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Evolving Jurisprudence of the Collegium: A Critical Analysis of Judicial Appointments in India

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Abstract

The judicial collegium is a mechanism that is contentious, but defining part of the process of selecting and appointing judges to the higher judiciary in India. The collegium system is the de facto system of judicial appointments, which evolved by the interpretation of constitutional provisions by the Supreme Court in famous three Judges Cases, despite there being no express constitutional or statutory requirement. This study critically examines the origin, operation, and consequences of the college system and its openness, responsiveness, and capacity to safeguard the independence of the judiciary. It provides an assessment of the constitutional structure, the main judicial precedents, legislative efforts such as the National Judicial Appointments Commission (NJAC), and the latest resolutions of collegium. It also studies the empirical trends of the appointments, the representation of regions and genders, and suggests some reforms to realign the appointment system with democratic and constitutional principles.

Keywords: *Collegium System, Judicial Appointments, Judicial Independence, NJAC, Four Judges Case.*

1. Introduction

The issue of appointment of judges to higher judiciary is of great constitutional significance, as it directly pertains to the separation of powers and the independence of the judiciary, which is a fundamental attribute of the Indian Constitution as a structure.¹ Although appointments to the Supreme Court and High Courts are guided by Articles 124 and 217, respectively, they do not provide a clear, accountable and transparent system. The collegium system is a judge-led process that has emerged due to judicial interpretations, primarily of the Judges Cases over the years, and has become the mechanism by which appointments and transfers are now regulated in the higher judiciary.²

The development of the collegium system is a serious judicial challenge to the authority of the executive. It has, however, received a lot of criticism regarding its lack of transparency, its lack of diversity, and it has been accused of nepotism.³ A debate grew stronger over judicial selection; the National Judicial Appointments Commission (NJAC) was enacted in 2014 but was struck down in 2015 by the Supreme Court for violating the doctrine of basic structure.⁴

On the one hand, there is an attempt by the collegium to ensure judicial independence; on the other hand, scholars contend that the collegium exists as a constitutional vacuum, where such a body lacks statutory authority and democratic accountability.⁵ This paper is a critical discussion of the legal framework surrounding the collegium system, its constitutional good practices and challenges, as well as possible reforms.

2. Constitutional Framework of Judicial Appointments

The legal basis to appointment of judges to the higher judiciary is provided by Articles 124 and 217 of the Constitution of India. Article 124(2) states that all the judges of the Supreme Court must be appointed by the President after consultation with such judges of the Supreme Court and the High Courts as deemed fit, and in the case of Chief Justice of India (CJI), necessarily in consultation with other judges.⁶ Similarly, the procedure for the appointment of the High Court judges is regulated in Article 217 and

includes the necessity to consult the CJI, the Governor of a certain state, and the Chief Justice of the appropriate Court.⁷

Initially, the word “consultation” was interpreted to give prominence to the executive, with the President was not bound by the judiciary’s opinion.⁸ However, the balance of power changed when the judicial interpretations emerged in the following decades, particularly after the Second and Third Judges Cases.⁹ Although the collegium system is silent in the text, the judiciary has interpreted the constitutional provisions to create a judge dominated system of appointment, emphasizing independence rather than accountability. This constitutional uncertainty has led to controversial academic opinions as to whether the collegium system complies with democratic values and the separation of powers.¹⁰

3. Evolution through the Judges Cases

Judicial craftsmanship has produced the collegium system of judicial appointment instead of following constitutional design. It was developed by the rulings of the Supreme Court cases, commonly known as the “Three Judges Cases”, which established the parameters underlying the concept. These rulings redefined the term “consultation” as it appears in articles 124 and 217 under the Constitution of India, and creating a grave imbalance of power between the judiciary and the executive regarding the appointment of judges.¹¹

3.1 First Judges Case – S.P. Gupta v. Union of India (1981)

The Court in the First Judges Case determined that the term “consultation” was not “concurrence”; thus primacy was assigned to the executive in appointments. The decision also made it clear that the executive’s discretion on appointment of judges came after consulting the CJI.¹² Justice Bhagwati opined that too much judicial control would create a “judicial autocracy”.¹³ The move was deemed consistent with a textual interpretation of the Constitution and was based on the prevailing executive prerogative of appointment

¹ *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

² *Supreme Court Advocates-on-Record Assn. v. Union of India*, (1993) 4 SCC 441.

³ Prashant Bhushan, *The Case That Shook India* (Penguin Books, 2018) pp. 223–28.

⁴ *Supreme Court Advocates-on-Record Assn. v. Union of India*, (2016) 5 SCC 1.

⁵ Abhinav Chandrachud, *Appointment of Judges in India: Transparency, Accountability and the Collegium* (2014) 6 NUJS L. Rev 1 at 5.

⁶ Article 124(2), Constitution of India, 1950.

⁷ Constitution of India, art. 217, cl. (1).

⁸ *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

⁹ *Supreme Court Advocates-on-Record Assn. v. Union of India*, (1993) 4 SCC 441; *Re Presidential Reference*, (1998) 7 SCC 739.

¹⁰ Arun K. Thiruvengadam, *The Constitution of India: A Contextual Analysis* (Hart Publishing, 2017) pp.248–50.

¹¹ Art. 124 and Art. 217, Constitution of India.

¹² *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

¹³ *Id.* at 110.

3.2 Second Judges Case – Supreme Court Advocates-on-Record Assn. v. Union of India (1993)

A nine-judge bench in this historic decision ruled and overruled the First Judges Case and established the opinion of the CJI as a collective opinion with senior judges to be the view that would prevail in appointments.¹⁴ This was the origin of the collegium system, which sought to shield the appointment of judges from political interference. To support its legal arguments, the Court was able to base its reasoning on the doctrine of judicial independence, which forms part of the basic structure.¹⁵ Prof. M.P. Singh observed that this judgment led to what he has termed as “a constitutional convention, not to be found in the text, but binding in practice.”¹⁶ However, the selection criteria, the accountability, and the transparency of decisions were not defined and attracted criticism.

3.3 Third Judges Case – Re Presidential Reference (1998)

The President of India, to bring clarity over the ambiguities that the Second Judges Case left behind, asked the Supreme Court to answer nine questions under Article 143(1). In response, the Court expanded the collegium beyond its inclusion of the CJI and four senior-most judges to become the collegium for Supreme Court appointments, as well as three senior-most judges for High Court appointments.¹⁷

In this ruling the collegium system was institutionalized, but not through a legislative or constitutional change. Critics point out that this result in judicial overreach, creating a new constitutional convention that does not have the support of Parliament.¹⁸

3.4 Fourth Judges Case – Supreme Court Advocates-on-Record Assn. v. Union of India (2015)

The NJAC Act, 2014, and 99th Constitutional Amendment were attempts to democratize the appointment process by adding executive and some members. However, the Supreme Court in a 4:1 majority, declared both unconstitutional on the grounds that they violated the basic structure,

especially the independence of the judiciary.¹⁹

On the one hand, the Court acknowledged the weaknesses of the collegium system, characterized, among other things, by a lack of transparency and nepotism. On the other hand, it ruled that the NJAC allotted too much authority to the executive, which ultimately compromised the essence of judicial independence.²⁰ Justice Chelameswar, in his dissenting statement, said that it requires immediate institutional overhaul and collegium is a euphemism for referring to nepotism.²¹

3.5 Memorandum of Procedure (MoP)

A Memorandum of Procedure (MoP) is a significant guideline that determines the transfer and appointment of judges in the higher judiciary in India. It furnishes the framework of the procedure for appointments as per the provisions in Articles 124 and 217 of the Indian Constitution, which deal with the Supreme Court and the High Courts, respectively. Although the MoP is not a statutory document, its powers are established by the rulings of the Supreme Court, especially in the Second Judges Case (1993) and the Third Judges Case (1998), which led to the institution of the collegium system. Such judgments vested the judiciary with primacy over the executive in the area of judicial appointments, holding that the recommendations of the Chief Justice of India (CJI) in consultation with the collegium would be binding on the executive.²²

The MoP was completed in 1999 through a consultative process between the judicial and executive, outlining the procedures to be used in appointments and transfers. It also includes arrangements concerning eligibility conditions of selecting individuals, consultations with constitutional authorities, and background checks by the intelligence agencies such as Intelligence Bureau (IB) and Research and Analysis Wing (RAW).²³ However, the collegium system, which is not specified in the Constitution, operates under the guidelines established by judicial pronouncements and the MoP.

In *Supreme Court Advocates-on-Record Association v. Union of India* (2016), a 5-judge bench declared the National Judicial Appointments Commission (NJAC) unconstitutional, and the Court directed the

¹⁴ *Supreme Court Advocates-on-Record Assn. v. Union of India*, (1993) 4 SCC 441.

¹⁵ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225; *Supra* note 4 at 37.

¹⁶ M.P. Singh, *Securing the Independence of the Judiciary – The Indian Experience*, (2003) 10 Indian Journal of Constitutional Law 245 at 257.

¹⁷ *Re Presidential Reference*, (1998) 7 SCC 739.

¹⁸ A. Chandra, *Judicial Overreach and Accountability* (Eastern Book Company, 2012) p.89.

¹⁹ *Supreme Court Advocates-on-Record Assn. v. Union of India*, (2016) 5 SCC 1.

²⁰ *Id.* at 151–157.

²¹ *Id.* (per Chelameswar, J., dissenting); See also A.G. Noorani, “Judicial Coup”, *Frontline*, November 2015.

²² *Supreme Court Advocates-on-Record Association v. Union of India*, (1993) 4 SCC 441.

²³ Ministry of Law and Justice, *Memorandum of Procedure for Appointment of Judges to the Supreme Court and High Courts*, (Government of India, 1999).

government to draft a new revised MoP in consultation with the CJI.²⁴ This was intended to provide transparency, accountability, and broader standards of judicial appointments without eliminating judicial primacy. Since then, the executive and judiciary have exchanged multiple drafts, with the revised MoP remaining unresolved due to a few areas of disagreement.²⁵

The critical points of contention between the two institutions relate to: (i) the establishment of a permanent secretariat to support the collegium; (ii) the enactment of transparent eligibility criteria based on both merit and seniority; (iii) inventive avenue to lodge a complaint against the candidate; and (iv) national security veto by the executive.²⁶ In this regard, the judiciary has proceeded, to some extent, towards increased transparency by making collegium resolutions partially publicly available since 2017. However, it has opposed the concept of providing a veto to the executive through a so-called national security clause, which it considers too easily open to abuse.

Although there is more transparency in making the appointment as of 2025, it is still done under the original 1999 MoP. The standoff on the revised MoP explains the inherent tension between the independence of the judiciary and the accountability of the executive. The MoP will continue to cause institutional friction and ambiguity, at least until when the judiciary and executive can agree upon its terms.

4. The NJAC Experiment and its Demise

Parliament passed the 99th amendment to the Constitutional Amendment Act 2014 and National Judicial Appointments Commission (NJAC) Act 2014 in an attempt to address significant objections to the collegium system by allowing a more comprehensive appointment authority.²⁷ The NJAC would have consisted of the Chief Justice of India (as Chairperson), the two senior-most Supreme Court judges, the Union Law Minister, and two eminent persons who would have been nominated by a committee consisting of the Prime Minister, Chief

Justice of India, and the Leader of the Opposition in the Lok Sabha.²⁸

It aimed to make the judicial appointment process more transparent, accountable, and diverse without compromising judicial independence. However, in the 2015 Fourth Judges Case, the Supreme Court, by a 4:1 majority, invalidated the NJAC and the 99th Amendment, believing that the amendment had transgressed the basic structure of the Constitution, specifically the principle of judicial primacy in appointments.²⁹

The Court noted that such equalization of executive power, particularly by the Law Minister and vested in so-called eminent persons, indicated a very grave danger to the independence of the judiciary.³⁰ In his dissent, Justice Chelameswar lamented the secrecy of the collegium and opined that there is need to reform the collegium to balance independence and accountability.

The NJAC had an undoubtedly valid institutional reform agenda advocated by unanimous Parliament and majority of state legislatures; however, even as the judiciary issued its 2015 verdict rejecting such reform, it not only reconfirmed the institutional supremacy of the collegium but also renewed calls for internal reform. According to scholars, the ruling confirmed the supremacy of a court over a democratically accountable government.

5. Structural and Functional Critique of the Collegium

The collegium system has been widely criticised, both structurally and functionally, although there is constitutional justification based on the doctrine of judicial independence. The most tenacious issue is its opacity. Collegium recommendations were thoroughly secretive until 2017; to date, although some resolutions have been made publicly available online, the reasoning behind appointments, non-appointments, and transfers is frequently not explained at all, or is only very vaguely justified.

The second significant problem is a lack of diversity in judicial appointments. Experiences have revealed that the higher judiciary remains unreformed, dominated by urban elites, with very little representation of dalits, women, minorities, and marginalized groups. The collegium has not established any clear policy or affirmative action toward ensuring inclusiveness, and this is a weakness in the democratic fabric of the judiciary.

²⁴ *Supreme Court Advocates-on-Record Association v. Union of India*, (2016) 5 SCC 1.

²⁵ Law Commission of India, *Report No. 230: Reforms in the Judiciary*, (Government of India, 2009).

²⁶ Arghya Sengupta and Ritwika Sharma, *Collegium and Transparency in Judicial Appointments*, Vidhi Centre for Legal Policy, New Delhi (2017) p. 12.

²⁷ The Constitution (Ninety-Ninth Amendment) Act, 2014, *The Gazette of India*, Extraordinary, Part II, Section 1, No. 63, dated 31st December, 2014.

²⁸ National Judicial Appointments Commission Act, No. 40 of 2014, s. 5.

²⁹ *Supreme Court Advocates-on-Record Assn. v. Union of India*, (2016) 5 SCC 1.

³⁰ *Id.* at 167–175.

Third, the allegations of nepotism and favouritism have increased over time. There have been cases of children or family members of the judges being hired, leading to the notion of an insider club.³¹ Justice Chelameswar is well-known for having referred to the collegium as a body that operates without “opaqueness and accountability”.³²

The collegium has also been accused of inefficiency and delay on a functional level. A large number of High Courts remain significantly backlogged due to numerous vacancies, and recommendations received by the executive rot in limbo or are returned with no action. This is worsened by the lack of an institutional secretariat that ensures coordination and record-keeping. In conclusion, although the collegium was meant to keep judicial independence intact, it ultimately faces institutional weaknesses that demand immediate reforms.

6. Comparative Perspective

Judicial appointment systems of other democracies have been examined and compared, showing that the collegium system of India is an exception among world democracies. Unlike other jurisdictions that consider contributions from both the executive and legislative branches, India places total authority in the court system, supporting it with the collegium, a non-statutory system created solely through judicial interpretation.

In the United States, Article II of the Constitution delegates the appointment of federal judges to the President, with the support and counsel of the Senate, providing both executive and legislative check and balance.³³ This process is political but transparent and incorporates confirmation hearings before the public.

In United Kingdom, the Judicial Appointments Commission (JAC) is an independent organization established under the Constitutional Reform Act of 2005, with judges, laypersons, and lawyers representing the commission. It reduces the candidates based on basis of merit and transparency, indicating an organized and concrete process.³⁴

In Canada, the appointment to the Supreme Court is made by the executive, but there has been a consultative mechanism before the appointment

through the judicial advisory committees. This is not without executive influence, but public nomination processes and parliamentary scrutiny have recently been marred by reforms.³⁵

The trend is toward institutional checks and transparency, which the collegium in India does not offer. According to experts, judicial autonomy should be counterbalanced by democratic legitimacy and accountability to the people. These systems sharply contrast with the functional dynamics of the Indian collegium, as well as its closed-door operations and absence of open legislative and public participation.

8. Key Case Laws Shaping the Collegium System

Case Name	Citation	Key Holding
S.P. Gupta v. Union of India	AIR 1982 SC 149	Executive primacy
SC Advocates-on-Record Assn. v. UOI	(1993) 4 SCC 441	Established collegium
Re Presidential Reference	(1998) 7 SCC 739	Defined collegium structure
SC Advocates-on-Record Assn. v. UOI	(2016) 5 SCC 1	Struck down NJAC

7. Proposed Reforms and the Way Forward

Whereas the collegium system has been regarded by the judiciary as critical in maintaining judicial independence, it has continued to raise issues of a lack of transparency, elitism, and efficiency. To sustain public trust and maintain the integrity of the institution, there must be immediate reform to strike a balance between transparency, accountability and diversity.

7.1 Statutory Backing for Collegium Functioning

The existing deficiency in the current collegium system can be attributed to one major flaw: a lack of constitutional or statutory basis. Legalizing the collegium would ensure clarity in the procedure and legislative control over it without compromising its integrity. Eligibility requirements, terms of appointment, and the disclosure of reasons for recommendations or refusals could be codified as a statute.³⁶

7.2 Establishment of an Independent Secretariat

³⁵ Cheryl Thomas, *Judicial Appointments in Canada: Recent Reforms*, (2017) Public Law 389 at 394.

³⁶ Abhinav Chandrachud, *Republic of Rhetoric: Free Speech and the Constitution of India* (Penguin, New Delhi, 2017) pp. 190–192.

³¹ Prashant Bhushan, *The Case That Shook India* (Penguin 2018) pp.221–223.

³² *Supreme Court Advocates-on-Record Assn. v. Union of India*, (2016) 5 SCC 1 (Chelameswar, J., dissenting).

³³ United States Constitution, Article II, Section 2, Clause 2.

³⁴ Constitutional Reform Act, 2005, c. 4 (U.K.). See Judicial Appointments Commission, available at <https://judicialappointments.gov.uk> (last visited Jul. 18, 2025).

The lack of an independent secretariat severely cripples the operations of the collegium. Currently, the system relies on ad hoc communication without institutional memory or data management. A Permanent Secretariat could assist in conducting research on nominees, maintaining records, and processing recommendations timely.³⁷ An administrative infrastructure for judicial appointments was also addressed in 121st Report of the Law Commission of India.³⁸ The absence of an independent secretariat significantly hinders the functioning of the collegium. Presently, the system depends on ad hoc communication with no institutional memory or data management.

7.3 Transparency and Reasoned Decisions

Although the Supreme Court has been publishing the collegium resolutions since 2017, it is not consistent or detailed in its reasoning. Making reasoned determinations published on appointments, rejections, and transfers would increase public trust and strengthen the institution. In his argument, Justice Lokur has stated that transparency must not compromise independence when approached with caution and proportion.³⁹

7.4 Inclusive Representation and Diversity

The Supreme Court still has not seen equal women representation, SC/ST representation, minority representation, and regional representation. Making diversity a tangible criterion, without distorting merit, would mean the judiciary would be more representative of pluralism in India.⁴⁰ South Africa and the UK have managed to incorporate diversity factors in their selection of people who fill judicial posts.⁴¹

7.5 Balanced Institutional Oversight

Instead of scrapping the collegium and replacing it with politically dominant institutions such as the NJAC, a renovated collegium would allow retired judges and luminaries of the legal world, in addition to representatives of civil society, to serve in an advisory capacity. This would bring external control

without sacrificing judicial primacy, ensuring a check on arbitrariness.

8. Conclusion

The collegium system in India is a distinguished judicial creation that was established through constitutional interpretation rather than explicit imposition. Although this system was initially designed to serve as a barrier to the executive, especially during political volatility, it has evolved into a self-regulated system dominated by the judges in manner how they appoint and transfer members to the higher judiciary. The Supreme Court defined the term “consultation” in Articles 124 and 217 to interpret the meaning of “concurrence” through Second, Third and Fourth Judges Cases, which resulted in the institutionalization of the precedence of judicial appointments over the executive of the country.

The collegium has, however, over the years faced persistent criticism. The system, despite preserving the independence of the judiciary against politics, is characterized by critical flaws: a lack of transparency, accountability, ineffective representation of minority groups or communities, and inefficiency of institutions. The NJAC, though a flawed effort toward democratizing the process, was unanimously legislated in Parliament but was also overruled by virtue of contravention of the doctrine of basic structure, once again giving primacy to the judiciary regarding appointments.

Comparative experiences in separate jurisdictions like the UK, US, and Canada reveal that judicial independence, transparency, diversity, and accountability can co-exist, provided there is a strong and balanced institutional design. India should shift towards a model that balances judicial independence with reform measures that would foster greater trust and legitimacy of the institution among the population.

The only possible future is through granting statutory recognition to the collegium, including the establishment of an independent secretariat, publication of reasoned decisions, and the use of inclusive criteria in making the representation. These changes do not require any constitutional modifications but can be implemented through procedural creation and institutional determination.

To sum up, the collegium should not be inactive. It must develop not in secrecy, but through discussion with the ideas of democracy, the principles of constitutional morality, and accountability to the people. It can only achieve this to fulfil its promise of an independent, impartial, and inclusive judiciary in the interest of the Indian Constitution.

³⁷ Vidhi Centre for Legal Policy, *Reforming the Collegium System*, Policy Brief (2020), p. 6.

³⁸ Law Commission of India, *121st Report on a New Forum for Judicial Appointments* (1987), para 5.4.

³⁹ Justice Madan B. Lokur, *Transparency and Collegium: Need for Institutional Credibility*, The Hindu, Feb. 2018.

⁴⁰ Sital Kalantry et al., *Gender Diversity on Indian High Courts* (2021) 27(2) Columbia Journal Gender & Law 135, at 144.

⁴¹ Kate Malleson, *Diversity in the Judiciary: The Case for Positive Action*, 36(3) Journal of Law & Society 376 (2009).

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