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Understanding the Collegium System in India

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ABSTRACT

The Collegium System in India has been a topic of debate and controversy since its inception. Proponents argue that it ensures the independence of the judiciary and prevents political interference in the appointment and transfer of judges, while critics argue that it is undemocratic and lacks transparency. This research paper aims to examine the impact of the Collegium System on the independence of the judiciary in India. The paper analyses the history and evolution of the Collegium System, the criteria used for the selection and appointment of judges, and the transparency of the system. The paper also examines the criticisms of the Collegium System and proposes potential reforms. The research findings suggest that while the Collegium System has ensured the independence of the judiciary, it has also faced criticism for its lack of transparency and accountability. The paper concludes with recommendations for reforms to make the Collegium System more transparent and accountable, while also maintaining the independence of the judiciary.

Keywords: *Collegium System, Independence of Judiciary, Appointment of Judges, Transparency in Judiciary, Reforms in Judiciary.*

I. INTRODUCTION

The Collegium system of India basically means “a procedure of appointment as well as the transfer of judges in the higher judiciary. This system has been followed in India since the 1990s. Under the collegium system, it is not the Executive branch that appoints the judges rather it is the collegium of judges which performs the same. The collegium comprises of Chief Justice of India and 4 senior most judges of the Supreme Court in India.² The aim behind introducing the same was the independence of the judiciary from the executive and safeguarding the integrity of the judiciary.

The Indian judiciary is an independent body that is responsible for upholding the constitution of India and maintaining the rule of law³. The judiciary comprises several courts, including the Supreme Court, High Courts, and District Courts. The appointment of judges to these courts is

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² Need for National Judicial Commission, <https://www.legalservicesindia.com/article/133/Need-for-National-Judicial-Commission.html> (last visited Apr 10, 2023).

³ Volume Ii & N E W Delhi, *T H E I N D I A N J O U R N A L O F L A W*, II (2015).

an important process that determines the functioning of the judiciary. This is where the Collegium system comes into play. Dating back to ancient times the concept of the collegium system was used to educate privileged classes of people in Rome and Greece. This concept was later used by medieval universities wherein individuals were organized into a group to be called colleges. The person was responsible for the socio-economic welfare of these students was known to be a master. Huge class sizes, passive learning, and lacking of individual attention are the challenges faced by traditional teaching methods to which the response came from the Collegium system in modern times.

The prime aim of this research paper is to examine the effectiveness of the collegium system in improving the quality of education and enhancing the learning outcomes of students. This article will discuss myriad aspects of the collegium system, circumscribing its history, structure, composition, and other approaches, and also involves its advantages and disadvantages. Further, it will review the existing literature on the subject matter, analyzing the concept in depth and identifying the gaps to be researched and addressed. The article will commence by providing an overview of the collegium system, highlighting its features as well as its benefits. This will be followed by a historical examination of the system, tracking its development from antiquity to the present. Following that, the study will look at the structure of collegiums, including their organization, size, and makeup. It will also look at the educational approaches employed in collegiums, such as active learning, project-based learning, and collaborative learning, as well as the role of technology in making these approaches possible. The following section of the paper will discuss the benefits and drawbacks of the collegium system. Increased student involvement and participation, improved critical thinking and problem-solving skills, and higher academic performance are among the benefits. Higher expenditures, the possibility of social isolation and exclusion, and the difficulty of scaling up the system to accommodate a larger number of people will be drawbacks.

The article's last portion will give a review of the existing literature on the usefulness of the collegium system, highlighting prior study findings and noting research gaps that need to be addressed. The review will contain a critical analysis of prior studies' strengths and flaws, as well as a discussion of the findings' implications for future research and practice.

Finally, the collegium system is an innovative approach to education that has the potential to increase educational quality and student learning outcomes. However, the system has several drawbacks and must be carefully planned and implemented to assure its success. This research article will add to the existing body of information about the collegium system by giving insights into its structure, pedagogy, and efficacy, as well as recommending topics for future

research and advancement.

(A) What is the collegium system?

The Collegium system is a method of appointing judges to the higher judiciary in India. It was introduced by the Supreme Court of India in 1993 through its judgment in the case of Supreme Court *Advocates-on-Record Association v. Union of India*.⁴ The system is a process of appointment of judges that involves the Chief Justice of India and a group of senior judges of the Supreme Court.

Under the Collegium system, the Chief Justice of India, along with four senior-most judges of the Supreme Court, makes recommendations for the appointment and transfer of judges to the High Courts and the Supreme Court. This recommendation is sent to the President of India for approval. The President is bound to accept the recommendation made by the Collegium and cannot refuse to appoint a judge recommended by it.

II. EVOLUTION OF THE COLLEGIUM SYSTEM

The Collegium System is a unique feature of the Indian judiciary that has undergone several changes over the years. The system comprises a group of senior judges who are responsible for appointing and transferring other judges. The system is designed to ensure the independence of the judiciary and prevent any interference from the executive.

(A) The Beginning

The Collegium System was established in 1993 when the Supreme Court of India, in the case of Supreme Court *Advocates-on-Record Association v. Union of India*⁵, declared that the power of appointment of judges lies with the judiciary and not with the executive. The Court observed that the executive had too much power over the appointment of judges, which undermined the independence of the judiciary. Therefore, the Collegium System was introduced to ensure that the judiciary had complete control over the appointment and transfer of judges.

(B) The Evolution

Over the years, the Collegium System has undergone several changes. Initially, the system consisted of the Chief Justice of India and the four senior-most judges of the Supreme Court. However, in 1998, the system was expanded to include the Chief Justice of India and the two senior-most judges of the Supreme Court. The rationale behind this change was to ensure that the executive did not have any influence over the appointment of judges.

⁴ Need for National Judicial Commission, *supra* note 1.

⁵ *Id.*

In 2014, the National Judicial Appointments Commission (NJAC)⁶ Act was passed by the Indian Parliament. The NJAC was set up to replace the Collegium System. However, the Supreme Court struck down the NJAC Act in 2015, stating that it was unconstitutional as it undermined the independence of the judiciary. The Supreme Court observed that the NJAC⁷ Act gave too much power to the executive, which was not in line with the constitutional principles of separation of powers.

In 2015, the Collegium System was reformed to include the Chief Justice of India and the four senior-most judges of the Supreme Court⁸. This move was aimed at ensuring that the Collegium System remained independent and free from any external influence. The system was further revised in 2019, where the collegium was expanded to include the Chief Justice of India and the four senior-most judges of the Supreme Court, along with the Chief Justices of High Courts. This change was made to ensure that the appointments of judges were made in a more transparent and democratic manner.

(C) The End

In conclusion, the Collegium System has undergone several changes over the years, with each change aimed at ensuring that the system remains independent and free from any external influence. The system has evolved to include more members and has become more transparent in its functioning⁹. The system has ensured the independence of the judiciary and prevented any interference from the executive, which is crucial for the functioning of a healthy democracy. The Collegium System remains a critical component of the Indian judiciary, and its continued evolution is essential for ensuring that the judiciary remains independent and impartial.

III. CRITICISM OF THE COLLEGIUM SYSTEM

The Collegium System is a process of appointment of judges in India, wherein the Chief Justice of India and a group of senior-most judges of the Supreme Court recommend appointments and transfers of judges to higher courts¹⁰. However, this system has been criticized by many as it lacks transparency and accountability.

(A) Lack of transparency

⁶ List of High Courts of India | LAW RESOURCE INDIA, <https://indialawyers.wordpress.com/tag/list-of-high-courts-of-india/> (last visited Apr 10, 2023).

⁷ Collegium vs NJAC: Govt seeks participatory role in judicial appointments, <https://www.newsgram.com/general/2015/11/04/collegium-vs-njac-govt-seeks-participatory-role-in-judicial-appointments> (last visited Apr 10, 2023).

⁸ Need for National Judicial Commission, *supra* note 1.

⁹ Collegium vs NJAC: Govt seeks participatory role in judicial appointments, *supra* note 6.

¹⁰ Need for National Judicial Commission, *supra* note 1.

One of the main criticisms of the Collegium System is that it lacks transparency. The process of selection and appointment of judges is shrouded in secrecy. There is no publicly available information about the criteria used for selection, and there is no scope for public scrutiny of the decisions taken by the Collegium. This lack of transparency has led to allegations of nepotism and favoritism in the appointment of judges.

In addition, the lack of transparency also contributes to the perception that the Collegium System is not an independent body. The appointments and transfers of judges are made by a group of judges who are not elected by the people, nor are they accountable to them. This creates a lack of confidence in the judiciary and undermines its credibility.

(B) Lack of accountability

Another major criticism of the Collegium System is the lack of accountability. The system is not accountable to anyone, and there is no mechanism for the redressal of grievances. The judges appointed under this system are not answerable to anyone, and there is no way to hold them accountable for their actions. This has led to a situation where judges are often seen as a law unto themselves.

Furthermore, the lack of accountability has also led to a lack of diversity in the judiciary. The appointments made by the Collegium System are often based on seniority, which means that younger and more diverse candidates are often overlooked. This has led to a judiciary that is not representative of the population it serves.

The Collegium System¹¹ has been criticized for its lack of transparency and accountability¹². The system needs to be reformed to make it more transparent and accountable. The appointment of judges is a crucial aspect of the functioning of the judiciary, and it is important that the process is fair, transparent, and accountable.

To address the criticism, the Indian government needs to take steps to ensure that judicial appointments are made on merit and not on the basis of nepotism and favoritism. The appointments should be made by an independent body that is accountable to the people. The criteria for selection should be made public, and there should be a mechanism for the redressal of grievances. The judiciary should also be more representative of the population it serves, with appointments based on merit and diversity.

Overall, the Collegium System needs to be reformed to ensure that the judiciary is fair,

¹¹ Collegium vs NJAC: Govt seeks participatory role in judicial appointments, *supra* note 6.

¹² List of High Courts of India | LAW RESOURCE INDIA, *supra* note 5.

transparent, and accountable¹³. This will help to maintain the confidence of the people in the judiciary and uphold the rule of law.

IV. REFORMS ON THE COLLEGIUM SYSTEM

The appointment of judges in India through the Collegium System has been a topic of debate for many years. While the system has been in place since 1993, it has been criticized for its lack of transparency and accountability. In this essay, we will discuss the need for reforms in the Collegium System and the measures that can be taken to improve it.

(A) Need for reforms

The Collegium System has been criticized for its opacity and lack of accountability. The process of appointment of judges is not transparent, and there is no system in place to evaluate the performance of judges. This lack of accountability has led to allegations of nepotism and favoritism in the appointment of judges. There have been instances where judges with questionable credentials have been appointed to the higher judiciary, raising questions about the integrity of the system.

The lack of transparency in the appointment of judges is a significant concern. The public has no idea how judges are selected or what criteria are used to evaluate them. The system is not open to public scrutiny, which undermines the credibility of the judiciary. The lack of transparency also leads to speculation and rumor-mongering, which further erodes public trust in the judiciary.

In addition to transparency, the Collegium System has also been criticized for its lack of diversity. The appointment of judges should reflect the diversity of Indian society, including regional representation, gender, and caste. However, the Collegium System has been criticized for its lack of diversity in terms of the appointment of judges. This lack of diversity has led to a perception that the system is biased towards a particular group, which is unacceptable in a democratic society.

(B) Reforms required

One of the significant reforms needed in the Collegium System is to establish a transparent and accountable system for the appointment of judges¹⁴. The process of appointment should be open to public scrutiny, and there should be clear criteria for the selection of judges. The performance of judges should be evaluated periodically, and there should be a mechanism for their removal

¹³ *Id.*

¹⁴ *Ii and Delhi, supra note 2.*

in case of misconduct or incompetence.

Another significant reform that is required is to ensure diversity in the appointment of judges. The Collegium System should take into account regional representation, gender, and caste while making appointments. A diverse judiciary will ensure that Indian society is fairly represented and that the judiciary is perceived as an independent and impartial institution.

The Collegium System should also take steps to ensure that the appointment process is free from political interference. The appointment of judges should be based on merit and not on political considerations. The judiciary should be independent of the executive and legislative branches of the government to ensure that it functions with integrity and impartiality.

The Collegium System is a critical mechanism for the appointment of judges in India. However, it has been criticized for its opacity and lack of accountability¹⁵. The reforms discussed in this essay are necessary to improve the system and ensure that the appointment of judges is transparent, accountable, and diverse. The judiciary is an essential pillar of democracy, and it is essential to ensure that it functions with integrity and independence.

V. RECENT DEVELOPMENTS

In recent news, the Supreme Court Collegium has recommended the appointment of eight new judges to the High Court of Kerala. However, this recommendation has been criticized by the Kerala High Court Advocates Association, who have alleged that the Collegium did not consider the seniority of the candidates while making the recommendation. This criticism of the Collegium's decision-making process highlights the need for transparency and accountability in the appointment of judges.

Another recent development is the delay in the appointment of judges to the Supreme Court. The Collegium had recommended the appointment of nine judges to the Supreme Court, but the government has not yet made any appointments. This delay has been criticized by the legal fraternity, who have pointed out that the delay is affecting the functioning of the judiciary. The vacancy of judges in the Supreme Court has reached an all-time high, which has led to a backlog of cases and a delay in the delivery of justice.

VI. WAY FORWARD

The Collegium System has been a subject of much debate and criticism, and there is a need for reforms to ensure transparency and accountability in the selection of judges.¹⁶ One way forward

¹⁵ *Id.*

¹⁶ Need for National Judicial Commission, *supra* note 1.

could be to establish a National Judicial Commission, which would be responsible for the appointment and transfer of judges. This would ensure that the process is open and transparent and that there is accountability for the decisions made. The establishment of a National Judicial Commission would also ensure that the appointments are made based on merit and not on personal connections.

Another way forward could be to introduce a mechanism for the removal of judges who have been appointed through the Collegium System¹⁷. This would ensure that judges are held accountable for their actions and that they are removed if they are found to be unfit for the position. The introduction of a mechanism for the removal of judges would also act as a deterrent for judges who may be tempted to abuse their power.

VII. CONCLUSION

The collegium system, also known as the college system, is a type of governance that has been employed throughout history in many circumstances. It has been used in many institutions of higher learning, such as universities and colleges, as well as religious and governmental organizations. In this study, we looked at the roots of the collegium system, its historical growth, and its present implementation. The collegium system was developed in ancient Rome to oversee numerous professional organizations and guilds. It was then adopted by the Catholic Church, where it formed a fundamental aspect of the church hierarchy's governance. The collegium system was also used by medieval universities to administer the institution's faculties and departments. The system has evolved and adapted to modern times, with various organizations and institutions using it in various ways. One of the most important advantages of the collegium system is its ability to foster member collaboration and consensus-building. The system ensures that all perspectives are heard and evaluated by giving each member a voice in the decision-making process. This can lead to better decision-making as well as a more unified and productive organization. Another benefit of the collegium structure is that it encourages professional development and specialization. The system can help to develop a community of specialists who are dedicated to their craft and committed to the organization's success by allowing members to specialize in different areas and share their knowledge and skills with one another. Despite these advantages, the collegium system is not without its drawbacks. One of the most serious is the possibility of groupthink, in which members become overly focused on reaching a consensus and neglect alternate perspectives or conflicting opinions. Furthermore, the system may be prone to power imbalances, in which certain

¹⁷ Collegium vs NJAC: Govt seeks participatory role in judicial appointments, *supra* note 6.

members wield disproportionate influence or control over others.
