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Judicial Power and Constitutional Accountability: A Comparative Study of Judicial Independence and Activism in India, the UK, and the USA

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Abstract

The independence of the judiciary, judicial activism, and accountability are fundamental principles in the legal systems of India, the United Kingdom (UK), and the United States of America (USA). Each country has its unique approach to these concepts, shaped by its historical, political, and legal environment.

In India, the independence of the judiciary is embedded in the Constitution and upheld by the Supreme Court's authority to interpret the law independently of the executive and legislative branches. Judicial activism has played a significant role in India, with the judiciary taking proactive steps to protect fundamental rights, promote social justice, and address issues such as environmental protection, corruption, and access to justice. However, concerns are raised about the judiciary's accountability regarding judicial appointments, transparency, and delays in the judicial process.

In the UK, judicial independence is upheld by the principle of parliamentary sovereignty, which ensures that judges are free from political interference and can interpret and apply the law without fear or favour. The UK judiciary has a long tradition of judicial restraint, with judges generally adhering to the doctrine of parliamentary supremacy. However, recent developments, such as the expansion of human rights legislation and the increased use of judicial review, points to the effective role of the judiciary in relation to the legislature and executive.

In the USA, judicial independence is guaranteed by the Constitution's separation of powers and the principle of judicial review, which allows the Supreme Court to strike down laws that violate the Constitution. Judicial activism has been a contentious issue in the USA, with some supporting the Court's role in advancing civil rights and expanding individual liberties, while others criticize judicial overreach and activism. The accountability of the judiciary in the USA is ensured through judicial impeachment, ethical codes of conduct and public scrutiny of judicial appointments.

While these principles are universal, their implementation varies across India, the UK and the USA, reflecting each country's legal traditions, political institutions, and societal values. Balancing these principles is essential for maintaining the integrity, credibility, and effectiveness of the judiciary in upholding the rule of law.

Key words: The independence of the judiciary, judicial activism, and accountability.

Introduction

The independence of the judiciary, judicial activism, and accountability are fundamental principles in the legal systems of India, the United Kingdom (UK), and the United States of America (USA). Each country has its unique approach to these concepts, shaped by its historical, political, and legal environment.

Judicial independence implies the ability of judges to decide cases impartially, without influence from the legislative or executive wings. It is essential for the rule of law and democratic governance. Judicial activism signifies the proactive role played by the judiciary, especially the higher courts, in enforcing rights, filling legislative gaps, and directing executive action to ensure justice. Judicial accountability signifies that judges, especially in higher courts, must remain impartial and free from external influence and should also be answerable for their actions.

The situation in India

The independence of the judiciary in India is a vital component of its democratic structure, ensuring that the courts function without interference from the executive or legislature. This principle is designed to uphold the rule of law, protect citizens' rights, and maintain a system of checks and balances. The Indian Constitution incorporates several measures to guarantee this independence.

Judges are appointed by a process that involves consultation with senior members of the judiciary, and once appointed, they enjoy security of tenure. They cannot be removed arbitrarily; a judge can only be removed through a detailed process of impeachment on grounds of proven misbehavior or incapacity. Moreover, the salaries, allowances, and pensions of judges are charged to the Consolidated Fund of India, meaning they cannot be altered to their disadvantage.

Irrespective of this, judges are free to decide cases without fear of consequences, and the judiciary has the authority to punish for contempt of court, which helps protect its dignity and authority. These provisions ensure that judicial decisions are made impartially, based solely on the interpretation of law. Judicial independence in India, thus, plays an important role in preserving constitutional values and safeguarding democracy.

Judicial activism in India has emerged strongly since the 1980s, particularly through Public Interest Litigations (PILs), where courts have stepped in to protect fundamental rights, environmental concerns, and good governance. It is rooted in the idea that the judiciary can beyond mere interpretation of the law to ensure that its spirit is upheld.

Though Judicial activism results in progressive decisions and social reforms, it raises concerns about overreach and the violation of the separation of powers. When courts start to legislate or administer, it affects the line between the three branches of government, potentially reducing democratic accountability.

Judicial accountability, therefore, becomes crucial in this context. Mechanisms like the in-house procedure of the judiciary, the collegium system, and proposed reforms such as the Judicial Standards and Accountability Bill aim to bring transparency to judicial conduct and appointments. However, critics argue these are either opaque or insufficient.

Balancing judicial activism with accountability is essential for a healthy democracy. While the courts must retain independence to protect constitutional values, they should also remain within their constitutional limits, ensuring their power is exercised with responsibility, restraint, and transparency.

Justice Sikri, while hearing a petition filed by the Campaign for Judicial Accountability and Reforms (CJAR), observed "Anybody and everybody, however high, has to be subject to the rule of law… We as judges have a duty to protect the rule of law and justice." These valuable words reflect the dimensions of judicial activism in India and its contribution towards the democratic principles.[1]

[1]https://www.thehindu.com/news/national/anyone-however-high-is-subject-to-rule-of-law-judge/article20110133.ece

Under the Indian Constitution, Article 14 came out to be the germane provision that specifically declares the reign of constitutional supremacy in India. The apex court of our country has time and again declared it as one of the "basic features."[2]

Equality before law and equal protection of the laws enshrined in Article 14 "disclose the anxiety of the framers of our constitution that no aspect of inequality, whether positive or negative or in other form or shape, should be favored or placed under any disadvantage by the state in circumstances which do not admit of a reasonable justification for a different treatment." [3]

The intention of Article 14 is based on the theory of classification. To reconcile constitutional equality with the facts of life, some distinction, classification, gradation or differentiation is inevitable. Permissible classification is inherent in legislation. This theory held the field for a long time.

The theory of non-arbitrariness is later stitched on to the article by the Supreme Court. According to the new doctrine, Article 14 invades arbitrariness in state action and ensures fair and equal treatment. During the most dreaded times of the pandemic, when governments in most parts of the world failed to establish democratic values, the Indian judiciary quickly came to the rescue of the daily labourers, migrant labourers and poor patients, upholding the constitutional value of equality.

When compared to Article 14, Article 21 protects the life and liberty of an individual against state action. A restricted field was attributed to it earlier. Now it is an all-embraced concept acting as a limitation on arbitrary actions of the state. By applying the principles of natural justice, a new life is added to it.

After Maneka Gandhi's case, day by day the scope and content of judicial activism is expanding, taking in its cauldron every dimension of all human faculties. This case revolutionized the meaning of Article 21 applying to various situations. The court imported the American "due process of law" into India by holding that natural justice is engulfed in Article 21.

The Article is used as a weapon against police atrocities, prison injustice, and delayed execution. Unprecedented dimensions sanctioned by the Supreme Court in upholding constitutional principles as the reigning norm in India today.[4] Right to life under the Article guarantees the right to life with dignity[5] and nowadays the right to choose his or her life partner is a fundamental right under Article 21.[6] Landmark judgments by the apex court of the country forced the Legislature to pass the Right to Education Act, 2009, to provide free and compulsory education to children and enforce it as a fundamental right under Article 21-A.

Article 21 gained special importance in the light of the pandemic situation with an extended view to the right to health. When the health and welfare of our nation is at peril, it brings forth the fundamental right of 'right to health' in the limelight.

The framers of our constitution used both the above provisions abundant cautela so as to cover every possible case and eventuality. The provisions are not just leaves of a book but form the means of ordering the life of a progressive people. There is grave danger in confining these provisions to watertight compartments.

In effect, the traditional role of the judiciary is no longer continued. Effective legislation and policy guidelines are pronounced in succession. The seeds sown by the judiciary in the form of public interest litigation have become a great tree with many branches. The power attached to the judiciary is felt by every Indian citizen. The role played by the audiovisual media in this regard is commendable. Every word spoken by the Judiciary is met with enthusiasm by the people. It has become the most effective instrument in upholding the supremacy of the Indian Constitution throughout Indian territory.

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[2] Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225
S.P. Gupta v. President of India (AIR 1982 SC 149) (known as Transfer of Judges case)
I.R. Coelho v. State of Tamil Nadu and others (2007 2 SCC 1)
[3] JILI. 1959-60. 297, P298
[4] Govind v. State of Madhya Pradesh, AIR 2003 SC 3357
Murli S. Deora v. Union of India, AIR 2003 SC 3357
[5] Vishaka v. State of Rajasthan, AIR 1997 SC 3011 : (1997) 6 SCC 241.
[6] Shakti Vahini v. Union of India: 2018 (7) SCC 192

Momentous decisions come out almost every day ensuring a constitutional democracy. Arbitrary laws are struck down as a measure to widen the scope and content of judicial activism. The domain of the Constitution in India is safe in the hands of the judiciary, which is quite independent from other branches of the government.

Definitely, the rule by the judiciary as visible today is only one side of a coin. On the other side lies the tale of rampant corruption, like the Vijay Mallya Scam in 2016, and blatant violations of individual rights as alleged in the case of violence against women in Manipur, children, and backward sections of the community. The scene was quite disturbing considering the attack of the novel coronavirus affecting all spheres of state action, including the Judiciary.

The Constitution is supreme in India. The Supreme Court's decisions are tested on the touchstone of constitutional provisions. If any reform is to be made to clean the sphere of public administration, it must start with the changes in the constitutional provisions.

Judicial Independence and Parliamentary Sovereignty in the United Kingdom

In the United Kingdom, the doctrine of parliamentary supremacy and judicial restraint has been upheld for a long time. However, recent developments, including the adoption of human rights legislation and the introduction of judicial review have transformed the functioning of the judiciary. The evolution of judicial independence and the doctrine of parliamentary sovereignty has a huge impact on constitutional and legal reforms.

Judicial independence and parliamentary sovereignty are foundational principles of the UK constitution. Traditionally, parliamentary sovereignty has meant that Parliament can make or repeal any law, and no other body can override its legislation. However, this principle has been increasingly challenged by the evolving role of the judiciary. The establishment of the UK Supreme Court, the incorporation of the European Convention on Human Rights (ECHR) through the Human Rights Act 1998 (HRA), and a rise in judicial review have significantly empowered the judiciary. Though judicial independence remains critical, its interaction with parliamentary sovereignty has led to a more complex and nuanced constitutional framework.

In the UK, judicial independence is safeguarded by several mechanisms, like the Security of Tenure under the Act of Settlement 1701 and the Constitutional Reform Act 2005, which separated the judiciary from the legislature and established the UK Supreme Court and the financial autonomy and the judicial appointments process.

These provisions have collectively helped judges away from political pressure, allowing them to make decisions based on law and legal principles.

The doctrine of parliamentary sovereignty

As defined by A.V. Dicey, parliamentary sovereignty means that the Parliament has the supreme legal authority to enact or repeal any law.[7] The courts are authorized to interpret the applicable legislation enacted by Parliament. This principle has controlled the UK's unwritten constitution and historically prevented judicial activism.

However, Dicey's view has been subject to reinterpretation in light of changing constitutional norms. The evolving landscape of UK public law has introduced new checks on parliamentary authority, especially in areas involving individual rights and administrative justice.

The Impact of the Human Rights Act 1998

The incorporation of the European Convention on Human Rights into domestic law through the Human Rights Act, 1998 marked a turning point. Courts are granted the power to review legislation in conformity

[7] A.V. Dicey, An Introduction to the Study of the Law of the Constitution (1885)

with human rights[8], although they cannot strike down primary legislation. Instead, they can issue a declaration of incompatibility under Section 4 of the Act.

While Parliament retains ultimate authority, this Act has enabled the judiciary to influence legislative interpretation and signal areas requiring reform.

Judicial review ensures that ministers and public bodies function within their legal powers and stick to procedural fairness.[9] These decisions underscore the judiciary's role in upholding constitutional principles and preventing executive overreach, even while respecting parliamentary supremacy.

The establishment of the UK Supreme Court in 2009 through the Constitutional Reform Act 2005 further strengthened judicial independence. The Court has increasingly assumed the role of constitutional guardian, particularly in cases where political accountability mechanisms have failed.

The Supreme Court has emphasized the importance of the rule of law and constitutional propriety. Its willingness to adjudicate politically sensitive matters has attracted both praise and criticism, creating a collision between judicial restraint and activism.

In a way, the expanding role of the judiciary undermines parliamentary sovereignty, but it is a necessary evolution in a modern democracy. Judicial decisions are ultimately subject to legislative supremacy, preserving parliamentary sovereignty.

The relationship is complementary in that the Parliament enacts laws, and the judiciary interprets and applies them. Where laws infringe on fundamental rights or constitutional norms, the judiciary can express its concerns, asking for parliamentary reconsideration.

Challenges

The dynamics between the judiciary, legislature, and executive continues to evolve. Recent proposals to reform judicial review and reconsider the Human Rights Act suggest potential corrections of this balance.

Brexit has also reignited debates over sovereignty and the role of domestic courts. As UK courts are no longer bound by European Union law, questions arise regarding how they will resolve the issues previously governed by extraterritorial legal principles.

Judicial independence and parliamentary sovereignty, though seemingly in conflict, can coexist within a robust constitutional framework. The UK experience demonstrates an adaptive system where courts respect legislative supremacy while ensuring legality, accountability, and protection of rights. The judiciary's increased assertiveness, particularly through human rights jurisprudence and judicial review, represents a powerful constitutional order. This balance must be maintained through dialogue, mutual respect, and a shared action.

The experience in the United States

Judicial independence is a cornerstone of democratic governance in the United States, enshrined in the Constitution through the separation of powers and the establishment of judicial review. The multifaceted dimensions of judicial independence, judicial activism, and accountability in the American legal system are explained below. It examines how the U.S. Constitution supports judicial independence, evaluates the debates encircling judicial activism, and outlines the mechanisms of judicial accountability. While judicial independence ensures impartiality in legal interpretation, judicial activism remains a contentious issue, reflecting conflicts between progressive change and judicial restraint. Mechanisms such as impeachment, ethical codes, and public oversight serve to hold judges accountable. A balanced approach is necessary, one that upholds independence while ensuring appropriate accountability and transparency.

The United States Constitution lays the foundation for a government rooted in the principles of checks and balances and separation of powers. Among the three branches of government, the judiciary occupies a unique

[8] R v A (No.2) [2001] UKHL 25
Ghaidan v Godin-Mendoza [2004] UKHL 30
[9] R (on the application of Miller) v Secretary of State for Exiting the European Union [2017] UKSC 5
R (Miller) v The Prime Minister [2019] UKSC 41

and critical role, ensuring that laws and executive actions conform to constitutional mandates. Judicial independence is essential for the fair and impartial application of laws and for maintaining public confidence in the legal system. At the same time, the judiciary is not immune from criticism, particularly in debates surrounding judicial activism and the limits of judicial power.

How judicial independence is structured in the United States, the controversies around judicial activism, and the mechanisms through which the judiciary is held accountable is mentioned below.

Constitutional Foundations of Judicial Independence

Judicial independence in the United States is firmly rooted in the Constitution, primarily through the separation of powers doctrine. Article III of the Constitution establishes the federal judiciary as an independent branch of government, distinct from the executive and legislative branches. Federal judges are appointed for life, contingent upon good behavior, which allows them to stay away from political pressure.[10] Their salaries cannot be reduced during their time in office, further safeguarding their autonomy.

The opposite of judicial independence is the principle of judicial review, first articulated in Marbury v. Madison,[11] which grants the Supreme Court the authority to invalidate laws that are inconsistent with the Constitution. Judicial review empowers courts to serve as a check on legislative and executive excesses, reinforcing the judiciary's role as guardian of the Constitution.

Through this framework, the judiciary can interpret laws without fear of political intervention. As Alexander Hamilton argued in Federalist No. 78, the judiciary is the "least dangerous" branch, as it possesses "neither force nor will but merely judgment"[12] (Hamilton, 1788/2009). However, its strength lies in the ability to uphold the rule of law through independent judgment.

The Role of Judicial Activism

Judicial activism refers to judicial rulings that are believed to be based on personal or political considerations rather than existing law. Supporters of judicial activism argue that it enables the courts to correct instances of injustice and adapt constitutional principles to evolving societal norms. Landmark decisions which struck down racial segregation in public schools[13] and which recognized a woman's right to choose an abortion[14], are often cited as examples of the judiciary promoting civil rights and liberties.

Critics, however, contend that judicial activism undermines democratic principles by allowing unelected judges to effectively create or alter laws. They argue that such decisions affect the lines between the judiciary and legislature, violating the separation of powers. This conflict is particularly evident in cases where courts overturn legislation passed by elected representatives, prompting accusations of "legislating from the bench"[15] (Silverstein, 2009).

Despite the controversy, judicial activism is not inherently partisan. Both liberal and conservative judges have been accused of activism, depending on the political implications of their rulings. For instance, the decision that expanded corporate political spending was lauded by some as a protection of free speech but criticized by others as judicial overreach.

Judicial Accountability in the U.S. System

While judicial independence is vital, it must be balanced with accountability to maintain legitimacy and prevent abuse of power. In the United States, several mechanisms exist to ensure judicial accountability.

1. **Judicial Impeachment**
   Federal judges, including Supreme Court justices, can be impeached by the House of Representatives and removed from office by the Senate for "high crimes and misdemeanors"[16] Although rare, impeachment serves as a constitutional check on judicial misconduct.

[10] (U.S. Const. art. III, § 1)
[11] Marbury v. Madison, 5 U.S. 137 (1803)
[12] Hamilton, A. (2009). The Federalist No. 78. In C. Rossiter (Ed.), The Federalist Papers (pp. 465–471). Signet Classics. (Original work published 1788)
[13] Brown v. Bd. of Educ., 347 U.S. 483 (1954)
[14] Roe v. Wade 410 U.S. 113 (1973).
[15] Silverstein, G. (2009). Law's allures: Discipline, sex, and the law. Cambridge University Press
[16] (U.S. Const. art. II, § 4)

3. **Ethical Standards and Oversight**
   Federal judges are subject to the Code of Conduct for United States Judges, which outlines ethical standards relating to impartiality, integrity, and avoidance of conflicts of interest. While Supreme Court justices are not formally bound by this code, there have been increasing calls for uniform ethical standards at all levels of the judiciary [17](Kozinski, 2015).
4. **Public and Media Scrutiny**
   Judicial nominations, particularly to the Supreme Court, are intensely scrutinized by the public and media. Senate confirmation hearings offer a platform to question judicial nominees on their legal philosophy and past decisions. This process fosters transparency and public engagement with the judiciary.
5. **Appellate Review**
   In the lower courts, decisions are subject to review by appellate courts and ultimately the Supreme Court, ensuring consistency and accountability in judicial decision-making.

Balancing Independence and Accountability

Achieving the right balance between judicial independence and accountability remains a potential challenge. Overemphasizing independence risks creating an unaccountable judiciary, while excessive accountability could subject judges to political influence. A well-functioning democracy requires both elements to coexist.

One proposal for enhancing accountability without compromising independence is the adoption of fixed terms for Supreme Court justices. Legal scholars argue that term limits, such as 18-year non-renewable terms, could reduce the political stakes of judicial appointments and promote generational diversity on the bench[18] (Calabresi & Lindgren, 2006).

Another solution is the implementation of binding ethical standards for all federal judges, including the Supreme Court. In 2023, public pressure intensified following reports of potential conflicts of interest involving justices, highlighting the need for clearer rules and enforcement mechanisms[19] (Bazelon, 2023).

The United States judiciary operates at the delicate intersection of independence and accountability. The Constitution provides a robust foundation for judicial independence, most notably through life tenure and the power of judicial review. Yet, this independence must be checked by mechanisms that ensure judges act within the bounds of law and ethics. Judicial activism continues to spark debate over the appropriate limits of judicial power, reflecting broader tensions in a dynamic democratic society. Ultimately, maintaining the legitimacy of the judiciary depends on striking a balance that respects the courts' autonomy while ensuring transparency, ethics, and public trust.

Conclusion

From the above discussion, it is clear that, though the principles of independence of the judiciary, judicial activism, and accountability are universal, their implementation varies across India, the UK, and the USA, reflecting each country's legal traditions, political institutions, and societal values. Balancing these principles is essential for maintaining the integrity, credibility, and effectiveness of the judiciary in upholding the rule of law.

[17] Kozinski, A. (2015). Ethics in the federal judiciary. Yale Law Journal Forum, 125, 239–247.
[18] Calabresi, S. G., & Lindgren, J. (2006). Term limits for the Supreme Court: Life tenure reconsidered. Harvard Journal of Law & Public Policy, 29(3), 769–877
[19] Bazelon, E. (2023). The case for Supreme Court ethics reform. The New York Times. https://www.nytimes.com/