



The Collegium System in India: Judicial Appointments, Institutional Independence and Crisis of Representation

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ABSTRACT

This article evaluates the history, systems and issues of Collegium System of judiciary appointments in India critically. The collegium system, which started in the Judges Cases, primarily vests in the judiciary the appointment of judges to the higher courts in an attempt to promote judicial independence as one of the cornerstones of the Constitution. Nevertheless, wide criticism has been brought up at the lack of the system in transparency, accountability as well as inclusiveness. This research piece examines the section in the constitution about Article 124 and 217 and the evolution of the selection procedure with the help of historic cases, such as the First, Second, and Third Cases on Judges. It speculates as well on the National Judicial Appointments Commission (NJAC) and its consequential overturning by the Supreme Court in 2015. Some of the major criticisms reflected in the paper include concentrated power and the level of nepotism, as well as the continued lack of representation of marginalized communities and women at the highest level of the judiciary. By placing the collegium system in the framework of wider democratic and institutional arguments, this article contends that, as far as it effectively safeguards judicial independence, it has structural constraints which imposes on the legitimacy of the system. This article concludes that there should be enactment of meaningful reforms which would create some balance



between independence and transparency, accountability and social representation when appointment of judges.

Introduction

Appointing judges to constitutional courts is one of the greatest institutional processes in any democracy. It has developed in India and this process is not a traditional system of appointment but where the highest judiciary is significant in the mode. Although the system has been widely seen as a fear of executive interference and a guarantor of judicial independence, I find that it has also been a subject of longstanding criticism in the inaccessibility, the elitism, as well as social inclusivity. The discussion of the collegium system has over the last 30 years extended to a larger constitutional debate of judicial independence and democratic legitimacy and social representation.

I also look at how the issue of judicial appointment has become more serious at the beginning of the twenty-first century, especially the bid to abolish the collegium system with the introduction of the National Judicial 5 appointments Commission (NJAC). I believe that by making this decision, the judiciary emphasized the importance of the judiciary upholding the primary framework of the Constitution, particularly the concept of judicial independence.

In this paper, I have critically discussed the evolution of the collegium system, its constitutional basis and its controversies. In order to be clear, I have segmented this article into 3 major themes. Originally, I follow the judicative interpretation and development of the collegium system. Second, I discuss the current institutional discussions of transparency, accountability and separation of powers. Third, I bring out the aspect of social presentation, especially the prevalence of upper-caste judges or lack of females Chief Justices of India.

Fitting the collegium system into the context of democracy and social justice, I believe that the present-day construct represents not only the advantages but also the structural constraints of the Indian constitutional system.

Methodology

This study uses a doctrinal and analytical approach based on secondary sources, including constitutional provisions, landmark judgments, and scholarly literature. It applies case law analysis to trace the evolution of the collegium system and a critical framework to assess issues of transparency,



accountability, and representation. The research is qualitative in nature, with brief comparative insights to contextualize India's system.

The study also relies on historical analysis to understand the constitutional and political context behind judicial appointments. Relevant reports and policy documents are examined to support the evaluation of reforms such as the NJAC. The approach remains interpretative, aiming to critically assess institutional practices rather than produce empirical findings.

Constitutional Framework of Judicial Placements.

In order to consider the origins of the collegium system, I initially consider the constitutional provisions in the area of judicial appointments in India. Firstly, the Constitution introduced a consultative process of having several constitutional actors when judges were being appointed to the Supreme Court and the High Courts. This framework is based on articles 124 and 217. Article 124 is to the extent that the judges of the Supreme Court are appointed by the President with consultations of such judges of the Supreme Court and High Courts, as deemed necessary and Article 217 provides a similar manner of appointment of judges of High Court. One may notice that the very word of consultation turned out to be a key topic of subsequent constitutional deliberation and legal interpretation.

But this order started to encounter greater difficulties in the 1970s, especially in the Emergency period. Issues of the intervention of the political system in the appointment of judges and the replacement of old judges raised much fear among people about the decline of the independence of the judges. This casts a crucial concern over how the judiciary is vulnerable without institutional protection.

This would later give rise to a case where the Supreme Court reconsidered and reconstrued the constitutional clauses that dealt with judicial appointments. To my mind, the occurrence of the Judges Cases should be perceived within this broader historical context. All these historic rulings slowly altered the definition of the term consultation and led to the creation of judicial primacy in appointments. This transition eventually resulted in the modern form of collegium.

The evolution of the Collegium System.

1. The First Judges Case (1981)

The initial significant point was the decision of the Supreme Court in *S.P. Gupta v. Normatively* referred to as *Union of India* (1981), it is commonly referred to as the First Judges Case. According to the Court, the executive was given primacy in appointing judicial members and this opinion of the Chief Justice of



India was not a binding opinion. This ruling practically ratified the preeminent place of the executive on the appointment of judges.

Critics said that the ruling was a violation of judicial independence because the government was given excessively high power to affect the judiciary.

2. The Second Judges Case (1993)

This was dramatically overturned in 1993 as the Supreme Court made its decision in *Supreme Court Advocates-on-Record Association v. Union of India*. The decision both built the collegium system and made clear that the opinion of the Chief Justice of India, reached after discussing the judicial appointments with his senior judicial colleagues, would have pre-eminence in judicial appointments.

The Court further decided that the Chief Justice should consult the other two senior-most judges at the Supreme Court, prior to giving out recommendations regarding names to be employed during appointment.

3. The Third Judges Case (1998)

This collegium system was further polished in the year 1998 where the President of India wanted clarification, a presidential reference, to the Supreme Court. As a reaction, the Court intended the proposal to enlarge that collegium and comprise the Chief Justice of India and the four senior-most Judges of the Supreme Court.

The result of this interpretation was that the executive lost the decisive authority over judiciary appointments to the judiciary.

Structure and Mode of operation of the Collegium.

Supreme Court Collegium

In order to describe how collegium system operates in practice, I first look at its form at Supreme Court level. The collegium of the Supreme Court is made up of the Chief Justice of India and the four senior-most judges of the Court. This organ is very key in proposing appointments and transfers of judges, both to the Supreme Court and the High Courts. I notice that the decision-making process in this collegium is grounded on collective consultation, in which senior judges discuss the aptness, merit, and integrity of candidates to recommend accordingly.



High Court Collegium

At the rank of the High Courts the collegium is organized in a relatively smaller frame. I believe that the High Court collegium consists of the Chief Justice of the High Court in question and the two senior-most of its judges. This body makes recommendations on who is to be appointed as a judge at the High Court. Such suggestions are then submitted to the collegium of the Supreme Court to be further consulted and thus a system of judicial checks and balances continues to operate.

Role of the Executive

I continue to learn that the functions of the executive of the collegium system are restricted but not completely absent. Although the executive has the power to consider the recommendations offered by the collegium and can object or revisit the same, its powers are not absolute. Judges are appointed by the President of India, who does this, though, in a mostly ritual fashion. By recommending again after due consideration, the collegium is bound by the constitution to implement the recommendation of the collegium. This is in effect a means of ensuring that the ultimate power of the judiciary in judicial appointments is upheld in the sense that the judicial independence principle is upheld.

Reasons in Support of the Collegium System

The proponents of the collegium system have claimed that the collegium system is necessary to provide a safeguard to judicial independence and this is a pillar of constitutional democracy.

Protection from Political Interference.

Among the arguments that were put forward in support of the collegium system, is that the system helps to eliminate the politicization of the judicial system. Since the courts are often required to give verdicts that touch the government, any attempt by the executive to influence the appointment of the judges would lead to biased courts.

Basic Structure Doctrine of Constitution.

One of the ways that the Supreme Court defended the difference in maintaining the collegium system was the doctrine of basic structure according to which specific aspects of the Constitution, including those involving judicial independence, cannot be changed even by changes in the Constitution.

Upon the decision to invalidate the NJAC in 2015, the Court decided that the executive possessing a strong authority when it comes to appointments may jeopardize the independence of the judges.



Arguments against the Collegium System

The collegium system has also come under continual criticism by scholars, politicians and even the members of the judiciary despite its intended purposes.

Lack of Transparency

Probably the most often mentioned is that the collegium system is secretive. The criteria followed in the selection of judges is seldom publicized and the decisions taken by collegium is a secret.

This has been associated with lack of accountability in the process and also lack of publicity. Opponents believe that this kind of secrecy diminishes the legitimacy of judicial appointments.

Concentration of Power

Collegium system vests massive power in few hands of judges. Such a concentration of power creates an issue of how power will be used and lack of external checks.

Analysts observe, the judiciary self-appoints itself and this is an oddity that the system is unique in the face of democracies or it even runs the risk of internal biasing.

Nepotism and the “Uncle Judge” Syndrome.

The other big dispute in the collegium system is the accusation of nepotism. The so-called uncle judge phenomenon implies that professional networks and family ties are usually the factors contributing to the judicial appointments.

Research has revealed that many of the higher courts are judges who have established legal families. In others, judges have been the children or relatives of the former judges or very high-profile lawyers.

These trends raise concerns over whether or not the collegium system continues to favour elite circles in the legal practice.

The NJAC Controversy

The largest reform effort to date was in 2014, when the National Judicial Appointments Commission (NJAC) was enacted into law via the 99 th Constitutional Amendment by Parliament. The NJAC was suggested to be the alternative institutional tool that would make the judicial appointment process more transparent and responsible as it would involve members of other organizations besides the judiciary. I



can note that this reform was generally viewed as a way of responding to historic critiques of the collegium system, especially its lack of transparency and power concentration.

Structure of NJAC

The suggested commission had to have six members. It comprised the Chief Justice, two senior-most Supreme Court judges, the Union Law Minister and two eminent persons which were to be chosen by a committee. This piece of work was part of the effort to build a balanced body, through representation by the judiciary, the executive as well as the civil society. The additional problematic aspect of the NJAC was that the suggestion of a candidate could be blocked by two members of the commission thus threatening a system of checks into the appointment process.

Supreme Court's Decision

In 2015, however, the Supreme Court, in a majority vote of 4 to 1, found the NJAC unconstitutional. The Court ruled that it was probable that executive members and other eminent persons in the Court may jeopardize the independence of the judiciary which is part of the basic structure of the Constitution. As it can be noticed, the Court emphasized a lot on safeguarding judicial independence without necessarily introducing further involvement in judicial appointments.

The decision eventually restored the collegium system and indicated once again the principle of judicial primacy in appointment. Simultaneously, it began an alternative constitutional debate on how an incentive should be used between privacy and accountability. I believe that the ruling not only preserved judicial autonomy; it also illustrated that there is more to be done in the area of reforms in the collegium system to deal with the issues of transparency and inclusiveness.

Representation and Question of Social Diversity.

Among the most incisive remarks about the collegium system is related with the issue of diversity of the higher judiciary.

Upper-Caste Dominance

Statistical data on judicial appointments demonstrate that there is a huge disproportion of representativeness. In the period 2018 to 2022, around 79 per cent of the High Court judges were recruited in the general category (upper castes), and the marginated groups were very underrepresented.



Also, Scheduled Castes were preoccupied with only some 2.8 percent appointment and Scheduled Tribes with some 1.3 percent.

These numbers are really dramatic in terms of the discrepancy between the judiciary set-up and the social composition of the Indian society.

Opponents state that such imbalance in judicial appointment is because there are no reservation policies in the appointment. The higher judiciary does not enforce formal quota of the marginalized community as in other institutions of the public.

Gender Representation

Another key issue is gender inequality in the judicial system. Female representation in constitutional courts is still a long way behind.

The number of female judges on the High Court and the Supreme number is very low and never had a woman judge.

Most interestingly, there are not a single example of a woman Chief Justice of India since the very inception of the Supreme Court in 1950.

This absence demonstrates systemic issues in the occupation of lawyers and makes one wonder whether the collegium model is more than effective in focusing on gender diversity.

Political criticism of the Collegium System

Political leaders and government officials have also criticized the collegium system.

As an example, other ministers have heaped praise on the system by stating that it is opaque and not accountable since it is not democratically reputable. The opponents argue that it is also not advisable to allow judges to appoint judges because this will defeat the fact of separation of powers.

Defenses by the Judiciary

In spite of these criticisms, the collegium system has great supporters among the members of the judiciary.



They state that a reform which would advance the executive input would pose a danger to judicial independence. In this perspective, an imperfect system of collegium beats a perfect system where political interferences with the appointment of judges are accepted.

Public Trust, Institutional Legitimacy and the Democratic Dilemma

In addition to the constitutional theory and the legal doctrine, it is necessary to analyze the collegium system based on the legitimacy of the institution and the trust of the population. The decision-making authority of courts is not the prerogative of the constitution but is also seen that the courts perform their duties with justice to represent the whole moral conscience of this whole society. This legitimacy may be sabotaged when the process of judicial appointment seems obscure, or appears socially excluding.

The opponents of collegium system contend that there is a democratic inadequacy in secrecy in appointment procedure. Contrary to the legislative or executive offices where processes can be a subject to debate in parliament, media coverage and scrutiny by the electorate, the process of judicial appointment by the collegium remains accessed by very few people.

This non-transparency has raised the eyebrows of scholars on whether the collegium system is capable enough to meet the modern day demands of institutional transparency which are a hallmark of democracy. In nations with high levels of social inequalities, including India, institutional legitimacy is conditional on the degree to which the diversity on the population is represented by institutions as well.

Imbalances in judicial appointments in regions and professions

The other aspect of criticism is associated with the local and professional experience of judges that are selected via the collegium system. The fact that India has a federal system and a vast geography imply that the courts should best be represented by various states and language backgrounds. Nevertheless, judge appointment trends have occasionally created great regional imbalances.

Some High Courts have traditionally been great vehicles to the Supreme Court. The proportionate number of Supreme Court judges is often a result of being a court in a metropolitan centre, with well-established legal community and a well-influential bar association.

The professional background also contributes considerably to the judicial appointments. It is common to have higher court candidates coming either out of the bar (senior advocates and practicing lawyers) or the judicial services (career judges). Traditionally the appointments by the bar have usually dominated the higher judicial system especially in the Supreme Court. This trend has sometimes presented some



controversies with regard to balancing between professional experience in the litigation and long term judicial experience in the subordinate judiciary.

Elite Legal Culture and Role of Informal Networks

Sociologists of the law have often noted that profession and non-professional relationships are influential in the appointment of judges. The elite bar of the judicial courts of metropolis, especially those litigating before the Supreme Court as well as large High Courts, throughout the Indian legal system has traditionally exercised a significant influence over the legal profession.

According to critics, the collegium system has a tendency of reinforcing these networks. Since senior judges usually have dealings with the most elite advocates in constitutional and commercial litigation, such professional networks may become the most common source of candidates that are able to be taken to the bench. Although it is true that such advocates might be high-competency lawyers, the use of elite professional contacts can reduce the number of candidates considered.

It has been said to be the formation of a kind of judicial elite which consists mostly of people pertaining to socially advantaged backgrounds which have a tendency to attend similar schools and colleges, professional circles, and socio-economic classes.

To legal scholars interested in the interaction of law and society, this dynamic indicates some larger trends in the Indian legal profession. Elites legal education and some of the high-profile law firms have been known to restrict admission based on economic factors, social contacts and geographic place. Therefore, systemic inequities in the legal occupation can eventually be replicated even in the court itself.

The Politics Of Delay and Judicial Appointments

During the last few years, this conflict between the judiciary and the executive has been observed in the form of stalling of judicial appointments. The executive arm of the government still has powers to look through recommendations made by the collegium after they have recommended individuals to be elevated to the High Courts or even the Supreme Court.

Such delays have added to the increasing issue of higher court vacancies in India. The number of empty judicial posts in many High Courts is often quite high, and it contributes to the increased case backlog and slowness of justice delivery. On some few occasions, the courts have come out openly to complain that the courts are indirectly pressered by the delays in appointment which leaves the courts with a reduced institutional capacity.



As seen through the eyes of the executive, however, the review process is afforded as a critical process through which accountability is nurtured and the backgrounds of the possible appointees are established. It was this institutional conflict that shows the greater constitutional conflict between two values, namely the insistence of the judiciary on independence, and the insistence of the executive on democratic supervision.

The politics of delay then is more than a matter of administrative inefficiency but an underlying constitutional conflict about how to divide the power between the Indian state.

Modern Reform propositions

A number of suggestions have come up to resolve the failures of the collegium system without interfering with judicial independence.

1. Increasing Transparency

Among the recommendations is that there should be publicity of the said criteria in appointment of judges and that collegium deliberations should be more transparent.

2. Institutional Secretariat

The other suggestion is to develop an independent secretariat which will help the collegium in assessing the candidates and record keeping.

3. Enhancing Diversity

It is championed by a number of scholars that there should be interventions that would see this especially to the female gender, the scheduled castes, the scheduled tribes, and the Other Backward Classes have higher representation in the judicial system.

More recent policy debates have focused on the need to encourage social diversity when it comes to appointing judges.

Collegium System in Comparative Perspective

All the democracies in the world are using mostly mixed system with the partnership of the judiciary, the executive as well as the independent commissions.

For example:



1. The United States is very dependent on executive nomination and legislative confirmation.
2. The UK has an autonomous commission of judicial appointments.
3. The judicial service commission in South Africa has representation of various government branches.

By comparison, India, though, has a special system of collegium in which the judiciary has direct power over its makeup.

Conclusion

The collegium system in India is a special constitutional evolution, which has been enhanced by the judicial interpretation, but not a constitutional evolution. The creation of the Judges Cases, it has established a solid basis of judicial primacy in judicial appointments and has been repeatedly justified as a necessary guarantee of judicial independence, which is one of the basic frameworks of the Constitution. To this end, the system has been effective in ensuring the judicial system is not unnecessarily interfered with by the executive appearing especially given historical experiences which see the issue of political influence being more pronounced than ever, during the times of the Emergency.

Meanwhile, the operation of the collegium system demonstrates serious limitations to the institutions. The way its decision-making process is not transparent, there are no well-defined selection criteria, and all the power is held by a small number of senior judges has caused serious doubts about accountability.

One of the most significant issues that are discussed in this paper is the problem of social representation at the higher judicial level. The inability of scheduled castes and the scheduled tribes to participate due to marginalization, as well as the failure to have a woman Chief Justice of India, indicate that there are structural disequilibrium when it comes to achieving gender and caste equality in the judiciary. These trends indicate that collegium system, as guarding institutional autonomy, has failed to meet the demands of diversity and inclusiveness required in a democratic society that is characterized by highly entrenched social inequalities.

To sum up, the collegium system represents the positive and ironical aspects of the constitutional democracy in India. It has been able to maintain judicial independence but has been weak in promoting transparency, accountability as well as representing fairness. It is not a question, though, of forsaking the system, but rather of reforming it so as to bring about a balance between independence and openness merit and diversity and institutional authority, on the one hand, and democratic legitimacy, on the other.



It is only with such calculated changes that the judiciary can still enjoy popular confidence and easily carry out its constitutional mandate in the changing democratic environment.

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