

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 3

2023

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Collegium System in India – Need for Judicial Independence

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ABSTRACT

Maintaining judicial independence is crucial to any nation's democratic system. The judiciary serves as a guardian of citizens' rights, which are protected by the law and the constitution. Every democratic nation uses a variety of strategies to guarantee judicial independence, which also guarantees personal freedom. The rights of the people can only be safeguarded against the arbitrary powers of the administration or legislature by an impartial and autonomous judicial system. The judiciary is made up of the courts, judges, and justices that make up the entire judicial system of the nation. Regardless of whether the judge is handling a civil or criminal matter, judicial independence is crucial. Judiciary systems plays a crucial role for gaining confidence in public. The only hope that people have in this democratic country amidst the complex and corrupt politics in this country is on the Judiciary, which promises to be fair and unbiased. So the appointment of judges in transparent manner is one of the essential requirements for sustaining confidence in people.

Keywords: *Appointment of Judges, Independent Judiciary, Collegium system, National Judicial Appointment Commission (NJAC).*

I. INTRODUCTION

In a democratic government, the judiciary's independence is crucial to allowing it to freely carry out the crucial tasks of interpreting and executing the law and making decisions regarding disputes. The courts are in charge of upholding the rule of law in the nation. In a nation with a codified constitution like India, the courts uphold the Constitution's supremacy by interpreting and enforcing its rules. Given the significance and importance assigned to the role played by the judiciary, the Constitution specifically calls for its separation from the executive branch.

Regarding judicial appointments and transfers, the division of powers between these two branches of the government must also be respected. In order to preserve the independence of the court, it is imperative that the two branches of government remain separate. Due to the ongoing conflict between the executive and the judiciary, appointing judges for the country's higher courts, including the Supreme Court and state High Courts, has become an issue of

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concern. A large portion of the turmoil has been caused by the task at hand for preserving judicial independence.

II. WHAT IS COLLEGIUM SYSTEM?

A system under which, the Chief justice Of India and four-senior most Supreme Court judges convene a forum to decide on judicial appointments and transfers of Judges. But there is no mention on Collegium System in the Constitution of India. The Constitution of India only prescribes Judges of the Supreme Court are appointed in accordance with Article 124. It states that the President shall choose the candidate after consulting with any High Court and Supreme Court judges he or she deems imperative. With the exception of his or her own appointment, the CJI must be consulted.

Judges for the High Court are appointed according to Article 217. It states that the CJI and the state governor should be consulted before the President appoints a judge. It is also recommended to consult the appropriate High Court's Chief Justice.

(A) How collegium system evolved?

A judge is appointed to the supreme court by the president on the recommendation of the collegium, a closed group consisting of the Chief Justice of India, the four senior most judges on the court, and the senior-most judge hailing from the high court of a prospective appointee, as per the constitution, as held by the court in the three judge cases (1982, 1993, 1998).

- i. S. P. Gupta v. Union of India - 1981 (also known as the Judges' Transfer case)
- ii. Supreme Court Advocates-on Record Association vs Union of India - 1993
- iii. *In re* Special Reference 1 of 1998

a. First Judges Case:

In *S P Gupta v. Union of India*, 1981, the Supreme Court ruled by a majority that the Constitution did not actually include the concept of the Chief Justice of India's primacy. It was decided that any of the constitutional officials listed in Article 217 may make a proposal for an appointment to a High Court; the Chief Justice of the High Court is not required to do so. The Constitution Bench further found that although the President will confer with these the authorities, his judgement is not need to be in accordance with all of them because the term "consultation" employed in Articles 124 and 217 does not mean "concurrence."

b. Second Judges Case:

A nine-judge Constitution Bench overturned the *S. P. Gupta* case ruling in Supreme Court

Advocates-on-Record Association v. Union of India, 1993, and created a specific procedure known as the "Collegium System" for the appointment and transfer of judges in the higher judiciary. The majority verdict gave the CJI primacy in matters of appointment and transfers while also ruling that the term "consultation" would not lessen the primary role of the CJI in judicial appointments, underscoring that the top court must act in "protecting the integrity and guarding the independence of the judiciary." "Since this is a subject within the judicial family, the executive cannot have an equal say in the matter, the role of the CJI is primal in nature.

According to the collegium system, the CJI should make the suggestion after consulting with his two senior most colleagues, and the executive should typically follow through on it. In addition, it said that while though the executive might ask the collegium to reconsider the case if it had reservations with the suggested appointment, the executive was bound to make the appointment if the collegium did so after reconsideration.

c. Third Judges Case:

The Supreme Court received a Presidential Reference from President K R Narayanan in 1998 on the definition of the word "consultation" as it relates to advisory jurisdiction under Article 143 of the Constitution.

The debate centred on whether a "consultation" required input from multiple judges in order for the CJI's judgement to be considered valid, or if the CJI's one and only opinion may suffice. In response, the Supreme Court established nine rules governing how the Coram should work while making appointments and transfers. These rules have since become the standard for the collegium.

According to this opinion, four of the CJI's most senior colleagues should make the suggestion rather than just two. Additionally, it was decided that Supreme Court justices with connections to the High Court from which the proposed name was derived should be contacted. Additionally, it was decided that the CJI should refrain from recommending action to the government even if two judges expressed disagreement. Since then, the collegium has provided advice on judge nominations and transfers.

III. ESTABLISHMENT OF NATIONAL JUDICIAL APPOINTMENTS COMMISSION (NJAC)

A law to establish the National Judicial Appointments Commission (NJAC) in place of the collegium was approved by parliament in 2015. The Supreme Court invalidated this in the Fourth Judges' case because the new structure would compromise the independence of the judiciary. A constitutional organisation called the National Judicial Appointments Commission

(NJAC) is being proposed to take the place of the current Collegium method of appointing judges. The Constitution (Ninety-Ninth Amendment) Act of 2014, which was approved by the Lok Sabha on August 13 and the Rajya Sabha on August 14, 2014, amended the Constitution to create the NJAC.

Beginning on April 13, 2015, the NJAC Act and the Constitutional Amendment Act came into effect. Six people will constitute this body: the Chief Justice of India, the two seniormost Supreme Court justices, the Law Minister, and two "eminent persons." These distinguished individuals are not eligible for re-nomination and will be chosen for a three-year term by a committee consisting of the Chief Justice, the Prime Minister, and the Leader of the Opposition in the Lok Sabha. If they do not agree with it, the Chief Justice and the two seniormost judges will be appointed to the position. A proposal that has been vetoed cannot be reinstated. The judges also need the assistance of the other commission members to get a name through. The NJAC Act and the constitutional amendment that restored the two-decade-old collegium system of judges appointing judges in higher judiciary were both overturned by the Supreme Court on October 16, 2015, with a majority decision of 4:1. The Supreme Court ruled that NJAC's interference with the judiciary's independence by the administration amounted to tampering with the constitution's basic structure, which parliament is not authorised to alter. The Supreme Court has admitted that there are transparency and credibility issues with the collegium method of selecting judges, which the Judiciary will address or enhance. Arguments against NJAC were based on the three historic rulings—the first, second, and third judges' cases—that protected the collegium system.

The President was given the power to disregard the judges' names recommended by CJI in the first judge case determined in 1981. Twelve years later, Justice J.S. Verma's ruling in the case of the second judge, which gave the judiciary priority, reversed this view. This principle was established by the Supreme Court in 1998, which also established rules for the collegium system's efficient operation. They said that the Constitution's fundamental design included the right to appoint judges, which was essential to the judiciary's independence. The historic rulings had legal force and could not be overturned by altering the Constitution.

(A) Failure of national judicial appointment commission

1. Absence of the qualification requirement of eminent persons – There was no eligibility criteria set or qualification requirement set for the eminent person who would be appointed.
2. Susceptibility of the appointment procedure – The susceptibility of the appointment process by amending in the Parliamentary led to failure of NJAC.

3. Misuse of Veto Power – The possibility of the misuse of veto power that effectively allows and arbitrary approach in decision making by the members of the board led to fall of NJAC.
4. Tampering of Basic Structure – Appointment of judges, coupled with primacy of judiciary and the Chief Justice of India was part of basic structure of the Constitution, which the parliament through NJAC violated it.
5. No Judiciary Independency – It is not possible to ensure independence of judiciary, if the institutional integrity is affected through a deliberative selection process involving potentially the need for negotiating the judicial space with the legislature and the executive

IV. NJAC V. COLLEGIUM SYSTEM

NJAC	COLLEGIUM SYSTEM
It was a body created to end two-decade old Supreme Court Collegium System of judges appointing judges.	It was based on Three Judges Case
Was passed by Lok Sabha on August 13, 2014. Was passed by Rajya Sabha later.	Appointment of Judges were made by Chief Justice of India and four more senior Supreme Court Judges. Has No constitutional backing.
Will consist 6 people- CJI, 2 senior most Supreme Court Judges, Law minister and two 'eminent' persons.	Article 124 of Constitution of India says appointments to be made by President in consultation with judges as President may deem necessary
Fear of Judicial Independence being compromised	A close-door mechanism which lacks transparency.

V. CRITICISM OF COLLEGIUM SYSTEM

1. Opaqueness & Lack of Transparency – Since it doesn't involve any official secretariat which leaves little room for the administrative body for checks and poses right to misuse.
2. Scope of Nepotism – as there is no prescribed norms regarding eligibility criteria or even the selection procedure which leads to wide for favouritism.
3. Embroilment in public controversies – As this system does not involve any official secretariat and is seen as close door affair with no public knowledge it may lead to public

controversies.

4. Unequal representation – The underrepresentation of women in the higher judiciary is also one of the major concern in the composition.
5. Exclusion of the executive – A system where a small number of judges secretly appoint the remaining judges resulted from the complete absence of the executive from the judicial selection process. Additionally, they are not answerable to any administrative entity, which could result in the selection of the incorrect candidate while omitting the appropriate candidate.

VI. WAY FORWARD AND CONCLUDING REMARKS

It was the goal of the Constitution's creators to create a structure in which both branches of the government would be involved. It was suggested that there be many authorities to ensure checks and balances. A basic assurance of the judiciary's independence is the division of powers.

Judges should be free to make decisions in accordance with their own interpretations of the law and the evidence, impartially. They ought to have unrestricted action without being subject to undue influence. The nomination of judges is a crucial component of judicial independence, which calls for judges to be free from any direct or indirect intervention or influences when dispensing justice. The ultimate objective of the judiciary's independence is to give judges the freedom to administer justice impartially and without fear or favour.

The Indian judiciary is seen as a very strong institution that has frequently forced inactive governments to carry out their obligation to serve the people. It has rendered numerous historic decisions, worked to safeguard and enlarge the scope of people's fundamental rights, and also made an effort to provide universally recognised human rights.

Although it may seem to many that India's higher courts are unaffected by the executive, some believe that post-retirement appointments are a potent incentive for executives at the union and state levels.

The impartiality, integrity, and independence of judges are directly impacted by the appointment process, hence there is a strong link between this freedom of judges and the appointment process. The "Judges- selecting- Judges" approach is likewise referred to as the "collegium system" in India, where judges are selected only by other judges. Instead of being established by a law passed by parliament or a clause in the constitution, the system for the appointment and transfer of judges has developed as a result of Supreme Court decisions. According to criticism levelled at the Central Government, the Supreme Court now functions as a "imperium

in imperio" (empire within an empire).

By creating a National Judicial Commission with a predominance of judicial members in 2002, the Government of India nevertheless made an unsuccessful attempt to put an end to the Collegium system of judicial appointment. The Lower House of the Parliament was presented with the Constitution (98th Amendment) Bill, which was intended to establish the Commission, but it finally expired.

A draught law to create two judicial commissions in India—one to handle the appointment of judges to the Supreme Court and another to handle the appointment of judges to the High Courts—is currently being prepared by the Union Law Ministry (as of May 2012).

The executive and judicial branches have the authority to resolve any unresolved issues and engage in productive discussion. A Fourth Judges' Case must be avoided at all costs, according to the executives, judges, and attorneys.

After all, the National Judicial Appointments Commission's establishment presented a real chance to develop a new transparent and democratic manner of appointing judges in accordance with modern constitutional design, but it was regrettably ruled unlawful. With this reform, the executive and judicial branches would have once again been equal in their ability to nominate judges in accordance with the law and the separation of powers. It is reasonable to anticipate that two judicial commissions will soon be established in India in order to prevent politically biased judges from being appointed to the country's superior courts or feeling beholden to the person who made the appointment.
