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Challenges and Reforms in the Indian Collegium System: An In-Depth Analysis

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ABSTRACT

The Indian collegium system of appointing and transferring judges in the higher judiciary has been analyzed and debated due to the inherent problems and challenges it raises. This study will examine the challenges and problems with the collegium system and it will provide insight into the historical background of the collegium and diverse perspectives of stakeholders in the legal community. This study identifies serious problems and challenges, from transparency and accountability to judicial independence. It delves into different perspectives of stakeholders to better illustrate and describe the complexities facing the collegium and judges in the Indian legal system.

Keywords: Indian collegium system, challenges, appointing and transferring judges, transparency and accountability.

I. INTRODUCTION

The Collegium System of selection of judges in the Higher Judiciary of India is a method whereby a body of senior judges recommend candidates for appointment to the Supreme Court and High Courts⁴. The Collegium, while initiating this process, is aimed at maintaining the independence of the judiciary and violating outside influence in the selection of judges. The Collegium system is premised on peer review, to guarantee the most able and experienced. In this process, the collegium assesses the appointment, as yet again, prefers to make it and names the candidates to the President of India⁵. The President is bound by the advice of the collegium and appoints these candidates or appoints them based on Constitutionally valid grounds for not so appointing, barring discernible reasons.

II. HISTORICAL EVOLUTION OF THE COLLEGIUM SYSTEM IN THE INDIAN JUDICIARY

After India's independence, the President appointed the Chief Justice of India and also the other

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⁴ Chandra, A., Hubbard, W. and Kalantry, S., 2018. From Executive Appointment to the Collegium System. *Verfassung und Recht in Übersee/Law and Politics in Africa, Asia and Latin America*, 51(3), pp.273-289.

⁵ Law Commission of India, 214th Report on Proposal for Reconsideration of Judges Appointment System (2008)

judges of the Supreme Court in consultation with the Chief Justice of India and such of the other judges as he deemed necessary, which was in conformity with the provisions in the Constitution. This appointment process of judges of Supreme Court has been provided under Article 124⁶ of the Constitution of India, reproduced below: Establishment and Constitution of Supreme Court. The origin of the collegium system in India is a multi-faceted development, which is elaborated upon chronologically below.

1. Appointment of Chief Justice of India (1950-1973):

Prior to 1973, there was an understanding between the government of the day and the Chief Justice of India for appointing the senior-most judge of the Supreme Court as the Chief Justice of India. Justice A.N. Ray became Chief Justice of India in the year 1973 which was against this consensus when he was appointed by superseding three judges of the Supreme Court more senior to him⁷. In 1977, another Chief Justice was appointed by superseding his seniors, which further strained relationship between the executive and the judiciary.⁸

2. First Judges Case (1981)⁹:

This adjudication, also referred to as the S.P. Gupta decision, has provided for judicial independence and the power of the executive to limit their actions in appointing judges to “consult” with the Chief Justice of India (CJI). It offered the power of the executive to deny the CJI's recommendation for “cogent reasons” only.

3. Second Judges Case (1993)¹⁰:

In this case, a petition was filed by the Supreme Court Advocates on Record Association. The finding of this case has further solidified the role of the judiciary by stating that consultation should be a “concurrence” instead of consultation. It also established the Supreme Court Collegium made up of the Chief Justice of India and four senior-most judges, which would serve as the sole body to make recommendations for apportionment to the Supreme Court

4. Third Judges Case (1998)¹¹:

This decision set out the function of the High Court Collegium, which comprises the Chief Justice of the High Court and the two senior-most judges, in recommending names for appointment for judges to the High Courts. It also clarified the process for transferring judges

⁶ Constitution of India, 1949, Art. 124,

⁷ Saba. (2017, May 23). *Judicial Appointments in India — A Critical Analysis* | SCC Times. SCC Times. https://www.sconline.com/blog/post/2017/05/23/judicial-appointments-in-india-a-critical-analysis/#_ftn32

⁸ Bansal, A., 2023. Collegium System in India. *Issue 1 Indian JL & Legal Rsch.*, 5, p.1.

⁹ S.P. Gupta v. Union of India, 1981 Supp SCC 87

¹⁰ Supreme Court Advocates-on-Record Assn. v. Union of India, (1993) 4 SCC 441

¹¹ Special Reference No. 1 of 1998, Re, (1998) 7 SCC 739

from one High Court to another. Furthermore, in the judgment, the Supreme Court laid down guidelines for the appointment of judges of the Supreme Court and High Courts, and this would commonly be referred to as the collegium system.

5. Collegium System:

In this appointment system for judges the collegium will recommend the names of the recommended candidates to the central government. The central government would also send its names of proposed candidates for consultation. This process therefore takes a considerable amount of time, and would not cease until an appointed time elapses. However, if the collegium resends the same name again, the government must approve the name¹².

The collegium system was widely criticized not only by the Government, but also by civil society on the basis of lack of accountability and transparency. This resulted in the 99th Constitutional Amendment Act, 2014¹³, the National Judicial Appointments Commission Act (NJAC)¹⁴, to supplant the collegium system in the appointment of judges.

6. National Judicial Appointment Commission Act, 2014:

The 1993 judgment was the basis on which a five-judge constitution bench declared the National Judicial Appointments Commission Act (NJAC) and the Constitution (ninety-nine amendments) Act, 2014, unconstitutional in October 2015. The primary function of this Commission was to recommend names for the appointment of Supreme Court judge and appointment and transfer of High Court judge.

III. COMPARATIVE ANALYSIS OF INDIAN AND AMERICAN JUDICIAL APPOINTMENT SYSTEM

The Indian Collegium system exemplifies the independence of the judiciary, a principle of the Constitution that originates from the American Constitution. Nevertheless, the American judges in the Supreme Court and other lower courts are directly appointed by the President and further vetted by the Senate; it is much more political in nature than India's Collegium System¹⁵. The Senate can reject nominations for any reason; as of late, such rejection has been clearly based on partisan claims. The appointment of Justice Amy Coney Barrett by the last President of the United States, Donald Trump, has been among the more recent US Supreme Court justices

¹² Manupatra. (2024). *Articles – Manupatra*. Manupatra.com. <https://articles.manupatra.com/article-details/Debating-the-Collegium-System-A-Comparative-Analysis>

¹³ Constitution (Ninety-Ninth) Amendment Act, Parliament of India, Act no. 99 of 2014

¹⁴ The National Judicial Appointments Commission Act, Parliament of India, Act No. 40 of 2014

¹⁵ S., Aniketan, 2023. Comparative Analysis of Appointment of Judges to Higher Level of Judiciary in India, USA and United Kingdom. *Issue 1 Indian JL & Legal Rsch.*, 5, p.1.

criticized for being appointed with a partisan motive¹⁶.

There exists a measure of public accountability in judicial appointments in the American system; however, the Indian system is criticized for lacking any public participation. Nevertheless, the collegial method utilized by the Indian system incorporates principles of peer review, which guarantees that only competent and experienced lawyers enter the judicial branch. As a result, the collegial method has been criticized for being elitist and homogenous, as illustrated that the number of times women judges have increased in the past five years. However, women are still underrepresented on the bench, making up only 11.76% of the judiciary as of 2022¹⁷. The representation of SC/ST judges has also been steadily increasing but is still inferior to the representation of women judges, SC/ST judges made up 14.71% of the judiciary in 2022.¹⁸

IV. CHALLENGES FACED BY COLLEGIUM SYSTEM IN INDIAN JUDICIARY

The collegium system in India and its mechanism of appointment of judges faces various challenges and criticisms. Some challenges faced by the Indian collegium system:

1. Lack of Transparency:

The obscurity inherent in the collegium system has received critique. The Indian collegium system conducts judicial appointments among a closed circle of judges, unlike many other democracies, which make judicial appointments publicly and relatively transparently appointed. Decisions made by the collegium are often kept obscure, and the public is usually left unaware of the specific criteria used to judge candidates for judicial appointments.¹⁹

There are concerns regarding favoritism, lack of accountability, and decisions being based on non-meritorious ground. Critics have argued that a transparent system would not only build public trust in the judiciary but also allow for a more objectified judgment of the qualifications and suitability of candidates.

2. Accountability and Oversight:

The collegium system is often criticized for its absence of formal accountability and oversight. Unlike other branches of government, such as the executive and the legislature, the judicial

¹⁶ S., Aniketani, 2023. Comparative Analysis of Appointment of Judges to Higher Level of Judiciary in India, USA and United Kingdom. *Issue 1 Indian JL & Legal Rsch.*, 5, p.1

¹⁷ Tata Trusts. (2023). *Share of women judges in high court in India as of December 2022, by state*. Statista. Statista Inc.. Accessed: March 24, 2025. <https://www-statista-com-culp.knimbus.com/statistics/1209522/india-share-of-women-in-high-court-judges-by-state/>

¹⁸ Sharma, L., 2024. Balancing Judicial Independence and Judicial Accountability: A Case for Transparency and Diversity in Collegium System. *Issue 2 Int'l JL Mgmt. & Human.*, 7, p.2125.

¹⁹ Law Commission of India, 214th Report on Proposal for Reconsideration of Judges Appointment System (2008)

appointment process is largely purely internal, in the sense that there is little possibility of external scrutiny²⁰. This has raised doubts about whether judges might act arbitrarily, and whether, either within or apart from the collegium, there are sufficient mechanisms in place to curb arbitrary decision-making and hold judges accountable for their decisions in judicial appointments.

Lehn and Rosenbloom, among others, have proposed the creation of an independent body, or some reformed system in which there are multiple actors in the appointment process (including the executive and the legislature), some of whom could provide procedural checks and balances on the judicial appointment system.

3. Inclusivity and Diversity:

Concerns about diversity and inclusivity in judicial appointments is not a new subject matter. The collegium system has been criticized as not being proactive enough with regard to the underrepresentation of certain demographics in the higher judiciary, and that includes women and underrepresented communities²¹.

Although there have been steps made towards diversification, well below the desired timeframe, this requires action to be more decisive - so the judiciary reflects the diversity of the population of India. We want a more balanced judicial system, and the criteria for selecting and appointing judges need to be equal on diversity.

4. Executive-Judiciary Tussle:

The relationship between the executive and the judiciary in respect to judicial appointments has often been characterized by tension and disagreement²². The collegium system, which puts the judiciary first in the appointment process, has also resulted in disagreements with the executive side. The executive has, at certain times, raised concerns over a lack of consultation followed by a perceived predominance held by the judiciary in the appointing process; while judges have appointments are also, at the same time, a fundamental part of judicial independence. This balance, between independence and some involvement by the executive, has often been the goal, but rarely achieved.

²⁰ Soni, S., Nemane, V. and Naikade, K., 2023. Pre and Post Implications of Collegium System in India: A Need of Policy Reforms. *Issue 3 Int'l JL Mgmt. & Human.*, 6, p.3949.

²¹ Soni, S., Nemane, V. and Naikade, K., 2023. Pre and Post Implications of Collegium System in India: A Need of Policy Reforms. *Issue 3 Int'l JL Mgmt. & Human.*, 6, p.3949.

²² Chandra, A., Hubbard, W. and Kalantry, S., 2018. From Executive Appointment to the Collegium System. *Verfassung und Recht in Übersee/Law and Politics in Africa, Asia and Latin America*, 51(3), pp.273-289.

5. Delay in Appointments:

Judge appointments and delays in appointing judges are another persistent issue, often resulting in vacancies on both the high court and Supreme Court, compounded by issues of how to create internal decisional time with collegium-style appointments - and any disagreements arising. These delays create issues for overall collegial interests and efficiency of the judiciary, continuing case backlog, and effects on legal justice in a timely manner. Therefore, streamline the appointment process, including timeliness in judicial appointments is paramount.

6. Quality of Decision-making:

Concerns have been raised by critics of the collegium system about the emphasis on seniority over merit in the selection of judges. Some argue that seniority and experience have become the primary criteria in an increasingly subjective assessment of a judge's competence to serve on a bench, rather than factors such as legal intelligence, knowledge of jurisdictions and areas of law, intellectual curiosity and agility, and a progressive and strategic judicial philosophy.

In order to promote better decision-making, a more thoughtful assessment of candidates is required and this requires more than seniority.²³ This would necessitate the development of specific and transparent criteria for assessing judicial competence, as well as a more systematic, rigorous, and transparent process of selection.

Lastly, the challenges facing the collegium system are complex and range from transparency and accountability issues, to questions of diversity and quality of decision-making²⁴. Reforms to address these challenges are necessary to support a fair and effective judiciary that supports the public's confidence²⁵. The ongoing discourse on these matters reflects a larger discussion about the role of the judiciary in a democratic society and the necessity of maintaining an equitable and accountable judicial system.

V. CONCLUSION

For some years now, calls for reform of the collegium system have been made. One major proposal has been the proper functioning of the National Judicial Appointments Commission (NJAC) or a similar institution that would involve many stakeholders in the appointments process. The NJAC could have representation from the judiciary, executive and other segments of the legal community. The idea is to design a system which is better balanced, more

²³ Granville Austin, *The Indian Constitution: Cornerstone of a Nation*

²⁴ Chandra, A., Hubbard, W. and Kalantry, S., 2018. From Executive Appointment to the Collegium System. *Verfassung und Recht in Übersee/Law and Politics in Africa, Asia and Latin America*, 51(3), pp.273-289.

²⁵ Naskar, S.K., 2023. *A Critical Analysis of Judicial Appointments in India (with respect to Higher Judiciary)*. Blue Rose Publishers.

accountable and provides a better answer to the issues surrounding the collegium system.

The collegium system debate will continue over the next number of years. There is no easy solution to the question of how to guarantee the independence of the judiciary and keep it accountable. Ultimately, the collegium system has both advantages, and disadvantages, and there is no clear consensus on whether it is the best system for the particular context of India.
