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Q1

"Constitutionally guaranteed judicial independence is a prerequisite of democracy". Comment.

UPSC Civil Services Mains 2023 · GS II · 10 marks · Indian Constitution

Indian Constitution - historical underpinnings, evolution, features, amendments, significant provisions and basic structure.

Core demand of the question

- Comment on the statement that constitutionally guaranteed judicial independence is a prerequisite of democracy
- Show the main constitutional guarantees and why they matter to democratic government

Revision summary

Democracy needs courts that can enforce the Constitution against the elected majority.

Articles 50, 121, 124, 211 and 217, charged salaries, and a hard removal process are the main guarantees.

The 99th Amendment and the NJAC were struck down in 2015 as a threat to independence of appointments.

Independence is a prerequisite; opacity of the collegium is a separate reform problem, not a reason to remove the guarantee.

Introduction

Democracy needs an independent court that can hold the elected executive and the legislature to the Constitution. The Constitution of India therefore writes judicial independence into appointment, tenure, salaries, and speech in Parliament, rather than leaving it to political goodwill.

Body**Why independence is a democratic prerequisite**

- A democracy is not only majority rule; it is majority rule under a written Constitution that the courts can enforce.
- Without independence, fundamental rights, federal limits, and free elections become paper promises that the government of the day can ignore.
- Articles 32 and 226 give the Supreme Court and the High Courts the power to issue writs; that power is useless if judges fear removal, pay cuts, or political posting.

Constitutional guarantees

- Article 50 directs the State to separate the judiciary from the executive in the public services of the State.
- Article 124 and Article 217 fix the manner of appointment and the tenure of Supreme Court and High Court judges, with removal only by a parliamentary address on proved misbehaviour or

incapacity, which is the impeachment process used in the Justice V. Ramaswami episode and later motions.

- Salaries, privileges, and the administrative expenses of the Supreme Court are charged on the Consolidated Fund, so the annual vote cannot starve the Court.
- **Article 121** and **Article 211** bar discussion in Parliament and in a State legislature on the conduct of a sitting judge except on a motion for removal.
- The collegium practice after the **Second and Third Judges Cases**, and the striking down of the **National Judicial Appointments Commission** in **Supreme Court Advocates-on-Record Association v. Union of India (2015)** after the Constitution (Ninety-ninth Amendment) Act, 2014, show that the Court treats appointment insulation as part of independence.

Limits that the comment must record

- Independence is not a licence for a closed collegium; the **2015** judgment itself asked for a Memorandum of Procedure and for more transparency.
- Delay in filling vacancies, in-house opacity, and the unused but heavy impeachment process are real stresses, yet they do not cancel the need for a constitutional guarantee.
- A comment that is fair therefore treats **Articles 50, 121, 124, 211 and 217**, and the failed NJAC amendment, as the democratic minimum, not as a finished reform of the appointments system.

Flow diagram

Democracy under Constitution -> Independent courts
Independent courts -> Arts 124 and 217 tenure
Independent courts -> Arts 50 121 211
Independent courts -> NJAC 99th Amendment struck 2015
Arts 124 and 217 tenure -> Rights and federal limits enforced

Conclusion

Constitutionally guaranteed independence is a prerequisite of democracy because only a secure court can enforce rights and limits against the majority of the day. India's text supplies that security through appointment, tenure, money, and speech bars, even while appointments remain an unfinished public debate.

Facts & figures

Article 50

Directive Principle requiring separation of the judiciary from the executive in the State's public services.

Articles 121 and 211

Bar discussion of a sitting judge's conduct in Parliament or a State legislature except on a removal motion.

Constitution (99th Amendment) Act, 2014

Created the **National Judicial Appointments Commission**; struck down in 2015.

SCAORA v. Union of India (2015)

Supreme Court held the NJAC and the 99th Amendment unconstitutional as damaging judicial independence.

Second and Third Judges Cases

Established the collegium for appointment and transfer of higher-judiciary judges.

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