

Law

Q. Is there an independent judiciary in the United Kingdom? What obstacles, if any, hinder this independence?

Although judges in the English Legal System are not part of the law making process, and full time judges are not allowed to be members of the House of Commons, they are still thought to be independent in a number of ways, as an independent judiciary plays an important role in protecting the liberty of an individual from abuse of power by the executive.

There is flexibility in the law for part time judges and they are allowed to be members of the Parliament. Judges can be members of the House of Lords in its legislative function, and can take part in debates on new laws. These Law Lords can now participate in controversial political debates which they were previously not allowed to do. An area where Law Lords participated was in government policies on sentencing, where Lord Taylor criticized minimum sentences.

Judges play a role in law making through the doctrine of judicial precedent. There have been cases in which judges have refused to change past precedent saying that it is the job of the Parliament to make amendments to law and not of the judges. An example of such a case is *C v DPP (1994)* regarding the criminal responsibility of children.

As superior judges cannot be dismissed by the Government, they are truly independent of it and can make decisions that cannot be changed. However, the appointment of judges is not independent from the executive. The Lord Chancellor is a member of all three arms of the state. The Prime Minister is responsible for the nomination of senior judges, but the appointment of judges at all levels is usually by the Lord Chancellor. Since 1998, the Lord Chancellor listens to all complaints against

judges. According to the statistics, there have been 23 cases where he has either written to the judges directly or referred them to the concerned officers. Thus the judges have become pressurized and in such cases are not independent from the executive.

The judges are protected from this pressure as the executives have no financial control over the judges. Therefore judges are financially independent, as their salary comes out of the consolidated fund and the Parliament does not interfere, but can make changes to retirement ages and pensions.

Also, judges cannot be sued for the decisions they make in the course of their judicial duties. This was decided in *Sirros v Moore (1975)* and is a key factor in ensuring judicial independence in decision making. Since senior judges cannot be removed unless they complete their terms, they are free of outside pressure when exercising their judicial functions.

The area in which there are most disputes regarding the independence of judiciary is concerning the political biases. Judges may favour some political parties, and thus when that party comes to power, the judges tend to support its establishment. In the case *Council of Civil Service Unions v Minister for the Civil Service (1984)*, the minister for the Conservative Government was concerned, withdrawing the right to trade union membership from civil servants working at the intelligence headquarters. The House of Lords upheld the minister's right, and the decision was seen as anti-trade union.

Similarly there have been some anti-government decisions as well, e.g. *DPP v Hutchinson (1990)*, in which some of the women were prosecuted under a bylaw for being on the property of Ministry of Defence unlawfully. This case went to the House of Lords, where the Law Lords ruled in the women's favour, holding that the Minister

had gone beyond his power in framing the bylaw so as to prevent access to common land.

Recently ministerial actions have been challenged by way of judicial review. In many cases the judges have ruled against the minister concerned, e.g. *R v Home Secretary, ex parte Fire Brigades Union (1995)* in which the changes to the Criminal Injuries Compensation Scheme made by the Home Secretary were unlawful.

In such cases the judiciary has played an important role in protecting individual rights.

It can be seen that there is, to an extent, an independent judiciary. There are still certain obstacles, as mentioned above, hindering this independence which are being overcome, helping make the judiciary permanently independent in the United Kingdom.