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# Balancing the Scales: Judicial Independence Versus Accountability in India's Higher Courts and Common Law Systems

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SURAJ VERMA<sup>1</sup> AND SHOVA DEVI<sup>2</sup>

## ABSTRACT

*This research paper examines the delicate balance between judicial independence and accountability in India's higher judiciary, with comparative insights from common law jurisdictions. It analyzes the constitutional and legal framework that shapes this relationship, including landmark Supreme Court judgments that have defined parameters of judicial autonomy. The evolution of India's collegium system receives special attention, particularly its origins, operational mechanisms, and critiques. The failed National Judicial Appointments Commission (NJAC) experiment represents a pivotal moment in this narrative, highlighting fundamental tensions between judicial independence and democratic oversight. Through comparative analysis with the UK, US, Canada, Australia, and other common law systems, the paper identifies alternative approaches to judicial appointment and accountability. Recent reform initiatives demonstrate incremental efforts toward transparency without fundamental structural changes. The research contributes to constitutional discourse by proposing balanced recommendations that preserve judicial independence while enhancing accountability measures. These include structured transparency protocols, modified collegium composition, formalized selection procedures, and post-retirement safeguards. The findings suggest that India's exceptional approach to judicial governance requires calibration rather than wholesale replacement, with reforms addressing specific deficiencies while protecting the judiciary's essential role in constitutional democracy.*

**Keywords:** *Judicial independence, Collegium system, Constitutional governance, Judicial appointments, Democratic accountability.*

## I. INTRODUCTION

### (A) Overview of judicial independence-accountability tension

The Indian judiciary stands on twin pillars of independence and accountability. These principles function as counterbalances for each other in democratic governance. The tension between them

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remains central to judicial legitimacy in India's constitutional framework. This dynamic reflects a fundamental paradox that courts face worldwide but takes unique forms within India's legal landscape.<sup>3</sup>

Judicial independence protects judges from external influences when making decisions. It ensures that they remain free from pressures by the executive, legislature, or powerful private entities. The Supreme Court emphasized this independence in *Supreme Court Advocates-on-Record Association v. Union of India*. The Court recognized judicial independence as part of the Constitution's basic structure.<sup>4</sup> Justice J.S. Verma noted that "independence of judiciary is not limited to independence from executive pressure or influence but it is a wider concept which takes within its sweep independence from many other pressures and prejudices." This principle ensures that judges decide cases on legal merits rather than extraneous considerations.

However, unchecked judicial power risks transforming independence into unaccountability. Democratic systems require all institutions to remain answerable to constitutional values and citizens. The challenge emerges when accountability mechanisms threaten to compromise judicial independence. In *C. Ravichandran Iyer v. Justice A.M. Bhattacharjee*, the Supreme Court observed that "judges must be honest, objective and impartial," while simultaneously acknowledging the need for proper safeguards against malicious allegations.<sup>5</sup> This tension plays out daily in courtrooms across India. Critics argue that the current system favors independence over accountability, allowing judicial overreach and delays to persist unchecked. Former Law Minister Arun Jaitley once remarked that the Indian judiciary created "the world's only system where judges appoint judges."

Common law jurisdictions approach this tension differently. The United Kingdom reformed its judicial appointments through the Constitutional Reform Act 2005, establishing an independent commission. The United States employs political appointment with legislative oversight. Canada and Australia utilize hybrid systems that seek balance through institutional diversity.<sup>6</sup> Each system attempts to calibrate independence with accountability in ways that reflect their constitutional values and historical experiences. India's approach, particularly through its collegium system, represents a distinctive trajectory among common law nations.

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<sup>3</sup> Upendra Baxi, *The Indian Supreme Court and Politics* 89-92 (Eastern Book Company 2010).

<sup>4</sup> *Supreme Court Advocates-on-Record Association v. Union of India*, (2016) 5 SCC 1.

<sup>5</sup> *C. Ravichandran Iyer v. Justice A.M. Bhattacharjee*, (1995) 5 SCC 457.

<sup>6</sup> Shimon Shetreet & Sophie Turenne, *Judges on Trial: The Independence and Accountability of the English Judiciary* 102-105 (Cambridge University Press 2013).

**(B) Research Questions**

1. How has the tension between judicial independence and accountability evolved in India's constitutional framework compared to other common law jurisdictions?
2. To what extent has the collegium system fulfilled its intended purpose of safeguarding judicial independence while maintaining adequate accountability mechanisms?
3. What institutional reforms could enhance judicial accountability in India's higher courts without compromising the essential elements of judicial independence?

**(C) Research Objectives**

1. To analyze the constitutional and jurisprudential development of judicial independence and accountability principles in India through examination of landmark Supreme Court judgments and constitutional provisions.
2. To critically evaluate the collegium system's effectiveness by examining its evolution, procedural framework, and practical outcomes, particularly in contrast to the NJAC alternative.
3. To identify viable reform pathways by conducting comparative analysis of judicial appointment mechanisms across common law jurisdictions and assessing their applicability to the Indian context.

**II. THEORETICAL FRAMEWORK**

Judicial independence constitutes a complex, multi-dimensional concept in constitutional democracies. It exists not as an end but as a means to secure impartial justice. Scholars distinguish between decisional and institutional independence as complementary elements. Decisional independence refers to a judge's capacity to decide cases free from external influence. This type empowers judges to apply law without fear or favor towards any party. Alexander Hamilton in Federalist No. 78 characterized judicial independence as essential to constitutional governance. He argued that "the complete independence of the courts of justice is peculiarly essential in a limited Constitution."<sup>7</sup>

Institutional independence operates at systemic level, protecting judiciary as separate branch. This dimension encompasses administrative autonomy and financial self-governance of judicial institutions. It establishes structural safeguards against encroachment from other governmental

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<sup>7</sup> THE FEDERALIST NO. 78 (Alexander Hamilton).

branches. The Supreme Court in *S.P. Gupta v. Union of India* considered this aspect crucial for democratic functioning. Justice P.N. Bhagwati observed that “if there is one principle which runs through the fabric of the Constitution, it is the principle of the Rule of Law and under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law.”<sup>8</sup>

Judicial independence also manifests through personal independence. This relates to tenure security, adequate remuneration and protection against arbitrary removal. Constitutional provisions like Articles 124(2) and 217 establish appointment procedures. Article 124(4) limits removal to proven misbehavior or incapacity, requiring impeachment by parliamentary supermajority. These mechanisms create what scholars term “decisional space” for judges to operate without political pressure. In *Re: Appointment and Transfer of Judges*, the Supreme Court emphasized that “the concept of independence of the judiciary is a notable contribution of the Constitution to the democratic polity.”<sup>9</sup>

Judicial accountability counterbalances independence to prevent arbitrary exercise of power. It encompasses multiple dimensions that check judicial authority. Formal accountability operates through constitutional mechanisms and legal frameworks. This includes appellate review procedures, impeachment provisions and administrative oversight. Section 218 of the Indian Penal Code criminalizes corrupt judicial behavior, demonstrating legislative commitment to judicial integrity.<sup>10</sup>

Informal accountability functions through professional norms, ethical standards and public scrutiny. The “Restatement of Values of Judicial Life” adopted by the Supreme Court provides ethical guidelines. Media coverage, academic critique and bar associations also generate accountability pressures. Justice M.N. Venkatachaliah once noted that “sunlight is the best disinfectant” regarding judicial conduct scrutiny. Legal scholars distinguish between decisional accountability and behavioral accountability. The former concerns correctness of judicial pronouncements while latter addresses conduct integrity.<sup>11</sup>

Common law systems exhibit inherent tension between independence and accountability principles. These systems value judicial creativity through precedent development. Yet this autonomy requires boundaries to maintain democratic legitimacy. The collegium system in India represents one attempt to balance competing values. Critics argue it prioritizes

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<sup>8</sup> *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

<sup>9</sup> *Re: Appointment and Transfer of Judges*, (1998) 7 SCC 739.

<sup>10</sup> Indian Penal Code, 1860, § 218, No. 45, Acts of Parliament, 1860 (India).

<sup>11</sup> Arghya Sengupta, *Independence and Accountability: The Appointment and Removal of Judges in India*, in OXFORD HANDBOOK OF THE INDIAN CONSTITUTION 341, 347 (Sujit Choudhry et al. eds., 2016).

independence over democratic accountability. In contrast, others see it as protecting essential judicial autonomy from political interference.<sup>12</sup>

The constitution framers recognized this fundamental tension. Ambedkar noted in Constituent Assembly debates that “there can be no difference of opinion in the House that our judiciary must be independent of the executive.” He simultaneously acknowledged need for public confidence in judicial integrity. This dual recognition established constitutional foundation for both principles. The Supreme Court has repeatedly treated judicial independence as part of the “basic structure” doctrine.<sup>13</sup>

Separation of powers further complicates this balancing act in common law jurisdictions. Lord Woolf, former Lord Chief Justice of England and Wales articulated that “judicial independence does not mean that the judiciary is somehow not accountable.” This perspective frames accountability not as opposition to independence but as its complement. In *Ram Jawaya Kapur v. State of Punjab*, the Supreme Court observed that separation of powers forms “the structural partitioning of power” in India’s constitutional scheme.<sup>14</sup>

### **III. CONSTITUTIONAL AND LEGAL FRAMEWORK IN INDIA**

#### **(A) Constitutional provisions for judicial independence**

India’s Constitution embeds judicial independence through multiple provisions. These safeguards were deliberately inserted by the framers after colonial experiences. Our Constitution establishes explicit protections in Part V for the Supreme Court. Similar protections appear in Part VI for High Courts across states. These provisions collectively insulate judiciary from external pressures. Dr. Ambedkar emphasized judicial independence as fundamental to constitutional democracy during debates.<sup>15</sup>

Article 124 focuses on Supreme Court establishment and judicial appointments. It outlines appointment procedures with presidential involvement after consultation with judges. The original constitutional vision balanced executive role with judicial input. The President appoints judges but must consult the Chief Justice of India. This consultation requirement demonstrates framers’ concern for judicial autonomy in selections. Supreme Court later interpreted this as binding consultation, not mere opinion-seeking exercise. This interpretation expanded judicial role in appointments considerably beyond drafters’ explicit language.<sup>16</sup>

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<sup>12</sup> Supreme Court Advocates-on-Record Association v. Union of India, (2016) 5 SCC 1.

<sup>13</sup> 7 CONSTITUENT ASSEMBLY DEBATES 258 (1949).

<sup>14</sup> *Ram Jawaya Kapur v. State of Punjab*, AIR 1955 SC 549.

<sup>15</sup> 7 CONSTITUENT ASSEMBLY DEBATES 958 (1949).

<sup>16</sup> INDIA CONST. art. 124, § 2.

Article 124(2) requires consultation with “such of the Judges of the Supreme Court and High Courts as the President may deem necessary.” This language created flexibility while ensuring judicial involvement. The text lacks absolute clarity on consultation’s exact nature. This textual ambiguity later allowed judicial interpretation to evolve through Three Judges Cases. Original provisions also included appointment of judges from outside judiciary. The Constitution allows eminent jurists to join Supreme Court directly. This provision aimed at bringing diverse perspectives into the highest court.<sup>17</sup>

Tenure protection represents another pillar of judicial independence. Article 124(4) restricts removal to impeachment for proven misbehavior or incapacity. This sets extremely high threshold for judicial removal. The process requires address by Parliament supported by special majority. This supermajority requirement demands broad consensus across political spectrum. No Supreme Court judge has ever been successfully impeached in India’s history. Justice V. Ramaswami faced impeachment proceedings in 1993 but voting fell short. This demonstrates the practical difficulty of removal under constitutional framework.<sup>18</sup>

Articles 233 to 237 govern subordinate judiciary appointments and conditions. These provisions insulate lower courts from executive control at state level. Article 233 places district judge appointments under High Court control. The Constitution deliberately removed district judiciary from direct executive influence. This multi-layered approach demonstrates framers’ comprehensive vision for judicial independence. Even lower courts received constitutional protection against political interference. The judiciary itself exercises administrative control over subordinate courts.<sup>19</sup>

Constitutional safeguards extend beyond appointments to functional independence. Article 142 confers extraordinary powers to Supreme Court for complete justice. This provision allows courts to transcend procedural limitations when necessary. Article 141 makes Supreme Court decisions binding throughout Indian territory. These functional powers enable courts to operate without constraints from other branches. The judiciary can enforce decisions against government without executive assistance. This represents an unusually strong form of institutional autonomy.<sup>20</sup>

Article 50 explicitly mandates separation of judiciary from executive. This Directive Principle guides state policy toward institutional separation. Though not directly enforceable, courts have

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<sup>17</sup> M.P. Jain, *INDIAN CONSTITUTIONAL LAW* 219 (LexisNexis Butterworths 7th ed. 2014).

<sup>18</sup> INDIA CONST. art. 124, § 4.

<sup>19</sup> INDIA CONST. arts. 233-237.

<sup>20</sup> Upendra Baxi, *The Indian Supreme Court and Politics* 89 (Eastern Book Company 2010).

used this principle interpretively. In *High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal*, Supreme Court emphasized this separation. It declared that “the constitutional scheme aims at securing an independent judiciary.” The Court treated Article 50 as fundamental to constitutional governance despite directive status.<sup>21</sup>

The Constitution also addresses personal independence through practical protections. Article 121 prohibits parliamentary discussion of judicial conduct except during impeachment. This insulates judges from political criticism in legislative forums. Article 129 grants Supreme Court contempt powers to protect against interference. These powers extend to High Courts through Article 215. The contempt jurisdiction enables courts to shield themselves from external pressures. In *Re: Arundhati Roy*, the Court affirmed contempt power as “armour of the judiciary.”<sup>22</sup>

Constitutional amendments have sometimes altered the judicial independence framework. The 42nd Amendment during Emergency attempted to limit judicial review. The 99th Amendment sought to replace collegium with National Judicial Appointments Commission. Courts responded by applying basic structure doctrine to preserve judicial autonomy. In *Supreme Court Advocates-on-Record Association v. Union of India* (2015), the Court struck down NJAC. It declared judicial primacy in appointments as part of constitutional identity. This judicial resistance demonstrates the deeply entrenched nature of independence protections.<sup>23</sup>

### **(B) Key Supreme Court judgments**

The Supreme Court has progressively enhanced judicial independence through landmark judgments. Several key decisions have reshaped the constitutional balance of power. This jurisprudential evolution reflects the Court’s institutional self-understanding. The interpretive journey began with early cases testing constitutional boundaries. It continues today through ongoing refinement of independence safeguards.<sup>24</sup>

The *S.P. Gupta v. Union of India* case initiated judicial appointments doctrine. It represented the First Judges Case in 1981. Justice P.N. Bhagwati delivered the majority opinion with significant consequences. The Court initially favored executive primacy in judicial appointments. It interpreted constitutional consultation requirements as non-binding. This approach briefly tilted institutional balance toward executive control. Prime Minister Indira Gandhi’s government welcomed this deferential stance. Critics viewed it as compromising

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<sup>21</sup> *High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal*, (1998) 3 SCC 72.

<sup>22</sup> *Re: Arundhati Roy*, (2002) 3 SCC 343.

<sup>23</sup> *Supreme Court Advocates-on-Record Association v. Union of India*, (2016) 5 SCC 1.

<sup>24</sup> Upendra Baxi, *THE INDIAN SUPREME COURT AND POLITICS* 45-48 (Eastern Book Company 2010).



judicial independence at a crucial juncture.<sup>25</sup>

Supreme Court Advocates-on-Record Association v. Union of India reversed this position. The Second Judges Case in 1993 marked dramatic jurisprudential shift. Justice J.S. Verma's majority opinion reinterpreted consultation as concurrence. This transferred appointment power from executive to judiciary itself. The Court established collegium system without explicit constitutional text. It created judicial primacy through creative constitutional interpretation. The Court justified this change as necessary to protect independence. Justice Verma noted that "independence of judiciary is not limited to independence from executive pressure."<sup>26</sup>

The Third Judges Case further developed collegium system through presidential reference. In *Re: Presidential Reference* AIR 1999 SC 1 clarified appointment processes. It expanded collegium membership from three to five senior judges. The Court specified detailed procedural requirements for judicial selections. These procedural safeguards aimed to enhance both independence and accountability. The Court attempted to balance competing constitutional values through structural reforms. This decision cemented judicial primacy in appointments for decades afterward.<sup>27</sup>

*L. Chandra Kumar v. Union of India* established judicial review as basic feature. This 1997 judgment protected courts from legislative attempts to limit jurisdiction. The Court invalidated portions of Constitution's 42nd Amendment restricting review powers. It declared that "judicial review is a part of the basic structure." This decision shielded courts from parliamentary efforts to curtail judicial power. It represented crucial victory for institutional independence after Emergency period. Chief Justice A.M. Ahmadi emphasized courts' role in constitutional protection.<sup>28</sup>

*I.R. Coelho v. State of Tamil Nadu* reinforced judicial review against Ninth Schedule. This 2007 decision extended review power to previously immune legislation. Chief Justice Y.K. Sabharwal affirmed courts' authority to examine fundamental rights violations. He declared "the principle of constitutionalism requires control over power." The judgment strengthened judiciary's position as constitutional arbiter. It demonstrated Court's willingness to scrutinize parliamentary supremacy claims. This approach ensured judicial independence remained functionally meaningful against legislative maneuvers.<sup>29</sup>

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<sup>25</sup> *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

<sup>26</sup> *Supreme Court Advocates-on-Record Association v. Union of India*, (1993) 4 SCC 441.

<sup>27</sup> *In Re: Presidential Reference*, AIR 1999 SC 1.

<sup>28</sup> *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261.

<sup>29</sup> *I.R. Coelho v. State of Tamil Nadu*, (2007) 2 SCC 1.

Indira Gandhi v. Raj Narain established initial basic structure doctrine parameters. Justice H.R. Khanna's opinion recognized judicial independence as fundamental. The Court held that parliamentary amendments cannot destroy essential features. This 1975 judgment created doctrinal foundation for protecting judicial autonomy. It emerged during political crisis testing democratic institutions. Chief Justice A.N. Ray dissented but couldn't prevent majority's constitutional vision. The case demonstrated judiciary's institutional resilience during constitutional stress.<sup>30</sup>

C. Ravichandran Iyer v. Justice A.M. Bhattacharjee balanced independence with accountability requirements. The Court examined judicial misconduct allegations against a sitting judge. Justice Kuldeep Singh's 1995 opinion offered nuanced accountability framework. He noted that "judiciary has no power to devise a new procedure." This acknowledged limitations on judicial self-regulation powers. The Court recognized need for accountability while preserving independence. It suggested internal mechanisms for addressing misconduct complaints.<sup>31</sup>

Supreme Court Advocates-on-Record Association v. Union of India (2015) rejected NJAC reforms. This Fourth Judges Case preserved collegium despite parliamentary override attempt. Justice J.S. Khehar declared judicial appointments as constitutional identity feature. He invoked basic structure doctrine against 99th Constitutional Amendment. The majority found executive involvement threatened judicial independence. Four judges overruled Parliament's near-unanimous constitutional amendment. Justice Chelameswar's lone dissent questioned overly broad independence claims.<sup>32</sup>

Shanti Bhushan v. Union of India addressed transparency in collegium functioning. The Court rejected demands for specific reforms but acknowledged improvement need. Justice Ranjan Gogoi recognized legitimate criticism of opaque appointment processes. This 2018 judgment reflected growing accountability concerns. The Court attempted balancing independence with public confidence requirements. It demonstrated tentative steps toward greater transparency without fundamental change.<sup>33</sup>

K. Veeraswami v. Union of India established procedural safeguards for judicial corruption cases. The Court required Chief Justice of India's permission for investigating judges. Justice M.N. Venkatachaliah's opinion crafted careful balance between immunity and accountability. He noted that "integrity is the hallmark of judicial discipline." This 1991 judgment protected

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<sup>30</sup> Indira Nehru Gandhi v. Raj Narain, 1975 Supp SCC 1.

<sup>31</sup> C. Ravichandran Iyer v. Justice A.M. Bhattacharjee, (1995) 5 SCC 457.

<sup>32</sup> Supreme Court Advocates-on-Record Association v. Union of India, (2016) 5 SCC 1.

<sup>33</sup> Shanti Bhushan v. Union of India, (2018) 8 SCC 396.

judges from harassment while permitting legitimate inquiries. It recognized both independence necessity and corruption dangers. The procedural compromise attempted satisfying competing constitutional values.<sup>34</sup>

#### **IV. THE COLLEGIUM SYSTEM**

##### **(A) Evolution and functioning**

The collegium system emerged through judicial interpretation rather than explicit constitutional mandate. It represents a unique Indian innovation in judicial appointments. This judge-made mechanism has evolved through a series of landmark judgments. Its development reflects institutional response to perceived threats against judicial independence. The formation occurred against backdrop of post-Emergency constitutional recalibration.<sup>35</sup>

Initially, the Constitution envisioned collaborative appointment process with executive primacy. Article 124(2) required presidential appointments after consultation with judges. The original constitutional text remained ambiguous about consultation's precise weight. This textual ambiguity created interpretive space for judicial creativity. The framers likely anticipated good-faith cooperation between branches. They did not foresee adversarial relationship that would later develop between judiciary and executive.<sup>36</sup>

In 1981, *S.P. Gupta v. Union of India* established executive primacy in appointments. Justice Bhagwati's opinion for majority gave President final authority. The Court interpreted "consultation" according to ordinary meaning without special weight. This First Judges Case temporarily settled constitutional question in executive's favor. Justice Bhagwati noted that "consultation does not mean concurrence." This decision reflected deferential judicial attitude during that period. Justice V.R. Krishna Iyer's separate opinion warned against excessive executive control.<sup>37</sup>

Political developments soon challenged this deferential stance. Several controversial judicial transfers occurred during early 1980s. The government appeared to punish independent-minded judges through transfers. Prime Minister Indira Gandhi's administration faced criticism for undermining judicial autonomy. These developments created institutional backlash within judiciary itself. The judges increasingly viewed executive control as direct threat to institutional

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<sup>34</sup> *K. Veeraswami v. Union of India*, (1991) 3 SCC 655.

<sup>35</sup> Arghya Sengupta, *INDEPENDENCE AND ACCOUNTABILITY OF THE INDIAN HIGHER JUDICIARY* 67 (Cambridge University Press 2019).

<sup>36</sup> INDIA CONST. art. 124, § 2.

<sup>37</sup> *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

independence.<sup>38</sup>

A dramatic reversal occurred through *Supreme Court Advocates-on-Record Association v. Union of India*. This 1993 Second Judges Case fundamentally reinterpreted constitutional provisions. Justice Verma's majority opinion converted "consultation" into effective "concurrence." The Court held that Chief Justice's opinion must receive primacy. It created the collegium comprising Chief Justice and two senior-most judges. Justice Verma emphasized that "independence of judiciary is not merely a rule of law." This decision transferred appointment power from executive to judiciary itself.<sup>39</sup>

The collegium's structure received further refinement through presidential reference. The Third Judges Case expanded collegium membership to include five judges. In *Re: Presidential Reference* AIR 1999 SC 1 outlined detailed procedural requirements. Chief Justice M.M. Punchhi clarified that Chief Justice must consult four senior-most colleagues. The opinion distinguished between Supreme Court and High Court appointments procedures. It required consultation with judges familiar with relevant High Court. This procedural elaboration attempted addressing practical difficulties in original collegium model.<sup>40</sup>

The collegium operates through largely informal and confidential deliberations. The Chief Justice convenes meetings with senior colleagues to discuss candidates. They evaluate professional competence, personal integrity and other relevant criteria. The selection process lacks transparent or standardized assessment metrics. Recommendations emerge through consensus without formal voting mechanisms. If disagreement persists, the majority view prevails within collegium. After internal consensus, recommendations transmit to executive branch.<sup>41</sup>

The government receives limited options upon receiving collegium recommendations. It may either accept nominations or return them with specific objections. If collegium reiterates same names, government must acquiesce to appointments. This procedure effectively provides judiciary with final authority. The Supreme Court clarified these limitations in *Supreme Court Advocates-on-Record Association v. Union of India* (2015). Justice Khehar's opinion confirmed that "reiteration makes recommendation binding on executive."<sup>42</sup>

Constitutional propriety demands inter-branch consultation even within collegium system.

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<sup>38</sup> Upendra Baxi, *THE INDIAN SUPREME COURT AND POLITICS* 124-128 (Eastern Book Company 2010).

<sup>39</sup> *Supreme Court Advocates-on-Record Association v. Union of India*, (1993) 4 SCC 441.

<sup>40</sup> *In Re: Presidential Reference*, AIR 1999 SC 1.

<sup>41</sup> Abhinav Chandrachud, *SUPREME WHISPERS: CONVERSATIONS WITH JUDGES OF THE SUPREME COURT OF INDIA 1980-1989* 214 (Oxford University Press 2018).

<sup>42</sup> *Supreme Court Advocates-on-Record Association v. Union of India*, (2016) 5 SCC 1.

Intelligence inputs and background verification remain executive functions. The government provides relevant information concerning candidates' suitability. In practice, informal consultation often precedes formal recommendations. Chief Justice typically discusses potential appointments with Law Minister beforehand. This consultation preserves nominal role for executive in selection process. It provides constitutional veneer to essentially judge-dominated system.<sup>43</sup>

### **(B) Critiques and reform attempts**

The collegium system has attracted persistent criticism from multiple stakeholders across decades. Legal scholars question its constitutional legitimacy and operational efficacy. Former judges have expressed misgivings about its functioning from insider perspective. Political leaders across party lines have advocated structural reforms. These critiques cluster around transparency deficits, democratic deficiencies and operational inconsistencies.<sup>44</sup>

Constitutional legitimacy concerns form the primary critique against collegium system. Critics argue that judicial interpretation has essentially rewritten constitutional text. Article 124 nowhere mentions collegium or judicial primacy in appointments. The transformation of "consultation" into "concurrence" represents interpretive overreach. Former Supreme Court Justice J. Chelameswar described it as "one of the most opaque systems." Constitutional expert Rajeev Dhavan characterized it as "a judiciary-created institution without constitutional foundation." This critique focuses on democratic deficit inherent in judge-made appointment system.<sup>45</sup>

Transparency deficiencies constitute another major criticism. Collegium deliberations occur behind closed doors without published criteria. Candidate selection reasons remain largely confidential despite recent improvements. No formal application process exists for potential candidates. The Law Commission's 214th Report noted that "the present system lacks transparency, accountability and objectivity." Former Law Minister Arun Jaitley once remarked that "judges appointing judges creates judicial oligarchy." This opacity prevents public scrutiny of selection rationales and quality.<sup>46</sup>

Representational inadequacies plague collegium decisions in practice. Women and

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<sup>43</sup> Nick Robinson, *Structure Matters: The Impact of Court Structure on the Indian and U.S. Supreme Courts*, 61 AM. J. COMP. L. 173, 179-181 (2013).

<sup>44</sup> Arghya Sengupta, *INDEPENDENCE AND ACCOUNTABILITY OF THE INDIAN HIGHER JUDICIARY* 89-92 (Cambridge University Press 2019).

<sup>45</sup> J. Chelameswar, J., dissenting, *Supreme Court Advocates-on-Record Association v. Union of India*, (2016) 5 SCC 1.

<sup>46</sup> LAW COMMISSION OF INDIA, 214TH REPORT ON PROPOSAL FOR RECONSIDERATION OF JUDGES CASES I, II AND III 19 (2008).

marginalized communities remain underrepresented in higher judiciary. As of 2023, only 11.5% of Supreme Court judges were women. Scheduled Castes and Scheduled Tribes face significant underrepresentation in judicial appointments. The Parliamentary Standing Committee on Law and Justice highlighted this imbalance. It recommended diversity considerations in judicial selections. Chief Justice D.Y. Chandrachud acknowledged these concerns but cited limited candidate pools.<sup>47</sup>

Nepotism allegations have damaged collegium's institutional legitimacy. Critics point to disproportionate appointments of judges' relatives to higher judiciary. The phenomenon of "sons and daughters of judges" occupying benches raises fairness questions. Senior Advocate Indira Jaising noted the prevalence of "judicial dynasties" within system. Former Chief Justice R.M. Lodha acknowledged this challenge but defended meritocratic selections. Statistical studies show significant correlation between family connections and judicial appointments.<sup>48</sup>

Operational inefficiency manifests through prolonged appointment vacancies across courts. The collegium frequently delays recommendations for months or years. Once recommended, further delays occur through executive inaction. High Courts operate at approximately 60% of sanctioned strength on average. The Supreme Court has repeatedly criticized government for appointment delays. The government conversely blames collegium for inadequate recommendations. This inefficiency directly impacts judicial functioning and access to justice.<sup>49</sup>

Merit assessment lacks standardized framework within collegium system. No transparent criteria exist for evaluating judicial candidates. Professional competence assessment relies on subjective collegium judgments. Senior advocate Fali Nariman criticized the "arbitrariness in selection process." Justice Krishna Iyer lamented absence of "rational criteria for choosing one judge over another." The system provides no comparative evaluation framework between competing candidates. Objective metrics like disposal rates or judgment quality lack formal consideration.<sup>50</sup>

Reform attempts have targeted collegium's structural weaknesses repeatedly. The National Judicial Appointments Commission represented most significant reform effort. The

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<sup>47</sup> DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE, 105TH REPORT ON THE FUNCTIONING OF THE HIGHER JUDICIARY: CHALLENGES AND OPPORTUNITIES 23 (2022).

<sup>48</sup> Abhinav Chandrachud, *THE INFORMAL CONSTITUTION: UNWRITTEN CRITERIA IN SELECTING JUDGES FOR THE SUPREME COURT OF INDIA* 167 (Oxford University Press 2014).

<sup>49</sup> Nick Robinson, *Structure Matters: The Impact of Court Structure on the Indian and U.S. Supreme Courts*, 61 AM. J. COMP. L. 173, 181 (2013).

<sup>50</sup> Mohan Parasaran, *Appointment of Judges to the Higher Judiciary – The Need for Reform*, 7 NUJS L. REV. 59, 67 (2014).

Constitution's 99th Amendment established NJAC with judicial-executive balanced membership. Parliament passed enabling legislation with near-unanimous support across parties. This reflected rare political consensus on collegium's deficiencies. Former Chief Justice R.M. Lodha supported "broad-based consultative process" while preserving independence. The NJAC envisioned transparent, accountable selection procedures.<sup>51</sup>

The Supreme Court invalidated NJAC through *Supreme Court Advocates-on-Record Association v. Union of India*. Justice Khehar's majority opinion invoked basic structure doctrine against amendment. The Court held that judicial primacy in appointments constituted essential constitutional feature. Justice Chelameswar's lone dissent questioned this expansive independence interpretation. He warned against judicial overprotection through basic structure doctrine. The majority emphasized independence threats from executive participation in appointments. This judgment foreclosed major structural reforms without constitutional reengineering.<sup>52</sup>

### **(C) NJAC case and aftermath**

The National Judicial Appointments Commission represented unprecedented constitutional restructuring. It emerged after decades of collegium criticism from multiple quarters. Parliament enacted the 99th Constitutional Amendment with extraordinary political consensus. The amendment received support from virtually all political parties. It passed with 367-0 votes in Lok Sabha and unanimous Rajya Sabha approval. This rare display of political unanimity reflected shared concerns about collegium deficiencies.<sup>53</sup>

The 99th Amendment introduced Articles 124A, 124B and 124C into the Constitution. Article 124A established NJAC with six members balancing judicial and non-judicial representation. It comprised Chief Justice of India, two senior Supreme Court judges, Law Minister and two eminent persons. These eminent persons would be selected by committee including Prime Minister, Chief Justice and Opposition Leader. This composition attempted balancing judicial independence with democratic accountability. It provided judiciary substantial representation while incorporating other stakeholders.<sup>54</sup>

Article 124B defined NJAC's functions for recommending judicial appointments. It granted NJAC authority for Supreme Court and High Court appointments. The provision also covered Chief Justice appointments and judicial transfers. Article 124C empowered Parliament to

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<sup>51</sup> The Constitution (Ninety-ninth Amendment) Act, 2014.

<sup>52</sup> *Supreme Court Advocates-on-Record Association v. Union of India*, (2016) 5 SCC 1.

<sup>53</sup> The Constitution (Ninety-ninth Amendment) Act, 2014.

<sup>54</sup> INDIA CONST. art. 124A (repealed 2015).

regulate NJAC procedures. The National Judicial Appointments Commission Act, 2014 subsequently provided implementation framework. These provisions collectively replaced collegium with statutory appointment mechanism. They attempted addressing transparency and accountability deficits in existing system.<sup>55</sup>

The amendments faced immediate legal challenge through writ petitions. Supreme Court Advocates-on-Record Association filed primary challenge questioning constitutional validity. Senior Advocate Fali Nariman argued that amendments violated basic structure doctrine. The government defended reforms as enhancing democratic legitimacy while preserving independence. Attorney General Mukul Rohatgi emphasized Parliament's constitutional amendment authority. These arguments presented fundamental questions about judicial structure and separation of powers. The case forced Court to evaluate limits of constitutional amendability.<sup>56</sup>

On October 16, 2015, the Supreme Court struck down both the 99th Amendment and NJAC Act. A five-judge constitution bench declared the amendments unconstitutional by 4:1 majority. Justice J.S. Khehar authored principal judgment emphasizing independence threats. Three judges wrote separate concurring opinions reinforcing majority conclusion. Justice Chelameswar issued solitary dissent challenging majority's constitutional interpretation. This landmark judgment reasserted judicial primacy in appointments against parliamentary consensus. It reaffirmed judicial independence as unamendable constitutional feature.<sup>57</sup>

Justice Khehar's majority opinion centered on judicial independence as basic structure element. He concluded that NJAC composition compromised appointment independence. The presence of Law Minister created executive influence potential in selections. The two "eminent persons" without defined qualifications introduced subjective element. The opinions emphasized veto possibilities through NJAC's decision-making structure. Justice Madan Lokur specifically noted risk of "eminent persons" blocking deserving candidates. This analysis privileged absolute independence over democratic accountability.<sup>58</sup>

Justice Kurian Joseph's concurring opinion emphasized procedural independence necessity. He considered NJAC's composition fatal to judicial autonomy. Justice Adarsh Kumar Goel similarly found that "primacy of judiciary" required protection. Justice Chelameswar's dissent challenged these premises fundamentally. He argued that "judicial independence does not mean

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<sup>55</sup> National Judicial Appointments Commission Act, 2014, No. 40, Acts of Parliament, 2014 (India) (repealed 2015).

<sup>56</sup> Supreme Court Advocates-on-Record Association v. Union of India, (2016) 5 SCC 1.

<sup>57</sup> Id.

<sup>58</sup> Id. at 408-15 (Khehar, J.).



exclusion of other branches.” His dissent questioned whether judges alone should select judges. He characterized this as “reductionist approach” to constitutional independence.<sup>59</sup>

The majority invoked an expansive interpretation of basic structure doctrine. It treated judicial primacy in appointments as essential constitutional feature. This reasoning extended basic structure beyond previously recognized limits. Earlier cases had identified judicial review and independence as basic features. The NJAC judgment uniquely extended protection to specific appointment mechanism. Justice Chelameswar critiqued this approach as unduly expanding unamendable constitution portion. He warned against “judicial supremacy” disguised as independence protection.<sup>60</sup>

The judgment created significant constitutional tensions between branches. Parliament had exercised amendment power with unprecedented consensus. The Court invalidated this democratic exercise through counter-majoritarian intervention. Political leaders expressed dismay at judicial nullification of constitutional amendments. Former Finance Minister Arun Jaitley described it as “tyranny of the unelected.” Prime Minister Narendra Modi called for constitutional debate about judgment. This institutional conflict highlighted fundamental tensions in democratic governance.<sup>61</sup>

Post-NJAC, the Court committed to collegium reforms while maintaining institutional control. Justice Khehar’s judgment acknowledged need for transparency improvements. The Court initiated separate proceedings for modifying collegium functioning. It invited public suggestions for enhancing transparency and accountability. The subsequent hearings received numerous reform proposals from stakeholders. This process seemed to acknowledge legitimate concerns without ceding appointment authority.<sup>62</sup>

The government responded by delaying judicial appointments through procedural objections. It withheld approvals for collegium recommendations for extended periods. Executive-judiciary relations deteriorated into public disagreements about appointment delays. Chief Justice T.S. Thakur publicly lamented mounting vacancies affecting judicial functioning. The government insisted on security clearances and suitability verification. This institutional friction demonstrated continuing governance challenges in appointment system. It reflected unresolved

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<sup>59</sup> Id. at 715-19 (Chelameswar, J., dissenting).

<sup>60</sup> Pratap Bhanu Mehta, *The Jurisprudence of Constitutional Rights in India*, in *COMPARATIVE CONSTITUTIONAL LAW IN ASIA* 262, 271-72 (Rosalind Dixon & Tom Ginsburg eds., 2014).

<sup>61</sup> Krishnadas Rajagopal, *NJAC Verdict: Centre, Jurists Differ on Way Forward*, *THE HINDU*, Oct. 18, 2015, <https://www.thehindu.com/news/national/njac-verdict-centre-jurists-differ-on-way-forward/article7776511.ece> (last visited Oct. 8, 2024).

<sup>62</sup> In Re: To Issue Certain Guidelines Regarding the Collegium System, (2015) 13 SCALE 478.

tensions between independence and accountability demands.<sup>63</sup>

## **V. COMPARATIVE ANALYSIS WITH COMMON LAW SYSTEMS**

Common law jurisdictions have developed diverse approaches to judicial appointments. Each balances independence and accountability differently through institutional design. These variations reflect distinct constitutional traditions and historical experiences. Comparative analysis reveals multiple viable models rather than singular solution. The approaches diverge significantly despite shared common law heritage.<sup>64</sup>

The United Kingdom dramatically reformed judicial appointments in recent decades. The Constitutional Reform Act 2005 established Judicial Appointments Commission. This independent body comprises fifteen members from diverse backgrounds. It includes judges, lawyers and lay persons selected through open competition. The Commission recommends candidates to Lord Chancellor after rigorous selection process. The Lord Chancellor possesses limited rejection authority but cannot select alternates. This reform eliminated traditional Prime Ministerial appointment power. It responded to transparency concerns while preserving judicial independence.<sup>65</sup>

The UK model emphasizes merit-based selection through structured assessment. Candidates undergo application screening, interviews and situational testing. The process incorporates defined competency frameworks with published criteria. Diversity receives explicit consideration within merit-based framework. Selection panels include non-legal members ensuring broader perspectives. Statistical monitoring tracks appointment patterns across demographic categories. The system provides reasoned explanations for selection decisions. This approach contrasts sharply with India's collegium deliberations lacking structured evaluation.<sup>66</sup>

The United States employs politically accountable judicial selection mechanisms. Federal judges receive presidential nomination with Senate confirmation. This process embeds democratic accountability through elected officials' involvement. Judicial independence emerges through life tenure after appointment. The system creates initial political accountability with subsequent decisional autonomy. Senate confirmation hearings provide public scrutiny of

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<sup>63</sup> Utkarsh Anand, Judiciary, Executive Clash Over Appointments and Delay, *THE INDIAN EXPRESS*, Apr. 25, 2016, <https://indianexpress.com/article/india/india-news-india/judiciary-vs-executive-supreme-court-judge-appointment-2768599/> (last visited Oct. 8, 2024).

<sup>64</sup> Kate Malleson, *The New Judiciary: The Effects of Expansion and Activism* 76-79 (Routledge 2018).

<sup>65</sup> Constitutional Reform Act 2005, c. 4, § 61 (UK).

<sup>66</sup> Graham Gee, The Politics of Judicial Appointments in the United Kingdom, in *APPOINTING JUDGES IN AN AGE OF JUDICIAL POWER: CRITICAL PERSPECTIVES FROM AROUND THE WORLD* 99, 107-110 (Kate Malleson & Peter H. Russell eds., 2016).

qualifications and judicial philosophy. This creates transparency absent in India's appointment system. Critics note partisan polarization affecting confirmation processes in recent decades.<sup>67</sup>

State judicial selection systems in America offer additional comparative insights. Many states utilize judicial elections providing direct democratic accountability. Others employ merit selection through nominating commissions with gubernatorial appointment. Some combine initial appointment with retention elections. These varied approaches demonstrate multiple accountability mechanisms within federal structure. They illustrate differing balances between democratic input and professional qualifications. Indian debates rarely reference these alternative democratic accountability models.<sup>68</sup>

Canada's judicial appointment system incorporates advisory committees with government decision-making. The Prime Minister appoints Supreme Court justices after consultation processes. Provincial advisory committees screen candidates for lower federal courts. These committees comprise legal professionals, judges and public representatives. They provide government with qualified candidate assessments. The process balances professional evaluation with democratic accountability through ministerial authority. Recent reforms strengthened transparency without fundamental structural changes. This hybrid model balances professional input with democratic legitimacy.<sup>69</sup>

Australia combines executive appointment with consultative processes. The federal Attorney-General recommends judicial appointments to Governor-General. Recent reforms incorporated broader consultation before recommendations. The Attorney-General solicits input from legal professional bodies. State appointments follow similar pattern with variations in consultation scope. The system maintains executive primacy while incorporating professional perspectives. This approach balances democratic accountability with professional standards. It demonstrates accountability through responsible government rather than judicial self-selection.<sup>70</sup>

New Zealand utilizes Attorney-General-centered appointment process with structured consultation. The Attorney-General recommends appointments after seeking Chief Justice input. A Judicial Appointments Unit manages administrative aspects of selection process. Public advertisements solicit applications for judicial positions. This creates transparency and

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<sup>67</sup> DENIS STEVEN RUTKUS, CONG. RSCH. SERV., RL31989, SUPREME COURT APPOINTMENT PROCESS: ROLES OF THE PRESIDENT, JUDICIARY COMMITTEE, AND SENATE 4-7 (2010).

<sup>68</sup> Jed Handelsman Shugerman, *The People's Courts: Pursuing Judicial Independence in America* 56-60 (Harvard University Press 2012).

<sup>69</sup> Peter McCormick, *Selecting the Supremes: The Appointment of Judges to the Supreme Court of Canada*, 7 J. APP. PRAC. & PROCESS 1, 13-17 (2005).

<sup>70</sup> Elizabeth Handsley & Andrew Lynch, *Facing up to Diversity? Transparency and the Reform of Commonwealth Judicial Appointments 2008-13*, 37 SYDNEY L. REV. 187, 191-193 (2015).

broadens candidate pools beyond insiders. The system maintains political accountability while incorporating professional assessment. It represents another variation balancing democratic legitimacy with independence values.<sup>71</sup>

South Africa's post-apartheid system established Judicial Service Commission. This body includes judicial, legal, political and public representatives. The Commission conducts public interviews with judicial candidates. These sessions allow direct questioning about qualifications and philosophy. The Commission recommends candidates to President who makes final selections. This transparent process emerged from particular historical context requiring transformation. It aimed at diversifying judiciary while maintaining independence. The South African model demonstrates possibility of transparent, inclusive selection.<sup>72</sup>

Singapore maintains executive-centered appointments with professional consultation. The Prime Minister recommends Supreme Court appointments after presidential approval. A Judges' Selection Commission advises government on potential candidates. This Commission comprises senior judges and government representatives. The system ensures executive accountability while incorporating judicial perspectives. It reflects Singapore's particular constitutional design emphasizing governmental effectiveness. This model demonstrates contextual adaptation within Westminster-derived system.<sup>73</sup>

## **VI. RECOMMENDATIONS AND CONCLUSION**

Balancing judicial independence with accountability requires nuanced institutional design. Constitutional democracies must safeguard decisional autonomy while ensuring responsiveness. India's system presents distinctive challenges requiring calibrated reforms. These reforms must preserve independence while enhancing legitimacy. No single model offers perfect balance for all contexts. The recommendations below emerge from comparative analysis and constitutional principles.<sup>74</sup>

Structured transparency represents essential first step toward meaningful accountability. The collegium should publish detailed selection criteria for judicial appointments. These criteria should include professional qualifications, ethical standards and diversity considerations. Minutes of collegium meetings should document deliberations with reasoned conclusions.

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<sup>71</sup> Philip A. Joseph, CONSTITUTIONAL AND ADMINISTRATIVE LAW IN NEW ZEALAND 233-236 (Thomson Reuters 4th ed. 2014).

<sup>72</sup> Penelope Andrews, The South African Judicial Appointments Process, 44 OSGOOD HALL L.J. 565, 568-570 (2006).

<sup>73</sup> Thio Li-ann, The Theory and Practice of Judicial Independence in Singapore, in ASIAN COURTS IN CONTEXT 269, 274-276 (Jiunn-rong Yeh & Wen-Chen Chang eds., 2014).

<sup>74</sup> Arghya Sengupta, INDEPENDENCE AND ACCOUNTABILITY OF THE INDIAN HIGHER JUDICIARY 298-302 (Cambridge University Press 2019).

Annual reports should track appointment patterns and demographic representation. This transparency would enhance public confidence without compromising independence. It draws inspiration from UK Judicial Appointments Commission practices. Former Justice Ruma Pal emphasized transparency as accountability cornerstone.<sup>75</sup>

Modified composition of appointment body would enhance democratic legitimacy. A reformed system should include judicial primacy while incorporating diverse perspectives. The collegium could expand to include retired judges, eminent jurists and law commission representatives. This expanded membership diversifies inputs while maintaining judicial centrality. It creates checks against individual biases while preserving institutional independence. Canada's advisory committees offer instructive model for balanced composition. Former Attorney General Soli Sorabjee advocated similar balanced approach.<sup>76</sup>

Formalized selection procedures would enhance appointment quality and consistency. The process should include standardized application procedures for potential candidates. Structured interviews with published evaluation criteria should assess capabilities. Comparative assessment reports should document selection rationales between candidates. Feedback mechanisms should inform unsuccessful candidates about development areas. These procedural safeguards enhance meritocratic dimensions without external control. They address current system's ad hoc nature criticized by Justice Chelameswar.<sup>77</sup>

Performance evaluation systems should inform elevation decisions within judiciary. Regular assessments should examine disposal rates, reversal percentages and judgment quality. Peer reviews should evaluate judicial temperament and courtroom management. Self-assessment components should encourage reflective practice among judges. These evaluations should inform promotion decisions through transparent metrics. Performance data would strengthen meritocratic dimensions of judicial advancements. The National Court Management Systems Committee has recommended similar measures.<sup>78</sup>

Structural diversity initiatives must address persistent representational deficiencies. The Supreme Court should establish diversity committees monitoring demographic patterns. Outreach programs should encourage applications from underrepresented communities.

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<sup>75</sup> Ruma Pal, Former Judge, Supreme Court of India, Address at the 5th V.M. Tarkunde Memorial Lecture: An Independent Judiciary (Nov. 10, 2011).

<sup>76</sup> LAW COMMISSION OF INDIA, 230TH REPORT ON REFORMS IN THE JUDICIARY - SOME SUGGESTIONS 35-39 (2009).

<sup>77</sup> J. Chelameswar, J., dissenting, Supreme Court Advocates-on-Record Association v. Union of India, (2016) 5 SCC 1.

<sup>78</sup> SUPREME COURT OF INDIA, POLICY AND ACTION PLAN: NATIONAL COURT MANAGEMENT SYSTEMS 19-23 (2012).

Mentorship initiatives should support career advancement for women and minorities. Infrastructure improvements should facilitate diverse judicial participation. These measures recognize diversity as institutional strength rather than compromise. Chief Justice Chandrachud's recent efforts demonstrate initial commitment toward this goal.<sup>79</sup>

Post-retirement cooling periods should become mandatory through legislative enactment. A minimum three-year cooling period should precede government appointments. Independent commission should review post-retirement appointment requests. Pension enhancements could offset financial impact of restricted opportunities. These safeguards would reduce perception of judgment influence through appointment expectations. The Law Commission's recommendations on this issue deserve implementation. Several High Court judges have voluntarily adopted similar restrictions.<sup>80</sup>

Complaint mechanisms require formalization through structured framework. A permanent judicial conduct committee should process misconduct allegations. This committee should include senior judges, retired judges and eminent jurists. Defined procedures should protect against frivolous complaints while enabling legitimate ones. Graduated sanctions should address misconduct proportionate to severity. These mechanisms would strengthen self-regulation within judicial framework. The Judicial Standards and Accountability Bill offered useful starting framework.<sup>81</sup>

Constitutional amendment remains viable despite NJAC experience. A modified amendment could preserve judicial primacy while enhancing accountability. It should establish constitutional appointment commission with judicial majority. Qualified supermajority requirements could ensure consensus transcending individual preferences. Constitutionalizing transparency requirements would create enforceable standards. This approach addresses current system's extra-constitutional nature. It respects independence while providing democratic legitimacy.<sup>82</sup>

Technology utilization offers practical accountability enhancements with minimal controversy. Online publication of judicial calendars would increase workload transparency. Digitized cause lists with time allocation enhance process predictability. Audio recording of arguments would

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<sup>79</sup> Utkarsh Anand, Diversity on Bench Essential: CJI Chandrachud, HINDUSTAN TIMES, Jan. 23, 2023, <https://www.hindustantimes.com/india-news/diversity-on-bench-essential-cji-chandrachud-101674425264371.html> (last visited Oct. 8, 2024).

<sup>80</sup> LAW COMMISSION OF INDIA, 14TH REPORT ON REFORM OF JUDICIAL ADMINISTRATION 44-48 (1958).

<sup>81</sup> The Judicial Standards and Accountability Bill, 2010, Bill No. 136 of 2010 (India).

<sup>82</sup> Madhav Khosla, Constitutional Amendment, in THE OXFORD HANDBOOK OF THE INDIAN CONSTITUTION 232, 240-243 (Sujit Choudhry et al. eds., 2016).

create verifiable proceeding records. Virtual access to hearings increases public scrutiny possibilities. These innovations strengthen accountability without threatening decisional independence. Chief Justice Chandrachud's technology initiatives demonstrate promising direction.<sup>83</sup>

All India Judicial Service implementation would restructure lower judiciary appointments. Centralized competitive examinations would standardize recruitment standards. Professional training academy would ensure consistent judicial education. Performance tracking would facilitate merit-based promotions between levels. This reform would create stronger institutional foundations for higher judiciary. Article 312 already provides constitutional framework for implementation. Former Chief Justice Ranganath Misra advocated this approach.<sup>84</sup>

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<sup>83</sup> SUPREME COURT OF INDIA, VISION DOCUMENT PHASE III OF THE E-COURTS PROJECT 57-62 (2021).

<sup>84</sup> Abhinav Chandrachud, THE INFORMAL CONSTITUTION: UNWRITTEN CRITERIA IN SELECTING JUDGES FOR THE SUPREME COURT OF INDIA 243-247 (Oxford University Press 2014).

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