INDEPENDENCE OF JUDICIARY

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“The bedrock of our democracy is the rule of law and that means we have to have an independent judiciary, judges who can make decisions independent of the political winds that are blowing.”

-Caroline Kennedy

One cannot bind himself to the donkey he's riding, an executive action can only be judged by an impartial judge isn't bind to the body it's called upon to judge. The forefathers of our great nation gifted us with a democracy which by its very definition assumes a judiciary and an independent one too. Democracy isn't functional if there's not an impartial body to review the state’s action as state can’t be the judge in its own cause.

It is very interesting to note that though our founding fathers borrowed heavily from the parliamentary kind of government within the United Kingdom, but they very consciously overlooked the judicial structure prevalent within the United Kingdom then. Until 2009, the House of Lords was the absolute best appellate body not a supreme court.

Dr. Babasaheb Ambedkar’s concern and vision to possess an independent judiciary is palpable within the subsequent observation within the constituent assembly-

“There is often no difference of opinion within the House that our judiciary must be both independent of the chief and must even be competent in itself. And the question is how these two objects are often secured ”.
The doctrine of Separation of Powers which was brought into existence to draw upon the boundary for the functioning of all the three organs of the state Legislature, Executive and thus the Judiciary, provides for a responsibility to the judiciary to act as a watchdog and to determine whether the chief and thus the legislature are functioning within their limit under the constitution and not interfering in each other’s functioning. This task given to the judiciary to supervise the doctrine of separation of powers can't be carried on in true spirit if the judiciary isn't independent in itself. An independent judiciary supports the lowest of doctrine of separation of powers to an outsized extent.

Chief Justice Michael Wolff of Missouri, in 2006 State of the Judiciary address, elaborated eloquently:

“Independence,” quite frankly, is both overused and misunderstood. It should not be interpreted, either by the general public or by any judge, to mean that a judge is liberal to do as he or she sees fit. Such behaviour runs counter to our oaths to uphold the law, and any plan to put personal beliefs before the law undercuts the effectiveness of the Judiciary as a whole. Better stated, “Independence” refers to the need for courts that are fair and impartial when reviewing cases and rendering decisions. By necessity, it requires freedom from outside influence or political intimidation, both in considering cases and in seeking the office of judge. Courts aren't established to follow opinion polls or to undertake to discern the desire of the people at any given time but rather are to uphold the law. The people believe courts to guard their access to justice and to guard their legal rights. For the sake of the people, then, judicial independence should be including the second stated measure – accountability.”¹ Simply stated independence of judiciary means that

The other organs of the Govt. just like the executive and legislature must not restrain the functioning of the judiciary in such how that it's unable to try to justice. The other organs of the Govt. shouldn't interfere with the choice of the judiciary. Judges must be ready to perform their functions without worrying or favour.

¹ The Missouri Bar
Independence of the judiciary doesn't imply arbitrariness or absence of accountability. Judiciary may be a part of the democratic political structure of the country. It is therefore accountable to the Constitution, to the democratic traditions and to the people of the country.

CONCEPT OF JUDICIAL INDEPENDENCE

Understanding the concept of judicial independence requires defining from whom judges are to be independent. While judicial independence may be a dynamic concept which will be defined in several ways, it's generally mentioned as shorthand for the judiciary’s independence from the executive and legislative branches of government. This is the Supreme Court’s essential understanding of the phrase. At a minimum, it means that judges cannot be punished physically or economically for the content of the decisions they reach. Consequently, judges need not fear deciding cases on their merits, even when contrary to the interests or desires of the other branches of government. Thus, other branches of government have no power over case outcomes. Judicial independence thereby frees judges to use the rule of law and do justice in individual cases. Judicial independence is an instrumental means to an end, not an end in itself. The concept isn't attractive because it makes judges happy, but because it protects against other branches forcing unfair judicial outcomes, grounded in self-interest or ideological fervour.

Justice Brayer has thus noted that the “question of judicial independence revolves round the theme of the way to assure that judges decide consistent with law, instead of consistent with their own whims or to the desire of the political branches of state.”\(^2\) Freed from threats from the opposite branches, judges could also be better ready to render dispassionate judgments and apply the law fairly to the facts. They are to be principled decision makers impartially deciding cases according to the rule of law. It is against this standard that judicial independence must be measured, and there's no intrinsic guarantee that independence will further the quality.

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\(^2\) Stephen G. Beyer, Judicial Independence
The concept of the independence of the judiciary has been thus explained by a distinguished writer:

“The rendering of an honest unbiased opinion based on the law and the facts is far from it is one of the most difficult tasks which can be imposed on fallible man. It demands wisdom as well as knowledge, conscience as well as insight, a sense of balance and proportion, and if not absolute freedom from bias and prejudice at least the ability to detect and discount such failings, in order that they are doing not becloud the fairness of the judgment, it's evident that the standard political environment is unable to provide the proper incentives which will call for these qualities, nor will it permit these qualities to be exercised without a large measure of interference which will deprive them of the great part of their value. The Judiciary briefly, must tend a special sphere clearly separated from that of the legislative and executive. They to accomplish this separation, be given privileges which are not vouchsafed to other branches of the Government and they must be protected against political, economic and other influence which would disturb that detachment and impartiality which are indispensable pre-requisites for the proper performance of their function. It is these unusual factors which create the condition known as independence of the Judiciary.”

The concept of "independence of the judiciary" was also discussed in the 19th biennial conference of the International Bar Association held in New Delhi in October 1982. In conference, the "Draft Minimum Standards of Judicial Independence" contained in Dr. Shimon Shetreet’s paper were ultimately approve as the "Delhi Minimum Standards" of judicial independence.

Dr. Shetreet stated that the modern concept of judicial independence cannot be confined to individual judges and to their substantive and personal independence but must also include the collective independence of the judiciary as an institution.

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3 An Independent Judiciary and A Democratic State
Thus, conceptually, as well as from the point of view of pragmatic materiality, the independence of the judiciary comprises two fundamental postulates, viz., "independence of the judiciary as an institutionalized organ" and "independence of the individual judges," and no judiciary are often said to be independent unless these two requisite are contemporary.

DEFINING JUDICIAL INDEPENDENCE

The definition of "independence of the judiciary" evolved by the International Commission of Jurists in 1981 contains a number of the essentials of the concept:

"Independence of the judiciary means . . . (1) that each judge is liberal to decide matters before him in accordance together with his assessment of the facts and his understanding of the law with none improper influence, inducements or pressures, direct or indirect, from any quarter or for any reason.4

Defining Judicial independence is confused by how various discussants define the term "judicial independence." However, most agree that as a general concept, judicial independence has two components: institutional independence and decisional independence. When discussing institutional independence, the main target of the discussion is that the judiciary's ability to face up to other branches of state. Institutional independence is usually mentioned as "external" independence.

When discussing the decisional component of judicial independence, the main target is on the individual deciding of every judge or of every collegial court." the power of every judge or court to form independent legal determinations also could also be mentioned as "internal" judicial independence. Both broad concepts are significant to the legitimacy of the branch of state, and both concepts of judicial independence are applicable to state also as federal courts. The component of institutional independence is important to our tripartite system of state.

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4 CJIL (Chicago Journal of International Law) 1988
It requires the courts' independence from the legislative and executive offshoot. Institutional independence is most frequently related to the separation of powers doctrine, though actually both decisional and institutional independence have separation of powers qualities. Institutional independence can't be accorded the branch without the respect of the chief and legislative branches for judicial decisions. A minimum of one writer has noted,

“An independent judiciary requires also that its decisions, once given, wouldn't be altered or ignored by the Govt. [responsible for enforcing them]."

However, as a part of the system of checks and balances created in our tripartite system of state, there are occasions when it's going to be appropriate for the legislature to manage a matter in a neighbourhood of constitutionally shared powers or to overrule the courts in a neighbourhood of exclusive legislative authority.

In the primitive era family Head would be dispensing justice by resolving conflicts within the family. However, there would be possibilities of element of bias in the Head who may show favour to one member because of his personal liking, or personal interest resulting from proximity. As the time progressed and social relations became complex, the need for independent i.e. unrelated adjudicator of disputes arose. Independence of judges should therefore be viewed not as a privilege of an individual judge but as a social arrangement, which ensures that there is no likelihood of bias due to proximity, relationship, personal acquaintances and other influencing causes. Thus, the principle of natural justice that no one will be a judge in his own cause, (which means he should have no direct or indirect interest involved in the outcome of the proceedings) is a child of the necessity to render unbiased and fair decisions.

Independence of judiciary is therefore not a private right of judges but the very foundation of judicial impartiality – and a constitutional right of the people of India to be governed by the rule of law that shuns all arbitrariness. Judicial independence characterizes a state of mind, which cares with the judge’s impartiality actually and reality, and a group of institutional and operational arrangements, which define the relationships between judiciary and others, particularly the other branches of the government so as to assure both, the reality and appearance of independence and impartiality.
Individual independence of a judge is reflected in such matters as security of tenure, while; the institutional independence of the court over which the judge presides is reflected in its institutional or administrative relationships to the executive and legislative branches of the State. The Judges are undoubtedly servants of the public but they are not public servants whose essential obligation is, consistently with law, to give effect to the policy of the government of the day. The duty of a judge, on the other hand, is to administer justice consistent with law, without worrying or favour, and without reference to the wishes or policy of the Executive.5

Judicial independence, however, is not only a matter of appropriate external and operational arrangement, but it is also a matter of independent and impartial decision making by each and every judge. The judge’s duty is to use the law as he or she understands it without worrying or favour and without reference to whether the choice is popular or not. This is the cornerstone of the rule of law. Judges independently and together should safeguard, uplift and support Judicial Independence.6

The right to be tried by an independent and impartial tribunal is an integral part of the principles of fundamental justice. The test of impartiality is whether an informed person, viewing the matter realistically and practically – and having thought the matter through, would apprehend a lack of impartiality in the decision maker. A reasonable perception that a judge lacks impartiality is damaging to the judge, the judiciary as a whole, and the good administration of justice. Judges should, therefore, avoid deliberate use of words or conduct, in and out of court, that would reasonably give rise to a perception of an absence of impartiality.7 The judges should not deal with case concerning which the judge actually has a conflict of interest. The judge should avoid circumstances in which a reasonable, fair minded and informed person would have a reasonable suspicion that the judge is not impartial. However, the judge should not recues unnecessarily, because, to do so will add to the burden of his or her colleagues and collectively should protect, encourage and defend judicial independence and contribute to delay in the courts.

5 “The Role Of The Judge And Becoming Judge.”
6 Ethical Principles for Judges
7 Model Conduct of Judicial Conduct 1988
During a constitutional democracy independence of judiciary facilitates maintenance of rule of law, ensures that unconstitutional statues are declared void and ineffective, and valid laws are duly implemented. Such judicial independence will have the effect of disciplining the holders of economic or political power for collective good. The Judiciaries should never be allowed to be used as instruments to advance the interests of the ruling elite, rather than as mechanisms to protect individual rights and freedoms and promote access to justice.

The integrity and independence of judges depend in turn upon their acting without fear or favour. Although judges should be independent, they should comply with the law, as well as provisions of the accepted code of conduct. Public confidence in the impartiality of judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of the code diminishes public confidence in the judiciary and thereby does injury to the system of state under law.

Judges also must keep up the appearance of the impartiality of the judicial process. For example, a judge shouldn't be friendly, greet with hands, and have an intimate conversation with one among the lawyers ahead of the adversary party just before the trial begins, albeit the judge and therefore the lawyer won’t to be classmates. The opposing party who has seen such gesture of private acquaintance won't accept an unfavourable decision, suspecting that the judge was biased. These things are evident, and the violations of these rules diminish the prestige and authority of the court. One rule, said Alfred the Great, applied everywhere: “Judge not one judgment for the rich and another for the poor”.

NEED FOR AN INDEPENDENT JUDICIARY

The basic need for the Independence of the Judiciary rests upon the following points:

To Check the functioning of the organs: Judiciary acts as a watchdog by ensuring that each one the organs of the state function within their respective areas and consistent with the provisions of the constitution. Judiciary acts as a protector of the constitution and also aids in append the doctrine of separation of powers.
Interpreting the provisions of the constitution: It had been documented to the framers of the constitution that in future the anomaly will arise with the supply of the constitution in order that they ensured that the judiciary must be independent and self-competent to interpret the provision of the constitution in such how to clear the anomaly but such an interpretation must be Page unbiased i.e. free from any coercion from any organs like executive. If the judiciary isn't independent, the opposite organs may pressurize the judiciary to interpret the supply of the constitution consistent with them. Judiciary is given the work to interpret the constitution consistent with the constitutional philosophy and therefore the constitutional norms.

Disputes mentioned the judiciary: It's expected of the Judiciary to deliver judicial justice and not partial or committed justice. By dedicated justice we mean to introduce that when a judge emphasizes on a specific aspect while giving justice and not considering all the aspects involved during a particular situation. Similarly, judiciary must act in an unbiased manner.

5. THE CONSTITUTIONAL PROVISIONS

Though in India there's no express provision within the Constitution but the independence of Judiciary is imbibed within the letters of varied provisions of the Constitution.

Independence of judiciary and rule of law are the essential features of the Constitution it can't be abrogated even by constitutional amendments.  

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8 S.P.Gupta v UOI AIR 1982 SC 149
SECURITY OF TENURE AND APPOINTMENT:

The facility of appointment of Judges of the Supreme Court is to be found in Clause (2) of Article 124 and this clause provides that each Judge of the Supreme Court shall be appointed by the President after consultation with such of the Judges of the Supreme Court and therefore the High Courts within the States because the President may deem necessary for purpose, as long as within the case of appointment of a Judge aside from the judge, the judge of India shall always be consulted.

It’s obvious on a clear reading of Clause (2) of Article 124 that it’s the President, which in effect and substance means the Central Government, which is empowered by the Constitution to appoint Judges of the Supreme Court. So also Article 217, Clause (1) Vests the facility of appointment of Judges of High Courts within the Central Government, but such power is exercisable only "after consultation with the judge of India, the Governor of the State and therefore the judge of the supreme court." it’s clear on a clear reading of those two Articles that the judge of India, the judge of the supreme court and such other Judges of the supreme court and of the Supreme Court because the Central Government may deem it necessary to consult, are merely constitutional functionaries having a consultative role and therefore the power of appointment resides solely and exclusively within the Central Government. It’s not an unfettered power within the sense that the Central Government cannot act arbitrarily without consulting the constitutional functionaries laid out in the 2 Articles but it can act only after consulting them and therefore the consultation must be full and effective consultation.

Prof. Shibban Lal Saksen of the members of constituent assembly had suggested that the appointment of Judges should be confirmed by 2/3rd majority of the Parliament\(^9\) was rejected as it would compromise the independence of judiciary and would go away the fate of the judge within the hands of the executives and legislators. This set the tone for Independence of Judiciary in our country.

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\(^9\) Constituent Assembly Debate On 24 May, 1949.
This proposition was rejected by the house because it might subsequent question that arises for consideration is on where be the facility to appoint Judges of the High Courts and therefore the Supreme Court located? Who has the ultimate voice within the appointment of Judges of High Courts and the Supreme Court?

Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts within the States because the President may deem necessary.

The bone of contention during this particular section is that the word ‘consultation’, that whether ‘consultation’ means concurrence or merely communication.

In *S.P Gupta v. Union of India*¹⁰ the Supreme Court held that ‘Consultation may be a mere Suggestion not concurrence and isn't binding on the president’. Their reasons were as follows:-

They followed the judgment in Sankalchand Sheth.

They said that judge of India is additionally a person with the issues and failings of a standard man, hence making his view binding on the President and therefore the executives could also be dangerous idea.

They referred the constitutional assembly debates where Dr. Ambedkar strongly opposed the thought.

But now in *Supreme Court Advocates on record v. Union of India*¹¹ the judgment in *S.P Gupta* is now reversed that the court has held that the opinion of the judge shall be binding on the President as he's more competent than other constitutional machineries to accrue the merit of a candidate.

¹⁰ AIR 1982 SC 149
¹¹ (1993) 4 SCC 441
The judges of the Supreme Court and High Courts are given the safety of the tenure. Once appointed, they still remain in office till they reach the age of retirement which is 65 years within the case of judges of Supreme Court (Art. 124(2)) and 62 years within the case of judges of the High Courts (Art. 217(1)).

In the words of the bench altogether *India Judges Association v Union of India* 12

“*They aren't employees of the State holding office during the pleasure of President/Governor of the State, because the case may be*”

In words of Prof. K.T Shah in Constituent Assembly-

“*. they ought to not, in any way be exposed to any apprehension of being thrown out of their work by bureaucratic or executive vexation. they ought to not be exposed to the danger of getting to secure their livelihood by either resuming their ordinary practice at the bar, or taking over another occupation which can not be compatible with a judicial mentality, or which can not be in tune with their perfect independence and integrity.”

They can't be expelled from the workplace aside from by a request for the President and that too on the ground of demonstrated bad conduct and insufficiency. A goals has too to be acknowledged with that impact by a larger part of absolute participation of each House of Parliament and furthermore by a greater part of no under two third of the individuals from the house present and casting a ballot. Methodology is confounded to the point that there has been no case of the evacuation of a Judge of Supreme Court or High Court under this arrangement.

*In C Ramachandra Iyer v. A.N. Bhatcharjee*

Pressure was put the local bar association on the judge to step down. During this case, the SC held that only the judge of the SC are often the first cause of the action against erring judges. Thus, after this case, action contra judges was allowed only through in-house procedures of the judiciary.

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12 AIR 1993 SC 2493
SALARIES AND ALLOWANCES:

“Those who control the purse strings will always have some capacity to influence the actions of those who are dependent upon the content of the purse...... There can be little question that executive government control over judicial salary fixation is always a minimum of an incipient threat to judicial independence.”¹³

The salaries and allowances of the judges is additionally an element which makes the judges independent as their salaries and allowances are fixed and aren't subject to a vote of the legislature. They’re charged on the Consolidated Fund of India just in case of Supreme Court judges and therefore the Consolidated Fund of state within the case of High Court judges. Their emoluments can't be altered to their disadvantage (Art. 125(2)) except within the event of grave financial emergency.

The conditions of service of judges while in office can't be varied during the tenure nor can their salaries be reduced. Until their salaries are determined by or under a law made by the parliament, their remuneration or allowances are as specified in II Schedule to Constitution of India¹⁴. Selection to the upper Judicial Service in terms of Article 233 of the Constitution of India is additionally conducted by the High Court.¹⁵

Article 112(3) (d)(i) of Constitution requires that budget shall contain a provision for payment of salaries and allowances and pensions to Judges of Supreme Court and Article 202(3)(d) deals with the salaries and allowances of supreme court.

¹³ Report of the Remuneration of Common Wealth of Australia
¹⁴ Article 125 and 221 of the Indian Constitution, 1950
Insofar as the judiciary at grass root level is concerned, the budget is ready by various unit heads, consolidated at the State level and presented to the State Legislature.

First All India Judges Case\(^{16}\), the Supreme Court said, “[t]he efficient functioning of the Rule of law under the aegis, of which our democratic society can thrive, requires an efficient, strong and enlightened judiciary. And to possess it that way, the nation has got to pay a price.”

Though The judge of India within the case of Supreme Court, and therefore the Chief Justice of supreme court have absolute powers within the matter of conditions of service of officers and servants and therefore the expenses of the Courts. But, if any rules made by the judge relate to salaries, allowances, leave or pensions, they require approval of the President or the Governor, because the case could also be, under Article 146(2) and 229(2) of Constitution of India respectively. These two are the provisions which clinching indicate that the financial autonomy of Indian judiciary is subject to executive control though within the preparation of budget to satisfy the Court expenses or within the establishment of latest Courts, the Judiciary is consulted.

TRANSFER OF JUDGES:

This provision is there within the constitution to immune the judges from unnecessary transfers employed by the executives to harass public servants who are honest.

*Judges Transfer Case 1*

In the case of *S P Gupta vs Union of India*, 1982 SC unanimously agreed with the meaning of the word 'consultation' as determined within the Sankalchand's case. It further held that the sole ground on which the choice of the govt. can be challenged is that it's supported mala fide and irrelevant consideration. In doing so, it substantially reduced its own power in appointing the judges and gave control to the executive.

\(^{16}\) (1992) 1 SCC 109
Judges Transfer Case 2

This matter was raised again within the case of *SC Advocates on Record Association vs Union of India*, AIR 1982. During this case, the SC overruled the decision of the S P Gupta case and held that within the matter of appointment of judges of high courts and Supreme Court, the CJ should have the primacy and the appointment of the CJ should be supported seniority. It further held that the CJ must consult his two senior most judges and therefore the recommendation must be made as long as there's a consensus among them.

Judges Transfer Case 3

A controversy arose again when the CJ recommended the names for appointment without consulting with other judges in 1999. The president sought advice from the SC (re Presidential Reference 1999) and a 9 member bench held that an advice given by the CJ without proper consultation with other judges isn't binding on the govt. Starting at now, because of the choice in Judges Transfer Case 2, the arrangement of the appointed authorities in SC and High Courts are genuinely liberated from official control. This is a significant factor that guarantee the freedom of the legal executive.
THE HIGHLY RIGID PROCESS OF IMPEACHMENT

Impeachment under Article 124(4) and (5).

The same procedure applies to Supreme Court Judges. Clause (4) of article 124 provides that a Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the entire membership of that House and by a majority of not but two-thirds of the members of that House present and voting has been presented to the President within the same session for such removal on the bottom of proved misbehaviour or incapacity. The constitutional provision doesn't prescribe how this investigation is to be carried on. It leaves it to Parliament to resolve and commit by law the detailed procedure consistent with which the address could also be presented and therefore the charge of misconduct or incapacity against the Judge investigated and proved. In America, the Judges of Supreme Court hold office for all times. They can, however, be removed by impeachment in cases of treason, bribery on other high crimes and misdemeanour.

K. Veeraswami v. Union of India17 A five Judges Bench of the Supreme Court held that a Judge of the Supreme Court and supreme court are often prosecuted and convicted for criminal misconduct.

The word 'proved' during this provision indicates that the address are often presented by Parliament only after the putative charge of misbehaviour or incapacity against the Judge has been investigated, substantiated and established by an impartial tribunal. The constitutional provision doesn't prescribe how this investigation is to be carried on.

In accordance with the above provision, Parliament has enacted the required law for the aim. The Judges (Inquiry) Act, 1968 now supervise the stratagem for investigation and proof of misbehaviour or incapacity of a Supreme Court judge for presenting an address by the homes of Parliament to the President for his removal.

17 (1991) 3 SCC 855 : 1991 SCC (Cri) 734
ART 124(7) PROHIBITION ON PRACTICING BEFORE ANY COURT:

No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.

This provision is there to make sure that there are not any future allurements for the judgments considering which their justice delivery is compromised.

POWERS AND JURISDICTION OF SUPREME COURT:

Parliament can only increase the powers and jurisdiction of the Supreme Court but cannot curtail them. In the civil cases, Parliament may change the pecuniary limit for the appeals to the Supreme Court. Parliament may enhance the appellate jurisdiction of the Supreme Court. It’s going to confer the supplementary powers on the Supreme Court to enable it work more effectively. It’s going to confer power to issue directions, orders or writs for any purpose aside from those mentioned in Art. 32. Powers of the Supreme Court can't be removed. Making judiciary independent.

NO DISCUSSION ON CONDUCT OF JUDGE IN STATE LEGISLATURE / PARLIAMENT:

Art. 211 provides that there shall be no discussion within the legislature of the state with respect to the conduct of any judge of Supreme Court or of a supreme court within the discharge of his duties. An identical provision is formed in Art. 121 which lays down that no discussion shall happen in Parliament with reference to the conduct of the judge of Supreme Court or Supreme Court within the discharge of his responsibilities except upon a motion for bestowing an address
to the President praying for the removal of the judge. It’s one among the safeguards to guard the independence of judiciary.  

Article 121 appears with a general heading ‘Procedure Generally’. Article 124 (4) and (5) appear in chapter IV and it's obvious that Article 121 may be a general rule designed to stop discussion in Parliament about the conduct of a judge of SC or HC.  

POWER TO PUNISH FOR CONTEMPT:  

Both the Supreme Court and therefore the Supreme Court have the facility to punish a person for his or her contempt. Art. 129 provides that the Supreme Court shall have the facility to punish for contempt of itself. Likewise, Art. 215 lays down that each Supreme Court shall have the facility to punish for contempt of itself.

Article 129 enables Supreme Court to be Court of Record:  

The Supreme Court shall be a court of record and shall have all the powers of such a court including the facility to punish for contempt of itself.

Naresh Shridhar Mirajkar v. State of Maharashtra  

Supreme Court has asserted that within the absence of any express provision within the Constitution the Apex Court being a court of record has jurisdiction in each and every matter and if there be any doubts, the court has power to work out its jurisdiction.

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18 HALSBURY, 4TH EDITION  
19 Sub-Committee On Judicial v. Union Of India And Ors 1991 AIR 1598  
20 AIR 1967 SC 001
Om Prakash Jaiswal v. D.K. Mittal\textsuperscript{21}

Availability of an independent judiciary and an environment wherein Judges may act independently and fearlessly within the source of existent of civilization in society the writ issued by the court must be obeyed. It’s the binding efficacy attaching with the commands of the court and the respect for the orders of the court which demoralise the resentful persons from taking the law in their own hands because they're assured of an efficacious civilized method of settlement of dispute.

Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat\textsuperscript{22}

The Supreme Court has held that its power to contempt in article 129 isn't confined to its own contempt. It reach all courts and tribunals subordinate to it within the country

SEPARATION OF THE JUDICIARY FROM THE EXECUTIVE:

Art. 50 contains one among the Directive Principles of State Policy and lays down that the state shall take steps to separate the judiciary from the chief within the public services of the state. The object behind the Directive Principle is to secure the independence of the judiciary from the executive. Art. 50 says that there shall be a separate judicial service free from executive control.

The separation of powers, also referred to as trias politica. The Doctrine of Separation of Power is that the forerunner to all or any the constitutions of the planet which came into existence since the

\textsuperscript{21} AIR 2000 SC 1136
\textsuperscript{22} AIR 1991 SC 2176
times of the “Magna Carta”. Though Montesquieu was under the erroneous impression that the foundations of British constitution lay in the principle of Separation of Power, it found its genesis within the American Constitution. Montesquieu had a sense that it might be a panacea to good governance but it had its own drawbacks. An entire Separation of power without adequate checks and balances would have nullified any constitution. It was only with this in mind the founding fathers of varied constitutions have accepted this theory with modifications to form it relevant to the changing times.\textsuperscript{23}

\textit{I.C. Golak Nath v State of Punjab} it was opined that

“The constitution brings into existence different constitutional entitles, namely the union, the state and the union territories. It creates three major instruments of power and expects them to exercise their respective powers without overstepping there limits. They should function with the spheres allotted to them to assure independence of all three wings”

OTHER STATUTORY PROVISIONS UN CrPc FOR INDEPENDENCE OF JUDICIARY

\textit{Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat}\textsuperscript{24}

A Magistrate, Judge or the other Judicial Officer is susceptible to prosecution for an offence like all other citizen but in sight of the paramount necessity of preserving the independence of judiciary and at an equivalent time ensuring that infractions of law are properly investigated, we expect that the subsequent guidelines should be followed:

\textsuperscript{23} http://www.nirmauni.ac.in/law/ejournals/previous/article3-v1i2.pdf
\textsuperscript{24} AIR 1991 SC 2176
If a judicial officer is to be arrested then the intimation has to be given to the District judge or the High Court.

If there is a need for immediate arrest, then the arrest need to be a formal or technical arrest.

Facts of such arrest should be effectively communicated to session judge or to the District Judge.

The arrested judicial officer shall never be taken to the police station without the prior order from the District/sessions judge.

All the communications should be provided to the judicial officer for his communication with his family members, lawyer and with District/sessions judge.

Neither panchnama, nor the Medical tests should be done except in the presence of the legal adviser.

No handcuffing of the judicial officer shall be done. Except in cases where there is extreme threat to the persons around him by that officer. Only then force can be used against him and can be handcuffed.

INDEPENDENCE OF JUDICIARY WAS COMPROMISED

There is a saying that 'Power tends to corrupt, and absolute power corrupts absolutely'

– Lord Acton

ADM Jabalpur v. Shivkant Shukla\(^{25}\)

In this case the Supreme Court was practically coerced by the govt. at that time to pass a favourable judgment. Justice H. R Khanna was the one who dissented from the majority but had to pay the worth, when Justice Beg was made the CJ despite Justice Khanna was senior. Justice Bhagwati

\(^{25}\text{AIR 1976 SC 1207}\)
who negated the difficulty raised had recently admitted that negating the issue raised in the instant case was the biggest mistake he ever made.

“He confesses that the Supreme Court decision in ADM Jabalpur was wrong and he pleads guilty for the same. The reason attributed for him joining the majority (Justices A. N. Ray, Y. V. Chandrachud, and M.H. Beg) in the case was that he was persuaded by his colleagues and he admits it was an act of weakness on his part. “He also says that it was against my conscience...That judgment is not Justice Bhagwati’s.”

**Indira Gandhi Nehru v. Raj Narain**

Where the dispute regarding P.M. election was pending before the Supreme Court, opined that adjudication of a selected dispute may be a judicial function which parliament, even under constitutional amending power, cannot exercise i.e. the parliament doesn't have the jurisdiction to perform a function which the opposite organ is liable for otherwise there'll be chaos as there'll be overlapping of the jurisdictions of the three organs of the state.

**IS THE JUDICIARY ACTUALLY FREE? OR IS IT BOUND BY MANY INTERNAL FACTORS AS OPPOSED TO EXTERNAL ONES?**

**LOBBYING**

Every Coin has two sides to it, when we support that CJI and CJ of SC and HC respectively should have the final call for selecting judges, it also has a negative side to it, the phenomenon of Lobbying of ‘Uncle Judges’ phenomenon.

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Since now the selection after the 3rd Judge transfer case has been completely internalized, therefore there is high profile lobbying for seat birth in HC and SC.

In its 230th report, the Law Commission has made the following observations:

“As a matter of practice, a person, who has worked as a District Judge or has practised in the High Court in a State, is appointed as a Judge of the High Court in the same State. Often we hear complaints about ‘Uncle Judges’. If a person has practised in a High Court, say, for 20-25 years and is appointed a Judge in the same High Court, overnight change is not possible. He has his colleague advocates – both senior and junior - as well as his kith and kin, had been practising with him. Even wards of some District Judges, elevated to a High Court, are in practice in the same High Court. There are occasions, when advocate judges either settle their scores with the advocates, who have practised with them, or have soft corner for them. In any case, this affects their impartiality and justice is the loser. The equity demands that the justice shall not only be done but should also appear to have been done.”

What is the solution then, in the words of an eminent Professor of Law, Dr.H.C. Hajare, ‘I think the creation of a judicial commission is the only solution to the various controversies in the appointment of Judges?
POST RETIREMENT EXECUTIVE OFFICES:

As we all know Judges are offered many post retirement offices just like the chairmanship of National Human Rights Commission and Press Council of India and others. It would not take rocket science to assume that these are allurements albeit some are honorary in nature.

Other example is that the office of the interstate river dispute Commission which extends to 3-5 years and is considered as a paid holiday for judges. Judges are humans with weaknesses and if such opportunities are up for grabs, it won’t be impossible for few to compromise of their morals.

Prof. K.T Shah in the constitutional assembly debates had made the following observation –

"Whether during his tenure of office, or in the ordinary course of judgeship or even on retirement, I would suggest that there should be a constitutional prohibition against his employment in any executive office, so that no temptation should be available to a judge for greater emoluments, or greater prestige which would in any way affect his independence as a judge”

M.C. Setalvad, the Chairman of the First Law Commission wrote in his autobiography:

"The Commission had, after careful consideration expressed the unanimous view that the practice of Judges looking forward to or accepting employment under the Government after retirement was undesirable as it could affect the independence of the Judiciary. We therefore recommended that a constitutional bar should be imposed on Judges accepting office under the Union or State Governments similar to the bar in the case of the Auditor and Comptroller-General and members of Public Service Commissions."
CONCLUSION

Judges have the ultimate responsibility for decisions regarding freedoms, rights and duties of natural and legal persons within their jurisdiction. The independence of each individual judge safeguards every person’s right to possess their case decided solely on the idea of the law, the evidence and facts, with none improper influence. A well-functioning, efficient and independent judiciary is an important requirement for a good, consistent and neutral administration of justice. Consequently, judicial independence is an important element of the proper to due process, the rule of law and democracy.

The independence of the judiciary as is obvious from the above discussion hold a prominent position as far because the institution of judiciary cares. It is clear from the historical overview that judicial independence has faced many obstacles in the past especially in reference to the appointment and therefore the transfer of judges. Courts have always tried to uphold the independence of judiciary and have always said that the independence of the judiciary may be a basic feature of the Constitution.

Courts have said so because the independence of judiciary is that the pre-requisite for the smooth functioning of the Constitution and for a realization of a democratic society based on the rule of law. The interpretation in the Judges Case giving primacy to the executive, as we've discussed has led to the appointment of at least some Judges against the opinion of the judge of India. The decision of the Judges Case was could never are intended by the framers of the Constitution as they always set the task of keeping judiciary free from executive and making it self-competent. The decision of the Second Judges Case and therefore the Third Judges Case may be a praiseworthy step by the Court during this regard.