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Judicial Independence under Siege: Comparing Systemic Vulnerabilities in Post- Trump America and Contemporary India

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ABSTRACT

This article examines parallel threats to judicial independence in the United States and India through a comparative institutional analysis framework. Where previous scholarship has focused predominantly on constitutional structures, this research interrogates subtler mechanisms of influence that compromise judicial autonomy. In the American context, we analyze the Trump administration's unprecedented rhetorical and procedural challenges to judicial authority (2017-2025), revealing how executive antagonism tested institutional resilience. Concurrently, in India, we investigate the phenomenon of post-retirement governmental appointments as potential instruments of judicial capture, examining empirical correlations between pro-government rulings and subsequent sinecures. Despite divergent constitutional traditions and political cultures, both democracies demonstrate alarming vulnerability to executive encroachment—through confrontational delegitimization in the US and accommodationist incentivization in India. This analysis contributes to contemporary discourse on democratic backsliding by identifying these parallel threats as symptomatic of broader institutional erosion. We conclude by proposing targeted reforms: legislative clarifications regarding executive constraints and appointment process depoliticization in the US context; mandatory “cooling-off” periods and transparent appointment protocols in India. These findings underscore the precarious position of judicial independence in established democracies and highlight the necessity of renewed vigilance against both overt and subtle forms of influence.

Keywords: *Judicial independence; checks and balances; executive overreach; democratic backsliding; post-retirement appointments; Trump administration; Indian judiciary; judicial capture; comparative constitutionalism; institutional resilience*

I. THE INTRODUCTION: JUDICIAL INDEPENDENCE AS DEMOCRATIC SAFEGUARD

The judiciary—that “least dangerous branch”—paradoxically stands as democracy’s most consequential guardian.³ Without robust judicial independence, constitutions become mere

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parchment barriers against majoritarian excess and executive ambition. Yet this independence remains perpetually vulnerable, threatened not only by dramatic constitutional crises but by gradual, sometimes invisible erosion. The mechanisms of this erosion vary dramatically across political systems while producing remarkably similar outcomes. How do these mechanisms operate in established democracies? And what do their similarities reveal about the universal fragility of judicial autonomy, a fragility that can be starkly exposed during widespread societal crises, such as pandemics, which test institutional capacities across the board, including the protection of vulnerable groups like children?⁴

This article examines two distinct but parallel challenges to judicial independence: executive confrontation in the United States during and after the Trump administration (2017-2025) and post-retirement incentivization in contemporary India. Though emerging from radically different constitutional traditions, both phenomena represent sophisticated forms of judicial capture that exploit institutional vulnerabilities without requiring outright constitutional rupture. By analyzing these parallel threats through a comparative lens, we illuminate the varied pathways through which judicial independence becomes compromised in ostensibly robust democracies.

The American case presents a study in direct executive antagonism. During his presidency, Donald Trump regularly challenged judicial legitimacy through unprecedented rhetorical attacks⁵ and policy maneuvers designed to test constitutional boundaries.⁶ His administration's approach—combining public delegitimization with procedural circumvention—represented a marked departure from historical norms of inter-branch respect.⁷ In India, by contrast, the primary threat manifests through subtle incentive structures rather than open confrontation. The routine practice of appointing retired judges to prestigious government positions creates potential conflicts of interest, where pre-retirement rulings favorable to government interests correlate with post-retirement sinecures practice, raises profound questions about judicial impartiality, particularly in cases involving significant government interests.

³ Khandelwal, Arpit. "Independence of Judiciary." *Part 1 Indian J. Integrated Rsch. L.* 2 (2022): 1, p. 2.

⁴ Rani, D. (2024). Averting a Lost Covid Generation: Reimagining a Post-Pandemic World for Children in India. *Issue 2 Int'l JL Mgmt. & Human.*, 7, p. 134.

⁵ Sharma, P. R. D. (2025). Emergency, narratives, and pandemic governance. *International Journal of Asian Studies*, 22(1), p. 174.

⁶ Hans Petter Graver, "The Legal Battle over Liberal Democracy | ACS." *American Constitution Society*, 31 Mar. 2025, www.acslaw.org/expertforum/the-legal-battle-over-liberal-democracy/. Accessed 11 May 2025.

⁷ Amna Nawaz et.al, "Constitutional Law Professor Analyzes Trump's Clash with the Judiciary." *PBS News*, 19 Mar. 2025, www.pbs.org/newshour/show/constitutional-law-professor-analyzes-trumps-clash-with-the-judiciary. Accessed 11 May 2025.

Previous comparative analyses have focused predominantly on formal constitutional protections for judicial independence.⁸ Our approach diverges by examining the informal practices and political norms that either buttress or undermine these formal protections. This perspective reveals how judicial independence can be compromised even within formally sound constitutional systems. By comparing these distinct forms of influence—confrontational in the US, accommodationist in India—we develop a more nuanced understanding of judicial vulnerability in contemporary democracies.

The article proceeds as follows: Section 2 explores the American experience, analyzing judicial responses to executive overreach during the Trump administration. Section 3 examines India's system of post-retirement appointments and their potential impact on judicial impartiality. Section 4 provides a comparative analysis, identifying parallels and divergences between these distinct vulnerabilities. We conclude with recommendations for institutional reforms in both contexts, emphasizing the need for renewed vigilance in protecting judicial independence against both overt and subtle forms of influence.

II. EXECUTIVE CONFRONTATION: THE US JUDICIARY UNDER THE TRUMP ADMINISTRATION

The Trump presidency (2017-2021, 2025-Present) marked an extraordinary period of executive-judicial tension in American constitutional history. Unlike previous administrations that occasionally disagreed with judicial rulings while respecting institutional boundaries, Trump's approach represented a systematic challenge to judicial legitimacy as a constitutional constraint.⁹ This section examines three dimensions of this challenge: rhetorical delegitimization, procedural circumvention, and institutional resistance.

A. Rhetorical Delegitimization

President Trump's public statements about the judiciary departed radically from historical norms of inter-branch respect. When courts ruled against administration policies, Trump frequently characterized judges as partisan actors or questioned their fundamental authority to review executive actions. This rhetoric—calling judges “so-called judges” or suggesting they had overstepped their constitutional role—resembled tactics employed in illiberal democracies to undermine public confidence in judicial checks. Indeed, such executive communication

⁸ Zubizarreta, Tim. “Is the Indian Judiciary Independent Anymore?” *Jurist.org*, - JURIST - Commentary - Legal News & Commentary, 13 May 2020, www.jurist.org/commentary/2020/05/arpit-richhariya-indian-judiciary-independence/. Accessed 11 May 2025.

⁹ “Courts under Pressure: Judicial Independence and Rule of Law in the Trump Era.” *Brennan Center for Justice*, 2021, www.brennancenter.org/our-work/research-reports/courts-under-pressure-judicial-independence-and-rule-law-trump-era. Accessed 11 May 2025.

strategies can be understood within a broader framework of how states employ narratives, particularly during perceived emergencies or crises, to shape public understanding and justify the exercise of power, sometimes by discrediting countervailing institutions.¹⁰ Vice President Vance amplified this approach, suggesting that judges were improperly interfering with legitimate exercises of executive power when ruling against administration priorities.¹¹

Consider this telling example: after a federal judge temporarily blocked the administration's second travel ban in March 2017, Trump described the ruling as "unprecedented judicial overreach" and suggested the court was acting politically rather than legally.¹² Similarly, when courts ruled against the administration's attempt to end birthright citizenship in 2025, administration officials publicly questioned whether courts possessed authority to "second-guess" presidential interpretations of the Fourteenth Amendment.¹³ This consistent pattern of delegitimization represents more than conventional criticism of unfavorable rulings; it constitutes a deliberate strategy to reposition the judiciary as a political obstacle rather than a constitutional check.

The efficacy of this rhetorical approach remains difficult to quantify. However, polling data from this period shows a marked decline in public confidence in judicial independence, particularly along partisan lines.¹⁴ This polarization of institutional trust represents a significant threat to judicial legitimacy, potentially undermining the court's ability to serve as an effective constitutional check during periods of concentrated political power.

B. Procedural Circumvention and Executive Overreach

Beyond rhetoric, the Trump administration engaged in systematic testing of constitutional boundaries through executive actions that invited judicial challenge. Several examples illustrate this pattern:

First, the series of travel ban orders beginning in January 2017 represented deliberate attempts to expand executive authority over immigration policy.¹⁵ Each iteration—progressively

¹⁰ Sharma, P. R. D. (2025). Emergency, narratives, and pandemic governance. *International Journal of Asian Studies*, 22(1), pp. 164, 167.

¹¹ Hans Petter Graver, "The Legal Battle over Liberal Democracy | ACS." *American Constitution Society*, 31 Mar. 2025, www.acslaw.org/expertforum/the-legal-battle-over-liberal-democracy/. Accessed 11 May 2025.

¹² Quinta Jurecic. "The Courts versus Trump, Then and Now." *Lawfare*, 2025, www.lawfaremedia.org/article/the-courts-versus-trump--then-and-now. Accessed 11 May 2025.

¹³ News, PBS. "How the Courts Have (so Far) Pushed Back on Trump's Attempts to Expand Presidential Power." *PBS News*, 7 Feb. 2025, www.pbs.org/newshour/politics/how-the-courts-have-so-far-pushed-back-on-trumps-attempts-to-expand-presidential-power. Accessed 11 May 2025.

¹⁴ Hasen, Rick. "'Threats to Democracy and Academic Freedom after Trump's Second First 100 Days; Bright Line Watch April 2025 Survey' #ELB." *Election Law Blog*, 5 May 2025, electionlawblog.org/?p=149779. Accessed 11 May 2025.

¹⁵ Quinta Jurecic. "The Courts versus Trump, Then and Now." *Lawfare*, 2025,

modified in response to judicial pushback—explored the outer limits of presidential discretion in an area traditionally subject to both statutory and constitutional constraints.

Second, the administration's 2025 attempt to end birthright citizenship through executive order directly challenged conventional understandings of the Fourteenth Amendment. By asserting unilateral presidential authority to reinterpret a core constitutional provision, this action represented a profound expansion of executive interpretive power.

Third, multiple attempts to freeze congressionally appropriated funds—most notably in February 2025—directly challenged Congress's power of the purse, a foundational constitutional principle. These actions prompted numerous state attorneys general to file suit, resulting in temporary restraining orders that partially restored funding flows.

Perhaps most troublingly, the March 2025 executive order targeting the Perkins Coie law firm for alleged unethical conduct marked an unprecedented use of executive power against specific legal advocates.¹⁶ The order—authorizing sanctions against a firm representing clients in challenges to administration policies—raised serious First Amendment concerns and threatened to chill effective legal opposition to executive actions.

These examples reveal a consistent pattern: the administration used executive orders not merely as governance tools but as vehicles for constitutional boundary-testing. Each action invited judicial review while simultaneously questioning the legitimacy of that review. This two-pronged approach—procedural challenge backed by rhetorical delegitimization—represented a sophisticated strategy for expanding executive power at the judiciary's expense.

C. Judicial Resistance and Its Limitations

The American judiciary demonstrated significant institutional resilience during this period of executive challenge. Lower federal courts frequently blocked or narrowed administration actions through nationwide injunctions and declaratory relief.¹⁷ This robust response—particularly from district and circuit courts—represents an important institutional success story, demonstrating the judiciary's capacity to check executive overreach even in the face of political pressure and delegitimization efforts.

www.lawfaremedia.org/article/the-courts-versus-trump--then-and-now. Accessed 11 May 2025.

¹⁶ Patrick G. Eddington, "Politics as Usual Will Not Stop Trump's Unconstitutional Acts." *Cato Institute*, 20 Apr. 2025, www.cato.org/commentary/politics-usual-will-not-stop-trumps-unconstitutional-acts. Accessed 11 May 2025.

¹⁷ Yasmin Abusaif, and Douglas Keith. "What Courts Can Do If the Trump Administration Defies Court Orders." *Brennan Center for Justice*, May 2025, www.brennancenter.org/our-work/research-reports/what-courts-can-do-if-trump-administration-defies-court-orders. Accessed 11 May 2025.

However, this resistance revealed important institutional limitations. Three deserve particular attention:

First, the case of Kilmar Abrego Garcia—deported to El Salvador despite a court order prohibiting his removal—highlights difficulties in enforcing judicial decisions against a determined executive.¹⁸ When agencies circumvent or ignore court orders, the judiciary possesses few independent enforcement mechanisms, relying instead on executive branch compliance based on constitutional norms rather than coercive power.

Second, the multi-year litigation surrounding various travel ban iterations demonstrated the inherent delays in judicial review. While courts ultimately shaped administration policy, the extended timeframe for definitive resolution allowed temporary implementation of contested policies, creating periods of constitutional uncertainty.

Third, the Supreme Court's mixed record in reviewing Trump administration actions highlights the importance of judicial composition. While occasionally imposing significant constraints, the Court—particularly after Trump's three appointments—showed greater deference to executive discretion in areas like immigration enforcement.¹⁹ This pattern suggests that judicial independence ultimately depends not only on institutional structures but on the individuals who populate those structures.

The administration's invocation of the Alien Enemies Act to deport Venezuelan nationals provides a particularly instructive case study. Lower courts questioned the Act's applicability absent a declared war or invasion, raising serious due process concerns. However, the enforcement challenges and procedural delays inherent in judicial review limited the practical effectiveness of these judicial interventions, allowing some deportations to proceed despite ongoing litigation.

While the judiciary ultimately preserved its institutional role as a constitutional check, this period exposed significant vulnerabilities in the American system of judicial independence. The combination of rhetorical delegitimization, procedural circumvention, and enforcement challenges revealed how executive power can erode judicial authority without requiring constitutional amendments or court-packing schemes. These subtler mechanisms of influence—operating within formal constitutional structures while undermining their

¹⁸ Patrick G. Eddington, "Politics as Usual Will Not Stop Trump's Unconstitutional Acts." *Cato Institute*, 20 Apr. 2025, www.cato.org/commentary/politics-usual-will-not-stop-trumps-unconstitutional-acts. Accessed 11 May 2025.

¹⁹ Alex Keyssar "Are We Headed for a Constitutional Crisis? Kennedy School Scholars on the Trump Administration and the Rule of Law." *Harvard.edu*, 25 Feb. 2025, www.hks.harvard.edu/faculty-research/policy-topics/democracy-governance/are-we-headed-constitutional-crisis-kennedy. Accessed 11 May 2025.

normative foundations—represent a sophisticated form of institutional capture that traditional safeguards may inadequately address.

III. INCENTIVIZED ACCOMMODATION: POST-RETIREMENT APPOINTMENTS IN THE INDIAN JUDICIARY

While the American judiciary confronted direct executive antagonism, India's judicial independence faces a more subtle threat: the routine practice of appointing retired judges to prestigious government positions. Unlike the confrontational approach characterizing US executive-judicial relations under Trump, this mechanism operates through incentives rather than constraints, creating potential conflicts of interest that may influence judicial decision-making in cases involving government interests. This section examines three dimensions of this phenomenon: constitutional context, empirical evidence of influence, and illustrative case studies.

A. Constitutional Context and Institutional Framework

India's constitution establishes elaborate safeguards for judicial independence, including detailed provisions regarding judicial appointments, tenure security, and separation from executive control. The Supreme Court and High Courts function as constitutional courts with broad powers of judicial review, while the collegium system—developed through judicial interpretation—gives senior judges primary authority over appointments and transfers within the higher judiciary. These formal protections reflect the framers' recognition that judicial independence constitutes an essential “basic feature” of India's constitutional structure.²⁰

Unlike the US system, where judges receive lifetime appointments, Indian judges face mandatory retirement (65 years for Supreme Court justices, 62 years for High Court judges). This structural difference creates a post-judicial career phase absent in the American context. During this phase, retired judges often receive appointments to various government positions, including:

- Governors of states (e.g., Justice P. Sathasivam to Kerala in 2014)
- Members of legislative bodies (e.g., Justice Ranjan Gogoi to Rajya Sabha in 2020)
- Chairs of statutory commissions (e.g., Justice Ranganath Mishra to NHRC)
- Heads of administrative tribunals
- Ambassadorial positions (e.g., Justice M.C. Chagla to US and UK)

²⁰ Khandelwal, Arpit. “Independence of Judiciary.” *Part 1 Indian J. Integrated Rsch. L.* 2 (2022): 1, pp. 2-3.

- Cabinet ministers (e.g., Justice M.C. Chagla)

Proponents defend this practice as leveraging judicial expertise for public benefit and providing distinguished retirement options for those who have served the nation.²¹ However, the absence of a mandatory “cooling-off” period between retirement and appointment—and the lack of transparent selection criteria—creates significant potential for conflicts of interest. When judges know that lucrative post-retirement positions depend on government discretion, their impartiality in cases involving those same government interests becomes questionable.

B. Empirical Evidence of Influence

Recent empirical research suggests these concerns extend beyond theoretical possibility. Studies examining correlations between judicial decisions and subsequent appointments have yielded troubling findings:

First, quantitative analysis indicates that Supreme Court judges who author judgments favorable to the government demonstrate higher probability of receiving prestigious post-retirement appointments.²² This correlation persists even when controlling for factors like judicial expertise and seniority.

Second, statistical models suggest the government’s probability of winning cases increases significantly when the deciding bench includes judges approaching retirement with sufficient time remaining in the government’s term to be “rewarded.”²³ This temporal relationship strengthens the inference of potential influence.

Third, international legal organizations have documented patterns suggesting executive interference in judicial functions beyond post-retirement appointments. The International Commission of Jurists has highlighted instances where the government effectively vetoed collegium recommendations and transferred judges without consent based on opaque criteria.²⁴ These practices compound concerns about judicial independence by suggesting multi-faceted executive influence throughout judges’ careers.

While correlation does not definitively establish causation, these empirical patterns raise legitimate questions about judicial impartiality. Even absent direct evidence of quid pro quo

²¹ Dam, S. (2023). “Active After Sunset: The Politics of Judicial Retirements in India.” *Federal Law Review*, 51(1), pp. 31-32.

²² Madhav Aney et.al. “The Politics of Post-Retirement Appointments: Corruption in the Supreme Court?” *Ideas for India*, 2020, www.ideasforindia.in/topics/governance/the-politics-of-post-retirement-appointments-corruption-in-the-supreme-court.html. Accessed 11 May 2025.

²³ Aney, Madhav S., Shubhankar Dam, and Giovanni Ko. “Jobs for justice (s): Corruption in the supreme court of india.” *The Journal of Law and Economics* 64.3 (2021), p. 3.

²⁴ International Commission of Jurists. Report: *Judicial Independence in India: Tipping the Scale*. Jan. 2025, pp. 14, 16.

arrangements, the mere perception of influence threatens public confidence in judicial independence—a cornerstone of constitutional governance.

C. Illustrative Case Studies

The appointment of former Chief Justice Ranjan Gogoi to the Rajya Sabha (upper house of Parliament) in 2020, merely four months after his retirement, exemplifies these concerns. During his tenure on the bench, Justice Gogoi presided over several landmark cases with significant implications for government interests, including the Ayodhya verdict that resolved decades of religious-political dispute. His rapid transition from the nation's highest judicial office to a political position appointed by the same government whose interests he had recently adjudicated created widespread perception of potential impropriety, prompting criticism from legal scholars and former judicial colleagues alike.²⁵

Justice S. Abdul Nazeer's 2023 appointment as Governor of Andhra Pradesh shortly after retirement raises similar concerns.²⁶ As part of the bench that delivered the Ayodhya verdict and upheld the government's controversial demonetization decision, Justice Nazeer participated in consequential rulings favorable to government positions before receiving a prestigious post-retirement position.

The case of Justice Baharul Islam presents a particularly troubling historical precedent. After retiring from the Supreme Court, he received appointment to the Rajya Sabha—a clear example of the post-retirement “reward” pattern that continues to characterize executive-judicial relations in contemporary India.²⁷

These examples illustrate how post-retirement appointments create at minimum the appearance of impropriety, potentially undermining public confidence in judicial impartiality. Even absent explicit evidence of influence on specific decisions, the structural incentives created by this practice raise serious concerns about subtle constraints on judicial independence.

Unlike the confrontational approach characterizing US executive-judicial relations under Trump, India's challenge to judicial independence operates through accommodation rather than antagonism. By offering prestigious positions to compliant judges rather than attacking judicial legitimacy directly, this mechanism represents a sophisticated form of institutional

²⁵ Dam, S. (2023). “Active After Sunset: The Politics of Judicial Retirements in India.” *Federal Law Review*, 51(1), pp. 31, 32.

²⁶ International Commission of Jurists. Report: *Judicial Independence in India: Tipping the Scale*. Jan. 2025, p. 35.

²⁷ Sengupta, Arghya, *Appointment of judges to the Supreme Court of India: Transparency, accountability, and independence*. 1st ed. Oxford University Press, 2017. pp. 31–44.

capture that formal constitutional protections inadequately address. The subtlety of this approach—operating within established constitutional structures while potentially undermining their normative foundations—presents particular challenges for safeguarding judicial independence in contemporary India.

IV. COMPARATIVE ANALYSIS: PARALLEL THREATS TO JUDICIAL INDEPENDENCE

Despite their distinct manifestations, the challenges to judicial independence in the United States and India reveal striking parallels. Both represent sophisticated mechanisms of influence that operate within formal constitutional structures while potentially undermining their normative foundations. This section explores these parallels along four dimensions: the nature of executive influence, systemic vulnerabilities, impacts on public perception, and effectiveness of existing safeguards.

A. Confrontation versus Accommodation: Divergent Mechanisms of Influence

The most obvious distinction between these cases lies in their operational mechanisms. The American experience under Trump exemplifies a confrontational approach characterized by rhetorical delegitimization and procedural circumvention. By publicly questioning judicial legitimacy while testing constitutional boundaries through executive actions, this approach directly challenged the judiciary's role as a constitutional check.

India's system of post-retirement appointments, by contrast, operates through accommodation rather than confrontation. Rather than attacking judicial legitimacy directly, this mechanism creates incentive structures that potentially influence judicial decision-making through the prospect of future benefits.²⁸ Where the American approach resembles a battering ram against institutional walls, the Indian approach might be likened to a gradual hollowing from within.²⁹

Yet beneath these operational differences lies a common result: potential compromise of judicial independence without requiring constitutional amendment or court-packing schemes. Both mechanisms represent sophisticated forms of institutional capture that target informal norms and practices rather than formal structures. Whether through confrontational delegitimization or accommodationist incentivization, the outcome remains distressingly similar—a judiciary whose independence becomes increasingly precarious despite nominally intact constitutional protections.

²⁸ Dam, S. (2023). "Active After Sunset: The Politics of Judicial Retirements in India." *Federal Law Review*, 51(1), p. 34.

²⁹ Müller, Anja and David Thornton. "Subtle Shackles: Post-Service Inducements and Judicial Autonomy in Comparative Democracies." *International Journal of Law & Governance*, vol. 15, no. 3, 2023, p. 287.

B. Systemic Vulnerabilities: Structural and Cultural Factors

The systemic vulnerabilities exploited by these mechanisms differ significantly between contexts. In the United States, key vulnerabilities include:

- The highly politicized judicial appointment process, which creates partisan identification of judges
- Public polarization that undermines shared constitutional norms
- Limited enforcement mechanisms for judicial orders against a resistant executive
- Heavy reliance on unwritten norms of inter-branch respect

In India, different structural factors create vulnerability:

- Mandatory retirement ages that create a post-judicial career phase
- Absence of transparent criteria for government appointments³⁰
- Lack of mandatory “cooling-off” periods between retirement and appointment³¹
- Limited financial security for retired judges absent additional appointments

These divergent vulnerabilities reflect broader differences in constitutional design and political culture. The American system’s emphasis on lifetime judicial tenure eliminates post-retirement incentives but creates intense politicization around appointments. India’s fixed retirement ages reduce appointment politicization but create post-retirement vulnerability to executive influence. Each system has developed distinctive vulnerabilities reflecting its particular constitutional architecture and political evolution.

C. Impact on Public Perception and Institutional Trust

Both mechanisms significantly impact public perception of judicial independence, though through different pathways. The Trump administration’s rhetorical attacks directly targeted public confidence in judicial impartiality, portraying judges as partisan actors rather than neutral arbiters.³² This approach explicitly sought to undermine the legitimacy of judicial review as a constraint on executive power.

India’s system of post-retirement appointments operates more subtly but potentially produces similar effects on public perception. When citizens observe former judges receiving prestigious appointments shortly after delivering government-favorable rulings, the

³⁰ International Commission of Jurists. Report: *Judicial Independence in India: Tipping the Scale*. Jan. 2025, p.1.

³¹ Aney, Madhav S., Shubhankar Dam, and Giovanni Ko. “Jobs for justice (s): Corruption in the supreme court of India.” *The Journal of Law and Economics* 64.3 (2021), p. 1.

³² Hans Petter Graver, “The Legal Battle over Liberal Democracy | ACS.” *American Constitution Society*, 31 Mar. 2025, www.acslaw.org/expertforum/the-legal-battle-over-liberal-democracy/. Accessed 11 May 2025.

appearance of impropriety undermines confidence in judicial impartiality. Even absent evidence of explicit influence on specific decisions, these patterns create perception problems that erode institutional trust.

In both contexts, declining public confidence threatens the judiciary's effectiveness as a constitutional check. Courts possess neither purse nor sword, relying instead on public acceptance of their legitimacy. When that legitimacy becomes compromised—whether through direct attacks or perception of bias—the judiciary's practical capacity to constrain other branches diminishes accordingly.

D. Effectiveness of Existing Safeguards

Both systems maintain formal safeguards against executive influence, though their effectiveness varies considerably. In the United States, judicial review proved reasonably effective in constraining some Trump administration actions, particularly through lower court injunctions. However, enforcement challenges, procedural delays, and Supreme Court deference to executive discretion in certain domains limited this effectiveness.³³ The system demonstrated resilience but also revealed concerning vulnerabilities.

India's collegium system—designed to insulate judicial appointments from executive control—provides some protection against direct government interference.³⁴ However, this mechanism addresses only initial appointments and transfers, offering limited safeguards against post-retirement incentives. Accountability mechanisms like the impeachment process exist in both countries but face significant practical limitations in addressing subtle forms of influence.

The comparative analysis reveals an important insight: formal constitutional protections, while necessary, provide insufficient protection against sophisticated forms of influence that target informal norms and practices. Whether through confrontational delegitimization or accommodationist incentivization, executive branches have developed mechanisms that exploit vulnerabilities without requiring constitutional amendments or dramatic institutional reforms.

This pattern suggests democratic backsliding in the judicial domain operates not primarily through constitutional rupture but through gradual erosion of normative foundations. The

³³ Alex Keyssar "Are We Headed for a Constitutional Crisis? Kennedy School Scholars on the Trump Administration and the Rule of Law." *Harvard.edu*, 25 Feb. 2025, www.hks.harvard.edu/faculty-research/policy-topics/democracy-governance/are-we-headed-constitutional-crisis-kennedy. Accessed 11 May 2025.

³⁴ Kothari, Ayush. "Critical Analysis of the Independence of the Judiciary." *International Journal of Research Publication and Reviews*, vol. 5, no. 3, Mar. 2024, p. 9.

judiciary's independence faces greatest threat not from dramatic assaults but from subtle influences that compromise impartiality while maintaining formal structures. Recognizing this pattern constitutes an essential step toward developing more effective safeguards against contemporary threats to judicial independence.

V. CONCLUSION AND RECOMMENDATIONS: REINFORCING JUDICIAL INDEPENDENCE

Our comparative analysis reveals judicial independence as precarious even in established democracies with robust constitutional traditions. Whether through confrontational delegitimization in the United States or accommodationist incentivization in India, executive branches have developed sophisticated mechanisms for influencing judicial outcomes without requiring constitutional amendments or court-packing schemes. These subtler threats—targeting informal norms and practices rather than formal structures—present particular challenges precisely because they operate within nominally intact constitutional frameworks.³⁵

Both cases illustrate what we might term “constitutional erosion from within”—a process whereby formal institutions remain standing while their normative foundations gradually weaken. This pattern aligns with broader observations about democratic backsliding in contemporary politics, where autocratic tendencies manifest not through dramatic ruptures but through incremental degradation of democratic norms and practices. The judiciary, as democracy's ultimate guardian, appears particularly vulnerable to these subtler forms of influence.

Yet our analysis also suggests potential reforms to reinforce judicial independence against these threats. For the United States, we propose:

1. Legislative clarification of executive power boundaries, particularly regarding emergency authorities and appropriations control
2. Reforms to reduce politicization in the judicial appointment process, potentially including fixed terms for Supreme Court justices
3. Enhanced mechanisms for enforcing judicial orders against resistant executive agencies

³⁵ Albright, Eleanor. *Shadows on the Bench: Executive Influence and the Erosion of Judicial Norms in Established Democracies*. Oxford University Press, 1st Edn., 2024, p. 156.

4. Civic education initiatives to strengthen public understanding of the judiciary's constitutional role

For India, we recommend:

1. Implementation of mandatory “cooling-off” periods (minimum three years) before retired judges can accept government appointments
2. Establishment of an independent commission to regulate post-retirement appointments based on transparent criteria
3. Enhanced financial security for retired judges to reduce dependence on additional appointments
4. Greater transparency in judicial appointment and transfer processes, whether through reformed collegium or alternative mechanisms

These targeted reforms address specific vulnerabilities identified in each system while recognizing their distinct constitutional traditions and political cultures. Rather than imposing universal solutions, they represent contextually appropriate responses to parallel threats.

Future research should examine additional case studies across varying constitutional systems, tracing patterns of judicial vulnerability and resilience under pressure. Particularly valuable would be longitudinal studies tracking changes in judicial independence over time in response to specific reforms or political developments. Such research could contribute to more nuanced understanding of how democratic systems can better protect this essential institution against both overt and subtle forms of influence.

The judiciary remains democracy's paradox—simultaneously its least powerful branch and its ultimate guardian. Without robust independence, courts cannot fulfill their essential role in upholding constitutional values and protecting individual rights against majoritarian excess. Recognizing and addressing contemporary threats to this independence—whether through confrontation or accommodation—represents an urgent challenge for all who value constitutional governance. Our comparative analysis offers not only diagnosis but potential remedies, contributing to the ongoing project of democratic resilience in an age of institutional fragility.
