



THE IMPACT OF POLITICAL INFLUENCE AND POWER ON THE INDIAN JUDICIARY

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Abstract

The growing influence and power of political entities have presented significant obstacles to the autonomy of India's judiciary. The Principles on the Independence of the Judiciary emphasize the significance of impartiality in rendering judgments, wherein decisions are made only on the basis of factual evidence and legal principles, without any undue limitations or inappropriate influences. The principle of separation of powers, which ensures the independence of the judiciary, is particularly highlighted in terms of the judiciary's role and its relationship with other branches of government. This research provides a critical analysis of the influence of political factors and power dynamics on the Indian Judiciary. It examines the complex connection between political forces and judicial rulings, investigating situations when the judiciary could be influenced by external pressures. Further, the research offers a comprehensive examination of how the legislative and executive branches of government utilize statutory provisions to reverse judicial rulings. It also explores the significance of the Separation of Powers concept within the Indian context. Moreover, it provides illustrations of cases in which such encroachment of authority has taken place inside the Judiciary, emphasizing the difficulties encountered by the Indian Judiciary in preserving its autonomy and probity. It emphasizes the need to protect the autonomy of the judiciary in a democratic society, while also highlighting the difficulties encountered while trying to act as a fair and unbiased

judge. This research makes a valuable contribution to the wider academic discussion around the function of the Judiciary in democratic government and the vital responsibility of safeguarding its independence and integrity.

Keywords: Independence, Influence, Interference, Judicial Accountability, Separation of Power.

Introduction

India is a country renowned for being the largest democracy worldwide. The Legislature, Executive, and Judiciary all play a crucial role in keeping the democratic principles alive. Though every branch is responsible for a different function, none enjoys constitutional priority over the others. However, there is considerable concern that the legislative branch empowers and affects the other two branches. This research analyzes whether the legislature genuinely has the authority to influence the judiciary or if it is just a fancy.

The vision of a judiciary that is autonomous is incorporated in the Indian Constitution. Unfortunately, the nation's political and legal past depicts a never-ending conflict between the administration and the legal system, in which political pressures and biases aim to poison the process of decision-making.³

As this research progresses, the first section discusses the doctrine of Division of Power in keeping the context of the judicial process, the instances of conflicts between the Legislature, Executive, and Judiciary, and

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Aayush Kumar, Anirudh Singh

the need to strike a balance between these branches, then we will discuss accountability and independence of the judiciary. Further an analysis of some instances where judicial decisions were influenced by external factors, such as personal bias, beliefs and ideologies of the judge, governmental pressure, and other factors. This paper also emphasizes that judicial independence does not always imply a complete delegation of powers to the judiciary, but rather a delicate balance between these branches to mutually strive to minimize such influences.

The Doctrine of Separation of Powers in the Judicial Context

Any nation has three separate bodies: the Executive branch, the Legislative, and the Judiciary. The idea of separating powers needs a precise division of duties among these three parts in order to avoid capricious or authoritarian control.⁴ The phrase “independent judiciary” is commonly used in conjunction with the notion of the division of powers. The division of powers idea necessitates the independence of the judiciary. The independence of the judiciary is rightly regarded as an essential component of the democratic structure. Essentially, the viewpoint is that the primary body of the judiciary, namely “judges,” should not be subject to internal political limitations and administrative agendas while applying and interpreting legislation to their decisions. They should be devoid of ideological pressure, personal or group interests, and other organizations, allowing judges to make impartial and equitable choices.⁵

Judges are at the heart of the judicial system; how well have they performed in this regard? Judges, are those who are appointed to determine the meaning of law through their manipulation of precedent and statutory interpretation rules, and they will be the final decision-makers on what the law says about any particular set of

facts before them. Besides that, judges are expected to deliver judgments in an unbiased way by strictly applying the law, without letting their subjective opinions, beliefs, favors, fear, or pressure from any of the parties in the case cloud their judgment in any way.

The idea of separation of powers promotes uniqueness in the organization and duties of the three domains of government, and so this doctrine proposes a separating line of authority. According to this idea, no single individual or group of individuals shall be allowed to wield the authority of all three departments of government. The concentration of authority in a single individual or group of people, according to a French thinker named Montesquieu, leads to authoritarianism and oppression. As a result, he felt compelled to decentralize authority in order to counteract arbitrary behavior, and vested the power of government in three distinct organs: the legislative, the executive, and the judiciary.⁶

The overlapping of both the executive and legislative branches, according to Montesquieu’s concept, would lead to the executive’s autocratic control since the executive could pass any laws it desired, whenever it pleased. The overlap of the legislative and judicial branches would also not shield a person from the power of the state. The doctrine’s importance comes from its goal of preserving individual liberty by avoiding the concentration of power in the hands of a single individual or a group of individuals.⁷

Articles 53(1)⁸ and 154(1)⁹ of the Indian constitution specifically provide that the governmental power of the Union and a State resides in the President and the Governor, correspondingly, but there is no equivalent provision about the vesting of powers in the legislative and the judiciary. As a result of this, it has been concluded that there is no clear separation of powers in India.

In *Kartar Singh vs. State of Punjab*¹⁰, the fundamental principle of the constitution, according to Justice Ramaswamy, is that legal supreme power has been given to the

4. PB Kurland, *The Rise and Fall of the “Doctrine” of Separation of Powers*, 85 MICHIGAN LAW REVIEW, 569, (1986).

5. *Id.*

6. Neerav Khare, *Separation of power and rule of law in India, unswerving deepening of democracy*, 4 INTERNATIONAL JOURNAL OF RECENT RESEARCH ASPECTS, 114 (2017).

7. Chetan Upadhyay, *Doctrine of Separation of Power and its Present Significance in India*, 3 JOURNAL OF CONSTITUTIONAL LAW AND JURISPRUDENCE, 21 (2020).

8. *INDIA CONST. art. 53, cl. 1.*

9. *INDIA CONST. art. 154, cl. 1.*

10. *Kartar Singh v. State of Punjab*, AIR 1961 SC 1787.

legislative wing to pass laws, the executive to carry them out, and the courts to interpret them within the parameters set by the constitution.

In the case of *Rai Sahib Ram Jawaya Kapur v. The State of Punjab*¹¹ it has been held that in India, we employ functions division rather than power separation. As a result, we are not strictly adhering to this doctrine. Cabinet ministers, for example, who execute both executive and legislative roles, are one example. Article 74(1)¹² gives them an edge over the executive branch by making their help and advice essential for the President. As a result, the executive takes its authority from the legislature and is legitimated by it. In the *Keshvananda Bharati*¹³ case, the core framework of the constitution, according to Justice Beg, consists of the division of powers. Each of the three pillars of the state cannot take over the activities of the others. This plan can never be amended, even if Article 368 of the founding document (Constitution) is invoked.¹⁴

Therefore, from the above judgments it can be held that the separation of powers although in the early years of independence was not a common concept but as the judicial interpretation grew in India this doctrine took a prominent place in the democracy of the country and the court also recognized it in its judgement.

Striking a Balance between the Organs

These three branches of government provide safeguards and checks on each other but are prohibited from interfering with one another's activities. As a result, the court uses its judicial review power over each of the two branches of government, while the legislature scrutinizes the executive's performance. In rare circumstances, the courts have issued laws and regulations based on their decisions. For example, the Vishakha rules on sexual misconduct, the court's decision in 2010 directing the Centre to provide grain for consumption, or the establishment of a high-level Special Investigation Team (SIT) headed by former Supreme Court

judge B P Jeevan Reddy to supervise an inquiry and attempts to retrieve black money stored in Swiss banks. In the case of *Aravali Golf Club v. Chander Hass*¹⁵ "Courts cannot create rights where none exist, nor can they continue to make orders that are incapable of enforcement or violate other laws or settled legal principles," Justice Katju stated, "To keep legal activism from descending into legal adventurism, the judiciary must exercise caution and restraint. It is vital to remember that the courts lack the ability to run the country. The judiciary should merely serve as a warning bell, ensuring that the government is fully prepared to carry out its duties." These are also cases where the legislature has used its power to overrule earlier decisions. The Supreme Court prescribed responsibilities in the matter of *Commissioner of Customs vs. Sayed Ali*¹⁶ The Parliament confronted them by enacting the Customs Amendment and Validation Bill, 2011 which validated the imposition of all duties retrospectively and measures that were undertaken by a few officials who were not empowered to do such acts under the relevant Customs Act. The cases mentioned above demonstrate how the legislature has stepped in to overturn judgments. In several cases, the court has worked in a "grey area," separating its role from the roles of the executive and legislative branches. Aside from the fact that the theory of separation of powers is not explicitly specified in the constitution, each pillar of the State has to establish a good relationship with each other while respecting the domain of the other two.

In the case of *Maneka Gandhi vs. Union of India*,¹⁷ The court quashed an executive order that prevented Maneka Gandhi from traveling abroad by confiscating her passport, stating that the right to travel abroad is protected by Article 21 of the Constitution.¹⁸ The concept of judicial review and judicial activism was expanded by this case and also increased the Courts' power to engage in any type of Executive action. The High Courts and Supreme Courts have become a watchdog for citizens'

11. *Rai Sahib Ram Jawaya Kapur v. The State of Punjab*, AIR 1955 SC 549.

12. *INDIA CONST. art. 235. cl. 1*

13. *Keshvananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

14. *INDIA CONST. art. 368.*

15. *Aravali Golf Club v. Chander Hass*, (2008) 1 SCC (L&S) 289.

16. *Commissioner of Customs vs. Sayed Ali*, (2011) 3 SCC 537.

17. *Maneka Gandhi vs. Union of India*, AIR 1978 SC 597.

18. *INDIA CONST. art. 21.*

fundamental rights when they are violated by an Executive action.

Judicial Accountability and Independence

Judicial accountability is, in certain parts, a byproduct of the judiciary's autonomy; simply put, accountability means taking the guilt of your acts and choices.¹⁹ It often refers to obligation to any external/internal body, whereas some may value obligation to ideals or oneself more than accountability to someone with the authority of penalty or correction. Because accountability is an important aspect of autonomy, Article 235²⁰ of the Indian Constitution provides for the 'control' of the High Court on the Subordinate Judiciary, plainly suggesting that a framework to maintain judiciary responsibility is provided in statutory form. Thus, giving the High Court authority over the lower courts ensures autonomy since it is not accountable to either the executive or the legislature. The stipulation for the rigorous procedure of expulsion was also made with the goal of establishing independence in mind. Except in extreme circumstances, there is no mechanism for higher courts since the authors of the Constitution assumed that "settled standards" and "pressure from peers" would serve as enough checks. But that has not happened entirely. The primary issue with the judiciary is that it is not democratically accountable to either the legislative or the government. When it comes to international norms and rules, we can see that the United Nations and the Council of Europe's recommendations are clearly followed in India. Several clauses on judicial punishment and removal are included in the UN Basic Principles. "A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure," declares Principle 17. The judge has the right to a fair trial. Unless stipulated otherwise, the first investiga-

tion of the subject will be kept secret. Principle 18, pertaining to the reasons for removal, specifies the kinds of removal that are permitted: "Judges shall be subject to suspension or removal only for reasons of incapacity or behavior that renders them unfit to discharge their duties".²¹ Furthermore, the Basic Principles of the United Nations support the requirement that legislation be enacted to allow judges to appeal punitive rulings. Principle 20 stipulates that "Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review".²² It is important to note that the Council of Europe's proposal on judicial independence establishes precise standards for the circumstances that might lead to the dismissal of a judge: "Appointed judges may not be permanently removed from office without valid reasons until mandatory retirement. Such reasons, which should be defined in precise terms by the law, could apply in countries where the judge is elected for a certain period or may relate to incapacity to perform judicial functions, the commission of criminal offenses, or serious infringements of disciplinary rules".²³

The Supreme Court had rightly asserted that "A single dishonest judge not only dishonors himself and disgraces his office but jeopardizes the integrity of the entire judicial system."²⁴

In the *Judges case*²⁵, It was specifically stated that the final power to choose a judge of the High Court or the Supreme Court rests with the government of the nation and not the Chief Justice of India. Furthermore, the language "consultation" in Articles 124 and 217 of the constitution was stated to not entail consent. The legal community deemed this ruling to be contrary to constitutional principles and the autonomous nature of the judiciary, and it was heavily condemned in scholarly literature. In the *Second Judge case*²⁶, The Supreme Court overturned the earlier ruling by establishing a collegium

19. R Handberg, *Judicial accountability, and independence: Balancing incompatibles*, 41 U. MIAMI L. REV, 127, (1994).

20. INDIA CONST. art. 235.

21. International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors, (Nov 19, 2022, 5:00pm), <https://www.refworld.org/pdfile/4a7837af2.pdf>.

22. *Id.*

23. *Id.*

24. Anil Divan, *Judicial Integrity and Judicial Reforms*, (Nov 19, 2022, 5:00pm).

<https://www.sconline.com/blog/post/2017/04/02/anil-divan-a-counsel-nonpareil/>.

25. S.P Gupta v. UOI, AIR 1982 SC 149.

26. Supreme Court Advocates on Record Association v. Union of India, AIR 1994 SC 268.

and giving the Chief Justice the predominant responsibility in judicial selections of justices. Justice J.S. Verma claimed “Should the executive have an equal role and be in divergence of many proposals, germs of indiscipline would grow in the judiciary,” However, because the particular role of the CJI hadn’t been established, this resulted in years of misunderstanding.

In the *Third Judges case*,²⁷ The Apex Court unanimously upheld the 1993 judgment, and the Collegium system was expanded to include the Supreme Court’s four senior-most judges after the Chief Justice for carrying out selection.

In the case of *K. Veera swami v. Union of India*²⁸. The majority ruled that a) The President of India is constitutionally authorized to provide prior permission for prosecuting a higher court Judge under section 6(1) (c) of the Prevention of Corruption Act, 1988. b) No criminal case must be launched under section 154, Cr. P.C.²⁹ against a High Court Judge, Chief Justice of the High Court, or Supreme Court Judge unless the Chief Justice of India has been approached in the issue. c) If the allegations of illegal wrongdoing are made against the Chief Justice of India, the Government must consult with any other Supreme Court judge or judges. d) A similar discussion will take place while reviewing the matter of providing sanction for charges, and it will be essential and suitable for the issue of sanction to be directed by and in line with the opinion of the Chief Justice of India.³⁰

Therefore, the terms accountability and independence go hand in hand, and this has been shown by the court in the judgment above moreover there is a very famous saying “With more power comes more responsibility” and power has been taken through second and third judges’ cases and responsibility has been embarked in other cases like K Veera Swami and United Nations Principles like 18, 19 and 20.

27. In Re: Presidential Reference, AIR 1999 SC 10.

28. *K. Veeraswamy v. Union of India*, 1991 SCR (3) 189.

29. CODE OF CRIMINAL PROCEDURE, 1973, § 154, Acts of Parliament, 1973, (India).

30. *Supra note*. 28.

31. The Wire Staff, Collegium System Has Not Improved Social Diversity in Higher Judiciary: Law Ministry, (Apr 9, 2023, 7:00pm), <https://thewire.in/law/collegium-social-diveristy-higher-judiciary-law-ministry>.

Recent Controversies Regarding the Collegium System

According to the Times of India, the Law Ministry of India informed the parliamentary panel on employees, public complaints, law, and justice headed by BJP Rajya Sabha MP Sushil Modi that “inequitable representation for backward and minority groups” in the judiciary’s upper ranks is “evident based on the fact” that 79% of every one of the high court judges appointed within 2018 and 2022 were from the upper castes. As per the TOI report, the ministry published that the existing collegium system has not been able to solve the problem of “social diversity in the higher judiciary, as it was initially devised by the Supreme Court” over the past three decades.

According to the Ministry of Law, 424 (79 percent) of the 537 appointments to high courts in the last five-year period came from the general category (the upper caste), 57 (11%) from Other Backward Classes (OBCs), 15 (2.8%) from the Scheduled Castes (SCs), and 7 (1.3%) from Scheduled Tribes. (STs). Based on the newspaper report, the ministry stated the castes of the 20 newly selected judges could not be determined.

According to the study, the federal government has clearly highlighted and flagged “bias” against the OBC and disadvantaged communities, stating that while constituting more than 35% of the population of the nation, just 11% of nominations were made from these groups.

The law department informed the panel that “it is the main duty of the SC collegium and the HC collegiums to deal with the issue of ensuring diversity and social justice in the procedure of selection to the constitutional posts.”³¹

Role of Government in Collegium System

Government intervention enters the scene only after the Apex Court has settled on the list of the judges to be submitted for elevation to the Supreme Court or the High Court. The government may later protest the collegium’s judgments and demand an explanation. If the

Aayush Kumar, Anirudh Singh

panel selects the same candidates, again and again, the government is compelled to accept them.

The chapter concludes when the Collegium repeats a name, “a bench of the Apex Court previously stated, adding that “there can’t be an instance where suggestions are submitted and the government sits on them” as this “frustrates the system.”

After the final selection of the Chief Justice of India, the Union Minister of Law, Justice, and Corporate Affairs will forward the suggestions to the Prime Minister, who will then discuss with the President upon the selection.

The administration claims there are a lot of pending cases since many judicial vacancies have yet to be filled. The vacant positions will continue till the fresh structure is in place, Rijju told House during the winter sitting in December. Meanwhile, the Supreme Court claims that the problem has come up since the federal government had been “sitting” on the SC Collegium’s suggestions for several years and months, including some which were reaffirmed by the collegium.³²

Government’s Opposition to the Collegium

In accordance with the Federal Government, the Supreme Court Collegium lacks transparency and operates as a “closed-door affair,” since no one knows why and how a judge is appointed. “There is additionally no accountability,” Rijju stated previously, citing “loop-holes” in the framework’s design.

He additionally referred to it as an “alien” idea. He also raised the question of under which constitutional provision the Collegium system is given, raising concerns about the government’s participation in the collegium system. “...if you expect the President to simply sign (on) their name to be nominated as a judge simply because the collegium recommends it, what is the role of state then?” he said.³³

Articles 124(2)³⁴ and 217(1)³⁵ of our Constitution allow for the appointment of judges in the Supreme Court of India as well as in respective High courts. According to the government’s website, “the Chief Justice of India and the other Supreme Court judges are chosen by the President of India under clause (2) of Article 124³⁶ of the Constitution. “But the Outline of Collegium system is nowhere given in the Constitution.

At the same pace, according to the Indian Express, the “collegium system has no basis in the Constitution or any particular law enacted by Parliament; it developed through Supreme Court decisions.”

The Supreme Court has said that the collegium process of appointing judges is part of national legislation and that “any law announced by the Supreme Court is “binding” on all parties. In the MEANTIME, other lawyers said that the “ suggestions for competent and worthy people were rejected by the Ministry of Law and Justice.” On how a judge’s name is suggested, Famous Supreme Court lawyer, Advocate Atif Suhrawardy stated, “Who more effectively could identify a worthy advocate than a sitting judge...a bureaucrat who examines a file knows a potential judge or a judge who views an advocate performing day in and day out would know him better?” Who has a greater probability of judging a potential judge?” The Apex Court and the central government had differing opinions on the NJAC Act, which was intended to help with judicial nominations but was ultimately overturned as “unconstitutional.”

The NJAC Act

The NJAC (National Judicial Appointments Commission) Act, equivalent to the Collegium, was proposed to govern the system for selecting and transferring Supreme Court and High Court judges. However,

32. Manu Sebastian, Centre Not Entitled To Segregate Collegium Resolutions, Supreme Court Should Act Tough Against Executive For Sitting Over Proposals: Justice MB Lokur, *LIVELAW*, (Apr 23, 2023, 8:52pm), <https://www.livelaw.in/top-stories/centre-not-entitled-to-segregate-collegium-resolutions-supreme-court-should-act-tough-against-executive-for-sitting-over-proposals-justice-mb-lokur-211403>.

33. Supreme Court Advocates-on-record Association vs. Union of India, AIR 2015 SC 5457.

34. *INDIA CONST.* art.124, cl. 2.

35. *INDIA CONST.* art. 217, cl. 1.

36. *INDIA CONST.* art. 124, cl. 2.

the panel included bureaucrats, officials from the executive, and some public lawmakers.³⁷

The NJAC encompassed the Chief Justice of India as the ex officio Chairperson, two senior-most Supreme Court justices as ex officio members, the Central Minister of Law and Justice as an ex officio member, and two prominent figures from the community at large — one of whom was to be chosen by a group comprised of the CJI, Prime Minister, and Leader of Opposition in the lower house of Parliament, along with one from those who belonged to SC/ST/OBC/minority groups.

It was adopted by the Indian Parliament in 2014 but was invalidated by the Supreme Court in 2015 with a motion of 4:1.

The basic framework of the document known as the Constitution of India mentions the separation of powers, especially in article 50³⁸, however, NJAC was found on the basis of “political involvement in the official procedures” of appointing judges.

“The legislature had assumed the duty of the judiciary.” The concept of division of powers was violated in this case, and the independence of the legal system was unable to be maintained. “The fundamental framework of the Constitution cannot be changed.”

Proposals of Honorable Law Minister

Mr. Kiren Rijiju, the Law Minister of India, has written to Chief Justice of India Mr. D Y Chandrachud, requesting that government-approved persons be enrolled within the collegium system. According to government authorities, the Union law minister has requested the development of a “search and evaluation committee” in the nomination of Supreme and High Court judges, with participation coming from the federal and state governments.

In December 2015, a Supreme Court panel observed that the views of the Centre and states must be heard and asked the government to draft a Memorandum of Procedure (MOP) with the Chief Justice of India to

enhance transparency in the collegium method of judicial appointment.

It also asked the Centre to consider comments in the MOP on the selection of judges on matters like qualification, openness, establishing a Secretariat for the appointment of judges, resolving grievances, and additional concerns.³⁹

The Collegium System can now be seen as the “light in disguise” as there is not a more viable option available currently in the nomination of the judges without the involvement of the government. A Proposal Including members of Civil Societies along with the judges in the collegium to choose new judges can be looked upon. These Members can be chosen by voting of judges in High Courts and Supreme Courts and Some Members Should be from SC/ST and Minority Communities. Moreover Government should increase the seats in the Supreme Courts and High Courts for Judges At least 5 times so that pending cases can solved at a faster pace.

Prashant Bhushan Contempt Case

The Supreme Court dismissed a contempt charge filed against Advocate Prashant Bhushan in 2009 after he told Tehelka magazine that some past Chief Justices of India were dishonest. Tarun Tejpal, the editor of Tehelka, had his case dismissed as well.

During the hearing, Bhushan made the following comment concerning his Tehelka conversation.:

“In my interview with Tehelka in 2009 I have used the word corruption in a wide sense meaning lack of propriety. I did not mean only financial corruption or deriving any pecuniary advantage. If what I have said caused hurt to any of them or to their families in any way, I regret the same. I unreservedly state that I support the institution of the judiciary and especially the Supreme Court of which I am a part, and had no intention to lower the prestige of the judiciary in which I have complete faith. I regret if my interview was misunderstood as doing so, that is, lower the reputation of the judiciary,

37. Rahel Phillipose, Collegium vs NJAC: What is the renewed debate over appointment of judges? THE INDIAN EXPRESS, (Apr 23, 2023, 9:00pm), <https://indianexpress.com/article/explained/explained-law/judiciary-appointment-of-judges-collegium-system-njac-debate-explained-8329397/>.

38. INDIA CONST. Article 50.

39. CNBC TV 18, (Apr 9, 2023, 7:00pm), <https://www.cnbc18.com/india/supreme-court-collegium-vs-centre-issue-explained-problems-impact-of-kiren-rijiju-proposal-possible-solution-15691401.html>.

Aayush Kumar, Anirudh Singh

especially the Supreme Court, which could never have been my intention at all.”⁴⁰

In another case, the Supreme Court of India began *Suo moto* contempt hearings towards Prashant Bhushan, a citizen’s rights advocate, and activist, based on a pair of tweets he wrote on the online social network Twitter. The tweets, among which included a remark about the Chief Justice of India driving a costly Harley-Davidson bike owned by the government’s leader and the other an assessment of the Supreme Court’s role in ruining democracy in India, were deemed a “malicious, scurrilous, determined attack” on the system of the administration of fairness by the Court.⁴¹

The Supreme Court ruled that Prashant Bhushan’s comments had “the impact of destabilizing the very basis of a vital cornerstone of Indian democracy,” and he was deemed in disobedience of court. In reaction to widespread condemnation of the judiciary’s efforts to stifle opinions, the Court imposed a symbolic penalty of a Re. 1 charge.

The posts on Twitter had the impact of discouraging an average petitioner and risking losing faith in the Supreme Court and CJI. The Court also concluded that if it failed to safeguard itself against vicious allegations like the one in this instance, it would open the door to comparable assaults on other judges. In consequence, stopping malevolent assaults was a matter of national dignity and pride in the community of nations, and it needed to be handled with determination.

The Prashant Bhushan Contempt cases are a Classic Example of the freedom of individuals against the Judiciary. Freedom can be more seen against the government but if a word that the judges don’t like and they hear it is spoken *Suo moto* cognizance could be taken by them and the person could be behind bars at any time, therefore, the amendment needs to be done in Contempt Act of 1971 regarding the cognizance of the contempt and therefore for it, a high-level committee

must be formed with special experts and members of the parliament who can look upon these matters.

Influence of Power and Connections on the Judicial Process

The abuse of power and connections could be seen in the working of the judiciary from lower to higher levels. More influence could be seen in lower-level judiciary such as tehsil-taluka courts and district courts but there also have been several instances in this country where influence could also be seen in the upper level of judiciary.⁴² In some places more and in some places less but the benefits of connections and through them the abuse of the judicial process could be seen in this country.

Honorable Justice C S Karnan, a sitting High Court Judge, was sentenced to six months in jail in May 2017 for leveling corruption claims against Supreme Court judges for the first occasion in India, following a Supreme Court (SC) committee found him guilty of disobedience of court. In a recent example, the Central Bureau of Investigations (CBI) charged a current judge from the Allahabad High Court’s (Lucknow bench) with bribery in December last year as it booked Honorable Justice Narain Shukla for getting illegal favors for allegedly backing a medical college. The CBI also identified IM Quddusi, previously serving as Chhattisgarh High Court judge, along with others in the latest case. These are some instances of corruption in the judiciary that have been revealed. Corruption and bribery in the lowest levels within the judiciary continue to be exposed on an ongoing basis around the country, contributing to the overall negative image of the judiciary. For instance, in April 2018, three lower-level judges in Telangana were arrested for possessing assets in excess of their recognized sources of income. In a similar vein in Gujarat, two lower-court magistrates were arrested in 2014 for allegedly accepting cash to settle cases while posted to the Vapi court. In January 2018, four sitting

40. Supreme Court Closes 2009 Contempt Case Against Prashant Bhushan and Tarun Tejpal, (Nov, 19th 2023, 1:53am), <https://www.livewlaw.in/top-stories/supreme-court-closes-2009-contempt-case-against-prashant-bhushan-tarun-tejpal-207860?infinitemscroll=1>.

41. In Re Prashant Bhushan, Twitter Communications India Pvt. Ltd., (Nov 19th, 2023, 2:01pm), <https://globalfreedomofexpression.columbia.edu/cases/in-re-prashant-bhushan-twitter-communications-india-pvt-ltd/>.

42. DR. G.P TRIPATHI, LEGAL METHODS, (Darbhanga Castle Prayagraj-2 2019).

Supreme Court justices convened a press conference in order to emphasize apparent rot in the court.⁴³

According to a report by Transparency International (2015), it states that MLAs from the governing party have 17% more chance to get their cases disposed of without conviction during their period in the given legislature, while MLAs from other parties have 15% less chance to get their cases disposed, without conviction within the same timeframe. Therefore, the data of this report indicates that the power of government does have an effect on judicial working.

In the most controversial case of India where it was believed that the Union Government had influenced the judiciary i.e., in the case of *ADM Jabalpur v. S.S Shukla*⁴⁴ the majority of 4 judges (Chief Justice A.N. Ray, Justice M. Hameed Ullah Beg, Justice P.N. Bhagwati and Justice Y.V. Chandrachud) found that following the declaration of a state of emergency and the accompanying cessation of Art. 21's enforcement⁴⁵, no writ lies in court against the detention of a person. According to the majority, no one has locus standing to file a writ petition pursuant to Article 226⁴⁶ in a High Court for Habeas Corpus relief, or any other writ, order, or directive, to contest the constitutionality of the order of detention considering the President Directive of June 27, 1975.

"Any pre-constitution rights, which are now included in Article 21, do not remain in existence and cannot be enforced if Article 21 is suspended." Ray C.J. held that "fundamental rights including the right to personal liberty are conferred by the Constitution. Any pre-constitution rights, which are now included in Article 21, do not remain in existence and cannot be enforced if Article 21 is suspended." Furthermore, the court determined that Article 21 constitutes the exclusive depository for the rights of life and freedom of conscience against the State. The Executive Order under Art. 359

bars any application to a petition of Habeas Corpus for the implementation of Article 21.⁴⁷ He went on to say that if any privilege that was before the Constitution was integrated into Part III, that right under common law would no longer exist within the Constitution.⁴⁸

In *Mohd. Ahmed Khan v. Shah Bano Begum and Ors*⁴⁹ Supreme Court concluded that "there is no conflict between the provisions of section 125 and those of the Muslim Personal Law on the question of the Muslim husband's obligation to provide maintenance for a divorced wife who is unable to maintain herself." It decided that there was no question that the Quran puts a responsibility on the Muslim husband for making provisions for or giving upkeep to the separated wife after citing it as the sole authority on the matter. Shah Bano sought maintenance from her spouse through the courts. Seven years had passed since the case approached the Supreme Court of India. The Supreme Court used Section 125 of the Code of Criminal Procedure, which applies to all people irrespective of race, creed, or faith. It ordered Shah Bano to pay maintenance, which is comparable to alimony.

In 1986, the Parliament of India passed an act titled "The Muslim Women (Protection of Rights on Divorce) Act, 1986", That rendered the Supreme Court's decision concerning the Shah Bano case null and void. In defiance of the ruling of the Supreme Court, the legislation provided support to a separated woman solely during the time of iddat, or until 90 days following the divorce, in accordance with Islamic law. This was in sharp contrast with Code Section 125. The spouse's 'obligation' to pay upkeep was therefore limited to the duration of the iddat. The "Statement of Objects and Reasons" of the act stated that "the Shah Bano decision had led to some controversy as to the obligation of the Muslim husband to pay maintenance to the divorced wife and hence opportunity was therefore taken to specify the

43. Allegation of Corruption in Judiciary, (Nov 19, 2022, 8:00 pm) <https://www.lawyered.in/legal-disrupt/articles/corruption-and-judiciary-dr-vinod-surana/>.

44. *ADM Jabalpur v. S.S Shukla*, AIR 1976 SC 1207.

45. *INDIA CONST.* art. 21.

46. *INDIA CONST.* art. 226.

47. *INDIA CONST.* art. 359.

48. *ADM Jabalpur: The case that was but should never have been*, (Nov 19, 2021, 10:00pm) <https://theleaflet.in/adm-jabalpur-the-case-that-was-but-should-never-have-been/>.

49. *Mohd. Ahmed Khan v. Shah Bano Begum and Ors*, AIR 1985 SC 945.

Aayush Kumar, Anirudh Singh

rights which a Muslim divorced woman is entitled to at the time of divorce and to protect her interests.”⁵⁰

Therefore, we could see in the above cases of ADM Jabalpur and Shah Bano Begum that the government has tried to influence the judiciary from the inside in former cases and outside in later cases by bringing a law that overturned the decision of the Supreme Court. These types of influences have been done in the working of the judiciary from both inside as well as outside. Moreover, the corruption in the Judiciary is vibrant and can be seen thoroughly. In Lower Judiciary there are several cases where magistrates are found to be living a lifestyle that cannot be afforded in government salary also in the recent past a 4 Judge press conference by Supreme Court Sitting Judges has made this case worse and opened the issue.

Instances where Judicial Decisions were affected by External Influences

Are judicial decisions simply based on rules and data? According to legal formalism, judges apply several legal justifications to the circumstances of a case in a methodical, mechanical in nature, and deliberate manner. Legal skeptics, on the other hand, contend that just applying legal grounds does not adequately explain judicial choices and that other elements such as emotional, electoral, and societal considerations impact court opinions.⁵¹

The impartiality of the legal system is a fundamental democratic value. Judicial independence allows judges to arrive at decisions according to legal grounds rather than politics or consensus. In legal issues, an independent legal system provides only fair and unbiased rulings. Political researchers have performed several studies and investigations to determine what elements impact judges’ decision-making. Demographic and socioeconomic background, partisanship and appointment, past employment, advancement possibilities, and precedent from the judiciary are also factors. A variety of research has been done to determine if social circumstances or personal traits impact court rulings. According to stud-

ies, there is little correlation between demography or socioeconomic background and judicial rulings.

A judge’s color, gender, or class, for example, has not been found to be a significant element in understanding a judge’s choices. Furthermore, recent research has indicated that age is not a useful factor in understanding judicial conduct. Prior legal experience seems not to be related to judicial conduct in general. However, several studies have discovered that prior criminal prosecution or defense experience has some impact on the judge making choices. According to recent research, the possibility of advancement plays a role in understanding district court judges’ actions.

Judicial precedent states that the court’s judgment in a single instance is binding on all subsequent cases with comparable facts. There exists a precedent-based hierarchy. All decisions of the Indian Supreme Court have an effect on all of the other high courts and district courts as well. All lesser courts in that state are bound by the rulings of the most senior state court. When there is no precedent concerning an issue approaching the judiciary, the court is allowed to make its own decision. According to recent studies, judges tend to depend on the written statements of other judges when addressing tough matters where there is no legally binding higher authority. Thus, judicial precedent is important in judicial making decisions; Even if the verdicts are not binding, judges are inclined to follow the precedents established by other courts.⁵²

There are also some cases in India that could be said to have been affected by external influences like the case of *Indira Sawhney v. Union of India*⁵³, In a 6:3 decision, the Supreme Court affirmed the 27 percent quota for SEBCs but overturned the 10 percent allocation based on financial considerations. It held that “a backward class cannot be determined only and exclusively with reference to economic criterion.” “It (economic condition) may be a consideration or basis along with, and in addition to, social backwardness, but it can never be the sole criterion,” the court held in its judgment.⁵⁴

50. The Muslim Women (Protection of Rights on Divorce) Act, 1986, § 125, Acts of Parliament, 1986, (India).

51. Extraneous Factors In Judicial Decisions, (Nov 20, 2022, 6:00pm) <https://pubmed.ncbi.nlm.nih.gov/21482790/>.

52. ARIZONA INSURANCE LAW, www.arizonainsurancelaw.com (Nov 20, 2022, 7:30pm).

53. *Indira Sawhney v. Union of India*, AIR 1993 SC 477.

54. Quotas and a Verdict, (Nov 20, 2022, 7:30pm), <https://www.thehindu.com/news/national/quotas-and-a-verdict/article26555301.ece>.

The judgment further said that the amount of reserve should not exceed 50% unless a specific circumstance for exceptional and unusual conditions was established to grant exemption to this norm. It further advised the Centre to grow so that the 'creamy layer' is excluded from the purview of quota for backward classes. The court said, "Just as every power must be exercised reasonably and fairly, the power conferred by Clause (4) of Article 16⁵⁵ should also be exercised in a fair manner and within reasonable limits – and what is more reasonable than to say that reservation under Clause (4) shall not exceed 50 percent of the appointments or posts, barring certain extraordinary situations."⁵⁶ Article 16 of the Constitution addresses equal chances in public jobs, and Clause 4 of it states: "Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State."⁵⁷ The court also held, "Duty of State to protect against deprivation due to poverty should not be confused with State's obligation to treat everyone uniformly and equally without discrimination."⁵⁸

The nation was divided into two parts, one that supported reservation and the other that supported merit and opposed the reservation. These protests have also led to deaths and self-immolation suicidal attempts by several persons, especially the students. The student of Delhi University Rajiv Goswami was the first one to commit this suicide. After this, a series of self-immolations became popular among college students who were particularly belonging to the upper castes. Then against this, the pro-Mandal protest also took place which led to violent protests among the students of both the groups. After this, the matter reached court, and finally, the judgment of the famous Indira Sawhney case came and it could be said this decision was affected by both political and external influences.

55. *INDIA CONST.* art. 16, cl. 4.

56. As SC considers referring Indra Sawhney judgment to larger bench, a look back at implications of landmark verdict, (Nov 20, 2022, 8:00pm), <https://www.firstpost.com/india/as-sc-considers-referring-indra-sawhney-judgment-to-larger-bench-a-look-back-at-implications-of-landmark-verdict-9394251.html>.

57. *INDIA CONST.* art.16(4).

58. *K. Veeraswamy v. Union of India*, 1991 SCR (3) 189.

Conclusion and Suggestions

Therefore, it can be concluded that the separation of powers between the executive, legislature, and judiciary has remained the soul of our constitution as directed by international principles. The balance of power should also be maintained for the functioning of a proper democracy and healthy delivery of the output of laws, welfare, education, and justice to the citizens. As there is distribution, conflicts regarding areas of influence between the executive and judiciary are likely to happen but it doesn't mean that these conflicts increase to such an extent that it may affect the functioning of the system. Judicial accountability and independence are facets of each other, without one another could not be completed and these new laws regarding accountability and independence from other organs should be implemented on the ground and especially in lower courts. We could also see that political power sometimes affects the judiciary with the help of reports and cases and this problem is also more at a lower level but higher judiciary also faces these influences many times and to overcome this the role of politicians and constitutional amendments should be minimized on the judgments. Also, the external influences of movements, and political agendas could be seen in the judgments therefore to minimize the psychology of the judges should be changed and their assets should be analyzed under preview of corruption by a judicial organization only. Finally, to form a good, unbiased, accountable, non-corrupt, fast decision-making judiciary we need to include several more reforms and also implement current laws judiciously.

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