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POLITICAL INFLUENCES IN JUDICIARY – *A STUDY*

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Introduction

Independence of the judiciary is a constitutional vision that has been incorporated into the Constitution of India. However, the political and judicial history of our country provides us with a tale of a constant struggle between the executive and judiciary wherein the political influences and prejudices seek to corrupt the process of imparting justice. In this regard, this article provides an account of these struggles and also emphasizes that independence of the judiciary may not imply the complete endowment of powers on the judiciary, rather it implies a creative and appropriate balance between the executive and judiciary to collectively strive to reduce such influences. Firstly, we will look into the constitutional conception of separation of powers in a historical context, then we will proceed to explore the presence of political influences in the functioning of the judiciary and the consequent tussle between the executive and the judiciary. We will also briefly see the presence of such influences at the level of lower courts.

Constitutional Framework: The Separation of Powers

The Indian State took shape in the course of nationalist struggles against the British Raj. The dominant image of the British-Raj was repressive as a result of the need to control this constant agony caused by these struggles against themselves. Hence, the subordination of the judiciary of that time to the political powers of London was seen in those times. A rule-governed authority formulated the notion of legality, however, almost all rules accommodated colonial and political inspiration. It has been observed that this was 'political' as opposed to 'juridical'. Out of this legacy, the Indian Constituent Assembly was able to build a state in which the judiciary had acquired

equal and independent prominence alongside the legislature and executive. Indeed, the Constitution of India incorporated this idea in the form of a 'separation of powers between the legislature, the executive, and the judiciary. The doctrine of separation of powers, essentially, meant the tripartite division of government function in the context of India. Philosophers like Aristotle, Montesquieu, and John Locke emphasized such division in functions and identified them as legislative, executive, and judiciary. These political theorists premised this separation on the basic assumption that the liberties and rights of people must not be compromised because of any tyrannical rule that vested and exercised each function on its whims.

However, such a conception of the heretic compartments for the state was realistically impossible, therefore, functionally this idea provided a means of checks and balances. Perhaps, that is why the framers of the Indian Constitution did not recognize the doctrine in its rigid sense. Hence, the Constitution not in its explicit terms, but schematically distinguished these functions by creating different branches of government. In *Ram Jawaya v. The State of Punjab*, this idea was elucidated very clearly. It was observed that our Constitution did not embrace the idea that one branch of government could take over the essential functions of the other, however, the executive can exercise certain powers such as delegated legislation and certain judicial functions but to a certain limit.

Moreover, it has been observed that the drafting committee for the Constitution, majorly constituted by lawyers, could not place their trust in the party politics of the regional levels, having diverse constituencies and ideologies. This is why, perhaps, they decided to stipulate the norms and principles which all parties should acknowledge as fundamental for the governance of India. This prescription of norms was intended to control and guide the decision-makers and displace political interest. Accordingly, the Assembly held its belief in the judiciary and the civil services since they were expected to remain aloof from the political interventions. It is important to note here that the principle of 'Separation of powers' may imply that the Constitution secured only the institutional independence of the judiciary, but it could not imply the independence of judges concerning their functions as judges. For that reason, perhaps, it is more appropriate to state that the independent judiciary is premised on the unobstructed or uninfluenced application of the law by the judges.

However, it has been argued multiple times, that despite the adequate provisions for independence and impartiality of the judiciary, the influence of politics still penetrates the machinery of our judicial system, in further sections, we will focus on some of these arguments.

Political Influence and the Judiciary

Appointment and Transfer of Judges: Although, the attempt of creating an objective framework through a constitutional scheme for particular functions of the government is an admirable achievement. However, it is perhaps impossible to not

refer to the subtle influences of politics on the judicial machinery, as it may substantially hamper the integrity as well as the aim of the Indian judiciary, which is to protect the rights and liberties of common people and impart justice. Although such influences are hard to account for in the general working of the machinery, yet mostly, the idea of political influence in the judiciary is associated with the appointments and transfers of judges to the courts. In this respect, even the Law Commission of India in its 14th Report observed that communal considerations and executive influence have prevailed in making the selection of judges.

It is important to note here that, in 1945, when it was sure that India would be an independent country very soon, the Sapru Committee recommended that the judges of the Supreme Court and the High Court may be appointed by the head of state in consultation with the Chief Justice of the Supreme Court, and in the case of High Courts, it would be decided in consultation with the Head of the unit and the Chief Justice of the concerned High Courts. However, eventually, as Dr. Ambedkar suggested that the idea of endowing unbridled power to the president to decide the judges was indeed fallible and there also exists the possibility of political pressure and considerations. Moreover, it was also a dangerous proposition to grant the veto power to the Chief Justice who himself being a human is subject to all the human failings and prejudices. Therefore, the power of appointment of judges was handed to the President, provided he consulted the Chief Justice concerning the appointment, but there was no requirement of the concurrence of the Chief Justice with regards to the final appointments.

However, within nine years of the commencement of the Indian Constitution, as noted earlier, great dissatisfaction was expressed by the Law Commission of India in its 14th Report concerning the appointment of judges for both Supreme Courts as well as the High Courts. However, the issue became significantly controversial in 1973, when the Union executive deviated from the established convention of appointing the senior-most puisne judge as to the Chief Justice, on the retirement of then Chief Justice of the Supreme Court. The executive had appointed the fourth most senior judge to the Chief justice, superseding his three senior colleagues. As a response, the three superseded judges resigned from the post in protest and this invoked the debate onthe independence of the judiciary in a political context. Subsequently, again, the retiring Chief Justice was replaced by the second most senior judge, in protest which the senior-most judge resigned from his duties. On both occasions apparently, it has been observed that the superseded judges had given unconducive judgments for the executive, while the superseding judges had given palatable judgments to the executive. On the first occasion, the superseded judges have laid down that the basic structure of the Constitution was unamendable in the case of *Kesavananda Bharati v. The State of Kerala*, and on the second occasion, the court had held that the suspension of Fundamental Rights during emergencies did not prevent the courts from examining the legality of detention in the *A.D.M. Jabalpur v. Shivakant Shukla.* This, perhaps, adequately represented the relationship between the appointment of judges and the independent judiciary.

Consequently, after the turn of the government in power, the Law Commission of India was approached for the issue of appointment of judges, and it suggested that the convention of appointing the senior-most puisne judges must be followed, and the same was done. While the Commission found the constitutional provision for the appointment of judge's sound', it acknowledged the flaws in its operation and made several recommendations for the elimination of political influence. The Commission suggested a decisive role for the judiciary in the matter of appointments and transfers through a collegial decision-making process.

Judicial Intervention: Unfortunately, even after this controversy, the political threat to the independence of the judiciary surfaced again. A little after the first supersession under the same government, a mass transfer of High Court judges took place, again apparently for the reason that the transferred judges had given judgments inconvenient to the government during the emergency of 1975-77. One of the Judges, Justice S.H. Seth who was transferred to the Gujarat High Court from the Andhra Pradesh High Court challenged the constitutionality of his transfer to Gujarat High Court, on the ground that it was done without his consent and the consultation between the President and the CJI. The petition was allowed on the latter ground. Subsequently, an appeal in the Supreme Court was disposed of with an assurance by the Central government to withdraw the transfer.

For the second time, the matter related to appointments of judges and additional judges came before the Supreme Court in *S.P. Gupta v. Union of India*, also known as the First Judges' case. Some of the petitions challenged the validity of the circular letter of the Union Law Minister to the Chief Minister of the states that asked them to obtain advance consent of the proposed appointees to the High Courts for transfer. Some of the other petitions challenged the validity of the practice of appointing additional judges and of not filling the permanent vacancies. Some also challenged the transfer of judges from one High Court to another. The Apex Court reiterated the basic feature of the Indian Constitution, which is the independence of the Judiciary, and the petitions were dismissed by the majority. However, it was observed that the transfer must be made only in the public interest and not by way of punishment. Although the appointment of additional judges was suspected of violating judicial independence, its application following the constitutional conditions was appreciated. The court also observed that the additional judges did not have a right to be appointed as permanent judges. The majority reiterated the primacy of the executive in the appointment of the judges. However, the judgment was criticized by the legal fraternity, and again the Law Commission was called upon to pursue the issue. In its 121st Report, the Commission recognized in light of the previous experiences, the need for an increased role of the judiciary in appointments and wider consultation. It recommended the constitution of an eleven-member National Judicial Service Commission, chaired by the CJI.

Consequently, the dissatisfaction caused by the First Judges' case, led to the Second Judges' case, Supreme *Court Advocates on Record Association v. Union of India*, which considered the petitions under Article 32 of the Constitution demanding the filling of existing vacancies in the Supreme Court and various High Courts. The Nine-Judge bench overruled the judgment of the First Judges' case and emphasized that the appointment of judges must involve the participatory consultative process wherein no constitutional functionary must be given primacy, rather the decision must be made collectively. The court established a judicial collegium consisting of the CJI and two senior-most judges as the main body. In the case of differences of opinions, the CJI has primacy, where the CJI and the other two judges' decisions would represent the opinion of the judiciary. This also puts a curb on the CJI's power to arbitrarily nominate the candidates. Moreover, the convention of appointing senior-most puisne judges as the CJI was upheld and it was stipulated that the consultation required under Article 124(2) of the Constitution may be referred only when the senior-most judge was not considered fit to hold the office of CJI. Although the judge attempted to establish a nexus between the judiciary and the executive, however, it was not without its criticism. It was argued that the judgment amounted to a reversal of constitutional provisions.

However, in 1997, the then CJI failed to name his successor on time as required by the Second Judges case, and later in 1998, the executive refused to appoint the judges to the Supreme Court and to transfer Chief Justices of the High Court recommended by CJI. The latter issue, however, led to the litigation and the gravity of the situation necessitated it for the President to seek the opinion of the Supreme Court in the matter. This was the Third Judges case or In re Presidential Reference. The nine-judge bench had to deal with nine questions broadly dealing with three aspects, namely, consultation between the CJI and his fellow judges in the matter of appointment for the Apex court and the High Courts, and the transfers in case of High Court; judicial review of transfer of judges; and relevance of seniority in making appointments to the Supreme Court. It was observed that the opinion of the CJI was not binding on the government. It also observed that the CJI shall consult a collegium of four senior-most judges and thereby widening the scope of the consultative process. The collegium was expected to make its decision by consensus, in case of difference, no one can be appointed unless his appointment conformed with the opinion of the CJI. But if CJI favoured someone against whom the majority of the collegium differs, such an appointment must not be made. In making appointments from the High Court judges, the Court emphasized the seniority principle but stipulated that merit was the predominant consideration, and a meritorious person can be appointed without regard to his or her seniority. The decision-making collegium for High Courts must include the Chief Justice of the concerned High Court and two senior-most judges. Judicial review of appointments or recommended appointments could also be sought. For the transfer of judges, CJI must consult with the Chief Justice of the High Court from where the candidate is to be transferred and the Chief Justice of the High Court to where the

candidate is to be transferred. The recommendation made by these consultations needs to be sent to the collegium of CJI and four senior-most judges of the Supreme Court. A transfer was also made subject to judicial review.

From the above account, one can easily make out the different phases through which the judiciary went in terms of appointments and transfers of the judges. The attempts were made to stabilize the nexus of the primacy of the role between the judiciary and the executive branch. However, some argue that these led to the excessive empowerment of the judiciary in the matter of appointments and transfers, consequently, in 2014, the National Judicial Appointments Commission Act, 2014 (NJAC) was brought in. It purported to set up a National Judicial Appointment Commission for regulating the appointment of the judges to the Supreme Court and High Courts in India. It replaced the collegium system of appointing judges which arguably undermined the constitutional provisions as well as affected the checks and balance system envisaged by the Constitution. As per the Act, the Commission had to be constituted by six-member including CJI as the Chairman. It has been argued that this in itself provides a strong judicial position in matters of appointment. The other members included two senior-most judges of the Supreme Court of India, a Union Law Minister, and two eminent personalities belonging to the scheduled caste/tribe or women community. The most prominent reason for the introduction of this mechanism was to make the process of appointments and transfers more accountable and transparent. Along with the NJAC Act, the Parliament also passed the Constitution (Ninety-Ninth Amendment) Act, 2014 which inserted Article 124A into the Constitution which provides for the composition of the NJAC. The Commission was formed to suggest the candidates for the appointments and transfer of the judges. No recommendations could have been made without the acceptance of the 'two eminent persons', moreover the Union law minister and the eminent persons were granted the veto power as well. This arrangement, however, led to constitutional inquiries in the matter and it led to the Fourth judge's case. In *Supreme Court Advocates on Record Association & Anr. v. Union of India, 2015,* or the Fourth judges' case, the Supreme Court held the NJAC Act and 99th Constitutional Amendment Act unconstitutional and upheld the Collegium system. It purported that the legislation breached the basic structure of the constitution.

The issue of appointment and transfer of the judges has, thus, seen considerable debate around it, however, amidst this debate what is important for us to remember is that the domain of appointments and transfers is a space for considerable interaction between the executive and the judiciary. Perhaps, that's why, as we saw, this domain has increasingly seen the involvement of political consideration. And that is precisely why we witnessed a struggle between both to retain the powers of appointments and transfer. However, this does not mean that the argument of transparency and accountability does not hold good. As noted earlier, judges are human beings too and, in that sense, they are fallible too, hence the excessive power and the opaque application of the collegium system are dangerous. Moreover, one can still not deny the existence of

political ideology that a judge may ascribe to, hence the involvement of politics in that sense is inevitable.

Political Influence in the Adjudication Process: As noted earlier, despite the constitutional framework, the working of the judiciary is susceptible to the political sphere that has the power to influence it. Although it has already been said that these political influences are very difficult to account for especially at the level of lower courts since they could never gain as much publicity or media coverage as the issue surrounding the Supreme Court and High Courts may get. This is to say that the information regarding these influences may not surface sufficiently and get unnoticed. In this sense, the judiciary may become a means to reach and satisfy political interests as a result of a particular case but this may get unnoticed. This is not an aspect that can be undermined. Some scholars have provided reliable data on how politicians can affect criminal adjudication in the Courts, in which either they are directly or indirectly involved. Moreover, it has been shown that politicians who are in power are more likely to affect the decisions than the politicians who are not in power. It has been shown that winners from the ruling party are 17% more likely to get their pending cases closed without conviction while they are holding their offices. The reasons for such biases may be a result of the judge's political affiliation or any political pressure that threatens the judge and his position. The politicians wield the power in some cases to manipulate the legal system through threats and political intimidation. Specifically, like, as we noted earlier, interference in the transfers, appointments, and promotions of judicial officers. However, it has been argued that this political pressure is most effective when dealing with less serious criminal cases and in states with low judicial strength.

The Way Forward

As we acknowledge the reality of the presence of political influence in the judiciary which is specifically expected to remain untouched by them, the next question that arises is whether we can separate these influences from the judiciary. In this regard, it is also important to note here that a politicized judicial system has wide-reaching consequences for democracy as it compromises the independence of the judiciary, facilitates corruption, hinders growth, and reinforces a vicious cycle of dishonest leaders entering politics. Therefore, in this sense, it becomes imperative to reach a reliable solution. The first major domain of political influence is in the appointments and transfers of the judges. Our Constitution, although schematically draws out the distinctions in powers of the executive, the legislature, and the judiciary, however for realistic reasons, also empowers them to keep the check on the other branch. As an implication, the dynamics of power between these branches become important. Concerning the issue of the appointment and transfers of the judges, thus, it becomes important that a mechanism that involves the collective and equal representation of both executive and judiciary should be formulated, such that neither the judiciary nor the executive may get overly empowered to abuse their powers.

Needless to say, the judges must also refrain from imparting any judgment that might affect the prominent goal of the judiciary, which is to impart justice. Here, it is important to note that the political influence may not always be a deviation from the path of justice. Hence, it is important the judges consciously engage with the suit presented before them. Concerning the executive, it is also submitted that their interaction with the judiciary begs the need for an objective consultation and consideration. Hence, it is also important that their powers must remain limited in that sense. Another issue relates to the political influence at the level of adjudication. It is submitted that firstly, the problem of unaccountability in terms of the incidents of such impartation of injustice must be publicized more. Secondly, again, the political influence acts majorly because of the threats and intimidation in such cases, which requires a more sophisticated arrangement in which judges may not feel powerless in front of politicians. Hence, it is submitted that it is extremely necessary that the present dynamics of power between both get revamped and the independence of the judiciary be maintained alongside a system of accountability and transparency.

Conclusion

It is submitted that the independence of the judiciary must not displace the requirement of the interdependence of the three branches of the government. Similarly, the steps should be taken to dilute the political influence present in the judiciary to the greatest extent as firstly, it adversely impacts the main purpose of the judiciary which is to uphold truth and justice, secondly, the idea of a competent and independent judiciary is the constitutional vision that was incorporated for the democratic governance of the country. Hence, the steps must be taken in that regard.

References

1. *https://books.google.co.in/books?hl=en&lr=&id=nNXnAAAAIAAJ&oi=fnd&pg=PA11&dq=Politics+and+Judiciary+in+India&ots=AdifvsdakR&sig=nWsmpV2ykR0Sq0ay0-v9EHMopgw&redir_esc=y#v=onepage&q=Politics%20and%20Judiciary% 20in%20India&f=false*
2. *https://www.jstor.org/stable/41854040?seq=6#metadata_info_tab_contents*
3. *https://www.tandfonline.com/doi/pdf/10.1080/14662049008447580*