

Independence of the Judiciary in South Africa: An Assessment After Twenty Years of Democracy

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Abstract : Any serious constitutionalism entails a system of government characterised by the separation of powers between the executive, the legislature, and the judiciary. The latter is generally in charge of upholding the rule of law and the respect for human rights which are vital for the functioning of any democracy. Therefore, for the judiciary to play its role as a watchdog, it should be independent from other branches of government. The aim of this paper is to examine the independence of the judiciary in South Africa after 20 of democracy. Defining judicial independence as the courts' ability 'to decide cases on the basis of established law and the merits of the case, without interference from other political or governmental agents', the paper examines the extent to which the South African judiciary is independent after twenty years of democracy. As part of assessing the independence of the judiciary, the paper begins by looking at the situation during apartheid, then proceeds with an examination of the post-apartheid legal order. It also examines the institutional independence of the judiciary by looking into its day to day activities which revolve around its self-governance, or administrative and financial independence. In addition, the paper assesses the judges' individual independence by examining whether judicial appointment, security of tenure, judges' remuneration and disciplinary actions and the removal of judges from office do not contain loopholes that can hinder judicial independence. Ultimately, the chapter argues that although the South African model of judicial independence is yet to be perfect, it is a good practice that can be emulated by other African countries.

Keywords : judicial independence, South Africa, democracy, separation of powers

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