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## A COMPARATIVE ANALYSIS OF JUDICIAL APPOINTMENT PROCESSES: INDIA AND BEYOND

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### ABSTRACT

The appointment of judges is a foundational aspect of any democracy, directly impacting the independence, impartiality, and efficiency of the judiciary. This paper undertakes a comprehensive comparative analysis of judicial appointment processes, with a primary focus on India and a study of other jurisdictions including the United States, United Kingdom, Canada, and South Africa. The aim is to understand the principles, practices, and institutional frameworks that guide the selection of judges in these countries and to evaluate the extent to which these processes uphold democratic accountability and judicial autonomy. India's collegium system, which entrusts senior judges with the authority to appoint judges to higher courts, is critically examined in the context of its opacity, lack of accountability, and limited public involvement. Contrasts are drawn with the more transparent and participatory models such as the U.S. system of Senate confirmation, the UK's independent Judicial Appointments Commission, Canada's advisory committee-based approach, and South Africa's Judicial Service Commission. These models are assessed for their relative emphasis on executive involvement, legislative oversight, merit-based evaluation, and public scrutiny. Through this comparative lens, the paper identifies key strengths and limitations in each system.

**Keywords:** Judicial Appointment, Independent, Collegium system, National Judicial Appointments Commission, Accountability.

## Introduction:

An independent and impartial judiciary is a fundamental cornerstone of a constitutional democracy. The credibility, legitimacy, and efficacy of the judiciary are profoundly linked to the integrity of its appointment procedure. Judicial appointments are not only administrative functions; they are crucial in creating the justice delivery system and maintaining the rule of law.<sup>1</sup> The selection of judges, the participants in the process, and the criteria utilized have substantial legal, political, and ethical ramifications. The process of appointing judges, particularly to the higher judiciary in India, has been a focal focus of vigorous discussion. The transition from presidential primary to the judiciary-centric Collegium system, as delineated by the pivotal "Three Judges Cases," signifies a distinctive constitutional progression. The Collegium system, intended to protect judicial independence, has frequently faced criticism for its lack of transparency, accountability, and apparent bias. The ephemeral National Judicial Appointments Commission (NJAC), declared unconstitutional in 2015, exacerbated the dialogue on institutional reform. Various democracies worldwide have implemented distinct types of judicial appointments, each customized to their political frameworks, legal customs, and cultural principles. Certain systems encourage transparency and legislative supervision, such as the United States, whereas others focus on meritocratic selection via independent commissions, exemplified by the United Kingdom. A comparative analysis can determine if India's current model conforms to global best practices or if revisions are necessary.

## 1.2 Objectives of the Study

This study seeks to:

- Examine the historical and constitutional evolution of the judicial appointment process in India.
- Analyze key judicial and political developments shaping India's current model.
- Compare India's system with those of other major democracies.
- Evaluate the balance between judicial independence, transparency, and accountability

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<sup>1</sup> M. P. Singh, Securing the Independence of the Judiciary- The Indian Experience, 10 :2 IND. INT'L & COMP. L. REV. 245, 245-291 (2000)

across systems.

- Suggest reforms or best practices that may be relevant to the Indian context.

### 1.3 Research Questions

- How has India's judicial appointment process evolved, and what are its current challenges?
- How do judicial appointment processes differ across democratic jurisdictions?
- What are the comparative strengths and weaknesses of India's model?
- What lessons can India draw from international practices to improve its judicial appointments?

### **Judicial Appointment in India**

The judicial appointment process in India is an essential part of the constitutional framework, significantly influencing the independence, integrity, and efficacy of the judiciary. The appointment of judges to the higher judiciary, specifically the Supreme Court and the High Courts, is principally regulated by Articles 124<sup>2</sup> to 147<sup>3</sup> for the Supreme Court and Articles 214 to 231 for the High Courts in the Constitution of India.<sup>4</sup> The founders of the Constitution initially envisioned a system in which the government would significantly influence judicial appointments, with the President selecting judges after consulting the Chief Justice of India (CJI) and other senior judges. This concept aimed to reconcile executive power with judicial perspective.<sup>5</sup>

Nonetheless, over time, apprehensions regarding executive overreach and the politicization of appointments prompted a succession of pivotal rulings by the Supreme Court, commonly referred to as the Three Judges Cases (1981, 1993, and 1998). These verdicts radically transformed the power dynamics, leading to the establishment of the Collegium System, an extra-constitutional framework wherein a consortium of the most senior Supreme Court judges

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<sup>2</sup> India Const. art. 124

<sup>3</sup> India Const. art. 147

<sup>4</sup> M.P. JAIN, INDIAN CONSTITUTIONAL LAW (LexisNexis Butterworths Wadhwa, 6th ed., 2010).

<sup>5</sup> *ibid*

proposes candidates for judicial appointments and promotions. The Collegium consists of the Chief Justice of India and the four most senior judges of the Supreme Court (or, for High Courts, the respective High Court Chief Justice and two senior-most judges), possessing the ultimate authority in judicial appointments, while the executive primarily assumes a formal, consultative function. The Collegium System was established to protect judicial independence by restricting executive intervention, however it has faced criticism. The system is perceived as opaque, devoid of transparent selection criteria, and unaccountable to the public or other governmental branches. It has faced criticism for sustaining favoritism, elitism, and insufficient diversity regarding gender, caste, and regional representation. In response to these deficiencies, Parliament enacted the 99th Constitutional Amendment Act in 2014,<sup>6</sup> which established the National Judicial Appointments Commission (NJAC) a proposed entity consisting of members from the judiciary, executive, and civil society to enhance transparency and inclusivity in the appointment process.

In the significant ruling of *Supreme Court Advocates-on-Record Association v. Union of India*<sup>7</sup>, the Supreme Court declared the NJAC unconstitutional, citing issues related to judicial independence. This ruling reinstated the Collegium System, simultaneously recognizing the necessity for adjustments to enhance transparency and accountability in the process. Since then, persistent discussions and proposals both within and beyond the judiciary have emerged concerning the optimal enhancement of the nomination process while safeguarding the fundamental value of judicial independence. In conclusion, the judicial appointment process in India is at a pivotal juncture, reconciling the conflicting imperatives of independence, transparency, accountability, and inclusivity. The Collegium System remains the dominant mechanism; yet, the lack of statutory support and codified protocols creates opportunities for uncertainty and reform. The Indian experience exemplifies the intricacies of creating an appointment process that is both institutionally sound and democratically valid.

Criticism of judicial appointments in India centers on several fundamental issues, mostly concerning transparency, accountability, and independence. Below is a comprehensive analysis of the principal criticisms:

**1. Lack of Transparency in the Collegium System:** The existing mechanism for appointing

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<sup>6</sup> The Constitution (Ninety-Ninth Amendment) Act, 2014

<sup>7</sup> *Supreme Court Advocates-on-Record-Association and Another v Union of India* (2016) 4 SCC 1

judges to the higher courts (Supreme Court and High Courts) is the Collegium System, wherein senior judges propose appointments and promotions.

- a. **Opaque Decision-Making:** The process is characterized by a lack of transparency, absence of explicit criteria, public interviews, or objective measurements. Decisions are taken in secrecy.
- b. **Lack of Public Accountability:** The public remains uninformed on the criteria for selecting one judge over another or the rationale for an individual's non-selection or transfer.
- c. **Absence of Minutes or Records:** The lack of public minutes from the collegium sessions hampers the ability to assess or scrutinize judgments.

## **2. Concerns Regarding Nepotism and Favouritism**

- a) **Accusations of "Uncle Judges":** There have been recurrent claims of bias, wherein family or close acquaintances of current or former judges receive preferential treatment.
- b) **Absence of Meritocracy:** Critics contend that merit is occasionally overshadowed by personal affiliations or lobbying inside the judiciary.

**3. Conflict between Executive and Judiciary Power Struggle:** The collegium system was established to shield judicial nominations from executive influence. Nonetheless:

- a) **Lack of Checks and Balances:** Excluding the executive maintains independence, yet results in restricted external supervision.
- b) **Accusations of Judicial Overreach:** Some contend that judges selecting judges fosters an echo chamber and subverts democratic values.

## **4. Disapproval of the National Judicial Appointments Commission (NJAC)**

In 2015, the Supreme Court invalidated the NJAC Act, which sought to establish a more equitable organization with members from the judiciary, government, and civil society for appointments.

Critics contend that this decision:

- a) **Dismissed Democratic Accountability:** It rejected a Parliamentary initiative to change the system.
- b) **Maintained Judicial Monopoly:** It retained exclusive power within the judiciary, disregarding the wider public interest.

## **5. Delays in Appointments and Vacancies**

There are chronic delays in filling judicial vacancies, leading to massive case backlogs.

The Collegium often delays recommendations, and when sent to the government, appointments are often stalled or returned leading to friction and delays.

## **6. Lack of Institutional Mechanism for Review**

- a) There's no formal process to review or challenge collegium decisions.
- b) The process is highly subjective and varies depending on the individuals in the collegium at any given time.

## **Comparative Overview: India vs. Other Countries**

The judicial appointment process in India, governed by the Collegium system, is distinctive as it is exclusively managed by senior judges, with limited participation from the executive or legislature. This approach seeks to maintain judicial independence but has faced significant criticism for its insufficient transparency and accountability. Conversely, other nations implement more equitable and transparent strategies. In the United States, the executive and legislative branches collaborate, with judges nominated by the President and confirmed by the Senate following public hearings, so enhancing transparency. The United Kingdom employs an autonomous Judicial Appointments Commission that appoints judges purely on merit, with minimal political influence. Likewise, South Africa's Judicial Service Commission has members from the judiciary, legislature, and civil society, thereby fostering diversity and public accountability. These worldwide examples underscore the benefits of multi-stakeholder engagement, openness, and institutional safeguards elements that are predominantly absent in

India's existing system.<sup>8</sup>

**[A] USA:** The judicial appointment process in the United States, particularly for federal judges and Supreme Court justices, adheres to a constitutionally mandated procedure that maintains checks and balances between the executive and legislative departments. Article II of the U.S. Constitution grants the President the power to designate judges, but the Senate offers "advice and consent," signifying that Senate confirmation is required for the President's nominee to be appointed.<sup>9</sup> When a judicial vacancy occurs, the President usually nominates a candidate, frequently following thorough consultations and occasionally including feedback from Senators, particularly about district and circuit court justices. The nomination thereafter proceeds to the Senate Judiciary Committee, which holds hearings and assesses the nominee's credentials, character, and integrity prior to the full Senate's confirmation vote. Upon receiving a majority vote of confirmation from the Senate, the President officially appoints the judge to the federal judiciary. Upon appointment, federal judges, including Supreme Court justices, hold lifelong tenures, which can only be terminated through impeachment by the House of Representatives and subsequent conviction by the Senate. This framework aims to shield the judiciary from political influences, thus promoting judicial independence.<sup>10</sup>

**[B] United Kingdom:** Judicial appointments in the United Kingdom are predominantly managed by the independent Judicial Appointments Commission (JAC), formed in 2006 under the Constitutional Reform Act 2005, to guarantee that choices are conducted based on merit through a fair and transparent procedure.<sup>11</sup> The JAC publicizes job openings, promotes applications from a broad and diverse candidate pool, and evaluates applicants based on their competence, professional experience, and character; the objective is to mirror societal diversity inside the judiciary while maintaining high merit standards. Appointments to higher courts, including the Supreme Court, are conducted by a specialized selection commission convened for each vacancy; candidates must fulfill stringent eligibility requirements, including a minimum of two years in high judicial office or a minimum of fifteen years in legal practice or qualifications. The panel proposes a candidate to the Lord Chancellor, who possesses only

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<sup>8</sup> Shivaraj S Huchhanavar, Conceptualising Judicial Independence and Accountability from a Regulatory Perspective, Oslo Law Review (Jan. 29, 2025, 11:04 AM), <https://www.scup.com/doi/10.18261/olr.9.2.3>

<sup>9</sup> U.S. Const. art. II

<sup>10</sup> S. Ramana Subramanian, Comparative Analysis of Judicial Appointments: A Study with Reference To The USA, UK, Australia, South Africa, Canada and India, 2 IJLRA 5, 5-19 (2024)

<sup>11</sup> Judicial Appointments Commission, Courts and Tribunals Judiciary (August 12, 2025, 5:45 AM), <https://www.judiciary.uk/judicial-appointments-commission/>

restricted authority to dismiss or seek reevaluation of the decision. Upon acceptance of the recommendation, the monarch formally appoints the individual subsequent to notification from the Prime Minister. This procedure aims to shield judge appointments from political interference and to enhance both judicial autonomy and public trust in the legal system.<sup>12</sup>

**[C] South Africa:** In South Africa, judicial appointments are governed by the Constitution and supervised by the independent Judicial Service Commission (JSC), which is instrumental in evaluating and recommending candidates to the President for appointment. Judges are appointed pursuant to Section 174 of the Constitution, which mandates that candidates possess appropriate qualifications and be deemed fit and proper, while also taking into account the necessity to represent the nation's racial and gender diversity to reform the judiciary. Upon the occurrence of a judicial vacancy, the Judicial Service Commission publicly publishes the vacancy and solicits nominations, requesting applications that include comprehensive curricula vitae and questions. The JSC performs public interviews of shortlisted candidates to evaluate their suitability, legal experience, ethics, and dedication to constitutional values. Subsequent to the interviews, the JSC engages in private deliberations and, through a majority secret ballot, proposes candidates to the President. The President is typically obligated to appoint candidates recommended by the Judicial Service Commission (JSC) for courts other than the Constitutional Court, whereas for the Constitutional Court, the President chooses from a shortlist submitted by the JSC. This procedure aims to guarantee openness, meritocracy, judicial independence, and representation of South Africa's varied society within its judiciary.

**[D] Canada:** Judicial appointments in Canada are carried out by both the federal and provincial or territorial governments, depending on the level of court. The federal government is responsible for appointing judges to superior courts in the provinces and territories, as well as to the Federal Court, the Federal Court of Appeal, the Tax Court of Canada, and the Supreme Court of Canada. To be eligible for a federal judicial appointment, a candidate must be a member of a provincial or territorial bar for at least ten years and must possess strong legal knowledge, ethical integrity, and appropriate judicial temperament. Applications are submitted through the Office of the Commissioner for Federal Judicial Affairs, and candidates are evaluated by independent Judicial Advisory Committees (JACs) based in each jurisdiction. These committees assess and classify applicants as "highly recommended," "recommended,"

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<sup>12</sup> S. Ramana Subramanian, Comparative Analysis of Judicial Appointments: A Study with Reference To The USA, UK, Australia, South Africa, Canada and India, 2 IJLRA 5, 5-19 (2024)



or “not recommended.” The Minister of Justice reviews the recommendations, consults with key stakeholders, and makes a final recommendation to the Governor General, who formally appoints the judge.<sup>13</sup>

Appointments to the Supreme Court of Canada follow a similar but more transparent process introduced in recent years, involving an Independent Advisory Board that consults widely and prepares a shortlist for the Prime Minister, who then makes the final decision. For provincial and territorial courts, appointments are handled by the respective provincial or territorial governments through a similar system of application, evaluation by judicial committees, and final selection by the Attorney General or cabinet.<sup>14</sup> Across all levels, judicial appointments are guided by the principles of merit, independence, and diversity, with recent reforms emphasizing the importance of reflecting Canada’s population in terms of gender, language, cultural background, and Indigenous representation. The overall goal is to ensure that the judiciary is not only highly competent and fair but also trusted by the public it serves.

## CONCLUSION

The process of judicial appointments lies at the very heart of judicial independence, impartiality, and legitimacy pillars upon which the credibility of any democratic system ultimately rests. A fair and transparent appointment mechanism is not merely a matter of administrative convenience but a constitutional necessity, as the judiciary functions as the guardian of fundamental rights and the final arbiter of disputes between citizens and the State. In India, the present collegium system, wherein the senior-most judges of the Supreme Court and High Courts collectively recommend appointments and transfers, emerged out of a series of landmark judicial pronouncements, most notably the Second and Third Judges’ Cases. These decisions were driven by the objective of insulating the judiciary from executive or political interference, which was seen as a potential threat to judicial independence and the doctrine of separation of powers. By vesting primacy in the judiciary itself, the collegium was envisioned as a safeguard against partisan pressures and undue influence. However, over time, the collegium system has come under sustained scrutiny for its structural and procedural shortcomings. Critics point to its opacity, as decisions are made behind closed doors with

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<sup>13</sup> The Judicial Structure, Government of Canada, (July 16, 2025, 8:45 AM), <https://justice.canada.ca/eng/rp-pr/cp-pm/just/07.html>

<sup>14</sup> Martin L. Friedland, Appointment, Discipline and Removal of Judges in Canada, in JUDICIARIES IN COMPARATIVE PERSPECTIVE, 46 and 55, (2011)

minimal disclosure of reasons or criteria. Unlike other institutions where accountability to the public is embedded through transparency mechanisms, the collegium's functioning has remained largely insulated from public gaze. There are no codified parameters to evaluate a candidate's merit, integrity, or suitability, leaving the process vulnerable to perceptions of favoritism, arbitrariness, and exclusion. Moreover, the system has struggled to adequately reflect the diversity of India's vast social fabric. Representation of women, marginalized communities, regional voices, and professionals from varied legal backgrounds has remained limited, raising concerns about inclusivity and the judiciary's ability to mirror the society it serves. These deficiencies have led to a growing chorus of demands for reform, urging the system to evolve without compromising its foundational aim of preserving judicial independence.

In contrast, global democracies have experimented with and institutionalized varied appointment models that attempt to strike a balance between independence, accountability, and representativeness. The United States, for instance, follows a highly politicized process where the President nominates judges and the Senate confirms them. While this system is rooted in democratic legitimacy through legislative oversight, it often exposes the judiciary to ideological polarization, with appointments reflecting partisan alignments rather than solely merit-based evaluations. The risk here lies in the judiciary being perceived as an extension of political authority rather than an impartial arbiter.

The United Kingdom, by comparison, has consciously moved toward a depoliticized and structured process. The Judicial Appointments Commission (JAC), an independent body, plays a central role in selecting candidates on the basis of merit through an open, consultative, and transparent procedure. This model not only emphasizes fairness and objectivity but also places significant weight on diversity and public confidence. Canada adopts a hybrid approach, involving advisory committees comprising legal professionals, judges, and laypersons. These committees make recommendations to the government, thereby balancing executive discretion with independent scrutiny and public participation. South Africa presents another instructive example, having crafted its Judicial Service Commission (JSC) in the aftermath of apartheid to ensure that the judiciary embodies principles of inclusivity, transformation, and accountability. The JSC includes members from across institutions the judiciary, legislature, executive, legal profession, and civil society making the process both participatory and reflective of broader democratic values.

The common thread running through these diverse systems is the recognition that judicial appointments must not only protect independence but also instill public trust by ensuring transparency, accountability, and representation. Well-defined processes with objective evaluation criteria, meaningful stakeholder involvement, and deliberate promotion of diversity are essential to achieving this balance.

For India, these international experiences offer valuable lessons. While wholesale transplantation of foreign models may not be feasible due to the unique constitutional and socio-political context, the Indian system can certainly draw inspiration to evolve a reformed structure. One possible pathway is the establishment of a Judicial Appointments Commission (JAC), designed in a manner that safeguards independence while addressing the deficits of the collegium. Such a commission could combine judicial expertise with representation from the executive, legislature, legal profession, and civil society, thereby ensuring a holistic, transparent, and accountable process. Clear, publicly available criteria for assessing candidates on merit, integrity, competence, and diversity would also help dispel doubts of arbitrariness. Moreover, periodic disclosure of the Commission's functioning, while maintaining necessary confidentiality, could enhance public confidence in the system.

A reimagined appointments framework would not dilute judicial autonomy but rather strengthen its legitimacy by aligning with democratic ideals and societal expectations. By ensuring that the judiciary is not only independent but also representative and accountable, India can build a stronger, more credible institution capable of withstanding the pressures of an evolving democracy. Ultimately, embracing reform while staying rooted in the Indian constitutional ethos can create a robust appointment system that truly embodies the principles of fairness, inclusivity, and transparency, thereby fortifying the rule of law and enhancing public faith in the judiciary.