

The system of appointment and retirement law constitutional administrative essay

Law



**ASSIGN
BUSTER**

The procedure by which judges are appointed is of fundamental constitutional importance. The process aspiring to judicial independence in United Kingdom developed very slowly. Under the Norman monarchy of the Kingdom of England the king hold judicial power. In the fifteen century, the king's role in judicial system became small as more courts were created and judicial profession grew. Despite this the kings could still influence courts. The Stuart Dynasty used this power constantly to overpower Parliament till King William III finally approved The Act of Settlement that assured the judicial independence. Under the unwritten British Constitution there are two important regulations that help to preserve judicial independence. The first one is that Parliament is not allowed to comment on the cases which are before the court. The second one is the principle of parliamentary privilege- members of Parliament are protected from prosecution in certain circumstances. The independence of judicial system can be assured only in condition of separation of powers. The state is divided into branches, each with separate and independent powers and areas of responsibility. These powers are legislature, executive and judiciary. Independent judiciary is essential to provide a fair trial. The process of appointment of judges was frequently criticized in United Kingdom. The judges appointed in courts came from the same law environment. It could endanger the fundamental right to a fair trial protected by Article 6 of Convention of Human Rights. The process of appointment of judges before reforms was not very clear and candidates could not simply apply for judicial office. Critics stated that the system was discriminatory and leaded to corruption. Before Constitutional Reform Act2005, the Lord Chancellor played crucial role in the appointment of

judges. The Queen on the advice of Prime Minister (who was advised by the Lord Chancellor) appointed the Lords of Appeal in Ordinary and the Lord Justices of Appeal. High Court judges, circuit judges and recorders were appointed by the Queen on the advice of the Lord Chancellor. District judges were appointed by Lord Chancellor. Prior to the Courts and Legal Services Act 1990 the highest judicial office that could be applied for was Circuit Judge, anything higher was by invitation only. Section 71 of 1990 Act created new system of qualification for judicial offices. The 1990 Act widened entry for the solicitors rather than barristers for the judicial offices in Supreme Court of England and Wales. Section 75 of Courts and Legal Services Act 1990 forbids a person who holds full time judicial office working as a barrister, solicitor, licensed conveyance and public notary. The process of appointment of judges for High Court involved the Lord Chancellor Department collecting information about candidates by making informal queries from barristers and judges. There were no advertisements for judicial office. Candidates waited to be invited to the post. The final appointment process involved traditional job interview. Before 1959 there was no retirement age for judge position. Judicial Pension Act 1959 forbade service past age 75, and then Judicial Pension and Retirement Act 1993 set the ordinary retirement age for 70 and enabled a minister (Lord Chancellor) to allow individual judges to remain in the office to age 75. The 1993 Act forbids judges aged over 75 to hold any judicial post. The process of appointing the judges was constantly criticized as secretive and lacking clearly defined selection criteria. 'Secret soundings', the process of selection of judges in the High Court, were described as 'A licence to discriminate and perpetuate

a judiciary which is perceived as a being not only pro-white and male, but which also has built-in bias against minorities, woman, solicitors, and anybody not perceived as a being ' safe pair of hands'. Common concerns included ' lack of openness', discriminatory, the role of patronage and dominance of elite group of barrister chambers. The reports found that almost 70 % of judges appointed to the High Court came from the set of chambers which had at least one ex-member among the judges. There was a strong tendency to recommend candidates from their own chambers.

Another studies show that the system of appointment the judges suffered from ' lack of judicial diversity'. Senior judges are mostly privately educated and hold degrees from a select group of universities. 81 % of them have Oxbridge degrees, 76 % attended fee-paying schools and 50 % went to boarding schools. Concerns regarded also woman and ethnic minorities to achieve judicial appointments. The numbers of woman and minority ethnic appointments were extremely small. The system of appointment the judges did not work and there was strong need to create new, more transparent, independent and diverse system. The system that would have more clearly distinguishes between the ability of woman and ethnic minorities to be appointed. The new act of Parliament of the United Kingdom, Constitutional Reform Act 2005 introduced new, modernized system of appointment and retirement of judges. 2005 Act initiated new rules that would lead to more transparent and diverse system of appointment the judges. The reform was also response to growing concerns that legislative, judicial and executive power might breach requirements of Article 6 of European Convention of Human Rights regarding a fair trial. Constitutional Reform Act 2005also

changed dramatically the Lord Chancellors role. Before 2005 Act Lord Chancellor had sole responsibility for appointments process and for making recommendations those appointments. The office of Lord Chancellor continued in existence but is no longer the head of judiciary and newly created institution of the Judicial Appointments Commission removed his responsibility for judicial appointments. Section 14 and schedule 3 of Constitutional Reform Act 2005 transferred the responsibility of the Lord Chancellor for certain judicial appointments to Her Majesty. Under the new reform the Lord Chancellor is no longer required to act as Speaker of House of Lords. The Act reduced the role of the Lord Chancellor to a limited veto over decisions of the Judicial Appointments Commission in the process of appointment of judges. The second division of Constitutional Reform Act 2005 is about new institution of Supreme Court - the highest in the whole of the United Kingdom for civil matters and for criminal matters from the United Kingdom jurisdictions of England and Wales and Northern Ireland. Newly created Supreme Court is composed of 12 judges (the first judges were current twelve Lords of Appeal in Ordinary). Future members of the Court are appointed by the Queen on the advice of Prime Minister who gathers recommendations from a selection commission. The selection commission is composed of President and Deputy President of the court, and member each from the English Judicial Appointments Commission, the Judicial Appointments Board for Scotland and the Northern Ireland Judicial Appointments Commission. The Supreme Court was established on 1 October 2009 on the strength of Constitutional Reform Act 2009 and assumed the functions of the House of Lords. Third part of the 2005 act

contains new appointment procedures. Section 61 of the act prescribes the creation of an independent body responsible for appointing judges- Judicial Appointments Commission. Schedule 12 to the act sets number of members of the Commission to 15 including the Chairman: five lay members, five judges, two legal professionals, a tribunal member and a lay magistrate. It took over a responsibility previously that of the Lord Chancellor and the Department of Constitutional Affairs. The members are appointed by Queen on the recommendation of the Lord Chancellor. JAC selects candidates for judicial office solely on merit and only people of good character through fair and open competition from wide range of candidates. The candidates are selected in regard to the need to encourage diversity in the range of persons available for judicial selection. Once appointed to a full time salaried position judges might not be removed other than in exceptional circumstances. JAC is responsible for recommending candidates to all judicial offices (established in schedule 14 to the Constitutional Reform Act 2005) as well as to the offices of the Lord Chief Justice, Master of the Rolls, President of the Queen Bench Division, President of the Family Division, Chancellor of the High Court, Lords Justices of Appeal and High Court Judges. The JAC is also subject to specific duties set out in Equality Act 2010 applied to public authorities to: eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity different groups and foster good relations between different groups. The new, modernized system of appointment the judges enabled solicitors to become judges. Part 2 of the Tribunals, Courts and Enforcement Act 2007 conditioned the qualification required for the judicial appointment. The candidate has to hold relevant qualification and has

gained experience in law for a specified period while holding relevant qualification. Relevant qualification is solicitor or barrister; however the Lord Chancellor broadened this to members of the Institute of Legal Executives and other bodies. These rules should help to increase judicial diversity. The Commission selects and recommends candidates on the basis of merit only, one individual for each vacancy. The Minister is not allowed to appoint someone who has not been recommended by JAC. There is a different system of recommending candidates for the position of Lord Chief Justice, the heads of Division and the Lord Justices of Appeal. The Commission sets the list of four members, consisting of two senior judges and two lay members of the Commission. Appointments of Lords Justices and above are made by the Queen on the advice of the Prime Minister. The Judicial Appointments Commission is not involved in process of appointment of judges to the Supreme Court. This process is supervised by special, temporary Commission appointed by the Minister. The reformation of system of appointment the judges started in 2005 by introducing Constitutional Reform Act and dramatically changing the process of appointment. Current systems become more diverse and understandable. In a speech in February 2007 the Lord Chancellor, Lord Falconer stated that progress on diversity was made ' we are making progress in terms of gender and diversity. Year on year the statistics are pointing in the right direction. In 1999 only 24 % of judicial appointments to courts and tribunals were woman. By September 2005 this had increased to 46 % (...) A similar picture emerges with those from ethnic minority backgrounds with the percentage of appointments to the courts and tribunals increasing from 5% to 17% in that same period.

While the percentage of judges in courts from ethnic minority backgrounds has doubled since 2001 to nearly 4% by April last year'. The Judicial Appointment Commission assures that new procedure of appointment the judges is diverse by selection based on qualities and abilities to determine merit. Candidates have to proof their equality by role play/ scenario questions checked by equality/ diversity experts from the Bar Council and Law Society and CILEx to ensure there is no discrimination. The JAC publishes an Official Statistics bulletin twice a year to record its performance and monitor diversity.