

The emphasis on diversity in the judiciary is unnecessary. the culture of any jud...

[Law](#), [Common Law](#)



Judges play many roles. They interpret the law, assess the evidence presented, and control how hearings and trials unfold in their courtrooms. Most important of all, judges are impartial decision-makers in the pursuit of justice. We have what is known as an adversarial system of justice - legal cases are contests between opposing sides, which ensures that evidence and legal arguments will be fully and forcefully presented. The judge, however, remains above the fray, providing an independent and impartial assessment of the facts and how the law applies to those facts. If the defendant is convicted of a crime, the judge passes sentence. It is essential for them to be independent and impartial for sake of rule of law. The Rule of Law claims that no governmental figure shall be above the law. Keeping judges as unbiased mediators of the law helps this — dicey claimed “ equality before the law- equal subjection of all classes to the ordinary law. It is vital that the courts serve as an unbiased body independent of the legislature which is made the law, and that they act independently of the executive in interpreting the meaning of laws. Central to the general idea of the rule of law is the specific proposition that it involves a rule of law, rather than the rule of people. From this perspective , judges are seen as subservient to, and merely the instrument of, the law; and the outcome of judicial process is understood as being determined through the straight forward application of legal rules, both statute and precedent, to particular factual situation. In applying those rules, the judge is expected to act in a completely impartial manner, without allowing his personal preferences to affect his decision in any way. A further assumption is that in reaching a decision, the judge is

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only concern with matters of law and refuses to permit politics, economics and rather non-legal matters to influence his decision. The law is assumed to be distinct from, and superior to, those non-legal issues and the assumption is that the judge operates, in the words of Professor JAG Griffiths, as a political, economic and social eunuch. In reality, however, the judges have a large measure of discretion in determining which laws to apply, what those laws actually mean and how to apply them. In the light of the potential creative power, it is essential to ensure that the judiciary satisfactorily represents society at large, in relation to which it has so much power, and to ensure further that it does not merely represent the views and attitudes of self-perpetuating elite. This desideratum could be reformulated in a form of a stark question: are judges biased, and do they use their judicial positions in such a way as to give expression to that bias? Bias can operate at two levels. The first is personal bias and occurs where individual judges permit their own prejudice to influence their understanding and implementation of the law. The fact is that it is individual makes it more open to control and, in the long run, less serious than the acquisition of corporate bias. Corporate prejudice involves the assertion that the judiciary, as a body, do not decide certain types of causes in a fair and unbiased way; rather than as a consequence of their shared educational experience, shared training and practical experience at the Bar, along with shared social status, they have developed a common ideology comprising a homogenous collection of values, attitudes and beliefs as to how the law should operate and be administered. The claim is that because, as individuals, they share the same

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prejudices, this leads to the emergence of an in-built group prejudice which precludes the possibility of some cases being decided in a neutral way. Further criticism of existing judiciary is its composition. The English judiciary is criticized as being white, male, barristers and Ox-Bridge graduates. The establishment of Judicial Appointment Commission is likely to reduce this primacy of white male and barristers in the higher judiciary as the lay members of JAC are encouraged to promote diversity. It is apparent that senior judges are still being appointed from the limited social and educational elite as they always have been and that this gives rise to the acquisition, if not necessarily the reality, that the decisions made by the elite merely represent the interest of a limited and privileged segment of society, rather than society as a whole. It is arguable that even if the acquisition of those commentators such as Prof. Griffith is inaccurate, it remains appropriate and, indeed, essential that in order to remove even the possibility of those acquisitions, the present structure of the judiciary be examined and altered. It is to be hoped that the establishment of the Judicial Appointment Commission, with its control over the appointment of Judiciary will open up the whole process to much welcome scrutiny in the future. There is one further point that has to be considered in relation to Griffith's attack on the Judiciary, and that is the fact that, with the advent of the HRA 1998, many on the political left appear to see the judges as the stalwart defenders of Human Rights in the face of an onslaught by the authoritarian state. This is particularly the case in relation to anti-terrorist legislation, which many see as draconian in its operation and affects. Therefore a lack of diversity in

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judiciary might result in: - Undermining the confidence of general people over judiciary - It would hinder the judiciary from being experienced, aware about different races and classes' problem - It might make the judiciary a subject matter of criticism for racial and general bias - The symbolic value of Judges, the servant of Law, undermined. The new appointments commission has been criticized by " The Guardian" of 28th January 2008, for example, reported that: the government's attempt to reform the system for choosing judges to create a more diverse judiciary is failing to break the strangle hold of privately-educated white males over the high court bench. Although the new appoints were designed to promote more diversity, all the judges appointed since were introduced to have been white male barristers and most were educated at independent schools. Kieth Vaz, the barrister and Labour MP who chairs the commons home affairs committee was quoted as saying that the system was no better at creating a more diverse judiciary. Truly it is necessary to prove that the appointment system of JAC is fair enough. Though they fail to prove the fairness from the beginning but it is very much necessary that they will be beyond the criticism otherwise they will be good for nothing. It is duty of government to observe that the commission is carrying its duty in proper way. Government can impose some rules and regulations in order to monitor and maintain the fairer system of JAC. A certain number of percentages from ethnic minority and from women can be reserve for appointment as judges by JAC. Further illustrated for immediate need for protection of belief of minors can be seen in the research report of March 2003 entitled " ETHNIC MINORITIES IN CRIMINAL

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COURTS PERCEPTIONS OF FAIRNESS AND EQUALITY OF TREATMENT". Stating and emphasizing on the fact that one in five black and one in eight Asian defendants definitely perceived racial bias in Crown Court and at least one in ten in magistrate courts combined with the fact that black lawyers and staff were more likely to perceive racial bias. Only 90 applications were made in total for this selection Exercise of judges of High Court in 2010, the percentages relating to applicants who were shortlisted and recommended for appointment within some diversity groups are based on small counts and should be interpreted with caution. A similar proportion of female applicants were shortlisted (33%) as male applicants (39%). Overall, of the 15 female applicants, 5 were shortlisted and 2 were recommended for appointment. Of the total of 6 BME applicants, 2 were shortlisted; both were subsequently recommended for appointment. Showing the urge to increase diversity in judiciary. (Judicial Selection and Recommendations for Appointment Statistics, England and Wales, April 2010 to September 2010) Professor Michael Zander in article entitled "A waste of Space" (2007) stated equality is 'another fundamental principle that should underpin any judicial appointments system...The communities of Britain are ever changing and our institutions need to adapt to ensure that they continue to reflect those changes' Judges or candidates for the judiciary should be checked as to whether they have common sense and are in the real world. But beyond that it is questionable how far a judge should be required to be knowledgeable about the myriad different elements in society. This notion suggests again diversity in Judiciary is emergent need. More importantly to counter argue it

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can be said, as noted by Zander himself, judges do not serve communities. If they serve anyone or anything that is the law, the administration of Justice. The principle of increased diversity in the makeup of the judiciary is now widely accepted provided that merit remains the first consideration. To further support The Judges in playing a role of fair and unbiased symbol JSB (Judicial Studies Board) introduced many ways to ensure that judges are trained in manner to comply with the urgent need to be fair in hearing cases of ethnic minorities. The function of the Equal Treatment Advisory Committee is to assist and support all judges and judicial office-holders to fulfill the obligations of the judicial oath by being equipped to recognize the many ways in which social, cultural and other differences may have a bearing on the conduct of cases and the wider judicial role, by (1) ensuring the integration of diversity and fair treatment issues into relevant aspects of JSB training; (2) providing and contributing to training and materials, including the Equal Treatment Bench Book, to support all judges and judicial office-holders in ensuring fair treatment and increasing their knowledge and understanding of their local communities; (3) acting as a referral point for judicial inquiries or concerns, within its terms of reference; (4) advising the JSB and its committees on all issues within its terms of reference: see the Judicial Studies Board Annual Report (2008—2009) p 38. Part 2 of the Act amends the minimum eligibility requirements for judicial appointments in England and Wales (and for some posts where the office-holders may sit in Scotland or Northern Ireland) with the aim of increasing the diversity of the judiciary. The existing eligibility requirements for judicial office are replaced

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with the requirement that a person must satisfy the "judicial-appointment eligibility condition". The sections mean that rather than eligibility for office being based on possession of rights of audience for a specified period, a person who wishes to apply for an office under any of the provisions amended by Schedule 10 to the Act will have to show that he has possessed a relevant legal qualification for the requisite period and that while holding that qualification he has been gaining legal experience. In respect of many of the offices, the number of years for which a person must have held his qualification before he becomes eligible for judicial office is also reduced.

(attempted reform) (Legal Services Act 2007) " I, _____, do swear by Almighty God that I will well and truly serve our Sovereign Lady Queen Elizabeth the Second in the office of _____, and I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will.

" Considering the bolded words in the oath taken by Judges it can be said that judges as required by good faith of people serve the law and if diversity in judiciary is not incorporated and considerable criticism due to miscarriage of justice due to lack of diversity requires the government to uphold the notion of diversity of Judiciary.