

AGE CAPS V. LIFETIME SEATS: JUDICIAL TENURE IN THE INDIAN & AMERICAN SUPREME COURTS

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Abstract

The constitutional frameworks of India and the United States represent two of the world's most comprehensive and enduring written constitutions, each reflecting the distinct historical, political, and social contexts of their respective nations. The Constitution of India, adopted on January 26, 1950, represents the world's longest written constitution, comprising 395 articles and 12 schedules. The Constitution of the United States, ratified in 1788 and amended twenty-seven times, represents the oldest written national constitution still in use. While both constitutions establish independent judiciaries as a core component of democratic governance, they differ significantly in their approaches to judicial organization, appointment mechanisms, and tenure provisions. The Supreme Court of the United States comprises nine justices appointed by the President with Senate confirmation, serving lifetime appointments during good behaviour. Conversely, the Supreme Court of India consists of the Chief Justice and thirty-three other judges, now thirty eight judges since July, 2026, appointed through a consultative process and mandated to retire at age sixtyfive.

This paper undertakes a comprehensive comparative analysis of these two constitutional systems, examining their judicial architecture, the mechanisms and philosophies underlying judicial appointments, the provisions governing judicial tenure and retirement, and the implications of these differences for judicial independence, accountability, and democratic governance.

American Constitutional Framework

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The United States Constitution emerged from the Constitutional Convention of 1787, forged in the aftermath of the American Revolutionary War and the perceived inadequacies of the Articles of Confederation. The Framers, drawing upon Enlightenment political philosophy and their own experiences with British colonial governance, designed a federal system featuring a strict separation of powers among three co-equal branches of government. Article III, Section 1 of the Constitution establishes the judicial power of the United States and vests it in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. This constitutional provision reflects the Framers' deliberate choice to create a strong, independent judiciary insulated from political pressures through lifetime tenure. The judicial philosophy underlying the American system emphasizes checks and balances, with the judiciary serving as a crucial counterbalance to potentially tyrannical exercise of executive and legislative power.

Indian Constitutional Framework

The Constitution of India represents a unique historical moment in post-colonial nation building, adopted by the Constituent Assembly under the visionary leadership of Dr. Bhimrao Ambedkar. Drawing inspiration from the American, British, and Irish constitutions while adapting these principles to India's unique historical, cultural, and social context, the Indian Constitution established a federal democratic republic with a parliamentary system of governance. Unlike the United States' presidential system, India adopted a parliamentary democracy wherein the executive derives its authority from the legislature. The Indian Constitution explicitly grants judicial review powers to the courts, and the Supreme Court has developed this power into a robust instrument for protecting fundamental rights and maintaining constitutional supremacy. Article 124 of the Constitution establishes the Supreme Court and prescribes the qualifications, appointment procedures, and retirement provisions for its judges. The Indian constitutional architecture reflects a deliberate commitment to a comprehensive enumeration of rights, detailed procedural safeguards, and an extensive amendment clause that reflects both aspirations for constitutional rigidity and flexibility.

Comparative Structure Of Judicial Systems

The Supreme Court of the United States possesses both original and appellate jurisdiction, as prescribed by Article III and subsequently modified by statute. Its appellate jurisdiction is subject to congressional regulation through the writ of certiorari, a discretionary device by

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which the Court selects cases of national significance for review. The Court's docket has evolved significantly, with the number of cases seeking review declining even as the complexity and constitutional significance of accepted cases has increased.

The Indian Supreme Court possesses equally expansive jurisdiction, encompassing original jurisdiction in disputes between the union and states, appellate jurisdiction over all courts, and the extraordinary power to issue writs for enforcement of fundamental rights. Notably, the Indian Supreme Court has explicitly recognized its role as a protector of constitutional governance and has occasionally exercised *Suo Moto* jurisdiction to address matters of national constitutional importance. This more expansive approach to judicial intervention reflects the Indian constitutional vision of an active, engaged judiciary committed to achieving the Constitution's transformative socio-economic goals.

Judicial Appointments: Mechanisms & Philosophies

The American Appointment Process:

The United States Constitution vests the appointment power in the President, subject to the advice and consent of the Senate. This constitutional provision reflects the Framers' concern with balancing presidential prerogative with legislative oversight, thereby preventing the concentration of appointment power in a single branch. This constitutional provision reflects the Framers' concern with balancing presidential prerogative with legislative oversight, thereby preventing the concentration of appointment power in a single branch. The President typically commences the process by identifying qualified candidates, with substantial input from the White House Counsel's Office and the Department of Justice. Contemporary practice involves consultation with home-state senators (through the courtesy doctrine in earlier periods), investigation by the Federal Bureau of Investigation, examination of the candidate's judicial philosophy and prior decisions, and submission to the Senate Judiciary Committee.

The Senate Judiciary Committee conducts public hearings where nominees are questioned extensively regarding their constitutional interpretation philosophy, prior judicial decisions, and potential conflicts of interest. The Committee's recommendation is forwarded to the full Senate, which votes on confirmation, with a simple majority required for approval. This process has become increasingly politicized in recent decades, with Supreme Court nominations emerging as flashpoints for broader ideological and partisan conflicts.

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The Indian Appointment Process:

The Indian Constitution provides that judges of the Supreme Court shall be appointed by the President on the advice of the Chief Justice, in consultation with such judges and law officers as the President may deem necessary. Unlike the American system, which emphasizes partisan political oversight, the Indian system deliberately insulates the appointment process from direct political control by conferring primary authority upon the Chief Justice and the judiciary itself. This principle reflects the constitutional framers' conviction that judicial appointments should be made by legal experts cognizant of judicial qualifications and capabilities rather than by politicians. In practice, the Chief Justice of India, in consultation with senior judges, typically selects candidates on the basis of seniority among the Bar and High Court judges, though exceptional merit has occasionally warranted deviation from strict seniority.

The appointment process does not involve legislative confirmation, though the President's formal role provides a constitutional safeguard and the government may occasionally express concerns regarding appointments.

This evolved into a controversial issue during the 1970s when the government attempted to influence judicial appointments, leading to the celebrated confrontation between the executive and the judiciary that culminated in the promulgation of the Emergency. Subsequent constitutional practice has established the 'Collegium system,' wherein the Chief Justice consults with senior judges regarding appointments and transfers, thereby institutionalizing judicial primacy in the appointment process. Unlike the American system, the Indian appointment process is largely non transparent, with public scrutiny and political debate playing minimal roles compared to the American confirmation hearings.

Retirement & Tenure Of Judges***American Tenure:***

The Constitution of the United States provides that federal judges "shall hold their Offices during good Behaviour. This provision, combined with protections against salary diminution, ensures that federal judges, including Supreme Court justices, serve for life, removable only through impeachment by the House of Representatives and conviction by the Senate for high crimes and misdemeanours. In American history, only one Justice has been impeached

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(Samuel Chase in 1805), and he was acquitted by the Senate, establishing that impeachment is an extraordinarily high bar requiring not merely disagreement with judicial philosophy but actual criminality or gross malfeasance.

The lifetime tenure provision reflects the Framers' conviction that judicial independence requires insulation from political pressure, and that judges should not fear electoral defeat or removal threats if their decisions displease the political branches or the electorate. In practice, American justices decide when to retire, and many have served into advanced age, with Chief Justice Roger Taney serving until his death at age eighty-seven and Justice William O. Douglas serving until age eighty. This system has produced extended periods of ideological stability on the Court, as justices have served average tenures of approximately fifteen years in modern times.

Indian Tenure:

The Constitution of India establishes a mandatory retirement age of sixty-five years for judges of the Supreme Court, sharply contrasting with the American system. This provision was deliberately incorporated into the Constitution to ensure regular infusions of fresh judicial perspectives and to prevent the accumulation of power in the hands of aged judges. High Court judges are subject to mandatory retirement at age sixty-two, while district and subordinate court judges typically retire at sixty, creating a pyramid of retirement ages that progressively lowers as one descends the judicial hierarchy. The constitutional design ensures that vacancies arise with regularity, providing the appointing authority (the President on the advice of the Chief Justice) with opportunities to reshape the judiciary through new appointments. The average tenure of Indian Supreme Court judges approximates eight to ten years, significantly shorter than their American counterparts, resulting in more frequent changes in the Court's composition and ideological orientation.

Additionally, Indian judges are subject to removal through impeachment by Parliament under Article 124(4) of the Constitution, wherein a judge may be removed for "proved misbehaviour or incapacity" upon the vote of majorities in both houses of Parliament. While impeachment provisions exist in the American system, the Indian constitutional framework contains additional specific procedural safeguards, including investigation by a committee and a higher evidential threshold of proof. The shorter tenure system has been defended as preventing ossification of judicial thinking and facilitating the evolution of constitutional

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interpretation in response to changing social conditions. Critics contend that the mandatory retirement system undermines judicial independence by making judges aware that their future prospects depend upon political authorities' favour for post-retirement positions in constitutional bodies or as ambassadors.

Comparative Analysis Of Judicial Independence & Accountability

Both constitutional systems prioritize judicial independence as essential to the rule of law, though they employ distinct mechanisms to achieve this objective. The American system emphasizes structural independence through lifetime tenure, salary protections, and the separation of powers, insulating judges from political pressure or threat of removal. The Indian system emphasizes institutional independence through the Collegium system and judicial primacy in the appointment process, while acknowledging that life tenure represents only one means of achieving independence. Both systems recognize that the Constitution itself constitutes the judge's paramount authority and that judges must be free to interpret constitutional provisions according to law rather than political convenience.

American judges are accountable through impeachment, an extraordinarily stringent mechanism rarely invoked, reflecting the constitutional priority placed upon insulating judges from political retaliation. The political accountability of judges is indirect, operating through the appointment process and the bully pulpit of public opinion, rather than through formal removal mechanisms. Indian judges face impeachment on grounds of misbehaviour or incapacity, a more accessible (though still demanding) form of accountability. Additionally, Indian judges' awareness that retirement occurs at sixty-five creates indirect accountability, as judges conscious of post-retirement career prospects may be influenced by government approval. Both systems present inherent tensions between independence and accountability; excessive insulation from accountability may enable judicial overreach, while excessive accountability mechanisms may compromise judicial independence.

The American system's extended judicial tenures create periods of ideological continuity, with a single president's appointments potentially influencing constitutional doctrine for decades. The Reagan and Bush appointments created a conservative majority that lasted for decades, fundamentally reshaping constitutional doctrine regarding federalism, gun rights, and religious liberty. The Indian Court has substantially revised its jurisprudence on

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fundamental rights, and its approach to constitutional interpretation has evolved significantly over seven decades.

Denouement

The Supreme Courts of India and the United States represent two distinctive approaches to judicial organization, appointment, and tenure, each reflecting particular constitutional philosophies and historical contexts. The American system emphasizes structural insulation from political pressure through lifetime tenure, selective appellate jurisdiction, and limited explicit amendment provisions, thereby requiring judicial interpretation to effectuate constitutional change. The Indian system emphasizes institutional mechanisms for judicial independence, regular infusions of new judges through mandatory retirement, explicit and accessible amendment procedures, and an expansive vision of the judiciary's role in effectuating constitutional transformation. The divergent approaches to judicial appointments reflect fundamentally different assumptions regarding the sources of judicial legitimacy: the American system emphasizes the political process and presidential prerogative (subject to senatorial confirmation), while the Indian system emphasizes judicial collegial determination insulated from political influence.

The lifetime tenure provisions in the American system represent an extraordinary commitment to judicial independence, enabling justices to disregard political consequences when interpreting the Constitution, though potentially creating incumbent justices whose views become divorced from evolving national understandings. The mandatory retirement provisions in the Indian system provide for regular constitutional renewal and respond to concerns regarding aged justices' capacity and responsiveness, though they create incentives for political influence through post-retirement appointments and may undermine judicial independence.

Comparative analysis reveals no universally optimal approach: each system reflects conscious constitutional choices balancing competing values of independence and accountability, stability and flexibility, and insulation from and responsiveness to democratic sentiment.

The institutional arrangements governing judicial appointments and tenure constitute foundational choices shaping the judiciary's role in constitutional governance and its relationship to the political branches and the public. As both nations confront contemporary

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challenges regarding judicial independence, institutional legitimacy, and the proper scope of judicial authority, comparative analysis of these contrasting systems illuminates the multiple approaches to reconciling judicial independence with democratic accountability. Future constitutional development in both nations will undoubtedly reflect continuing efforts to refine these mechanisms in response to evolving understandings of the judiciary's proper constitutional role and the requirements of rule of law governance.

Endnotes

1. The Constitution of India, art. 124, § 5 (2019).
2. U.S. Const. art. III, § 1.
3. U.S. Const. art. II, § 2, cl. 2.
4. 28 U.S.C. § 1. 5. The Constitution of India, art. 124, §
5. Ashok Kumar Singh v. Union of India, (2009) 6 SCC 278 (India).
6. Chief Justice John Roberts, 2005: Year-End Report on the Federal Judiciary, 1 (2005).
7. The Constitution of India, art. 124, § 7 (establishing the retirement age as sixty-five years).
8. 28 U.S.C. § 1 (providing that justices shall hold their offices during good behavior).
9. Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803).
10. S.R. Bommai v. Union of India, (1994) 3 SCC 1, 51 (India) (establishing that the Constitution is a living document open to reasonable reinterpretation).
11. The Constitution of India, art. 368 (describing the amendment procedure requiring a two-thirds majority).
12. U.S. Const. art. V (describing the amendment procedure requiring a two-thirds majority in both chambers of Congress).
13. The Constitution of India, art. 12 (defining the state as including the Union and state governments).
14. U.S. Const. art. III, § 2 (establishing federal judicial power).

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