Introduction

It is the principle that judges should make legal decisions free from pressure and irrelevant considerations. It means that judges should be able to act solely according to the law and their interpretation of it. Under the strong arm of judicial independence, judges should not fear the consequence of their decision as sometimes it could be unpopular. There are circumstances around the world in which the judges might be influenced by other sources and their decisions manipulated by an outside power.

Checks and Balances are also a very important factor in achieving democracy around the world. John Adams once said: "It is by balancing each of these powers against the other two, that the efforts in human nature toward tyranny can alone be checked and restrained, and any degree of freedom preserved in the constitution.” In order to grant the citizens of a country their fundamental rights and allow them to act freely, the government branches must be able to stay restrained from being the dominant part or become influenced by an outside power.

These seemingly separated concepts are correlated and intertwined. So, in order to promote the rights of citizens and to ensure the equality and fairness made by the government, it is essential for each country to implement measures to ensure the country possesses an independent judiciary.

Definition of Key Terms

Independent Judiciary

An independent judicial system is free from the control of any other government branches and private influences; it is considered a very important factor when maintaining a country’s democracy, but it is also very difficult to achieve. An independent judiciary is very important to the separation of power of one country, as it can ensure the equality and freedom of a country’s people.

Separation of Power
A model under which a state divides its government into different sub-branches; each branch has specific powers and responsibilities regarding different issues. For example, the government could be divided into executive, legislature, and judiciary. The purpose of the separation of power in a system is to avoid creating an autocratic government.

Checks and Balances

After the government is divided into branches, each branch has the ability to limit, or check, the other branches; this division creates a balance between the separated powers. Checks and balances are especially important in governments that have separated powers among legislative, executive, and judicial branches.

Democracy

The Greek phrase for democracy means “rule by people”; In a democratic government system, the people have the right to select their governing legislation; and the most common approach for democracy is through majority rule, which is to select based on the number of votes each candidate gets.

Rule of Law

The Rule of Law is defined as the authority and influence of law in a society; it is considered to be a principle where the people and the government of the entire society follows. It means that everyone in a society is subject to the law and it is the contradiction of a monarchy or an oligarchy.

Judicial Impartiality

A judge who is considered to be judicial impartial should not have biased, prejudices, and favors of any kind when making a decision. Judicial impartiality overlaps with an independent judiciary in some aspects; both of them requires the court to make a judgement without improper influences of any kind for any reason.

Background Information

Why is an independent judiciary important?

The judges solve problems that society is unable to resolve through the interpretation of laws. The issues can be either big or small; they can vary from child custody and divorce conflicts to frauds involved millions of dollars. Being independent of other government branches ensures the quality and fairness of judges’ decisions. The credibility of judges is based on their renowned reputation and the fairness of law; when people are trusting their judges, they assume the judges will make just decisions and will ensure their entitled rights. If the judges are influenced by powers of any kind, they are not able
to grant people their rights nor can they ensure democracy. Imagine a nation without an independent judiciary composed of fair and impartial judges; imagine a society as exists in many parts of the world, where power and money are the leverage of justice. The outcome of legal conflicts in these countries is unimaginable. In the absence of a system of fair judges, the promises of democracy and equality are merely empty promises. Therefore, the presence of a third, independent, non-biased branch of government in a country that is guided by the law is essential in maintaining the balance of a government and securing democracy.

Problems exists with judicial independence around the world

In some countries that experience conflict or that are recovering from past conflicts, there might be a fragmentary government system that has corrupted the judiciary. The judges might be controlled by political forces or other individual influence that disturbs the judges’ decision-making process. Some of the judges might even be involved in human rights abuse events and discriminate on the fundamental rights of the citizens.

United States of America

When talking about Checks and Balances, the first country that one could possibly think of is definitely the United States of America. In this country, federal judges are nominated by the President and approved by the Senate. During a legal process in the United States of America, all who appear in court must be treated as equals. For example, whenever jurors hear a criminal case, they are instructed not to privilege the testimony of a police officer over that of a defendant. In the United States of America, federal courts, are responsible for interpreting and settling disputes arising out of state law.

Yemen

Between September 2014 and March 2016, there was a case of violation of judicial independence in Yemen. The judges in Yemen faced many challenges: members of the judiciary have been assaulted, faced murder and death threats. They have also been threatened to be kidnapped and robbed by individuals and groups seeking to intervene with the legal process. Some judges have been killed when fulfilling their duties. Members of their families have also faced these fates. In addition, both the Arab Peninsular branch of Al Qaeda (AQAP) and ISIS are competing for control of areas in Yemen. They are non-state actors who benefit from the political chaos within Yemen.

The International Association of Judges (IAJ) put forward a decision in November 2014 recognizing the obstacles faced by the judiciary in Yemen and extended its support to the Yemen judiciary, helping them regain their judicial independence.
The importance of judicial independence has long been recognized in Yemen’s supreme law. In the Yemen Law, judges are independent and are free from influences of any kind except the law. This stipulation ensures that the judicial branch of the Yemen government possesses judicial, financial, and administrative autonomy.

In January 2015 a new draft constitution was completed by Hadi’s government. The draft allowed for greater independence when selecting the judiciary members. The draft stated that the President and other government officials of the Republic have the rights to appoint judiciary members. The Houthis rejected the draft constitution. On 6 February 2015 after Hadi’s government resigned, the Houthis, opposition of Hadi’s government, declared themselves in control of the government, dissolving parliament and declaring its Revolutionary Committee to be the acting authority in Yemen.

In March 2015, a coalition of Arab states, led by the government of Saudi Arabia, commenced airstrikes in Yemen in an effort to restore the Hadi government. Strategies of airstrikes and use of force of such intensity have led to a dire humanitarian situation. According to the UN, there were more than 8,100 civilian casualties (almost 2,800 deaths and over 5,300 wounded) between March and December 2015 as a result of the coalition airstrikes. Over twenty million Yemenis were in need of emergency humanitarian assistance.

Ukraine

On 24 February 2014, the Verkhovna Rada, Parliament of Ukraine, adopted a resolution according to which twelve of the eighteen judges of the Constitutional Court were to be dismissed by the institutions which appointed them. In the following months, a law relating to this issue was adopted in the Ukrainian Constitution. It was a serious violation of the judicial independence of the judiciary of Ukraine.

The law indicated that if a judge fails a review he or she will immediately be removed from any court and would then be dismissed. It is understandable that Ukrainians want to make sure no corruption is happening in their courts, however, instead of tackling the issue appropriately, they accused the judges of being bias and making politically oriented decisions. The law also states that judges may be subject to review if they attended restricted meetings, rallies, and marches during the protest period from November 21, 2013, through February 21, 2014]. Judges would also be subject to reviews if the European Court of Human Rights challenged their decisions, even though the court issues at least 700 rulings annually challenging the decisions of national courts.

The law did not gain adequate public consultation and reviews by international organizations such as the Council of Europe’s European Commission for Democracy through Law (the Venice Commission). Five of the judges were dismissed, and the Parliament demanded that the president dismisses the rest of the judges. In March, the Parliament appointed new judges. However, after a while,
this decision was followed by the political crisis of Ukraine in which protests and violent actions occurred; the result of this crisis is a change in the government system.

Advantages and Disadvantages of an independent judiciary

Advantages

The advantages of an independent judiciary are very clear as they ensure equality as well as fundamental human rights. By setting the judicial system apart from other government branches, the government can ensure that people are able to rely on the law and the courts when they encounter legal matters, especially when the legal issues involve a great amount of money. When there is a lot of profit involved in a lawsuit, it is possible that the judge might be manipulated by an outside power.

Another advantage of an independent judiciary is the fairness of the outcome of a case. When the judges are independent of the government branches, they are able to act solely according to the law and their interpretation of it. This means the decision is solely based on the country’s law, even though it might be an unpopular one. This helps to ensure the justice of the court and the impartiality of the decisions.

Disadvantages

There are also certain disadvantages of an independent judiciary. The first and most obvious one is the abuse of power. Since the judges are solely acting and deciding on their own, there might be some abuse of power in the judiciary without other governmental branches to restrict and check it.

There might be a lack of judicial accountability. Since the judiciary is independent, they are not required to provide their rationale behind their decisions and the motives behind these decisions might be unclear to the public, it could thus be hard for the public and the other government branches to assess the rightfulness of the judges’ decisions.

Another disadvantage concerns the corruption of the court and judges. If the judiciary is independent of all the other branches of government, corruption can be even more severe than ever before. Since the judges are the only ones deciding the outcome of a lawsuit, they might be paid off by individuals to make unfair decisions. In this case, since the judiciary is independent of other government branches, it is not possible for them to supervise or influence the decision made by judges, leading to unprecedented cases of corruption.

Measuring judicial independence

Maintaining the independence of the judiciary means that not only individual judges are independent, but the judiciary as an institution must also remain impervious to other influences. A judiciary is considered independent when; judges decide cases in accordance with the principles of judicial independence and when they are free from outside interference. Furthermore, the judiciary as an
institution must function autonomously, without interference from the other branches of government when managing its administrative affairs, to be considered independent.

Although a lot of measures have been implemented to assess the independence of the judiciary in countries around the world, most of those measures have not been very successful. The failure in measuring the success of an independent judiciary is due to the complexity of the measurement. In order to assess the independence of the judiciary, organizations or governments need to have access to comparative data, which are usually hard to gather. Even if they get the data they need, it remains very difficult to determine the independence of the judiciary, due to the degree of judicial independence in a country depending on its specific cases.

An independent judiciary’s influence on a country

**Economy**

A prosperous market economy depends on a strong state that secures and protects the private property rights of its citizens. Yet, the strength of the state can be a drawback: if it is strong enough to secure private property rights, it can also be strong enough to attenuate them. In this situation, an independent judiciary could make it better. If a state is able to ensure that its representatives respect and protect property rights, then additional investments could lead to a higher income, growth, as well as higher tax receipts for the state.

**Sovereignty**

There are currently basic principles set by the United Nations and relevant organizations to improve and supervise the role of judges as well as the independence of a nation’s judiciary. However, when international organizations attempt to set up more regulations to ensure the judiciary independence, they should keep in mind possible issues linked to sovereignty. Some countries might consider the implementation of treaties and regulations a violation of their sovereignty, thus, it could be difficult for all countries to reach a consensus on this issue.

**Democracy**

A democratic country requires all governmental institutions to respect and protect the rights of its citizens. The establishment of an independent judiciary is a key factor in achieving this goal. Establishing an independent judiciary helps the people of a country to have equal rights and acquire their fundamental rights.

How does an independent judiciary correlate with checks and balances?

The separation of powers is a fundamental element of a well-organized government and democracy. An independent judiciary is essential to preventing executive initiatives that are out of the bounds of national constitutional frameworks or inconsistent with international standards. In a prominent public interest case in Uganda, a member of parliament challenged the President’s appointment of a
retired judge as interim Chief Justice, arguing that it was unconstitutional. A judicial panel reviewed the case and stopped the appointment.

An independent judiciary is a crucial part of checks and balances because it helps to maintain this sector democratic. An independent judiciary makes sure the judicial decisions made by the court are fair and just, which is consistent with the idea of checks and balances. Checks and balances aim at ensuring the executive, legislative, and judicial branches own the power to check one another and make sure that none of these branches become dominant. It also requires different branches to share power and cooperate with one another to manage a country’s important issues. These two concepts intersect with one another, judicial independence is thus a determining factor of achieving checks and balances.

**Major Countries and Organizations Involved**

**International Association of Judges (IAJ)**

The International Association of Judges was founded in Austria in 1953 and is the oldest international organization in this field. It is an international, non-governmental organization that consists of national associations of judges (not individual judges), from approximately 90 countries. IAJ promotes the independence of the judiciary and the Rule of Law.

**World Justice Project (WJP)**

The World Justice Project (WJP) is an international organization that promotes the Rule of Law around the world by raising people’s awareness of the importance of it. The project aims at stimulating governmental reforms around the globe. It also established an assessment tool called “Rule of Law Index” to offer a detailed analysis of the degree each country adheres to the rule of law. Since 2006, WJP commits itself to giving people around the world a greater understanding of the law and enhance their opportunities in all fields of people’s life.

**Denmark**

Denmark’s legal system is considered the world’s best legal system according to the Rule of Law Index established by the World Justice Project in 2014. The Danish judicial system comprised of 24 county courts, the Maritime and Commercial Court of Copenhagen, the Eastern and the Western High Courts, and the Supreme Court. The Danish judges are absolutely scrutinized and are independent of the government’s influences as they are appointed for life and are subject to the Rule of Law only. The legal system in Denmark is completely transparent to the public as the records of the legal process are made available to the public.

A Danish Court Administration was established in 1999 to manage the work of judges and the administrative affairs of the Danish courts. The administration is independent of the executive power and is supervised by a separate committee.

**The Netherlands**
The judicial system in the Netherlands is comprised of 11 District Courts, 4 Courts of Appeal, and a Supreme Court. The District Courts are in charge of civil cases that involve claims up to 25000 euros. The division of jurisdictions in the Netherlands allocates cases to each individual court. There are also specific courts in the Netherlands that are in charge of various issues.

Like Denmark, the judges in the Netherlands cannot be dismissed by the Minister of Justice and Security.

**The United States of America**

The federal judiciary in the United States of America is one of the three branches of the federal government. While the Executives and Legislative branches are selected by the people, members of the judicial branch are appointed by the president and will serve with the agreement of the Senate. Federal courts have the power to interpret the law, determine the constitutionality of the law, and apply it to individual cases. When we’re considering the concept of “checks and balances”, the United States of America is one of the best examples. Since the United States of America have a tripartite government that is separated into three branches, they consider Checks and Balances to be essential for the security of democracy.

**Timeline and Events**

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<tr>
<th>Dates</th>
<th>Description of event</th>
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<tr>
<td>December 10th, 1948</td>
<td>The Universal Declaration of Human Rights was passed in France. This is a document that includes clauses relating to the protection of fundamental human rights.</td>
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<tr>
<td>1953</td>
<td>The International Association of Judges (IAJ) was founded in Salzburg, Austria and has headquarters in Rome. The IAJ promotes the Independence of the judiciary and the Rule of Law.</td>
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<tr>
<td>2006</td>
<td>The establishment of the World Justice Project (WJP)</td>
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<tr>
<td>February 24th, 2014</td>
<td>The Verkhovna Rada, Parliament of Ukraine, adopted a resolution according to which twelve of the eighteen judges of the Constitutional Court were to be dismissed. A case of violation of judicial independence in Yemen broke out and involved life threatening events for Yemeni judges when they are fulfilling their duties.</td>
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Relevant UN Treaties and Events

- International Covenant on Civil and Political Rights, December 16 1966
- UN Basic Principles on the Role of Lawyers, September 7 1990
- The Universal Declaration of Human Rights, December 10 1948
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, December 18 1990
- Basic Principles on the Independence of the Judiciary, December 13 1985
- The Universal Charter of the Judge, November 17 1999

Previous Attempts to Solve the Issue

There are various UN treaties and principles set up by international organizations on the issue of Independent Judiciary, Article 1 of the UN Basic Principles on the Independence of the Judiciary indicate that government and other institutions must respect the independence of the judiciary, which means that all the judges have jurisdiction over the issue and should not be subject to revision. The Universal Declaration of Human Rights also promoted the rights of citizens when encountered legal issues. Furthermore, the World Justice Project was established to measure the judiciary independence around the world and works on an index to rank all the countries’ judiciaries.

Possible Solutions

There are numerous organizations now relating to the issue of independence and all of which have made some progress in this issue, but they are scattered around the world in different places and serves different purposes relating to judicial independence. Some help to promote the independence of judges, some try to measure the degree of judicial independence in countries around the world, and some set up principles and promote treaties. It is thus important to consider organizations such as but not limited to the International Association of Judges, the World Justice Project, and the UN and its sub-branches, when thinking of solutions. All the organizations can collectively forge a path to build independent judiciaries around the world. There could be a UN conference held discussing methods to collectively work on issues related to judicial independence.
Promoting the scrutiny and transparency of judicial systems around the world. It is possible to form another Non-Governmental Organization (NGO) to supervise the legal institution and to ensure the transparency of a legal process. Whenever a judicial decision is made, there should be a report on the process, which should contain the whole situation and a brief summary of the rationale behind the decision. Afterwards, the report could be published in the database or online on the local court’s website for the public to see. This could ensure the transparency of the judge’s decision, as well as, guarantee that the judge is following the rule of law and is not influenced by an outside power of any kind.

However, when solving a global issue such as this one, all delegates must be able to adopt different perspectives in order to be able to consider and comprehend issues linked to a nation’s sovereignty. Even though maintaining an independent judiciary is crucial in promoting and securing democracy, it is also significant to make sure that all countries can reach a consensus and assert their fundamental rights. All of the clauses and potential solutions must respect human rights.

**Bibliography**


Appendix or Appendices

I. World Justice Project (WJP) Rule of Law Index

http://data.worldjusticeproject.org/

II. International Association of Judges


III. The Universal Charter of the Judge

IV. Judicial Independence: What It Is, How It Can Be Measured, Why It Occurs

V. Basic Principles on the Independence of the Judiciary

VI. International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors
https://www.refworld.org/pdfid/4a7837af2.pdf

VII. Constitutionalism, Judicial Review, and the World Court
https://scholarship.law.edu/cgi/viewcontent.cgi?article=1409&context=scholar

VIII. Lack of Judicial Independence and Its Impact on Transnational and International Litigation
https://scholar.smu.edu/cgi/viewcontent.cgi?article=1537&context=lbra