

Mandate of the Special Rapporteur on the independence of judges and lawyers

Ref.: AL IND 1/2025
(Please use this reference in your reply)

25 February 2025

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolution 53/12.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **rules, procedures and practices in the Indian judiciary that may impact its independence and impartiality. These allegations include reported failure to use predetermined, merit-based criteria to select and appoint judges, delays in the appointment of judges, transferring of judges without consent and without predetermined criteria, the underrepresentation of women and minorities within the judiciary; the possible influence of post-retirement roles undertaken by judges; and practices concerning the listing of cases before the Supreme Court, all of which may impact the real or perceived impartiality and independence of the Supreme Court.**

According to the information received:

Judicial selection, appointment and transfer procedures

Supreme Court Collegium System

The method for selection, appointment and transfer of judges in India relies on the Collegium System. The judicial selection and appointment system has evolved through judgments of the Supreme Court on the interpretation of article 124(2) of the Constitution of India which provides the method to appoint justices of the Supreme Court. Under the Collegium System, the President of India appoints Supreme Court justices based on recommendations from the Chief Justice of India. The Chief Justice consults with the Supreme Court Collegium, which is composed of the four other most senior judges.

The process of judicial selection and appointments to the High Courts is similarly governed by article 217, as interpreted by the Supreme Court, in conjunction with article 124. Judges of the High Court are recommended by the Collegium of that High Court, comprising the Chief Justice of the High Court and the two senior-most judges, and must be approved by the Supreme Court Collegium in consultation with the governor of the State concerned.

Judges are to be recommended by the Supreme Court Collegium to the Executive, which then issues the order for appointment. The Supreme Court has stated that it expects the central government to make appointments within 3-4 weeks after the Collegium has issued its final recommendations.

The Supreme Court Collegium also has the power to transfer judges among High Courts. Judicial transfers are governed by article 222 of the Constitution as interpreted by the Supreme Court. Transfers are recommended by the judiciary, with the Executive responsible for implementation. The consent of a transferred judge is not required, and the criteria for transfer are reportedly vague and ill-defined, leaving space for arbitrary and possibly punitive or retaliatory use of this power.

The Supreme Court Collegium holds the authority to recommend judicial appointments and transfers as a means of safeguarding judicial independence. However, it has been reported that the process for selecting and transferring judges lacks pre-determined criteria, and the reasons for judicial transfers are not made public.

There are reportedly no clear and transparent procedures for selecting judges, nor are there objective and predetermined criteria upon which selection is to be based, apart from the limited Constitutional requirements. The information highlights with concern cases in which the Executive reportedly refuses to accept the names recommended by the Collegium or delays the issuance of orders for appointment. The Executive has reportedly rejected a number of recommendations by the Collegium on the basis of confidential intelligence reports, and in other cases has simply taken no action on a recommendation without any stated reason.

Selection and appointment of judges

According to the information, there is no objective, predetermined, and transparent criteria used by the Collegium for assessing and selecting judicial candidates, or the Executive in appointing the Collegium's recommended candidates.

In addition, the information points to actions by both the Collegium itself, and by the Executive in relation to the Collegium's recommendations, which are seen as undermining the independence and impartiality of the judiciary.

The information suggests that in recent years, there have been several cases in which the Collegium reportedly has not recommended otherwise senior and well-respected judges for elevation after decisions by these judges which held the Executive to account.

The information also emphasized that there have been cases in which the Executive's stated reasons for rejecting the Collegium's recommendations were not based on merit. For example, according to the information, the Executive cited the political views and the sexual orientation of candidates, when rejecting recommended appointments.

The information states that from January to July 2024, the Supreme Court Collegium recommended a total of 111 judges to be appointed to High Courts, whereas only 87 were appointed by the Executive. The Executive has thus used its power as an effective veto over judicial appointments.

In addition, in the few last years, the Supreme Court has repeatedly taken note of delays in the Executive's action on its recommendations. In 2023, the Court reprimanded the Executive for repeatedly delaying appointments.

Transfer of judges

According to the information, judges have been transferred between High Courts in situations suggesting that this power has either been used as a method of disguised sanction or reprisal or has been perceived as such.

In 2022, the Chief Justice attempted to transfer 20 High Court judges, but the Executive did not act on the recommendations. In November of the same year, the Supreme Court Collegium announced the transfer of 7 High Court judges. The justification provided by the Supreme Court Collegium was explained as administrative reasons.

In other cases, judges have been transferred in situations perceived by many in the bar and the broader public as punishment for their judicial decisions checking the power of the Executive. This has involved judges being moved from a High Court seen as having a very high status to a High Court of lower status.

In all of these cases, predetermined, transparent criteria for judicial transfer have been absent. The consent of the judges transferred has not been a prerequisite.

Post-retirement political positions of judges

According to the information, there is a pattern in which a significant number of Supreme Court justices, once retired, have been appointed to Government positions, without any rules or guidelines to prevent conflicts of interest or the undue influence that could result from such appointments being used—or being seen to be used—to reward certain justices for decisions they took on the bench. Reportedly, between 1999 and 2020, 70% of retired Supreme Court justices (73 out of 103) were appointed to a range of government jobs. This included, 4 justices appointed to political positions (1 became a state governor, 1 became a member of parliament, 2 became Parliamentary Ombudsmen), 50 justices appointed to statutory bodies or tribunals and 8 justices appointed to ad hoc commissions set up by the government. While there are restrictions imposed by articles 124(7) and 220 of the Constitution, which prohibit a retired Supreme Court justice from practising as an advocate in any court or tribunal and a retired High Court judge from practising as an advocate before the High Courts, there are no other rules or guidelines concerning post-judicial employment.

There is no prohibition against retired justices taking up positions as heads or members of tribunals, commissions or committees constituted by the Executive or the Judiciary. On the contrary, statutory commissions like the National Human Rights Commission, set up under the Protection of Human Rights Act, require that its chairperson be a retired judge. In 2021, a former justice of the Supreme Court was appointed by the government as the chair of the National

Human Rights Commission (NHRC) one year after he had retired from the Supreme Court.

In 2020, a former Justice of the Supreme Court was appointed as member of the upper House of Parliament only four months after his retirement from the Supreme Court. In February 2023, a former Justice of the Supreme Court was appointed as Governor of Andhra Pradesh state after only one month he had retired. In 2024, a former Justice of the Supreme Court was appointed as chairperson of the Lokpal, the anti-corruption authority who represents the public interest in the Republic of India.

The information suggests that, apart from articles 124(7) and 220 of the Constitution of India, no additional guidelines exist to regulate the employment opportunities judges may pursue after retirement. Furthermore, there are no regulations ensuring that appointments by the Executive follow clear and predefined selection criteria, leaving open the possibility of abuse of such selection. The information suggests that the many in the public perceive a pattern of rewards whereby justices or judges who have ruled in favor of the Executive are later appointed to choice positions.

Representation of minorities

Currently, the Supreme Court has 2 women judges and 3 judges from the Scheduled Class communities, among a total of 34 sitting justices. Information indicates that, as of early 2024, out of the 33 sitting judges, 30 are Hindus, one is Muslim, one is Christian and one is Parsi.¹ Additionally, 36% of the justices are from the top Brahmin caste, which only constitutes the 5% of the India's population.

As of today, of the 661 High Court judges appointed since 2018, 21 (3%) belong to the Scheduled Caste (Dalit) category, 12 (1.8%) to the Scheduled Tribe (indigenous) category, 78 (11%) to the Other Backward Class category, and 499 (75%) to the General category. The General category includes Brahmins and a few other groups considered to be 'upper' castes. Public data on the representation of religious minorities, such as Muslims and Christians, in the High Courts is not available. While India has reservations for Scheduled Caste and Scheduled Tribe communities in public service, no such reservations exist in the judiciary. Furthermore, the judiciary does not have provisions for reservations for other marginalized communities, including religious minorities.

In 2022, the Ministry of Law and Justice issued a public statement clarifying that the mandate of reservation does not apply to the judiciary: "Appointments of Judges to the Supreme Court and High Courts are made under articles 124, 217, and 224 of the Constitution of India, which do not provide for reservations for any caste or class of persons." Constitutional provisions governing the appointment of judges have been interpreted to exclude and take precedence

¹ Supreme Court Observer, *Supreme Court Review 2023: The diversity problem remained unaddressed*, 4 January 2024, <https://www.scobserver.in/journal/supreme-court-review-2023-the-diversity-problem-remained-unaddressed/#:~:text=Since%20the%201950s%2C%20the%20tradition,guaranteeing%20a%2012.5%20percent%20representation>

over the constitutional requirement for reservations.

Furthermore, since 2023, the Government has asserted that its role is limited to implementing recommendations made by the judiciary and that it cannot ensure the selection of women or minorities for judicial postings.

Procedures to list cases at the Supreme Court

India follows the seniority principle by custom, designating the most senior Supreme Court justice as the country's Chief Justice. The information suggests that the Chief Justice of India may exercise broad discretion as "Master of the Roster" in decisions concerning prioritizing, listing, and assigning cases. The Supreme Court hears cases in benches of two or three judges, or in constitutional benches comprising five or more judges of an odd number. When a case is filed in the Supreme Court, it is designated to be heard under a subject-specific roster. Each roster is assigned to a set of specific justices by the Chief Justice. The Chief Justice has the discretionary power to allocate cases in deviation of the roster system by re-assigning cases once they have been allocated to a particular bench.² Cases allocated to different benches are then listed for hearing before this bench by being added chronologically to a "cause list" of cases already being heard by that bench.

In addition, listing is further determined based on the stage of hearing, whether a case has been freshly filed, whether notice has been issued to the opposite party, whether it is to be heard for an interim relief or final arguments, among other criteria set out in rules governing procedure and the Supreme Court Handbook.³ A bench hears a fresh case and directs that the case be listed for a subsequent hearing within two or four weeks. Reportedly, after the first hearing, usually no specific date is given by the Judges on when the following hearing will take place. The specific date is to be determined by the Registry of the Supreme Court, which functions under the control and direction of the Chief Justice.

The information indicates that the procedures governing the assignment and listing of cases do not oblige the Chief Justice to provide a public explanation for decisions that deviate from the rules. However, such deviations could potentially be used to delay case hearings in specific cases. The information suggests that a number of high-profile, politically sensitive cases have been subject to very long delays. Given the high stakes of cases before the Supreme Court, a delay may be valuable to one party or another, and any change to the normal rules could benefit a party.

Further, information suggests that in some instances, a deviation may be taken from the procedures for the allocation of cases to ensure that cases seen as politically sensitive are assigned to certain judges, while others would be excluded from hearing these cases.

² The Supreme Court Rules, 2013: Supreme Court Handbook on Practice and Procedure and Office Procedure, Chapter XIII, Cause List and Listing, para. 3, p. 102.

³ Supreme Court Handbook, Chapter XIII, Cases, Coram and Listing, para. 1-3, p. 105-106.

Thus, departures from the published rules – especially when enacted without any explanation – may open the door to questions as to the motivations for the action. Patterns of such deviations have led to former judges and senior advocates raising concerns about the impartiality of the Supreme Court in certain sensitive matters concerning the Executive.

While I do not wish to prejudge the accuracy of these allegations, I must express serious concerns regarding several issues that could impact the actual or perceived independence and impartiality of the judiciary in India. These include decisions on appointments that raise concerns about the use of criteria other than merit, unjustified delays in the appointment of judges, and the transfer of judges without their consent and in the absence of predetermined criteria. All of these issues raise concerns under international standards for security of tenure for judges. I am also concerned about the apparent underrepresentation of women and minorities within the judiciary, which raises concerns about equal opportunities for individuals qualified to be considered for positions within the judiciary. In addition, I take note with concern of the assumption of post-retirement political roles or government posts by judges without clear guidelines to safeguard against the use of such appointments as rewards for on-bench decisions. Furthermore, I am troubled by the broad discretion open to the Chief Justice concerning the listing, assigning, and scheduling of cases. This lack of transparency concerning procedures for listing cases has reportedly led to mistrust in the impartiality and independence of the judiciary.

In light of the above-mentioned allegations and concerns, I wish to draw the attention of Your Excellency's Government to my last report on 'Safeguarding the independence of judicial systems in the face of contemporary challenges to democracy' ([A/HRC/56/62](#)). In this report, I urge States to ensure that judicial appointments and promotions are conducted through a transparent process based on objective, pre-established legal criteria (para. 71(b)), in order to safeguard the separation of powers. Additionally, I highlighted that undue influence can also be exerted through the strategic transfer of judges to under resourced or undesirable locations, transforming such measures into a form of punishment, retribution, or intimidation (para. 53). Further, in my report to the General Assembly ([A/79/362](#)), I highlighted that "States may mandate that public servants, including judges, require prior approval of postretirement job prospects to manage potential conflicts of interest, or impose a "cooling off" period in which judges cannot carry out certain forms of work that carry particular risks of conflict" (para 42).

I recall that international standards provide that the independence of the judiciary shall be guaranteed by the State, and judgements must be taken without any form of influence and pressure. The issues identified in this letter raise questions about compliance with the principle of judicial independence as enshrined in article 14(1) of the International Covenant on Civil and Political Rights, which India acceded to on 10 April 1979. Judicial independence is fundamental to ensuring the right to a fair trial. Additionally, as highlighted by the Human Rights Committee in its general comment No. 32, a tribunal must appear impartial to a reasonable observer, further underscoring the importance of addressing these concerns.

In this regard, I express serious concerns regarding the allegations of lack of predetermined, objective, and merit-based criteria for the selection and appointment of

judges. The Basic Principles on the Independence of the Judiciary specify that judges should be selected based on competence, integrity, and independence. International standards suggest that these criteria should be made public. I am very concerned that there is no evidence that the Collegium applies fixed, merit-based criteria. Such a lacuna leaves judicial selection open to undue influence. In relation to the Executive's appointment power, the information suggests that the government does not disclose the dates and reasons for their rejection of judicial candidates recommended by the Collegium.

I am also concerned about the lack of transparency in the transfer of judges, for which no predefined criteria are publicly available. This lack of transparency raises concerns, as the absence of clear and publicly accessible guidelines, combined with a pattern of transfers seen as punitive, has reportedly led to the perception that transfers have been affected by external factors. As this mandate has said, "One of the most recurrent forms of disguised measures affecting a judge's conditions of service is the transfer to a different court or tribunal as a measure to punish an independent and courageous judge and to deter others from following her or his example" (A/75/172, para. 69). I express my concern that the procedures for judicial transfers, combined with the absence of a consent requirement for the transferred judge, risk undermining the judiciary's independence and could be viewed as subject to undue influence by the executive.

Furthermore, I am concerned about the absence of guidelines governing the post-retirement political roles of judges. The available information indicates that regulations to prohibit or manage the positions judges may assume after retirement exist only for their role as advocate. Additionally, the lack of predefined selection criteria for appointing judges to post-retirement roles by the Executive raises further concerns. This regulatory gap could undermine the independence and impartiality of the judiciary, as it may lead to the perception that while in office, a judge's decisions could be impacted by considerations of how their rulings might influence potential future appointments or employment opportunities. Taken together, these dynamics could have effects on the right to a fair trial and due process guarantees.

In addition, I express my concerns on the significant underrepresentation of women, so-called "lower" castes, and religious minorities in the Indian judiciary system, which raises serious questions about diversity and inclusivity within the judiciary. I am concerned this may erode confidence in the institution's impartiality, potentially compromising access to justice for all segments of society. I emphasize that the lack of objective, merit-based criteria for the selection of judges leaves room for discrimination.

Finally, I am concerned about the wide discretion enjoyed by the Chief Justice as Master of the Roster. This discretion includes the ability to allocate cases outside of the existing rules without any requirement for a reasoned explanation. The Basic Principles on the Independence of the Judiciary emphasize that "The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration" (principle 14). International best practice suggests that cases should be assigned based on objective criteria, and that discretion in this regard should be limited. The lack of clarity in listing may also lead to questions about impartiality, especially when the public identifies a seeming pattern in which certain politically sensitive cases

are repeatedly assigned to specific judges.

A secondary concern regarding the procedures for listing and assigning cases is that they could lead to delays in certain cases. As emphasized by the Human Rights Committee in general comment No. 32, the promptness of judicial proceedings is essential to ensuring the fairness of a trial. Further, it has been observed that some emblematic cases appear to move forward with celerity, while others appear to stall. This pattern underscores the wisdom of adopting safeguards to limit discretion.

In connection with the above alleged facts and concerns, I would like to recall that international standards provide important guidelines for how best to guarantee judicial independence, both institutional and individual, and impartiality, both objective and subjective. I underscore that, in line with international standards, many of the issues identified in this letter are matters for the judiciary itself to manage.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please indicate the measures taken to ensure that the procedures for selecting and appointing judges, and for transferring judges from one High Court to another comply with international standards and guarantee the independence of the judiciary. Please describe the criteria and standards used to select, appoint, and transfer judges, in addition to the professional requirements specified by article 124 of the Constitution.
3. Please provide information on the measures taken to guarantee that the judiciary is seen to be independent and impartial. If no measures have been taken, please explain how public confidence in the independence of the judiciary is ensured.
4. Please explain the measures that have been taken by Your Excellency's Government to ensure that judges are not influenced by the possibility of obtaining favorable post-judicial appointments from Government officials.
5. Please provide more information about the demographics of judicial positions—including women and minority representation—and if possible, provide similar information about whether the demographic data is similar for those graduating from law school.
6. Please indicate what measures have been taken to guarantee the full representation of society in the judiciary system and to overcome the

underrepresentation of women, lower castes and religious minorities among the judiciary.

7. Please describe any steps taken by the Supreme Court of India to bring existing rules, policies and practices in line with international standards and best practices, particularly focusing on removing discretion and scope for arbitrariness in the listing and allocation of cases.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of my highest consideration.

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, I would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

I draw the attention of your Excellency's Government to article 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified by India on 10 April 1979, that provide that everyone is entitled to a fair and public hearing by an independent and impartial tribunal established by law.

The independence of the judiciary is an essential requirement of the democratic principle of separation of powers, which stipulates that the executive, the legislature and the judiciary constitute three separate and independent branches of Government. The principle of the separation of powers is the cornerstone of an independent and impartial justice system. According to this principle, the Constitution, laws and policies of a country must ensure that the justice system is truly independent from other branches of the State. Within the justice system, judges must be free to carry out their professional duties without political interference and must be protected, in law and in practice, from attack, harassment or persecution as they carry out their professional activities.

In this regard, article 14(1) of the ICCPR enshrines the requirements of independence and impartiality of the judiciary. In its general comment 32 (2007) on article 14, the Human Rights Committee emphasized that the right to equality before courts and tribunals serves as a procedural means to safeguard the rule of law and is “an absolute right that is not subject to any exception.” (CCPR/C/GC/32, para. 2). Article 14 requires States to adopt appropriate measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them. The requirement of independence “refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature” (para. 19).

Moreover, article 14 provides for the principle of equality before competent, independent and impartial courts and tribunals. The Human Rights Committee clearly stated that “[a] situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal” (para. 19). Fair trial guarantees can never be subject to derogatory measures that would circumvent the protection of non-derogable rights (para. 6). In addition, ‘the requirement of impartiality has two aspects. First, judges must not allow their judgement to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one

of the parties to the detriment of the other. Second, the tribunal must also appear to a reasonable observer to be impartial' (para. 21). Fairness of proceedings entails the absence of any direct or indirect influence, pressure or intimidation or intrusion from whatever side and for whatever motive. An important aspect of the fairness of a hearing is its expeditiousness (para. 27).

The principle of the independence of the judiciary has also been enshrined in the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, which establish that the independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country.

Principle 1 provides that it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

Principle 2 provides that the judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

Principle 4 states that there shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.

Principle 6 entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

Principle 10 affirms that any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

Furthermore, the values enshrined in the Bangalore Principles of Judicial Conduct are complementary. Regarding the first Value on independence, judges shall be independent in relation to society and parties to disputes. Judges also "shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom." Regarding the second Value on impartiality, it applies not only to the decision itself but also to the process by which the decision is made. A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary. The Commentary on the Bangalore Principles elaborates that judicial independence means freedom from undue external influence and freedom from other judges' undue influence (para. 39).

In regard to the representation of women in the judiciary system the Human Rights Council at the 44th session has emphasized ‘that an independent and impartial judiciary [...], which foster a balanced representation of men and women and the establishment of gender-sensitive procedures, is essential for the effective protection of women’s rights, including protection from violence and revictimization through court systems, to ensuring that the administration of justice is free from gender-based discrimination and stereotypes, and to a recognition that both men and women benefit when women are treated equally by the justice sector’ (A/HRC/44/L.7). Consequently, ‘States should promote diversity in the composition of the members of the judiciary, including by taking into account a gender perspective’. Additionally, ‘the requirements for joining the judiciary and the selection process [should be] non-discriminatory, public and transparent, based on objective criteria, and guarantee the appointment of individuals of integrity and ability with appropriate training and qualifications in law’ (para. 2).