

Representation after CRA 2005

- Baroness Usha Prashar : Days of the secret sounding and tap on the shoulder are long gone

Judiciary Diversity Statistics 2016

- Females in 2015 : 25%, 2016 : 28%

- BAME in 2016 : 5%

Steps to increase diversity

a) *Fast-track to the High Court* - Requires no previous judicial experience, does not require to have sat as Recorder (To ensure diversity at a quicker pace)

b) *Support scheme for under-represented group*

- Work-shadowing (Gauge if job is suitable for them)

- Workshops (Provide guidance to better equip candidates for selection process)

c) *Judicial Mentoring Scheme* - Focuses on women and BAME

d) *Judicial Diversity Initiative* - A forum to promote equal participation of men and women from diverse backgrounds (Greater diversity by 2020)

Is the judiciary independent, neutral and impartial?

- Have been questioned about representation and diversity but independence was never an issue. Judiciary has already been capable of preserving liberty and justice for all before **CRA 2005**. The independence of judiciary was enhanced after **CRA 2005** (s3 and s4). Before, selection was done in secrecy as opposed to now, done publicly, to increase accountability and gain public confidence

Are judges conservative and illiberal?

Not as conservative and illiberal as before - **Jackson v AG** and **Belmarsh's Case**

c) Public Interest Immunity

- Prosecution can silently submit evidence (Will be harmful to someone) and defendant might not know about the evidence (No equality of arms)

d) Closed Material Procedures

- Secret trials (For sensitive materials)

Miscarriages of Justice

Stephen Downing - 9 hours without solicitor, signed confession he couldn't read, jailed for 27 years

Stephen Lawrence - Guilty but acquitted, only convicted after 18 years. Led to Macpherson Report

Birmingham 6

Guilford 4

Causes of MOJ

a) Jury (Tends to believe in a man, Police evidence)

b) Prejudice

c) Limited grounds for appeal

d) Unreliable confessions (Police pressure / Mental incapacity)

- **s74 Police and Criminal Evidence Act 1984** - Judge can exclude evidence if will disrupt fairness)

- **s76 Police and Criminal Evidence Act 1984** - Courts have discretion to exclude confession obtained through oppression

- **s76(8) Police and Criminal Evidence Act 1984** - Oppression : Torture/Inhumane treatment/Degrading treatment/Use or threat of force

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What ought judges do?

- **McLoughlin v O'Brien** (When Parliament is silent, judge has jurisdiction but should not be too involved with policy considerations unless leads to development of legal principle)
- **R v Offen and others** (If the area involved is regulated by statute, courts refuse to change the position of the law)
- **DPP for NI v Lynch** (If the area involved is not regulated by statute, courts make law)

Justice is ultimate goal, only question is the degree judges participate in law-making

Precedent - Can changes be made?

- Owed not to judges but to the law
- **R v R** reflects this status, change was necessary although bold. Has to keep up with changing social values and ideas
- **R v Lambert** shifts only evidential burden to the defendant for some cases (Previously, shifts legal burden)
- **R v Camplin** (Whether provoked, reasonable man's test)

*Change only when necessary. Valuable attitude in ensuring proper balance between Rule of Law and justice

Decisions of ECtHR - Binding?

s2(1) HRA 1998 - All courts must take into account decisions of ECtHR (No strict obligation)

R (Alconbury) v SOS for the Environment, Transport and Regions - Obligated to take into account if clear and constant

Manchester City Council v Pinnock - Not bound to follow every decision of ECtHR, **s2** only requires to take into account if clear and constant