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Judicial Systems: A Comparative Analysis of India and U.S.A

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ABSTRACT

All thoughtful men agree that it would be impossible to govern any country wisely without a good judiciary; and accordingly every enlightened nation has established courts, conferring on them such powers and imposing on them such duties as seem best calculated to promote the public welfare. Indeed, the importance of the judiciary is now so thoroughly recognized that in every land where liberty is cherished and the law respected, the people are engaged in a constant struggle to improve their system; and in that struggle the judges have everywhere borne the most useful part. With that thought in my mind, the researcher would now like to introduce the topic.

Given the complex nature of comparative study in the field of judicial systems, the researcher has tried meticulously to analyse the topic based on five yardsticks, namely- the constitution and composition of courts, principle of natural justice, concept of judicial review and how it is enforced, separation of powers and finally the challenges that lay ahead of both the judicial systems.

I. INTRODUCTION

“We are under a Constitution, but the Constitution is what the judges say it is, and the judiciary is the safeguard of our property and our liberty and our property under the Constitution.”

- Charles Evans Hughes

As we know that India and America boast of being the world's biggest and oldest democracy respectively in the world. It is indeed a privilege to know that both the democracies have not only thrived over the time but have maintained the constitutional supremacy. One of the basic features or as we say the touchstone of democracy is judiciary. The most important function of judiciary is to interpret law. The Indian Constitution provides for Independence of judiciary which is a basic feature of the constitution as reiterated by honourable Supreme Court of India. In case of U.S.A, the power of judiciary has evolved over time, we shall see in the later chapters

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how the judiciary has declared almost every law passed by legislature which was in conflict with the constitution or the court itself. The founding fathers of America were also concerned about freedom of courts and that is very much prevalent in the debates of constitutional convention. We will also see how two cases shaped the history of judicial review in United States.

If there should be an occurrence of India the underlying long periods of the preeminent court of India saw the selection of a methodology portrayed by alert and attentiveness. Being saturated with the British convention of restricted legal survey, the court commonly received a pre-governing body position. This is evident from the rulings such as *A.K Gopalan*. As Justice Cardozo puts it, “A constitution states or ought to state not rules for the passing hour but principles for an expanding future.”

It would therefore be interesting to compare these two vast systems of democracy and to trace their historical backgrounds and their workings in light of the major challenges that stand ahead. The researcher has also attempted to draw certain similarities where ever necessary between the two systems since it is the belief of the researcher that despite having certain differences in terms of composition and approach the basic spirit of both the systems is same i.e. JUSTICE.

II. CONSTITUTION AND COMPOSITION OF COURTS

U.S.A

- a) If the government court framework is seen as a pyramid, at the top is the Supreme Court of the United States, the most elevated court.
- b) On the following level are the 13 United States Courts of Appeals and the US Court of Appeals for the Armed Forces.
- c) On the accompanying level are the 94 US region courts and the particular courts, for example, the Tax Court, the Court of Federal Claims, the Court of Veterans Appeals, and the Court of International Trade. There are different highways a case may take to a government court.

INDIA

- a. **Supreme Court:** the Supreme Court of India is the apex judicial forum and final court of appeal as established by Chapter IV of Part V of the Constitution of India. The Supreme Court enjoys writ, appellate, original and advisory jurisdiction. In addition to this Supreme Court and High Court also enjoy the power of judicial review. The Supreme Court of India

consists of the Chief Justice of India and thirteen other Judges. The Judges are appointed by the President of India on the ministerial advice after consultation with the Judges as prescribed in the fundamental law of the land. They hold office until they attain the age of sixty-five years and are irremovable except by what is known as the process of impeachment only on the ground of proved misbehavior or incapacity. Chapter IV of Part V of the Constitution of India deals with the Union Judiciary.

b. **High Court:** High Courts are the highest courts at district and union territory level. These courts have jurisdiction over a state, a union territory or a group of states and union territories. The High Courts in India enjoy writ, Revision and Appellate jurisdiction, whereas High Courts at Mumbai, Kolkata, Delhi and Chennai also enjoy original jurisdiction. Just below the Supreme Court there is a High Court for each State. But there is a common High Court for the States of Assam and Nagaland. Each High Court consists of a Chief Justice and such other Judges as the President may deem it necessary to appoint. Every Judge of a High Court is appointed by the President on the Ministerial advice after consultation with the Chief Justice of India, the Governor of the State concerned and in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court too. The retiring age of the High Court Judges has recently been raised from sixty to sixty-two years.⁴ A High Court judge may be removed from his office exactly in the same manner as in the case of removal of a Supreme Court Judge. Chapter V of Part VI of the Constitution of India deals with the High Courts in the states.

c. **District and Sessions Court:** Generally each state is divided into districts presided over by a 'District and Sessions Judge'. He is known as District judge when he presides over a civil case and a Sessions judge when he presides over a criminal case. He is the highest judicial authority at district level. Constitution of courts below this level varies from state to state. Chapter VI Part VI of the Constitution of India deals with Subordinate Courts.

d. **Various Tribunals and Appellate Boards:** The Indian Judicial system also consist of many Tribunals and Appellate Boards constituted for specific purposes. The power, jurisdiction and procedure of these forums are generally governed by the statutes constituting them. IPAB is one of the most prominent among these forums and it enjoys appellate as well as original jurisdiction in IP matters.

NOTE: It is important to note that the Judges of the Supreme Court of India retire at the age of 65. The Judges of the Supreme Court of America on the other hand are appointed for life time but they can retire, if they so choose, at the age of 70. This enables their country to utilize their experience which they have gathered at the expense of the nation. It is not unoften that

Judges after their retirement in India are appointed as members of various tribunals and commissions. Evidently all such judges as are offered various assignments after their retirement are capable of serving the Courts also.

III. POWER OF JUDICIAL REVIEW

U.S.A

The basic hypothesis of American legal audit is condensed by sacred lawful researchers and students of history as follows: the composed Constitution is crucial law. It can change just by remarkable administrative procedure of national proposition, at that point state endorsement. The forces of all offices are restricted to counted awards found in the Constitution. Courts are normal:

- a) To authorize arrangements of the Constitution as the preeminent rule that everyone must follow, and
- b) To decline to uphold anything in strife with it.

INDIA

The Apex Court of India holds the weapon of Judicial Review but in no way at par with the Judicial Review of the Supreme Court of the United States.

The "due process " clause in the Constitution of America enables its Supreme Court to declare such laws ultra vires as are not in consonance with their reason while in India the Judges of the Supreme Court can declare only such laws and orders as ultra vires as are repugnant to the Constitution The problem before our Supreme Court is not to examine the "due process' but "the procedure established by law." The American Supreme Court has freely used the doctrine of implied powers enabling thereby a rigid constitution to keep pace with times but no such role has been assigned to the Supreme Court of India. Accordingly while the Supreme Court of America has been described as the third chamber of its Legislature, more powerful than the remaining two, no such role is expected to be played by the Supreme Court of India.

IV. SEPARATION OF POWERS

U.S.A

The Constitution of the U.S.A. accommodates more prominent detachment of forces because of which the workplace of the President has gotten all the more impressive.

President Grover Cleveland- He additionally started to suspend civil servants who were named because of the support framework, supplanting them with progressively "meriting" people. The Senate, in any case, would not affirm numerous new designations, rather

requesting that Cleveland turn over the classified records identifying with the suspensions. Cleveland unflinchingly won't, affirming, "These suspensions are my official demonstrations ... I am not mindful to the Senate, and I am reluctant to present my activities to them for judgment." Cleveland's famous help constrained the Senate to withdraw and affirm the chosen people. Besides, Congress at last canceled the questionable Tenure of Office Act that had been passed during the Johnson Administration. Generally speaking, this implied Cleveland's Administration denoted the finish of presidential subjection.

Let us examine how the system of checks and balances works in U.S.A -

Legislative

- Writes and authorizes laws
- Enacts charges, approves obtaining, and sets the financial limit
- Has sole capacity to pronounce war
- May start examinations, particularly against the official branch
- The Senate thinks about presidential arrangements of judges and official office heads
- The Senate sanctions settlements
- The House of Representatives may reprimand, and the Senate may evacuate, official and legal officials
- Sets up government courts aside from the Apex Court, and sets the quantity of judges on the Apex Court
- May abrogate presidential vetoes

Executive

- May veto laws
- Wages war at the course of (Congress makes the standards for the military)
- Makes announcements or affirmations (for instance, pronouncing a highly sensitive situation) and declares legitimate guidelines and official requests
- Influences different parts of its plan with the State of the Union location.
- Appoints judges and official division heads
- Has capacity to concede acquittals to indicted people, aside from in instances of reprimand

Judicial

- Determines which laws Congress proposed to apply to some random case

- Determines whether a law is illegal. Notwithstanding, this isn't a force given in the constitution. It was 'made' in Marbury v Madison (1803)
- Determines how Congress implied the law to apply to debates
- Determines how a law demonstrations to decide the mien of detainees
- Determines how a law demonstrations to constrain declaration and the creation of proof
- Determines how laws ought to be deciphered to guarantee uniform approaches in a top-down design by means of the interests procedure, yet gives circumspection in singular cases to low-level adjudicators. (The measure of carefulness relies on the standard of audit, controlled by the sort of case being referred to.)
- Polices its own individuals

INDIA

The Apex Court has, over the few decades, construed the fundamental rights incorporated in Part III of the Constitution liberally, and for securing their effective implementation adopted innovative methods *which may at times appear to trespass on the legislative and executive fields*. For example, the right to life guaranteed by Article 21 of the Constitution has been construed as the right to life free from environmental pollution. By issuing a series of guidelines in a public interest litigation and regular monitoring of their enforcement, the Court has brought down air pollution in Delhi, the Capital of India.

V. CHALLENGES AHEAD

U.S.A

- **Political Challenges**

The Constitution commands that the forces of the government be isolated among three free branches: official, authoritative and legal. Be that as it may, the Judiciary is financed; similar to every single other piece of the government, through apportionments bills passed by Congress and marked by the President. You have heard that the Judiciary doesn't have the intensity of the tote. To be sure, it doesn't; it is needy for its money related job on Congress and the President.

The Judiciary's money related issues are put together not just with respect to the declining level of their apportionments yet in addition on the way that 84% of costs comprise of two things over which it has little control in the close to term-lease and faculty costs.

- **Structural Challenges**

The declining preliminary rate in common cases has been joined by an unprecedented

increment in the utilization of private debate goals discussions, for example, discretion and intervention, which occupy cases from the government courts or, when a case is documented in administrative court, are turned to either by understanding or by heading from the area court. A quarter century back, individuals who made their living as authorities or go between were rare. Today, there is a multitude of them taking care of what used to be court's the same old thing. Obviously, the extensive pre-preliminary cost coming about because of legal executive's case the board systems is one explanation.

The expanding dependence on staff that is happening at the re-appraising level because of taking off caseloads and a reasonable hesitance to manage the taking off caseloads by expanding the quantity of judges is another reason for concern.

INDIA

- **Backlog of pending cases:** India's genuine framework has the best excess of pending cases on the planet – as much as 30 million pending cases. Of them, more than 4,000,000 are High Court cases, 65,000 Supreme Court cases. This number is constantly broadening and this itself shows the inadequacy of the certifiable framework.. Additionally, in addition by virtue of this wealth, a large portion of the detainees in India's remedial offices are prisoners predicting starter. It is in like way quick and dirty that in Mumbai, India's money related center point, the courts are wasted time with age-old land examines, which go about as an obstruction in the city's mechanical movement.

- **No interaction with the society:** It is critical that the authentic authority of any nation ought to be a fundamental piece of the general populace and its relationship with the general populace must be made run of the mill and huge. It is in like way observed that there is duty of standard inhabitants in legitimate dynamic in two or three nations.

- **Appointment of Judges:** Recently we saw an ugly battle between the government and the Indian Judiciary on the issue of appointment of Judges. Even the constitution was amended and NJAC was brought forth replacing the previous system of collegium. Later we saw how the Supreme Court upheld NJAC as unconstitutional and restored the old system of collegium. It is very essential for the healthy development of our democracy that such clashes are avoided. The issue of appointment is a concern but it must be resolved without conflicts between the organs of the government.

VI. CONCLUSION

It may fairly be concluded that both the judicial systems are remarkable both in terms of their organization and the way each has handled the challenges from time to time and evolved with

the ever changing needs of the society. Judiciary has always remained the guardian of rights of the citizens.

It goes without a doubt that independence of judiciary is very essential for it to perform according to expectations and to establish rule of law in the society. As the researcher has discussed above the judicial systems of both U.S.A and India share sharp contrasts but in the end they stand for the same principles of equity, justice and good conscience. Whether in terms of Judicial review of its own decisions or standing firm on maintaining the principles of natural justice the judiciary has always kept in mind the interest of citizens. Today people have utmost faith in this organ of government more than other two.

The basic function of judiciary is to interpret law keeping in mind various factors like intention of legislature and objet of legislation. But over the past decade there has been a major shift in the role of Judiciary across the globe. They have expanded their functions in the interest of the citizens and even went further to the extent of giving the directions to the executive and legislature based on the facts and circumstances of each case. This has increased the role of judiciary and further expanded its independence and power in the legal realm. On the other hand today we see some major challenges facing judiciary like appointment of judges, attack on its independence, corruption and various others. They call for a collective effort to curb such factors which might restrain impartial functioning of judiciary. There must be a balance between power and duty. Only then the ideals of democracy will survive and spirits of justice prevail.
