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Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; PH.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St. Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing PH.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Inter-country adoption laws from Uttarakhand University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat



Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, PH.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, PH.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University. More than 25 Publications in renowned National and International Journals and has authored a Text book on CR.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); PH.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

A COMPARATIVE ANALYSIS OF JUDICIAL INDEPENDENCE AND ACCOUNTABILITY IN INDIA AND UNITED KINGDOM

AUTHORED BY - AASTHA JAIN

S. NO.	CONTENTS
1.	INTRODUCTION
1.1	Statement of Problem
1.2	Literature Review
1.3	Research Objectives
1.4	Research Questions
1.5	Research Methodology
1.6	Scope and Limitations
2.	Conceptual and Theoretical Framework
2.1	Judicial Independence
2.2	Judicial Accountability
2.3	Tension Between Judicial Independence and Accountability
2.4	Comparative Constitutionalism
3.	Judicial Independence and Accountability in India
3.1	Constitutional Framework for Judicial Independence
3.2	Judicial Appointments and Collegium System
3.3	Landmark Cases in Shaping Judicial Independence in India

4. Judicial Independence and Accountability in United Kingdom
 - 4.1 Evolution of Judicial Independence in United Kingdom
 - 4.2 Judicial Accountability Mechanism in United Kingdom
 - 4.3 Landmark Cases in Shaping Judicial Independence in United Kingdom

5. Comparative Analysis
 - 5.1 Constitutional Structures
 - 5.2 Judicial Appointment Process- Collegium vs. JAC
 - 5.3 Challenges to Judicial Independence- A Comparative Context

6. Conclusion and Recommendations
 - 6.1 Recommendations for India
 - 6.2 Recommendations for United Kingdom
 - 6.3 Conclusion



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CHAPTER 1: INTRODUCTION

Judicial independence is the ability of courts and judges to perform their duties without any influence or control of other agents whether governmental or private. Judicial independence must be balanced with judicial accountability so as to maintain trust, transparency and legitimacy of public in the judicial system.

Both India and United Kingdom are countries with rich judicial traditions. Judicial independence and accountability are the two main principles of their legal system, but they also involve to a certain extent socio-political contexts.

This research paper aims to provide a comparative analysis of how these two countries navigate the tension between judicial independence and accountability.

1.1 STATEMENT OF PROBLEM:

Judicial independence ensures that judiciary can make decisions without any external pressure. However, judicial independence without judicial accountability can lead to unresponsiveness, while excessive accountability may undermine judicial impartiality. This tension is a critical issue in both India and United Kingdom.

In “India”, judicial independence is enshrined in the Constitution and judiciary plays a vital role in safeguarding democracy. Critics believe that there is a lack of robust mechanism in holding Judges accountable for misconduct and that there is also lack of transparency in approaches of the Judges which can lead to corruption and inefficiency, which further raises questions about judiciary’s accountability to public.

In “United Kingdom”, judicial independence evolved through common law and is protected under the Constitutional Reform Act, 2005. Appointment of Judges by Judicial Appointment Commission raises questions about judiciary’s independence from political pressure.

On one hand, India struggles with transparency and accountability in judicial appointment, and on the other hand, United Kingdom faces the question of judiciary’s independence from political pressure.

This research paper explores the challenges faced by both the nations in balancing judicial independence and judicial accountability and possible reforms in each nation's system as well.

1.2 LITERATURE REVIEW:

1. A critical study of provisions relating to judicial independence and judicial accountability- Shrinivasa Prasad R.¹

Judicial Independence is a crucial aspect in maintaining the constitutional democracy as it provides a platform for institutional mechanism to safeguard the rule of law. Institutionalizing with respect to the rule of law is of utmost importance as it is the case for those nations which are undergoing the process of democratization. The courts play a vital role in establishing culture of legality when given the scope for enacting natural justice, regulating governmental behavior and consolidating important legal and constitutional values. Judges hold the power of assuring legal stability. The only drawback being that the mechanism for judicial appointment may have its own disadvantages and therefore no system can be termed as the best. Despite this, to in order to maintain public confidence in the appointment system and to ensure judicial independence the commission system is perhaps a very effective mechanism for judicial appointment.

Judicial accountability should also be inclined towards social legitimacy rather than focusing only on the ethical and professional aspects. Therefore, it is safe to say that judiciary functions on the doctrine of public trust as judges may acquire judicial authority but they need people to believe in their integrity and capacity to deliver meaningful judgements.

2. Relative Study of Independence of Judges in India and United Kingdom- by Jeffy Johnson²

For the attainment of fair and unbiased justice, there is a need of an independent judiciary, facilitated by the Constitution. In order to protect the privileges and rights and prohibit the encroachment of the other two organs, that is, the legislative and executive, justice must be dispersed without any intervention.

Embracing judicial independence is crucial as it upholds the very foundation of rule of law.

¹ <http://hdl.handle.net/10603/201723>

² <https://blog.ipleaders.in/relative-study-independence-judiciary-uk-india/>

The integrity of any judicial system relies on autonomy of its judges. There must be no undue influence or control of any governmental or private entity. To foster the accountability of judiciary, judges should be granted long tenures as it is fundamental to the principal democracy and rule of law. Therefore, the judiciary is empowered to resolve disputes, conduct judicial reviews and enforce the fundamental rights.

1.3 RESEARCH OBJECTIVES:

1. To examine the historical evolution of judicial independence in India and United Kingdom.
2. To analyze the legal framework that ensures judicial independence in India and United Kingdom.
3. To address the balance between judicial independence and judicial accountability.

1.4 RESEARCH QUESTIONS:

1. What role does historical evolution play in the judicial independence of India and United Kingdom?
2. What legal frameworks and reforms ensure judicial independence in India and United Kingdom?
3. How United Kingdom and India strike a balance between judicial independence and accountability?

1.5 RESEARCH METHODOLOGY:

The doctrinal research methodology on judicial independence and accountability include:

- a. **Legal Text Analysis:** Scrutinizing relevant legal facts, including statutes and precedents to understand the foundation principles and provisions governing judicial independence and accountability.
- b. **Comparative Legal Analysis:** Comparing legal frameworks across both nations to identify similarity and differences, and legal interpretations regarding judicial independence and judicial accountability.
- c. **Historical Review:** Tracing the historical development of judicial independence and judicial accountability to discern its evolution.

1.6 SCOPE AND LIMITATIONS:

SCOPE:

1. **Emphasizing focus on comparative jurisdiction of India and United Kingdom:**
 - (a) Supremacy of Constitutional and legal framework in governance of India and United Kingdom.
 - (b) Role of legal precedents in shaping the judicial independence and accountability.
 - (c) The appointment of judges.
 - (d) Comparative analysis of the difficulties and reforms against it.
2. **Key institutions responsible**
 - (a) India: Supreme Court, High Court, Collegium System.
 - (b) United Kingdom: Judicial Appointment Commission (JAC), United Kingdom Supreme Court (UKSC), Parliament.
3. **Sources:**

Analysis of legal texts, judicial decisions, academic literature, and reports from relevant government bodies.
4. **Theoretical Framework:** The research paper covers the aspect of:
 - (a) Separation of power
 - (b) Judicial autonomy
 - (c) Judicial accountability

Limitations:

Diverging Jurisdictional Context:

Both India and United Kingdom despite being the common law countries operate differently in political, social and constitutional aspects. The major contrast between the countries being India's written Constitution and United Kingdom's uncodified. The socio-political environment in both the countries varies which ultimately affects the judiciary.

Subjective nature of accountability mechanism:

Assessing the effectiveness of accountability of judicial system can be subjective. Media narratives and political affiliations, may influence public perceptions on judicial independence and accountability.

Limited focus on subordinate judiciary:

The research mainly focuses on ‘higher judicial bodies’, that is, Supreme Court, High Courts in India and United Kingdom Supreme Court and Appellate Courts in the United Kingdom. Due to time constraints ‘subordinate judiciary’ could not be the central focus of the research.

Evolving nature of judicial reforms:

With the ongoing debates and potential reforms in both the countries, there is always room for new findings and further research.



CHAPTER 2: THEORITICAL FRAMEWORK

2.1 Judicial Independence

Judicial independence means the judiciary has the right to exercise free and impartial decisions without any influence of external agents like governments or private operators. Judicial independence acts as an underpinning principle in both Indian and United Kingdom legal frameworks, ensuring fair applications of the law and protecting individual rights. Although the contents are similar, the bases of theoretical underpinnings and institutional structures differ between countries due to the peculiarities of their legal histories and structures as well as their socio-political backgrounds.

Judicial Independence in the UK: The concept of judicial independence for the United Kingdom goes way back to its historical development, mainly after the Glorious Revolution of 1688, when the judiciary became independent of the monarchy. This autonomy is legally embedded in various developments like the Act of Settlement of 1701, which established the security of tenure for judges, thereby ensuring that a monarch or Parliament could not arbitrarily remove them from office.

Key Theoretical Aspects:

- 1. Separation of powers:** The UK operates with a well-settled theory of separation of powers. The judiciary has separation, and work free from political actors' influence.
- 2. Rule of law:** The judiciary maintains the rule of law, and provides equal and uniform laws before the law towards everyone regardless of their position and influence in society.
- 3. Institutional Safeguards:** Judges in England possess security of tenure along with an independence to exercise discretion and are shielded from removal. This means that the judges cannot be influenced by the government or other powers to affect decisions.

Judicial Independence in India:

The principle of judicial independence, as provided in the Constitution of India, dating from 1950, particularly under Article 50, separated the judiciary from the executive in the public services of the state.

Key Theoretical Aspects:

- 1. Doctrine of Basic Structure:** In India, judicial independence is constitutionally protected under the Doctrine of Basic Structure, as described in the seminal case of *Kesavananda Bharati v. State of Kerala* (1973). Under this doctrine, certain features of the constitution are irrevocably entrenched and cannot be changed by amendment of the Legislation.
- 2. Judicial review:** This judicial review exercised by Indian courts ensures that legislation or executive actions violating the constitution are annulled. It's an important mechanism for keeping the rule of law and ensuring that government is accountable.
- 3. Appointments and Tenure:** Indian judges have an insulated appointment process from political influence through a collegium system. Like the UK, Indian judges have the security of tenure and can be removed from office only through a complicated impeachment process in Parliament.

2.2 Judicial Accountability

Judicial accountability is the process where the judges are made responsible for their decisions, actions, and behavior in totality. While judicial independence ensures an independent system where judges work free from pressures from extraneous factors, accountability ensures that the judicial system remains transparent, dependable, and neutral. India and the United Kingdom lay stress on the need for accountability for the judiciary but differ in their approaches in most respects, considering the legal conditions and principles applicable to them.

Judicial accountability in UK

Main Mechanisms of Judicial Accountability in UK:

- 1. Public Scrutiny and Transparency:** UK courts are open. Decisions by the courts are public, and judges are meant to explain their decisions so that their verdicts can be examined by the public and the legal fraternity. This openness acts as a guarantee that the judiciary is accountable to the public hence building trust and confidence in the law.
- 2. Appeal and Review Processes:** The primary mechanism for judging accountability in the UK is through the appeals system. If there is a party to that case, which feels that the lower court judge misdirected himself on the law or judgment, his decision can be reviewed by an appellate court. The appellate courts have power to set aside, vary, or remit decisions. It thus ensures that errors made by the judiciary will be corrected, and there will be delivery of justice fairly.

3. **JCIO:** Complaints related to the behavior of the judges are processed by the institutions. In case a judge is found guilty of misconduct, then his/her warning, reprimand or removal from the position can be provided to him/her. This decision altogether remains subjective to behavioral misconduct rather than merits of judicial decisions. This framework affords judges all degrees of independence in decision-making without compromising professional and ethical standards.
4. **Parliamentary Oversight:** The judiciary is independent of parliament, but its actions, indirectly, come within the purview of parliamentary committees, especially those relating to reforming the law and judicial appointments.

Judicial Accountability in India

Key Mechanisms of Judicial Accountability in India:

1. **Collegium System and Appointments:** The collegium system regarding appointment and promotion, regulating judges in the Supreme Court and the High Courts, has been criticized because it is not transparent. While the collegium system ensures judicial independence from political influence, accountability among judges remains an issue. It is under these efforts toward reform of this system in the form of NJAC, recently proposed, that the debate b/w accountability and independence is thrown open.
2. **Judicial Impeachment/Removal:** The removal of judges in India is governed by the Judges Inquiry Act, 1968, which outlines the process of impeachment of High Courts judges or Supreme Court judges based on established facts of misconduct or incapacity. It requires long procedures culminating into a parliamentary resolution that is rarely invoked. This process of impeachment, although providing some form of accountability, has been found to be cumbersome and political in nature, thereby restricting its effectiveness as a means of holding judges accountable.
3. **Judicial Self-Regulation:** Indian judiciary has developed through various methods of self-regulation, such as the adoption of codes of conduct for judges. In particular, the Indian judiciary adopted in 1997 the Restatement of Values of Judicial Life, thereby setting standards and principles to guide conduct at the judicial level. Decisions of the Supreme Court and High Courts are reviewed by the process of appeal; this is an in-house system for holding the judiciary accountable in judicial decision-making.

2.3 Tension between judicial independence and accountability

Judicial independence is needed for the courts to be independent of extraneous influence and fair and impartial. The rule of law would definitely dominate, but judicial accountability balances that, allowing transparency and honesty in judicial discretion as well as public trust in the judiciary. Such principled existence exists between India and the UK, but with colossal hurdles posed between striking the right balance.

The tension occurs with accountability measures perceived to infringe on judicial independence, for instance debates over judicial activism or reforms on appointment processes. To balance these, there is a need for clear and effective appointment/ removal processes, well-defined ethical standards, and strong systems for appeal and review.

In conclusion, every country needs an independent and accountable judicial service to achieve independence with responsibility and responsibility with independence. Work is done on both fronts to keep the two ends equal and in balance.

2.4 Comparative constitutionalism

1. Written v. Unwritten Constitution: India has a written constitution adopted in 1950, is one of the longest in the world. It explicitly mentions the structure of government, separation of powers, and fundamental rights, providing every such well-outlined framework for governance. The UK is driven by an unwritten (or uncodified) constitution, which is statute, convention, judicial decisions, and historical documents such as the Magna Carta and Bill of Rights 1689. There is no single constitutional document, but constitutional principles are derived from a wide variety of sources.

2. Sovereignty and Constitutional Supremacy: In India, the Constitution is supreme meaning all laws and actions of the government must be confirmed to the constitutional framework. The Supreme Court of India possesses the power of judicial review, meaning it can declare laws which are unconstitutional as void.

In the UK, the central principle is parliamentary sovereignty. The parliament can make or unmake any law and no court can declare an Act of Parliament void. However, the UK was a member of the European Union (until Brexit) and enacted the Human Rights Act 1998, which meant in practice absolute parliamentary sovereignty was curtailed, and courts check legislation for compatibility with human rights.

3. Federalism vs. Unitary State: India is a federal system wherein the powers between central and state governments are divided. Here, the Constitution clearly separates the power of the Union and that of the States, though the Indian system is actually quasifederal,

giving greater powers at the centre. The UK is a unitary state, with the central government, though it has taken forms of devolution since the late 1990s which have endowed Scotland, Wales, and Northern Ireland with powers. Still, the UK Parliament has the power to make laws on devolved matters and thus has the final say.

- 4. Fundamental Rights:** India has an elaborate chapter on Fundamental Rights within its Constitution that include rights to equality, freedom, life, and personal liberty, which can be enforced in court. The Supreme Court of India has substantially contributed towards implementing and construing these rights, more so through *Kesavananda Bharati v. State of Kerala* (1973), which established the principle of the basic structure doctrine.

The United Kingdom has no codified Bill of Rights, but rights are ensured through common law, statutes such as the Human Rights Act 1998, which incorporates the European Convention on Human Rights into domestic law, and judicial decisions. However, such rights can be amended or repealed by Parliament—an example of the doctrine of parliamentary sovereignty.

- 5. Judicial Review and Constitutional Interpretation:** Judicial review is well developed in India with judicially ensured rights, including the power of courts, particularly the Supreme Court, to declare unconstitutional acts of parliament or of the Legislature. The judiciary assumes an active role under the constitution in protecting constitutional rights as well as making the government accountable.

Although courts cannot dissolve acts of parliament in the UK, courts can interpret laws and are empowered under the Human Rights Act to issue declarations of incompatibility where there is a violation of human rights obligations. The courts are also able to review executive actions with a view to ensuring that these actions are legal.

- 6. Amendment Process:** In India, amendments to the Constitution can be affected by Parliament on a special majority and in some areas by ratification by a majority of states. But by *Kesavananda Bharati*, certain sections of the Constitution, particularly about basic structure, cannot be amended.

In the UK, constitutional amendments may be made through ordinary Acts of Parliament. Constitutional provisions need not be amended through a special process because the UK Parliament is understood to be sovereign.

CHAPTER 3: JUDICIAL INDEPENDENCE AND ACCOUNTABILITY IN INDIA

3.1 Constitutional Assurance of the Judiciary

The Constitution of India ensures judicial independence through several provisions:

1. **Article 51:** The principle of the independence of the judiciary is enshrined under this Article of the Directive Principles of State Policy.
2. **Article 124:** It provides protection in terms of tenure of Supreme Court Judges. They can only be removed through impeachment on grounds of 'proved misbehavior or incapacity', therefore it is highly independent.
3. **Article 141 & Article 142:** It gives the Supreme Court the discretion to enforce its ruling or judgment.
4. **Financial Independence:** Salaries and pensions of the judges are paid out of the Consolidated Fund of India and, therefore, are not a matter of parliamentary discussion.

The judiciary also lacks external control through very high standards of appointment and removal of key personnel as provided in the Constitution. The judiciary has a significant responsibility of protection of rights and can also conduct the interpretation of laws in an independent fashion.

3.2 Judicial appointments and the Collegium System

According to the collegium system that evolved through judicial law making, the judges of the Supreme Court and High Courts are appointed. It also serves the cause of judicial liberty by removing the power of appointments from the executive or legislative authority, and bestowing it with the most senior judges.

1. **First Judges Case (1981):** The executive was most influential in the appointments to the judicial branch with the judiciary in an advisory role.
2. **Second Judges Case (1993):** Finally, and most significantly the Supreme Court overruled the earlier judgment and said that the primary responsibility of Judicial appointments must lie with the Chief Justice of India leading to the formation of the Collegium system.
3. **Third Judges Case (1998):** The collegium was widened to the CJI and four most senior judges of the Supreme Court of India of the respective time.

Because this system is non-transparent and not accountable, there have been controversies over NJAC which was declared unconstitutional in 2015 to affirm the dominance of the collegium.

3.3 Judgmental Precedent That Has Kept Judicial Independence Intact in India

Several key cases have contributed to shaping judicial independence in India are:

1. **Kesavananda Bharati v. State of Kerala (1973):** This case decided a bar on the Parliament's modification appeal about The Constitution in creation the basic structure doctrine that shielded the judicial independence as a section of the Constitution as a basic structure.
2. **S.P. Gupta v. Union of India (1981):** Firstly, the predominance of the executive branch in the selection of judges was recognized, then was canceled in subsequent decisions.
3. **Supreme Court Advocates-on-Record Association v. Union of India (1993):** This case stated that there is no reason why the judiciary where the CJI presides over should not be given the primacy in appointment of judges.
4. **NJAC Case (2015):** The National Judicial Appointments Commission Act was a decision with the dissolution of the judiciary and the restoration of the collegium system.



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CHAPTER 4: JUDICIAL INDEPENDENCE AND ACCOUNTABILITY IN UNITED KINGDOM

4.1 Evolution of Judicial Independence in United Kingdom

Judicial independence in the United Kingdom evolved gradually through constitutional developments, particularly after the separation of powers became more distinct in the 18th century:

- 1. The Act of Settlement (1701):** This act established judicial tenure and the principle of judicial tenure means that judges could only be dismissed by the monarch on an address in the both Houses of Parliament.
- 2. The Constitutional Reform Act (2005):** This Law was a major step toward the strengthening of judicial protection of rights and freedom of an individual. It established the United Kingdom Supreme Court as a new body separating from the House of Lords, and in order to remove politics from the appointment process set up an Independent Judicial Appointment Commission (JAC).
- 3. Judicial Oaths Act (1888):** Judges then take an oath that they are going to dispense justice without favor and for this reason we see that they are protected by the Constitution from any influence from political parties.

Judicial independence of the United Kingdom was evolving from the common law tradition in which it was established and their slow detachment from the political authorities.

4.2 Judicial Accountability mechanism in United Kingdom

Judicial accountability in the United Kingdom is managed through several mechanisms:

- 1. Judicial Conduct Investigations Office (JCIO):** The JCIO deals with complaints as to the social behavior of judges although they cannot review or criticize any political decision or judgements.
- 2. Appellate Mechanisms:** The applicants can appeal the decisions to other superior courts to ensure that judges remain accountable their legal procedures.
- 3. Removal Process:** In the United Kingdom, senior judges can be dismissed from their duties only by a joint resolution of both the Houses of Parliament.
- 4. Public Scrutiny:** Judicial decisions and proceedings of the Court, attracts public and often media's attention, particularly in matters that have attracted public interest.

4.3 Landmark cases in shaping Judicial Independence in United Kingdom

Several landmark cases have shaped judicial independence in the United Kingdom:

1. **Entick v. Carrington (1765):** This case gave rise to the doctrine of legal justification for government intervention in people's human rights, and the key role of the judiciary as a check against the executive branch.
2. **R (Miller) v. Secretary of State for Exiting the European Union (2017):** In this Brexit-related case, the United Kingdom Supreme Court confirmed that the government cannot violate Article 50, overriding parliamentary sovereignty, where the Court reaffirms their independence over executive decisions.
3. **R (Miller) v. Prime Minister (2019):** As for democratic independence, the United Kingdom Supreme Court recently declared that the prorogue of the Parliament by Prime Minister Boris Johnson was unlawful, so demonstrating the ability of the judiciary to examine the decisions of the political branch.
4. **Anisminic v. Foreign Compensation Commission (1969):** The House of Lords did make it clear that statutes can be the subject of judicial review as a mechanism to uphold the Constitutional role of the courts and thereby, supervision and control of actions of executive branches of government.



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CHAPTER 5: COMPARATIVE ANALYSIS

5.1 Constitutional Structures

1. **India:** India has a written Constitution which enshrines the value, powers and structure of the Judiciary. The established fundamental principles of Indian Constitution and Judiciary has absolute power of Judicial Review so that it can assess the constitutional or un-constitutional status of any law enacted by law making body or an action of law implementing authority.

Articles 50, 124, 141 and 142 are four articles of the Indian Constitution that directly addresses the judicial independence.

2. **United Kingdom:** Unlike India, the United Kingdom doesn't possess a written Constitution. Instead, it is based on aspects like conventions, statutes and judicial precedent. They remain free from influence of acts like the "Act of Settlement (1701)" and contemporary legislation like the "Constitutional Reform Act (2005)" which separates the judicial branch from the ruling and parliamentary branches.

The "Rule of Law" principle has it that in the United Kingdom, everyone, including the officials of the government, is accountable to the law from which the Courts are supreme.

The judiciary has comparative autonomy in both the countries but the constitutional autonomy in India is more assertion than the United Kingdom where it is just on conventions and statutory laws are followed.

5.2 Judicial appointment processes- Collegium v. Judicial Appointment Commission

Judges' appointment methods demonstrate an important distinction between the two models.

1. **India's Collegium System:** Collegium System is the prevalent mechanism to select judges that are to serve in the Supreme Court and High Courts in India. This system is headed by the Chief Justice of India (CJI) and four most senior judges of the apex Supreme Court and propose names to the President of India. This process developed during the "Second and Third Judges Cases" through judicial pronouncements; the executive's interference in the appointment of judges is minimal.

They again hailed the system for shielding the judiciary from undue influence by the other arms of government but at the same time faulted it for being obscure and stubborn on accountability and diversity in the appointment of the commission members. In the similar fashion, solutions toward abolishing Collegium System, including the National

Judicial Appointments Commission (NJAC) in 2015 were quashed by Supreme Court and consolidation of power in judiciary in regard with the appointments reemerged.

- 2. United Kingdom's Judicial Appointment Commission (JAC):** On the other hand, the United Kingdom created the “Judicial Appointments Commission (JAC)” in 2005 when enacting the “Constitutional Reform Act”. The JAC is an autonomous body to recommend persons for appointment as judges exercising the judicial power of Uganda freely and without influence. It has both legal and non-legal members and its appointments are made with the recommendation of the Lord Chancellor. The JAC endeavors to take the political bitten out of Judiciary but at the same time guarantee the independence of the Judiciary. It is more of formal order than the openness of India’s collegium system; there are standard measures to follow when recruiting, the positions are advertised and the system is more inclusive of diversity.

Key Differences:

India has a system called the collegium system which is almost exclusively “controlled by the judges” with little or no input from executives but it suffers from “lack of transparency”. The United Kingdom’s JAC is “independent and diverse” comprising of both legal and lay members in a much structured and more certain process.

5.3 Challenges to judicial independence – A comparative context

However, both countries still come under pressure in the independence of the judiciary though the pressures emanate from different facets of the two civilizations.

INDIA:

- 1. Executive Interference:** Though, the influence of the executive is from time to time reported on matters of transfer or on cases of long delays in confirmation of appointments of judges.
- 2. Political Pressures:** This is happening due to indirect pressure through high profile cases involving the executive or legislation. For example, the judiciary performance in political case such as the “Emergency (1975-77)” has created issues on the independence of judiciary particularly in politically sensitive cases.
- 3. Transparency Issues:** When it comes to appointment of judges, the collegium system is not really transparent, and often lacks formal procedures that necessarily mean that there is favoritism and nepotism, which again shakes peoples’ trust in the judiciary.

- 4. Backlog of Cases:** This explains why the judiciary is also compromised by the huge number of cases that has piled up over the years. When justice is delivered in the black, this is understood as a threat for freeing the judiciary and the public's confidence in the legal system.

UNITED KINGDOM:

- 1. Government Criticism:** Lately, criticism has come from government officials as seen in the high-profile cases such as the "Miller cases" where the judiciary made a decision against that of the executive. Any such criticism threatens to erode the confidence that the people have on the impartiality of the judiciary.
- 2. Parliamentary Sovereignty:** Different from most countries, the United Kingdom's judiciary is independent, but the concept of parliamentary sovereignty states that Parliament can, in theory, afford the courts limited powers. On the other hand, Judicial review and the Human right act 1998 have enhanced the check of judiciary on the legislature's actions.
- 3. Budgetary Constraints:** There are other factors, which are in a way an impairment of Judicial autonomy in the United Kingdom.

COMPARATIVE CHALLENGES:

- 1. Political pressure:** In India, it is the desire of the executive branch to interfere with the judiciary through transfers or delays and on the other hand, In the United Kingdom it is criticism of judicial decisions by the political leadership.
- 2. Transparency:** The JAC in the United Kingdom offers greater openness than the collegium system in India is deemed to be highly secretive.
- 3. Judicial Capacity:** The two jurisdictions face some of the challenges inherent in operating with limited resources and having too many cases on their docket; India's courts are worse in this regard.

CHAPTER 6: CONCLUSION AND RECOMMENDATIONS

6.1 Recommendations for India:

- 1. Strengthening Federalism: Quasi-federal system:** In the quasi-federal system, a lot of power is given to the central government at the cost of diminished autonomy on the part of the state. Therefore, there is an enormous scope for such a more balanced federal structure which could provide more legislative and fiscal autonomy to states to enhance regional governance and diminish centralization, just like in the practice of the UK's devolution.

Recommend: Increase further decentralization of power and sharpen the lines between central and state powers, at least on the areas of taxation, education, and health.

- 2. Judiciary Appointments Transparency:** Transparency in the collegiate system in India has been under criticism. The UK's Judicial Appointments Commission (JAC) is a good lesson where India could have a sharper process with accountability on making appointments.

Recommendation: Reform the process of judicial appointment by establishing an independent Judicial Appointments Commission, comprising legal expertise and civil society representatives to conduct open and impartial judicial appointments.

- 3. Protection of Fundamental Rights:** Although the chapter on Fundamental Rights is very comprehensive, its process of the enforcement of rights and redress to violate the same is slow. Thus, assurance must be made that the accessibility to justice should be stronger and that the delivery mechanism of legal processes must be quicker so that the rights can be more effective.

Recommendation: Enhance the enforcement of fundamental rights by dealing with issues of delay in the judicial process and ensuring that citizens get faster access to justice. Special courts or tribunals might be required for addressing cases of violation of rights.

- 4. Simplifying Constitutional Amendments:** The amendment process in India is quite complex and calls for special majorities most of the time. This saves the Constitution from any changes that may result from whims of rulers but often casts a roadblock before the promised necessary reforms. A tiered amendment process would resemble the flexible approach that the UK follows for non-basic-structure changes.

Recommendation: Streamline the amending process of the Constitution over non-core provisions. This way, reforms can be fast-tracked for policies for the economy, its

administration, and governance while ensuring protection of the basic structure doctrine.

- 5. Increased Public Involvement in Constitutional Procedures:** India can learn from a system allowing greater public participation in constitutional and legal reform processes as exemplified by the UK public consultations when it comes to the major changes to laws.

Recommendation: Constitutional amendments and reforms affecting basic rights should be supported by public consultation and public participation in the legislative process. Such consultation can be done through referendums, public hearings, or digital venues.

- 6. Strengthening the Rule of Law and Anti-Corruption Mechanisms:** Stricter anti-corruption mechanisms and the maintenance of independent institutions responsible for upholding the Constitution are avenues for the government to strengthen the rule of law in India.

Recommendation: Strengthen anti-corruption bodies and give them higher autonomy, just like in the case of the United Kingdom with the National Crime Agency (NCA), ensuring constitutional breaches and corruption are dealt with resolutely.

6.2 Recommendations for UK:

- 1. Codification of the Constitution:** The uncodified constitution of the United Kingdom can sometimes be riddled with ambiguity and uncertainty surrounding constitutionalism. On one hand, while the flexibility of the United Kingdom's constitution serves its rightful place, codification of some of its key constitutional principles, like the separation of powers, rule of law, and protection of fundamental rights, would give clearer guidance on the limitations of parliamentary and executive power. Recommendation: Ensure the codification of some key provisions of the constitution, regarding only some key constitutional principles. This would bring clarity on matters of constitutional interpretation and yet not rigidify an unnecessarily voluminous constitution.
- 2. Strengthening Judicial Review Powers:** Thus, though UK courts cannot declare invalid law, the scope of judicial review has expanded with the advent of the Human Rights Act 1998 and UK's embrace of European human rights standards. As the issues of law become increasingly complex in a post-Brexit Britain, the nation will likely face the need for expanded judicial review in certain fields to prevent executive overreach.

Recommendation: Strengthen the powers of judicial review, especially in areas of human rights and constitutional concerns, and respect parliamentary sovereignty. Then, the courts would be able to serve stronger remedies whenever legislation infringes on rights and constitutional principles.

- 3. Human Rights Protections Beyond Brexit:** To this end, there is the need to ensure that human rights protections, heretofore underpinned by EU law, remain robust following the UK's exit from the European Union. UK can increase further its commitment to human rights by integrally consolidating the ECHR within the domestic legal framework and through an extension of the Human Rights Act by ensuring a continuous protection of citizens' rights.

Recommendation: Restore and possibly extend the scope of the Human Rights Act 1998, such that this act of Parliament will continue to safeguard fundamental rights well, in the wake of losing the effective scrutiny by the EU.

This would ensure that human rights standards remain high after Brexit.

- 4. Greater Accountability of Parliament:** Although the UK Parliament is sovereign, executive dominance in the legislative process has been a cause of concern, specially in majority governments. It may well be that parliamentary committees play a more crucial role to check the power game against the executive for proper scrutiny of government action and legislative proposals.

Recommendation: Devise the role of parliamentary committees such that there is a fuller exploitation of their powers of investigation and greater opportunity for more cross-party working to better scrutinise the activities of the executive and draft legislation proposed.

- 5. Strengthening Judicial Appointments and Scrutiny:** While the Judicial Appointments Commission (JAC) does much to create openness in judge selection, further efforts could be made in building up diversity, and ensuring that judges keep under scrutiny their conduct, without harming judicial independence. Its aim of enhancing public trust in judicial procedures is also relevant.

Recommendation- Increase the transparency and diversity of the process of judicial appointment, so that the judiciary is really representative of the society it serves. Reform the Judicial Conduct Investigations Office (JCIO) to increase resources and capacity to deal with complaints and maintain public confidence in the judicial system.

- 6. Strengthening Devolution and Federal Principles:** The devolution system in the UK grants different levels of legislative authority to Scotland, Wales, and Northern Ireland.

However, the tensions between devolved administrations and central government persist, especially concerning how powers will be allocated post-Brexit. All this could become less visible and a clearer image of the limits of devolved power if indeed treated as a more federal direction.

Recommendation: Strengthen the devolution settlement by making its legislative powers clearer and possibly expanding those same powers. This means adopting a quasi-federal model so that devolved regions have clearer authority over health, education, and local governance

- 7. Public Participation and Constitutional Reforms:** While the flexibility inherent in the UK's uncodified constitution may be an advantage in itself, it does make it rather hard for the public to grasp or take part in constitutional processes. Improved public participation and involvement in discussions of constitutional reform, allowing citizens to have a sharper understanding of what rights they have as well as being aware of where to obtain access to them, would improve democratic accountability.

Recommendation: Strengthen the mechanism of public consultation and participation on constitutional matters, especially in significant reforms, through the use of referendums, public debates, and web-based platforms. Then, constitutional amendments will be more democratic and just.

6.3 Conclusion

In conclusion, India and the United Kingdom are pledged toward constitutionalism but under fundamentally distinct frameworks: India with a written, codified constitution and a high system of judicial review, whereas the UK has an uncodified, flexible constitution with an overarching stress on parliamentary sovereignty. Opportunities for mutual learning abound, for the two countries could understand and draw lessons from each other. For example, India could learn towards greater transparency in the appointments to judicial bodies, while the UK could appreciate full human rights protections with a clarification over the devolution arrangements. The dual conflicting goals of judicial independence and accountability characterize both of these countries, for they balance the requirements of democratic principles against the integrity of their law systems. Further public participation, judicial accountability, and protection of rights in the future are likely to be an important cornerstone of adaptation by both countries to evolving political and social frames.