges become corrupt and partial then it is very difficult to save the basic structure of the constitution i.e. Judicial Independence. Judiciary is the third pillar of democracy but when the judicial independence faces such a great threat then along with the independence of judiciary, democracy is also in danger.

CONCLUSION

The independence of judiciary is not just the basic feature of the Indian constitution perhaps it also helps in protecting the rights and also to provide justice to every sufferer in the country. Judiciary is denoted as the third organ of the democracy but is it really secure by the political interference? The independence of judiciary has faced many obstacles from the historic times till now but is it

¹² Preeti Sharma, *Judiciary in India, No longer Independent: A Critical Analysis*, vol. 1 issue 6 , and Dr. J.N.Pandey- *Constitutional law of India*, central law agency, 56th edition, 2019, chapter-22

still independent? In an historic overview the judiciary was totally in the hands of the monarch and hence it not said to be independent.

The constitution was framed by the makers in such a way that it ensures the total independence of Judiciary. There are several provisions drafted by the makers in the constitution for the safeguard of Judiciary. To accomplish the goal of a democratic Nation, the Judicial Independence is must as only then the Judiciary can function and protect the rights of the Citizens and guard the constitution. The interpretation in the constitution of India which challenges the Judicial Independence is not justifiable.

The interpretation in the judges transfer case 1 giving primacy to the executive has led to the violation of the basic feature of the Indian constitution, but later in judges transfer case 2 and 3, primacy was given to the judiciary was a relief for a short period of time as again the judicial independence was at risk after the passing of national judicial appointments commission bill.

Even in the recent era there are several cases which reflect that the judiciary is no longer independent or even if it's still independent, is it at the significant value of independency? Or the destruction of judicial independence is undoubtedly visible? There are many questions being raised various times but answers are yet to be given.