

AN EXAMINATION OF JUDICIAL CORRUPTION
IN THE UNITED STATES AND INDIA

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I. Introduction

Independence and impartiality of judges is key to a properly functioning judicial system. If citizens believe that judges are corrupt and decisions can be bought, then faith in the judicial system will erode over time. There is a common perception that judges in older, more established judicial systems in developed countries would be less susceptible to corruption than judges in developing countries. One might expect that the United States judiciary (established in the 18th century), for example, is less corrupt than the relatively young Indian judiciary (established in 20th century). However, Transparency International¹ reports have shown that respondents from both countries give similar ratings on various judicial corruption scales.² Such results warrant a closer look at judicial corruption in the United States and India.

This paper will examine various forms of corruption, and not focus solely on quid pro quo bribery that typically comes to mind when discussing corruption.³ There are various forms of judicial corruption, including cases of judges ruling on matters involving a financial or personal conflict of interest, receiving of gifts, granting of favors, ex parte communications, etc.⁴ The judiciary must remain neutral, and any actions that cast doubt on the independence and impartiality of judges can do severe damage to the public's trust in the judicial system. Thus, this paper will include data and instances that examine of all forms of corruption.

Part II consists of a brief overview of the judicial system in both countries, providing the reader with an understanding of commonalities and differences between the systems. The section

¹ Transparency International is an international non-governmental organization formed “to stop corruption and promote transparency, accountability and integrity at all levels and across all sectors of society.” Transparency International, *Our Organisation*, http://www.transparency.org/whoweare/organisation/mission_vision_and_values/0/ (last visited Apr. 12, 2016).

² World Economic Forum, *The Global Competitiveness Report 2015-2016*, Sept. 2015, www.weforum.org/gcr.

³ Stratos Pahis, *Corruption in Our Courts: What It Looks Like and Where It Is Hidden*, 118 YALE L.J. 1900, 1904 (2009), http://www.yalelawjournal.org/pdf/795_t7d36jwp.pdf.

⁴ *Id.*

will discuss the establishment and authority of the judicial branches in both countries, including judicial appointments and the types of courts that exist. Part III contains a discussion of the judicial oversight and removal process in both the United States and India. Part IV outlines the extent of corruption in both nations. An examination will reveal that the corruption exhibited in the Indian judicial system resembles that found in state judicial systems in the United States. Similar corruption is not found in the federal judicial system, and thus the Indian system may advantage from implementing controls similar to the U.S. federal judicial system. Finally, Part V will discuss recent judicial reform efforts in India and suggest improvements to the judicial system based on aspects of the U.S. federal judiciary.

II. Organization of the Judicial Systems

a. United States

The United States Constitution is the supreme law of the United States and is the source of all government powers, protecting the fundamental rights of citizens by providing important limitations on the government.⁵ Article III of the Constitution establishes the judicial branch.⁶ Section 1 of Article III establishes the Supreme Court and grants Congress the power to establish additional lower courts.⁷ Section 1 further requires that Supreme Court justices and federal judges of the lower courts exhibit good behavior for tenure and prohibits decreasing compensation for judges during their time in office.⁸ Section 2 of Article III establishes the federal judiciary's original and appellate jurisdiction.⁹ Clause 3 of Section 2 outlines the right to

⁵ The White House, *The Constitution*, <https://www.whitehouse.gov/1600/constitution> (last visited on Apr. 12, 2016).

⁶ U.S. CONST. art. III.

⁷ *Id.* at § 1.

⁸ *Id.*

⁹ *Id.* at § 2, cl. 1-2. Discussion of federal judges in this paper will be limited to Article III judges. Thus, any reference to federal judges will refer to judges nominated by the President and confirmed by the Senate.

a jury trial for all federal crimes, except impeachment cases.¹⁰ Section 2 of Article II of the Constitution addresses the appointment process for federal judges.¹¹ The President of the United States has the power, by and with the advice and consent of the Senate, to appoint judges of the Supreme Court.¹²

Article III of the Constitution grants Congress power to determine significant aspects of the federal judiciary. For example, Congress determines the number of Supreme Court Justices (currently 9) and establishes the lower federal courts.¹³ Congress used this power to accommodate the ever-changing legal landscape by creating lower courts as needed.¹⁴ As a result, there are three basic levels of federal courts today.¹⁵ Congress created 94 U.S. district courts, which serve as the trial courts of the federal judicial system and hear federal cases.¹⁶ Congress has also created 12 regional circuit courts and one “Federal Circuit” court, which hear cases on appeal from the district courts.¹⁷ The highest court in the nation, as mentioned before, is the Supreme Court of the United States.¹⁸ The Supreme Court has both original and appellate jurisdiction, although it is mainly an appellate court reviewing lower court decisions.¹⁹ “Certiorari”, which is a method for a person to request Supreme Court review of a lower court decision, allows the Supreme Court to exercise discretion in deciding which cases to review.²⁰

¹⁰ *Id.* at § 2, cl. 3.

¹¹ *Id.* at § 2, cl. 2.

¹² *Id.*

¹³ The White House, *The Judicial Branch*, <https://www.whitehouse.gov/1600/judicial-branch> (last visited Apr. 12, 2016).

¹⁴ *Id.*

¹⁵ Judicial Learning Center, *Levels of the Federal Courts*, <http://judiciallearningcenter.org/levels-of-the-federal-courts/> (last visited Apr. 12, 2016).

¹⁶ *Id.*

¹⁷ *Id.* The Court of Appeals for the Federal Circuit also receives cases from the International Trade Commission, the Merit Systems Protection Board, the Patent and Trademark Office, and the Board of Contract Appeals.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ United States Department of State, *Outline of the U.S. Legal System* (2004), <http://usa.usembassy.de/etexts/gov/outlinelegalsystem.pdf> (last visited on Apr. 12, 2016).

Aside from the federal judiciary, the United States also has a system of state courts.²¹ These courts have roots in the colonial period, as many states had already written constitutions prior to the writing of the Constitution.²² Each state has the authority to “adopt any organizational scheme it chooses, create as many courts it wishes, name those courts whatever it pleases, and establish their jurisdiction as it sees fit.”²³ Thus, there is little uniformity within the state judicial system as a whole and no two states utilize identical court systems.²⁴ Some state court systems have retained complex organizational structures while others have adopted unified court systems.²⁵ State courts can be divided into four general levels: “trial courts of limited jurisdiction, trial courts of general jurisdiction, intermediate appellate courts, and courts of last resort.”²⁶ Regardless of individual differences, state courts generally handle far more cases than those decided by federal courts.²⁷ For 2013, trial courts in the 50 states, the District of Columbia, and Puerto Rico reported a combined total of 94.1 million²⁸ incoming cases, whereas the U.S. District Courts reported a total of 363,914.²⁹ Whereas federal judges are nominated by the President and confirmed by the Senate, the state court judicial appointment process is varied. State court judges may be selected in a variety of ways, depending on the state, including: election, appointment for a given number of years, appointment for life, and combinations of these methods (e.g., appointment followed by election).³⁰

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ National Center for State Courts, *Examining the Work of State Courts: An Overview of 2013 State Court Caseloads* (2015), <http://ncsc.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/2137> .

²⁹ Administrative Office of the U.S. Courts, *Federal Judicial Caseload Statistics 2013*, <http://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2013> (last visited on Apr. 12, 2016).

³⁰ Administrative Office of the U.S. Courts, *Comparing Federal & State Courts*, <http://www.uscourts.gov/about-federal-courts/court-role-and-structure/comparing-federal-state-courts> (last visited on Apr. 12, 2016).

b. India

Similar to the United States, India has a constitution that is the supreme law of the land.³¹ The Indian Constitution came into effect on January 26, 1950 and, similar to the U.S. Constitution, grants power to various branches of the government and lays down the framework for the Indian legal system.³² Like the U.S., India has adopted a basic framework of federalism, with a distribution of power between the central government (the Union) and the individual state governments.³³ While the U.S. court system has separate federal and state courts, the Indian Constitution provided for a single, integrated system of courts that administers both Union and State laws.³⁴ At the bottom of the judicial hierarchy are subordinate courts, which handle various civil and criminal cases within the states.³⁵ The district courts have jurisdiction over the subordinate courts, but fall under the administrative control of the state high court in which the district belongs.³⁶

The high courts of India have the supreme judicial power at the state level and there are 24 high courts that hold jurisdiction over “a state, union territory, or a group of union territories or states.”³⁷ The high courts mainly have appellate authority, but may have original jurisdiction over some federal issues.³⁸ Finally, much like the U.S. Constitution, the Indian Constitution gave Parliament the power to set the number of Supreme Court judges.³⁹ The original Indian

³¹ Society of Indian Law Firms, *Indian Judicial System*, <http://www.silf.org.in/16/indian-judicial-system.htm> (last visited on Apr. 12, 2016).

³² Supreme Court of India, *Constitution*, <http://supremecourtindia.nic.in/constitution.htm> (last visited on Apr. 12, 2016).

³³ Vijay Jaiswal, *Federalism in Indian Constitution*, IMPORTANT INDIA, Aug. 24, 2013, <http://www.importantindia.com/2044/federalism-in-indian-constitution/>.

³⁴ *Id.*

³⁵ Maps of India, Judiciary of India, <http://www.mapsofindia.com/government-of-india/judiciary/> (last visited on Apr. 12, 2016).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Supreme Court of India, *supra* note 32.

Constitution envisioned the Supreme Court of India with a chief justice and seven additional judges.⁴⁰ Parliament increased this number and now the highest court in the country consists of one Chief Justice and 31 other judges.⁴¹

Under Article 124 of the Indian Constitution, the President of India can appoint a Supreme Court judge after consulting with the Chief Justice of India (CJI), judges of the high courts, and the Supreme Court, as the President may deem necessary.⁴² Article 217 involves the appointment of high court judges, which states that the President should appoint a high court judge after consulting with the CJI and the Governor of the state.⁴³ Notably, in the early 1990s the Supreme Court of India put forth three landmark decisions, together known as the “Three Judges Cases,” and decided that the CJI must agree to all judicial appointments.⁴⁴ The “First Judges Case” was the SP Gupta case, decided on December 30, 1981, and the Supreme Court found that the President could, with cogent reasons, refuse to appoint judges recommended by the CJI.⁴⁵

The “Second Judges Case” was the *Supreme Court Advocates on Record Association vs. the Union of India*, decided on October 6, 1993, and a nine-judge bench of the Supreme Court reversed the “First Judges Case” and found that the CJI must be given the primary role in judicial appointments.⁴⁶ Although the “Second Judges Case” established a collegium, three of the judges could not agree on the exact role of the CJI in the selection process, leading to years of

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² INDIA CONST. art. 124. Chief Justice of India (CJI) is consulted in all appointments except his or her own.

⁴³ INDIA CONST. art. 217.

⁴⁴ HT Correspondent, *National Judicial Appointments Commission: All you need to know*, HINDUSTAN TIMES, Oct. 16, 2015, <http://www.hindustantimes.com/india/national-judicial-appointments-commission-all-you-need-to-know/story-cLiqIF9nUZm0foI6hTNNJI.html>.

⁴⁵ *Id.*

⁴⁶ *Id.*

uncertainty regarding the appointment and transfer of judges.⁴⁷ The “Third Judges Case” was *In Re Special Reference*, decided on October 28, 1998, and the Supreme Court solidified the supremacy of the judiciary in the appointment and transfer of judges.⁴⁸ This decision essentially created a collegium system, which requires that the CJI confer with a plurality of the four most senior Supreme Court judges to decide who will be a high court or Supreme Court judge.⁴⁹ Critics have disapproved of the collegium system since its introduction because there is no constitutional provision for such a system and it makes India “the only country where judges are allowed to select themselves, determine their own transfers, and discipline themselves.”⁵⁰

III. Judicial Oversight and Removal

a. United States

i. Federal

As mentioned above, Section 1 of Article III of the U.S. Constitution provides that Supreme Court and federal judges of the lower courts shall hold their offices during good behavior.⁵¹ Federal judges may be Article III judges, magistrate judges, or bankruptcy court judges.⁵² Only Article III judges are granted the protections of lifetime appointment and may hold office so long as Congress does not pursue impeachment and conviction.⁵³ Lifetime appointment and prohibition against judicial salary cut are cited as safeguards to ensure that

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Kalraj Mishra, *NJAC was the people’s will*, INDIAN EXPRESS, Oct. 26, 2015, <http://indianexpress.com/article/opinion/columns/njac-was-the-peoples-will/>.

⁵¹ U.S. CONST. art. III, § 1.

⁵² Federal Judicial Center, *How the Federal Courts Are Organized*, <http://www.fjc.gov/federal/courts.nsf/autoframe?openagent&nav=menu1&page=/federal/courts.nsf/page/183> (last visited on Apr. 12, 2016).

⁵³ *Id.*

judges render impartial and independent decisions.⁵⁴ The foundation of these safeguards can be traced back to the Declaration of Independence, which articulated that one grievance of the American colonies against England was that King George III influenced the decisions of the judges with his control over their tenure as well as the amount and timely payment of their salaries.⁵⁵

Another safeguard against judicial corruption at the federal level can be found in the Code of Conduct for United States Judges.⁵⁶ This code of conduct delineates ethical canons that apply to federal judges and provides guidance regarding performance of official duties and engagement in outside activities.⁵⁷ The code was initially adopted at the Judicial Conference on April 5, 1973 and “applies to United States circuit judges, district judges Court of International Trade judges, Court of Federal Claims judges, bankruptcy judges, and magistrate judges.”⁵⁸ Other courts have adopted the code as well, such as the Tax Court, Court of Appeals for Veteran Claims, and the Court of Appeals for the Armed Forces.⁵⁹ The ethical canons state that a judge 1) should uphold the integrity and independence of the judiciary, 2) should avoid impropriety and the appearance of impropriety in all activities, 3) should perform the duties of the office fairly, impartially, and diligently, 4) may engage in extrajudicial activities that are consistent with the obligations of judicial office, and 5) should refrain from political activity.⁶⁰

The United States maintains another layer of federal judicial oversight with the United States Department of Justice (DOJ) Public Integrity Section (PIN).⁶¹ PIN is charged with

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Archive of PIN Reports, <http://www.usdoj.gov/criminal/pin> (last visited Apr. 12, 2016).

overseeing the federal government's efforts to combat corruption and prosecute elected and appointed public officials at all levels.⁶² Consequently, PIN has "exclusive jurisdiction over allegations of criminal misconduct on the part of federal judges"⁶³ If the appropriate outcome from an investigation against an Article III judge requires removal, then the process involves impeachment by the House of Representatives and conviction in the Senate.⁶⁴

ii. State

Turning to judicial oversight at the state level, each state and the District of Columbia has a judicial conduct organization (JCO) charged with investigating and prosecuting complaints against judges.⁶⁵ The JCOs have varying names, depending on the state, and may be called a commission, board, council, court, or committee.⁶⁶ The JCOs have been established by state constitution in twenty-eight states, by statute in sixteen states, and by court rule in seven states.⁶⁷ JCO membership ranges from twenty-eight members to as little as five members, with the average falling between seven and eleven members.⁶⁸ Depending on the state, JCOs may be comprised of judges, lawyers, and/or laypersons.⁶⁹

Various purposes for judicial discipline have been cited, with the most prevalent being 1) "preserving the integrity of the judicial system and the public confidence in the system and, when necessary, safeguarding the bench and the public from those who are unfit,"⁷⁰ 2)

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *The Judicial Branch*, *supra* note 13.

⁶⁵ Cynthia Gray, *A Study of State Judicial Discipline Sanctions* (2002), <http://www.ncsc.org/~media/Files/PDF/Topics/Center%20for%20Judicial%20Ethics/Publications/Study-of-State-Judicial-Discipline-Sanctions.ashx> (last visited Apr. 12, 2016).

⁶⁶ *Id.*

⁶⁷ Cynthia Gray, *How Judicial Conduct Commissions Work*, 28 JUSTICE SYS. J. 405, 406 (2007), <http://www.ncsc.org/~media/Files/PDF/Publications/Justice%20System%20Journal/How%20Judicial%20Conduct%20Commissions%20Work.ashx>.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *A Study of State Judicial Discipline Sanctions*, *supra* note 64.

“impressing upon the judge the severity and significance of the misconduct,”⁷¹ 3) “detering similar conduct by the judge and others,”⁷² 4) “reassuring the public that judicial misconduct is not tolerated or condoned,”⁷³ and 5) “fostering public confidence in the self-policing system.”⁷⁴

The grounds for discipline typically include “willful misconduct in office, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, persistent failure to perform judicial duties, habitual intemperance, and conviction of a crime.”⁷⁵ Generally more than 80 percent of the complaints filed with JCOs are dismissed, mainly because the complaints are not based on a matter for discipline, but rather for appellate remedy.⁷⁶ While other complaints are resolved through informal or private remedies, each year “approximately 100 judges are publically sanctioned in state judicial discipline proceedings.”⁷⁷

Once a complaint is investigated, charges may be filed and a judge may appeal an adverse decision to the state supreme court.⁷⁸ If a sanction is necessary, it may range from a private or public chastisement through fines and suspension without pay to removal, depending on the state.⁷⁹ Removal is considered a last resort to be reserved for egregious cases of judicial misconduct in most states.⁸⁰ In seven states, removal is not an option in judicial discipline proceedings and judges may only be removed through impeachment or address.⁸¹

b. India

⁷¹ *In re Hathaway*, 630 N.W.2d 850, 861 (2001).

⁷² *In re Peck*, 867 P.2d 853, 857 (1994); *In re Hathaway*, 630 N.W.2d 850, 857 (2001); *In re Krepela*, 628 N.E.2d 262, 271 (2001).

⁷³ *In the Matter of Seaman*, 627 A.2d 106, 121 (1993); *In re Krepela*, 628 N.E.2d 262, 271 (2001).

⁷⁴ *In re Peck*, 867 P.2d 853, 857 (1994).

⁷⁵ *How Judicial Conduct Commissions Work*, *supra* note 66.

⁷⁶ *A Study of State Judicial Discipline Sanctions*, *supra* note 64.

⁷⁷ *Id.*

⁷⁸ *How Judicial Conduct Commissions Work*, *supra* note 66, at 415.

⁷⁹ *Id.*

⁸⁰ *A Study of State Judicial Discipline Sanctions*, *supra* note 64.

⁸¹ *Id.*

The Indian Constitution provides some protections for Supreme Court judges similar to those found in the U.S. judicial system to ensure safeguards against judicial corruption.⁸² The process for removing a judge of the Supreme Court of India or a state high court is provided in Article 124(4) of the Indian Constitution and the Judges Inquiry Act of 1968.⁸³ In India, a member of the higher judiciary, who would be roughly equivalent to an Article III judge, can only be removed through the process that requires proven misbehavior or incapacity.⁸⁴ A complaint against a judge must be made through a resolution by either 100 members of the Lok Sabha (lower house of India's Bicameral Parliament) or 50 Rajya Sabha members (higher house of Parliament).⁸⁵ After a signed motion is sent to the appropriate presiding officer of the house (either the Speaker of the Lok Sabha or Chairman of the Rajya Sabha), the presiding officer arranges a three-member committee.⁸⁶ This committee is comprised of a judge from a Supreme Court, a jurist, and either a Chief Justice of a high court if the complaint is against a high court judge, or, another judge from the Supreme Court if it is against a judge of the Supreme Court.⁸⁷ If the committee determines that the judge is guilty of misbehavior or suffers from incapacity, the motion is taken up for consideration in the house where the motion originated and the judge is removed by the requisite majority, i.e. a majority of total and 2/3 of its members present and voting.⁸⁸

⁸² Supreme Court of India, *supra* note 32.

⁸³ Maneesh Chhibber, *The law on impeachment of judges*, INDIAN EXPRESS, Apr. 29, 2010, <http://archive.indianexpress.com/news/the-law-on-impeachment-of-judges/555056/1>.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

IV. Existing Judicial Corruption

Despite the existing safeguards, neither the United States nor Indian judicial system is free from corruption. In 2014-2015, the United States ranked 28 out of 140 countries and scored 5.2 out of 7 on the Judicial Independence Indicator.⁸⁹ Judicial independence measures the perceived extent to which the judiciary of the country is “independent from influences of members of government, citizens, or firms.”⁹⁰ Scores range from 1, which indicates a heavily influenced judiciary, to 7, which indicates a completely independent judiciary.⁹¹ India ranked 64 out of 140 countries and scored 4.0 out of 7.⁹²

Further, in the same period of time, the United States ranked 37 out of 140 countries and scored 5.1 out of 7 on the Irregular Payments and Bribes Indicator.⁹³ The Irregular Payments and Bribes Indicator for obtaining favorable judicial decisions measures the perceived regularity of “companies making extra payments or bribes in connection with obtaining favorable judicial decisions.”⁹⁴ Scores range from 1, which indicates very common, to 7, which indicates that such payments or bribes never occur.⁹⁵ India ranked 64 out of 140 countries and scored 4.0 out of 7.⁹⁶

According to Transparency International’s Global Corruption Barometer⁹⁷, in 2010/2011, 72 percent of people felt that the United States government’s efforts to fight corruption were ineffective, whereas only 29 percent believed them to be effective.⁹⁸ Additionally, 72 percent of

⁸⁹ Transparency International, *Corruption by Country / Territory: United States of America*, <http://www.transparency.org/country/#USA> (last visited Apr. 12, 2016).

⁹⁰ World Economic Forum, *supra* note 2.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Transparency International’s Global Corruption Barometer is a worldwide public opinion survey focused on asking individuals about experiences and perceptions of corruption in their country. Transparency International, *Global Corruption Barometer*, <http://www.transparency.org/research/gcb> (last visited Apr. 12, 2016).

⁹⁸ *Corruption by Country / Territory: United States of America*, *supra* note 88.

individuals felt that corruption in the United States increased between 2007 and 2010, whereas 22 percent believed it stayed the same and only 6 percent believed corruption had decreased.⁹⁹ Additionally, on a scale from 5 (indicating extremely corrupt) to 1 (indicating not at all corrupt), the public perceived the judiciary's corruption rating to be 3.4.¹⁰⁰

Interestingly, the Global Corruption Barometer showed that in India, during the same 2010/2011 time frame, 44 percent of individuals felt that the Indian Government's efforts to fight corruption were ineffective, while 31 percent believed the efforts were neither effective nor ineffective and 25 percent believed the efforts to be effective.¹⁰¹ Additionally, 74 percent of individuals believed that corruption increased in India between 2007 and 2010, while 16 percent believed the corruption stayed the same and 10 percent believed it decreased.¹⁰² Finally, the public perceived the judiciary's corruption rating to be 3.1 on the scale mentioned previously, which is a bit less than what is found in the United States.¹⁰³

The extent to which cultural factors affect this rating is yet to be determined. For example, it may be that citizens in India believe the judiciary to be corrupt, but less corrupt in comparison to the Indian Parliament and other governmental organizations, in a country where corruption is a pervading problem. Contrastingly in the United States, where the expectation may be that the judiciary is to be impartial and independent and held to a higher standard, there may be less tolerance for perceived corruption.

Additionally, the aforementioned statistics combine perceptions regarding both the United States federal and state judiciaries. This fact may be key to understanding why

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Transparency International, *Corruption by Country / Territory: India*, http://www.transparency.org/country/#IND_PublicOpinion (last visited Apr. 12, 2016).

¹⁰² *Id.*

¹⁰³ *Id.*

perceptions of judicial corruption in the United States resemble those in India. In fact, a 2009 study showed that there is a smaller incidence of discovered bribery in federal courts than in state courts.¹⁰⁴ Additionally, the study found that corruption in the form of bribery seems to occur less in appellate courts, possibly due to the increased prestige of appellate judgeships or the fact that appellate judges often must decide cases in panels, which would require bribery of more than one judge and increase risk of detection.¹⁰⁵ The study posits various reasons for why federal judges are less susceptible to corruption.¹⁰⁶

One reason may be that “federal judges hold positions of higher prestige and pay relative to state judges and therefore face higher detection costs.”¹⁰⁷ Thus, there may be a smaller incidence of discovered corruption with respect to the number of federal cases because the increased detection cost may outweigh the benefits.¹⁰⁸ Another reason for lower incidence of judicial corruption in federal courts may be the different makeup of cases before federal and state courts.¹⁰⁹ Federal courts tend to see a higher percentage of bankruptcy cases than civil or criminal cases, whereas state courts see a higher percentage of traffic and criminal cases.¹¹⁰ The study found that the most common type of discovered and punished judiciary bribery was related to traffic violations and criminal prosecutions.¹¹¹ Thus, since state courts hear traffic violations and many more criminal cases, the difference in makeup of cases may contribute to less corruption in the federal courts.

¹⁰⁴ Pahis, *supra* note 3, at 1923.

¹⁰⁵ *Id.* at 1924.

¹⁰⁶ Pahis, *supra* note 3, at 1923.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.* at 1925.

Yet another reason for the difference may be the difference in electing judges versus appointing judges. The study found that “elected judges were caught accepting a larger number of bribes relative to the number of cases that they handled” versus appointed judges.¹¹² Thus, because state judges are elected in some states while federal judges are appointed, the effect may be that corruption is higher on the state level.

V. Judicial Reform Efforts in India

The Indian judicial system would benefit from increased transparency and accountability. While researching on this topic and other topics relating to Indian government oversight, it becomes increasingly apparent that information is not readily available to the public on Indian government websites or databases. Unlike in the U.S., where PIN reports at the federal level and JCO or state court decisions at the state level are available, the Indian government does not make reports readily available or easily accessible. It is this lack of transparency that drives Indian efforts to reform the judicial system, possibly believing that increased transparency and accountability would lessen the chances of corruption and increase public trust in the justice system.

Accordingly, India has made two judicial reform efforts in recent years: the Judicial Standards and Accountability Bill of 2010 and the National Judicial Appointments Commission (NJAC).¹¹³ The Judicial Standards and Accountability Bill of 2010 (JSAB) aimed to deal with

¹¹² *Id.* at 1924.

¹¹³ Pradeep Thakur, *Judicial accountability bill hits National Judicial Appointments Commission roadblock*, TIMES India (Feb. 21, 2015), <http://timesofindia.indiatimes.com/india/Judicial-accountability-bill-hits-National-Judicial-Appointments-Commission-roadblock/articleshow/46319248.cms>.

the complaints against judges and bring transparency to the judiciary by laying out enforceable standards of conduct for judges.¹¹⁴

One way in which JSAB tried to ensure judicial transparency was by requiring judges to disclose details of their and their family member's assets and liabilities.¹¹⁵ Another method was “establishing the National Judicial Oversight Committee, the Complaints Scrutiny Panel, and an investigation committee.”¹¹⁶ Additionally, JSAB set forth complaint mechanisms so that any person could make a complaint against a judge on the grounds of misbehavior or incapacity.¹¹⁷ The process ensured the complaints were confidential and that frivolous complaints would be penalized to maintain the integrity of the system.¹¹⁸

The JSAB also addressed judicial discipline and removal, by establishing processes for removal of judges of the Supreme Court and high courts.¹¹⁹ The processes included the ability to make a motion in Parliament for removal of a judge on the grounds of misbehavior, which would be referred to the Oversight Committee for further investigation.¹²⁰ Additionally, JSAB provided for a time-bound investigation against judges facing allegations of corruption, with the Oversight Committee implementing an in-camera inquiry against the judge.¹²¹ Although the effort to increase transparency in the judicial system was noble, unfortunately the JSAB passed in the lower house of the Parliament in 2012, but later lapsed.¹²² There have been attempts to re-

¹¹⁴ PRS Legislative Research, *The Judicial Standards and Accountability Bill, 2010*, <http://www.prsindia.org/billtrack/the-judicial-standards-and-accountability-bill-2010-1399/> (last visited on Apr. 12, 2016).

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Thakur, *supra* note 112.

¹²² *Id.*

introduce the bill, but the Indian government tabled the re-introduction until matters regarding the NJAC were resolved.¹²³

The National Judicial Appointments Commission Act was passed by Parliament in August 2014 and it came into force in April 2015.¹²⁴ The NJAC was aimed at replacing the collegium system of appointing judges in India.¹²⁵ The NJAC proposed a transparent selection process for high court and Supreme Court judges.¹²⁶ The CJI was to head the NJAC and the other members were to be the law minister, two senior Supreme Court judges, and two “eminent people.”¹²⁷ These “eminent people” were to be selected by a collegium consisting of the Prime Minister, the CJI, and the leader of the single largest party in Lok Sabha.¹²⁸ The NJAC was to replace the current process in which judges select fellow judges for the bench.¹²⁹ Proponents were hopeful of re-introducing the JSAB at the heels of NJAC’s adoption and implementation.¹³⁰

However, there was a petition filed in the Supreme Court challenging the NJAC.¹³¹ Ultimately, on October 15, 2015, the Supreme Court of India found that the NJAC Act was unconstitutional on the grounds that it would affect the independence of the judiciary.¹³² The Supreme Court found that the judiciary can only remain impartial and function properly by ensuring that it is kept absolutely insulated and independent from the other branches.¹³³

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ HT Correspondent, *supra* note 44.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Mishra, *supra* note 50.

¹³³ Krishnadas Rajagopal, SC Bench strikes down NJAC Act as ‘unconstitutional and void’, THE HINDU, Oct. 20, 2015, <http://www.thehindu.com/news/national/supreme-court-verdict-on-njac-and-collegium-system/article7769266.ece>.

Therefore the political-executive cannot take part in the appointment of judges.¹³⁴ The court cited concerns over including the law minister in the process of judicial appointments, as well as other political officials.¹³⁵

Although the above-mentioned Indian judicial reform efforts failed, it is possible to incorporate elements of these reform efforts that are similar to the U.S. federal judicial system into future efforts, taking into account the concerns articulated by the Supreme Court and other opponents in striking down these reform efforts.

VI. Recommendations for Indian System

Unfortunately, Indian efforts to reform the judicial system have not been successful as of late. It may be that reform efforts should focus on implementing systems similar to those in place in the U.S. federal judiciary. As indicated in a 2009 analysis, there is a smaller incidence of discovered bribery in federal courts than in state courts, which may suggest that the increased detection costs associated with the higher prestige and pay of a federal judge outstrips any benefit resulting from accepting bribes or participating in other corrupt behavior.¹³⁶ Elements from U.S. federal judicial oversight that may be incorporated in future Indian reform efforts may include the implementation of a formal code of judicial ethics, abolishment of the collegium system, implementation of an appointment system with nomination by the President and ratification from the Houses of Parliament, an established judicial oversight organization modeled after the DOJ PIN and resembling the NJAC, and ensured salary and lifetime appointment for judges.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Pahis, *supra* note 3, at 1923.

The implementation of a formal code of judicial ethics may provide Indian judges with a sense of duty and lessen the likelihood of corrupting influences. More importantly, the abolishment of collegium system and replacement with a formal appointment system would increase transparency and accountability. Instead of fellow judges and the CJI coming together to make a decision on appointments, it is important that the other branches of the government act as checks and balances to ensure fairness of the process. Thus, the President of India and the Houses of Parliament should be actively involved in deciding who receives an appointment to the bench. This may contribute an improvement in public perception in that Indian citizens may be less likely to believe that there is nepotism or corruption involved in a closed system of judicial appointments, where judges appoint fellow judges. Instead, the elected President and officials of Parliament will be given the task of appointing the judges who ultimately have a significant hand in interpreting and deciding the law in India. This system would resemble the U.S. system of the President nominating federal judges, with the Senate confirming nominations. Although the introduction of NJAC was aimed at implementing a similar system and failed, perhaps future reform efforts may focus on including individuals that have been vetted by the judiciary and deemed to be free of undue political influences. Such efforts may alleviate the concerns articulated by the Supreme Court in the decision to strike down the NJAC.

As previously discussed, PIN has exclusive jurisdiction over investigating and punishing allegations of criminal misconduct by federal judges in the United States.¹³⁷ The PIN reports are publically accessible, well organized, detailed, and provide individuals with information about misconduct by federal judges. Such centralized oversight leads to increased transparency and accountability and allows for uniform and efficient investigation and punishment of reported

¹³⁷ Archive of PIN Reports, *supra* note 60.

misconduct. Such a system would be beneficial in India. The bifurcated U.S. system, with separate federal and state courts, makes implementing one oversight organization difficult because of the extremely complex and varying state court systems. However, the U.S. federal judiciary implements such a system and it would not be too difficult to establish a similar system in India since the Indian judicial system is similarly streamlined, with one system of courts hearing cases involving both Union and state law. Although the JSAB aimed to establish the National Judicial Oversight Committee, the bill has lapsed and has not been re-introduced. This may be because elements of the bill are too harsh to garner approval. For example, the provision requiring judges to disclose all assets and liabilities so that the information may be published on the court's website may not provide for necessary privacy protections. This is unlike the U.S. system, which allows U.S. federal judges to redact information for security reasons, if they can show that publicizing it would pose a physical or financial danger to themselves or their families.¹³⁸ Including such protections may improve the likelihood of JSAB's passage and adoption.

Finally, ensuring lifetime appointments and no salary cuts to judges may be advantageous in the Indian judicial system. These elements are considered to be safeguards in the U.S. system,¹³⁹ and may serve the same purpose in the Indian system. If judges are not worried about their salaries decreasing and providing enough for their families, they may not be as susceptible to bribery or other forms of corruption. Additionally, currently the retirement age for judges in India is 65, and that may be too early for judges who feel that they are still able to work after that

¹³⁸ Jamie Schuman, *Legal site releases judges' financial disclosure data, highlighting teaching fees and security exemptions*, REPORTER'S COMMITTEE FOR FREEDOM OF THE PRESS, May 22, 2014, <http://www.rcfp.org/browse-media-law-resources/news/legal-site-releases-judges-financial-disclosure-data-highlighting-te>.

¹³⁹ Federal Judicial Center, *supra* note 51.

age or who do not have enough money saved to meet expenses post-retirement.¹⁴⁰ Such factors may contribute to vulnerability to corruption and receiving bribes. All these suggestions are, of course, modeled on the U.S. federal judicial system's safeguards against corruption and are offered as possible add-ons or alternatives to current reform efforts in India.

VII. Conclusion

Judicial corruption can greatly undermine public confidence in the justice system. If citizens perceive the system to be broken and believe that judges can be corrupted and bought, then there would be a serious break down of judicial process. One may expect that older judicial systems would be well established and less prone to corruption than newly established judicial systems in developing countries. The United States judiciary, for example, has roots in the colonial era and was officially established in the 18th century. U.S. citizens may hold judges to a higher standard and expect the highest moral character exhibited on the bench because of the age of the judicial system. In comparison, India's judicial system was established in the 20th century and is relatively young. One may expect that such a young judiciary would be more subject to corruption. However, surveys by Transparency International¹⁴¹ have shown that respondents in both the U.S. and India give the countries similar ratings on judicial corruption scales.¹⁴² This is contrary to what one might expect, which is that respondents in the U.S. would report less judicial corruption than the respondents in India.

This paper examined the reasons for the similar results. It may be that the perceived corruption levels in the U.S. and India are similar because the surveys combine perceptions about the U.S. federal judges and state judges. Studies have found that corruption in U.S. state courts is

¹⁴⁰ Former law minister Arun Jaitley has expressed his view that "the clamor for post-retirement jobs is also adversely affecting the impartiality of judges in the higher judiciary." Mishra, *supra* note 50.

¹⁴¹ *Our Organisation*, *supra* note 1.

¹⁴² World Economic Forum, *supra* note 2.

higher than in the U.S. federal judicial system. Higher corruption in state courts could inflate the overall perceived corruption in the country. This has been attributed to various reasons, such as the fact that federal judgeships are more prestigious and better compensated and that the cases before federal courts are less likely to lead to judicial corruption.

Furthermore, the U.S. state judicial systems and the Indian judicial system seem to have similar organizational and oversight features which may contribute to the similar corruption problems. Because the U.S. federal judiciary seems to exhibit less corruption than either the U.S. state judiciaries or the Indian judicial system, borrowing from the U.S. federal judicial corruption safeguards would benefit the Indian judicial system. There have been various recent efforts to increase transparency in India, including the Judicial Standards and Accountability Bill of 2010 and the National Judicial Appointments Commission.¹⁴³ However, these efforts have stalled recently. Combining elements from the U.S. judicial system with the current Indian judicial system will help solve the corruption issue in India and increase transparency, ultimately increasing the faith of Indian citizens in the justice system.

¹⁴³ Thakur, *supra* note 112.