



Gujarat National Law University

# GUJARAT NATIONAL LAW UNIVERSITY

## Appointment of Judges: Procedures in Commonwealth Member States and Other Selected Jurisdictions

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Professor (Dr.) Bimal N. Patel, Director & Professor of Public International Law  
Professor Avinash Bhagi, Assistant Professor  
Shashi Bhushan Sharma, Research Associate  
Alok Ratnoo, Research Associate  
Neha Khurana, Research Associate



*Centre for Constitutional & Administrative Law*

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## 1. AUSTRALIA

SR. NO.	PARTICULARS	DETAILS
1.	<b>Highest Court</b>	High Court of Australia: The High Court is the final appellate court beyond the state and territory supreme courts.
2.	<b>Appointing Law</b>	<ul style="list-style-type: none"> <li>• Commonwealth of Australia Constitution Act 1900: S. 72(i).</li> <li>• High Court of Australia Act 1979: S 6</li> </ul>
3.	<b>No. of judges</b>	Consists of 7 justices, including the Chief Justice.
4.	<b>Appointing authority</b>	Governor-General acting on advice of the federal Cabinet (The responsible Cabinet member is the Attorney-General, who in the case of a vacancy on the High Court of Australia must consult with the Attorney-General of each state prior to recommending a candidate to the Governor-General.)
5.	<b>Appointing procedure</b>	<ul style="list-style-type: none"> <li>• Once the Cabinet has approved the Attorney-General's recommendation of the nominee, the appointment papers (including the Commission of Appointment) are forwarded to the Executive Council Secretariat for consideration by the Governor General.</li> <li>• If in agreement, the Governor General signs the Commission of Appointment and it is fixed with the Great Seal by way of authentication.</li> <li>• Once an appointment has been approved by the Governor-General in Executive Council, the Attorney-General publicly announces the appointment.</li> </ul>
6.	<b>Other Commission</b>	N-A
7.	<b>Composition of commission</b>	N-A
8.	<b>Role in</b>	N-A

	<b>appointment</b>	
9.	<b>Advantages of the system</b>	<ul style="list-style-type: none"> <li>• Flexibility and</li> <li>• Confidentiality</li> </ul>
10.	<b>Disadvantages of the system</b>	<ul style="list-style-type: none"> <li>• Lack of accountability of executive government, and</li> <li>• The Restricted range of people who presently hold judicial office.</li> </ul>
11.	<b>Important observation</b>	<ul style="list-style-type: none"> <li>• Judges are appointed to Commonwealth courts, including the High Court, by the Governor-General, acting on the advice of the Commonwealth Government. State judges are appointed by the State Governor, on the advice of the State Government.</li> <li>• Informal consultation sometimes takes place before an appointment is made. Consultation is legally required only in relation to the appointment of High Court judges when the Commonwealth Government must consult with the various State Governments.</li> </ul>

## 2. BANGLADESH

SR. NO.	PARTICULARS	DETAILS
1.	<b>Highest Court</b>	Supreme Court of Bangladesh
2.	<b>Appointing Law</b>	Constitution of the People's Republic of Bangladesh 1972.
3.	<b>No. of judges</b>	Organized into the Appellate Division with 7 justices and the High Court Division with 99 justices.
4.	<b>Appointing authority</b>	Chief justice and justices appointed by the President
5.	<b>Appointing procedure</b>	The President acts alone in appointing the Chief Justice, and appoints other judges, after consultation with the Chief Justice, on the Prime Minister's advice (arts 48(3) and 95(1)).
6.	<b>Other Commission</b>	N-A
7.	<b>Composition of commission</b>	N-A
8.	<b>Role in appointment</b>	N-A
9.	<b>Advantages of the system</b>	<ul style="list-style-type: none"> <li>• Flexibility and</li> <li>• Confidentiality</li> </ul>
10.	<b>Disadvantages of the system</b>	<ul style="list-style-type: none"> <li>• Patronage Appointments</li> <li>• Appointments based on extraneous consideration.</li> </ul>
11.	<b>Important observation</b>	Prior to 2014, decisions on appointment and removal were made by the Supreme Judicial Commission of Bangladesh which was composed of nine ex-officio members, six of whom were from the judiciary—the Chief Justice of Bangladesh, the three senior-most judges of the Appellate Division, and two senior most judges of the High Court Division of the Supreme Court. The recommendations also were not binding on the executive. This provision was abolished by the Sixteenth Amendment to the Constitution (Act XIII of 2014).

### 3. BRAZIL

SR. No.	PARTICULARS	DETAILS
1.	<b>Highest Court</b>	The Supreme Federal Court
2.	<b>Appointing Law</b>	Constitution Of The Federative Republic Of Brazil, 1988
3.	<b>No. of judges</b>	11
4.	<b>Appointing authority</b>	President + Approval by the Federal Senate
5.	<b>Appointing procedure</b>	President and approved by the Federal Senate(complete majority)
6.	<b>Other Commission</b>	NA
7.	<b>Composition of commission</b>	NA
8.	<b>Role in appointment</b>	NA
9.	<b>Advantages of the system</b>	Appointing procedure is plural which is very good for accountability but Senate take lone time to approve the names.
10.	<b>Disadvantages of the system</b>	Judiciary has no role in appointment of judges
11.	<b>Important Observations</b>	<ul style="list-style-type: none"> <li>• The citizens who are related in blood or in affinity to any current Justice of the Court, in ascending, Descending or collateral line, until third degree, must not be appointed Justice of the Supreme Federal Court. Even so, it is in the appointment of Supreme Court seats that the executive has the greatest leverage.</li> <li>• The Supreme Federal court is considered one of the busiest court in the world.</li> </ul>

#### 4. CANADA

SR. NO.	PARTICULARS	DETAILS
1.	<b>Highest Court</b>	Supreme Court of Canada
2.	<b>Appointing Law</b>	Canadian Constitution Act 1867; Judges Act 1985; Supreme Court Act 1985.
3.	<b>No. of judges</b>	Consists of the chief justice and 8 judges
4.	<b>Appointing authority</b>	Chief justice and judges appointed by the prime minister in council; (or The Governor in Council.) <b><u>Selection Authority:</u></b> The Prime Minister + Minister of Justice.
5.	<b>Appointing procedure</b>	<b>Who are Consulted:</b> <ul style="list-style-type: none"> <li>• Chief Justice and Judges of the Supreme Court and the Chief Justice of the Federal Court — Minister of Justice who in turn consults provincial attorneys-general.</li> <li>• Judges of Federal Court — Advisory Committee on Judicial Appointments, senior members of the judiciary, the bar, the appropriate provincial and territorial attorneys-general and ministers of justice.</li> </ul> <b>Nominations and Recommendations:</b> <ul style="list-style-type: none"> <li>• The Prime Minister recommends candidates for appointment as the Chief Justice and judges of the Supreme Court and the Chief Justice of the Federal Court.</li> <li>• The Minister of Justice recommends candidates for appointment as judges of the Federal Court.</li> </ul>
6.	<b>Other Commission</b>	<b><u>PROVINCIAL APPOINTMENTS:</u></b> For Appointments in the courts other than supreme court. Judicial Appointments Advisory Committee (JAAC)
7.	<b>Composition of commission</b>	The Committee has thirteen members. Legislation requires that the composition of the committee represent the diversity of the provinces. There are seven lay members appointed by the Attorney

		General and six from the legal community – three lawyers, two judges, and a member of the judicial council. All members serve for a renewable term of three years. The legislative branch is not represented in the composition of the committee. Though the Attorney General appoints more than half the membership of the committee, the committee as a whole is considered independent of the Attorney General and the Government.
8.	<b>Role in appointment</b>	The committees are advisory and do not actively recruit candidates; they only consider names submitted by the executive.
9.	<b>Advantages of the system</b>	<ul style="list-style-type: none"> <li>• "Advisory Committees on Judicial Appointments" have been set up in provinces and territories for consultation purposes.</li> <li>• Judges are now believed to have been selected more for their legal merits than for political considerations.</li> </ul>
10.	<b>Disadvantages of the system</b>	<ul style="list-style-type: none"> <li>• Unstructured and lacking in transparency.</li> <li>• No committee to advise the federal government on appointments to the Supreme Court.</li> <li>• Advisory Committee on Judicial Appointments is only advisory in nature, not a nominating committee.</li> <li>• Lack of consultation by the Minister of Justice with the Attorneys General and Chief Justices of various provinces.</li> </ul>
11.	<b>Important observation</b>	<ul style="list-style-type: none"> <li>• Note - in 1949, Canada finally abolished all appeals beyond its Supreme Court to the Judicial Committee of the Privy Council (in London)</li> <li>• The provincial appointments committees are advisory and do not actively recruit candidates; they only consider names submitted by the executive.</li> </ul>



## 5. FRANCE

SR. NO.	PARTICULARS	DETAILS
1.	<b>Highest Court</b>	<ul style="list-style-type: none"> <li>• Court of Cassation or Cour de Cassation (consists of the court president, 6 divisional presiding judges, 120 trial judges, and 70 deputy judges organized into 6 divisions - 3 civil, 1 commercial, 1 labor, and 1 criminal);</li> <li>• Constitutional Council (consists of 9 members)</li> </ul>
2.	<b>Appointing Law</b>	<ul style="list-style-type: none"> <li>• The fifth French Constitution was promulgated on October 4, 1958- Article 64, Article 65.</li> </ul>
3.	<b>No. of judges</b>	<ul style="list-style-type: none"> <li>• Court of Cassation or Cour de Cassation (consists of the court president, 6 divisional presiding judges, 120 trial judges, and 70 deputy judges organized into 6 divisions - 3 civil, 1 commercial, 1 labor, and 1 criminal);</li> <li>• Constitutional Council (consists of 9 members)</li> </ul>
4.	<b>Appointing authority</b>	<ul style="list-style-type: none"> <li>• The Conseil Supérieur de la Magistrature (CSM) is a Constitutional body, created by Article 64 in 1883 to assist the President in selecting both judges and public prosecutors (considered part of the judiciary)</li> </ul>
5.	<b>Appointing procedure</b>	<ul style="list-style-type: none"> <li>• Court of Cassation judges appointed by the president of the republic from nominations from the High Council of the Judiciary(CSM), presided by the Court of Cassation and 15 appointed members; judge term of appointment NA;</li> <li>• Constitutional Council members appointed - 3 by the president of the republic and 3 each by the National Assembly and Senate presidents; members serve 9-year, non-renewable terms with one third of the membership renewed every 3 years</li> </ul>
6.	<b>Other Commission</b>	<ul style="list-style-type: none"> <li>• Oversight commission: responsible for inquiry and removal</li> </ul>

7.	<b>Composition of commission</b>	<ul style="list-style-type: none"> <li>• 10 + President of Republic and Minister of Justice ex officio.</li> </ul> <p>The CSM's membership is as follows:<sup>1</sup></p> <ul style="list-style-type: none"> <li>• The President</li> <li>• The Minister of Justice</li> <li>• Three prominent citizens who are neither judges nor members of Parliament, nominated by the President of the republic, the president of the National Assembly, and the president of the Senate, respectively</li> <li>• One judge from the Council of State (apex administrative court, under the control of the executive), who is elected by the Council of State's general assembly</li> <li>• Five judges</li> <li>• Five public prosecutors (The President and Minister of Justice sit as ex officio members.)</li> </ul>
8.	<b>Role in appointment</b>	<ul style="list-style-type: none"> <li>• The CSM plays the primary role in the appointments to the Court of Cassation (the highest court for civil and criminal appeal), of the chief judges of the Courts of Appeals, and of the chief judges of the tribunaux de grande instance (the major trial courts). For these 350 positions, the CSM advertises positions, reviews applications, interviews candidates and submits its recommendations to the President. Technically, the President can refuse to appoint a candidate proposed by the CSM but in reality the President is always limited to appointing a judge proposed by the council. In addition, the council's approval is required for all lower court appointments.</li> </ul>
9.	<b>Advantages of the system</b>	<ul style="list-style-type: none"> <li>• Constitutional clarity.</li> </ul>
10.	<b>Disadvantages of the system</b>	<ul style="list-style-type: none"> <li>• The issue of judicial appointments has been a contentious one in France stemming from the Constitution's assignment of the judiciary to a position of less power and independence than the executive and legislature.</li> </ul>

<sup>1</sup> Article 65 of French Constitution

11.	<b>Important observation</b>	<ul style="list-style-type: none"><li>• Until the new Constitution of 1946 the President did not share the power to appoint the CSM's members with the members of Parliament. In 1958, in the Constitution of the Fifth Republic, the exclusive authority to appoint members of the CSM was returned to the President, a move not reversed until 1993. The 1993 amendment also widened the CSM's jurisdiction, enlarged its membership, and handed it an advisory role in both the nomination and disciplining of judges.</li></ul>
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## 6. GERMANY

SR. NO.	PARTICULARS	DETAILS
1.	<b>Highest Court</b>	<ul style="list-style-type: none"> <li>• <b>Federal Court of Justice</b> (court consists of 127 judges including the court president, vice-presidents, presiding judges, and other judges, and organized into 25 Senates subdivided into 12 civil panels, 5 criminal panels, and 8 special panels;</li> <li>• <b>Federal Constitutional Court</b> or Bundesverfassungsgericht (consists of 2 Senates each subdivided into 3 chambers, each with a chairman and 8 members)</li> </ul>
2.	<b>Appointing Law</b>	Article 95 of the Basic Law (German Constitutional)
3.	<b>No. of judges</b>	<ul style="list-style-type: none"> <li>• Federal Court of Justice consists of 127 judges including the court president, vice-presidents, presiding judges, and other judges, and organized into 25 Senates subdivided into 12 civil panels, 5 criminal panels, and 8 special panels;</li> <li>• Federal Constitutional Court or Bundesverfassungsgericht consists of 2 Senates each subdivided into 3 chambers, each with a chairman and 8 members</li> </ul>
4.	<b>Appointing authority</b>	<ul style="list-style-type: none"> <li>• Federal Court of Justice judges selected by the Judges Election Committee</li> <li>• Federal Constitutional Court judges – elected</li> </ul>
5.	<b>Appointing procedure</b>	<ul style="list-style-type: none"> <li>• Federal Court of Justice judges selected by the Judges Election Committee, which consists of the Secretaries of Justice from each of the 16 federated States and 16 members appointed by the Federal Parliament; judges appointed by the president of Germany; judges serve until mandatory retirement at age 65;</li> <li>• Federal Constitutional Court judges - one-half elected by the House of Representatives and one-half by the Senate;</li> </ul>
6.	<b>Other Commission</b>	Judges Election Committee
7.	<b>Composition of</b>	The Committee is designed to represent the interests of federal and

	<b>commission</b>	state executives as well as those of the parliament. It is chaired by the federal Minister of Justice and consists of 16 state Ministers of Justice and 16 members nominated by the federal parliament. The federal Minister of Justice does not, however, have a vote on the committee. Committee members, including the Minister of Justice, have the right to propose candidates.
8.	<b>Role in appointment</b>	The Committee's selection is based on review of candidates' personal files and the presentations of two Committee members. Though the final nomination comes from the Committee it also considers the evaluation of a committee of Federal Court judges. The evaluation is an important factor but is ultimately non-binding.
9.	<b>Advantages of the system</b>	<ul style="list-style-type: none"> <li>• Ensures balanced representation of major 2 parties and balanced regional representation This balance was probably not intended by the legislator.</li> <li>• The mode of selecting the President guarantees that the chief justices are not selected from same institution at the same time.</li> <li>• Independence of judiciary is maintained.</li> <li>• proportional representation is accorded to all political parties, regions, and both Catholics and Protestants.</li> </ul>
10.	<b>Disadvantages of the system</b>	<ul style="list-style-type: none"> <li>• political negotiation</li> <li>• non-binding evaluation</li> <li>• for compromising separation of powers by allowing so much input from politicians and political parties.</li> </ul>
11.	<b>Important observation</b>	Germany offers an example of the legislative branch having sole control over federal judicial appointments while only the judiciary, specifically the Federal Constitutional Court, has the authority to remove federal judges. Appointments to the Federal Constitutional Court itself, though, are made entirely by the two houses of the legislature.

## 7. HONGKONG

SR. NO.	PARTICULARS	DETAILS
1.	<b>Highest Court</b>	Court of Final Appeal
2.	<b>Appointing Law</b>	The Basic Law, the Hong Kong Court of Final Appeal Ordinance and the Judicial Officers Recommendation Commission Ordinance: Basic Law, Art. 90 and Juridical Officers Recommendation Commission Ordinance, s.3 and 6.
3.	<b>No. of judges</b>	consists of the chief justice, 3 permanent judges and 20 non-permanent judges; note - a sitting bench consists of the chief justice and 3 permanent and 1 non-permanent judges
4.	<b>Appointing authority</b>	The Chief Executive of HKSAR shall, pursuant to Article 90 of the Basic Law, appoint judges of the CFA and the Chief Judge of the High Court, on the recommendation of the Judicial Officers Recommendation Commission. The appointment(s) will not be legally effective until and unless LegCo has given its endorsement.
5.	<b>Appointing procedure</b>	<p>The Basic Law, the Hong Kong Court of Final Appeal Ordinance and the Judicial Officers Recommendation Commission Ordinance provide the following procedures:<sup>2</sup></p> <ul style="list-style-type: none"> <li>• Step 1: the JORC advises or makes recommendations to the Chief Executive;</li> <li>• Step 2: the Chief Executive accepts the recommendation of JORC and subject to the endorsement of the Legislative Council will make the recommended appointment;<sup>3</sup></li> <li>• Step 3: the Chief Executive reports the appointment to the Standing Committee of the National People's Congress for the record.</li> </ul>
6.	<b>Other</b>	N-A

<sup>2</sup> Basic Law, Art. 90 and Juridical Officers Recommendation Commission Ordinance, s.6.

<sup>3</sup> Brief for the Legislative Council, 30 November 2000.

	<b>Commission</b>	
7.	<b>Composition of commission</b>	<p>Total nine members:</p> <ul style="list-style-type: none"> <li>• <i>s.3(1)(a)</i>: "the Chief Justice, who shall be the Chairman".</li> <li>• <i>s.3(1)(b)</i>: "the Secretary for Justice".</li> <li>• <i>s.3(1)(c)(i)</i>: "two shall be judges".</li> <li>• <i>s.3(1)(c)(ii)</i>: "one shall be a barrister and one shall be a solicitor, each holding a practising certificate issued under the Legal Practitioners Ordinance (Cap. 159)".</li> <li>• <i>s.3(1)(c)(iii)</i>: "three shall be persons who are not, in the opinion of the Chief Executive, connected in any way with the practice of law".</li> </ul>
8.	<b>Role in appointment</b>	<p>The Judicial Service Commission was established in 1976. The main function of the Commission was to "advise the Governor regarding the filling of vacancies in judicial offices". In 1997, the name of the Commission was changed to Judicial Officers Recommendation Commission. The scope of judicial officers under its purview was enlarged and the main function was to "advise or make recommendations to the Chief Executive regarding the filling of vacancies in judicial offices".</p>
9.	<b>Advantages of the system</b>	Judges appointed are respected
10.	<b>Disadvantages of the system</b>	<ul style="list-style-type: none"> <li>• Lacking in transparency.</li> <li>• Insufficient information provided by the Administration to the Legislative Council.</li> <li>• The number of dissenting votes permissible for a JORC resolution to be effective should not be two.</li> <li>• The membership of the Secretary for Justice in JORC is seen to have a tendency to undermine the independence of the JORC.</li> <li>• Appointment of political figures as members of JORC.</li> </ul>
11.	<b>Important observation</b>	<b><u>*The judicial appointment process of HONGKONG can be studied in two time frames: pre and post 1997</u></b>

		<ul style="list-style-type: none"><li>• Before 1 July 1997, the process of appointment of judges of the Supreme Court can be summarized into the following procedures: (1) the Judicial Service Commission (JSC) gave advice to the Governor; and (2) the Governor appointed the judges by Letters Patent under the Public Seal with the instructions given through a Secretary of State.</li><li>• After 1 July 1997, the process of appointment of the Chief Justice and judges of the Court of Final Appeal and the Chief Judge of the High Court can be summarized into the following procedures: (1) the Judicial Officers Recommendation Commission (JORC) advises or makes recommendation to the Chief Executive; (2) the Chief Executive accepts the recommendation of JORC, and subject to the endorsement of the Legislative Council will make the recommended appointment; and (3) the Chief Executive reports the appointment to the Standing Committee of the National People's Congress for the record.</li></ul>
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## 8. IRAQ

S. NO.	PARTICULARS	DETAILS
1	<b>Highest Court</b>	The Federal Supreme Court
2	<b>No. of Judges</b>	Article 92 of Iraq Constitution says, as per the law made by Council of Representatives (Law to be made)
3	<b>Appointing Law</b>	The Constitution of Iraq 2005 and Law made by the Council of Representatives (to be made)
4	<b>Appointing Authority</b>	Article 91 of the Iraq Constitution provides that the Judges to the Federal Supreme Court Shall be Appointed By the Higher Judicial Council.
5	<b>Appointing Procedure</b>	Article 91(2) says selection of judges of the Federal Supreme Court shall be made by the Higher Judicial Council, which is entirely composed of Judges and Public Advocates. The selection made the Higher Judicial Council, shall directly result into appointment completely independent from the Executive and Legislature
6	<b>Other Commission</b>	Higher Judicial Council
7	<b>Composition of Commission</b>	Judges and Public Advocates
8	<b>Role in Appointment</b>	Sole appointing authority
9	<b>Advantages</b>	Appointments are made by Higher Judicial Council which exclusively comprised of members of the judiciary hence completely independent from Executive and Legislative interference.
10	<b>Disadvantages</b>	Accountability is a major issue with this procedure of appointment. Further Iraq has yet to make the law providing detailed procedure for the appointment, removal and other ancillary issues of the Federal Supreme Court.
11	<b>Important Observations</b>	The Higher Judicial Council is an important guarantor of judicial independence

## 9. IRELAND

SR. NO.	PARTICULARS	DETAILS
1.	<b>Highest Court</b>	Supreme Court of Ireland
2.	<b>Appointing Law</b>	<ul style="list-style-type: none"> <li>• Constitution of Ireland 1937, Article 6.1. (i).</li> <li>• Courts and Court Officers Act, 1995.</li> </ul>
3.	<b>No. of judges</b>	Consists of the chief justice, 9 judges, 2 ex-officio members - the presidents of the High Court and Court of Appeal - and organized in 3-, 5-, or 7-judge panels, depending on the importance or complexity of an issue of law.
4.	<b>Appointing authority</b>	Judges nominated by the prime minister and Cabinet and appointed by the president; chief justice serves in the position for 7 years; judges can serve until age 70.
5.	<b>Appointing procedure</b>	<ul style="list-style-type: none"> <li>• Government nominates &amp; President appoints the Chief Justice. The Government has complete discretion. Judicial Board has no function here.</li> <li>• Board recommends at least 7 persons who have applied for the position. The government must disclose when it decides to nominate someone who was not recommended. There is a practice of usually selecting 1 non-Catholic.</li> <li>• Under section 16(2) of the 1995 Act, the Board's recommendation functions are initiated upon request by the Minister where there is a vacancy or forthcoming vacancy in judicial office.</li> <li>• In addition, the Board publishes annually advertisements inviting persons who wish to be considered for appointment to any judicial vacancies that may arise to submit their names to the Board.</li> <li>• The Board also publishes advertisements from time to time inviting applicants in respect of specific vacancies which have or are about to arise.</li> </ul>

		<ul style="list-style-type: none"> <li>• A person who wishes to be considered for appointment to judicial office is required to so inform the Board in writing, and to provide the Board with such information as it may require enabling it to consider the suitability of that person for judicial office, including information relating to education, professional qualifications, experience and character.<sup>4</sup></li> <li>• The Board requires such persons to provide an application form which requires details of their practice, professional qualifications, education, character, etc.</li> <li>• The Board has appointed a sub-committee to consider and advice on the large number of applications to the Circuit and District Courts.</li> </ul>
6.	<b>Other Commission</b>	N-A
7.	<b>Composition of commission</b>	<p>The Board consists of seven members who are judges and practicing lawyers, plus not more than three lay members.<sup>5</sup></p> <p>The composition can be summarized as:</p> <ul style="list-style-type: none"> <li>• the Chief Justice; who is Chairperson of the Board;</li> <li>• the President of the High Court;</li> <li>• the President of the Circuit Court;</li> <li>• the President of the District Court;</li> <li>• the Attorney General;</li> <li>• a practising barrister who is nominated by the Chairperson for the time being of the Council of the Bar of Ireland;</li> <li>• a practising solicitor who is nominated by the President for the time being of the Law Society of Ireland; and</li> <li>• not more than three persons appointed by the Minister for Justice, Equality and Defence (hereafter “the Minister”), which are persons engaged in or having knowledge or experience of</li> </ul>

<sup>4</sup> Courts and Courts Officers Act, 1995, s. 16(1).

<sup>5</sup> Courts and Court Officers Act, 1995, s. 13(2).

		commerce, finance, administration, or persons who have experience as consumers of the service provided by the Courts that the Minister considers appropriate.
8.	<b>Role in appointment</b>	<ul style="list-style-type: none"> <li>• The Board commenced operation in 1996. Its functions are to identify persons and inform the Government of the suitability of those persons for appointment to specified judicial office.<sup>6</sup></li> <li>• The Board may adopt such procedures as it thinks fit to carry out its functions.<sup>7</sup></li> <li>• It may also: (a) advertise for applications for judicial appointment, (b) require applicants to complete application forms, (c) consult persons concerning the suitability of applicants to the Board, (d) invite persons, identified by the Board, to submit their names for consideration by the Board, (e) arrange for the interviewing of applicants who wish to be considered by the Board for appointment to judicial office, and (f) do such other things as the Board considers necessary to enable it to discharge its functions under this Act.<sup>8</sup></li> </ul>
9.	<b>Advantages of the system</b>	<ul style="list-style-type: none"> <li>• Good system: Public opinion is not that State is favoured over citizen by the Court. No great tension between the government and the Court.</li> <li>• Can't be a member of Parliament or hold any other office or remunerative activity; earlier political participation is permissible; it is inappropriate for a judge to manifest their political party sympathy or participation in a public controversy (this is also rare)</li> </ul>
10.	<b>Disadvantages of the system</b>	<ul style="list-style-type: none"> <li>• Risk of influence, of Government patronage in the process.</li> <li>• The lack of diversity in the judiciary.</li> </ul>
11.	<b>Important observation</b>	There is no evidence within any of the annual reports of the <i>Judicial Appointments Advisory Board</i> (beyond monitoring applications on the

<sup>6</sup> Courts and Court Officers Act, 1995, s. 13(1). The Board's first annual report was produced in 2002, pursuant to the Courts and Courts Officers Act, 2002, s. 11

<sup>7</sup> Courts and Court Officers Act, 1995, s. 14(1).

<sup>8</sup> Courts and Court Officers Act, 1995, s. 14(2)

		<p>basis of gender, experience in years and professional background) that it is concerned explicitly with issues of diversity or fair representation, in contrast to the approach of most judicial appointments bodies elsewhere. There are a number of other problems with the Board. Primarily, these reflect the statutory functions and powers of the Board rather than the operation. On occasion, the Board does not appear to go as far as it might in addressing a range of matters, which might be due to limited funding.</p>
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## 10. ISRAEL

SR. NO.	PARTICULARS	DETAILS
1.	<b>Highest Court</b>	Supreme Court (consists of the chief justice and 14 judges)
2.	<b>Appointing Law</b>	<ul style="list-style-type: none"> <li>• Basic Law: Article: 71: The Judicature.</li> <li>• Courts Law, Sections: 1-24</li> <li>• Rules of procedure of the Judicial Selection Committee, 1984.</li> <li>• The Judges Bill, 1953</li> </ul>
3.	<b>No. of judges</b>	The chief justice and 14 judges
4.	<b>Appointing authority</b>	Judges are appointed by the President of the State on the nomination of the Judges' Nominations Committee.
5.	<b>Appointing procedure</b>	<ul style="list-style-type: none"> <li>• Vacancies are advertised in the official government gazette and potential candidates can apply using a questionnaire supplied by the Committee. The Minister of Justice, the President of the Supreme Court and three Committee members may also propose candidates.</li> <li>• Application for election by the applicant. Includes filled questionnaire; resume; recommendations; etc.</li> <li>• Verification of recommendations by the court's administration.</li> <li>• Publishing the candidate list in Reshumot, followed by a waiting period of at least 21 days in which every citizen may contact the committee before the hearing, with a reasoned explanation of opposition to a particular candidate.</li> <li>• Interview of the candidate by a subcommittee of the Judicial Selection Committee, containing at least three members (at least one judge, one attorney, and one MK).</li> <li>• Final decision by the Committee to confirm or reject a candidate.</li> </ul>
6.	<b>Other Commission</b>	N-A
7.	<b>Composition of</b>	The Nominations Committee is composed of nine members:

	<b>commission</b>	<ul style="list-style-type: none"> <li>• three judges (the President of the Supreme Court and two Supreme Court justices)</li> <li>• two members of the Knesset (Israel's Parliament)</li> <li>• two Ministers (one of them being the Minister of Justice, who chairs the Committee)</li> <li>• two representatives of the Israel Bar Association.</li> </ul>
8.	<b>Role in appointment</b>	Recommendations are final and binding on the President and the process is balanced as the committee includes members from all three branches of legislature, executive and judiciary.
9.	<b>Advantages of the system</b>	<ul style="list-style-type: none"> <li>• Judicial Independence</li> <li>• Tenure Security</li> <li>• Adequate representation of all branches of Government</li> <li>• Binding and finality of judicial nominations.</li> </ul>
10.	<b>Disadvantages of the system</b>	<ul style="list-style-type: none"> <li>• Ideological inclination of the members of the committee.</li> <li>• Judges' undue involvement in the overtly political (indeed overtly partisan) activity of judicial appointments.</li> </ul>
11.	<b>Important observation</b>	<ul style="list-style-type: none"> <li>• The Committee's decision to appoint a judge in all courts (except the Supreme Court), is passed by a simple majority of members present at the meeting. Appointing Supreme Court judges requires, a majority of 7 of the 9 committee members, or two less than the number present at the meeting (6 of 8, 5 of 7, etc.).</li> <li>• Confidentiality applies legally to the committee's deliberations and they are not published for public review. This confidential appointment process is unique, because the selection process for every other public office is required by law to register and publish minutes of the committee's meetings.</li> </ul>

## 11. JAPAN

SR. NO.	PARTICULARS	DETAILS
1.	<b>Highest Court</b>	Supreme Court or Saiko saibansho; note - the Supreme Court has jurisdiction in constitutional issues
2.	<b>Appointing Law</b>	<ul style="list-style-type: none"> <li>• Constitution of Japan, 1947: Judiciary (Articles 76–82)</li> </ul>
3.	<b>No. of judges</b>	Consists of the chief justice and 14 associate justices
4.	<b>Appointing authority</b>	Supreme Court chief justice designated by the Cabinet and appointed by the monarch; associate justices appointed by the Cabinet and confirmed by the monarch
5.	<b>Appointing procedure</b>	<p>15 Judges, Cabinet appoints. The people review judicial appointments by vote at the first general election of the House of Representatives following the appointment and subsequently at 10-year intervals.</p> <p>The criteria of appointment are unclear. It seems that each field has its good will and basically selects candidates by itself. The Cabinet Secretary explains the appointment process as follows:<sup>9</sup></p> <ul style="list-style-type: none"> <li>• The Supreme Court Justices are appointed by the Cabinet after hearing opinions of the Supreme Court Chief Justice.</li> <li>• The hearing of the Chief Justice is conventionally conducted for the personnel management that reflects as far as possible the actual circumstances of the Supreme Court.</li> <li>• The Chief Justice generally gives opinions on candidates' field, several candidates, and the most splendid candidate.</li> <li>• Candidates' list is submitted to a Cabinet council through Prime Minister's judgment (a) upon the Chief Justice's presentation of several candidates (in relation to candidates from judges, attorneys and public prosecutors), or (b) upon the selection by the Cabinet secretary (in relation to candidates from persons of learning and experience</li> </ul>

<sup>9</sup> Naikaku Kanbou [Secretary of the Cabinet], Saikousai Saibankan no Ninmei ni Tsuite [On the Appointment of the Supreme Court Justices] (paper presented at the 5th meeting of the Daigokai Shihōseido Kaikaku Suishin Honbu Komon Kaigi [Adviser Assembly of the Judicial Reform Promotion Office], July 5, 2002).



		<p>including administration and foreign affairs).</p> <ul style="list-style-type: none"> <li>• Supreme Court Justices are selected from utmost objective and fair point of view in consideration of their important status, which is subject to popular review.</li> <li>• Current fields that the Supreme Court Justices come from are results of synthetic consideration of the Supreme Court’s mission and cases it dealt with and others.<sup>10</sup></li> <li>• Selection process and reason of selection are made clear as far as possible at a press conference by a Chief Cabinet secretary after unofficial decision of appointment. Detailed process of judicial selection including other candidates is not publicized.</li> </ul>
6.	<b>Other Commission</b>	<p>The Lower Court Judges Nominating Consultation Commission, JNCC, was set up in 2003. It consists of eleven members which include six lay persons.</p> <p>The JNCC is consulted to screen all applicants to the judgeship, by the Supreme Court. Then, the commission collects information about applicants via its regional committees and related persons. Finally, the commission decides “adequate” or “inadequate” to each applicant and recommends its decisions to the Supreme Court.</p>
7.	<b>Composition of commission</b>	N-A
8.	<b>Role in appointment</b>	N-A
9.	<b>Advantages of the system</b>	<ul style="list-style-type: none"> <li>• To guarantee balanced sense of society in realizing justice. No political balance aimed at.</li> <li>• Broad vision &amp; learned in law. At least 40 years of age. 10 judge (or more) must be judge of 10 years' standing or other lawyer/ prof. of law for a total of 20 years or more. Thus 5 judges. need not have legal qualifications.</li> </ul>

<sup>10</sup> Id. The mission of the Supreme Court is constitutional judgments and unification of statute interpretations. Cases dealt with by the Supreme Court are approximately 6,400 (civil cases are approximately 4,500, criminal cases are approximately 1,900 and grand bench cases (constitutional judgment and precedent change) are 8) per year as of 2000.

10.	<b>Disadvantages of the system</b>	<ul style="list-style-type: none"> <li>• The Cabinet’s nomination process and the appointment process are not necessarily transparent.</li> <li>• The criteria of appointment are unclear.</li> <li>• The entrenchment of fixed proportions for the numbers of justices who come from each field.</li> </ul>
11.	<b>Important observation</b>	<ul style="list-style-type: none"> <li>• Most Supreme Court Justices are appointed at their sixties and work for several years before their statutory retirement age: seventy. They must decide many cases and some of them retire before seventy due to their heavy workloads. In addition, it has been observed that the system of popular review of Supreme Court Justices has no practical meanings. People can only dismiss a Justice by putting a “X” mark next to his/her name. There is no detailed information related to each individual Justice subject to the review process. It is not possible for the people to make meaningful judgments. In consequence, none of the 157 justices who have been subject to popular review have been dismissed in the 21 elections since after World War II</li> <li>• Incompatibility with office of Judge: Can't be a member of Parliament, hold another salaried position (unless has the Supreme Court's permission), or carry out commercial position for gain. No active participation in politics.</li> </ul>

## 12. MALAYSIA

SR. NO.	PARTICULARS	DETAILS
1.	<b>Highest Court</b>	Federal Court
2.	<b>Appointing Law</b>	<ul style="list-style-type: none"> <li>• Constitution of Malaysia 1963;</li> <li>• Judicial Appointments Commission Act 2009;</li> </ul>
3.	<b>No. of judges</b>	consists of the chief justice, president of the Court of Appeal, chief justice of the High Court of Malaya, chief judge of the High Court of Sabah and Sarawak and 7 judges
4.	<b>Appointing authority</b>	Judges are appointed by the King, 'acting on the advice of the Prime Minister, after consulting the Conference of Rulers' (art 122B(1)).
5.	<b>Appointing procedure</b>	After sifting the applications and nominations for judicial office it receives, the JAC forwards to the Prime Minister a minimum of three names of selected candidates for each vacancy in the High Court and a minimum of two candidates for each vacancy in the other superior courts. The selection must be set out in a report which provides reasons for the JAC's recommendations. The Prime Minister may ask the Commission to submit two more names in respect of any vacancy. Once the Prime Minister has made a choice from among these candidates, the Prime Minister then advises the King accordingly (Judicial Appointments Commission Act, ss 22–28).
6.	<b>Other Commission</b>	The Judicial Appointments Commission Act 2009, which establishes a Judicial Appointments Commission (JAC).
7.	<b>Composition of commission</b>	The Judicial Appointments Commission is composed of nine members: five judicial members (the Chief Justice of the Federal Court, who chairs the Commission, the President of the Court of Appeal, the Chief Judge of the High Court in Malaya and of Sabah and Sarawak, and a Federal Court judge appointed by the Prime Minister); and four eminent persons who are not members of the executive or other public service to be appointed by the Prime Minister in consultation with various (listed) legal associations and the Attorney General (Judicial

		Appointments Commission Act 2009, s5).
8.	<b>Role in appointment</b>	The commission plays the initiator role in culling out the nominations and recommends the name to PM. The advice is not binding. But it reserves the primary role of judicial appointment recommendations.
9.	<b>Advantages of the system</b>	<ul style="list-style-type: none"> <li>• Unbiased selection of judicial candidates for the consideration of the Prime Minister.</li> </ul>
10.	<b>Disadvantages of the system</b>	<ul style="list-style-type: none"> <li>• The Prime Minister's power of rejecting the Commission's recommendations of multiple candidates renders the undertaking of a lengthy process of selection unproductive and useless.</li> </ul>
11.	<b>Important observation</b>	<ul style="list-style-type: none"> <li>• Malaysia has a dual judicial hierarchy of civil and religious (sharia) courts.</li> <li>• The Federal Constitution of Malaysia has not empowered the Parliament to enact a law providing for the establishment of a Judicial Appointments Commission, it also appears that the Judicial Appointments Commission Act 2009 is an invalid piece of legislation.</li> </ul>

### 13. MYANMAR

SR. No.	PARTICULARS	DETAILS
1.	<b>Highest Court</b>	The Supreme Court
2.	<b>Appointing Law</b>	Constitution of Myanmar, 2008
3.	<b>No. of judges</b>	The Chief Justice and 7-11 judges
4.	<b>Appointing authority</b>	President + Pyidaungsu Hluttaw (Union Parliament)
5.	<b>Appointing procedure</b>	<p>The President submits his nomination to the Pyidaungsu Hluttaw (Union Parliament) and seeks its approval. Then, he appoints the person who has been approved by the Pyidaungsu Hluttaw as the Chief Justice of the Union.</p> <p>For other judges in coordination with the Chief Justice of the Union, the President submits his nominations of persons to be appointed as Judges of the Supreme Court of the Union to the Pyidaungsu Hluttaw for approval.</p>
6.	<b>Other Commission</b>	NA
7.	<b>Composition of commission</b>	NA
8.	<b>Role in appointment</b>	NA
9.	<b>Advantages of the system</b>	Nomination made the executive are subject to review of the Legislature. A transparent procedure up to certain extent.
10.	<b>Disadvantages of the system</b>	Appointment is exclusively Executive Driven, hence completely devoid of judicial independence.
11.	<b>Important Observation</b>	A cumbersome Executive and Legislative dominated Judicial appointment procedure, Judiciary has no role to play in appointments.

## 14. NEW ZEALAND

SR. No.	PARTICULARS	DETAILS
1.	<b>Highest Court</b>	The Supreme Court
2.	<b>Appointing Law</b>	The Supreme Court Act, 2003
3.	<b>No. of judges</b>	5
4.	<b>Appointing authority</b>	Governor General
5.	<b>Appointing procedure</b>	Attorney general with consult with the interested persons and suitable bodies for their views after this he consults with the Chief Justice who will confer with the other judges of the court, settle a shortlist of not more than three appointees. Attorney-General will consider the shortlisted candidates. In addition to the criteria by which all judges are selected, the Attorney-General will consider the overall make-up of the court, including the diversity of the bench and the range of experience and expertise of the current judges. Once the Attorney-General has chosen the most suitable candidate from the shortlist, he will notify Cabinet of his decision and recommend the appointment to the governor-General.
6.	<b>Other Commission</b>	NA
7.	<b>Composition of commission</b>	NA
8.	<b>Role in appointment</b>	NA
9.	<b>Advantages of the system</b>	Expeditious system of appointment.
10.	<b>Disadvantages of the system</b>	Executive dominated appointing procedure, judicial independence compromised.
11.	<b>Important Observations</b>	All judges of Supreme Court are High Court judges

## 15. PAKISTAN

SR. NO.	PARTICULARS	DETAILS
1.	<b>Highest Court</b>	Supreme Court of Pakistan
2.	<b>Appointing Law</b>	<ul style="list-style-type: none"> <li>• Constitution of the Islamic Republic of Pakistan 1973;</li> <li>• Judicial Commission of Pakistan Rules 2010 (SRO 122(KE)/2010);</li> </ul>
3.	<b>No. of judges</b>	Consists of the chief justice and 16 judges
4.	<b>Appointing authority</b>	Appointed by the president of Pakistan;
5.	<b>Appointing procedure</b>	The JCP selects a candidate for each vacancy and forwards the name to a Parliamentary Committee composed of four members from the Senate and four members from the National Assembly, who are selected in equal numbers from the ruling party and the opposition. The Committee may confirm or, by a three-fourths majority, reject the candidate. If confirmed, the Prime Minister forwards the name of the candidate to the President for appointment (art 175A(8)–(13)).
6.	<b>Other Commission</b>	Judicial Commission of Pakistan (JCP)
7.	<b>Composition of commission</b>	Its membership, mainly judicial, varies according to whether appointments are made to the Supreme or High Courts (art 175A(1)–(5)). For appointments to the Supreme Court the JCP is composed of the Chief Justice who acts as chairman, the four most senior judges of the Supreme Court, a retired Chief Justice or Supreme Court judge, the Federal Minister for Law and Justice, the Attorney-General and a senior advocate appointed by the Pakistan Bar Council.
8.	<b>Role in appointment</b>	JCP plays the role of recommending name of candidate judges to the parliament, which reserves the right to accept or reject the selection.
9.	<b>Advantages of the system</b>	<ul style="list-style-type: none"> <li>• Unbiased selection of judicial candidates for the consideration of the Parliament and president.</li> <li>• Equal participation of ruling party and opposition.</li> </ul>

10.	<b>Disadvantages of the system</b>	<ul style="list-style-type: none"><li>• The Prime Minister's power of rejecting the Commission's recommendations of multiple candidates renders the undertaking of a lengthy process of selection unproductive and useless.</li></ul>
11.	<b>Important observation</b>	This process is not applicable to the appointment of the Chief Justice, since the President must appoint the most senior judge of the Supreme Court to this position (art 175A(3)).



## 16. RUSSIA

SR. NO.	PARTICULARS	DETAILS
1	<b>Highest Courts</b>	Constitutional Court of the Russian Federation, Supreme Court. And Supreme Court of Arbitration
2	<b>Appointing Law</b>	Article 128 of the Constitution of the Russian Federation
3	<b>No. of Judges</b>	19 Judges {Article 1259(1)}
4	<b>Appointing Authority</b>	Qualification Collegia / Supreme Qualification Collegium + The President of the Russian Federation +
5	<b>Appointing Procedure</b>	<ul style="list-style-type: none"> <li>Judges are appointed by the Federation Council, the upper house of Federal Assembly of Russia. Candidates are recommended by the Qualification Collegia / Supreme Qualification Collegium to the President, who in turn recommends candidates to the Federation Council.</li> </ul>
6	<b>Other Commission</b>	Qualification Collegia / Supreme Qualification Collegium
7	<b>Composition of Commission</b>	<ul style="list-style-type: none"> <li>Qualification Collegiums of judges of the subjects of the Russian Federation are formed of judges of the courts of the SRF of different levels, representatives of the public and a representative of the President of the RF. Judges-members are elected by a secret ballot at a Conference of Judges. Elections between the conferences are carried out by the Qualification Collegium of the judges of the SRF. Representatives of the public are appointed by the legislatures of the SRF and the representative of the President is appointed by the President of the RF.</li> </ul>
8	<b>Role in Appointment</b>	<ul style="list-style-type: none"> <li>Qualification Collegium recommends the names of desired candidates for appointment, to the President of the Russian Federation. The president of Russian Federation after due scrutiny forward the names of the candidates to Federation Council.</li> </ul>
9	<b>Advantages of the system</b>	Provides for Merit based appointing procedure, Provides for plural appointing bodies.
10	<b>Disadvantages of the system</b>	Lack of Transparency, strict criteria and rules for selection and accountability, which inevitably leads to arbitrariness and abuses.
11	<b>Important Observation</b>	This system of appointment has maintained plurality in appointing authorities which is indeed very important for judicial independence.

## 17. SINGAPORE

SR. NO.	PARTICULARS	DETAILS
1.	<b>Highest Court</b>	Supreme Court which consists of High Court and the Court of Appeal.
2.	<b>Appointing Law</b>	The Singapore Constitution (Articles 93– 101)
3.	<b>No. of judges</b>	<p>Consists of the president or chief justice and 16 justices and organized into an upper tier Appeal Court and a lower tier High Court</p> <p>Chief Justice and two Judges of Appeal.: Court of Appeal</p> <p>The High Court consists of the Chief Justice, nine Judges and six Judicial Commissioners.</p>
4.	<b>Appointing authority</b>	President of Singapore
5.	<b>Appointing procedure</b>	<p>The President makes all judicial appointments ‘if he, acting in his discretion, concurs with the advice of the Prime Minister’ (art 95(1)). The Prime Minister is required to consult the Chief Justice prior to tendering such advice unless the position to be filled is the Chief Justiceship (art 95(6)). If the President refuses to appoint a particular candidate the legislature may overrule the President’s decision by a resolution passed by no less than two-thirds of the total number of elected Members of Parliament (art 22(2)).</p>
6.	<b>Other Commission</b>	N-A
7.	<b>Composition of commission</b>	N-A
8.	<b>Role in appointment</b>	N-A
9.	<b>Advantages of the system</b>	<ul style="list-style-type: none"> <li>• Clear safeguards for judicial independence in the Singapore constitution: <i>Article 93</i> invests judicial power in the Supreme Court and not with the executive.</li> </ul>

		<ul style="list-style-type: none"> <li>• <i>Articles 98 and 99</i> ensure the independence of the judges who sit in the Supreme Court by granting security of tenure.</li> </ul>
10.	<b>Disadvantages of the system</b>	<ul style="list-style-type: none"> <li>• Transparency</li> <li>• The criteria of appointment are unclear.</li> </ul>
11.	<b>Important observation</b>	President may also appoint temporary judges (known as “Judicial Commissioners”) for such periods as he thinks fit or for specific cases or classes of cases

## 18. SOUTH AFRICA

SR. NO.	PARTICULARS	DETAILS
1.	<b>Highest Court</b>	Constitutional Court (for Constitutional matters)
2.	<b>Appointing Law</b>	Constitution of the Republic of South Africa
3.	<b>No. of judges</b>	11
4.	<b>Appointing authority</b>	President + JSC + Leaders of parties in the National Assembly
5.	<b>Appointing procedure</b>	<p>President after consulting the Judicial Service Commission (JSC) and the leaders of parties represented in the National Assembly, appoints the President and Deputy President.</p> <p>The other judges of the Constitutional Court are appointed by the President, as head of the national executive, after consulting the President of the Constitutional Court and the leaders of parties represented in the National Assembly.</p>
6.	<b>Other Commission</b>	Judicial Service Commission
7.	<b>Composition of commission</b>	<ol style="list-style-type: none"> <li>a. the Chief Justice, who presides at meetings of the Commission;</li> <li>b. the President of the Constitutional Court;</li> <li>c. one Judge President designated by the Judges President;</li> <li>d. the Cabinet member responsible for the administration of justice, or an alternate designated by that Cabinet member;</li> <li>e. two practicing advocates nominated from within the advocates' profession to represent the profession as a whole, and appointed by the President;</li> <li>f. two practising attorneys nominated from within the attorneys' profession to represent the profession as a whole, and</li> </ol>

		<p>appointed by the President;</p> <p>g. one teacher of law designated by teachers of law at South African universities;</p> <p>h. six persons designated by the National Assembly from among its members, at least three of whom must be members of opposition parties represented in the Assembly;</p> <p>i. four permanent delegates to the National Council of Provinces designated together by the Council with a supporting vote of at least six provinces;</p> <p>j. four persons designated by the President as head of the national executive, after consulting the leaders of all the parties in the National Assembly; and</p> <p>k. When considering matters specifically relating to a provincial or local division of the High Court, the Judge President of that division and the Premier, or an alternate designated by the Premier, of the province concerned.</p>
8.	<b>Role in appointment</b>	<p>a. The Judicial Service Commission must prepare a list of nominees with three names more than the number of appointments to be made, and submit the list to the President.</p> <p>b. The President may make appointments from the list, and must advise the Judicial Service Commission, with reasons, if any of the nominees are unacceptable and any appointment remains to be made.</p> <p>c. The Judicial Service Commission must supplement the list with further nominees and the President must make the remaining appointments from the supplemented list.</p>
9.	<b>Advantages of the system</b>	Plurality in appointing authorities, Judicial Service Commission is represented all related fields.
10.	<b>Disadvantages of the system</b>	Size of Commission is unnecessarily long, Commission is just advisory system, finality in appointment lies with President.
11.	<b>Important Observations</b>	The new system reflects a complete rejection of that which persisted under apartheid where Judicial appointments were completely executive. However if Judicial Service Commission has not done

		wonders, considering the situation at the start of the process ten years ago, the achievements have not been insignificant.
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**SUPREME COURT OF APPEAL**

SR. No.	PARTICULARS	DETAILS
1.	<b>Highest Court</b>	Supreme Court of Appeal(other than constitutional )
2.	<b>Appointing Law</b>	Same as above
3.	<b>No. of judges</b>	a Chief Justice, a Deputy Chief Justice and the number of judges of appeal determined by an Act of Parliament.
4.	<b>Appointing authority</b>	President + JSC
5.	<b>Appointing procedure</b>	President after consulting the Judicial Service Commission, appoints the Chief Justice and Deputy Chief Justice.  other Supreme Court judges appointed by the national president on the advice of the JSC
6.	<b>Other Commission</b>	Same as above
7.	<b>Composition of commission</b>	Same as above
8.	<b>Role in appointment</b>	Same as above
9.	<b>Advantages of the system</b>	Same as above
10.	<b>Disadvantages of the system</b>	Same as above
11.	<b>Important Observations</b>	Same as above

## 19. UNITED KINGDOM

SR. NO.	PARTICULARS	DETAILS
1.	<b>Highest Court</b>	Supreme Court
2.	<b>Appointing Law</b>	<ul style="list-style-type: none"> <li>• Constitutional Reform Act 2005 (CRA);</li> <li>• Supreme Court (Judicial Appointments) Regulations 2013;</li> <li>• Judicial Appointments Commission Regulations 2013;</li> <li>• Judicial Appointments Regulations 2013;</li> <li>• Judicature (Northern Ireland) Act 1978;</li> <li>• Justice (Northern Ireland) Act 2002;</li> <li>• Judiciary and Courts (Scotland) Act 2008;</li> <li>• Scotland Act 1998.</li> </ul>
3.	<b>No. of judges</b>	Consists of 12 justices including the Court President and Deputy President
4.	<b>Appointing authority</b>	Appointed by Her Majesty The Queen
5.	<b>Appointing procedure</b>	Judicial appointments to the UK Supreme Court are made by the Crown on the recommendation of the Prime Minister, who in turn may only recommend candidates whose names have been notified by the Lord Chancellor. The Lord Chancellor may only notify the Prime Minister of candidates selected by a five-member selection commission composed of two senior judges, one of whom will be the President of the Supreme Court unless the vacancy that is due to be filled is in respect of that position, and one member representing each of the judicial appointments bodies for England and Wales, Scotland and Northern Ireland (CRA Part 3 and Schedule 8; Supreme Court (Judicial Appointments Regulations 2013). The Lord Chancellor may once reject a selected candidate and once ask the commission to reconsider its selection, but must thereafter notify a name selected by the commission at any stage in the process in relation to that particular vacancy, and not previously rejected, to the Prime Minister. The grounds for rejecting a

		candidate and for requiring the commission to reconsider its selection are narrowly defined and if the Lord Chancellor exercises either power, he or she must give written reasons to the commission (Supreme Court (Judicial Appointments) Regulations 2013).
6.	<b>Other Commission</b>	Appointment Commission
7.	<b>Composition of commission</b>	The Commission will comprise the President and Deputy President of the Supreme Court, and one representative from each of the proposed <b>Judicial Appointments Commission for England</b> and Wales, the Judicial Appointments Board for Scotland, and the Northern Ireland Judicial Appointments Commission.
8.	<b>Role in appointment</b>	The Commission prepares a list of suitable candidates, having regard to prescribed criteria in regulations, and must consult senior judges. The Commission forwards the list of between two and five candidates for each vacancy to the Minister with any comments they consider appropriate.
9.	<b>Advantages of the system</b>	<ul style="list-style-type: none"> <li>• Greater chance of making the correct decision if the candidates have been assessed for a long period of their professional lives and the Lord Chancellor and the judges being consulted were advised of such assessment.</li> </ul>
10.	<b>Disadvantages of the system</b>	<ul style="list-style-type: none"> <li>• System of consultation is unstructured.</li> <li>• Comments were drawn from people who were selected from a narrow pool.</li> <li>• The Lord Chancellor's role contravenes the principle of separation of powers.</li> </ul>
11.	<b>Important observation</b>	The Supreme Court was established by the Constitutional Reform Act 2005 and implemented in October 2009, replacing the Appellate Committee of the House of Lords as the highest court in the United Kingdom



## 20. USA

SR. NO.	PARTICULARS	DETAILS
1.	<b>Highest Court</b>	US Supreme Court
2.	<b>Appointing Law</b>	The United States Constitution
3.	<b>No. of judges</b>	Consists of 9 justices - the chief justice and 8 associate justices
4.	<b>Appointing authority</b>	President nominates and, with the advice and consent of the Senate, appoints Supreme Court justices;
5.	<b>Appointing procedure</b>	<ul style="list-style-type: none"> <li>• <b><u>Role of the Legislature:</u></b> <ol style="list-style-type: none"> <li>a. The Senate must give advice and consent in the appointment process.</li> <li>b. Senators often recommend potential nominees for judgeship of the federal courts.</li> <li>c. Senate Judiciary Committee is responsible for investigating, testifying and voting on the nominees.</li> </ol> </li> <li>• <b><u>Selection Authority:</u></b> Attorney General + White House Counsel's Office</li> <li>• <b><u>Who are Consulted:</u></b> Senators, Members of the House of Representatives, federal and state judges, members of the legal community, state Governors, state judicial selection panels, citizens and the American Bar Association which in turn consults judges and lawyers in the candidate's community.</li> <li>• <b><u>Nominations and Recommendations:</u></b> <ol style="list-style-type: none"> <li>a. Attorney General recommends candidates.</li> <li>b. The President nominates candidates.</li> </ol> </li> <li>• <b><u>Confirmation and Endorsement:</u></b> <ol style="list-style-type: none"> <li>a. Senate Judiciary Committee confirmation, hearing and voting.</li> <li>b. Full Senate: voting.</li> </ol> </li> </ul>
6.	<b>Other Commission</b>	N-A
7.	<b>Composition of</b>	N-A

	<b>commission</b>	
8.	<b>Role in appointment</b>	N-A
9.	<b>Advantages of the system</b>	<ul style="list-style-type: none"> <li>• The process manifests checks and balances between the executive and legislative branches and the judiciary.</li> </ul>
10.	<b>Disadvantages of the system</b>	<ul style="list-style-type: none"> <li>• The process has become increasingly complex and prolonged, it may lead to the situation that highly qualified persons may be reluctant to seek or accept nomination because of the burdensome and redundant screening and vetting process. They may also be concerned about personal privacy and low judicial salaries"</li> <li>• The process can, and perhaps does, impinge on the independence of the judiciary.</li> </ul>
11.	<b>Important observation</b>	<ul style="list-style-type: none"> <li>• Not any, the procedure has been in place for many decades.</li> <li>• The US court system consists of the federal court system and the state court systems; although each court system is responsible for hearing certain types of cases, neither is completely independent of the other, and the systems often interact</li> </ul>

## **Suggestions for the Improvement of Collegium Consultation**

The appointment of judges shall be subject to rigorous merit based selection process and openness and transparent selection process shall be observed from beginning till end.

### **Collegium Secretariat**

A Collegium Secretariat should be a professional secretariat, composed of a senior most Judge of the Supreme Court as its convener, two more judges of the Supreme Court, representative of Bar Council of India, Ministry of Law and Justice, a senior representative from the police forces, two eminent academicians from the law and related fields. The Secretariat should have essential qualified staff to undertake entire administrative process for the selection of judges. There shall be two directorates one for the Supreme Court and another for the High Courts. They shall handle all applications, booking panels for selection days and running the secretariat for the selection days. They also handle outreach with candidates and programming the exercises. There shall be a small communications team which shall handle communications, including answering media queries.

### **Selection Process:**

Vacancy of judges should be advertised and interested candidates must complete a comprehensive Personal History Form (PHF), which shall be submitted to the Secretariat. In its assessment of each candidate, the Secretariat shall review the PHF. If a candidate is a member of any statutory/non-statutory board / committees / institutions, a reference from these institutions must be made available to the Collegium. Following its shortlisting, the Secretariat shall categorize candidates as "Recommended" or "Unable to Recommend" for professional test.

### **Eligibility criteria**

Interested candidates shall create online profiles and apply electronically. Candidates shall be invited to take a professional test. There may be a second stage to the shortlisting if it is anticipated the selection exercise will attract a large number of candidates, which could take the form of a written assessment or interview by the Collegium. The Collegium shall give mark for the qualifying test as well as personal interview. The Collegium shall undertake necessary consultation including academic institutions and professional associations or institutions of which the candidate has been a member

in any capacity. Each criteria – experience, professional test, interview, character check, shall be given weighted average in the proportion of 40:20:20:20 and the merit list shall be prepared. Tie-breakers shall be used for increasing diversity within the judiciary.

If a person is not short-listed for a professional test by the Secretariat from the initial applications, the Collegium can review the candidature directly and place in writing why the candidate not successful in qualifying test is invited for interview.

The tests are designed to assess candidates' ability to perform a High Court Judge role. This can be prepared by three senior most judges from the relevant High Court, Advocate-General and a designated Supreme Court Judge.

References shall be obtained after test and interview. The same shall informed to the candidate during the interview.

The interview panel shall consist of judges as voting members and a representative of Bar Council of India/State, a representative of Ministry of Law and Justice and an eminent academician as observers.

**Process:**

1. Invitation for submission of application: Upon receipt of notification of vacancy getting due, the secretariat shall invite application from potential candidates at least 6 months in advance.
2. Eligibility:
  - a. High Court Judge: Minimum number of experience as a lawyer / legal academician
  - b. Skills: Critical thinking, reasoning, decision-making, communication
  - c. Others: Legal aid record, Lok Adalats record, Number of cases handled, Number of judgments delivered, Number of judgments overturned or affirmed by the division bench or superior court, Assessment of professional excellence, overall legal and judicial awareness of the state and personal characteristics, review of legal publications, result of participation in various training programs, etc.
3. Technical shortlisting: Those candidates who meet eligibility criteria shall be short-listed for a professional competency test.

4. Tests: A professional competency test shall be held to assess the candidate's knowledge and competence.
5. Interview: The Collegium shall conduct a short interview to learn more about candidate's knowledge, competence, ability, temperament and other personal traits as desirable from a judge.
6. References: A candidate must supply details of four referees. No referee shall belong to a candidate's family relations.
7. Collegium Report: The Collegium shall prepare a report on the basis of above and undertake necessary statutory consultation including good character check.
8. Selection: The Collegium under the Chief Justice shall inform about its selection to the President.
9. Quality assurance: Before forwarding names of selected candidates to the President, a quality assurance shall be effected by the Chief Secretary of the Secretariat to ensure meeting of all requirements in full and complete manner.

**Overall monitoring:**

The Chief Secretary of the Collegium Secretariat shall have an overall monitoring role. He/she shall

- audit the processes and procedures for making appointments
- handle complaints resulting from the appointment procedure
- consider comments on the judicial appointments processes
- investigate any matter in the appointments process as directed by the Chief Justice
- recommend improvements and changes to the Chief Justice.

The Secretariat shall submit its detailed report annually to the Parliament.

**Transparency:** Interviews of potential candidates can be made in public, and transcripts of interviews can be posted on the Internet. However, openness must be balanced against the individual candidate's right to confidentiality.

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*Centre for Constitutional & Administrative Law*

[ccal@gnlu.ac.in](mailto:ccal@gnlu.ac.in)

**Gujarat National Law University**

Attalika Avenue, Knowledge Corridor,  
Koba, Gandhinagar - 382007 (Gujarat) INDIA,  
Phone No. : +91-79-23276611/23276612  
Fax No. : +917878186624, +91-79-23276613  
Email : [contact@gnlu.ac.in](mailto:contact@gnlu.ac.in)