

# Guarding the Guardians: The Crisis of Judicial Independence in India

Dr. Bhavana Dhoundiyal<sup>1</sup>, Aayush Singh<sup>2</sup>

<sup>1</sup>Assistant Professor, IILM University, Greater Noida

<sup>2</sup>LLM (Specialization), IILM University Greater Noida

**Abstract-** Judicial independence and institutional integrity form the foundational pillars of a democratic constitutional order. They ensure that judges can decide cases impartially, free from external pressures, political influence, or internal biases. In India, the constitutional architecture enshrines the doctrine through Articles 50, 124, 217, and various judicial interpretations. Yet, contemporary developments—politicisation of appointments, executive interference, judicial activism, internal opacity, and performance deficits—have triggered debates on whether judicial independence today represents more of a myth than a lived reality. This research paper critically examines the constitutional, structural, and normative foundations of judicial independence; evaluates the Indian appointment system including the Collegium and the stalled NJAC; analyses key Supreme Court decisions shaping judicial autonomy; and investigates systemic issues affecting institutional integrity such as judicial misconduct, lack of accountability mechanisms, and institutional secrecy. A comparative analysis with systems in the United States, United Kingdom, and Canada highlights alternative models and possible reforms. Finally, the paper proposes an integrated reform framework combining transparency, accountability, and constitutional safeguards to strengthen the independence and integrity of the Indian judiciary. The objective is to argue that independence and accountability are not competing values, but complementary requisites for preserving democratic legitimacy.

## I. INTRODUCTION

The judiciary occupies a unique position in democratic governance as the guardian of constitutional rights, interpreter of law, and ultimate arbiter of disputes. Its legitimacy rests fundamentally upon independence—real, perceived, and institutional. Judicial

independence is not a privilege for judges, but a safeguard for citizens against arbitrary power. As famously noted by Justice Bhagwati, “Judicial independence is the lifeblood of constitutional democracy.”<sup>1</sup> Without independence, the judiciary cannot serve as a counter-majoritarian check on executive excesses, nor can it maintain public trust necessary for voluntary compliance with judicial decisions.

Judicial independence refers to the ability of courts and judges to perform their duties without undue influence from the executive, legislature, private interests, or internal hierarchy. The concept includes both individual independence (security of tenure, financial security, decisional autonomy) and institutional independence (control over administration, appointments, transfers, and internal discipline). The United Nations Basic Principles on the Independence of the Judiciary (1985) underscore that judicial independence “shall be guaranteed by the State and enshrined in the Constitution or the law.”<sup>2</sup>

The Indian Constitution embeds the doctrine through structural provisions—security of tenure under Articles 124(2) and 217; salaries charged on the Consolidated Fund under Articles 125 and 221; and separation of powers under Article 50. Yet, independence is not merely a textual guarantee but a lived constitutional value shaped by political culture, judicial norms, and institutional design.

Constitutional Democracy and the Judicial rhythm

<sup>1</sup> S.P. Gupta v. Union of India, AIR 1982 SC 149.

<sup>2</sup> United Nations Basic Principles on the Independence of the Judiciary, 1985.

Judicial independence ensures:

- Protection of Fundamental Rights
- Checks and balances against executive dominance
- Fair adjudication in criminal and civil disputes
- Maintenance of rule of law and constitutional supremacy

The Supreme Court in *S.P. Gupta v. Union of India* emphasised that independence is essential for impartial adjudication and maintaining public confidence in justice delivery.<sup>3</sup> India's judiciary enjoys broad constitutional protection, yet contemporary debates reflect a paradox. The judiciary is formally independent but often institutionally opaque. Judges enjoy security of tenure, but the appointment system lacks transparency, leading to allegations of nepotism. The judiciary exercises expansive powers through public interest litigation (PIL), yet faces criticism for selective activism and inconsistent standards. Judicial independence is protected from the executive, but internal pressures, collegial seniority norms, and administrative hierarchy also raise concerns. The National Judicial Appointments Commission (NJAC) case revived debates about the balance between judicial independence and democratic accountability. In *Supreme Court Advocates-on-Record Association v. Union of India*, the Supreme Court struck down the NJAC, reaffirming judicial primacy in appointments.<sup>4</sup> However, critics argue that the decision insulated the judiciary from necessary accountability mechanisms.

**Institutional Integrity: The Missing Pillar**

Institutional integrity refers to the ethical, procedural, and structural soundness of the judiciary as an institution. It encompasses: transparency in appointments, accountability through internal and external mechanisms, ethical conduct norms for judges, efficient case management, absence of corruption and influence-peddling.

Public trust in courts

The Indian judiciary has periodically faced controversies—ranging from impeachment proceedings, allegations of corruption, to internal conflicts within the Supreme Court (e.g., the 2018 press conference by four senior judges). Such events raise critical questions about the robustness of institutional integrity.

Need for a Comprehensive Study

Despite extensive scholarship on judicial independence, a holistic analysis combining independence and institutional integrity is lacking. Judicial independence without accountability leads to insularity, while accountability without independence leads to executive domination. This paper argues that the future of India's judicial system depends on harmonising both elements through structural, procedural, and ethical reforms.

## II. EVOLUTION OF JUDICIAL INDEPENDENCE

Judicial independence in India is constitutionally entrenched through a carefully designed framework that distributes powers, defines safeguards, and limits external control over the judiciary. The framers of the Constitution sought to establish a judiciary strong enough to act as a counter-majoritarian institution, yet balanced enough to function within the democratic architecture. The features built into the constitutional design—appointments, tenure, removal procedures, administrative control, financial autonomy, and separation of powers—form the bedrock of institutional independence.

### 1. Historical and Philosophical Foundations

The idea of judicial independence did not originate in India but evolved through global constitutionalism. Montesquieu's doctrine of separation of powers, which argues that liberty cannot exist if judicial power is not separated from executive and legislative authority, heavily influenced the Constituent Assembly.<sup>5</sup> Dr. B.R. Ambedkar emphasised that the judiciary must remain "independent both of the

<sup>3</sup> *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

<sup>4</sup> *Supreme Court Advocates-on-Record Ass'n v. Union of India*, (2016) 5 SCC 1.

<sup>5</sup> Montesquieu, *The Spirit of the Laws* (1748).

executive and the legislature,” justifying special provisions for security of tenure and impartial appointments.<sup>6</sup> Indian constitutionalism also borrowed from the U.S. and British models. From the United States, India adopted the notion of judicial review and the doctrine of constitutional supremacy. From the United Kingdom, India inherited institutional traditions such as judicial hierarchy and common law adjudication. These comparative influences helped shape a judiciary that was autonomous, impartial, and empowered.

## 2. Structural Provisions in the Constitution

### A. Appointment of Judges

The Constitution originally vested the power of judicial appointments in a consultative model involving the President, the Chief Justice of India (CJI), and other judges. Articles 124(2) and 217 specify that judges of the Supreme Court and High Courts are appointed by the President “after consultation” with judicial authorities.<sup>7</sup> However, the ambiguous word “consultation” led to decades of debate on the extent of executive involvement. Ultimately, the Supreme Court transformed this system through the three Judges Cases into the Collegium System, establishing judicial primacy in appointments.

Judicial independence requires protection from political appointments, but critics argue that the Collegium, lacking transparency and accountability, undermines institutional integrity.

### B. Security of Tenure

Articles 124(4) and 217(1) guarantee security of tenure for Supreme Court and High Court judges, subject only to removal by impeachment on grounds of “proved misbehaviour or incapacity.”<sup>8</sup> This stringent standard ensures that judges cannot be arbitrarily dismissed by the executive or legislature. The difficulty of impeachment reflects conscious design: the judiciary must remain insulated from

political retaliation, especially when adjudicating disputes involving those in power.

### C. Financial Independence

Articles 112–125 and 202–221 ensure that judges’ salaries, allowances, and administrative expenses are charged on the Consolidated Fund of India and are not subject to parliamentary vote.<sup>6</sup> This prevents the executive or legislature from using financial control as leverage over the judiciary. The 14th and 42nd Law Commission Reports noted that financial autonomy is indispensable for judicial independence, especially for infrastructure, staffing, and technology.<sup>7</sup>

### D. Separation of Powers (Article 50)

Article 50 mandates the State to separate the judiciary from the executive in public services.<sup>8</sup> Though placed in the Directive Principles of State Policy (DPSP), it has had profound influence on judicial reforms, particularly in criminal justice, where magistrates were separated from executive influence. The Supreme Court has reiterated that separation of powers is part of the basic structure, thereby constitutionally protecting judicial independence from legislative or executive encroachment.<sup>9</sup>

### E. Contempt of Court

Articles 129 and 215 empower the Supreme Court and High Courts to punish for contempt.<sup>9</sup> This authority safeguards the judiciary from acts that may lower its authority, interfere with justice, or impede independence. However, excessive use of contempt proceedings has been criticized as anti-democratic and inconsistent with free speech.

## 3. Judicial Review: A Constitutional Safeguard

Judicial review under Articles 32 and 226 empowers courts to scrutinize executive and legislative actions. The Supreme Court in *L. Chandra Kumar v. Union of India* reaffirmed judicial review as a part of the basic structure, thus protecting it from amendment.<sup>10</sup> This

<sup>6</sup> Constituent Assembly Debates, Vol. VII (1948)

<sup>7</sup> INDIA CONST. arts. 124(2), 217.

<sup>8</sup> *Supreme Court Advocates-on-Record Ass’n v. Union of India*, (1993) 4 SCC 441.

<sup>9</sup> INDIA CONST. arts. 124(4), 217(1).

<sup>10</sup> INDIA CONST. arts. 112–125, 202–221.

power reinforces independence by enabling courts to act as guardians of fundamental rights and check any institutional excesses by other organs. Without independence, judicial review would be meaningless.

#### 4. Three Judges Cases and the Rise of Judicial Primacy

The evolution of the appointment process through judicial interpretation dramatically altered the balance of power within the constitutional scheme. In the first Judges Case (1982) of *S.P. Gupta v. Union of India*, the Court held that “consultation” did not mean “concurrence,” granting the executive primacy in appointments.<sup>11</sup> In second judges’ case (1993), the *Supreme Court Advocates-on-Record Ass’n v. Union of India*, the Court reversed its earlier view, creating the Collegium System and granting primacy to the CJI and senior judges.<sup>12</sup> In three Judges Case (1998), Court expanded the Collegium to include the CJI and four senior-most judges.<sup>13</sup> These judgments constitutionally entrenched judicial control over appointments, framing it as essential for independence. However, critics argue that this judicially crafted system lacks legal basis, transparency, and objective criteria.

#### 5. NJAC Case and the Debate on Institutional Integrity

The 99th Constitutional Amendment (2014) attempted to create the National Judicial Appointments Commission (NJAC), giving the executive, judiciary, and independent members equal roles in appointments. The Supreme Court struck it down in 2015, holding that judicial primacy is part of the basic structure.<sup>14</sup>

While the judgment protected independence, it also raised concerns: Was the Collegium too opaque to remain unchallenged? Should independence override democratic accountability? Can the judiciary self-regulate appointments without external checks? The Court acknowledged flaws in the Collegium and directed the Government to improve the Memorandum

of Procedure (MoP), but progress since then has been limited.

#### 6. Internal Independence within the Judiciary

Judicial independence is not only external (from other branches) but also internal. Internal independence ensures that judges are not influenced by: Senior judges, Chief Justices, Administrative hierarchies and Peer pressures. The concerns here include: The strong seniority convention in appointments of Chief Justices, Lack of transparent roster allocation and administrative powers concentrated in the Chief Justice with pressure in politically sensitive cases. The 2018 press conference by four senior Supreme Court judges dramatically exposed internal tensions, alleging that case allocations were being manipulated.<sup>15</sup> This incident revealed the fragility of internal institutional integrity.

#### 7. High Courts and Subordinate Judiciary: Autonomy Challenges

While the Supreme Court enjoys strong constitutional backing, lower courts face structural challenges:

##### A. Subordinate Judiciary

Appointments and promotions are overseen by the High Courts, but administrative control is shared with State Governments. Infrastructure and funding are inadequate. Executive influence persists in transfers and postings despite Article 50.

##### B. High Courts

Executive delay in Collegium recommendations affects independence and efficiency. Differences between State and Central governments often politicize judicial appointments. The Supreme Court in *All India Judges’ Association v. Union of India* emphasized the need to strengthen the subordinate judiciary to preserve overall institutional integrity.<sup>16</sup>

<sup>11</sup> Law Commission of India, 14th Report (1958); 42nd Report (1969).

<sup>12</sup> INDIA CONST. art. 50.

<sup>13</sup> *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

<sup>14</sup> INDIA CONST. arts. 129, 215.

<sup>15</sup> *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261.

<sup>16</sup> *Supreme Court Advocates-on-Record Ass’n v. Union of India*, (1993) 4 SCC 441.

## 8. Financial Control and Administrative Autonomy

Despite constitutional guarantees, the judiciary remains financially dependent on the executive for infrastructure and development. Annual budgets for the judiciary are extremely low—typically less than 1% of national expenditure.<sup>17</sup>

Key concerns:

- Delays in sanctioning judicial posts
- Inadequate funding for courtrooms, technology, and staff
- State dependence for High Court building projects
- Lack of financial planning autonomy a truly independent judiciary requires fiscal autonomy to administer itself effectively.

## 9. Constitutional Interpretation

The principle of judicial independence has been firmly entrenched as a cornerstone of the Indian Constitution through a series of landmark judicial pronouncements, which have unequivocally recognized it as part of the unamendable basic structure. This foundational doctrine was first articulated in the seminal case of *Kesavananda Bharati v. State of Kerala*, which established that certain constitutional fundamentals are beyond the Parliament's power to amend. This principle was further solidified in *Indira Nehru Gandhi v. Raj Narain*, where the Supreme Court explicitly underscored the necessity of an independent judiciary for the functioning of a healthy democracy. Later, in *S.R. Bommai v. Union of India*, the Court again powerfully affirmed this stance, linking judicial independence directly to the preservation of federalism and democratic governance. Collectively, these precedents create an impregnable constitutional shield, safeguarding the judiciary's autonomy from any legislative or executive attempts to erode its foundational role through constitutional amendments.

## 10. The Bigger Picture: Independence vs. Accountability

While the constitutional architecture of India provides an extensive framework to insulate the judiciary from external pressures, it presents a significant deficit in

institutional accountability. This has resulted in a complex modern-day imperative to strike a delicate equilibrium between judicial primacy and the core components of institutional integrity—namely, transparency, meritocracy, administrative efficacy, and ethical behavior. The preservation of public trust, the ultimate bedrock of judicial authority, is contingent upon addressing this gap through deliberate reforms that complement independence with commensurate responsibility.

## III. THREATS TO JUDICIAL INDEPENDENCE

Despite strong constitutional safeguards, judicial independence in India faces numerous challenges—both external and internal. These threats arise from political actors, executive control, legislative hostility, structural weaknesses, administrative pressures, and the judiciary's own internal dynamics. Understanding these threats is crucial because judicial independence cannot be protected merely through constitutional provisions; it requires continuous vigilance, reform, and institutional commitment.

### 1. Executive Interference

#### A. Political Influence Over Appointments

The transition to the Collegium system, while mitigating direct executive dominance, has not fully insulated the appointment process from political influence. Such interference now manifests through strategic executive actions, including the deliberate stalling of Collegium recommendations, the unjustified reiteration of returned names, and the obstruction of appointments in High Courts of political significance. The instrumental use of Intelligence Bureau (IB) reports as a de facto veto power further exemplifies this challenge. Although the Supreme Court explicitly cautioned against these tactics in *Supreme Court Advocates-on-Record Ass'n v. Union of India*, citing their threat to judicial primacy, the persistence of executive delays continues to impair judicial functioning and independence.

#### B. Transfer of Judges

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<sup>17</sup> In re Presidential Reference, (1998) 7 SCC 739.

Article 222 of the Constitution explicitly empowers the President—a power effectively exercised by the executive government—to transfer judges from one High Court to another, the application of this authority has been a persistent source of controversy and a significant flashpoint in the debate over executive overreach. The Supreme Court, in judgments like *Union of India v. Sankalchand Himatlal Sheth* and later reaffirmed in the *Second Judges Case*, has endeavored to insulate this process by interpreting the provision to mandate "consultation" with the Chief Justice of India, intending to infuse an element of judicial primacy and ensure that transfers are made only in the public interest, not as a punitive measure. Despite this constitutional safeguard, the transfer power has frequently been deployed in a manner that raises acute suspicion of political motive, eroding public confidence in the autonomy of the judiciary. Instances such as the transfer of Justice Jayant Patel from the Gujarat High Court shortly after he presided over a court monitoring the investigation into the alleged extra-judicial killing of Tulsi ram Prajapati, and the transfer of Justice Rajiv Shakhder from the Delhi High Court following his orders scrutinizing government actions, have been widely perceived as acts of political retaliation for judicial decisions that challenged powerful executive interests. These cases exemplify how the transfer mechanism can be wielded as a tool to discourage judicial independence, creating a "chilling effect" whereby judges may feel compelled to avoid adjudicating on sensitive matters out of fear of reprisal. Consequently, what was conceived as a tool for better administration of justice has, in practice, often functioned as a shadowy instrument of executive influence, undermining the very foundation of an impartial and fearless judiciary.

### C. Control Over Infrastructure and Funding

Beyond the direct interference in appointments and transfers, the judiciary's autonomy is subtly yet significantly compromised by its financial and administrative dependence on the executive, as well as by legislative hostility. Constitutionally guaranteed financial security for judges is undermined by the executive's comprehensive control over the judiciary's operational needs, including court infrastructure, judge strength approvals, IT modernization funds, and administrative budgets. This dependency is acutely

manifested in chronic underfunding, with the judiciary consistently receiving less than 1% of the national annual budget, which cripples its efficiency and capacity. Simultaneously, the legislature poses a direct threat to the judiciary's constitutional role through populist measures and outright hostility. This is evidenced by historical attempts like the 42nd Amendment of 1976 to curtail the power of judicial review, the frequent passage of state-level laws that insulate executive decisions from legal challenges, and the enactment of legislation designed specifically to override inconvenient judicial verdicts. Together, these executive and legislative pressures create a pincer movement that constrains judicial independence not through a direct assault, but through the stranglehold of resource deprivation and the constant threat of having its authority legislatively nullified.

## IV. CONCLUSION

Any constitutional democracy is built on the foundation of institutional integrity and judicial independence. While independence guarantees escape from external influences, integrity ensures freedom from internal degradation. Over the last seven decades, the Indian judiciary has seen periods of institutional assertiveness, executive domination, confrontation, internal conflict, and modern challenges influenced by social, political, and technical changes. One recurring theme emerges from this intricate development: judicial independence cannot be viewed as an aim in and of itself unless it is supported by accountability, efficiency, openness, and public confidence.

Security of tenure, financial autonomy, separation of powers under Article 50, and judicial review as part of the fundamental framework are only a few of the many institutional protections that India's constitutional architecture offers the judiciary. By taking precedence in nominations, the Supreme Court further solidified its independence through the Judges' Cases. However, what started out as a safeguard eventually turned into an opaque system that was criticized for its lack of defined standards, opacity, and inconsistency. Despite being doctrinally congruent with the fundamental structure concept, the NJAC ruling rekindled a discussion about striking a balance between democratic accountability and independence.

Defenders contend that executive interference would compromise judicial neutrality, while critics contend that insulation without control runs the danger of fostering opacity.

the sentinel on the qui vive when independence and integrity coexist.

Public trust, structural openness, and moral behavior are all necessary for institutional integrity, a virtue that is sometimes disregarded yet is just as important. Threats to integrity can come from both inside and outside the institution, as demonstrated by the events of the 1970s, the ADM Jabalpur mistake, judge supersessions, accusations of wrongdoing, and even the historic public conference by top judges in 2018. Institutional confidence is further undermined by internal administrative secrecy, inexplicable transfers, selective case distribution, and a lack of diversity. In the meantime, the public's confidence in the judiciary's ability to function is diminished by enormous backlogs of cases, inadequate infrastructure, and delays in the administration of justice.

The best way to maintain independence is to balance it with formal accountability systems, according to comparisons with other democracies. While using open judicial appointments commissions, nations like the United Kingdom and Canada preserve judicial independence. Public hearings bring openness to the confirmation of judges in the United States, but politicization presents additional difficulties. Without sacrificing its distinct constitutional character, India must learn from these international models.

In the end, a court system's strength comes from the trust it commands rather than just the authority it has. Integrity without independence becomes brittle, and judicial independence without integrity becomes self-serving. Together, they uphold the nation's democratic foundation, defend constitutional government, and uphold the rule of law.

From the Basic Structure theory to the post-Emergency constitutional restoration, India's judiciary has consistently shown bravery, tenacity, and the ability to self-correct. The future necessitates a deliberate commitment to strengthen this heritage by adopting changes that protect the autonomy necessary for judicial impartiality while improving openness and public accountability. The judiciary can only really continue to be the custodian of the Constitution and