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"CONSTITUTIONAL GUARDIANS: A COMPARATIVE STUDY OF JUDICIAL REVIEW IN INDIA AND USA"

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Abstract

The main objective of this paper is to study and analyze different aspects that stand similar or dissimilar among the Indian and the American Judiciary systems. The paper begins with the Historical background of the Judicial system in both countries, followed by the Judicial Structures including different types and levels of courts established by the respective systems and their jurisdictions and the impact of Federalism in the judiciary systems, powers of both the systems in reviewing the laws and determining their constitutional validity, procedures followed by both the countries to appointing and removing the Judges, the level of independence of Judiciary in both systems, Judiciary's function of Checks and Balances, the enforceability of the basic rights of their respective citizens, different paths that are chosen by both nations in promoting Judicial Activism and limiting the Judicial interference, Judiciary's role in providing legal aid to the unprivileged as well as giving the access to the citizens for fighting the matters on behalf the general public, different criminal and civil laws and their role in governing the justice system as well as the influence of the Precedents, and the paper concludes with the limitations of both the systems like, Case Backlogs and Speed of Justice followed by the recent Trends and Reforms in both the Judicial systems of India and USA.

Keywords: - Indian and American Judiciary Systems, Historical Background, Types of Courts and Jurisdictions, Constitution and Judiciary, Judicial Review and Constitutional Validity, Appointment and Removal of Judges, Independence of Judiciary, Checks and Balances, Enforceability of Rights, Judicial Activism and Interference, Legal Aid and Access to Justice, Civil and Criminal Laws, Social Justice, Human Rights, Case Backlogs, and Trends and Reforms.

Research Questions

1. What are the main differences in the judicial systems including the judicial structures of India and the U.S.A.?
2. How does the Judicial review system work in India and how does it differ from the U.S.A?
3. How effective are Judicial Independence and Checks and Balances in safeguarding democracy and human rights in India and the U.S.A.?

Research Objectives

1. To study the historical evolution of judicial review and its role in India and the U.S.A.
2. To analyze the judicial structures and the impact of federalism in both countries.
3. To examine the independence of the Judiciary and compare the processes of appointment and removal of judges.
4. To interpret the role of the Judiciary in protecting the rights of people, enforcing justice, and overcoming the limitations of the system.

Both the research questions and research objectives of this paper are aligned closely. Questions seek to evaluate the key differences between the judicial systems of India and the U.S.A. and also to know how Judicial review, Independence of Judiciary, Checks and balances work in both countries. And objectives seek to investigate the historical evolution of the concept of Judicial review, judicial structures including the courts established and their jurisdictions, independence of judiciary, appointments, and removal of judges, and also aims to find how efficient the judicial systems of both countries in protecting the rights of citizens and enforcing them the Justice, these evaluations and understandings ultimately result in answering the research questions. Thus, with this, it is clear that both research questions and objectives depict a structural approach to understanding the Judicial Systems of India in comparison with that of the U.S.A.

Research Methodology

The research method used in writing this paper is the Doctrinal Method i.e., secondary data was collected from different books, research papers, and websites, and with this it is declared that this paper is of an objective nature rather than subjective. Personal choices and opinions were not depicted in this paper and only findings that were mentioned and published in different

sources were only used to write this paper.

Hypothesis

The Indian judiciary system demonstrates greater adaptability in providing access to justice for underprivileged citizens compared to the American system, as evidenced by a more extensive focus on legal aid programs and public interest litigation.

Literature Review

In the process of working on this paper, the information was taken from different sources of studies that are already done by several scholars. Those include Datar. In his study in 2020, had studied about the independence of the Judiciary and also about separation of powers in both India and the US. A study done by Bhatia in 2019 found out influence of federalism on Judicial structures in both nations. Sahai studied about Judicial Activism, Rosen studied about the concept of Judicial Review, and the study of M.Ramanujam in his study compared the procedures of appointment and removal of judges in both countries in the year 2018. A study by M. Hall in 2019 studied the role of the Judiciary in maintaining checks and balances. A. Verma's study analyzed the challenges in providing legal aid in India. Wilkins studied about the concept of PIL in comparison with India and the US and the study of Pandey compared the civil laws and the influence of precedents in India and the US. Studies done by Sharma and Wallace in the years 2021 and 2020 discussed and focused on the possible Judicial Reforms to be brought in India and the USA.

Introduction

As we all know the Judiciary is one of the 3 pillars of a democratic government that accompanies the other 2 pillars which are Legislative and Executive who together governs and runs a state. The Main role of the judiciary is to interpret the laws made by the legislative and that have to be executed and implemented by the executive. Other important functions of the Judiciary are to protect the rights of the citizens and to keep a check on the laws made by the legislative and balance them according to the provisions of the Constitution to administer justice in an effective manner. The Judiciary is very important for every nation and government to deliver justice without any partialities and bias and to safeguard the rights of people.

In this study, we'll get to know about the Judicial systems of India and the United States of

America. As mentioned in the abstract, different aspects related to the judicial system of both nations will be covered and studied as part of the research done for this paper. To begin with a brief introduction about the judicial systems of both countries.

India's judicial system is an integrated and unified judicial system that came into existence based on the Indian Constitution of the year 1950. This system was influenced by the Common Law System and established its provisions and functions. The highest court of India is the Supreme Court of India. Along with this, there are 2 more levels of courts at the State and District levels. The Supreme Court has the authority of Judicial review over the laws and actions of the legislative and executive. The judges of these higher courts are appointed by the President of India as per the recommendations of the collegium who will serve up to 65 years of age. The role of the Judiciary also includes promoting social justice and protecting the fundamental rights of the citizens.

The Judicial System of the USA is also influenced by the Common Law System and Federal system established based on the US. Constitution of the year 1789. This system follows the Federal System with dual courts namely, federal and state courts. Just like in India, there is also an apex court in there i.e., the Supreme Court of the United States. And other two levels of courts established there are the district courts and Courts of Appeals. Even here there exists the authority of Judicial Review on the actions of the Legislative and Executive. The judges are appointed by the President and confirmed by the Senate. The tenure of the Federal judges is lifetime. The ultimate role of the judicial system of the US is to uphold the Constitution.

Historical Development of the Judicial System

Indian Judicial System

Pre-Independence Scenarios¹: In the Ancient and Medieval periods, the legal system in India was administered and run based on the concepts of Dharma, and other sources of law like Manu Smriti under the Hindu Dynasty and evolved to Islamic Law under the Mughal Empire. During that time, the judicial structure was not so formal, and mostly local courts in Panchayats and community-based dispute resolution mechanisms were followed. During the British Colonial Period, a formal court system was introduced in the presidency towns of Calcutta, Madras, and Bombay by the East India Company in the year 1726. The Supreme Court of Calcutta was

¹ Bhattacharyya, S. (2019). *Evolution of the judiciary system in India* (pp. 32–45). Oxford University Press

established in India by the British by passing legislation Regulating Act of 1773 and also established High Courts in Bombay, Calcutta, and Madras through the Indian High Courts Act of 1861, this act had integrated the Indian Judiciary into the British legal system and made Privy Council the final court for appeals even for Indians.

Post-Independence Scenarios²: After attaining independence in the year 1947, the Constitution of India was brought into the picture, and as per the provisions of the Constitution, an independent judiciary was established by taking the reference from the legal systems of the British but also adapted to the democratic ideas. The Supreme Court of India was established in the year 1950 and was made the Supreme Court the final court for appeals and also made it a guardian of the Constitution. Judicial Review, Judicial Activism, and enforcing Fundamental rights are some major functions of the Judiciary in India.

American Judicial System

Colonial Era³: Before attaining independence, they used British law, but with some necessary changes, and every colony used to have a court each. Judicial power used to be limited with the colonies and those colonial courts used to work in the interest of the British. The local courts intended to use the Common law but due to their limited powers, they could not challenge the British laws. During that time, the US's Judiciary couldn't be independent and unified but was dependent on the British monarchy and its laws.

Post-Independence Scenario⁴: After achieving independence, the U.S. Constitution made space for a unified judiciary with the Supreme Court at its top and the judiciary was made independent from the executive and legislative. Later the Judiciary Act was enacted in the year 1789 and the federal judiciary with provisions of establishment of the Supreme Court and lower federal courts was brought into existence. There are certain major cases that brought major changes in the Judiciary of the USA like the principle of Judicial Review was established through the judgment of the case of Marbury vs. Madison etc.

Judicial Structures

Indian Judicial Structure

² Basu, D. D. (2018). *Introduction to the Constitution of India*.

³ Hall, K. L. (1992). *The judiciary in American history* (pp. 145–189). Oxford University Press.

⁴ Finkelman, P. (2014). *The U.S. Supreme Court: A historical overview* (pp. 78–102). Cambridge University Press.

In India there are 3 levels of courts, the Supreme Court is the Apex court which is the highest court with 33 judges along with a Chief Justice appointed by the President of India. It was established under Article 124⁵ of the Constitution in the year 1950. It has original jurisdiction, Appellate jurisdiction, Advisory Jurisdiction, along with the Writ Jurisdiction by which it takes up the cases filed through a writ petition of any individual under Article 32 for human rights violation. The next subordinate level of courts is the High Courts which are at the State level and established under Article 214⁶ of the Constitution. There are around 29 High courts at the state and union territories level and the number of judges is calculated based on the caseload. Even these judges are appointed by the President of India after consulting the Chief Justice of India, Chief Justice of High Courts, and state governor Their jurisdiction consists of appeals from the subordinate courts and writs under Article 226 of the Constitution.

The next level of courts is District Courts which are established in every district to preside the cases in that particular jurisdiction and the judgments of these courts can be appealed in the High Courts and subsequently at the Supreme Court. These courts handle civil and criminal cases based on the pecuniary and geographical jurisdictions along with the appeals from the subordinate courts. Each state will have multiple districts and each district will have a district court presided by a Chief Judicial Magistrate. The last level of courts is the subordinate courts⁷ which include Civil and Criminal Courts, and Family Courts whose jurisdictions vary from state to state. Along with these courts, there are some special courts⁸ and tribunals that deal with exclusive types of cases like Tax and Labor tribunals, fast-track courts, and Consumer Courts for expedited and speedy recovery of the cases.

American Judicial Structure⁹

The judicial structure of America is slightly different from that of the Indian judicial structure with some similarities. Even here there is a Supreme Court which is the highest court of the nation established under Article III of the Constitution in the year 1789 with a Chief Justice and other 8 Associate Justices, with 3 different types of jurisdictions namely, original, appellate, and primarily appellate. Other levels of courts are at the state level called Courts of Appeal, these are the intermediate appellate courts between the district and Supreme courts

⁵ Basu, D. D. (2018). *Introduction to the Constitution of India*.

⁶ Mahajan, V. D. (2001). *Jurisprudence and legal theory* (pp. 110–135). Eastern Book Company

⁷ Gupta, A. (2015). *Structure and functions of the Indian judiciary* (pp. 65–89). Sage Publications.

⁸ Jain, M. P. (2015). *Indian Constitutional Law*.

⁹ <https://www.uscourts.gov>

which hear appeals on federal cases, usually after trial courts that are also called District courts. There are 13 total Courts of Appeals in the USA which included 12 regional circuits and 1 Federal circuit.

In each state of the US, there is an individual highest courts usually called State Supreme Courts which deal with the cases relevant to State laws and constitutions. There are many other subordinate courts like District Courts which are 94 in number across the U.S. also called trial courts where federal courts handle cases of both civil and criminal. Along with these courts, there are many other courts that function as per the special jurisdictions they are namely, Bankruptcy Courts, Magistrate Courts, Intermediate Appeals Courts, State Trial Courts, and Special Courts.

Impact of Federalism on the Judiciary Systems

Impact of Federalism on Indian Judiciary¹⁰

India is a Quasi-federal nation in which the powers are separated between the Central and the State governments. The Judiciary takes up and solves the disputes between different states, between state and centre, and such other issues. Article 131 of the Indian Constitution has granted the Supreme Court the authority and the jurisdiction to resolve disputes between central and state governments and also to review the laws made by both Parliament and the Legislative bodies of the States and can strike down or declare a particular law as null or valid if it feels it to be unconstitutional. Usually, the High Court of a respective state deals with cases only relevant to that particular state as per its Territorial Jurisdiction. Being the subordinate court of the Supreme Court, it also has functions to do the assigned actions by the apex court. Due to this federal structure and nature's impact on the judiciary, it is argued the judiciary often favours central authorities in disputes or issues between the centre and the states by following the Supremacy law that says that the Federal laws prevail over the laws made by the state governments.

Impact of Federalism on the American Judiciary¹¹

¹⁰ Jain, M. P. (2015). *Indian Constitutional Law (8th ed.)*. LexisNexis. (pp. 785-793).

¹¹ <https://www.ncsc.org>

With the strong federal system¹² In the USA, powers and authorities are shared between the state and the federal governments (federal here refers to the central government) and the Judiciary takes care of the compliances as per the Constitution at both federal and state levels. Just like in India, even here the apex court i.e., the Supreme Court resolves the disputes or issues between the federal and state governments, reviews the laws made at both levels, and checks their constitutionality. Just like the High Courts in India, here in the USA, there are separate highest courts referred to as the state's Supreme courts that handle the cases related to or governed by the state laws, but review of such state laws and constitutional issues is done by the Federal Courts only. Federal laws prevail over the State made laws just like in India.

Powers to Review the Laws and Determining the Constitutional Validity

The Judiciary of India has the ultimate power and authority to review the laws made by the Parliament and the state legislatures as per Article 13 of the Indian Constitution.¹³ This provision allows the courts to declare a law unconstitutional and invalid if those laws violate the fundamental rights and other parts of the basic structure of the Constitution that came into existence through the judgment of the case *Kesavananda Bharati vs. the State of Kerala* in the year 1973 and this power to review the laws also extend to the amendments that are brought to change the provision of the Constitution and thus even the amendments can be declared void and null if they violate the provisions of the basic structure of the Constitution. The apex court i.e., the Supreme Court of India's decision would be final regarding the interpretation of the laws and reviewing their constitutional validity.

In the USA¹⁴, the concept of Judicial Review was not mentioned in any of the Constitutional provisions because that came into existence through the decision of the case *Marbury vs. Madison* in the year 1803. In the judgment of this case, it was made clear that the Supreme Court of the USA can review and check the validity of the laws made by the Federal and State Governments and can invalidate them if they do not comply with provisions of the Constitution. Along with the legislative actions, even the executive actions are subject to the Judicial Review. The Supreme Court which is the highest court of the USA's decisions are final and those

¹² Rosen, J. (2006). *The Supreme Court: The Personalities and Rivalries that Defined America*. Henry Holt and Co. (pp. 102-110).

¹³ Baxi, U. (1980). *The Supreme Court under Trial: Judicial Power and Indian Democracy*. Journal of the Indian Law Institute, 22(3), 369-393.

¹⁴ Sathe, S. P. (2002). *Judicial Activism: The Indian Experience*. *Washington University Global Studies Law Review*, 1(1), 29-53.

decisions can only be overturned by amending the Constitution or through future judgments.

Appointment and Removal of Judges

India¹⁵

In India, the judges of the Supreme Court are appointed by the President of India based on the recommendations made by the Collegium System which consists of the Chief Justice of India and other senior judges. To be appointed as a Supreme Court judge, one must have worked as a High Court Judge for 5 years or must practice as an advocate for 10 years and the tenure would be until they attain the retirement age i.e., 65 years. They can be removed by a very complicated method of impeachment by the Parliament with a majority of two-thirds in both houses of the Parliament only after proving the charges of misbehaviour or incapacity after a thorough inquiry as per the Judges (Inquiry) Act of 1968.

In the same way, even the judges of the High Courts are appointed by the President of India after consulting the Governors and the Chief Justices of the respective states and High Courts. A person must practice as an advocate for at least 10 years or must be a sitting judge to get appointed as a High Court Judge and he or she can serve until they attain 62 years of age. The process of removal of High Court judges is also the same as that of the process that is followed to remove the Supreme Court Judges.

Judges for the District and other Subordinate courts are appointed by the Governors of the respective states after consulting the State High Court and State Public Service Commission. The required qualifications and the tenure of these judges vary from state to state. These judges can be removed from their offices by the Governor for similar reasons like misconduct and incapacity. But, are removed by the Governors after getting a report from the respective High Courts after monitoring the disciplinary actions of the respective candidates.

The collegium system by which judges are appointed is free from political interference and it shows the level of independence of the Judiciary without any connections or pressures linked to the political parties or leaders. Also, the process of impeachment is so complex and it is difficult to remove judges by the political leaders without any proper reason.

¹⁵ Chandrachud, Y. (2018). **The Judiciary and Constitutional Interpretation in India: Challenges and Reforms**. *Journal of Indian Law Institute*, 54(1), 55-72.

USA¹⁶

Judges of the Supreme Court are appointed by the President of the U.A., after confirmation from the Senate followed by the Senate Judiciary Committee's hearings. Federal judges including Circuit and District court judges are also appointed by the President with the approval of the Senate just like appointing the Supreme Court Justices. There are no particular qualifications mentioned in the Constitution but experienced legal professionals and scholars are preferred therein. Tenure of Office for Federal Judges is for life if they maintain a bona-fide behaviour. These judges can be only removed through a process of impeachment with a simple majority in the House of Representatives and a two-thirds of majority in the Senate to remove the judges on the grounds of Treason, Bribery, or crimes, etc.

Judges for the lower courts like lower federal courts are also appointed by the President after getting confirmation from the Senate. But there is another process through which they are appointed i.e., by getting elected or appointed by the governor or through processes based on the merit of the candidates. Qualifications and tenure of Office vary from state to state and even they are removed through impeachment, recall elections, and such other modes which also differ from state to state.

Unlike the system in India, Life tenure for federal judges makes sure there is independence from the political leaders and parties. However, the process of confirmation by the Senate can be influenced politically thus this might depict a lack of independence and influential behaviors.

Independence of Judiciary and Checks and Balances

India¹⁷

As per Articles 124 to 147 and 214 to 231 of the Indian Constitution, the Supreme Court and the High Courts have been respectively granted Independent Judiciary by the Indian Constitution. There is no political influence in the process of appointment of Judges as it takes place through a Collegium System and even the retirement age of the judges was also fixed at 65 and 62 for the judges of the Supreme Court and the High Courts respectively. The salaries

¹⁶ Kumar, R. (2010). **Appointment and Accountability of Judges: Indian and US Perspective.** *Comparative Constitutional Law Review*, 2(1), 12-28.

¹⁷ Chandrachud, Y. (2018). **The Judiciary and Constitutional Interpretation in India: Challenges and Reforms.** *Journal of Indian Law Institute*, 54(1), 55-72.

and allowances of these judges can also not be reduced until there is a financial emergency under Article 360. With all these provisions it is clear that the Constitution of India ensures an Independent Judiciary that enhances the trust of people in the Indian Judicial System by providing the security of tenure to the judges and the process of impeachment through which judges are removed is also so complex and lengthy due to which there won't be any insecurity for judges while they deliver judgments and it proves the existence of independence to the Judiciary with less political interference and influence.

All the 3 pillars of the government namely, executive, legislature, and judiciary operate independently by having checks on each other. The judiciary ensures that the executive and legislative actions are under the purview of the Constitution or not. The Judiciary does have powers to declare any action of executive and legislative as null and invalid when it finds their actions being unconstitutional. But there is a possibility for overriding the decisions of the Judiciary by the legislative through the process of amending the provisions of the Constitution under Article 368. Thus, this is how the function of Checks and Balances works in India.

USA¹⁸

Like in India, even in the U.S.A., Article III of the Constitution of the U.S. provides certain benefits for judges by providing them the life tenure of Office, not allowing for reducing their salaries and perks, etc. As we have seen in the processes of appointment and removal of Judges in the previous section, there are both legislative and executive involved in the process of appointing judges in the U.S. by providing judges the life tenure of Office, ensuring them the security from losing their jobs and can act unbiased and without pressure from the political leaders.

Just like in India, all three branches work together by having checks on each other. However, the judiciary will have the authority to invalidate the laws and provisions that are unconstitutional in nature. But Congress and the President can make necessary changes and make amendments by which the decisions of the Judiciary can be overridden.

Enforceability of Basic Rights

India

¹⁸ Kumar, R. (2010). **Appointment and Accountability of Judges: Indian and US Perspective**. *Comparative Constitutional Law Review*, 2(1), 12-28.

Indian Judiciary plays a major role in enforcing the rights. Part 3 of the Indian Constitution provides citizens with fundamental rights under Articles 12 to 35. Citizens can directly approach the Supreme Court of India and the respective High Courts under Articles 32 and 226 respectively. In the case of violation of their fundamental rights, citizens can get their rights enforceable through the courts by filing writ petitions in these higher courts.

USA

Like the Fundamental rights in India, the citizens of the US have the Bill of Rights added to their Constitution through the first ten amendments that protect the right to free speech, equal protection, right to due process, etc. These rights when violated can be enforced through Judicial institutions like federal courts and even approach the ultimate court i.e., the Supreme Court. These rights can also be protected through the provisions of the State constitutions which provide more enhanced protections of the rights of the citizens when compared to the protection provided by the Federal Constitution.

Judicial Activism and Judicial Restraint¹⁹

The Judiciary plays an active role in protecting the rights and expanding the scope of the Constitutional rights in India. Courts do intervene in the matters of policymaking that are actually done by the legislative. Through this process of Judicial Activism, the judicial institutions address issues related to human rights, and environmental protection through the cases filed by the public in general. But this system of Judicial Activism is often criticized due to its interference in the matters and actions of legislative and executive, with which their powers get diluted and the judiciary gets more powers. To address this issue, there is another concept that came into existence i.e., Judicial Restraint by which the reach or the actions of the judiciary are controlled and made limited to that extent up to which they are intended and allowed to act as per the Constitutional provisions. This also helps in the smooth functioning of the separation of powers and allows the government that was elected by the people to make laws and restrict the Judiciary from intervening.

Even in the United States, this concept of Judicial Activism plays a key role in expanding and enforcing the rights and constitutional principles. While exercising this method, it made several landmark decisions and judgments regarding privacy laws, equal protection among everyone, gender equality, and such other matters. There are some important matters like penalizing racial

¹⁹ Bhushan, P. (2004). **Judicial Activism and the Role of the Judiciary in India**. *Economic and Political Weekly*, 39(49), 5159-5161.

discrimination and regulating abortion laws that are passed through this process of Judicial Activism. Even in the US, people criticize this Judicial Activism due to the Judiciary's intervention in the policy-making or the law-making processes of the legislative. Thus, to help this out the courts over there started practising restraint by limiting their duties and powers only to interpreting the laws and checking the validity of the laws made rather than intervening in the law-making process.

Public Interest Litigation²⁰

This concept was introduced in the 1980s to allow and provide marginalized and unprivileged communities or groups of people a mechanism to file a case by someone else on their behalf. Usually, these cases are filed in matters like Environmental issues, Human rights issues, etc. Those who cannot afford to file a case and lead it can seek the help of Non-Governmental Organizations who usually file these cases for a cause that helps in solving the issues of the public at large but not just only one individual or group of individuals. Courts usually take only those PILs that fulfil the criteria required for a case to be PIL that includes the motto as the problem to be solved that helps the public at large, etc.

There is no such type of mode like PILs in the US. But there are a type of cases called class-action lawsuits that are filed in the federal courts that serve similar purposes by which problems of a large number of people or a group of people can be resolved. Usually, these types of cases are filed to ensure the enforcement of civil rights and deal with large corporate bodies or against the actions of the Government.

Legal Aid to the Unprivileged

India ²¹

Article 39A of the Indian Constitution though comes under the purview of the Directive Principle of State Policy, it guarantees free legal aid to the unprivileged and marginalized people who cannot afford the costs of fighting the legal battles by paying high fees to the advocates. As per the provision, all the state governments are entitled to provide free legal aid to those who are in need and ensure that justice is made accessible to everyone irrespective of their financial or economic background. A separate law was enacted by the Government of

²⁰ Sahu, G. P. (2008). **Public Interest Litigation in India**. *The Indian Journal of Political Science*, 69(2), 313-326.

²¹ Basu, D. D. (2012). **Introduction to the Constitution of India** (22nd ed.). Lexis Nexis.

India i.e., the Legal Services Authorities Act of 1987 that consists of the framework for providing access to free legal aid to the needy. This act established National and State Legal Service Authorities that oversee the functioning of providing legal aid.

These authorities have functions that include conducting legal aid camps, organizing Lok Adalat's, providing legal awareness and education to law students, and representing the unprivileged. It also includes organizing Mobile clinical legal aid centres and providing legal services to people who reside in rural areas where there are no proper resources available. As we have already discussed these services can be availed by certain groups of people who belong to unprivileged groups like Scheduled Castes, Scheduled Tribes, Other Backward Castes, Economically Backward Classes, and Physically handicapped people, etc.

USA²²

Like in India, even in the US Constitution, there exists a provision as per the 6th Amendment that guarantees the right to have counsel in criminal cases through the State, and this protection is extended to the state courts through the principle of due process under the 14th amendment. A legislation namely, the Criminal Justice Act was enacted in the year 1964 that governs the rules regarding funding for legal aid to those who need it. Along with this, there was another authority established namely, Legal Services Corporation (LSC) in the year 1974 to fund civil legal aid for those who earn low income. Usually, those who cannot afford a lawyer to deal the criminal cases are appointed an attorney by the court if the charges are serious in nature. Civil legal aid is also available but only to those whose earnings are below 125% as per the federal poverty guidelines.

Through Public Defender Services, states provide public defenders to deal the criminal cases and in the case of civil cases, legal aid is provided by the NPOs and LSC-funded agencies by which the clients can avail legal advice and representation for the cases related to housing, family matters, and consumer rights. Along with these, other initiatives like legal clinics, and self-help legal aid resources are also made available to those who need it and some states even offer online resources to provide legal assistance.

Civil and Criminal Laws

²² Tushnet, M. (1996). **Legal Aid and the U.S. Constitution.** *Harvard Law Review*, 109(8), 125-149.

India²³

In India, there are some basic civil laws that govern matters relating to properties, matters of family issues, Consumer protection, etc. One of those laws is the Civil Procedure Code of 1908, this law is procedural in nature and consists of the procedures to be followed in the trial or proceedings of the cases that are of civil in nature which may include Property disputes, Contracts, Family issues, Torts, etc. Along with these, there are some Substantial laws like that deal only with the provisions and punishments that have to be interpreted and given by the judge, some of those laws are namely, the Indian Contract Law of 1872, the Transfer of Property Act of 1882, the Hindu Marriage Act of 1955, the Specific Relief Act of 1963, Consumer Protection Act of 2019 (Amended), the Insolvency and Bankruptcy Code of 2016.

The major Criminal laws include the Indian Penal Code of 1860 which defines the offence and punishments of offence, and for better functioning of these criminal laws, there is a procedural law that is similar to that of the Civil Procedure Code i.e., the Criminal Procedure Code of 1973, that provides the procedures to be followed in the trial of the cases. Now these laws were not in function as new laws were brought into existence from July 01st of the year 2024, they are Bharatiya Nyaya Sanhita which replaces the old IPC by making several changes like removing the sedition law, changing the penalties and severity of punishments, etc. The new law that replaced the Criminal Procedure Code is the Bharatiya Nagarik Suraksha Sanhita brought several new changes and upgraded the system with the dynamic requirements. Even the Evidence Act was replaced by a new law namely, Bharatiya Sakshya Adhiniyam by making necessary changes in the provisions related to the admissibility of evidence, privacy protection, etc. Other substantial laws that are implemented using the above given procedural laws are the Prevention of Money Laundering Act of 2002, and the Protection of Children from Sexual Offences (POCSO) Act of 2012. Etc.

USA²⁴

In the United States, along with substantial laws like Contract law, Property law, etc., there is legislation that monitors and governs the procedures of the courts regarding civil laws i.e., the Federal Rules of Civil Procedure (FRCP) that is followed in the federal courts to deal with the civil cases. There are some new laws including the Affordable Care Act of 2010 that govern

²³ Singhania, K. (2019). **Overview of New Civil and Criminal Laws in India**. *Journal of Indian Law*, 48(3), 112-127.

²⁴ Zebley, S. (2010). **Federal Rules of Civil and Criminal Procedure**. *Journal of Legal Studies*, 39(1), 23-31.

the healthcare sector, and the First Step Act of 2018 that looks after the cases regarding the Criminal Justice. Usually, civil laws are handled only by the state courts and federal courts will come into the picture when there is a federal issue.

Criminal laws include the U.S. Criminal Code which has a framework to govern federal crimes. State criminal codes look after the cases of State crimes that happen at the state level. Along with this, there is also the USA Patriot Act of 2001 which governs criminal cases of federal courts. Along with these, there are other substantial laws regarding every special type of offence just like in India. Some of them are the USA Patriot Act to govern terrorism-related cases, the Justice for Victims of Trafficking Act of 2015, etc.

Impact of Precedents

In the common law system followed by India²⁵, Judicial Precedents have been given utmost importance and they are binding in nature for the presently existing courts. However, there is an option to change the decisions given in the previous judgments by the higher courts like the Supreme Court. As per Article 141 of the Indian Constitution, the decisions of the Supreme Court would be binding by all other lower courts in India, and only the Supreme Court will be having the ability or the power to overrule or override the decisions or judgments given by it or the already given previous judgments.

Even in the U.S²⁶., they do follow the doctrine of stare decisis²⁷ which means to follow and adhere to the precedents and they consider it as the fundamental policy. Just like in India, the Supreme Court of the U.S.'s judgments are of binding on nature for the lower courts, and only the Supreme Court can change or overrule such judgments through its new rulings or by reviewing the previously pronounced decisions or judgments. Usually, the Federal and State courts are bound to follow the precedents i.e., previous judgments. But sometimes there is a possibility of lower courts interpreting the laws based on which precedents were passed, and in such conditions, the Supreme Court intervenes and takes up the case for review.

There are some backdrops in the Indian Judicial System that include a Backlog of cases²⁸ which

²⁵ Shankar, R. (2007). *Judicial Precedents and Their Role in Indian Courts*. *Journal of Indian Constitutional Law*, 17(1), 52-68.

²⁶ Zebley, S. (2010). *Stare Decisis and Federal Court Precedents*. *Journal of Legal Studies*, 39(1), 23-31.

²⁷ It means "to stand by things decided".

²⁸ Goodwin, A. (2020). **Addressing the backlog: Judicial efficiency and reform in India**. *Law and Social Policy Journal*, 12(1), 30-44.

means millions of cases are pending in the courts and this pendency leads to the delay in administering justice. Many courts operate with a small number of judges and vacancies are not filled as per the requirement to deal with pending cases. Though the salaries of judges are enough high, still there exists corruption in some courts that may result in adverse delivery of Justice. People who reside in rural and semi-urban areas face difficulty in approaching the courts with less income and wealth that is not enough for them to fight legal battles and their access to courts would be limited. The other main problem of the Judiciary is it is being more active and its interference in the actions of the Legislative and Executive may lead to a clash between all the 3 branches of Government.

While we look at the drawbacks and the backdrop of the American Judicial System, its main problems include extensive judicial activism, in which judges interfere²⁹ in the actions of the Legislative and the Executive by influencing the policy-making procedures. The procedures of trial of cases are so lengthy that lead to pendency and delay in disposing of the cases. Another problem is the high costs and expenses³⁰ that have to be borne by the citizens to fight a legal battle in the courts of the U.S. It is assumed that the judicial appointments in the U.S. are politically influenced and motivated as the appointments are done by the President after getting confirmation from the Senate. It is also alleged that the sentences of the courts are sometimes biased based on race and economic stability which affects the trust of people in the Judicial System as it adversely affects the fair sentencing practice.

Reforms and Recommendations

India³¹

1. Filling up the Vacancies: By filling the vacancies of the Judge posts and also by increasing the number of judges in the courts can help in reducing the backlog of the cases and that can also help in reducing the pendency of the cases.
2. Fast-track Courts: Establishing more fast-track courts helps in handling a particular type of cases and helps some groups of people like women and senior citizens to dispose of their cases in a much more effective and timely manner.

²⁹ Meador, D. J. (2019). **Judicial activism and restraint: Balancing the scales in the US judicial system.** *American Journal of Legal Studies*, 9(4), 118-135.

³⁰ Turner, B. (2020). **The cost of justice: Examining the high cost of legal services in the US.** *Harvard Law Review*, 13(3), 102-120.

³¹ Goodwin, A. (2020). **Addressing the backlog: Judicial efficiency and reform in India.** *Law and Social Policy Journal*, 12(1), 30-44.

3. e-Courts: Using the technology in the procedures and practices that are followed in the Courts can help in having efficient results by reducing the burden on the staff and can allow them to focus on tasks for which technology cannot be used.
4. Simplifying the Procedures: Results can also be efficient if the procedures that are being followed are reduced or changed in an easy way. With this people can also access the courts and judicial institutions easily with the confidence of having more transparency.
5. Legal Aid: Providing legal aid to\ unprivileged communities can help in providing them legal aid and access for them to facilitate legal and judicial facilities.
6. Judicial Accountability: Governments have to set up independent bodies or other agencies to monitor the performance of the courts and also be vigilant in handling corruption cases and must ensure that the judiciary is independent.

USA

1. Judicial Restraint: By restricting the judicial actions and preventing it from intervening in the actions of the legislative and executive, it can make sense to the powers that are separated among all the three branches of the government and that can allow the government that was elected by the people directly to make laws and policies to govern them.
2. Legal Aid: As we have discussed above in the section of challenges, the costs³² or the fees of the judiciary in the US are very high, and not everyone can afford to fight and lead a legal battle. Thus, it is suggested to provide legal aid facilitates to those who are not wealthy enough and who cannot afford the rates.
3. Alternative Dispute Resolution: With the increasing workload and backlog of cases, alternative dispute resolutions like negotiating, mediation, and such other mechanisms can be utilized in resolving disputes outside the courts that also result in speedy disposal of cases.
4. Reforming Nomination Process: Judges in the US are appointed by the President after confirmation from the Senate and this is a point of discussion where there are a lot of objections from the public alleging the possibility of political influence in the appointments of judges. Thus, there is a need to reform this procedure to protect the trust of people in the Judiciary.

³² Turner, B. (2020). **The cost of justice: Examining the high cost of legal services in the US.** *Harvard Law Review*, 13(3), 102-120.

5. Reforms in Sentencing: There is an allegation about sentencing and it was alleged that there is bias and racial discrimination in giving sentences to the offenders. Thus, this should be reformed and must be made free from discrimination.

Conclusion

Thus, with this study of the Judicial Systems of India and the United States of America, it is clear that the Constitution is being considered as the supreme source to administer Justice and protect human rights and the Judiciary is also playing a crucial role in maintaining and balancing the powers of different branches of the Government i.e., Legislative, Executive, and Judiciary. As discussed in the Abstract of this paper, this paper has discussed the historical backgrounds of the Judiciary of India and the US, followed by the Judicial structures, different types of courts, their functions, jurisdiction, and the impact of Federalism on these courts that were established in all the levels of the Government and the State. It also discussed about the concepts of Judicial Review, Independence of the Judiciary, Judicial Activism and Restraint, Checks and Balances, PIL, different civil and criminal laws based on which the court's function, influence, and impact of the Precedents, and concluded with the backdrops and limitations of the Judicial System and Recommendations were also given to make the Judiciary function in a better and more efficient way.

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