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COLLEGIUM AND JUDICIAL APPOINTMENT COMMISSION: A COMPARATIVE STUDY

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Collegium: A 'Non-Constitutional' Entity

Collegium: A 'Non-Constitutional' Entity: The term collegium is not explicitly used in the Indian Constitution. It has been enacted in accordance with the judicial ruling. The assembly of the highest-ranking Judges of the Supreme Court and the Chief Justice of India responsible for the nomination of Judges is paradoxically referred to as the collegium.[3] The foundation of the system may be traced to the recommendations of the Bar Council. On October 17, 1981, during a national conference for lawyers in Ahmedabad, Gujarat, it was proposed that a collegium system be established for the appointment of Supreme Court judges by designated authorities.[4]

1. The Chief Justice of India.
2. Five senior justices of the Supreme Court.
3. Two individuals who would represent the BCI and the Bar of the Supreme Court.

Subsequently, J. Bhagvati in S.P. Gupta v. UOI[5] on December 30, 1981, emphasized the imperative of the collegium system for the appointment of judges. Expounding on the definition of the term consultation, Bhagwati J affirmed the perspectives of Krishna Iyer J. It was articulated in Union of India v SankalchandHimmatlalSheth that 'We concur with the opinion of Krishna Iyer, J.' It was stated in the SankalchandSheth Case that consultation differs from consent. They may engage in discussion yet disagree; they may confer but not reach consensus. However, Bhagwati J in SP Gupta explicitly expressed his dissatisfaction

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[3]The Constitution of India, Bare Act, 2021 publication. Universal, New Delhi.
[4]AIR 1982 Supreme Court.
[5]AIR 1982 Supreme Court.

with the current system of judicial appointments. In this system, the authority to appoint judges is solely assigned to one individual (the President). The selection 'may or may not be accurate or sufficient' and 'it may frequently be flawed and disrupted by external or irrational individuals.'[6]

According to existing legislation, it is the executive's authority to request the collegium to reevaluate nominations, aligning with the overarching notion of checks and balances. However, rejecting the nomination of a respected attorney without providing any formal commentary undermines both this principle and the counter-majoritarian function of the judiciary. According to Subramaniam, the administration appears to indicate its readiness to undermine judicial independence and aims to regain authority over appointments. Subramaniam expressed in a letter to Chief Justice RM Lodha of the Supreme Court, "Recent events have instilled profound doubts regarding the Executive Government's capacity to recognize and uphold the independence, integrity, and dignity of the judiciary. I do not anticipate any improvement in this disposition over time."[7]

Conflicting Opinions of Democratic Pillars

Conflicting Perspectives on Democratic Principles: The government's response to court decisions that contradicted its stated objectives was consistently the Constitution. Parliament perceived its modifying authority as applicable to the plenary, thus believing it could limit the court's powers of judicial review. Initially, the Supreme Court concurred. However, by 1967, a few years subsequent to Nehru's demise, the court's perspective had shifted. Amidst a diminished central government, the court made its most consequential move to assert authority over the Constitution.

In Golak Nath v. State of Punjab[8], the court determined that Parliament could not modify the Constitution in a way that violated an individual's fundamental rights. Numerous disputes subsequently emerged between the executive and the court. In 1971, after a division within the Congress party, Indira Gandhi's faction secured a substantial majority in Parliament, propelled by her renowned "garibihatao" campaign. Gandhi pledged to eliminate legal impediments to social transformation. Consequently, upon taking office, the

[6]AIR 1982 Supreme Court.
[7]Indianexpress.com updated on September 16, 2020. Last accessed on March 26, 2025.
[8]AIR 1967 Supreme Court.

administration promptly enacted multiple constitutional revisions, each designed to reestablish Parliament's preeminence over the Constitution. However, the court once more obstructed the government's initiatives. In a pivotal ruling in Kesavanand Bharati v. State of Kerala[9], an extraordinary 13-judge bench overturned the court's verdict in Golak Nath. However, it importantly ruled, by a seven-to-six majority, that Parliament does not possess the authority to alter the fundamental framework of the Constitution.

Suppression of Judges and Emergency

Judicial Suppression and Emergency: The government promptly retaliated. On 25 April 1973, the day following the announcement of the Kesavanand decision, the union government declared J. A.N. Ray, ranked fourth in seniority in the Supreme Court, is the future Chief Justice of India. Until the appointment of J. A.N. RayA trend emerged to designate the most senior judge as Chief Justice. Chandrachud emphasizes that each individual that Ray replaced had ruled against the administration in significant cases, including Kesavanand. The prominent politician Mohan Kumara Mangalam asserted that the government is obligated to evaluate a judge's philosophy and perspective when determining their suitability to preside over the Supreme Court. This is reasonable to a certain extent; but, the practice of elevation by seniority was established to guarantee judicial independence. A politically driven deviation from this practice would incentivize judges aspiring to the position of chief justice to conform their perspectives to those of the government.

Any uncertainties regarding the government's intentions were promptly alleviated by the Emergency imposed by Gandhi in 1975. In accordance with a new preventive detention law, the Maintenance of Internal Security Act, around 673 individuals—predominantly political adversaries of the government—were arbitrarily apprehended. Numerous detention orders were contested, resulting in several High Courts ruling in favor of the detainees. The government's response was dual: it reassigned judges who rejected the orders to different High Courts without their approval, and it challenged the High Court's rulings to the Supreme Court.

Khanna was to confront not only the government's ire. The executive aimed to

[9]AIR 1973 Supreme Court.

reassign up to 16 judges from different High Courts, all of whom had issued rulings unfavorable to the government during the Emergency. Justice S.H. Sheth contested his transfer in the Gujarat High Court. According to Chandrachud, Sheth's case,[10] ultimately adjudicated by the Supreme Court, signifies the "initial conflict between the executive and the judiciary regarding the authority to dictate the Court's composition."

The Supreme Court determined that the executive was not obligated to adhere to the chief justice's position when ordering a transfer; the government was merely compelled to contact him. The consultation process, as articulated by Justice VR Krishna Iyer, must be "genuine, important, and influential," relying on comprehensive and accurate information provided by the Government to the Supreme Court. Additionally, should the government disregard the chief justice's opinion, the decision would be susceptible to invalidation; courts would retain the authority to scrutinize such transfers, which would be presumed to have been swayed by extraneous factors.

Establishment of Collegium through Judicial Pronouncement

The Collegium for the nomination of judges should be constituted through a modification to Article 124(2), as articulated by J. Bhagwati.217(1). The composition of the collegiums, as articulated by Justice Bhagwati in the First Judges' Case (S.P. Gupta v. UOI, 1981, commonly referred to as the judges transfer case), which emphasized the necessity for a broader membership and extensive consultation, was entirely disregarded; the Collegium's membership remained narrowly confined to judges of superior courts. However, in 1993, the Supreme Court, in the Second Judges' Case[11], and subsequently in 1998, through its ambiguous stance in the Third Judges' Case[12], successfully established the collegium of judges.

First Judges' case (1981)

These safeguards should have been applicable to the appointment process as well. The court's rationale in the Sheth case reflected the intentions of the Constitution's framers by maintaining a balance between the executive and the judiciary. However, in the SP Gupta case (1981), disregarding its prior judgment, it was determined that the President is not

[10]1977, 4 SCC 193.
[11]Supreme Court in Record Association v. Union of India, AIR 1993 SC.
[12]Regarding Special Reference No. 1 of 1998, (1998) 7 SCC 739.

obligated by the counsel of the Chief Justice of India indicates that the negotiation does not constitute an agreement. As a result, the protections established in Sheth's case, which included judicial oversight of transfers and appointments, were disregarded. Legal scholar H.M. Seervai asserted that the judiciary was now vulnerable to governmental influence. During the subsequent decade, particularly under Rajiv Gandhi's prime, High Court nominations frequently occurred without the Chief Justice of India's consent.

The second Judges' case: (1993)

In 1993, amidst a proposal to establish a National Judicial Commission for the appointment of judges, the Supreme Court reevaluated its ruling from the First Judges case. As noted by Chandrachud, the judiciary was experiencing a significant crisis of credibility. One of its justices, Justice V. Ramaswami, had narrowly evaded impeachment in Parliament, despite an inquiry committee finding him culpable of 11 counts of corruption; the Congress party had instructed its members to abstain from voting against the implicated justice.

Rather than reinstating the balanced approach proposed by Krishna Iyer in the Sheth case, the majority in SCAORA (Supreme Court Advocates on Record Association) v. UOI ("2nd Judges" case) completely altered the framework and instituted a new procedure for judicial appointments. The court determined that the opinion of the Chief Justice of India (CJI) should be paramount, with the CJI responsible for assessing the qualifications of candidates. Conversely, the CJI is obligated to reach a conclusion only after consulting with two senior judges of the Supreme Court. The insights of these judges are deemed crucial for evaluating the suitability of candidates. The CJI would then formulate thecollegium, accompanied by two judges, later enlarged the practice to incorporate a fifth member. Consequently, consultation has evolved into not merely concurrence but alignment with the judiciary's will.

In the Second Judges Case, J. S. Verma overturned the prevailing perspective from the First Judges Case, prioritizing the President in the appointment of judges to superior courts. Justice Verma asserted that the Chief Justice of India (CJI) must formulate his opinion during the consultative process by considering the insights of the two most senior judges of the Supreme Court. This approach would ensure that the CJI's opinion reflects a collective judgment rather than an individual viewpoint, derived from a distinguished group within the

judiciary. Furthermore, he argued that the CJI should take into account the perspectives of his Supreme Court colleagues who are familiar with the relevant High Court's affairs. The CJI may also seek the opinions of one or more senior judges from that High Court, whose insights are deemed significant for the selection of judges.

The President's function as the appointing authority is minimized. The term 'consultation' in Articles 124(2) and 217(1) of the Constitution is often interpreted as 'concurrence,' indicating that the Chief Justice of India, best positioned to evaluate candidates' qualifications, must concur for any higher judicial appointment, barring exceptional circumstances explained to the Chief Justice by the executive. In the absence of consensus, the Chief Justice's opinion, formed collectively with input from senior colleagues, prevails. Justice Verma proposed this procedure for appointing judges to superior courts in India, asserting it as the optimal method within the 'constitutional framework.'

Third Judges case (1998)

In the Third Judges Case, the Nine-Judge[13] Bench articulated the following considerations on the appointment of judges:

1. The Chief Justice of India's opinion, which holds precedence in the consultative process and embodies the judiciary's perspective, must be established through consultation with the collegium, comprising the Chief Justice and four senior judges of the Supreme Court. The judge designated to succeed the Chief Justice should also be included, provided he is not among the four most senior judges. Their opinions should be documented in writing.

2. The written opinion of the majority of senior High Court justices, who originate from jurisdictions where the proposed individuals are judges, must be solicited, unless they are members of the Bench.

3. The Chief Justice of India must convey the collegium's recommendation, together with the opinions of the majority of senior judges from the High Court, on the suggested individuals who serve as judges, to the President.

[13]Regarding Special Reference No. 1 of 1998, (1998) 7 SCC 739.

4. The opinions of individuals consulted by the Chief Justice of India, including non-Judges, should be documented in the memorandum and communicated to the Government of India.

5. The collegium system typically formulates its recommendations based on consensus; however, if there is a divergence of view, no appointment will occur if the Chief Justice of India dissents.

6. If two or more members of the collegium express opposition, the Chief Justice of India should refrain from advancing the recommendation.

7. If the recommended individual is not appointed, the materials and information provided by the Government of India should be presented to the collegium. Should the collegium be reconstituted, the recommendation should be reconsidered to determine whether it should be withdrawn or reaffirmed. An appointment must be made only if the recommendation is unanimously reaffirmed.

8. The Chief Justice of India may, at his discretion, inform the recommended individual of the grounds provided by the Government of India for his non-appointment and solicit a response, which, if sent, will be evaluated by the collegium prior to retracting or reaffirming the recommendations.

9. Merit should be the primary criteria, however seniority among High Court justices and seniority on a national scale should also be considered.

10. Compelling and valid justifications must be articulated to endorse an individual of exceptional talent, irrespective of age.

11. The absence of representation for the High Court Judge in the Supreme Court may imply a similarity or equivalence between the two entities.

12. The Judges who have been bypassed may be reconsidered unless there are compelling reasons recorded to preclude their appointment. Consequently, he articulated his view that the Collegium should comprise the Chief Justice of India and the four most senior Judges of the Supreme Court. This adjustment increased the number of Judges in the Collegium from two to four. Thus, Justice Verma recognized the need for

enhancement within the Collegium system but refrained from advocating for a complete overhaul of the mechanism. The prevailing political discontent with the current appointment system is evidenced by the fact that numerous political parties and factions advocate for the establishment of a National Judicial Appointment Commission to replace the Collegium.

Critics of Collegium

The Second Judges Case, ratified in 1998, has faced substantial criticism. J. Krishna Iyer subsequently noted that the collegium system lacks a mechanism to incorporate public input in the appointment process. There are no established regulations, no oversight, and a semblance of anarchy prevails. The inadequacies of this system in India were most apparent in 2009, when PD Dinakaran was appointed as a Supreme Court judge amidst corruption allegations. He mitigated the court's prolonged embarrassment by resigning from his position as Chief Justice of the Sikkim High Court.

Furthermore, to be appointed as a Judge in the Supreme Court, one must typically be the Chief Justice of a High Court. The collegium seldom deviates from this norm, primarily to ensure a specific form of diversity. This indicates a preference for geographical representation over other considerations such as caste, gender, and religion. At any given time, no more than two or three judges from the same High Court serve concurrently on the Supreme Court. Issues regarding an individual candidate's overall qualifications or the character and intellect of eligible jurists who do not fulfill the collegium's criteria remain unaddressed.

Informal factors appear to be disregarded. According to Chandrachud, this system has resulted in the court being “diverse only in the politically correct sense.”

The collegium system may indeed reflect the context of its era. As Chandrachud notes, the rulings in 1993 and 1998 that enabled the judiciary to assume appointment powers occurred not during the authoritarian regime of Indira Gandhi, but at a time when the stability of the central government was compromised by fragile coalitions. Paradoxically, however, the

Supreme Court's performance in safeguarding the rights of political and cultural minorities against the state has been unsatisfactory in several prominent cases over the past two decades. It is possible that the collegium's informal appointment criteria, coupled with insufficient public oversight, has undermined rather than enhanced the court's independence.

Merits of Collegium System of Appointment

1. The collegium system enhances confidentiality. Ruma Pal, a former Judge of the Supreme Court of India, asserted that this system is one of the nation's best-kept secrets.It remains concealed within the confines of the institution, which contributes to the system's opacity and hinders its effective functioning.

2. The collegium system ensures the judiciary's independence from political interference, delineating it from the executive and legislative branches.The judiciary can operate without fear or favoritism in the absence of governmental involvement, so upholding the notion of separation of powers.

3. Numerous instances exist where Supreme Court judges were reassigned due to political pressures. Consequently, granting the executive branch the authority to transfer judges would undermine judicial independence and impede the effective operation of the judiciary. The collegium system would be optimal for ensuring impartiality, as it safeguards independence and enables judges to fulfill their responsibilities without fear of interference or influence.

4. The administrative body lacks specialization and understanding concerning the qualifications of judges compared to the Chief Justice of India. The collegium system guarantees that qualified individuals occupy judicial positions in the Supreme Court.

Demerit of Collegium system of appointment

1. This system lacks guidelines for selecting candidates for the Supreme Court Judge position, resulting in extensive nepotism and unwarranted favoritism. Consequently, deserving candidates are excluded from appointment as judges.
2. The Collegium system lacks standards for evaluating judicial applicants, fails to conduct background investigations, and is not accountable to any administrative

authority, perhaps resulting in the selection of unsuitable candidates while disregarding qualified individuals.

3. Numerous cases are currently pending before the Court, and the restricted timeframe for appointments may impose an additional stress on the Judiciary.
4. The notion of checks and balances is compromised in this system. In India, three branches operate with relative independence while maintaining oversight and control over the excessive powers of any single branch. The Judiciary is reliant on the executive appoints Judges in collaboration with the Chief Justice of India and the senior-most Judges of the Supreme Court; nonetheless, this structure grants substantial authority to the Judiciary in the nomination process, thereby undermining checks on excessive power and facilitating potential misuse.
5. This arrangement results in a lack of openness within the legal system.

National Judicial Appointment Commission

M.C. Setalvad, former Attorney General and Chairman of the Law Commission in 1956, analyzed the trend and proposed that the appointment of the Chief Justice of India should not rely solely on seniority; rather, the individual's judicial experience, administrative competence, and merit should be the fundamental qualifications.

Until 1973, there was a pattern of appointing the most senior judge as Chief Justice of India, which has effectively evolved into a tradition adhered to by the Executive without exception.

Nonetheless, this 22-year precedent was disrupted mere hours after the announcement of the Keshavanand Bharti v. State of Kerala (Fundamental Rights) decision in 1973. Mr. J. Ajeet Nath Ray, ranked fourth in seniority at the Supreme Court, was appointed as Chief Justice of India, superseding the three senior judges: Shelat, Hegde, and Grover. Within eight hours of Mr. A.N. Ray's inauguration as Chief Justice, the three judges—Shelat, Hegde, and Grover—resigned from the Supreme Court.

The Government's action was vehemently condemned by the Bar Association of the Supreme Court, Bar Associations across India, and the legal community. According to a resolution, the Government's action is a blatant and outrageous attempt that undermines the freedom and transparency of the judiciary, thereby diminishing the status of the Supreme

Court. Nevertheless, the Government of India defended this action by presenting several arguments: (1) The President of India possesses unfettered authority to appoint any eligible individual as Chief Justice of India (CJI). While this power is acknowledged, the President has historically refrained from exercising discretion, opting instead to appoint the senior-most judge as CJI, a practice that has evolved into convention. (2) Furthermore, the Government contended that its decision to appoint the CJI and bypass the senior-most judge was based on a report from the Law Commission.Thirdly, it was contended that the executive was authorized to evaluate the mental disposition or social philosophy of the judges.

Law Commission Reports and their role

The Law Commission Report is purported to have been released circa 1956, although no subsequent action has been taken.For approximately 17 years, the government's position has been rendered nonviable due to the report issued by the Law Commission long ago. Furthermore, had the government adhered to the Commission's recommendations, senior judges of the Supreme Court would not have resigned. The Law Commission Report elucidates the professional standing of the Supreme Court of India. He stated, "The role of the Chief Justice of India necessitates not only a judge with expertise and experience but also one endowed with sound judgment capable of addressing the intricate issues that periodically arise, and above all, individuals who cultivate independence and can manage the autonomy of the judicial character that has emerged."

The Law Commission advocated the establishment of the National Judicial Commission (NJC). Nevertheless, the Law Commission did not complete its significant job. The Law Commission specified that the structure and operation of the National Judicial Service Commission (NJSC) should be meticulously designed and executed. A proposed tentative magnum opus for NJSC has been submitted by the Law Commission, comprising: the Chief Justice of India (Chairman); the three most senior judges of the Supreme Court; the outgoing Chief Justice of India; three Chief Justices in order of seniority; the Minister of Law and Justice, Government of India; the Attorney General of India; and a distinguished law academician.

The Law Commission, in its 1987 report (No. 121), reiterated the necessity to curtail executive authority and avert intervention in judicial processes. This can only be

accomplished by the establishment of a Judicial Commission. Since then, millions of gallons of water have flowed, and the situation has changed tremendously as a result of the two Supreme Court cases. The Law Commission Report (121st) significantly influenced the 1993 Supreme Court ruling in the Advocates-On-Record case. The primary rationale for the study emerged from the two Supreme Court opinions in Advocate-on-Record Association v UOI and Re: Referral of the President (1998) as previously noted.

The aforementioned judgments have transferred the authority to designate judges of the higher judiciary to the collegium. Although not established as a constitutional provision, a judicial appointment commission was intended to ensure the independence of the court in practice. However, genuine liberation from political influences and other constraints, which depend on the personal traits of pickers and the lack of public oversight, has prompted a fresh examination of the issue.

The NCRWC (National Commission to Review the Working of the Constitution) in its 2002 report recommended the establishment of a National Judicial Commission to advise on the recruitment of judges to all superior courts, excluding the Chief Justice of India. It has articulated the opinion that the Vice President of India, the Chief Justice of India, two senior judges of the Supreme Court, and the Law Minister of the Central Government should form the Judicial Commission. The Chief Justice of a High Court will also serve as a Member of the Commission when deliberating the nomination of a judge to that High Court. Therefore, if the Law Commission directed the appointment of the Chief Justice of India based on merit rather than seniority, it implied that the government's selection process should prioritize quality. The supersession of three judges occurred because they ruled against the Government, rather than due to a deficiency in their qualifications or experience. The Law Commission further proposed that a custom be established for the nomination of judges. In the present situation, no new convention was established prior to the appointments being made. The functioning of government in a democracy relies on the party system; hence, judges must embrace the social philosophy of the ruling party.[14]

While it is accurate that a Judge's social philosophy significantly influences case decisions, the pertinent question is: what type of social philosophy should a Judge endorse?

[14]K. Subba Rao, "The Suppression of Judges." The Price of Executive Interference Souvenir, p. 43, published by the Bar Council of Uttar Pradesh. 2011

The response pertains to the philosophy of the Constitution rather than that of the ruling party. The preamble of the constitution encapsulates the social ideology. The Constitution is the supreme law of the land. It is intended for future generations. A party that establishes a government remains in power for a fixed duration. The ruling party may not necessarily adhere to constitutional ideologies. Consequently, the judge's duty is to uphold the principles of the Constitution rather than those of the Government.

The desire for the National Judicial Appointment Commission stems from a lack of confidence in the recommendation, or more accurately, the consultation process. The judiciary contends that those recommended by the government, whether through a commission or other means, or those appointed to judicial positions under executive authority, may not be reliable due to potential incompetence. Vice opposite Executive contends that judges nominated by their peers through the collegium system are deliberately interfering with the implementation of changes initiated by the Government. Each political party secures electoral victory based on a certain manifesto, and subsequent to winning the election, they endeavor to actualize their manifesto by amending existing laws or enacting new legislation. Due to this change implemented by the Government, the aggrieved individual seeks recourse in a court of law, since they are to be treated unjustly. The Judiciary plays a crucial role in scrutinizing the government's wrongful actions. That incites the Government. This occurred under Indira Gandhi's administration in the Judges' suppression case.[15]

Judges favouring Judicial Appointment Commission

Judges supporting the Judicial Appointment Commission: It is evident that some judges within the judiciary contend that the appointment of judges is an executive function and should involve minimal interference. Conversely, there are judges who assert that the appointment process and the appointing authority should be centralized within the judiciary. Some judges believe that a National Judicial Appointment Commission is necessary. NJAC serves as a platform for both governmental entities to articulate their recommendations.

MarkandeyKatju proposed the establishment of a National Judicial Appointment

[15]J. MarkandeyKatju, "Whither Indian Judiciary," p. 72, Publication. Bloomsbury, New Delhi. (2018).

Commission before the Supreme Court's ruling that invalidated the NJAC Act. His proposal to replace the Collegium with the National Judicial Appointment Commission by recommending:

Ten years following the implementation of the Collegium system in 2003, the National Democratic Alliance Government sought to supplant the Collegium with a National Judicial Commission, comprising three ex-officio judicial members and two executive appointees, by introducing the Constitution (Ninety-Eighth Amendment) Bill in the Lok Sabha, the lower house of Parliament. The Bill, which was under consideration by a Standingcommittee has lapsed due to the dissolution of the Lok Sabha. In its 2007 Report, the Parliamentary Standing Committee on Law and Justice asserted that following the 1993 ruling in the Second Judges' Case, the executive's role in judicial appointments has been nearly eradicated. Consequently, it recommended that both the executive and judiciary participate in the appointment process, with the executive holding precedence.

The empowered committee and the National Judicial Council could make the ultimate recommendation instead of the Collegium. The Government endorsed the proposal to abolish the Collegium of justices. To enhance transparency and the executive's role in appointing judges to the Supreme Court and the twenty-one High Courts, the Union Law Ministry has drafted a constitutional amendment bill to replace the current Collegium system with a two-tier National Judicial Commission (NJC) system—one for appointing Supreme Court judges and another for High Court judges.

In July 2012, the Law Ministry amended the Bill to substitute the proposed two-tier National Judicial Commission system with a single-tier system. A new provision has been added to the Bill mandating the attendance of the pertinent Chief Minister at the Commission meeting if their advice is deemed essential for the nomination of High Court judges. This clause was intended to eliminate the time-consuming process of soliciting the Chief Minister's advice for the appointment of judges in the High Court. Despite the government's extensive writing and redrafting of the Bill over nearly two years, it lacks the necessary parliamentary majority to pass the Bill without the backing of the opposition party, the BJP, which has subsequently shown its unwillingness to support it.

The Central Government. has condemned the collegium system, asserting that it has established a 'imperium in imperia,' signifying an empire within an empire, specifically within the Supreme Court. This has conferred substantial authority upon the Supreme Court, which may result in the abuse of power and thereafter undermine the regulation of the Judiciary.

National Judicial Appointment Commission Act, 2014

To enhance the transparency of the judiciary, the government. Introduced the 99th Amendment and the National Judicial Appointment Commission Act in 2014. Both the Amendment and the Act were contested at the Supreme Court. The Supreme Court deemed it null and unconstitutional.

The National Judicial Appointment Commission (NJAC) comprises a group of six individuals.

1. Chief Justice of India.
2. Two most senior judges of the Supreme Court.
3. Minister of Justice.
4. Two distinguished individuals.

Approximately sixteen state legislative assemblies have submitted the National Judicial Appointment Commission Bill and the Constitutional Amendment Bill. In December 2014, the President of India assented to the Bill. The Lower House and Upper House of Parliament subsequently passed The Constitutional Amendment Bill, 2014 (121st) on 13 and 14 August 2014. The Amendment Act had several notable features:

- Article 124A has been incorporated. It pertains to the establishment of the NJAC.
- The "collegium" system overseen by the Chief Justice of India has been abolished by the recent legislative change and constitutional amendment.
- Appointment of two distinguished individuals in the NJAC. Of the two, one must be a woman or belong to the SC/ST/OBC or minority community.
- The NJAC aims to eliminate the judiciary's dominance in the selection of judges.

A committee including the Chief Justice of India, the Prime Minister, and the Leader of the Opposition in the Lok Sabha will nominate two distinguished individuals for a term of three years, with no eligibility for reappointment. The members of NJAC has veto authority. If two members oppose a nomination or decision, the appointment is rescinded. However, the Act and Amendment were both deemed void and unlawful by the Supreme Court.

Incorporating distinguished individuals in the appointment of judges is essential, since it legitimizes the entire process. However, there are no established criteria for selecting distinguished individuals. It can mostly be confined to individuals who have achieved significant success in the legal profession. Regarding the legislature's aim, it seems that only individuals engaged in legal practice are eligible. He must guarantee that the procedures remain uninterrupted by appointing retired judges or senior attorneys.

The inclusion of distinguished individuals is essential to legitimize the entire appointment process, expand the scope of the legal profession, and assume a pivotal role in the appointment procedure. However, there are no established standards for picking this demographic. According to the law, the name must be submitted to the executive by the affirmation of five members, including the President. This indicates that any two members may reject a decision. Consequently, throughout this procedure, the selection of a member seems to be more significant than the selection of a judge. Competent individuals will attract other competent individuals.

Consequently, the crucial inquiry that requires resolution is: “How will the NJAC select the most qualified candidates?” To ensure the process is adequately robust, the function of each commission member will be essential. The allocation of a reserve for one distinguished individual from marginalized groups (based on caste and gender) could enhance variety and equilibrium among the upper courts. The government's inability to address the escalating crimes against women suggests that achieving gender parity in representation on the NJAC and the judiciary could be a significant advancement.[16]

The Presidential assent to the Constitution (121st Amendment) Bill has initiated the establishment of the National Judicial Appointments Commission (NJAC). The collegium system was regarded as operating in an obscure manner. The National Judicial Appointments

[16]P.N. Bhagwati, “My Trust with Justice,” published by Universal Law Publications (an imprint of Lexis Nexis), January 2015.

system aims to formalize the process for appointing judges to the Supreme Court and High Courts. Opinions have been polarized on the efficacy of the proposed "commission" in contrast to the prior "collegium" established by the judges themselves. Consequently, the unverified mechanism encounters ambiguous prospects.

The NJAC Bill and the Constitutional (121st Amendment) Bill delineate the framework and process. Nonetheless, it necessitates an innovative strategy for selecting the most competent and qualified judges. Justice Bhagwati articulated the necessity for judges to be cognizant of the socioeconomic realities of Indian life and to strive to alleviate suffering. Although the Honorable Supreme Court deemed the 99th Constitutional Amendment Act ultra vires, recent developments illustrate an ongoing struggle for supremacy between the executive and the judiciary, reminiscent of prior debates regarding fundamental rights and the directive principles of state policy. The Supreme Court has perceived the Amendment as an assault on

National Judicial Appointments Commission: A critique

The National Judicial Appointments Commission: A critique: An evaluation of the newly enacted law for judicial appointments contends that it will render the judiciary subordinate to the executive, thereby posing a fundamental threat to the Constitution and Indian democracy. The longstanding calls for judicial transparency, accountability, and representativeness have been overlooked in these new legislative measures. The petition submitted by the Supreme Court Association of Advocates-on-Record asserts that Parliament lacks the authority to alter the Constitution's basic structure, which it has done, and consequently, the government should be prohibited from forwarding the amendment bill to the states for ratification. The NJAC Bill is further contested on the basis that, at the time of its introduction, Articles 124 and 217 were fully operational, and no legislation can contravene the Constitution. Thus, the two bills are deemed ineffective and void ab initio.

The petition contesting the constitutional amendment asserts that the two bills obliterate the separation of powers and jeopardize the autonomy of the judiciary. In simpler terms, this implies that the executive can dictate the makeup of the judiciary, transforming it into an entity appointed by the executive. Considering that, within our system, laws enacted by the executive can be contested before the judiciary, it is crucial that judges remain independent of the executive in their appointments.

Unlike the Constitutional Reform Act of 2005 in the United Kingdom, the National Judicial Appointment Commission (NJAC) Act of 2014 in India lacks a comprehensive and established system. Although a Memorandum of system (MoP) was subsequently provided by the Supreme Court,and determined that the Government may incorporate such a method through an Amendment, which it has not yet undertaken.

The Supreme Court expressed its discontent regarding the Government's introduction of an Amendment to implement the NJAC Act, 2014, perceiving it as an infringement on its independence. In the case of National Judicial Appointments Commission v. Union of India (2015), the Supreme Court adjudicated on the constitutionality of the NJAC, a proposed constitutional entity designed to supplant the Collegium system. The Court deemed the NJAC unconstitutional, asserting that it contravened the principle of judicial independence and the fundamental structure of the Constitution of India. Furthermore, the Court determined that the NJAC Act was inconsistent with the principle of separation of powers, as it attempted to encroach upon the judicial prerogative concerning appointments and transfers. Consequently, the previous Collegium system was reinstated.

The Supreme Court determined that the appointment and transfer process of judges under the Collegium system must exhibit greater transparency, necessitating the public disclosure of the rationale behind judicial selections. In the case of Supreme Court Bar Association v. Union of India (2018), the court further asserted that the Collegium system should be subject to public scrutiny, and public opinion should be factored into the selection process.

Conclusion

The advancement of society largely depends on the appropriate application of law within it. Consequently, the administration of justice is a grave responsibility that must be executed with both integrity and moral clarity, free from external influences. The administration of law must inspire confidence in people for whom it is established or enacted. If the legal system does not instill faith in the general populace, the judge will be neglecting his obligation to dispense justice.

The judges confronted with several intricate issues are obligated to identify a resolution that is acceptable to society or, at the very least, to the majority of individuals. Judges are obligated to provide justifications for their decisions. Judicial institutions play a crucial role in resolving interest disputes and serve as a balancing force amid the conflicting pressures and influences within society.

The courts of law are derived from the Constitution. and serve as the means to realize the principles articulated therein. An independent and impartial judiciary are key components of a Federal Constitution. to uphold the supremacy of the Constitution. TheIndian judicial system is currently experiencing significant stress and is nearing a state of crisis. The escalating debts in H.C. and even in South Carolina. are generating significant anxiety for the Nation. The reputation of the Indian Judiciary is significantly compromised by an extraordinary backlog of cases. The primary explanation for the decrease in disposal rates in the Apex Court appears to be its focus on Constitutional and public interest litigation. Both the judiciary and the legal profession have significant responsibility for delays. Prof. Baxi advocates for a comprehensive overhaul of the system as a solution to the dilemma within the Indian legal framework.

No court, regardless of the number of judges, could resolve all matters emerging in a big nation like India, especially if litigants were permitted unfettered rights of appeal. Three out of five days in a week are predominantly consumed by the deliberation of special leave applications in the Supreme Court. The tide continues to rise. The problem appears to transcend self-regulation and necessitates legislative amendment to align Article 136 with Articles 132 and 133, so confining the Supreme Court's authority to matters of national legal significance alone. Our system accommodates several appeals, which inevitably prolong the final resolution of cases.

The authority to nominate judges is frequently condemned for its misuse. The process for appointing judges should consequently be reformed. The judicial appointment should not be concealed in secret as it currently is a debate exists over the precise meaning of Art. 124 (2). One perspective is that the discourse provided for some designated authority of the Supreme Court. and thePresident may deem some state H.C.s significant for design, although it is not mandatory. The executive has the discretion to consult the individuals specified or to forgo consultation entirely. The stipulated consultation is merely a formality and does not in

any manner restrict the authority of the President, who consistently acts on the counsel of the Council of Members. Another perspective is that the consultation stipulated in Article 124 (2) is obligatory, and the executive must give appropriate consideration to the recommendations given by the consulted parties.

There exists a viewpoint that the term “every judge” in Article 124 (2) encompasses the Chief Justice, hence obligating the President to consult the individuals specified in Article 124 (2) during the appointment of the Chief Justice. Regarding the configuration of the judges of the High Court. The President has concluded discussions with the Chief Justice of India, the State Governor, and the Chief Justice of the High Court. apprehensive. The Union Law and Home Ministers are not referenced under Article 217 of the Constitution. have assumed a crucial function in relation to information concerning an eligible candidate. It has been observed that the Chief Justice submits suggestions for judicial appointments to the Chief Minister, who, upon agreement, forwards them to the Governor. The final decision rests with the Chief Minister. This process distinctly introduces politics into the appointment of judges.

The Law Commission of India, in its 121st Report, has proposed the establishment of an eleven-member National Judicial Service Commission (NJSC). The definitive boundaries of presidential power in many situations remain unclear.

Concerns have arisen regarding the relocation of the Chief Justice and other judges of the High Courts beyond their respective home states. The term "consultation" has consistently been a point of disagreement between the executive and the courts; what does it signify? Does it signify the agreement of the highest court led by the Chief Justice of India? What is the essence of consultation? These are the key questions troubling the legal minds in the nation.

These inquiries were presented to the union judicial body on two separate occasions. Initially, in the matter of U.O.I. vs. Sankalchand Seth in 1977, and subsequently in the case of S.P. The case of Gupta vs. Union of India in 1982, sometimes referred to as the judges' transfer case, was handled by the Supreme Court. The term "consultation" does not signify "concurrence" of the Chief Justice of India; rather, it must be substantive and entail a dialogue after assessing the merits. However, in 1993, a nine-judge constitutional panel.

Supreme Court bench In a seminal ruling in the case of S.C. The Advocate-On-Record Association v. Union of India determined that the appointment and transfer of Supreme Court justices are subject to specific regulations. The Chief Justice of India (C.J.I.) should have the ultimate authority after consulting with colleagues, and seniority will be the exclusive basis for the nomination of the C.J.I.

While reversing its prior ruling in S.P. In Gupta's case, it was determined that the ultimate authority over the appointment and transfer of judges resides with the court.

The view of the Chief Justice of India should hold paramount importance in the selection of judges, while the executive serves as a counterbalance to the selection process conducted by the Chief Justice of India.

Justice Varma issued the majority opinion, stating, "Consequently, the executive component in the appointment process has been minimized, and political influence has been eradicated." The term "consultation" was employed in the Constitution rather than "concurrence." However, this was executed solely to demonstrate that absolute discretion was not conferred upon any individual, including the Chief Justice of India, let alone the executive.

The issue of appropriate remuneration for judges is also pertinent. The lifestyles of the Supreme Court judges. & H.C. Accustomed practices during their term cannot be sustained through their pensions. The apprehension of aging and financial stability post-retirement pervades their thoughts and is likely to negatively impact their creativity. In a society such as ours, which is predicated on monetary values, a certain prestige is associated with the wealth one possesses; nonetheless, it would be erroneous to assert that the S.C. & H.C. Judges would attain greater status solely if their remuneration is increased. The prestige of a judge is derived from their rank, stature, skill, and the quality of their rulings. Nonetheless, this does not imply that there is no justification for increasing judges' pay.

The Collegium system has been challenged on several grounds.

1. The Collegium system is founded on an interpretation of the Indian Constitution. The most challenging aspect to swallow is that the advice was seen as the conclusion, which

represents a highly ludicrous reading of the consultation procedure outlined in the Constitution, where the consultation itself has been framed as permission.

2. The Supreme Court. has established a tradition within the collegium system whereby the appointment of judges is conducted by the judges themselves. In contrast, the appointment process for judges in the higher judiciary of many countries, including Britain and America, is regarded as an administrative function executed by the executive branch. In Britain, judges are appointed by the Emperor based on recommendations from a 15-member judicial appointment commission. Three members of the judiciary and twelve additional members are external, while in the United States, judges are appointed by the president based on the recommendations of the appointments commission, which requires a resolution to be approved by a two-thirds majority in the Senate. If the resolution receives a majority vote in the Senate, the judges' appointments acquire statutory status.

3. This approach constitutes a blatant infringement of the fundamental principles of state policy as articulated in Article 50 of the Indian Constitution.

4. The Collegium system fosters corruption and nepotism, as evidenced by research indicating that 52% of judges in the upper judiciary are associated across generations.The second and third reasons are the absence of openness in their appointment, as the office of the Chief Justice of India is not subject to the provisions of the Right to Information Act.

Suggestions

The initiation and conclusion of judicial reform hinge on the nomination of appropriate judges, whether in the Supreme Court or the High Court. for the inferior judiciary. The appointment of judges is the primary and essential component of judicial reform.

The process for appointing higher judiciary in accordance with the Constitution has changed following three Supreme Court rulings, which must be examined for a comprehensive and nuanced understanding of the current situation and its impact on the selection and appointment of judges.

Today, we find ourselves at an impasse due to widespread discontent with the consultative system, which has become not only burdensome but exceedingly impractical. The Chief Justice of a High Court. A judge from outside the state, appointed by government policy, possesses little knowledge and information regarding the legal practitioners within the state. In numerous states, the highest-ranking judges within the collegiums originate from external jurisdictions, resulting in nominations being hindered due to insufficient information. It is important to acknowledge that there are two primary fields of inquiry. One aspect is the candidate's legal acumen to assess their fitness, while the other pertains to their antecedents. The Chief Justice of India and other judges of the Supreme Court. & H.C. can solely adjudicate legal mattersinsight. They lack competence compared to the predecessors of a rival, for which the Executive is the most qualified authority.

It is also argued that the collegium should now consist of four rather than two senior-most judges of the court in the formation of a High Court. Adjudicator. The South Carolina Judge, acquainted with the particular H.C. It is also advised, increasing the total to six. The increased number of consultants has resulted in a higher likelihood of delays in the discussion cycle and the scheduling of opportunities. All correspondence must be documented in hard copy, and the opinions of the consultants have to be communicated to the government.

There is no indication regarding the consequences of a lack of consensus among the consultants or if the majority opinion contradicts the C.J.I. S.P. Gupta's case has established that all correspondence among the various specialists involved is subject to public scrutiny, as the entire record has been summarized and disclosed in its entirety.

Execute the Law Commission's 214th Report about the 'Proposal for Reconsideration of I, II, and III Judges cases' as per its proposed two solutions:

1. Alleviate the administrative load associated with the appointment and transfer of judges without establishing a distinct secretariat or intelligence-gathering system for the collection and verification of the personal and professional backgrounds of potential appointees:

2. Restricting the collegium's selection criteria to the most senior judges from the High Court. seeking nominations to the Supreme Court, disregarding numerous capable subordinate judges and advocates.
3. The Collegium permits Executive involvement while preserving judicial supremacy. Via the Collegium. The judiciary has affirmed its position, resulting in the rejection of the NJAC, which is contrary to the collegium system. The NJAC system is entirely lawful and nullified by the Indian Judiciary.
4. To request a reassessment of the matter involving the three justices before the Supreme Court.
5. A statute to reestablish the supremacy of the Chief Justice of India and the authority of the government to execute appointments.
6. The Indian legal system has assimilated certain principles and norms from both the English and American judicial frameworks. The integration of these frameworks into the Indian system regarding the appointment of judges to the Supreme Court will be immensely beneficial to the public and the nation's future.
7. The judiciary will be vigilant regarding the abuse of power by the executive and the legislature through mechanisms of judicial review, embodying the principle of "Quiscustodietipsos custodes" (who guards the guardians).
8. The purpose of ensuring the separation of the executive and judicial can be achieved by safeguarding the integrity of an upcoming deputyis assessed by individuals occupying legal positions, specifically the Chief Justice of India, High Court judges, and other top adjudicators of the Supreme Court. Additionally, the H.C.s.
9. Certain fundamental rights require proactive state intervention for their realization; when the state fails to act, the judiciary must intervene to enforce such necessary state actions to ensure the effectiveness of these rights. It is therefore essential that the judiciary be completely free from executive influence and maintain robust independence. Freedom, evidently, is a trait that must emanate from within the heart.
10. The quality must be fundamental to the adjudicator's essence; yet, decisions should not be influenced by the leader's threats or flattery and must remain entirely independent and resolute.
11. The concentration of judicial appointments within existing courts is a significant power; in my view, particularly in Third World countries, entrusting this solely to the executive is likely to undermine judicial independence. It is evident that in the

majority of democratic societies, this authority is conferred upon the executive, as the leader is accountable for their actions to the populace through Parliament.

Moreover, it is pertinent to note that in many countries, particularly India, appointments of Chief Justices of High Courts are made on an acting basis, and they serve as acting judges for extended periods. This is a detrimental practice that undermines the autonomy of the judiciary, considering the actions of the current Chief Justice. would perpetually exist in a state of uncertainty, unsure if he should seek validation. Although the courts do not shirk their duty to provide access to justice for the multitude in this nation, it would be accurate to assert that achieving this objective would be challenging unless the mechanisms for the distribution of justice are reformed. Such change can be achieved in two ways: through alterations at the foundational level and through modifications at the operational level. Systemic changes challenge the framework's viability and need an exploration of alternate justice administration frameworks. It may need revising the Constitution or several statutes. Conversely, operational modifications require adherence to a framework and the identification of diverse methods to improve the efficacy of the legal system.[17]

The most significant part of judicial reform in India is the recognition that theoretical proposals offered over time have not resulted in any substantial change. The current imperative is to execute those concepts and explore enhancements. This perspective is gaining traction and will, in a few years, change the justice delivery system to enhance its efficiency, speed, and cost-effectiveness, thereby serving the Constitutional objectives.Reforms cannot yield immediate outcomes; therefore, additional time and considerable patience are required. Some initiated reforms have already elicited a favorable response, fostering optimism that the forthcoming years will witness a transformation in India's justice delivery system.

[17]Access to Justice and Judicial Reforms by Justice S.B. Sinha, published in the Journal of the National Judicial Academy, Bhopal, India, Volume. 1 2005