

Judicial Independence and the Future of Constitutional Democracy in India

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Abstract

One of the important pillars of a constitutional democracy is the absolute independence of the judicial system at all levels. This is imperative if the rule of law is to prevail, fundamental rights to be guarded against erosion and an institutional balance to be maintained in the Indian political system.¹ In democracies today, the judiciary has an important role to place in interpreting constitutional values, ensuring that the government is responsible to the public for its actions and protecting citizens against the unwanted and illogical use of state power against them.² This chapter attempts to examine the unfolding relationship between the independence of the judiciary and the constitutional democracy in India. Emphasis is laid on the various kinds of challenges that the Indian judiciary faces especially in regard to institutional, political and constitutional aspects.³

This chapter tracks the maturation of judicial independence in India from what the framers of the Constitution had visualized to the present-day development of judicial review, public interest litigation and the collegium system.⁴ At the same time, this chapter discusses the apprehensions over judicial appointments, interference from the executive, judicial overreach, pending cases, lack of transparency, media scanning, politicization of institutions, and the diminishing confidence of the public in the judicial process. This chapter contends that the judiciary's ability to maintain its freedom is closely linked to the future of the country while, at the same time, remaining accountable, transparent and maintaining high moral and ethical behaviour.

The role of the Supreme Court and various High Courts of the country in dealing with issues like electoral democracy, federalism, secularism, minority rights, freedom of speech, privacy, social justice, and constitutional governance is put under the lens.⁵ This chapter delves into the impact of political polarisation on the functioning of the judiciary and the democratic system emanating from technological transformation, digital governance, and artificial intelligence. The need for structural reforms is discussed

¹ M.P. Jain, *Indian Constitutional Law* (9th edn., LexisNexis Butterworths Wadhwa, Nagpur, 2023) 196–205.

² Granville Austin, *Working a Democratic Constitution: The Indian Experience* (Oxford University Press, New Delhi, 1999) 72–85.

³ Upendra Baxi, *The Indian Supreme Court and Politics* (Eastern Book Company, Lucknow, 1980) 145–170.

⁴ S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (2nd edn., Oxford University Press, New Delhi, 2003) 18–42.

⁵ Sujit Choudhry, Madhav Khosla and Pratap Bhanu Mehta (eds.), *The Oxford Handbook of the Indian Constitution* (Oxford University Press, New Delhi, 2016) 1–25.

to improve judicial efficiency, accessibility, ethical accountability and institutional credibility. These are necessary to preserve democratic legitimacy.⁶

The discussion in this chapter is based on an interdisciplinary approach founded on constitutional law, political theory, governance studies and democratic discourse. It analyses the reasons for judicial independence operating not just as a legal requirement but as a democratic barricade to preserve India's constitutional future.⁷ It rounds off the analysis by stating that if democratic resilience and constitutional governance in India has to be maintained, it is necessary to strengthen judicial institutions, ensure separation of power and protect constitutional values.⁸

Keywords: Judicial Independence; Rule of Law; Constitutional Governance; Separation of Powers; Judicial Review; Supreme Court of India; Collegium System; Constitutional Morality; Judicial Accountability; Public Interest Litigation; Federalism; Electoral Democracy, Judicial Reforms.

1.0 Introduction

It is widely accepted that the complete independence of the judiciary is one of the most important pillars of a constitutional democracy. It is the foundation on which democratic legitimacy, constitutional governance and the rule of law are built and maintained.⁹ It is the judiciary that is responsible in a constitutional democracy to ensure constitutional morality, protect citizens against fanciful or illegal government action, and preserve a proper balance between the various institutions and organs of the state so that they function smoothly and effectively. The judiciary has a considerable and broader significance in India because the country's unity depends on the diverse and divergent communities living together in peace and harmony. The judiciary has to make certain that it is maintained. The framers of the constitution were keen on the judiciary remaining completely independent so that it could protect constitutional values from political exorbitance while ensuring that democratic governance remained rooted in legality, accountability and justice (Austin, 1999). As a result, the Indian judicial system functions on two levels—adjudicating on a purely legal basis and assuming the role of a constitutional guardian to preserve democratic continuity and institutional stability.¹⁰

Since Independence, the judicial system in India has transformed constitutional governance through judicial reviews, expansion of fundamental rights, public interest litigations and interpreting the constitution.¹¹ Despite this, scholars have raised concerns about where the Indian judicial system is heading while taking into account the various debates that have arisen around judicial appointments, executive influence, judicial accountability, transparency deficits, delays in finalising cases, scrutiny by the media and institutional legitimacy (Baxi, 2015). It is in this context that it is imperative to understand

⁶ Justice D.Y. Chandrachud, *The Constitution We Adopted (With Selected Speeches)* (Juggernaut Books, New Delhi, 2024) 95–128.

⁷ Aharon Barak, *The Judge in a Democracy* (Princeton University Press, Princeton, 2006) 35–68.

⁸ Bruce Ackerman, *The Future of Liberal Revolution* (Yale University Press, New Haven, 1992) 93–117.

⁹ H.M. Seervai, *Constitutional Law of India: A Critical Commentary*, Vol. I (4th edn., Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2015) 276–289.

¹⁰ B. Shiva Rao, *The Framing of India's Constitution: A Study* (Universal Law Publishing Co. Pvt. Ltd., New Delhi, Reprint 2012) 312–326.

¹¹ V.N. Shukla, *Constitution of India* (13th edn., Eastern Book Company, Lucknow, 2017) 623–658.

judicial independence in terms of constitutional principles and democratic safeguards.¹² This is important to evaluate the resilience of India's constitutional democracy.

2.0 Historical Evolution of Judicial Independence in India

There has been a dynamic interaction between constitutional aspirations and political realities as seen in the development of India's judicial independence. When the Constitution was being drafted in the Constituent Assembly after India gained its freedom, the framers realised the paramount need for a neutral judiciary with the ability to function independently of political authority.¹³ The Constitution of India, while establishing an integrated judicial system, gave the Supreme Court and the various High Courts wide-ranging powers to interpret law, judge disputes and nullify unconstitutional actions.¹⁴ To keep judges sequestered from executive pressure, they were provided Constitutional safeguards of security of tenure, fixed salaries, procedural autonomy and impeachment mechanisms (Seervai, 1996).

The benefits of an independent judiciary shot into the limelight during the political crises of 1960s and the 1970s. Considerable tensions ran high between Parliament and the judiciary. (Noorani, 2017) The supersession of senior judges as a fallout of the judgement in the Kesavananda Bharati vs. State of Kerala case led to embarrassing questions about executive interference and judicial autonomy. Later, when Emergency was imposed, there was disquietude over what was considered the brittleness of democracy. The judiciary came under heavy fire for failing to adequately protect civil liberties. This was pushed into the spotlight after the controversial decision in ADM Jabalpur vs. Shivkant Shukla in which it was claimed that constitutional protections concerning personal liberty had weakened considerably.¹⁵

The judiciary became assertive after the Emergency was lifted. There seemed to be a tendency in courts to switch to an activist direction that led to emphasis on constitutional accountability, civil liberties and social justice. This was the beginning of a stronger and more independent judiciary that was committed to protect democratic institutions and constitutional morality.¹⁶

3.0 Constitutional Foundations of Judicial Independence

There are many provisions in the Constitution of India that legitimize the independence of the judiciary. These provisions are designed to maintain institutional autonomy and a sharp separation of powers.¹⁷ Articles 124 to 147 provide the framework for the Supreme Court while Articles 214 to 231 regulate the working of the High Courts.¹⁸ These constitutional provisions protect the judiciary in terms of tenure, financial security and administrative independence. In this manner, political interference is kept at arm's length (Basu, 2018).

Though not rigidly codified in India, the concept of separation of powers is an integral part of constitutional functioning. The judiciary maintains a balance by acting as a watchdog against executive

¹² Nick Robinson (ed.), *Expounding the Constitution: Essays in Constitutional Theory* (Oxford University Press, New Delhi, 2017) 245–268.

¹³ H.R. Khanna, *Making of India's Constitution* (Eastern Book Company, Lucknow, 1981) 178–196.

¹⁴ M.C. Setalvad, *The Indian Constitution* (2nd edn., Eastern Book Company, Lucknow, 1967) 239–258.

¹⁵ A.G. Noorani, *Constitutional Questions in India: The President, Parliament and the States* (Oxford University Press, New Delhi, 2000) 188–215.

¹⁶ S.K. Verma and Kusum (eds.), *Fifty Years of the Supreme Court of India: Its Grasp and Reach* (Oxford University Press, New Delhi, 2000) 89–112.

¹⁷ D.D. Basu, *Introduction to the Constitution of India* (23rd edn., LexisNexis Butterworths Wadhwa, Gurugram, 2022) 451–486.

¹⁸ P.M. Bakshi, *The Constitution of India* (16th edn., Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2021) 186–245.

arbitrariness and unconstitutional or exorbitant legislative actions. The process of judicial review empowers courts to examine the validity of laws and governmental actions leading to reinforcing constitutional supremacy. Thus, by functioning as a structural necessity, judicial independence maintains democratic accountability and constitutional continuity.¹⁹

4.0 Judicial Review and Constitutional Supremacy

One of the most robust instruments that judicial independence uses to protect constitutional democracy in India is judicial review. Any attempt of domination by the majority by enacting unconstitutional legislation is nipped in the bud by the judiciary's inbuilt authority to declare it null and void.²⁰ An outstanding example of such judicial authority is seen in the *Kesavananda Bharati vs. State of Kerala* case in which the Supreme Court held that Parliament's power to amend the Constitution is limited and that it cannot nullify compulsory constitutional principles relating to judicial independence, democracy, secularism and federalism (Sathe 2002).

This judgement made it clear that the judiciary is the ultimate authority to interpret constitutional limitations, thus significantly transforming constitutional jurisprudence. Later judgements in other cases too reiterated this principle and re-established judicial power to prevent political manipulation. Constitutional democracy was thus bolstered by judicial review that prevented arbitrary exercise of power that went against the basic rights of citizens.²¹

5.0 Public Interest Litigation and Democratic Governance

The rise in public interest litigations (PIL) basically widened the scope of the judiciary to take a hand in the democratic governance of India. PILs opened up avenues for marginalised communities to bring the social injustices they were being discriminated with to the notice of the courts.²² Barriers of procedure were dismantled to enable courts to intervene in matters relating to bonded labour, environmental degradation, prisoners' rights, gender injustice and socio-economic inequality (Bhagwati, 1985).

Judicial activists were empowered by PIL that made it easy for them to seek justice and strengthen the protections envisaged under Article 21 of the Constitution.²³ Courts went in for thorough and wide-ranging interpretations of the right to life, and recognised dignity, education, health, environment and livelihood as indispensable entitlements under the constitution.²⁴ Though PIL strengthened democratic participation and accountability, critics pointed out that too much judicial intervention risked undermining institutional boundaries and that drawing courts into areas of governance trespassed on areas traditionally reserved for elected institutions (Shankar & Mehta, 2008).

¹⁹ M.P. Singh and Sujit Choudhry (eds.), *The Oxford Handbook of the Indian Constitution* (Oxford University Press, New Delhi, 2016) 307–329.

²⁰ V. Sudhish Pai, *Constitutional Supremacy: A Revisit* (LexisNexis Butterworths Wadhwa, Nagpur, 2011) 121–148.

²¹ Justice M.N. Venkatachaliah (ed.), *Constitution of India* (2 vols., Eastern Book Company, Lucknow, 1998) Vol. I, 547–571.

²² S.P. Sathe, *Public Interest Litigation in India: Transgressing Borders and Enforcing Limits* (Oxford University Press, New Delhi, 2002) 82–118.

²³ P. Ishwara Bhat, *Fundamental Rights: A Study of Their Interrelationship* (Eastern Book Company, Lucknow, 2004) 201–229.

²⁴ Rajeev Dhavan, *The Supreme Court of India: A Socio-Legal Critique of Its Juristic Techniques* (N.M. Tripathi Pvt. Ltd., Bombay, 1977) 286–312.

6.0 The Collegium System and Judicial Appointments Debate

Practically all debates on judicial independence in India revolve around judicial appointments. Constitutional interpretations of The First, Second and Third Judges cases led to the evolution of the collegium system.²⁵ Notably, the decision in Supreme Court Advocates-on-Record Association vs. Union of India emphasised judicial supremacy in appointments and transfers and limited any influence by the executive (Robinson, 2013).

However, there is continuous criticism of the collegium system even though it is admitted that it gave muscle to institutional autonomy. The criticism mainly related to opacity, lack of transparency and limited accountability. The constitutional controversy that the National Judicial Appointments Commission (NJAC) generated led to further debates over maintaining a balance between judicial independence and democratic accountability.²⁶ By nullifying the NJAC in 2015, the Supreme Court re-asserted judicial independence as part of the Constitution's basic structure. Critics, however, continued to press for institutional reforms claiming it was necessary to improve transparency and inclusivity (Khosla, 2019).

7.0 Contemporary Challenges to Judicial Independence

There are many institutional and structural challenges that face judicial independence in India in the twenty-first century. The large number of cases pending in courts, infrastructural deficiencies, long wait for justice, political pressures and the media's tendency to sensationalise most, if not all, cases has been causing anxiety in the public at large.²⁷ The confidence of citizens in the efficiency of the judicial system is shattered by the large number of pending cases in courts all over the country. This also weakens democratic legitimacy (Law Commission of India, 2009).

Another aspect that has given rise to questions regarding many constitutional aspects relate to allegations of post-retirement appointments, politicisation of judicial decisions, selective judicial intervention and inconsistent transparency mechanisms.²⁸ To maintain and boost public trust, it would be necessary for judicial accountability to coexist with judicial independence. Ethical integrity must also be ensured and procedural transparency given priority to strengthen democratic resilience.

8.0 Judiciary, Constitutional Democracy and Fundamental Rights

A decisive role has been played consistently by the Indian judiciary in protecting constitutional democracy. On various occasions it has intervened in matters involving electoral governance, secularism, minority rights, privacy, and freedom of expression. Periodically, executive excesses have been stopped by judicial interventions preserving constitutional values. A case in point is the Justice K. S. Puttuswani vs. Union of India case in which the court held that privacy was a fundamental right.²⁹ This strengthened the protections guaranteed by the constitution against excessive state surveillance and established dignity as a core constitutional value (Chandrachud, 2017).

²⁵ Fali S. Nariman, *Before Memory Fades: An Autobiography* (Hay House India, New Delhi, Revised edn., 2017) 279–305.

²⁶ Abhinav Chandrachud, *Supreme Whispers: Conversations with Judges of the Supreme Court of India, 1980–1989* (HarperCollins Publishers India, New Delhi, 2018) 331–349.

²⁷ Justice V.S. Malimath (Chairman), *Report of the Committee on Reforms of Criminal Justice System* (Government of India, Ministry of Home Affairs, New Delhi, 2003) 173–189.

²⁸ B.N. Srikrishna, *Judicial Ethics and Accountability* (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2014) 41–68.

²⁹ Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (HarperCollins Publishers India, New Delhi, 2019) 247–276.

By continuing to engage in federal disputes, citizenship debates, religious freedoms, electoral integrity and freedom of speech, the judiciary has demonstrated its statutory role to safeguard democratic governance. In the increasing politically polarised environments in which courts have to operate, it sometimes becomes difficult, but necessary, to maintain judicial neutrality.³⁰

9.0. Technology, Artificial Intelligence, and Judicial Transformation

The rapid advance in technology is changing the functioning of the judiciary in India. There is limitless potential to speed up the judicial process with the introduction of digital courts, electronic filing systems, virtual hearings and artificial intelligence-based legal technologies. This will also improve efficiency and accessibility. The steps taken after the COVID-19 pandemic relating to judicial digitization quickened the pace to a large extent and proved that technology was capable of improving institutional functioning.³¹ Concern was expressed in connection with algorithmic bias, cyber security, digital exclusion and privacy violations.³² A detailed constitutional regulation of technological amalgamation is therefore necessary (Susskind, 2019).

10.0 Judicial Reforms and the Future of Constitutional Democracy

Constitutional autonomy has to be preserved and judicial institutions have to be made stronger for the future of constitutional democracy. It is necessary to introduce structural reforms in areas of transparency in judicial appointments, increasing judicial capacity, improving case management systems, institutional diversity, ethical oversight and technological modernization.³³ Also, institutional balance has to be maintained between the legislature, executive and judiciary. This is important to prevent erosion of democratic values.³⁴

Judicial independence cannot function in a cocoon sequestered from political interference. It has to recognise public accountability, transparency and constitutional fidelity. The trust that citizens have in judicial institutions that they operate without bias and consistently within constitutional boundaries is the bedrock of democratic legitimacy.³⁵

11.0 Conclusion

The independence of the judiciary is the basic foundation of constitutional democracy in India. The judiciary is not only an interpreter of the law but also a constitutional guard mandated to protect democratic governance, fundamental rights and institutional accountability. Despite onslaughts relating to political polarisation, judicial appointments, delays and technological disruptions, the importance and relevance of judicial independence has not diminished and it is considered crucial to sustain constitutional resilience and democratic legitimacy. The future of constitutional democracy in India will to a great extent depend on the judiciary's ability to maintain autonomy; at the same time, it would have to embrace transparency,

³⁰ Madhav Khosla, *India's Founding Moment: The Constitution of a Most Surprising Democracy* (Harvard University Press, Cambridge, MA, 2020) 189–214.

³¹ Richard Susskind, *Online Courts and the Future of Justice* (Oxford University Press, Oxford, 2019) 1–42.

³² Lyria Bennett Moses, *Artificial Intelligence in Society* (Cambridge University Press, Cambridge, 2021) 153–180.

³³ Justice J.S. Verma, *New Dimensions of Justice* (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2000) 121–147.

³⁴ Dieter Grimm, *Constitutionalism: Past, Present, and Future* (Oxford University Press, Oxford, 2016) 197–223.

³⁵ Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (Cambridge University Press, Cambridge, 2003) 261–284.

accountability and institutional reform. It is therefore essential to toughen judicial institutions, protect constitutional morality and fortify separation of powers to safeguard India's democratic future.

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