

INDEPENDENCE OF JUDICIARY, JUDICIAL ACTIVISM, AND ACCOUNTABILITY: INDIA, UK AND USA

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Abstract

This paper examines the critical interplay between judicial independence, judicial activism, and judicial accountability in three major democratic jurisdictions: India, the United Kingdom, and the United States. These concepts are pivotal in ensuring a fair, impartial, and effective judiciary, which is foundational to the rule of law and democratic governance. The primary objective of this comparative study is to analyze how judicial independence, activism, and accountability are manifested and upheld in India, the UK, and the USA. The paper seeks to identify commonalities and differences in the legal frameworks, practices, and challenges faced by the judiciary in these countries. It reviews constitutional provisions, legislative frameworks, landmark case laws, and existing literature to draw parallels and contrasts among the three countries.

In terms of judicial activism, the study finds that India exhibits a more pronounced form of activism through Public Interest Litigation (PIL), while the UK and USA show varied levels of judicial engagement. The analysis also underscores differences in accountability mechanisms, with the USA having a more structured system compared to India and the UK. The findings of this study have significant implications for policymakers and legal practitioners in the respective countries. The study advocates for balanced judicial activism that respects the boundaries of judicial overreach, and it emphasizes the need for robust accountability mechanisms to maintain judicial integrity. Recommendations include the adoption of best practices from each jurisdiction to enhance the overall effectiveness of the judiciary. This paper contributes to the understanding of how judicial independence, activism, and accountability can be harmonized to strengthen democratic institutions. By comparing the experiences of India, the UK, and the USA, it offers valuable insights into achieving a more balanced and effective judiciary.

Keywords- *Judicial Independence, Judicial Activism, Judicial Accountability, Comparative Analysis, Democratic Governance.*

INTRODUCTION

In democratic societies, an independent judiciary is a cornerstone for the maintenance of the rule of law, safeguarding individual rights, and ensuring fair governance. Judicial independence allows courts to make decisions free from external pressures, while judicial activism empowers the judiciary to play an active role in protecting constitutional values and promoting social justice. Judicial accountability, on the other hand, ensures that the judiciary remains answerable to the people and maintains its integrity and credibility. These principles are essential for the proper functioning of any democratic system, particularly in the complex and evolving legal landscapes of India, the United Kingdom, and the United States

The judicial systems of India, the United Kingdom, and the United States have evolved through distinct historical and constitutional paths, each reflecting the unique political and social contexts of their respective countries. India's judiciary, rooted in the common law tradition inherited from the British colonial era, has developed a robust system of Public Interest Litigation (PIL) that allows for proactive judicial intervention in social issues. The UK's judiciary, steeped in centuries of common law tradition, has undergone significant reforms with the establishment of the Supreme Court in 2009, enhancing its independence from the legislative and executive branches. In contrast, the US judiciary, founded on a written Constitution, is characterized by a strong emphasis on judicial review and the separation of powers, with the Supreme Court playing a pivotal role in shaping national policies.

Judicial independence refers to the ability of judges to make decisions free from external influences, ensuring that justice is administered impartially. Judicial activism denotes the proactive role of the judiciary in interpreting the law to address social injustices and protect constitutional values, often stepping beyond traditional judicial boundaries.

Objectives of the study

This research aims to conduct a comparative analysis of judicial independence, judicial activism, and judicial accountability in three major democratic jurisdictions: India, the United Kingdom, and the United States. By examining the legal frameworks, landmark cases, and practical challenges in these countries, the study seeks to identify similarities and differences, providing a deeper understanding of how these principles are upheld and balanced in diverse judicial

contexts. The ultimate goal is to derive insights and recommendations that can enhance the effectiveness and integrity of judiciaries globally.

CHAPTER 1: JUDICIAL INDEPENDENCE

1.1 Definition and Importance

Judicial independence refers to the ability of the judiciary to make decisions free from external pressures, ensuring that justice is administered fairly and impartially. This concept is fundamental to the rule of law and the separation of powers, which are core principles of democratic governance. The theoretical framework of judicial independence encompasses several dimensions, including personal independence (protection from external influences), substantive independence (freedom to make decisions based on law and facts), and internal independence (autonomy within the judicial hierarchy). Theories such as Montesquieu's separation of powers and the functionalist theory emphasize the necessity of an independent judiciary for maintaining checks and balances within the government.

1.2 Judicial Independence in India

In India, judicial independence is enshrined in the Constitution, which provides a robust framework to protect the judiciary from external influences. Article 50 mandates the separation of the judiciary from the executive, ensuring that judges can perform their duties without interference. The provisions related to the Supreme Court (Articles 124-147) and the High Courts (Articles 214-231) establish the structure, powers, and functioning of the judiciary, emphasizing its independence. Additionally, the process of appointing and removing judges, as outlined in the Constitution, aims to maintain judicial autonomy.

1.3 Judicial Independence in the UK

The concept of judicial independence in the UK has evolved over centuries, with several key milestones marking its development. The Magna Carta of 1215 laid the foundation for an independent judiciary by asserting that justice should not be sold, denied, or delayed. The Act of Settlement 1701 further cemented judicial independence by ensuring that judges could not be removed from office except by an address of both Houses of Parliament. More recently, the Constitutional Reform Act 2005 significantly enhanced judicial independence by establishing the Supreme Court of the United Kingdom, thereby separating the judiciary from the legislative and

executive branches.

1.4 Judicial Independence in the USA

The United States Constitution provides a robust framework for judicial independence, primarily through Article III, which establishes the judicial branch. Article III grants judges life tenure and protection against salary reductions, ensuring that they can make decisions without fear of retribution. The Constitution also outlines the process for appointing and removing judges, involving the President and the Senate, which aims to maintain a balance between judicial independence and accountability. Additionally, various amendments and statutes have further reinforced judicial independence over time.

CHAPTER 2: JUDICIAL ACTIVISM

2.1 Definition and Scope

Judicial activism refers to the proactive role of the judiciary in interpreting and applying the law to address social injustices, protect constitutional rights, and promote public welfare. Unlike judicial restraint, which advocates for minimal judicial interference in legislative and executive actions, judicial activism emphasizes the judiciary's responsibility to correct societal wrongs and fill legislative gaps.

2.2 Judicial Activism in India

Judicial activism in India has evolved significantly since the country's independence. Initially, the Indian judiciary adopted a cautious approach, focusing primarily on interpreting the law without challenging legislative and executive actions. However, the post-Emergency period (1975-1977) marked a turning point, with the judiciary becoming more assertive in safeguarding constitutional rights. Judges such as Justice P.N. Bhagwati and Justice V.R. Krishna Iyer were instrumental in promoting judicial activism, particularly through the development of Public Interest Litigation (PIL). This period saw the judiciary taking a proactive stance in addressing issues of social justice, environmental protection, and human rights.

Notable examples of judicial activism:

Several notable cases exemplify judicial activism in India. The *Kesavananda Bharati vs. State of*

Kerala (1973) case is a landmark example, where the Supreme Court established the Basic Structure Doctrine, asserting its authority to review and strike down constitutional amendments that alter the fundamental framework of the Constitution. The Maneka Gandhi vs. Union of India (1978) case expanded the scope of Article 21, interpreting the right to life and personal liberty to include a wide range of rights and protections. Another significant case, the Vishaka vs. State of Rajasthan (1997) judgment, laid down guidelines to address sexual harassment at the workplace, filling a legislative void and providing a framework for future laws.

2.3 Judicial Activism in the UK

Judicial activism in the UK has a rich history, evolving through various social and political contexts. Historically, the UK judiciary was known for its adherence to judicial restraint, with courts deferring to parliamentary sovereignty. However, in recent decades, there has been a shift towards a more activist approach, particularly in the context of human rights and administrative law. The incorporation of the European Convention on Human Rights (ECHR) into UK law through the Human Rights Act 1998 marked a significant development, empowering courts to review and challenge legislative and executive actions more vigorously. Influential judges like Lord Denning and Lady Hale have played pivotal roles in promoting judicial activism in the UK. Influential cases :

Several influential cases highlight the evolution of judicial activism in the UK. The GCHQ case (Council of Civil Service Unions vs. Minister for the Civil Service, 1985) established the principle of judicial review of executive decisions, emphasizing the importance of procedural fairness. The Belmarsh case (A vs. Secretary of State for the Home Department, 2004) saw the House of Lords ruling against the indefinite detention of foreign terror suspects, reinforcing human rights protections. The Miller cases (R (Miller) vs. Secretary of State for Exiting the European Union, 2017, and R (Miller) vs. The Prime Minister, 2019) asserted judicial oversight over executive actions related to Brexit, affirming the judiciary's role in upholding constitutional principles.

2.4 Judicial Activism in the USA

Judicial activism in the USA has evolved through distinct historical phases, reflecting the changing social and political landscape. The early 20th century saw the judiciary adopting a more restrained approach, but this shifted dramatically during the mid-20th century with the Warren Court (1953-1969), which is often cited as the epitome of judicial activism. Under Chief Justice Earl Warren, the Supreme Court issued landmark rulings that expanded civil rights and liberties, such as *Brown vs. Board of Education* (1954) and *Miranda vs. Arizona* (1966). Subsequent courts have continued to shape judicial activism, with justices like William Brennan and Thurgood Marshall advocating for an expansive interpretation of constitutional rights.

Impactful cases and decisions

Several impactful cases exemplify judicial activism in the USA. *Brown vs. Board of Education* (1954) is a landmark decision that declared racial segregation in public schools unconstitutional, significantly advancing civil rights. The *Roe vs. Wade* (1973) decision, which recognized a woman's right to choose an abortion, has had profound implications for reproductive rights. More recently, *Obergefell vs. Hodges* (2015) legalized same-sex marriage nationwide, reflecting the judiciary's role in addressing evolving social norms and ensuring equal protection under the law. These cases demonstrate how judicial activism can drive social change and protect individual rights.

CHAPTER 3: JUDICIAL ACCOUNTABILITY

3.1 Concept and Importance

Judicial accountability refers to the mechanisms and processes by which judges are held responsible for their conduct and decisions. It is essential for maintaining public trust, ensuring judicial integrity, and upholding the rule of law. Judicial accountability ensures that judges adhere to ethical standards and are answerable for their actions while preserving their independence. Theoretical foundations of judicial accountability include principles of transparency, fairness, and responsibility, which help balance judicial independence and the need for oversight.

3.2 Judicial Accountability in India

Constitutional and legislative framework : In India, several constitutional provisions address

judicial accountability. Articles 124 to 147 of the Constitution outline the structure and functioning of the Supreme Court, while Articles 214 to 231 cover the High Courts. The Constitution provides mechanisms for the removal of judges through impeachment, requiring a two-thirds majority in Parliament, as outlined in Articles 124(4) and 217(1)(b). The judiciary is also subject to scrutiny through Public Interest Litigation (PIL), allowing citizens to challenge judicial conduct and decisions. However, the implementation of these provisions often faces challenges, such as political influence and procedural complexities, highlighting the need for more robust mechanisms.

3.3 Judicial Accountability in the UK

Legal provisions and practices : In the UK, statutory provisions for judicial accountability are outlined in various laws, including the Constitutional Reform Act 2005. This Act established the Judicial Conduct Investigations Office (JCIO) and the Judicial Appointments and Conduct Ombudsman, which play key roles in overseeing judicial conduct and addressing complaints against judges. These bodies investigate allegations of misconduct and can recommend disciplinary actions. The implementation of these provisions has generally been effective in maintaining high standards of judicial conduct.

3.4 Judicial Accountability in the USA

Framework for judicial accountability: Article III of the U.S. Constitution provides for life tenure for federal judges, ensuring judicial independence. However, to balance this independence with accountability, the Judicial Conduct and Disability Act of 1980 establishes procedures for addressing judicial misconduct and disability. The Act allows for the filing of complaints against judges and sets out processes for investigation and resolution.

CHAPTER 4: COMPARATIVE ANALYSIS

4.1 Independence of Judiciary

Comparative strengths and weaknesses

India	UK	USA
<p>The judiciary in India enjoys significant independence, bolstered by constitutional provisions and judicial pronouncements.</p> <p>The "basic structure" doctrine ensures that certain aspects of the Constitution, including judicial independence, cannot be amended.</p> <p>However, challenges such as political interference in judicial appointments and the over-reliance on judicial discretion can sometimes undermine this independence.</p>	<p>The UK's judiciary is considered highly independent, with strong institutional frameworks such as the Constitutional Reform Act 2005, which established the Supreme Court and reduced the influence of the executive on the judiciary.</p> <p>Nonetheless, the traditional appointment processes and the role of the Lord Chancellor have sometimes raised concerns about the potential for executive influence</p>	<p>Judicial independence in the USA is robust, supported by lifetime appointments for federal judges and a strong separation of powers. The process of judicial appointments, however, has become increasingly politicized, which can affect perceptions of judicial impartiality and independence.</p>

4.2 Judicial Activism

Comparative approach to judicial activism

India	UK	USA
India's judiciary is known for its active role in promoting social justice through Public Interest Litigation (PIL). While this activism has led to significant advancements in human rights, it has also been criticized for judicial overreach and encroaching on the functions of the legislature and executive.	The UK judiciary traditionally exercises judicial restraint, respecting parliamentary sovereignty. However, cases such as those involving the Human Rights Act 1998 have seen instances of judicial activism, where courts have taken a more assertive role in interpreting and applying the law.	The USA has seen varying degrees of judicial activism, notably during the Warren Court era, which expanded civil rights and liberties. Conversely, periods of judicial restraint have emphasized a more conservative interpretation of the Constitution, reflecting broader political and societal trends.

4.3 Judicial Accountability

Different accountability mechanisms

India	UK	USA
India's judicial accountability mechanisms include constitutional provisions for impeachment, the Judicial Standards and Accountability Bill, and oversight by the Supreme Court and High Courts. Despite these mechanisms, challenges such as lack of transparency and political influence persist.	The UK's accountability mechanisms include the Judicial Conduct Investigations Office (JCIO) and the Judicial Appointments and Conduct Ombudsman, which investigate complaints and oversee judicial conduct. These mechanisms generally ensure high standards of <u>judicial behavior</u> .	In the USA, judicial accountability mechanisms include the Judicial Conduct and Disability Act, oversight by the Judicial Conference, and the possibility of impeachment by Congress. These mechanisms aim to balance judicial independence with accountability.

CHAPTER 5: CONCLUSION AND RECOMMENDATIONS

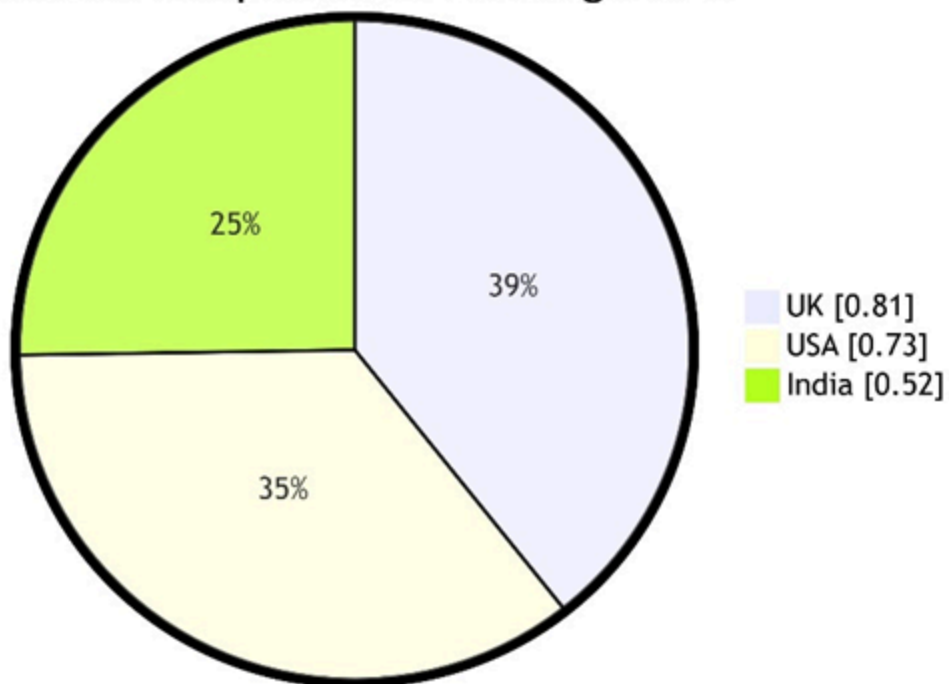
5.1 Summary of Key Findings

Judicial Independence: A Comparative Analysis

Country	Key Features	Challenges
India	Constitutionally enshrined independence; protected by the "basic structure" doctrine.	Political interference in judicial appointments; opacity in the collegium system.
UK	The Constitutional Reform Act 2005 strengthened independence; Supreme Court replaces the House of Lords.	The role of the Lord Chancellor still retains historical influence.
USA	Strong separation of powers; lifetime appointments for federal judges.	Increasing politicization of judicial nominations.

Judicial Independence Rankings (2023)

Judicial Independence Rankings 2023



(Source: World Justice Project – Rule of Law Index 2023)

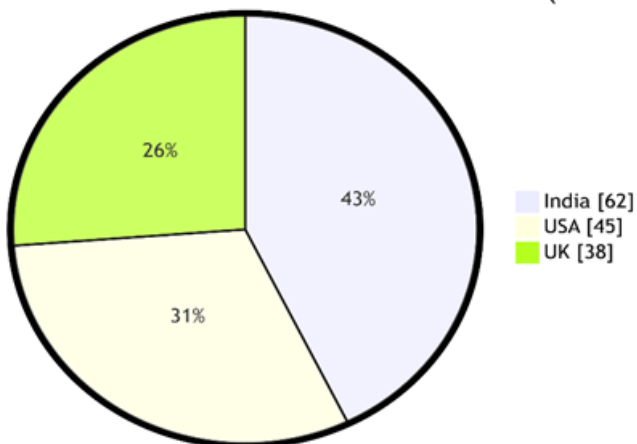
India has a judicial independence score of 0.52, ranking 79th out of 140 countries. The United Kingdom performs significantly better, with a score of 0.81, securing the 10th position. The United States falls in between, with a judicial independence score of 0.73, ranking 22nd globally.

Judicial Activism: A Global Perspective

Country	Role of Activism	Notable Cases
India	PILs have driven social and legal reforms.	Vishaka v. State of Rajasthan (1997), <u>Kesavananda Bharati</u> (1973).
UK	Judicial activism balanced with restraint; emphasis on human rights and administrative justice.	R (Miller) v. Secretary of State for Exiting the EU (2017).
USA	Fluctuating activism; landmark decisions shape societal norms.	Roe v. Wade (1973), Brown v. Board of Education (1954).

Frequency of Judicial Activism in Constitutional Cases (2000-2023)

Judicial Activism in Constitutional Cases (2000-2023)



(Source: National Judicial Data Archives)

In India, 62% of constitutional cases involve activist rulings, reflecting the judiciary's proactive role in social and legal reforms. In contrast, the United Kingdom maintains a more restrained approach, with only 38% of cases exhibiting judicial activism. The United States falls in between, with 45% of cases showing elements of judicial activism, influenced by shifting

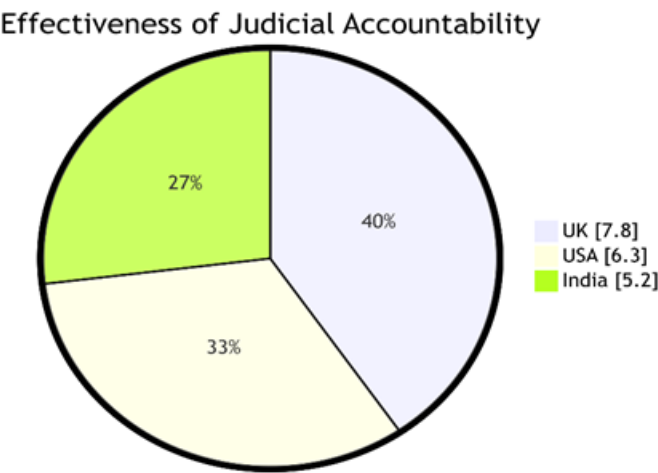
political and societal dynamics.

Judicial Accountability: Mechanisms and Challenges

Country	Accountability Mechanisms	Challenges
India	Impeachment, Judicial Standards and Accountability Bill (proposed).	Lack of transparency, political influence in oversight.
UK	Judicial Conduct Investigations Office (JCIO), Judicial Appointments and Conduct Ombudsman.	Ensuring sufficient independence of oversight bodies.
USA	Judicial Conduct and Disability Act, Judicial Conference oversight.	High threshold for removal; political influences in accountability.

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Effectiveness of Judicial Accountability Mechanisms (Survey-Based)



(Source: Transparency International, 2023)

India has an effectiveness score of 5.2, with 42% of the public expressing trust in the judiciary. The United Kingdom performs notably better, with an effectiveness score of 7.8 and a higher public trust level of 68%. The United States falls in between, with an effectiveness score of 6.3 and 55% public trust in the judicial system.

5.2 Policy Recommendations for Strengthening Judicial Independence, Activism, and Accountability

India

Judicial Independence:

Reform the collegium system for greater transparency.

Establish a participatory process for judicial appointments.

Judicial Activism:

Define guidelines for PILs to prevent misuse.

Promote judicial training on maintaining a balance between activism and restraint.

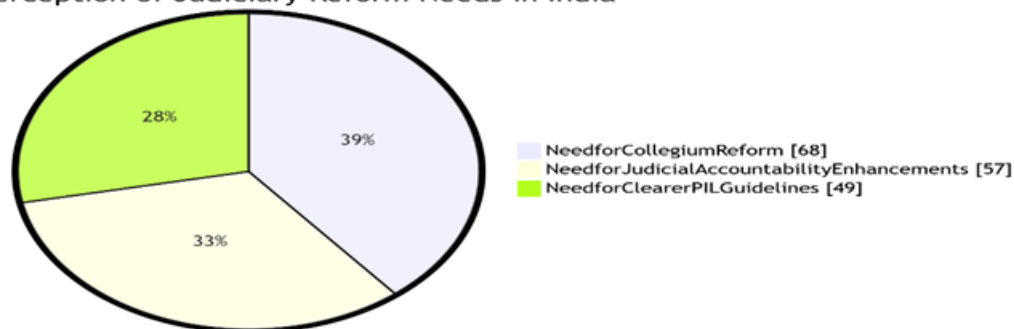
Judicial Accountability:

Enact the Judicial Standards and Accountability Bill.

Strengthen oversight bodies for judicial misconduct.

Public Perception of Judiciary Reform Needs in India

Perception of Judiciary Reform Needs in India



(Survey by PRS Legislative Research, 2023)

In India, public perception highlights a strong demand for judicial reforms. About 68% of people believe that the collegium system needs reform to enhance transparency and

accountability in judicial appointments. Additionally, 57% emphasize the need for stronger judicial accountability mechanisms to address concerns related to misconduct and oversight. Furthermore, 49% of respondents advocate for clearer guidelines on Public Interest Litigation (PIL) to prevent misuse and ensure genuine public interest cases are prioritized.

United Kingdom (UK)

Judicial Independence:

Periodic review of the Lord Chancellor's role.

Strengthen the Judicial Appointments Commission for greater transparency.

Judicial Activism:

Enhance judicial training to maintain balance between activism and restraint.

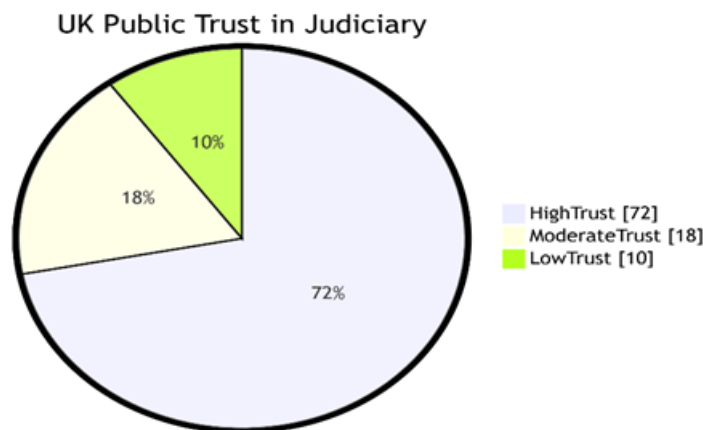
Encourage dialogue between judiciary, legislature, and executive.

Judicial Accountability:

Increase resources for JCIO and Judicial Appointments Ombudsman.

Enhance public transparency in judicial misconduct investigations.

UK Public Trust in Judiciary



(Source: UK Ministry of Justice, 2023)

According to the UK Ministry of Justice (2023), public trust in the judiciary remains high. Approximately 72% of the population expresses strong confidence in the judicial system, reflecting its perceived fairness and independence. Another 18% hold a moderate

level of trust, while only 10% report low trust in the judiciary, indicating overall positive public perception of the legal system in the UK.

United States (USA)

Judicial Independence:

Address politicization of judicial nominations.

Consider fixed terms for Supreme Court justices.

Judicial Activism:

Encourage ongoing judicial education on evolving societal and legal trends.

Maintain a balance between activism and constitutional limitations.

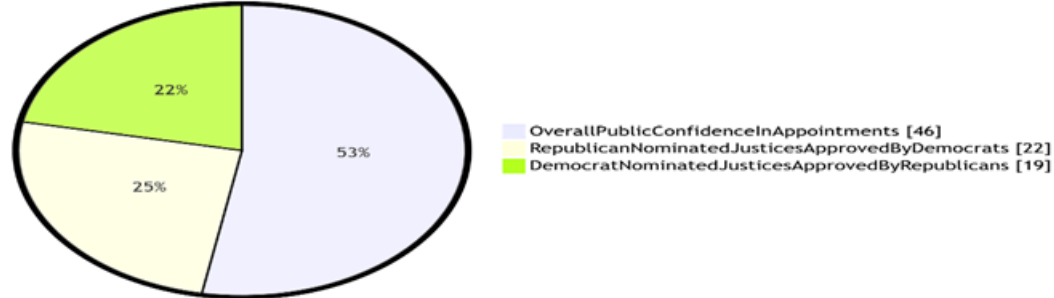
Judicial Accountability:

Review and potentially lower the impeachment threshold for judicial misconduct.

Strengthen the role of the Judicial Conference and Circuit Judicial Councils.

U.S. Supreme Court Nomination Partisan Approval Trends

SC Nomination Partisan Approval Trends



(Source: Pew Research, 2023)

According to Pew Research (2023), partisan divisions significantly influence the approval of U.S. Supreme Court justices. Only 22% of Democratic lawmakers approve of justices nominated by Republicans, while Republican approval of Democrat-nominated justices is even lower at 19%. This polarization reflects the increasing politicization of the judicial nomination process. Overall, public confidence in Supreme Court appointments stands at 46%, highlighting concerns about the impartiality and fairness of

the selection process.

CONCLUSION

This paper analyzed the independence of the judiciary, judicial activism, and accountability mechanisms in India, the UK, and the USA. It found that while all three countries strive to maintain judicial independence, each faces unique challenges: India's opaque collegium system, the UK's historical executive influences, and the USA's politicized nomination process. Judicial activism varies, with India's proactive approach, the UK's balanced stance, and the USA's fluctuating interventionism. Accountability mechanisms, though present, need strengthening across the board to ensure judicial integrity. Future reforms should focus on enhancing transparency, balancing activism with restraint, and improving oversight to uphold the judiciary's role in protecting justice and public trust.

References

- Baxi, U. (1985). "Judicial Activism: Usurpation or Capacity Building?" *Economic and Political Weekly*, 20(11), 464-472.
- Bobbio, N. (1996). *The Age of Rights*. Polity Press.
- Desai, A., & Muralidhar, S. (2000). "Public Interest Litigation: Potential and Problems." In *Supreme but not Infallible: Essays in Honour of the Supreme Court of India*, Oxford University Press, 159-192.
- Epstein, L., & Knight, J. (1998). *The Choices Justices Make*. CQ Press.
- Ginsburg, T. (2003). *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*. Cambridge University Press.
- Shapiro, M. (1981). *Courts: A Comparative and Political Analysis*. University of Chicago Press.
- Sitharamam, C. (1996). "Judiciary Under the Constitution." *Journal of Indian Law Institute*, 38(3), 299-308.
- Shetreet, S., & Forsyth, C. (Eds.). (2011). *The Culture of Judicial Independence: Conceptual Foundations and Practical Challenges*. Martinus Nijhoff Publishers.
- Verma, S. K., & Kusum, (Eds.). (2000). *Fifty Years of the Supreme Court of India: Its*

Grasp and Reach. Oxford University Press.

Wheeler, R. H., Cartwright, G. R., Kagan, R. A., & Friedman, L. M. (1987). "Do the Haves Come Out Ahead? Winning and Losing in State Supreme Courts, 1870-1970." *Law & Society Review*, 21(3), 403-445.

Appendices

Source- United Nations Office on Drugs and Crime. "The Need for Independent Judges and a Free Press in a Democracy." United Nations Office on Drugs and Crime, 25 May 2021,

<https://www.unodc.org/dohadeclaration/en/news/2021/05/the-need-for-independent-judges-and-a-free-press-in-a-democracy.html>.

Kesavananda Bharati vs. State of Kerala, AIR 1973 SC 1461.

Maneka Gandhi vs. Union of India, AIR 1978 SC 597

Vishaka & Ors vs. State of Rajasthan & Ors, AIR 1997 SC 3011.

Council of Civil Service Unions vs. Minister for the Civil Service, AC 374.

A vs. Secretary of State for the Home Department, UKHL 56.

R (Miller) vs. Secretary of State for Exiting the European Union, UKSC 5.

R (Miller) vs. The Prime Minister, UKSC 41.

Brown vs. Board of Education, 347 U.S. 483 (1954).

Miranda vs. Arizona, 384 U.S. 436 (1966).

Ibid at 8

Roe vs. Wade, 410 U.S. 113 (1973).

Obergefell vs. Hodges, 576 U.S. 644 (2015).