



Judicial Appointment and Judiciary Review in India: Balancing Independence and Accountability

Welcome to our presentation on the critical topic of judicial appointments and judicial review in India. We will explore how the balance between independence and accountability shapes the very foundation of our democracy.



The Backbone of Democracy: Judicial Independence

The judiciary stands as a vital guardian of the Rule of Law and individual rights in any democratic nation. Its ability to act without fear or favour is paramount. At the heart of this independence lies the process of judicial appointments.

Safeguarding Rule of Law

The judiciary protects fundamental rights and ensures governmental actions adhere to constitutional principles.

Fair Appointments are Key

An independent judiciary relies on a fair and transparent system for appointing judges, free from undue influence.

Public Trust at Stake

Controversies in appointments can erode public confidence, impacting the judiciary's legitimacy and the democratic balance.

Constitutional Framework of Judicial Appointments

The Indian Constitution, through Articles 124 and 217, vests the power of appointing judges with the President. This process, however, is carried out in consultation with the judiciary. Let's delve into the initial design and how it evolved.

Articles 124 & 217: The constitutional provisions stipulate that the President appoints judges to the Supreme Court and High Courts. This appointment is made after consulting with such judges of the Supreme Court and of the High Courts in the States as the President may deem necessary.

Executive Primacy: Initially, the constitutional design granted the executive branch significant sway, with the judiciary playing a consultative role. The President, advised by the Council of Ministers, held the ultimate decision-making authority.

Early Practice: Despite the executive's constitutional primacy, early practice often saw the Chief Justice of India (CJI) wielding considerable influence, sometimes even dominating the appointment process through strong recommendations.

The Rise of the Collegium System

A pivotal shift occurred in the post-1973 era, leading to a judiciary-led appointment process that eventually solidified into the Collegium system. This system fundamentally altered the balance of power in judicial appointments.



Post-1973 Supersession Crisis

The controversial appointment of A.N. Ray as CJI over three senior judges triggered judicial introspection and calls for greater judicial control over appointments.



Collegium Formation

Through a series of Supreme Court judgments (the "Judges' Cases"), the Collegium system emerged. This panel, comprising the CJI and senior-most Supreme Court judges, became responsible for recommending judicial appointments and transfers.



NJAC Struck Down

In 2015, the Supreme Court invalidated the National Judicial Appointments Commission (NJAC) Act, which sought to involve the executive in judicial appointments. This ruling reaffirmed the Collegium's supremacy in the appointment process.

Controversies and Criticisms

While ensuring judicial independence, the Collegium system has faced persistent criticism for its perceived opacity and lack of accountability. These concerns often lead to tensions between the executive and the judiciary.



- **Opaque Process:** Critics argue that the Collegium's decision-making lacks transparency, with no clear criteria for selection or reasons for rejection, leading to allegations of arbitrariness and favouritism.
- **Madras High Court Debate (2023):** The appointment of Justice Victoria Gowri, despite concerns raised about her past remarks, reignited debates about the Collegium's accountability and decision-making process.
- **Executive-Judiciary Tensions:** Ongoing friction between the government and the judiciary over the selection and appointment of judges underscores fundamental disagreements about the roles and powers of each branch.

Judicial Review of Judicial Appointments: The Debate

The question of whether decisions made by the Collegium can be subjected to judicial review is a critical and complex one. Proponents argue that such review ensures fairness and adherence to legal principles without compromising independence.

Can the Collegium's decisions be scrutinised for fairness and legality, just like other administrative actions?

Scholars advocate for applying administrative law principles to Collegium decisions. This approach would evaluate:

- **Legality:** Ensuring decisions adhere to constitutional provisions and established legal frameworks.
- **Rationality:** Requiring decisions to be based on sound reasoning and relevant considerations, avoiding arbitrary choices.
- **Procedural Fairness:** Guaranteeing that due process is followed, including proper consideration of candidates and absence of bias.

ⓘ This approach aims to ensure non-arbitrariness in judicial appointments without directly interfering with the judiciary's autonomy in recommending candidates.

Comparative Perspectives: India vs USA and Beyond

Examining judicial appointment systems in other democracies provides valuable insights into alternative approaches and their strengths and weaknesses. India's Collegium stands out for its unique, judiciary-centric model.



United States

The President nominates judges, and the Senate confirms them through public hearings. This process involves significant political scrutiny and public debate, often focusing on judicial philosophy and qualifications.



India's Collegium

Unique to India, this system relies on senior judges. While designed to protect independence, its secrecy is a frequent point of criticism, contrasting with more open processes elsewhere.



United Kingdom

The UK employs a Judicial Appointments Commission, an independent body that recommends candidates, balancing executive input with a merit-based, transparent selection process.



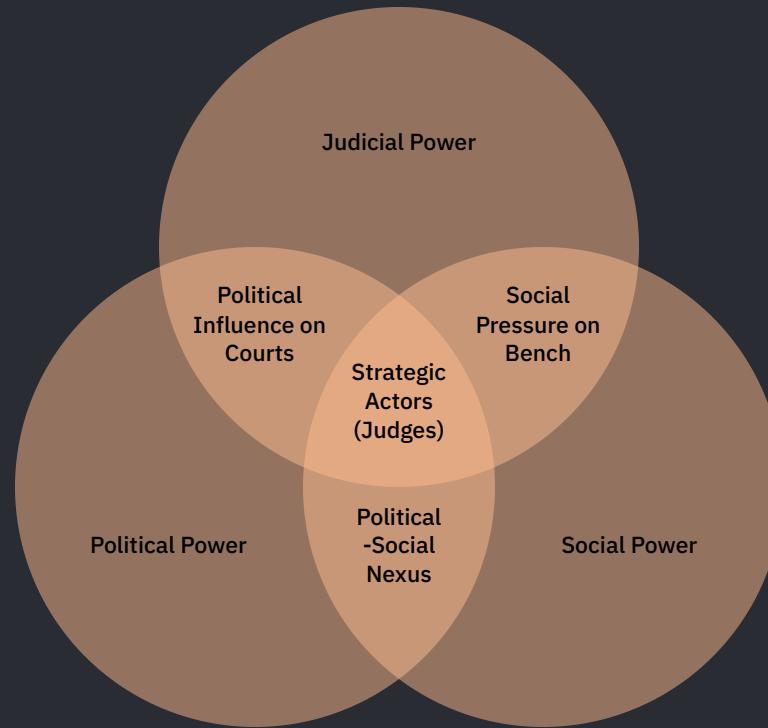
South Africa

The Judicial Service Commission, comprising judges, lawyers, and political representatives, recommends judicial candidates after public interviews, aiming for a balance of independence, transparency, and representativeness.

Lessons from these systems highlight the need for balancing transparency and accountability with the essential requirement of judicial independence.

Power Dynamics Within the Judiciary

Beyond institutional designs, the internal power dynamics and the strategic behaviour of judges significantly impact judicial independence. Recent trends in India have sparked concerns regarding alignment with the executive.



Executive Alignment: Over the past decade, some observers have noted an increasing alignment between the Supreme Court's decisions and the government's stance, raising questions about the judiciary's ability to act as an uncompromised check on executive power.

Judges as Strategic Actors: Judges are not merely passive interpreters of law. They are strategic actors who navigate complex political, social, and judicial landscapes, influencing the judiciary's perceived and actual independence.

Beyond Institutional Design: This suggests that even robust institutional frameworks for judicial appointments and review might not fully guarantee independence if the underlying power dynamics or judicial behaviour shift towards political alignment.

Towards a More Transparent and Accountable System

To strengthen both independence and public trust, there is a growing consensus on the need for reforms that enhance transparency, merit, and diversity in judicial appointments without politicising the process.



Clearer Criteria

Establish objective, publicly known criteria for evaluating judicial candidates, focusing on merit, integrity, and legal acumen.



Diversity & Inclusion

Promote gender and regional diversity in judicial appointments to ensure the judiciary truly reflects the diverse society it serves.



Procedural Safeguards

Implement robust procedural safeguards and mechanisms for public disclosure of the appointment process, while protecting confidentiality where necessary.



Balanced Roles

Find a harmonious balance between the executive's legitimate role in appointments, judicial input, and ensuring public trust in the selection process.

Conclusion: Safeguarding Democracy Through Fair Judicial Appointments

The strength of India's democracy rests significantly on the shoulders of its independent and accountable judiciary. A fair, transparent, and balanced approach to judicial appointments is not just a procedural formality; it is a constitutional imperative.

Transparent, rule-based appointment processes are crucial for strengthening judicial independence and public confidence.

Judicial review can act as a vital check, ensuring fairness and legality in appointments without undermining the judiciary's core autonomy.

Ultimately, a robust, impartial, and credible judiciary is indispensable for upholding constitutional values, protecting fundamental rights, and ensuring the continued health of India's democratic fabric.

