
COMPARATIVE STUDY OF REMOVAL OF JUDGES OF SUPREME COURT IN INDIA AND USA

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ABSTRACT

The Constitution is the most important statute in the country. The law gives power and legitimacy to all other norms; hence a state's Constitution serves as a normative framework, validating all other laws and activities. In this article, we compare the study of the removal of judges of the Supreme Court in India and the US. Criticism like Separation of powers, How the Indian Judiciary works, How the US Judiciary works, Indian Judiciary, The US Judiciary, Comparison of judge appointments in India and the USA of higher judiciary, Removal of Judges & Analysis.

Keywords: Separation of Powers, Judiciary, Statue, Norms

INTRODUCTION

The foundation of democracy is the rule of law which means we should have an independent judiciary, where judges are free to make any decision independently without any interpretation of any political wings. The judicial branch of the government refers to countries' court systems. The judiciary is considered as guardian of democracy and the Constitution. For democracy should function efficiently, it is obligatory to have an impartial and independent judiciary. Constitutionalism talks about limits which says that the power of government should be legally limited, and its legitimacy depends on these limitations. The judiciary is the judicature of courts that adjudicates the legal disputes between the two parties and interprets and applies laws in specific legal cases. The judiciary plays a vital role in improving the law-making process and democratic ideals. It can be possible by enforcing the texts and spirits of the constitutional provisions that govern the legislative procedures.¹

SEPARATION OF POWERS IN INDIA AND THE USA

The term separation of powers means the horizontal division of power that is the legislative, executive, and judicial functions of government among separate and independent bodies. It limits the possibility of exercising absolute power of government though the sanction of all three branches of government is required for making the laws, executing the laws, and administering the laws. The doctrine of separation of power has been compared with the theories of ancient and medieval governance systems which involve various elements of society such as monarchic, aristocratic, and democratic interests.

In India, there are three branches of Government the legislature, the executive, and the judiciary. India follows a system of checks and balances. The judiciary plays a crucial role in protecting the legislature and the executive does not exceed its vested boundaries and precludes them while exercising their absolute power. The Indian Constitution guarantees that the judiciary in India should remain independent from the leverage of the legislature and the executive. In the US, the federal system is divided into three branches of Government the legislature, the executive, and the judiciary. The Federal Government in the US is efficacious and subjected to a system of checks and balances. The judiciary also plays a crucial role in the

¹ <https://www.jstor.org/stable/41854044>, <http://www.legalservicesindia.com/article/500/Judiciary-system-in-India.html>

US while protecting the legislature and the executive does not exceed its vested boundaries and precludes them from exercising their absolute power through judicial review. The US Constitution guarantees that the judiciary in the US should remain independent.

The term separation of powers focuses on the strict distinction of powers and seeks to initiate the undivided functioning of each organ.

In India, the idea of separation of powers is not followed duly unlike in the US. The Court has the power to reverse any unlawful law passed by the legislature through a system of checks and balances.

In the US it encompasses a rigid separation of powers having a doctrine of checks and balances that hold governance effective and efficient.²

INDIAN JUDICIARY

The Judiciary is that branch of the government that interprets the laws, settles disputes among the two parties, and seeks justice for all the citizens.

In India, the judiciary plays an important role in making sure that the legislature and the executive branch do not exceed their powers and restrict them from exercising arbitrary powers.

In India, the judiciary acts as the guardian and interpreter of the Constitution. India follows a single integrated judicial system. The Judiciary in India has a pyramidal structure where the Supreme Court or Apex Court is at the top and below them are the High Courts and various courts in district and sub-ordinate level.

The district and sub-ordinate courts function under the direct supervision of higher courts.

The main function of the Indian Judiciary system is to apply law in a particular case.

The Supreme Court is the apex court in India which acts as guardian of the Constitution. The conflicts that arise between the Union Government and the State Government or between the

² <https://www.whitehouse.gov/about-the-white-house/our-government/the-judicial-branch/>,
<https://legalserviceindia.com/legal/article-7695-legal-profession-in-india-evolution-historical-development-and-regulations.html>

legislature and executive are decided by the apex court or the Supreme Court of India.

The Indian Judiciary ensures that the people's rights are protected from trampling upon by the state or various agencies. The apex courts enforce Fundamental Rights by issuing the writs.

In a Federal Country like India, Higher Courts act as the arbiter between the States and the Union.

The courts sometimes act as a non-judicial body or administering body when it comes to granting certain licenses, registering marriages, and assigning guardians for minor children and lunatics.

The apex court can give its advisory opinions on the questions related to constitutions. It can be done when there are no disputes and the executive desires.

HOW THE INDIAN JUDICIARY WORKS

The judiciary in India is hierarchical. There are four strata of hierarchy which are as follows:

- The Supreme Court of India or the Apex Court
- The High Courts of every State or the Constitutional Courts
- The Sub-ordinate Courts at the District Levels
- Tribunals- National Green Tribunal, Armed Forces Tribunal, Income Tax Appellate Tribunal, etc.
- Naya Panchayats
- Lok Adalat

Supreme Court

The governance in India is Federal Structure in nature and the Supreme Court or the apex court of India known as the Federal Court. Article 124 to Article 147 of the Indian Constitution deals with the functions and jurisdiction of the Apex Court or the Federal Court.

The Regulating Act of 1773 established the Supreme Court of Judicature at Calcutta in the year 1774. Similar types of Courts were established in Bombay and Madras in the year 1800 and 1823 respectively.³

The Supreme Court has been vested with its jurisdiction as well as the powers of both the Federal Court as well as Privy Council and started functioning on 28th January 1950.

The Supreme Court in India has three jurisdictions i.e., the Original Jurisdiction (Article 131), the Appellate Jurisdiction (Article 136 [1]), and the Advisory Jurisdiction (Article 143 [1]).

Under Article 137 of the Indian Constitution, the apex court is empowered to review any of its previous judgments.

The Supreme Court lays its guidelines and rules and lays down the procedure for its functioning. The Supreme Court is responsible for protecting and upholding the fundamental rights of the citizens by issuing writs under Article 32 of the Constitution to enforce the rights of the citizens. It is the highest court of appeal and Article 141 provides that the subordinate courts or the lower courts would be bound by the law enforced by the apex court.

High Court

Article 214 of the Indian Constitution provides a High Court in every state. Parliament has also been empowered to establish a common High Court for two or more States. For ex-Punjab and Haryana High Court

The High Court consists of five types of Jurisdictions i.e., the Original Jurisdiction (Article 215), the Appellate Jurisdiction, the Writ Jurisdiction (Article 226), the supervisory Jurisdiction (Article 227), and the Review Jurisdiction (Article 226).

The High Court controls the functioning of sub-ordinate courts and issues rules and guidelines for their functioning. The High Court is empowered to issue writs for the protection of Fundamental Rights of individuals. The High Court hears appeals against the judgment given by the sub-ordinate court. The High Court has also the power of Judicial Review.

³ <https://legislative.gov.in/constitution-of-india/>

Sub-Ordinate Court

The district court has been established by the State Government. There are primarily two types of District Courts:

- Criminal Courts
- Civil Courts

Tribunals

Tribunals may be judicial or quasi-judicial. The Tribunals provide quick justice and are usually established when there are several pending matters relating to a particular subject matter pending before the courts. Thus, these tribunals help in reducing the burden of the courts.

Naya Panchayats

The Naya Panchayats are established at the village level and are aimed at providing cheap and faster justice. They are based on the direction provided by Under Article 40 which states that the State must take steps to empower the panchayats.

Lok-Adalat

The Lok Adalat is also known as the 'People's Court'. The Lok Adalat consists of judicial officers, retired and serving, and such other persons as prescribed by the Central Government.

The Lok Adalat does not adjudicate disputes, rather, it aims to resolve disputes through mediation and arbitration.

THE U.S. JUDICIARY & HOW THE U.S JUDICIARY WORKS

The hierarchy of the Courts in the United States is primarily divided into three parts:

- The Supreme Court of the United States
- Circuit Courts
- District Courts or the Trial Courts

Courts in the federal system work differently in many ways than State Courts. Federal Courts are considered courts of limited jurisdictions which means they can only hear those cases authorized by the United States Constitution or Federal statutes. The Federal District Courts can hear any cases related to statutes, constitutions, or treaties. This type of jurisdiction is called 'Original Jurisdiction'.

Those cases which entirely based on state law may be brought in federal court under 'Diversity Jurisdiction'.

Supreme Court

The Supreme Court of the US is the highest in the American judicial system and has the power to decide appeals on all cases brought in federal court or those brought in state court but dealing with federal law.

Unlike circuit court appeals, however, the Supreme Court is usually not required to hear the appeal.

If the writ is granted, the Supreme Court will take briefs and conduct oral arguments. If the writ is not granted, the lower court's opinion stands.

Circuit Courts

The federal district court has decided a case, the case can be appealed to a United States Court of Appeals. Twelve federal circuits divide the country into different regions.

The Federal Circuit Court of Appeals has a nationwide jurisdiction over very specific issues such as patents.

Any case may be appealed to the circuit court once the district court has finalized a decision. Some cases can be appealed before a final decision by making an 'interlocutory appeal'.

District Courts

In the U.S. district courts are the general trial courts of the federal court system. District courts handle trials within the federal court system, both civil and criminal. District court judges are responsible for managing the court and supervising the court's employees.

COMPARISION OF APPOINTMENT OF JUDGES OF APEX COURT IN INDIA AND THE US

Article 124(2) of the Indian Constitution talks about the procedures for the appointment of judges of the Supreme Court of India. The Judges of the Supreme Court are appointed by the President of India after consultation with the Chief Justice of India. The President may consult such judges of the Supreme Court as necessary. The Union Law Minister also advises the President on the appointment of Judges of the Supreme Court.

In the United States President nominates someone for a vacancy on the Court and the Senate votes to confirm the nominee, which requires a simple majority. In this way, both the Executive and Legislative Branches of the federal government have a voice in the composition of the Supreme Court. The Chief Justice is appointed by the President and confirmed by the Senate.

REMOVAL OF JUDGES IN INDIA AND THE UNITED STATES

INDIA

Article 124(4) ensures the guidelines for the removal of sitting Supreme Court judges. The process for removal of Supreme Court judges is guided by Article 124(4) of the Indian Constitution and the Judges Inquiry Act 1968. Article 218 of the Indian Constitution talks about the removal of judges of the High Court.

Removal proceedings against the judges of the Supreme Court or a High Court can be initiated in any house of the Parliament. For this:

- A minimum of 100 members of the Lok Sabha may give a signed notice to the speaker,
or
- A minimum of 50 members of the Rajya Sabha may give a signed notice to the
Chairman

The speaker or chairman may consult individuals and examine relevant content related to notice and according to that, he or she may decide to either admit or refuse to admit it.

After the motion is admitted, the Speaker of the Lok Sabha or Chairman of the Rajya Sabha

will form an Inquiry Committee as per Article 3(2) of the Judges (Inquiry) Act, 1968 to start investigating the complaint. It will consist of the following members:

- A Supreme Court Judge,
- A High Court Chief Justice, and
- A Jurist, as per the decision of the Speaker/Chairman

If such notices have been admitted in both Houses of Parliament, the Inquiry Committee will be formed together by the Speaker and the Chairman of the respective houses. In this scenario, the notice that has been on a later date will stand rejected. If such notices have been passed by both the Houses of Parliament on the same day, the Inquiry Committee will not be formed.

As per Article 124(4) of the Constitution, the motion is required to be adopted in each house by:

- A majority of the total membership of the House, and
- A majority of not less than two-thirds of members present and voting

If the motion is adopted by this majority in one house, the motion will be sent to the other house.

Article 124(4), after the motion is adopted in both houses by the required majority, is placed before the President of India, who will issue an order for the removal of the judge.

USA

Under Article 3 of the United States Constitution Federal judges can only be removed through impeachment by the House of Representatives and conviction in the Senate.

In the United States, the word ‘removal’ is merely the term for the proceeding that begins the process of removing an official from the government. Thus, while this particular section of the Constitution sets the broad outline for what is expected of a federal judge (that he or she sit in “good Behaviour”), other officials can be impeached as well, including the President of the United States himself (see Article 2, Section 4). The process of what is colloquially known as

impeachment contains two steps. The first step, the one that is technically the impeachment, is taken by the House of Representatives. By a simple majority, the House can vote to impeach a federal official. This process is akin to an indictment in an ordinary criminal proceeding. Then, once the official is impeached, the Senate holds a trial to determine if the official should be convicted, in which case the official is removed from office. The Senate, however, needs a two-thirds majority to convict.

ANALYSIS

In India, the process of removal of judges is very long unlike in the United States of America the removal of judges is a two-step process. In India, the removal of judges is very difficult unlike in the United States the removal of judges is not as difficult as in India.