

Course Name - B.A.LL.B 4TH sem/
LL.B 2nd sem

Subject - Constitution of India

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Concept - **Independence of Judiciary**

Independence of Judiciary

The constitution has made the following provisions to ensure independence of judiciary.

1. **Security of Tenure:** - The judges of the Supreme Court have security of tenure and they cannot remove from office except by an order of the President by adopting the set procedure laid down in the constitution.
2. **Salary of Judges fixed not subject to vote of Legislature:** - The salary and allowances of the judges of the Supreme Court are fixed by the constitution and being paid from Consolidated Fund of India. Salary cannot be altered.
3. **Parliament can extend but cannot curtail the jurisdiction and power of the Supreme Court:-** To work more effectively the Parliament may enhance the jurisdiction of the Supreme Court in civil cases, here the point to be noted that in all the provisions the Parliament can exceed, but cannot curtail the jurisdiction and power of the Supreme Court **under Article 138.**
4. **No discussion in Legislature on the conduct of Judges:-** Neither in Parliament nor in a State Legislature a discussion can take place with respect to the conduct of a judge of the Supreme Court in discharge of his duties **under Article 121.**

5. Power to punish for its contempt:- The supreme Court and the High Court have the power to punish any person for its contempt under article 129 and 215, this power is very essential for maintaining the impartiality and independence of the Judiciary.

6. Separation of judiciary from executive:- States have been directed by the constitution through article 50 to take steps to separate the judiciary from the executive in the interest of public service of the State.

7. Judges of the Supreme Court are appointed by the Executive with the consultation of Legal experts:- Executive cannot appoint the Judges without the consultation of the Judges of the Supreme Court as provided in Art. 124(2).

8. Prohibition on practice after retirement:- Under article 124(7) of the constitution a retired Judge of the supreme Court is prohibited to appear and plead in any court or before any authority within the territory of India.

9. Oath to Work Fearlessly:

Before assumption of office, the judges have to take an oath to perform their duties fearlessly and to uphold the Constitution. The ruling party committed to a particular ideology expects the judges to read the writing on the wall and act accordingly. The supersession of three judges and appointment of a junior judge as Chief Justice raised the issue.

Ex-Chief Justice S.M. Sikri was of the view that commitment to the philosophy of the ruling party, is not the part of the oath administered to a judge. Hence such commitment should not be expected of him.

10. Powers to Make Rules to Regulate their Procedure:

The Supreme Court is equipped with full powers to make rules for regulating its practice and procedure and to take effective steps for the enforcement of its decrees and orders

11. Denial of Political Office before or after Retirement:

The judges should not be allowed to hold political office after retirement otherwise they will have the temptation of creating ground for becoming the political leaders or gaining some other lucrative office through political Godfathers during their tenure as judges. Moreover, they should not be allowed to seek election to the Parliament or contest for any other political office during the term of their office after resigning from the office of a Judge. K. Subba Rao ex-chief Justice of India resigned from the august office and contested for the President ship of India.

Naturally he had to pander to the opposition parties for support. Such a step seriously impairs the independence of Judiciary as mind for election is to be made much before election. Thus for a favour, the favours are apt to be doled out as well.

Conclusions

The Constitution of India has created a democratic Republic and a trinity of instrumentalities to enforce its paramount provisions without fear or favour, affection or ill will. The Executive echelons, when they exceed their power as inscribed and circumscribed in the **Suprema Lex**, are subject to scan, scrutiny and correction by the Higher Judiciary.

The Legislature has vast law-making powers and is functionally competent to perform an inquest into the Administration. But when it transgresses its constitutional bounds, the Court can quash its action by writs or command fresh operation by appropriate directions.

However, Judges, vested with considerable power, are oath-bound by the Constitution of India, without violating jural parameters and performing with exemplary good behaviour. Judicial bounds of dignity and propriety are real and noble. The Independence of Judiciary holds a prominent position as far as the institution of Judiciary is concerned.

Courts have always tried to uphold the **Independence of Judiciary** and have always said that the Independence of Judiciary is a basic feature of the Constitution of India. Courts have said so because the **Independence of Judiciary** is the pre-requisite for the smooth functioning of the Constitution of India and for a realization of a democratic society based on the Rule of Law. The comparative study of the constitutional provisions reveals that the judicature is no less important than the other organ of the State. It keeps every organ of the State or other constitutional and non-constitutional bodies within their limits assigned to them and prevent encroachment on the sphere of each other. Thus, it prevents chaos and works for peace prosperity communal harmony and amity.