
JUDICIAL APPOINTMENTS AND THE INDEPENDENCE OF JUDICIARY: A COMPARATIVE STUDY OF THE UK, USA AND INDIA

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Introduction:

Judicial independence is the soul of constitutional democracy. The judiciary can only protect the principle of rule of law if judges are not influenced by political pressure, discrimination or coercion. A truly independent bench is necessary to safeguards constitutional norms, fundamental rights and democratic ideals are protected. One of the main factors that determines judicial independence is the structure of judicial appointments. The question of who appoint judges, the process of their appointment, and the safeguards to be taken to protect their independence directly shapes the confidence that people have in the judicial system. Different countries have created various appointment frameworks for appointing judges. These frameworks are structured to balance two conflicting interests: first, to maintain judicial independence by safeguarding judges from political influence; and second, to ensure judicial accountability through some through some element of democratic supervision. The methods of judicial appointment therefore distinguish based on constitutional evolution, political values and legal customs of each country.

In United Kingdom, for centuries the executive had stringent control over judicial appointments. Apprehensions about secrecy, heterogeneity, and political prejudice paved the way for reforms under the Constitutional Reform Act 2005, which instituted the Judicial Appointments Commission (JAC). The JAC enhanced transparency and merit-based selection in judicial appointments, but debates continued concerned to representation and heterogeneity.¹

In the United States, the appointment procedure is explicitly political. Under Article II of the U.S Constitution, the President has empowered to nominate judges of the Supreme courts and other federal courts, with affirmation by the Senate.² While the procedure ensures democratic

¹ Constitutional Reform Act 2005 (UK).

² US Constitution, art II, s 2, cl 2.

checks, it often leads to intense political conflict. Judicial appointments in the USA, regularly become battlegrounds for ideological conflict between political groups, raising doubts about whether the independence of judiciary can truly be preserved when judges are closely associated with political positions.³

In India, the method of appointing judges has shifted from executive supremacy to the dominance to the collegium system, where the senior judges appoint the new judges⁴. While this safeguards judicial autonomy, this mechanism, however, often been criticized for its lack of transparency, accountability and public oversight. In 2014, Parliament introduced the National Judicial Appointments Commission (NJAC) through constitutional amendment, but in 2015 the Supreme court struck down the NJAC as unconstitutional, reaffirming the collegium system⁵. The debate over transparency, liability and independence continues to this day.

By comparing the different appointment system of different countries, helps us to understand the pros and cons of different appointment models. By studying these systems side by side, this research aims to recognize lesson from each model and recommend a more balanced approach that upholds independence while maintaining transparency and accountability.

2-Judicial Appointments in the United Kingdom.

The UK has ancient practice of judicial autonomy, but the procedure of appointing judges has not always been free from political pressure. Traditionally, the Lord Chancellor held extensive powers in the appointment of judges, which raised concern about confidentiality, unaccountability, and the possibility of extensive dominance over the judiciary.⁶

Reforms under the Constitutional Reform Act 2005.

To address these concerns, Parliament enacted the Constitutional Reform Act 2005, which instituted the Judicial Appointments Commission (JAC)⁷. The JAC is an autonomous body assigned to select candidates for holding judicial position in Wales and England and constituted

³ Abhinav Chandrachud, 'Appointment of Judges and the Independence of the Judiciary' (2019) *NUJS Law Review* 1.

⁴ Supreme Court Advocates-on-Record Association v Union of India (1993) 4 SCC 441 (Second Judges Case).

⁵ Supreme Court Advocates-on-Record Association v Union of India (2015) 6 SCC 1 (NJAC Case).

⁶ Kate Malleson, *Creating a Judicial Appointments Commission: Which Model Works Best?* (2004) Public Law 102.

⁷ Constitutional Reform Act 2005 (UK).

of judges, lawyers and lay members ensuring that the appointment procedure includes perspective from both within and outside the legal profession. The main functions of the JAC are the following: a-To invite applications for appointments. b-To evaluate candidates on their merits through conducting tests, interview and references.

c- To recommend these appointments to the Lord Chancellor, who generally consent to these recommendations until and unless any special cause exist.⁸

Strengths of the UK Model

The JAC model of UK has various strengths. First, it reduces the probability of political influence in the appointment procedure.⁹ Secondly, it enhances public confidence by making the selection procedure more transparent and just. Thirdly, by including common people in the commission, prevents judicial appointments from being seen as the reserved domain of judges and lawyers.

Limitations and challenges

Despite the positive features of the UK appointment system, it faces some criticisms also. Scholars observed that composition of the judiciary continues to show restricted diversity, especially in terms of gender, ethnicity and socio-economic representation. While the JAC was expected to expand inclusivity, progress has been prolonged. Another challenge is the duration and complexity of the procedure, which sometimes cause backlogs in filling judicial vacancies.

Moreover, although the Lord Chancellor's powers have been curtailed, they are not been completely abolished. In exceptional cases, the Lord Chancellor may reject the recommendation of JAC or ask it to reconsider¹⁰. This shows that the executive still retains some residual authority.

Conclusion on the UK Model

Overall, the UK's judicial appointment system reflects a necessary reform towards transparency and merit-based selection. While it has noticeably reduced political dominance

⁸ Judicial Appointments Commission, 'About Us' (Judicial Appointments Commission)

⁹ J L Maute, *English Reforms to Judicial Selection* (2007) 95 Georgetown LJ 101.)

¹⁰ Constitutional Reform Act 2005, ss 88–94.

compared to the earlier system, it is still evolving. Concern regarding diversity, functionality and maintaining balance between autonomy and accountability continue to shape political debates on judicial reform in UK.

3-Judicial Appointments in the United States

The United States adopts a very distinct model of judicial appointments compared to United Kingdom. Its system is influenced by the written constitution of 1787 and reflects the principle of checks and balance between the executive and legislative organs of state authority.

Constitutional Basis:

Article II, Section 2 of the U.S Constitution also termed the Appointment Clause, empowers the President to nominate judges of the Supreme Court and other federal courts, but these nominations must be affirmed by the senate.¹¹ This system ensures that no single organ of state authority has exclusive control over judicial appointments.

Nomination and Confirmation procedure:

1-Nomination by the president: The president nominates a candidate to fill up the judicial vacancy after consultation with senators, advisors and stakeholder group.

2-Hearings before the Senate Judiciary committee: The nominated candidate must appear before the Senate judiciary committee, to express their views on Constitutional interpretation and to answer the question related to judicial philosophy and previous judgements.¹²

3-Vote by senate: If the nominated candidate approved by the Judiciary committee, the nomination goes up to full Senate for a vote. This nomination can be confirmed by simple majority. This procedure ensures that candidate's record is openly assessed by the public, and citizens can observe how their elected senators determine the competence of nominees.

Merits of the U.S Model:

One of the merits and strengths of U.S model is democratic accountability. Because the

¹¹ US Constitution, art II, s 2, cl 2.

¹² Abhinav Chandrachud, 'Appointment of Judges and the Independence of the Judiciary' (2019) 4 *NUJS Law Review* 1.

nominated candidate has to go through Senate confirmation process, the judicial appointments become fair and transparent. Parliamentary debates remain accessible to public scrutiny and

Senators remain accountable to their voters for the decision reached. Another merit of the U.S model is that once the candidate appointed as a judge, they are allowed to serve a life tenure under Article III, which enables them to make impartial decision without fear of removal or unpopularity.¹³ This ensures judicial independence after appointment.

Limitation and challenges

While the United States judicial appointment system has many advantages, it is often criticized for being excessively political in appointing judges, especially at the Supreme Court¹⁴. Presidents usually nominate candidates whose legal outlook align with their own political outlook, and Senators votes during confirmation processes mirrors existing partisan divisions, raising concerns on judicial independence¹⁵. As a result of which, Judicial appointments have become the hot topic for political conflicts.

This political influence has been visible in various recent nominations. For example: The confirmation of Justice Brett Kavanaugh in 2018 led to intense political conflict, as did the appointment of Justice Amy Coney Barrett just before the 2020 U.S presidential election.¹⁶ These example highlights how the appointment procedure can intensify partisan divide and raise serious doubts about the impartiality of the judicial system.

Another issue is the lifetime tenure of federal judges, which allows them to serve on the bench for several decades after appointment. This makes every nomination highly significant. Consequently, political disputes over judicial appointments have intensified with both parties attempting to shape the composition of judiciary in ways that will influence the system for generations to come.

Conclusion of the U.S Model:

The U.S method of judicial appointments is distinctive because it combines judicial autonomy

¹³ US Constitution, art III, s 1.

¹⁴ Job Michael Mathew, 'Judicial Appointments in India: Towards Developing a More Holistic Definition of Judicial Independence' (2019) 9(10) *Nirma University Student Law Review* 107.

¹⁵ Abhinav Chandrachud, 'Appointment of Judges and the Independence of the Judiciary' (2019) 4 *NUJS L Rev* 1.

¹⁶ The New York Times, 'How the Amy Coney Barrett Confirmation Process Unfolded' (NYT, 27 October 2020)

with strong democratic accountability. While Senate's role in confirming judicial appointments is meant to provide checks and balances, the procedure has become excessively politicized, undermining public trust in judicial impartiality. This system reflects conflict between the autonomy and accountability, showing the menace of too much political interference in judicial appointments.

4-Judicial appointments in India

The judicial appointments of India have been shaped in a unique way, influenced by the colonial legacy, the written constitution of 1950, and evolving statutory interpretations. Unlike the UK and USA, where reforms were primarily legislative, India's judicial procedure have been significantly framed by Supreme Court judgements.

Earlier appointment system in India:

In the initial years after independence, the President was empowered to appoint judges, acting on the advice of executive. As per Article 124 (for supreme court) and Article 217 (for high court), the President was required to consult the Chief Justice of India and other judges before making appointments, but the finale authority rested with the executive¹⁷. This gave the government a dominant role in judicial appointments raising concerns about political influence in the process.

Shift from executive supremacy to collegium system

The equilibrium of power shifted after a series of landmark judgement by Supreme Courts commonly known as the Judges' Cases.

1-First Judges Case (S.P Gupta v Union of India, 1981) – In this case the court held that consulting with Chief justice of India did not mean getting his agreement, there by confirming the supremacy of executive.¹⁸

2-Second Judges Case (Supreme Court Advocates-on-Record Association v Union of India, 1993)– The court reversed its earlier view from the First Judges case, ruling that Chief

¹⁷ Constitution of India 1950, arts 124 and 217.

¹⁸ S.P. Gupta v Union of India AIR 1982 SC 149.

Justice of India's opinion formed in consultation with senior judges, would have primacy in judicial appointments.¹⁹

3-Third Judges Case (1998 Presidential Reference)- In this judgement the court clarified that judicial appointments should be made through a collegium system consisting of the CJI and four senior-most judges of the Supreme Court.²⁰

This chain of ruling created the collegium system for judicial appointments, significantly reducing executive dominance.

Establishment of NJAC

In 2014, the Parliament established the **National Judicial Appointments Commission (NJAC)** through the 99th Constitutional Amendment Act²¹. This commission included members from executive, judiciary and civil society, aiming to make the procedure of appointments more just and transparent. However, the supreme court struck down the NJAC in its judgement in **Supreme Court Advocates-on-Record Association v Union of India (2015)**, declaring it unconstitutional and violative of the principle of judicial independence under the doctrine of basic structure.²⁰

Merits of the Indian Judicial Model.

The collegium system safeguards the judiciary from executive dominance and political interference. It reinforces judicial independence by ensuring that appointments are primarily in the hands of judges rather than political groups. This protection is seen as necessary in a democracy, where separation of powers is a fundamental constitutional principle.

Criticisms and Challenges:

At the same time, the collegium system has been widely criticized for its lack of transparency and accountability. Decisions regarding appointments are taken behind closed doors with no publicly standards guiding the approval or disqualification of candidates²¹. This has led to

¹⁹ Supreme Court Advocates-on-Record Association v Union of India (1993) 4 SCC 441. ²⁰ Re Presidential Reference (1998) 7 SCC 739 ²¹ Constitution (Ninety-Ninth Amendment) Act 2014.

²⁰ Supreme Court Advocates-on-Record Association v Union of India (2015) 6 SCC 1

²¹ Prashant Bhushan, 'Judicial Appointments and Accountability: Need for Reforms in the Collegium System' (2014) 49(10) Economic and Political Weekly 12.

accusations of nepotism, favouritism and lack of diversity in appointments. Delays in filling vacancies are another major problem, often contributing to the significant backlog of cases in Indian Courts.²²

There is ongoing debate about whether a reformed version of NJAC or another independent commission should replace the collegium system, striking a balance between judicial independence and accountability.

Conclusion on the Indian Model

The Indian Judicial system represents a strong judicial response to executive dominance. By asserting primacy over appointments, the judiciary has protected its independence. However, the lack of transparency and accountability remain a significant problem. India's experience highlights the difficulty of striking a balance between independence and accountability in judicial appointments.

5-Comparative Analysis of UK, USA and India's Judicial System.

Judicial appointments in the United Kingdom, the United States, and India depict three very distinguish framework to balancing judicial independence and accountability. Each framework has evolved in response to its own historical and political context.

Accountability vs Independence

- In the UK, the establishment of the Judicial Appointments Commission (JAC) reduced executive dominance and promoted merit-based selection in judicial appointments. This procedure reflects a commitment to judicial independence, although the executive still retains sufficient powers through the Lord Chancellor.²³
- In the United States, the senate approves judicial appointments to ensure accountability and transparency, but the procedure often turns political, with selections reflecting party loyalty more than considerations of judicial competence or merit.²⁴

²² Law Commission of India, *Report on Reforms in Judicial Appointments* (Report No 121, 1987).

²³ Constitutional Reform Act 2005 (UK) ss 88–94.

²⁴ Abhinav Chandrachud, 'Appointment of Judges and the Independence of the Judiciary' (2019) 4 NUJS L Rev

- In India, the collegium system for judicial appointments ensures maximum judicial independence by excluding the executive from the appointment process. However, the lack of transparency and accountability has raised serious concerns about hierarchical bias and decision-making behind closed doors.²⁵

Thus, while the UK and India prioritise independence in, the USA leans more significantly towards accountability through political interference.

Transparency in Judicial Appointments:

Transparency is an essential factor in maintaining public confidence in the judiciary. The US judicial system is considered as the most transparent, with open hearings and press coverage of the confirmation process in the Senate. This allows citizens to directly witness the questioning of candidates. However, the major drawback is that such hearings often turn into political theatre rather than serving as genuine evaluations of judicial competence.²⁶

The UK judicial framework offers a comparatively higher degree of transparency through applications and published selection procedures. In contrast, India's collegium system for judicial appointments has been criticised for its opacity, since its discussions and reasons for appointments are not publicly communicated.²⁷ This confidentiality often undermines public confidence in the judiciary.

Diversity and Representation

Diversity remains a common challenge in all three judicial systems.

- The UK judiciary has historically been dominated by white men; however recent efforts supported by statistical data indicate gradual change, with about 35% of judges now women and nearly 10% from minor ethnic groups, aiming to enhance heterogeneity by promoting gender and racial representation.²⁸

²⁵ Supreme Court Advocates-on-Record Association v Union of India (1993) 4 SCC 441.

²⁶ Abhinav Chandrachud, 'Appointment of Judges and the Independence of the Judiciary' (2019) 4 NUJS L Rev 1.

²⁷ Pritam Baruah, 'Transparency and Accountability in Judicial Appointments: Rethinking the Collegium System' (2016) 58(2) Journal of the Indian Law Institute 159.

²⁸ *The Lawyer Portal*, 'How Diverse Is the Judiciary in the UK?' (The Lawyer Portal, 2024) ³¹The White House, 'Justice Ketanji Brown Jackson: Biography' (2022).

- The US has attained more evident diversity in their judicial system, with the appointments of women and judges from minority communities, but appointments still depend on political considerations³¹.
- In India, the judicial system continues to be dominated by socially male judges from socially privileged background with very limited representation of women, minorities and marginalised groups.²⁹

Thus, despite operating under different judicial systems, all three countries struggle to ensure that their judicial system genuinely reflects the societies they serve.

Effectiveness and delays

Delays in appointments of judges create major problems for the functioning of the courts.

In the UK, the Judicial Appointment Committee's procedure has sometimes been criticised for its slow and bureaucratic procedures.

In the USA, political conflicts within the Senate can delay appointments for months, leaving important judicial offices vacant.

In India, the collegium system has resulted in chronic delays, with the executive withholding names recommended by collegium, some pending for years, thereby contributing to the accumulation of pending cases.³⁰ This demonstrates that no judicial system is free from the problem of delay, although the reasons may vary.

Lessons to be learned:

These are the following lessons that can be learned-

- India can make the appointment procedure more transparent, for example by publishing reasons for appointments or by allowing limited participation of non-judicial members, without undermining judicial independence.

²⁹ Vidhi Centre for Legal Policy, *Breaking the Silence: Gender Representation in the Higher Judiciary of India* (Vidhi, 2021)

³⁰ *The Wire*, 'Supreme Court Highlights Govt's Delays in Clearing Recommendations Made by Collegium' (The Wire, 25 July 2025) ³⁴Constitutional Reform Act 2005 (UK).

- The USA could reduce political influence by introducing more objective standards in judicial confirmations or limiting partisan influence.
- The UK could work on strengthening diversity and representation, ensuring that judiciary reflects a broader social base.

Ultimately, the key challenge lies in striking the right balance between independence, accountability, transparency and efficiency. While no system is flawless, but a comparative outlook offers valuable lessons for reform.

6-Findings and Recommendations:

From the comparative analysis of the UK, USA and India has several key findings emerge:

1-Balancing of Judicial Independence and accountability

- In the UK, judicial independence has been strengthened through the Judicial Appointments Committee (JAC), though the executive still plays a limited role.³⁴
- In the United States, the Senate confirmation procedure is structured to ensure accountability, but it often compromises judicial independence since political interests strongly influence appointments.³¹
- In India collegium system prioritises judicial independence by excluding the executive, yet it lacks transparency and accountability.³²

2-Difference in Transparency

- The USA has the highest level of transparency through public hearings, but this also heightens the political influence.
- The UK maintains moderate transparency through structured judicial procedures.
- India faces opacity, as the collegium operates behind closed doors without providing

³¹ Abhinav Chandrachud, 'Appointment of Judges and the Independence of the Judiciary' (2019) 4 *NUJS Law Review* 1.

³² Supreme Court Advocates-on-Record Association v Union of India (1993) 4 SCC 441

reasons for appointments or rejections.³³

3- Challenge of diversity

All three countries judicial system faces issues with representation as women, minorities and people from marginalised groups remain underrepresented in the judiciary.³⁴

4-Delays in appointments

Appointments delays are common across all three systems: bureaucratic hurdles in the UK, political conflicts in the USA, and executive-judiciary friction in India.³⁵ These delays reduce judicial efficiency and contribute to case backlogs.

7-Recommendations

1-For India:

- Increase transparency in judicial appointments by publishing reasons for appointments and rejections of candidates.
- Consider a reformed NJAC system that gives primacy to the judiciary including representatives of civil society to enhance accountability.
- Promote diversity by setting clear targets to ensure representation of women, minorities, and marginalised groups.

2-For USA:

- Political influence can be reduced by adopting clearer criteria for evaluating judicial nominees, focusing on merit rather than relying on ideology.⁴⁰
- Replacing lifetime tenure in judicial appointments with fixed but long tenure could

³³ Arghya Sengupta, *Judicial Appointments in India: Transparency and Accountability* (Vidhi Centre for Legal Policy 2016).

³⁴ Vidhi Centre for Legal Policy, *Breaking the Silence: Gender Representation in the Higher Judiciary of India* (Vidhi, 2021)

³⁵ Law Commission of India, *Reforms in Judicial Appointments* (Report No 121, 1987). ⁴⁰ Abhinav Chandrachud, 'Appointment of Judges and the Independence of the Judiciary' (2019) 4 *NUJS Law Review* 1.

decrease political influence in appointments while ensuring judicial independence.³⁶

3-For the UK:

- Continue efforts to improve diversity so that the judiciary better reflects the pluralism of British society.
- Simplify the appointment process to reduce bureaucratic delays while still ensuring merit-based selection.

General recommendations:

All systems should aim to balance independence, accountability, transparency, and efficiency.

A blended-model that combines UK's merit-based approach, the USA's openness to public scrutiny, and India's emphasis on protection of judicial independence could provide a more balanced and effective framework.

Conclusions:

Judicial appointments play a vital role in safeguarding the judicial independence, which is necessary for upholding democracy, constitutionalism, and the rule of law. A comparative study of UK, USA, and India's judicial system shows that although each country has adopted different procedures, none has achieved the ideal balance between independence, transparency and accountability.

In the UK, the Judicial Appointments Committee has curbed executive dominance and introduced merit-based procedures for selection, but it still faces challenges in terms of diversity and bureaucratic delays.³⁷ The US system is highly transparent and publicly accountable; however, the excessive political dominance in the appointments often undermines judicial neutrality.³⁸ The Indian model, shaped by judicial interpretation, ensures independence from the executive, but confidentiality and unaccountability reduce public confidence.³⁹

³⁶ *SC Observer*, 'Average Tenure of Chief Justice Expected to Drop Over Next Decade' (SC Observer, 2024)

³⁷ Constitutional Reform Act 2005 (UK)

³⁸ Abhinav Chandrachud, 'Appointment of Judges and the Independence of the Judiciary' (2019) 4 *NUJS Law Review* 1

³⁹ *Supreme Court Advocates-on-Record Association v Union of India* (2015) 6 SCC 1.

This comparison makes clear that reforms are required across all three systems. A more balanced approach would blend merit-based selection from UK, public oversight from the USA, and judicial independence from India. Such a framework would ensure that appointments are free from political influence while remaining transparent and accountable to society.

Ultimately, judicial independence cannot be absolute; it must operate with mechanisms of accountability. The challenge lies in designing systems that prevents executive dominance without leading to political drama or judicial elitism. Judicial appointments, therefore, are not just a legal procedure but a constitutional matter crucial to the survival of democracy itself.