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Appointing Judges through the Collegium: Risk and Challenges

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ABSTRACT

Independence of Judiciary is very important and essential so that they can be impartial and perform their duty without any fear and favour as well as without any external pressure. Moreover, it is a basic feature of the Indian Constitution. Judicial independence requires the administration of justice and the judge should be free from any direct and indirect influence or interference of political bodies or non-political bodies. Therefore, freedom of judgment and appointment thereof becomes an important aspect for the head of the state which is followed by most of the countries of the world whether they are democratic or otherwise. The basic theory of a tripartite separation of powers between the legislature, executive and judiciary was first put forward in the eighteenth century by the French philosopher Montesquieu. It asserts that the autonomy of the courts is the greatest protection against the tyranny of the majority, and against those who would treat rights as fungible rather than unassailable. In keeping with this view, the framers of India's Constitution saw the judiciary as the primary guardian of the sort of equality-political and civil, as well as social-that they hoped Independence would usher in. To this end, the Constituent Assembly vested in the Supreme Court and the various High Courts the power of judicial review, which allowed the judiciary to strike down laws enacted by Parliament.

Keywords: *Independence, Judicial Review, Constituent Assembly, Fungible, Tripartite.*

I. INTRODUCTION

History tells us there is no way to create a perfect separation of powers, or a perfect antidote to majoritarianism. In the United States, the twentieth-century legal scholar Alexander Bickel asked how unelected judicial members could exercise almost unimpeded authority in overruling decisions arrived at by a democratically elected government. Checks and balances are meant to come in through a selection process whereby the president nominates judges who are then subject to confirmation by a legislative body.**[1]**

In practice, the government in power often elevates judges closely aligned to the ideology of

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the ruling party. Moreover, judges tend to interpret the law in ways that are broadly sympathetic to the worldviews of the legislature and executive; as the American political scientist Robert Dahl wrote in 1957, it is "somewhat unrealistic to suppose that a Court whose members are recruited in the fashion of Supreme Court Justices would long hold to norms of Right of Justice substantially at odds with the rest of the political elite." [2]

Greatest length with the question of how to ensure an independent judiciary. Judges had to be insulated from political influence, but subject to a system of checks and balances that would preserve the country's democratic principles and prevent the judiciary from wielding untrammelled power. To that end, it was almost unanimously agreed that the process of appointing judges to the Supreme Court and the High Courts would be a consultative one: the president, representing the Indian people, would elevate candidates only after conferring with the Chief Justice of India and other senior judges.

But ever since the Indira Gandhi-led government launched a withering attack on the judiciary in the 1970s, India has been appointing judges to its higher courts through a process that, in one way or another, has undermined the consultative principle. This, in turn, has been part of a larger, longer-running battle over who should ultimately control the Constitution-Parliament or the Supreme Court. In the current system, in place since the early 1990s, a changing group of five judges headed by the chief justice of India, and known as the collegium, effectively controls appointments, having usurped that power almost entirely from the executive through a series of questionable rulings. The process is notoriously secretive, leaving no room for public scrutiny of individual nominees.

As a result, the Indian public knows very little number of people about 31 men and woman who currently serve on the Supreme Court, or about their recent predecessors. Nor is there space for a larger democratic debate about the criteria on which judges ought to be selected.

Now, there are signs that the balance of power in judicial appointments may soon shift-although not necessarily for the better. The recently botched elevation to the Supreme Court of Gopal Subramaniam, a senior lawyer and former solicitor general of India, was a bellwether of this change. Subramaniam, who is 56, was nominated by the collegium this May; its members apparently felt that the court would be well served by this lawyer of hitherto a stunning reversal, given unimpeachable integrity. But in Subramaniam's reputation, in June the government sought to overturn his nomination by sending it back to the collegium.

Appointment by head of the state through the consultation with Lord Chancellor was essentially a British method which was adopted by our Indian Constitution under Article 124 which

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provides " every judge shall be appointed by President by warrant under his hand and seal after consultation with such of the judges of the Supreme Court and High Court of the State as President may deem necessary for the purpose and shall hold office until he attains the age of sixty five years provided in case of appointment of judge other than Chief Justice, the Chief Justice of India shall always be consulted." [3]

The process of consultation by President to the senior most Judges of Supreme Court and Chief Justice of India is because they are well qualified due to their long tenure.

II. COLLEGIUM: A 'NON-CONSTITUTIONAL' ENTITY

The word collegium is not specifically mentioned in the Indian Constitution. It has come in to force as per Judicial pronouncement. The group of senior most Judges of Supreme Court and Chief Justice of India for appointment of Judges is ironically known as collegium. The origin of system may be traced by recommendation of Bar Council India from a national seminar of lawyers long back of October 17, 1981 at Ahmedabad, Gujarat when it was recommended that there should be a collegium system for appointment of Judges of Supreme Court by following authorities:[4]

(i) The Chief Justice of India.

(ii) Five senior Judges of Supreme Court.

(iii)Two representatives who would be representing the Bar Council of India and Bar Association of the Supreme Court.

Later on J. Bhagvati in S.P. Gupta v. UOI[5] on 30, December,1981 focused on the necessity of collegium system for appointment of Judges. Elaborating on the meaning of the word consultation, Bhagwati J endorsed the views of Krishna Iyer J. expressed in Union of India v Sankalchand Himmatlal Sheth that 'We agree with what Krishna Iyer, J. said in Sankalchand Sheth Case that: consultation is different from consentaneity. They may discuss but may disagree; they confer but may not concur.' However, Bhagwati J in the First Judges' Case expressed his dissatisfaction with the existing mode of appointment of judges in India in which the authority to select judges has exclusively been vested 'in a single individual' (the President) whose choice 'may be incorrect or inadequate' and 'may also sometimes be imperceptibly influenced by extraneous or irrelevant considerations.' Therefore, he considered it unwise to entrust power particularly to make crucial and sensitive appointments, such as judicial appointments, to single individual (the President) without putting checks and controls on the exercise of such a power. Therefore, he suggested that there must be collegium to recommend

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to President for appointment of Judges in Supreme Court and High Court.

India's is not a straightforwardly majoritarian democracy. The judiciary is meant to ensure that all Indians are accorded the same fundamental rights and are treated with equality before the law even if doing so conflicts with the will of the political or cultural majority at the time, as expressed through the

other branches of government. Fostering a judiciary with the strength of character to fulfil this role, and the intellectual capacity to engage with the complexities of jurisprudence, ought to be an essential concern of the appointments process. Under current law, it is the executive's prerogative to ask the collegium to reconsider nominations, as is in keeping with the general principle of checks and balances. But spurning the nomination of a well-regarded lawyer without offering any official comment subverts both this principle and the counter majoritarian purpose of the courts. By Subramaniam, the government seems to signal its willingness to compromise the independence of the judiciary, and an intention to claw back control over appointments. As Subramaniam put it in a letter to the Supreme Court's chief justice, RM Lodha, "The events of the past few weeks have raised serious doubts in my mind about the ability of the Executive Government to appreciate and respect the independence, integrity and glory of the judiciary. I do not expect this attitude to improve with time." [6]

The ostensible reason for this step was leaked to unsubstantiated media reports. The Central Bureau of Investigation it had previously engaged him as counsel on numerous occasions) and the Intelligence Bureau (although it had earlier cleared his name) apparently raised questions about Subramaniam's character. The government made no formal comment. It was well known, however, that Subramaniam, as amicus curiae in the Sohrabuddin fake encounter case (in which senior members of the ruling Bhartiya Janata Party, including its new president Amit Shah, have been implicated), played an important role in attempting to check alleged authoritarian excesses by the Gujarat government during the period it was headed by Narendra Modi. Ultimately, many commentators believed, it was this willingness to challenge the government that led to Subramaniam's rejection.

III. CONFLICTING OPINIONS OF DEMOCRATIC PILLARS

The government's response almost every time a decision of the court conflicted with its avowed goals was Constitution. Parliament believed its amending powers to be to amend the

plenary, and therefore thought it could restrict the court's powers of judicial review. Initially, the Supreme Court agreed. But, by 1967, a few years after Nehru's death, the court's opinion had changed. With a weakened central government, the court took its most significant step

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towards claiming control over the Constitution.

In Golak Nath v. State of Punjab,[7] the court held that Parliament could not amend the Constitution in a manner that infracted a person's fundamental rights-a determination which would be made by the court.

Several conflicts soon arose between the executive and the judiciary. In 1971, following a split in the Congress, Indira Gandhi's faction emerged with a sizeable majority in Parliament on the back of her famous “garibi hatao” campaign. Among other things, Gandhi promised to remove judicial barriers to social change. To that end, immediately upon assuming power, the government introduced several constitutional amendments, each aimed at restoring Parliament's supremacy over the Constitution. But the court once again thwarted the government's plans. In a landmark decision in Kesavanand Bharati v. State of Kerala,[8] an unprecedented 13-judge bench overruled the court's decision in Golak Nath. But significantly, it held, through a seven-to-six majority, that Parliament did not have the power to alter the basic features of the Constitution.

Suppression of Judges and Emergency:

The government soon struck back. On 25 April 1973, a day after the Kesavanand decision was proclaimed, the union government announced that the next Chief Justice of India would be AN Ray, then the fourth most senior judge on the court. Until then, constitutional convention had been to appoint the most senior judge of the Supreme Court as chief justice. Each of those whom Ray superseded, Chandrachud emphasises, had held against the government in key cases, including Kesavananda. The influential minister Mohan Kumara Mangalam claimed that the government had a duty to consider the philosophy and outlook of a judge in deciding whether he or she ought to lead the Supreme Court. This is reasonable so far as it goes-but the convention of elevation by seniority was in place because it ensured judicial independence; a politically motivated departure from the convention would encourage judges hoping to become chief justice to align their views with those of the government.

Any doubts over the government's intent were soon dispelled by the Emergency, which Gandhi declared in 1975. In pursuance of a new law of preventive detention, the Maintenance of Internal Security Act, some 673 people-most of them political opponents of the government were arbitrarily arrested. Some of the detention orders were challenged, and several High Courts ruled in favour of the detainees. The government's response was two-fold: it transferred judges who opposed the orders to other High Courts without their consent, and it appealed the High Court’s decisions to the Supreme Court.

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In what is now almost universally viewed as a pusillanimous decision, the Supreme Court held, through a four-to-one majority in the Habeas Corpus case, that it was powerless in the wake of the Emergency to question executive actions of preventive detention. (Chandrachud's grandfather, YV Chandrachud, was one of the judges who ruled in favour of the government.) Justice HR Khanna, who wrote a historic dissenting opinion, would pay for his bravery. When Ray retired as chief justice, the Gandhi-led government appointed M.H. Beg as his successor, even though Khanna was next in the line of seniority.

Khanna was not only to face the wrath of the government. The executive sought to transfer as many as 16 judges from various High Courts, each of whom had ruled against the government during the Emergency. One of those judges, Justice S.H. Sheth, challenged his transfer in the Gujarat High Court. In Chandrachud's words, Sheth's case,[9] which was ultimately decided by the Supreme Court, represents the "first tussle between the executive and the judiciary for the power to control the Court's composition."

The Supreme Court ruled that the executive, in ordering a transfer, was not bound by the chief justice's opinion; the government was only required to consult him. But it also found that the process of consultation, in the words of Justice VR Krishna Iyer, had to be "real, substantial and effective," and "based on full and proper materials placed before the Chief Justice by the Government." Further, if the government chose to ignore the opinion of the chief justice, the decision would run a high risk of invalidation; courts would have the power to review such transfers, which would be presumed to have been influenced by extraneous considerations.

IV. ESTABLISHMENT OF COLLEGIUM THROUGH JUDICIAL PRONOUNCEMENT

The Collegium for appointment of Judges, according to J. Bhagvati, be established through the amendment made in Article 124(2) and 217(1). The composition of the collegiums as contemplated by Bhagwati J. in the First Judges' Case that it 'should be more broad- based and there should be consultation with wider interests' was completely ignored; the membership of the Collegium was kept narrow-based (i.e., confined only to the judges of the superior courts). But in 1993, a majority of Nine-Judge Constitutional Bench of the Supreme Court in the Second Judges' Case[10] and in 1998, the unanimous opinion of the nine Judge Constitutional Bench of the Supreme Court in the Third Judges' Case [11]did accomplish the task of setting up of the collegium of judges.

(i) ***First Judges' case (1981):*** These safeguards ought to have applied to the process of appointments, too. After all, the court's reasoning in the Sheth case echoed the intentions of the Constitution's framers insofar as it struck a balance between the executive and the judiciary.

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But in 1981, the court, in SP Gupta v. Union of India (which became known as the "First Judges" case), overlooked its earlier decision, and decided that the recommendation of the chief justice was in no way binding on the executive. In other words, consultation did not amount to concurrence. Consequently, the safeguards put in place by Sheth's case, including

the judicial review of transfers and appointments, were swept aside. According to the legal scholar H.M. Seervai, the judiciary was now placed "at the mercy of the Govt. of India." [12] Over the course of the next decade, and especially during the premiership of Rajiv Gandhi, appointments to High Courts were often made without the concurrence of the chief justice of India.

The second Judges' case: (1993): Then, in 1993, against the backdrop of a proposal to introduce a National Judicial Commission to appoint judges, the Supreme Court reconsidered its decision in the First Judges case. As Chandrachud notes, the judiciary at this time also faced a serious crisis of credibility. One of its judges, Justice V. Ramaswami, had just survived an impeachment motion in Parliament, in spite of an inquiry committee finding him guilty of 11 charges of corruption; the Congress party had issued a whip to its members in Parliament directing them to abstain from the vote against the impugned justice.

Instead of reinstating the sane balance advocated by Krishna Iyer in the Sheth case, the majority in Supreme Court Advocates on Record Association v. Union of India (popularly known as the "Second Judges" case) flipped the tables completely, and established a new procedure for judicial appointments. The court ruled that primacy ought to be given to the view of the chief justice of India, who is "best equipped to know and assess the worth" of candidates. In turn, the chief justice was to formulate his opinion by consulting his two most senior colleagues, and the most senior judge on the Supreme Court whose view was "likely to be significant in adjudging the suitability of the candidate"-thereby creating the collegium system. (The procedure was later expanded to include a meant not just fifth member.) In effect, consultation now concurrence but conformity with the judiciary's will.

In the Second Judge case, J. S. Verma overruled the majority view in the First Judges Case, giving primacy to President in the matter of appointment of Judges to superior courts. Verma J held that the opinion given by the CJI in the

consultative process had to be formed taking into account the views of the two senior most judges of the Supreme Court. This would ensure that the opinion of the Chief Justice of India was not merely his individual opinion, but an opinion formed collectively by a body of men at the apex level in the judiciary. He also contended that the Chief Justice of India is expected to

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take into account the views of his colleagues in the Supreme Court who are likely to be conversant with the affairs of the concerned High Court. The Chief Justice of India may also ascertain the views of one or more senior Judges of that High Court whose opinion, according to the Chief Justice of India, is likely to be significant in the formation of judges.

The great weight should be given to the opinion of CJI and senior most Judges of Supreme Court. The primacy should be given to CJI in the matter's accordance with the appointment of Judges of Supreme Court. He further elaborated the situations when non-appointment was permitted and justified. For example, if the final opinion of the Chief Justice of India was contrary to the opinion of the senior judges consulted by the Chief Justice of India and the senior judges were of the view that the recommended was unsuitable for stated reasons, which were accepted by the President, then the non-appointment of the candidate recommended by the Chief Justice of India would be permissible. Similarly, when the recommendation was for appointment to a High Court, and the opinion of the Chief Justice of the High Court conflicted with that of the Chief Justice of India, the non-appointment, for valid reasons to be recorded and communicated to the Chief Justice of India, would be permissible.

Thus, the President's role as the appointing authority is reduced to the minimum. The word 'consultation', used in Articles 124(2) and 217(1) of the Constitution, tends to be interpreted as 'concurrence' observing that concurrence of the Chief Justice of India, who was best equipped to assess the true worth of the candidates for adjudging their suitability, was needed for any higher judicial appointment except certain cases for strong cogent reasons disclosed to the Chief Justice by the executive and in the absence of consensus, his opinion, formed collectively after taking into account the views of senior colleagues, would hold primacy. This procedure devised by Justice Verma for the appointment of judges of superior courts in India was, according to him, the best method, in the 'constitutional scheme.'

(iii) ***Third Judges case:*** In Third Judges Case,[13] the Nine-Judge Bench opined the following points with reference to the appointment of judge:

1. The opinion of the CJI, having primacy in the consultative process and reflecting the opinion of the judiciary, has to be formed on the basis of consultation with the collegium, comprising of the CJI and the four senior most Judges of the Supreme Court. The Judge, who is to succeed the CJI should also be included, if he is not one of the four senior most Judges. Their views should be obtained in writing.

2. Views of the senior most Judges of the Supreme Court, who hail from the High Court's where the persons to be recommended are functioning as Judges, if not the part of the collegium, must

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be obtained in writing.

3. The recommendation of the collegium along with the views of its members and that of the senior most Judges of the Supreme Court who hail from High Courts where the persons to be recommended are functioning as Judges should be conveyed by the Chief Justice of India to the Govt. of India.

4. The substance of the views of the others consulted by the Chief Justice of India or on his behalf, particularly those of non-Judges should be stated in the memorandum and be conveyed to the Govt. of India.

5. Normally, the collegium system should make its recommendation on the basis of consensus but in case of difference of opinion no one would be appointed, if the CJI dissents.

6. If two or more members of the collegium dissent, CJI should not persist with the recommendation.

7. In case of non-appointment of the person recommended, the materials and information conveyed by the Govt. of India, must be placed before the original collegium or the reconstituted one, if so, to consider whether the recommendation should be withdrawn or reiterated. It is only if it unanimously reiterated that the appointment must be made.

8. The CJI may, in his discretion, bring to the knowledge of the person recommended the reasons disclosed by the Govt. of India for his non-appointment and ask for his response thereto, which, if made, be considered by the collegium before withdrawing or re-iterating the recommendations.

9. Merit should be predominant consideration though inter-seniority among the Judges in their High Courts and their combined seniority on all India basis should be given weight.

10. Cogent and good reasons should be recorded for recommending a person of outstanding merit regardless of his lower seniority.

11. For recommending one of several persons of more or less equal degree of merit, the factor of the High Court's not represented on the Supreme Court, may be considered.

12. The Judges passed over can be reconsidered unless for strong reasons, it is recorded that he be never appointed.

The recommendations made by the CJI without complying with the norms and requirements, are not binding on the Govt. of India. According to Bharucha J, the principal objective of consultation with a plurality of judges, terming it as a Collegium of judges, by the Chief Justice of India, in the formation of his opinion for recommending candidates for appointment to the

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Supreme Court, was to ensure that the best available talent is brought to the Supreme Court Bench. For, the Chief Justice of India and the senior most Judges, by reason of their long tenures on the Supreme Court, were best fitted to achieve these objectives. Therefore, he further expressed his opinion to the effect that it is desirable that the Collegium should consist of the Chief Justice of India and the four senior most Judges of the Supreme Court. Thus, the number of senior-most judges of the Supreme Court as the member of the Collegium was increased from two to four.

It is interesting to note that J. Verma, the leading author of leading judgement judges in 1993, after a passage of time found faults in the working of the system and went to the extent of saying that: 'judicial appointments have become judicial disappointments,' and that 'working of the judgment now for some time is raising serious questions, which cannot be called unreasonable; therefore, some kind of rethinking is necessary.

Thus, Verma J. felt the necessity of introducing an improvement in the Collegium system but stopped short of suggesting replacement of the mechanism. The existing political dissatisfaction with the present system of appointment would be evident from the facts that most of the political parties and groups to manifest National Judicial Appointment Commission in place of Collegium.

V. CRITICS OF COLLEGIUM

Second Judge's Case which was affirmed in 1998-has since been widely denounced by critics. As Krishna Iyer later noted, under the collegium system, "There is no structure to hear the public in the process of selection. No principle is laid down, no investigation is made, and a sort of anarchy prevails." That this system has failed India was most apparent when, in 2009, the collegium nominated for elevation to the Supreme Court PD Dinakaran, who was then besieged by a string of corruption allegations. (He saved the court from protracted embarrassment by resigning from his post as Chief Justice of the Sikkim High Court.)

In addition, in order to be considered for elevation to the Supreme Court, a person must almost always be the Chief Justice of a High Court. The collegium deviates from this principle very rarely, and often only in the interest of securing a certain kind of diversity. This suggests that geographical variety is favoured over other factors, including caste, gender and religion. No more than two or three judges from the same High Court serve together on the Supreme Court at any given time.

Questions of an individual candidate's overall suitability, or of the character and intelligence of eligible jurists who don't meet the collegium's informal criteria, seem to be ignored. What this

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system has meant, Chandrachud writes, is that the court is "diverse only in sense the politically correct sense."

The collegium system might well be a product of its times. As Chandrachud highlights, the judgments in 1993 and 1998 that helped the judiciary arrogate power of appointment came not under the authoritarian Indira Gandhi government, but at when the solidity of the central government was undermined by tenuous coalitions. Somewhat paradoxically, however, when it comes to protecting the rights of political and cultural minorities against the state, the Supreme Court's record in a number of high-profile cases over the last two decades has been disappointing. Perhaps the collegium's informal criteria for appointments, combined with a lack of public scrutiny, has degraded rather than bolstered the court's independence.

Today, we once again have a party that enjoys a majority in the Lok Sabha, is not pressured by the demands of coalition politics, and is keen-as the Gopal Subramaniam episode showed to make its imprint on the judiciary. There is little evidence to suggest that, in the face of such a government, the court will act as a counter majoritarian institution.

The new regime is presently in the process of reworking a bill on constitutional amendments, which will establish a National Judicial Commission and a new process of appointing judges. To what extent this will impinge upon judicial independence remains to be seen. That said, if the judiciary continues to appoint judges using the collegium system it has carved out for itself, there might be little reason for the government to question the process: after all, there is little to guarantee that judges appointed by the collegium will be equipped to serve as guardians of the Constitution.

Merits of Collegium System of Appointment:

(i) The collegium system increases secrecy. Ruma Pal, a former Judge of the Supreme Court of India, stated that this system is one of the best kept secrets in the country. It kept secret within the four walls of the body for proper and effective functioning of the institution that makes the system opaquer.

(ii) The collegium system makes Judiciary independent from the politics. It separates the judiciary from the influence of executive and legislative. Without Govt. interference, judiciary can work without any fear and favour. This ensures the doctrine of separation of power.

(iii) There are many cases in which the judges of the Supreme Court were transferred because of the political influences. So, the power given to executive organ for transferring the judges would lead to decrease the independence of judiciary as well as it will stop the judiciary organ to work effectively. For fair functioning collegium system would be best as it ensures the

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independence and allows the judge to perform their duty without any fear or without any interference and influence.

(iv) The executive organ is not specialist or does not have the knowledge regarding the requirements of the Judge as comparative to the CJI. Collegium system ensures that the deserving one is sitting in the position of judges in Supreme Court.

Demerits of Collegium system of appointment:

(i) This system does not provide any guideline for selecting a candidate for Judge of the Supreme Court because it leads a wide range of nepotism and unnecessary favour. Because of that deserving candidate are kept away to be appointed as Judge.

(ii) The Collegium system does not have any criteria for testing of candidate as a Judge as well as they don't investigate the background of the candidate and they are not accountable to any administrative body that may lead a wrong choice of candidate while overlooking right candidates.

(iii) Already there are many cases pending in the Court, they are having limited time the power given to them for the appointment would lead to burden to Judiciary.

(iv) The principle of check and balance is violated in this system. In India, three organs work partially independently but they keep check and balance and control on the excessive powers of any organ. As Judiciary is dependent on the executive for the appointment of the Judges with the consultation of CJI and the senior most Judges of SC; but this system gives the immense power to Judiciary to appoint Judges, so the check on the excessive powers would not be ensured and misuse of powers can be done.

(v) This system leads to non-transparency of the judicial system.

VI. CONCLUSION

All mechanisms for judicial appointment may have some advantages and disadvantages and therefore, no particular system can be treated as the best system. Despite this, in order to maintain public confidence in the appointment system and to ensure judicial independence the commission system is perhaps a very effective mechanism for judicial appointment.

However, to ensure the effectiveness of this mechanism the commission should be representative in nature comprising members of the executive, legislature, judiciary, legal profession and lay persons. In addition, it should be ensured that the commission uses a system which is transparent and open to public scrutiny. In this regard the composition and working system of the South African Judicial Service Commission may be an acceptable model. Such a

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mechanism may be very effective to ensure the appointment of the best qualified person to judicial office. [14]

However, the Collegium of judges has not been performing its task of recommending candidates for appointment as judges in the superior courts satisfactorily. No guidelines or criteria are being followed by the Collegium in discharging its functions. Its decisions are secrecy, a mystery and enigma.

In the words of Iyer, the Collegium has been dilatory, arbitrary and smeared by favourites and present collegiate elitism is the vanishing point of democratic values in the pyramid of justice.

Nevertheless, the Government of India made an abortive attempt in 2002 to give a decent burial to the Collegium system of appointment of judges by establishing a National Judicial Commission with a predominance of judicial members. The Constitution (99th Amendment) Bill, placed before the Lower House of Parliament for establishment of Commission was lapsed.

The Union Law Ministry has been preparing a draft bill for establishing two Judicial Commissions in India, one for dealing with the appointment of judges of the Supreme Court and another for the appointment of Judges of the High Courts. On the other hand, a writ petition challenging the legality of the establishment of Collegium of Judges has been pending before the Supreme Court of India for decision.

Therefore, it can reasonably be expected that, within a short period of time, two judicial commissions would be established in India, in order to ensure that the matter of appointment of judges in the superior courts of India does not result in a politically biased judges who are or feel beholden to the appointing authority.

In this context, it is very proper to say that Judicial commissions, advisory Committees and procedures for consultation with the Chief Justice will be useless unless there exists, among the politicians of all parties, a realization that the interest of the community requires that neither political nor personal patronage nor a desire to placate any section of a society, should play any part in making judicial appointments.

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