AMERICAN JOURNAL OF MANAGEMENT AND IOT MEDICAL COMPUTING
Peer Reviewed, Referred & Indexed Journal
E-ISSN: 3069-0110
Vol.4, No.4 (2025)
www.ajmimc.com

INDIAN CONSTITUTIONAL CLAUSES REGARDING JUDICIAL INDEPENDENCE: AN SYNOPSIS

K. Rama Krishna Baba[1]

[1]Research Scholar, P.G. Department of Legal Studies and Research, Acharya Nagarjuna University, Guntur

1. INTRODUCTION

The independence of judiciary is not a new concept but its meaning is still imprecise. The starting and the central point of this concept is apparently the doctrine of separation of powers. Therefore, it primarily means the independence of judiciary from legislature and executive. But that amounts to only the independence of judiciary as an independent institution form the other two institutions of the state without regards to the independence of the judges in exercising of their functions. In such a case there is not much that is achieved. The independence of judiciary does not mean just creation of an autonomous institution free from control and influence of the legislature and the executive. Judicial Independence The underlying purpose of independence of judiciary is that judges must be able to decide disputes before them, according to the law, uninfluenced by any other factor. For this reason independence of judiciary is the independence of each and every judge. Whether such independence would be ensured to the judge only as members of an institution or irrespective of it is one of the most important considerations in determining and understanding the meaning of independence of judiciary. The meaning of judicial independence has different meanings to different people over period of time also to several members of the constituent assembly.

Our constitution by the way of the Articles just talks about the independence of judiciary but it is no where defined what actually is meant by independence of judiciary. The primary talk on the independence of the judiciary is based on the doctrine of separation of powers which holds its existence from several years. The doctrine of separation of powers talks of the independence of the judiciary as an institution from the executive and the legislature. The other meaning of judicial independence is the independence of the exercise of the functions by the judges in an unbiased manner i.e. free from any external factor. So the meaning of independence of the judiciary can be understood as the independence of the institution of the judiciary and also the independence of the judges which forms the part of the judiciary Constitutional Provisions maintaining Independence of Judiciary The independence of judiciary and the protection of its constitutional provisions are not achieved by a single act but rather over a period of time by a continuous struggle that takes place within the framework of the ongoing and the dynamic process.

Therefore it 5 may not be possible to lay down all the conditions in advance either in the constitution or otherwise which will ensure and secure perpetual independence of the judiciary. Such conditions will have to be checked and revised from time to time. A few conditions are, however, so basic to the independence of the judiciary that without them the judicial independence will not exist. Some of them may be assigned to the collective independence of the Judiciary as an institution, while others may be assigned to the independence of the independence of the individual judges.

Judicial independence requires that the judges should be protected against the attacks on their conduct in court. This is secured from two branches of law. Firstly, judges are immune from personal action for damages in respect of their personal action. Anything said by the judge in the court by judges, advocates or witnesses is absolutely privileged against an action of libel and slander and to this extent is similar to parliamentary privilege. Enforcing the independence of judges, convention dictate that there should be no criticism leveled it them from the members of the executivebut not of the legislature. Parliamentary practice prohibits the criticism of the judges other than the motion expressing criticism or leading to impeachment of the judge. The judges are also immune from suits if they have acted within their jurisdiction or their powers. The situation here remains

Received: 08-10-2025 | Accepted: 13-10-2025 | Published: 20-10-2025 |

unclear. If a superior court acts beyond its jurisdiction, it remains immune to suit till it does not come to know about the violation of jurisdiction. On the contrary, if the magistrate acts beyond his authority, whether innocently or knowingly, lie is not immune from a suit. Part of the immunity enjoyed by the judiciary is extended to other participants of the judicial proceedings. This relates to the law of defamation so that everything said in the court is absolutely privileged. They also enjoy certain protection. They are not required to give reasons for their verdict nor will they be punished for not giving a verdict.

2. Appointments to Judgment and Decisions by Judges

2.1 Judge Bagwati's Opinions

The judicial system is one of the laudable institutions that upholds democratic principles and the rule of law. What makes the rule of law meaningful and effective is entrusting the job of making sure all State organs stay within their jurisdiction given to them by the Constitution and laws to the judiciary. Almost every country has a written constitution that spells out how different parts of government are supposed to function together and what powers each one has. Within its bounds, the Constitution grants authority to the many departments of government and specifies the limits within which those branches may use it. "It is imperative that these judges possess not only exceptional qualifications, but also national recognition as top-tier individuals with unwavering integrity. They must be prepared to confront the executive branch and any adversary that crosses their path."318 The appointment of judges to higher courts is also heavily influenced by the executive branch. In my view, this concentration of power in the hands of the executive branch undermines the independence of the judiciary, particularly in developing countries.

In most democracies, the power to do so is granted to the administration because it is answerable to the people through Parliament for its acts. However, in practice and substance, this accountability is no longer there because in many countries, the executive branch controls the legislature and the legislative check is nonexistent. In addition, if the executive has complete appointment power, individuals seeking judicial appointments may try to influence executive appointments in order to be appointed to the bench. This would make them feel obligated to the executive and, unknowingly or intentionally, lean towards supporting the executive in adjudicatory processes. A similar situation would arise if the executive has complete promotion power; in this case, the judge seeking promotion may be biased toward the executive, who has the authority to promote him. Of course, there have been cases where judges appointed by the executive have displayed corrupt behavior. The bulk of judges are regular people, so it's not out of the question that they may be quietly swayed to side with the executive branch in cases when citizens and the state are at odds.

As a result, the public would have less faith in the judiciary's ability to be fair and independent. Another factor that might impact the competence of the court is political concerns, which could lead to the appointment or promotion of an unqualified candidate rather than the best one. Therefore, we Indians have sought to limit the executive branch's ability to choose judges by requiring it to seek advice from three high court chief justices: the chief justice of the High Court, the chief justice of India, and the chief justice of the Supreme Court when selecting judges to sit on the Supreme Court and the High Court, respectively. Obviously, it's consultation rather than concurrence, but according to the Indian Supreme Court, for consultation to be successful, all pertinent information must be provided and reasons must be addressed. But even this consultation obligation has failed miserably. While it's true that the top justice of India has accepted every single appointment made by the executive branch so far, there have been cases when the chief justice's suggestions for judges were rejected. For some Indian jurists and attorneys, the chief justice's appointment authority should be seen as an extension of his or her advisory role, as the government should be bound to follow his or her recommendations. Nevertheless, this viewpoint was contested.

First, the authority to choose judges for higher courts is not vested in the chief justice in any nation on Earth. Second, as he is not a directly elected official, the chief justice does not serve as an advocate for or answer to the people. Thirdly, no one person, no matter how powerful, should have all of that power. Anyone can abuse or misuse power, including the president, prime minister, or chief justice. However, not even India's newly established system of delegating appointment power to the government to be used in conjunction with the chief

Received: 08-10-2025 | Accepted: 13-10-2025 | Published: 20-10-2025 |

justice has been effective in preventing political interference in such appointments. Appointing officials is thus the responsibility of a Judicial Service Commission headed by the chief justice and including prominent lawyers, judges, and law professors; the commission should also include representatives from the executive branch. The government must then accept the commission's recommendation of an individual's name. It would be sufficient to avoid political involvement and choose competent, honest people.

2.2 Justice V.R. Krishna Iyer's Opinions

Truth enjoys being nude, while craft must wear clothing. In every genuine democracy, there is a sacred trio of powerful individuals with constitutional authority who oversee daily operations. While both strive for operational discipline and harmonious institutions, each is constrained by its own limited dominance. When the executive branch makes a mistake, goes too far, or acts arbitrarily, the judiciary steps in to fix it without favoritism or fear. While lawmakers have the power to make laws and are responsible for conducting national inquests, the power to govern or overturn such laws rests with the courts; the suprema lex mandate serves as the last test. The House is autonomous, subject only to this judicial check. 173 When faced with an apparently intractable problem, the Indian nation always manages to find a way to excel. India looks to its esteemed leaders to step up and address any national issue that arises. Both Chief Justice K.G. Balakrishnan and Prime Minister Manmohan Singh are positioned within a historical framework. This is a national issue, not an individual one. A power struggle and institutional conflicts cannot bring you down to your lofty status and cause you to disappoint the people. India, or Bharat, is too great to give in to petty concerns, hence we will prevail. Our national goal and purpose are paramount.

The ability to choose justices for India's highest court and lower courts rests with the president, a move that the constitution's framers clearly intended. Westminster traditions handed down through the ages to the Council of Ministers rule the President. There should be zero tolerance for judges who give in to executive coercion or who enjoy amassing wealth via social or economic means in order to curry favor with the proprietary or spiritual high priests. From the Constitution's preamble, their social and economic ideologies could diverge significantly. Every judge has their own unique set of principles, including their level of adherence to communalism, legality, democracy, and socialism. However, the majority of them unconsciously let their class awareness color their perception of the law and the facts.

When dealing with the higher court, there are significant constraints on independence and impartiality. It is difficult to pretend that the courts command the same degree of broad trust when class concerns are involved, Winston Churchill declared in Parliament. Contrary to popular belief, they are not biased and yet a sizable portion of our society has been indoctrinated to believe otherwise. Chief Justice K. G. Balakrishnan of India has called on the public to voice their disapproval of the collegiums method of judicial appointment. A helpless Chief Justice of India has conceded that he could do nothing to change India's controversial collegiums system of judge nominations. Justice Balakrishnan says that his successor takes the ultimate decision in an interview with The Hindu newspaper. He was of the opinion that two important Supreme Court decisions must be reviewed in order to alter the collegiums method of judge selection. Prior to proceeding, it is necessary to examine the 1993 Supreme Court decisions that established the collegiums system as well as the 1998 Presidential reference to the subject. He thinks that the Centre need to pursue a judicial review of these pertinent rulings.

To increase executive oversight and openness in judicial appointments, the Centre has previously proposed revisions to the Memorandum of Procedure. Judgment is rendered by a collegium of justices appointed by the Chief Justice of India. There have been many complaints about the system, which has been running for more than ten years, due to the fact that the judges themselves are chosen by the judiciary. Its original intent was to counteract the executive-appointed-by-family practice of nepotism and arbitrary judicial selection. According to K.G. Balakrishnan, the collegiums he heads are faithfully carrying out the ruling in the matter of the Second Judges.

The executive branch has made it clear that it does not participate in the nomination process; that duty and accountability for such matters rests solely with the judiciary. The judiciary is therefore made to pay for the recent irregularities in these nominations. Indeed, the veto authority was provided. The current practice of having the seniormost judge hold the position of Chief Justice of India should be replaced, according to former

Received: 08-10-2025 | Accepted: 13-10-2025 | Published: 20-10-2025 |

Supreme Court Judge Kuldeep Singh, with an open and transparent selection procedure. To combat corruption in the court system, he advocated for highly open and accountable procedures for selecting and promoting judges, as well as for the collegiums system itself. "The Chief Justice of India, widely regarded as the country's most powerful official, should be appointed through an impartial and unpretentious selection process, independent of seniority," the statement said. Speaking on his time on the Supreme Court, Justice Singh recalled that eight of the highest-ranking judges in the country were named Chief Justices of India while being under investigation for serious crimes.

3 An Analysis of Supreme Court Opinions

"A comprehensive participatory consultation procedure is used to choose the most competent and deserving individuals to be appointed to the High Courts and the Supreme Court. It is imperative that all constitutional officials work together to fulfill this duty, with the main objective of making a judgment that supports the constitutional purpose and stops primacy in its tracks."320 The majority opinion's summary states that: "Appointments proposed by the Chief Justice of India are not binding on the Chief Justice of India unless exceptional circumstances and well-reasoned, convincing arguments against the proposed appointment have been presented to the Chief Justice of India. Alternatively, if the justifications are rejected by the Chief Justice of India and the other judges of the Supreme 320 Supreme Court Advocates-On-Record Association v. Union of India and others. 177 Court who have been apprised of the matter, the appointment should be made in line with solid tradition." Several ideas and principles from the justice administration systems in the United States and England have made their way into Indian law. All parties involved the society, the system, and the country's future stand to benefit greatly if the Indian system follows these systems' lead when it comes to nominating justices to the Supreme Court.

The real issue is whether it is more important to retain democracy or the independence of the judiciary, as a completely autonomous judiciary might easily become a dictatorship and judges choosing their own peers is a blatant step in that direction. The Law Commission of India321 has called for a reevaluation of the Judges Cases I, II and III, arguing that they have essentially rewritten the Constitutional provisions concerning the nomination of judges to the Higher Judiciary.322 Now is the time to notice that although certain sections of the transfer case judgments are followed to the letter, other aspects are disregarded and forgotten. According to Justice J.S. Verma, who authored the majority opinion in the matter of the Second Judges, his ruling was grossly misconstrued and abused. Justice has remarked that the majority judgment's guidelines for the appointment procedure implied a partnership between the administration and the judiciary.323 It is no longer acceptable for the Supreme Court to be the only body responsible for appointing judges to the higher judiciary. In 1990,324 there was an attempt to establish a National Judicial Commission and have its recommendations used to appoint judges to the Supreme Court and High Court.

3.1 Alternatives that are incompatible

Another attempt was made to amend Articles 124 and 217 to make this possible, but political pressure prevented these changes from being implemented. Chapter III A, which would have provided the framework for the establishment and operation of a National Judicial Commission, was suggested for inclusion in Part 5 following Chapter III in the 2001 Constitution Amendment Bill.325 An alternative to implementing the National Judicial Commission's advice was also considered in the proposed amendment to Article 124(2) of the Constitution. After conferring with India's Chief Justice, the President may, under the Constitution, remove a judge from the High Court. In response to concerns that the executive branch could abuse its transfer authority, the highest court in India ruled that only the Chief Justice of India had the authority to initiate a transfer and that there needed to be good reasons to disagree with the chief justice's opinion.327 According to the current stand, as suggested in the Third Judges Case, the Chief Justice of India is required to confer with a number of senior judges, and the collegiums have to take this advice into account. The opinion will not have any binding effect on the government until this process is followed. Appointing judges to the higher court within one month of a vacancy occurring, among other exceptional ideas and observations made by the judiciary, is one of the notable suggestions that has sadly been forgotten and lost over time. By interpreting constitutional provisions in a way

Received: 08-10-2025 | Accepted: 13-10-2025 | Published: 20-10-2025 |

that has changed the spirit of the provision, likely unintentionally, in their favor, the judiciary has been attempting to free itself from the slight control that the executive has over the judiciary. Judicial review and the kind, nut "Quis custodiet ipsos custodies" may have been the most egregious examples of legislative and executive authority abuses. Since the current collegiums mechanism has failed to meet expectations, the Central government recently requested that the Supreme Court examine the system of nomination of judges to higher courts on April 4th, 2021. Justices Deepak Verma and B.S. Chauhan of the highest court bench sent the case to Chief Justice S.H. Kapadia, who would then assign a suitable bench to examine the request from the federal government. The attorney general informed the court that a complete statute regarding judicial nominations is being considered by the federal government, but that this process might be lengthy due to the need to modify the constitution. He urged the court to reconsider its ruling on judicial appointments from 1993. Collegiums, comprised of the chief justice and four other senior-most judges of the highest court, are responsible for making judicial nominations to both the highest court and the high courts; the Supreme Court has vested entire authority in this matter in this group. After reviewing the report from senior counsel A.K., the court sent the case to Chief Justice Kapadia.

Ganguly, who had previously been designated as a friend of the court (amicus curiae), for this matter. Suraz India Trust brought this up in a public interest lawsuit. In his 12-page report to the court, Gauguly stated that the 1993 decision " has to be reevaluated since the process used to choose its justices is incompatible with our democratic system and goes against the principles of checks and balances, separation of powers, and democracy as outlined in our constitution." The report went on to say that the "supremacy of the chief justice as interpreted in the Second Judges Case (1993) has also come to be perceived as encouraging lack of accountability in the entire system." An anomaly has been created by the current system of judicial appointment in the higher judiciary, according to the amicus curiae report "Law's Delays: Arrears in Court," since the collegiums of the Supreme Court are solely responsible for filling judicial vacancies, rather than the executive branch.

"According to the study, the union law minister is held responsible by parliament for the delays in filling judicial vacancies, even though he does not really have anything to contribute. Ganguly asserts that "the decision of this court was a result of the perception of the judiciary that it required to be insulated from the interference from the executive". His main argument was that there are other ways to ensure independence, as shown by the system's operation." The 2008 recommendations of the Law Commission for a review of the decision should be considered in light of the Supreme Court's indication that the judgment of 1993 establishing the collegium system of judge nominations needs to be revisited. In its 214th report, the previous Commission, which was headed by Justice A.R. Lakshmanan, proposed a system where the Executive and the judiciary would each have an equal say in choosing members for the Supreme Court and High Courts. After reviewing the appointments made between 1993 and 2008, the Commission recommended reevaluating the three Supreme Court rulings from 1982, 1993, and 1998 in order to provide more uniformity and clarity in the appointment process. "In every other constitution, the appointment of judges is either done by the executive branch alone or by the executive branch in conjunction with the country's chief justice.," the study said, reflecting its analysis of the situation in different countries. It was the latter approach that the Indian Constitution took.

But in the 1993 "second judges case" (Advocates on Record Association vs. the Union of India), the Executive branch was entirely disregarded, and in 1998, the Supreme Court upheld this approach, with minor adjustments, in its presidential reference. Justice J.S. Verma, a former Chief Justice of India and author of the main decision in the 1993 case, reiterated in an interview with Frontline329 the need for an immediate and thorough evaluation of the current process for selecting judges. Justice "My 1993 decision, which holds the field, was greatly misunderstood and abused," Verma said. Within that framework, I indicated that the judgment's current operation has been posing significant concerns for some years now, and these concerns cannot be deemed unjustified. As a result, a change of approach is necessary. According to the Commission, who cited this interview, the Indian Constitution has a lovely system of checks and balances for the appointment of judges to the Supreme Court and High Courts under Articles 124 (2) and 217 (1), which ensures a balanced role for the Judiciary and the Executive. The power dynamic must return to its natural equilibrium. The government's policy mandates that the chief justice of each high court "is from outside the State." Even the most senior members of the collegiums' judicial bodies come from outside the state. As a consequence, the judges who make up the collegiums aren't familiar with the applicants' identities and backgrounds, and appointments are often impacted by a lack of sufficient information, the Commission said.

Received: 08-10-2025 | Accepted: 13-10-2025 | Published: 20-10-2025 |

Preceding the Constitution's implementation, these uncertainties were validated with regard to the High Court, and they were promptly addressed with regard to the Supreme Court after its implementation. Despite the fact that the Constitution's framers wanted judges especially the Chief Justice of India and the Chief Justices of the High Courts to be actively involved in the judge-appointment process, they gave the Chief Justice no say in the issue.331 The framers of the Constitution did not intend for judicial nominations to be subject to either legislative approval or panel recommendations. The framers of the Constitution had good intentions when they included provisions for the appointment of judges. They thought these would be the best way to ensure an impartial and capable judiciary in India. They also believed that the high-ranking constitutional officials involved would fulfill their constitutional duties fully. Despite some exceptions, time and experience have shown that these provisions have mostly worked as intended.

4 Independent Judiciary & Separation of Powers

Many nations across the world do not recognize the separation of powers idea, in part because it is quite strict in its actual interpretation. A government founded on the rule of law, not on the caprices and wishes of officials, is the basic aim of the theory of separation of powers, according to Montesquieu. Another essential part of the aforementioned ideology is judicial independence, or the separation of the court from other branches of government. Correct administration of justice cannot occur till then. The judiciary is a barometer of a nation's true progress; when it lacks independence, it heralds a dictatorship in which all power is concentrated in the hands of a few, increasing the likelihood of abuse of that power. Therefore, the conception of a just government relies heavily on the doctrine of separation of powers, and the independence of the court ensures that justice is administered fairly and properly. 2.9.1 Understanding Judicial Independence The independence of the court is still not clearly defined, even after all these years.

By the way, our constitution's provisions just make passing reference to judicial independence; they do not elaborate on its practical implications. 64 AIR 1955 S.C. 576. 38 The principle of separation of powers, which has been around for a while, is the main basis for discussions on judicial independence. The judiciary's autonomy from the legislative and executive branches is a basic tenet of the separation of powers philosophy.65 Scholarly works on the subject may provide light on the alternative interpretation of judicial independence. The "constituent mechanism" has been the standard by which academics have defined judicial independence. When asked to define judiciary, scholars often bring up the topic of judges' independence. Consequently, a truly independent judiciary is one in which judges are able to carry out their duties without interference from any higher authority. Thus, the independence of the judiciary may be defined as the autonomy of both the judiciary itself and its individual members, the judges. "The organ of the government not forming a part of the executive or the legislative, which is not subject to personal, substantive and collective control, and which performs the primary function of adjudication" defines the judiciary, according to Shetreet, who attempts to explain the terms "Independence" and "Judiciary" separately in his work.66 The ultimate conclusion that can be drawn from Shetreet's writings is that the independence of the judiciary as an institution and the independence of the individual judges must be interdependent.

If the institution of the judiciary is not independent, then there is no way that the individual judges can be considered independent either. To sustain the rule of law and equitable administration of justice in the nation, an independent judiciary is essential. When it comes to reining in the administration's arbitrary actions, an independent judiciary is crucial. Legal recourse is available to anyone who have suffered harm as a result of the administration's capricious actions. The rule of law and the constitution are often upheld by an impartial court. Everyone is equal in the eyes of the law, regardless of their socioeconomic status, and the court punishes lawbreakers. To achieve this goal, the court must maintain its independence; otherwise, it would be unable to hold the executive branch accountable for legal infractions. Beyond that, the golden rule of fair justice states that justice must be done, but also seem to have been done, to the people. When matters are resolved by an impartial court, the public feels that they have been fairly treated, which in turn prevents any discontent. In order to ensure a fair and impartial judiciary, the power to appoint and remove judges should not rest with the executive branch. However, if this power is given to an executive branch agency, proper safeguards must be put in place to prevent its abuse. The role of the executive branch should be more ceremonial and passive in order to preserve the independence of the judiciary.

Received: 08-10-2025 | Accepted: 13-10-2025 | Published: 20-10-2025 |

4.1 A case for Judicial Independence

The independence of the judiciary is predicated on the following: 1. To monitor how the organs are operating: The judiciary serves as a watchdog by making sure that each state organ operates within its designated borders and in accordance with the constitution's requirements. Aside from protecting the constitution, the court also backs the concept of separation of powers. 2. Assists in maintaining the principle of division of powers. 3. Interpreting the Constitution: The framers of the Constitution were aware that future ambiguity would arise with its provisions, so they made sure that the judiciary would be autonomous and competent to interpret the Constitution in a way that would clear up any confusion. However, they also made sure that the judiciary would be free from pressure from other organs, such as the executive, so that their interpretations would be objective. Without judicial independence, other branches might exert pressure on the court to interpret constitutional provisions in a way that benefits themselves. It is the responsibility of the judiciary to interpret the Constitution in light of constitutional principles and norms. 4. Cases sent to the courts: The courts are supposed to provide judicial justice, not committed or partial justice. What we mean by "committed justice" is that it happens when a judge gives justice without taking into account all the factors at play, instead focusing on one. The courts, too, ought to be impartial. Transparency in the nomination of judges is essential for carrying out all these tasks. Judges are entrusted with the responsibility of interpreting and applying the Constitution in order to ensure equality and justice.

5 CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

Over the last sixty-four years and beyond, India's highest court has done an excellent job, much to everyone's delight. Not just the general public but even judicial institutions throughout the world have expressed their appreciation and admiration. It has achieved its goal of protecting and furthering the public welfare by establishing and expanding fundamental rights and by increasing the importance of the Directive Principles of State Policy. It is justifiable for any nation to take pride in its judiciary, which has produced world-class thinkers and doers who have dedicated their lives to using the law for the benefit of society. However, there are also some outliers, and more of them have surfaced in recent years. Lately, the public has been worried about judges who don't stick to their work schedules, who take time away from court without asking for leave, who take too long to make decisions, and who seem to act randomly. A disciplinary mechanism is necessary to protect the integrity of the court from the actions of this few. Those who are wrongfully charged will be protected by this system. Aside from that, there won't be any reason to utilize the system since its sheer presence will be discouraging. The function of the court is crucial in any democratic society, it follows. As a check on the power of the administrative and legislative branches, the framers of our Constitution envisioned a robust and autonomous judiciary.

The principle of separation of powers is one that India has adopted. In this setup, the legislative, executive, and judicial departments of government all have distinct but complementary roles. The consolidation of authority across the three branches threatens to prolong authoritarianism and curtail personal freedoms. Since the court protects our basic rights, this is a bad situation to be in. Therefore, it was believed that the separation of powers between the legislative and executive branches would provide a safeguard for the people's access to justice. 186 However, this kind of behavior cannot be tolerated in any democratic government. It would be very difficult for the legislature to remove corrupt judges under any checks and balances system. The procedure is intentionally made to be onerous and arduous so that judges no longer fear removal and can make judgments based on their own free will. When there is a duplication of effort like this, however, people start to doubt the court's impartiality. Due to the difficulty of the removal procedure, a system of rotating judges has been established as a form of punishment. Some high court judges have recently been transferred for engaging in behavior unbecoming of their positions, including those from the Punjab & Haryana High Court and the Karnataka High Court.

According to the researcher, this approach is completely inappropriate and fails to address any issues. The

Received: 08-10-2025 | Accepted: 13-10-2025 | Published: 20-10-2025 |

judges' decision addressed several difficulties and, in some cases, steered the legislation in the right direction. So, with respect to what was formerly called "Crown Privilege" but is now called "public interest immunity," the judges' decision brought our legislation in line with the latest developments in England. In light of these problems, it is essential to form the National Judicial Commission without delay. This organization may not have all the answers, but it can handle a lot of problems and investigate them more scientifically and objectively. The advantage of having a Commission like this is that it is not beholden to either the political or executive departments. The researcher has already detailed its makeup. Thus, creating the National Judicial Commission could be vital for protecting the independence of the court. No system is perfect since any method for appointing judges may have its advantages and disadvantages. Regardless, the public continues to have faith in the nomination process, and judicial independence is ensured via the commission system, making it a potentially effective vehicle for judicial appointment. The effectiveness of this system, however, depends on the commission's ability to reflect the population at large and include representatives from the legislative, executive, and legal branches. In addition, the commission must run a system that is open and available to the public. The South African Judicial Service Commission's structure and operations might serve as a good example in this respect. Appointing the most competent individuals to judgeships may be greatly improved by such a system. There must be safeguards in the Constitution to avoid the misuse and abuse of power by the government. Dr. Rajendra Prasad issued a warning during the most recent 187 Constituent Assembly meeting, and we must not forget It. He asserted that the nation's well-being would be determined by its administration, independent of any provisions in the Constitution.

The folks handing it out will decide that. Like any mechanical part, a constitution eventually breaks down. It is the men that breathe life into and guide India, thus all the country needs are some decent men who would put the country's interests ahead of their own. Right now, this is the most important thing. There are high expectations of the court because of its unique status as specified in the Constitution. It is believed that a more independent court would better uphold the rule of law. The fundamental justifications, other from purely altruistic ones, include protecting the rule of law and serving the public good. Judicial accountability is a feature of republican democracy's independent judiciary. Therefore, judges must follow the rules of proper judicial conduct. "The glory of man is to be perfectly just, which is an attribute of the divine nature," as stated by Addison, and we should strive to be as just as possible. In a nutshell, this is the role of the judiciary.

5.2 **Recommendations**

Originally, both the civilizations and their rules were primitive. Alongside society's expansion, laws have also expanded. "The law ought to be stable, but it ought not to remain static," Pound would advise." This creates a connection between law and society in which the law is a tool for social change. It is vital to get background information about the evolution of legal history in order to fully realize, respect, and value the current legal system. Any civilized country must have a courageous and unbiased justice system. For a federal system like India's, it is also a necessary prerequisite. The only way for higher court judges to safeguard people' basic rights is if they are courageous, unbiased, and selfgoverning. Contrarily, people' rights cannot be upheld if judges are themselves timid and powerless. Strangely, India's government spent a long time trying to establish a court system but never once tried to establish a corpus of law, which is an unusual aspect of the country's legal history. The development of a consistent body of law was an attempt to rectify these shortcomings. The codification process, however, was necessary for the development of a cohesive system of law. Afterwards, the focus of legislation shifted to specific regions, leading to the consolidation of regional variations and eventually, national uniformity.

REFERENCE

[1] Art 22, the Constitution of the People's Republic of Bangladesh, Done at Dhaka, 4 November 1972, in Force 16 December 1972. http://bdlaws.minlaw.gov.bd/act-details-367.html
[2] Judgment (1999) Secretary, Ministry of Finance vs. Masdar Hossain, 52 Dhaka Law Report (AD), p. 82. https://shamimsufi.files.wordpress.com/2013/05/secretary-ministry-of-finance-vs-md-masdar-hossain-and-others-52-dlr-ad-82.pdf
[3] Constitution of the People's Republic of Bangladesh (1972) Done at Dhaka.
[4] Islam, M. (2006) Constitutional Law of Bangladesh. 2nd Edition, Mullick Brothers, Reprint, 65.

Received: 08-10-2025 | Accepted: 13-10-2025 | Published: 20-10-2025 |

[5] Hossain, M.M. (2020) Separation of Judiciary in Bangladesh-Constitutional Mandates and Masdar Hossain Case's Directions: A Post Separation Evaluation. International Journal for Court Administration, 11, 4.[CrossRef]
[6] Ershadul Bari, M. (1993) Importance of an Independent Judiciary in a Democratic State. The Dhaka University Studies, Part F, 4, 1-11. https://law.du.ac.bd/en/wp-content/uploads/2017/09/Volume.-IV-No.1-June-1993.pdf
[7] Akkas, S.A. (2004) Independence and Accountability of Judiciary—A Critical Review. Centre for Rights and Governance (CRIG), Dhaka, 22.
[8] Dawson, R.M. (1954) The Government of Canada. The University of Toronto Press, Toronto, 486.
[9] Geyh, G.C. and Tassel, V.E.E. (1998) The Independence of the Judicial Brance in the New Republic. Chicago-Kent Law Review, 74, 31.
[10] Russell, P.M. (2001) Towards a General Theory of Judicial Independence. In: Russell, P. and O'Brien, D.M., Eds., Juridical Independence in the Age of Democracy: Critical Perspectives from Around the World, University Press of Virginia, London, 6.
[11] Millar, S.P. (1981) Judicial Administration in Canada. McGill-Queen's University Press, Kingston, 54.[CrossRef]
[12] Halim, M.A. (1998) Constitution Constitutional Law and Polities: Bangladesh Perspective. Rico Printers, Dhaka, 342.
[13] Rohson, W.A. (1951) Justice and Administrative Law.
[14] Walter Valente vs. Her Majesty the Queen (1985) 2 RCS 673. https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/108/index.do
[15] Fricdland, M.L. (1995) A Place Apart: Judicial Independence and Accountability in Canada. Canadian Judicial Council, Toronto, 2.
[16] Sarrower, E.R. (2008) On Judicial Misconduct and Discipline—Without Merit: The Empty Promise of Judicial Discipline. Massachusetts School of Law, 4, 90. http://www.tulanelink.com/tulanelink/sassower_01a.htm
[17] Kamal, J.M. (1994) Bangladesh Constitution: Trends and Issues. University of Dhaka, Dhaka, 27.
[18] Karim, M.A. (2014) Separation of Judiciary in Bangladesh. International Journal of Human Rights and Constitutional Studies, 2. https://www.inderscienceonline.com/doi/pdf/10.1504/IJHRCS.2014.067882
[19] ldrisur Rahman vs. Bangladesh (2008) 60 Dhaka Law Report, 714.
[20] Judgement (1993) Bangladesh vs. Aftabuddin, 48 Dhaka Law Report.
[21] HussainaraKhatoon vs. State of Bihar (1979) Cr LJ. 1045. https://indiankanoon.org/doc/1373215/
[22] Article 109, the Constitution of the People's Republic of Bangladesh, Done at Dhaka, 4 November 1972, in Force 16 December 1972. http://bdlaws.minlaw.gov.bd/act-details-367.html
[23] Islam, M.R. (2013) 2013 Independence of the Judiciary—The Masdar Case. Daily Star, 6 August. https://www.thedailystar.net/independence-of-the-judiciary-the-masdar-case-14760

Received: 08-10-2025 | Accepted: 13-10-2025 | Published: 20-10-2025 |