
JUDICIAL APPOINTMENTS IN INDIA: A DEEP DIVE INTO THE COLLEGIUM SYSTEM

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ABSTRACT

This paper examines the judicial appointment process in India, highlighting the evolution and functioning of the collegium system. Established through a series of Supreme Court judgments, this system involves the Chief Justice of India and senior judges recommending appointments to the President, aiming to ensure judicial independence from political influence. Despite its intent, the collegium system has faced criticism for its lack of transparency and potential nepotism, as it operates without formal constitutional backing or clear procedural guidelines. Attempts to replace it with the National Judicial Appointments Commission (NJAC) were deemed unconstitutional in 2015, reaffirming the collegium's primacy. Recent developments indicate ongoing tensions between the judiciary and executive regarding timely appointments, prompting calls for reform to enhance transparency and efficiency in the process and calls for reviving the National Judicial Appointments Commission (NJAC).

Keywords: Judicial Appointments, Collegium system, National Judicial Appointments Commission, Appointment process, Constitution of India

Introduction:

In India, judicial appointments are carried out by the President of India in consultation with Chief Justice of India along with other judges of Supreme court and High courts in the states. However, following the **Second Judges case**¹, 'Collegium system' was introduced for the appointment and transfer of judges in the higher judiciary.

This system was never a part of the Constitution or any act made by the parliament, but it evolved through the Supreme Court judgements. Though attempts have been made to replace the collegium system. Despite its efforts, it ultimately fell short.

India's Chief Justice Dhananjaya Y. Chandrachud has defended the collegium system, acknowledging its imperfections while emphasizing its crucial role in safeguarding judicial independence. He argues that the system, designed to protect the judiciary from external pressures, is the best mechanism currently available to uphold this fundamental value. The system's primary purpose is to ensure the judiciary remains free from undue influence and maintains its integrity.²

Historical Context:**Evolution of the Collegium System:**

The origin of the concept of the collegium system can be traced via Bar Council of India's recommendations suggesting of the collegium system for the appointment of Supreme Court Judges by the following authorities:

- 1- The Chief Justice of India
- 2- Five senior Judges of the Supreme Court
- 3- Two representatives would represent the Bar Council of India and the Supreme Court Bar Association

¹ Supreme Court Advocates-on-Record Association Vs Union of India AIR 1994 SC 268

² "Collegium system ensures independent judiciary: CJI", *Hindustan times*, March 19, 2023, available at < <https://www.hindustantimes.com/india-news/collegium-system-ensures-independent-judiciary-cji-101679164720871.html> > (last visited 6th December, 2024)

The recommendation of such collegium will be binding on the President, though he can ask for reconsideration on some specific grounds³.

And since then, the evolution of collegium system evolved through the series of judgements of the Supreme Court also known as the “Judges Cases”. The First Judges case also referred as *S.P. Gupta v Union of India*⁴ gave the executive an upper hand in appointing the judges. This created a conflict of interest, as the executive branch holds greater authority in both the appointment and removal of judges within the higher judiciary.⁵ However, Judge Bhagwati emphasized on the necessity of having a collegium system in India. He also expressed his dissatisfaction with the current system of judicial appointments in India, where the power to select the judges solely rests with the President. He noted that this system may lead to incorrect or inadequate choices, influenced by irrelevant or extraneous factors.⁶ He also proposed the establishment of a collegium system to advise the President on the appointment of judges to the Supreme Court and the High Court.⁷

Then came along the Second Judges Case⁸, 1993 where the judgement was delivered with 7:2 majority and rejecting the ruling of *S.P. Gupta* and stating that the utmost importance must be accorded to the recommendation of the CJI, which is made after duly considering the opinions of the two senior- most judges of the Supreme Court.⁹ Thus, reducing the political influence and favoritism.

³ Kanishk Mor, “India’s Collegium System: Exploring its history, functioning, benefits and drawbacks”, Vol. 4 Issue 1 of Indian Journal of Legal Review, p.1514 (2024)

⁴ AIR 1982 SC 149

⁵ Hemant Varshney, “Supreme Court Advocate-on- Record Association v. Union of India- Second Judges Case- Case summary” available at < <https://www.legalserviceindia.com/legal/article-3681-collegium-system-inindia.html> > (last visited 6th December, 2024)

⁶ Deepshika Garg, “Collegium system in India” available at < <https://www.legalserviceindia.com/legal/article-3681-collegium-system-inindia.html> > (last visited 6th December, 2024)

⁷ Justice P. N. Bhagwati in First Judge’s Case. In para 30 of the judgment Justice P. N. Bhagwati observed that the requirement of consultation under art. 124 (2) is not being exercised properly and the result is that the CJI alone is consulted in the matter of appointment of a Supreme Court Judge and largely as a result of a healthy practice followed through the years, the recommendation of the CJI is ordinarily accepted by the Central Government, the consequence being that in a highly important matter like the appointment of a Supreme Court Judge, it is the decision of the CJI which is ordinarily, for all practical purposes final...It is unwise to entrust power in any significant or sensitive area to a single individual, howsoever high or important may be the office which he is occupying. There must be, checks and controls in the exercise of every power, particularly when it is a power to make important and crucial appointments and it must be exercisable by plurality of hands rather than be vested in a single individual. For this very reason it is suggested that there must be a collegium to make recommendation to the President in regard to appointment of a Supreme Court or high court Judge, the recommending authority should be more broad based and there should be consultation with wider interests.

⁸ *Supra* note 1

⁹ *Supra* note 5

The Third Judges case¹⁰ ultimately clarified and elaborated on the composition and functioning of the collegium. For appointments to the Supreme Court, the Collegium would consist of the Chief Justice of India and the four most senior judges of the Supreme Court. In contrast, for the High Court, the Collegium would include the Chief Justice of India and the two most senior judges of that High Court.

The collegium system was widely praised for its exclusion of the political interference but with it came along the criticism as it established the monopoly of the judges over the executive. Therefore, an effort was made to substitute the Collegium system with the National Judicial Appointment Commission (NJAC), consisting of judges, executives, and other experts. The Constitution was amended through the 99th Amendment Act, 2014 which introduced the Article 124A, establishing the NJAC. The amendment also altered Articles 124 B and 124 C, outlining the functions of the Commission and Parliament's power to legislate on the judicial appointments and the transfers.¹¹

Lastly, in the Fourth Judges case¹² where the court upheld the primacy of collegium system and by 4:1 majority. It declared the 99th Amendment unconstitutional and null as it infringed upon the independence of the judiciary, which is a fundamental aspect of the Constitution, and consequently, the NJAC Act was deemed void and unconstitutional. However, in response to the wide spread criticism against the collegium system, the apex court has directed the Government to submit the Memorandum of Procedure (MoP) for consideration, aiming to implement necessary reforms for improved transparency and efficiency.¹³

Current Judicial Appointment Process:

The current judicial appointment process in India operates under the collegium system, where the selection and transfer of judges are made independently. This process is explained further below, starting with the composition of the collegium.

¹⁰ *In re Special Reference No. 1* (1998) 7 SCC 739

¹¹ "The Three Judges Case", available at < https://sociallawstoday.com/three-judges-case/#_ftnref5 > (last visited 6th December, 2024)

¹² *Supreme Court Advocates-on-Record-Association and another V. Union of India* (2016) 5 SCC 1

¹³ "Three Judges Cases- On Judicial Appointments" available at < <https://www.iasexpress.net/ie-pedia/three-judges-cases-1981-1993-1998-on-judicial-appointments/> > (last visited 5th December, 2024)

Composition of the Collegium:

The **Supreme Court** collegium consists of a CJI and four other senior most judges¹⁴, while the **High Court** collegium consists of Chief justice and four other senior most judges of that court.

Appointment Procedure:

The collegium system is a mechanism by which decisions regarding the appointments and transfers of judges in the Supreme Court and High Courts are made, rather than following Articles 124(2), 217(1), and 222(1) of the Constitution.¹⁵

In the process of appointing judges to the higher judiciary, the collegium recommends candidates who possess the necessary qualifications, integrity, and judicial temperament, which are then submitted to the Central Government.¹⁶ In turn, the government also proposes some names to the collegium.¹⁷ Subsequently, these names are forwarded to the Intelligence Bureau (IB) for background checks. Once the IB completes its investigations, it returns the report to the Central Government. In case the Central Government has any objections or seeks clarification regarding the choices made by the collegium, it can send back the report with specific reasons. However, if the collegium reiterates the same names, the Central Government is obligated to give its assent to the names. But time limit for this process is not fixed. However, in 2021, the Apex Court set a time frame of 18 weeks for the entire process, from recommendation of names to IB's reporting back and Government's final submission. The court also ruled that when the collegium reiterates the names unanimously, "such appointment should be processed, and appointment should be made within three to four weeks."¹⁸

Once the collegium submits a recommendation to the President, the President has the option to either accept the recommendation or return it to the collegium for reconsideration. Should the collegium reaffirm its recommendation for the same candidate, the President is bound by this

¹⁴ Till 1998 or before Second Judges Case the members of the collegium of the Supreme Court were two-senior most judges.

¹⁵ Kirti Bajaj, "Appointment of Higher Judiciary in India: Collegium or Commission" Vol. 6 of Indian Politics & Law Review Journal (IPLRJ), p. 192 (2021)

¹⁶ Names recommended for the appointment by a High Court collegium reaches the Government only after the approval by the Chief Justice of India and the Supreme Court collegium.

¹⁷ *Supra* note 15

¹⁸ "SC fixes timelines for appointment of judges, notes HCs are in crisis", *Deccan Herald*, 20th April, 2021 available at < <https://www.deccanherald.com/india/sc-fixes-timelines-for-appointment-of-judges-notes-hcs-are-in-crisis-976595.html> > (last visited 7th December, 2024)

recommendation. Consequently, although the President is required to undertake the formalities, the ultimate decision-making authority lies with the Collegium.¹⁹

Recent Developments:

On September 19th, 2024 the Jharkhand Government filed a contempt petition in Supreme Court against delay by the Union Government to act on a Supreme Court's collegium recommendation (made in July) to appoint HC chief justice of Himachal Pradesh Justice M S Ramachandra Rao as the Chief Justice of Jharkhand HC. The Apex Court while hearing the petition fixed the "time limit" for the Centre to notify the appointment of judges recommended by the collegium.

After which the appointments/transfers were announced on September 21st, 2024 of various judges including transfer/appointment of HC chief justice of Himachal Pradesh Justice M S Ramachandra Rao as the Chief Justice of Jharkhand HC.

On November 29th, 2024 it was confirmed in Lok Sabha by the Law Minister Arjun Ram Meghwal that five recommendations that were made by the Supreme Court Collegium to transfer High Court Judges have been pending with the Government for over six months.²⁰

National Judicial Appointments Commission (NJAC):

The 99th Amendment Act (herein referred as **the act**) was passed in the year 2014 which established National Judicial Appointments Commission (NJAC). The NJAC Act became effective from April 13, 2015.

The act inserted the article 124A in the Constitution which states that the NJAC consists of the CJI as the Chairman, two other senior judges of the Supreme Court as the members, the Union Minister in charge of the Law and Justice as a member and two eminent persons²¹

¹⁹ *Supra* note 15

²⁰ "5 Collegium proposals by SC on HC judges' transfer pending with govt for over 6 months, LS told", *The Indian Express*, 30th November, 2024 available at < <https://indianexpress.com/article/cities/delhi/5-collegium-proposals-by-sc-on-hc-judges-transfer-pending-with-govt-for-over-6-months-ls-told-9698062/> > (last visited 9th December, 2024)

²¹ INDIAN CONSTITUTION art. 3, amended by The Constitution (Ninety-ninth Amendment) Act, 2014. The two eminent persons to be nominated by the committee consisting of the Prime Minister, the Chief Justice of India and the Leader of Opposition in the House of the People (Lok Sabha).

The objective of establishing the judicial commission was to ensure that we have a democratic society who promotes fairness and justice.²²

The NJAC was an entity aimed at ensuring a more transparent process for appointing the Chief Justice, Supreme Court judges, and High Court judges compared to the existing collegium system, with a more active role for the executive and legislative branches. However, the NJAC faced legal challenges from the Supreme Court Advocates-on-Record Association and senior advocates, who filed writ petitions contesting the constitutionality of the Ninety-ninth Amendment and the NJAC Act.

The matter was heard by the three- judges constitutional bench for over a month and thus on October 16, 2015, a five- judges bench of Supreme Court with a 4:1 majority declared the 99th Constitutional Amendment Act and the NJAC Act 2014 “unconstitutional and void”²³

The verdict of the court cited that the amendment interferes with the independence of judiciary, which forms the basic structure of the constitution. The court was also unsatisfied with the composition of NJAC as the two eminent persons in the committee were the political appointees which invoke a serious threat to the independence of the judiciary. But the majority also agreed that there needs to be a change in the collegium system and hence asked for recommendations and suggestions to improve the existing collegium system.

Justice Chelameswar's dissenting opinion highlighted the concerns surrounding judicial supremacy and the excessive power held by the judiciary. It highlights the shortcomings in the system of checks and balances, emphasizing the failure of the existing mechanisms to effectively regulate and limit the power of the courts.²⁴

Criticism of the Judgement:

The apex court, in its attempt to safeguard the independence of the judiciary, has inadvertently created a significant legal controversy. The Court stated that the judiciary's independence is an essential part of the Constitution's basic structure. In his judgment, Justice Chelameswar stated

²² Priya Mishra, “Independence: Evaluating the NJAC vs. Collegium system in India” Vol. 8 Issue 6 of International Journal of Novel Research and Development (IJNRD), p. 181 (2023)

²³ *Supra* note 12

²⁴ Nikhil Srivastava, “Judicial Independence and Reformation of the Collegium System: Evaluating the NJAC Judgement and Foreign Judicial Appointment Systems” Vol. 5 Issue 4 of International Journal for Multidisciplinary Research (IJFMR) p. 3 (2023)

that the "basic features" of the Constitution are essential elements of its "basic structure," and that amending an article that represents a basic feature could potentially undermine the basic structure, though it may not necessarily do so. He argued that the violation of a basic feature does not necessarily equate to a violation of the basic structure doctrine.

Furthermore, there seems to be no case law or judicial ruling that explicitly asserts that judicial primacy is an inherent aspect of the Constitution's basic structure. While the SC, in the Third Judges case, validated that judicial independence is a fundamental aspect of the basic structure, the question of whether judicial primacy itself forms part of this structure remained unresolved.

The basic structure doctrine was formulated to prevent any substantial alterations to the core principles and values of the Constitution. However, it is challenging to logically uphold the argument that judicial primacy, a concept that emerged after the Second Judges case, forms a part of the Constitution's basic structure.²⁵

Further the discomfort of appointing two eminent persons from the politics could have been resolved with the constructive solutions rather than striking down the entire act. Also, when reviewing the constitutional amendments, the apex court does have its own three- staged procedure.²⁶ In this case the apex court did not follow the second stage. The main concern of composition would have been easily solved if the Chief Justice was given the veto in appointing the eminent persons.²⁷

Related Constitutional Provisions:

The framers of the constitution gave utmost importance on safeguarding the judicial independence. Methods for appointment of judges was debated in great detail in the constituent assembly. The "consultation" mentioned in the article was discussed majorly as majority of the members wanted this to be binding. However, Dr. BR Ambedkar was against granting unfettered supremacy to the judiciary and wanted the executive to be prime in appointment of judges and not to treat the consultation with the chief justice as an agreement or concurrence.

²⁵ *Ibid*

²⁶ Firstly, it examines whether the law as interpreted in the usual matter is valid or not. Secondly, if it is found to be invalid, then the court proceeds further where the court assesses whether the law can be interpreted in a way that aligns with the constitutional requirements. Finally, if the law cannot be interpreted to comply with the Constitution, it is then struck down.

²⁷ *Supra* note 22 at 182

However, the “Second Judges” case institutionalized the collegium system and thus the primacy of judiciary for judicial appointments over executive was done.²⁸

- 1- **Article 124(2)**²⁹ of the Indian Constitution provides that “the Judges of the Supreme Court are appointed by the President after **consultation** with such a number of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose.”
- 2- **Article 217**³⁰ of the Indian Constitution states that “the Judge of a High Court shall be appointed by the President consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court.”

Criticism of Collegium system:

1. Many jurists, judges and other dignitary members of the society have criticized the collegium system on the grounds of being opaque in its functioning and lacks the transparency.
2. The term ‘Collegium’ is not mentioned in the Constitution and has been developed by the judiciary itself for retaining the power to select judges by itself.
3. The absence of a structured procedure or qualification requirements for appointments, as well as the lack of a specified time limit for the appointment process, leads to significant delays and affects the delivery of justice and it thus contributes to backlogs in the legal systems.³¹
4. The collegium's discretionary power in selecting judges has raised concerns about nepotism, as it often leads to the preference of sons and nephews of previous judges or

²⁸ “Collegium: Ensuring judicial independence or perpetuating an accountable system” *available at* <<https://www.moneycontrol.com/news/opinion/collegium-ensuring-judicial-independence-or-perpetuating-an-unaccountable-system-12828331.html>> (September 24, 2024)

²⁹ The Constitution of India

³⁰ The Constitution of India

³¹ Anuj Prakash, “Collegium System and its Criticism” *available at* <<https://www.legalbites.in/topics/articles/collegium-system-and-its-criticism-897582>> (last visited 15th January, 2025)

senior lawyers, potentially excluding more qualified candidates.³²

5. It lacks diversity in terms of representation from different regions, communities and demographics as the collegium system is often perceived as an exclusive club of the judges.³³
6. This system has also strained the relationship between the Government and the judiciary.
7. The tradition of 'seniority' in appointments is being disregarded, allowing for subjective and biased decision-making.
8. The collegium operates independently of the executive branch, which lacks consultation in the appointment process. Critics argue that this undermines the principle of separation of powers and can create conflicts of interest between the judiciary and the government.³⁴

Views of political persons, eminent jurists and judges:

Ex union minister **Kiren Rijiju** in one of his interviews said that the “Collegium system is alien to the Constitution of India and anything which is alien to the constitution merely by the decision taken by the court or judges can never be backed by the people of the country.”³⁵

In 2011, former Supreme Court judge **Ruma Pal**, while delivering the 5th VM Tarkunde Memorial Lecture, raised a significant concern regarding the secretive nature of the judicial appointments process. She highlighted the possibility of erroneous appointments, nepotism, and political influence due to the confidential nature of the process involving only a few individuals.³⁶

Retired **Justice Kaul**, the second most senior judge of the Supreme Court, expressed his discontent with the collegium system for appointing judges. He emphasized the need for

³² “Collegium System and Appointments” available at <<https://vajiramandravi.com/quest-upsc-notes/collegium-system-and-appointments/>> (last visited 15th January, 2025)

³³ *Ibid*

³⁴ *Supra* note 31

³⁵ The Economic Times- YouTube, “Collegium system is alien to the Indian Constitution: Kiren Rijiju”, 2022 available at <<https://youtu.be/n6tYepwEv3s?si=YcHI0F2fmvFD5dmB>>

³⁶ *Supra* note 28

collaboration between the executive and the judiciary to establish a transparent mechanism for appointments, citing the lack of trust resulting from the dismissal of the NJAC in 2015.³⁷

Additionally, Justice Kaul addressed the issue of the "uncle judge syndrome," suggesting that appointments should be based solely on merit, rather than any familial connections. He advocated for a fair and unbiased selection process, focusing on the qualifications and capabilities of the candidates³⁸.

Judicial Appointment system in other countries:

In United Kingdom: The appointment of judicial officers is done by the Judicial Appointments Commission (JAC) consisting of 15 members³⁹ including a chairman who choose the persons to be appointed as judges for various courts and tribunals. The JAC is an autonomous entity created under the Constitutional Reform Act of 2005. Its main duty is to choose candidates for judicial positions in courts and tribunals in England and Wales, as well as for certain tribunals that have jurisdiction over Scotland or Northern Ireland.⁴⁰ The commission works autonomously and the working of judicial officers goes through checks and balances, which is done by a body of "Judicial Appointments Conduct and Ombudsman" and they also deal with the complaints which are lodged against appointments made by the JAC. The reason of creating JAC was to enhance judicial independence by removing the appointment power from the Lord Chancellor and making the process of appointment clearer and more accountable.

The similarities between the Indian Judicial appointment system and United Kingdom's are both consider the independence of judiciary as a cornerstone of democracy. The appointment in both the systems is done on merit basis. The procedure followed by JAC is based on five

³⁷Utkarsh Anand, "Collegium not the best system to pick judges... transparent dialogue needed: Justice SK Kaul", *Hindustan Times*, 26th December, 2023 available at < <https://www.hindustantimes.com/india-news/collegium-not-the-best-system-to-pick-judges-transparent-dialogue-needed-justice-sk-kaul-101703528264666.html> > (last visited on 9th December, 2024)

³⁸ *Ibid*

³⁹ "Three of whom are judges out of the 15 members and the remaining 12 are appointed through open competition. These members range from existing judicial officials, members of the legal profession, non-legally qualified judicial officers and the public. The commission aims to select people solely on merit, and the person is selected only if the selecting body is satisfied that the candidate is of good character."

⁴⁰"Judicial Appointments Commission" available at < <https://www.judiciary.uk/judicial-appointments-commission/> > (last visited 15th January, 2025)

qualities⁴¹:

- 1- Intellectual capacity
- 2- Personal qualities (integrity, independence, judgement, decisiveness, objectivity, ability, willingness to learn)
- 3- Ability to understand and deal fairly
- 4- Authority and communication skills
- 5- Efficiency

In India, appointments to the SC and HCs are made by the President based on recommendations from a collegium of senior judges, designed to insulate appointments from political pressures. The UK's JAC operates similarly, selecting candidates through a transparent process focused on merit and diversity, thus ensuring that appointments reflect societal demographics.⁴² One other similarity is that a Public Interest Litigation (PIL) can be filed to seek redress for the grievances affecting the public interest. In India, this concept of PIL allows any individual or any organization to approach the courts where public interest is at stake, even if they are not directly affected by the issue. A landmark ruling of such is Vishakha Case⁴³ where the court established the guidelines for preventing sexual harassment in workplace.

Now, if we talk about the point of divergence, India has a written Constitution that serves as the supreme law of the land whereas in the UK their constitution is unwritten and is based on the statutes, common law and conventions.⁴⁴ Other difference is that both the judicial systems engage in judicial review to some extent. In India, the Supreme Court can invalidate laws that contravene constitutional provisions, while in the UK, courts review executive actions for legality but cannot nullify primary legislation passed by Parliament. This reflects a shared

⁴¹ "National Judicial Appointment Commission: A Comparison with UK" available at < <https://lexinsider.com/national-judicial-appointment-commission-njac-comparison-with-uk/> > (last visited 13th January, 2025)

⁴² Available at < <https://testbook.com/question-answer/the-judicial-systems-in-india-and-uk-seem-to--673c6a958063f4cb7cb9670a> > (last visited 13th January, 2025)

⁴³ Vishakha v. State of Rajasthan (1997) 6 SCC 241

⁴⁴ Available at < <https://pwnonlyas.com/pyq/the-judicial-systems-in-india-and-the-uk-seem-to-be-converging-as-well-as-diverging-in-recent-times-highlight-the-key-points-of-convergence-and-divergence-between-the-two-nations-in-terms-of-their-ju/> > (last visited 12th January, 2025)

understanding of the judiciary's role in maintaining checks and balances within government.⁴⁵ Lastly, the appointment process structure is very different. In India, the appointment of judges to the Supreme Court and High Courts is conducted through a collegium system, where senior judges play a significant role in the selection process, and the recommendations are made to the President of India.⁴⁶

In United States of America: The President has the power to nominate judges to the federal court, which are then put forth by the members of the Senate.⁴⁷ Confirmation hearings are then done by the Senate for every prospective nominee.

Senate Judicial Committee provides for specific qualifications which are to be possessed by every prospective nominee, which will then be assessed by the standing committee of the American Bar Association.⁴⁸

Point of difference between India and USA: Is federal court judges in the US serve during good behavior, whereas in India, Supreme Court judges hold their positions until the age of 65, while High Court judges serve until the age of 62.

Another difference is that Judicial appointments in India are done by the collegium where the role of executive and legislature is very less while in the USA the executive and legislature are responsible for judicial appointments.⁴⁹

In Russia:

In Russia, there are two types of courts: the federal courts and the Court of the Objects of the Russian Federation. Similar to India, Russia has a collegium system responsible for selecting, appointing, and promoting judges, as well as handling matters related to the discipline of judges.

⁴⁵ Sargam Jain (Asst. Professor), "Judicial Review: A Comparative Analysis of India, USA and UK" Vol. 1 Issue 2 of International Journal of Law Management and Humanities (2018)

⁴⁶ Rubasha Perwee, Dr. Avishek Raj, "Comparative Analysis: Appointment of Judges of Superior Courts of India in Comparison with the US and UK" Vol. 31 of Penacclaims ISSN 2581-5504 (March 2024)

⁴⁷ Before a vote in the Senate, the nominees are evaluated by a committee of the American Bar Association and examined by the Senate Judiciary Committee.

⁴⁸ "Judicial Appointments in India and other countries" available at < <https://blog.ipleaders.in/judicial-appointments-in-india-and-other-countries/#Russia> > (last visited 7th December, 2024)

⁴⁹ "Judicial Appointments in India and other countries" available at < <https://blog.ipleaders.in/judicial-appointments-in-india-and-other-countries/#Russia> > (last visited 7th December, 2024)

The Collegium of Judges in Russia is established through an electoral process, with judges being elected by the judicial community to become part of the collegium. This method of composition differs from the formation of the collegium in the Indian judiciary, where the Chief Justice of India and four senior-most Supreme Court judges form the collegium without an election process. In Russia, the list of potential judges compiled by the collegium is submitted to the President of Russia.

The Russian President holds the authority to reject the recommended candidate for judgeship, and the President's decision can be made without providing a reason. Therefore, in contrast to the Indian President, the Russian President holds significantly more power in the appointment of judges.⁵⁰

Suggestions:

The collegium system should consist of elected members from both the government and the judiciary, and specific criteria should be laid out to ensure transparency in the appointment process. The process of filling judicial vacancies is an ongoing and collaborative effort that involves both the executive and the judiciary, and it cannot be restricted to a specific time frame.

However, it is essential to contemplate the establishment of a permanent, independent body to formalize the process with adequate safeguards that uphold the independence of the judiciary, ensuring judicial primacy without exclusivity. This body should ensure independence, promote diversity, exhibit professional competence, and uphold integrity. Rather than selecting a specific number of judges against a certain number of vacancies, the collegium should provide the President with a panel of potential candidates in order of preference and based on other valid criteria for appointment.

Including representatives from various legal bodies, such as Bar Associations and civil society groups, in the appointment process can help ensure that diverse perspectives are considered, contributing to a more balanced judiciary that reflects the society it serves. By implementing these suggestions, India can work towards a judicial appointment system that not only preserves the independence of the judiciary but also enhances its credibility, transparency, and

⁵⁰ *Ibid*

effectiveness in delivering justice to its citizens.

Conclusion:

The appointment of judges is a critical process that requires careful consideration and due diligence. Fali Nariman, an eminent jurist, once said, "The judges' job is not to appoint other judges."⁵¹ It is essential to maintain a balance between the executive and legislature when appointing judges to the higher judiciary to resolve power struggles.

The collegium system represents both the triumph and challenge of India's quest for judicial independence. Born from judicial necessity in the 1990s to combat political interference, it has evolved from saviour to subject of intense criticism. What was once hailed as a guardian of independence is now viewed by many as an opaque, unaccountable system plagued by delays, nepotism concerns, and lack of transparency.

The failed NJAC experiment in 2015 highlighted the judiciary's reluctance to embrace external oversight, while recent tensions over appointment delays underscore the system's growing strain. As Fali Nariman observed, "The judges' job is not to appoint other judges" capturing the fundamental tension between judicial independence and democratic accountability.

The crux of India's judicial appointment dilemma lies not in choosing between independence and accountability, but in finding a synthesis that honours both values. The experiences of other democracies offer lessons, but India's unique constitutional framework demands homegrown solutions that include greater transparency, defined timelines, diverse representation, and clearer criteria.

The collegium system has served as a guardian of judicial independence for over three decades, but it must now evolve to meet 21st-century democratic expectations. Whether it can reinvent itself while preserving its core mission will determine not just the future of judicial appointments, but the very character of Indian constitutionalism. The stakes are high the credibility of India's judicial system and its democratic foundations hang in the balance, demanding continued dialogue and meaningful reform.

⁵¹ "My client is the independence of the judiciary: In sterling 7- decade career, Nariman left lasting imprint on judiciary", *The Indian Express*, 22nd February, 2024 available at < <https://indianexpress.com/article/india/my-client-is-the-independence-of-the-judiciary-in-sterling-7-decade-career-fali-nariman-left-lasting-imprint-on-judiciary-9174251/> > (last visited 7th December, 2024)