

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIAL TEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.



Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

DECODING THE COLLEGIUM SYSTEM: JUDICIAL APPOINTMENT AND TRANSPARENCY CONCERNS.

AUTHORED BY - VEDANT SHINDE & AMAN SHUKLA

Introduction:

Indian Judiciary has been of significant importance in service of justice and guarding the constitutional principles since India got the Independence. Indian Constitution, adopted in 1950, laid down the foundation of independent judiciary. Indian Judiciary is meant to act as a guardian of the fundamental rights of the citizens of India and provide protection from tyranny. One of the most debated aspects of the Indian Judiciary is appointment and transfer of judges which particularly question the notions of transparency and accountability. Decisions of the judges while delivering the verdict are looked upon as precedents in the upcoming legal matters. Thus, the judgments are rendered by knowledgeable and skilled legal experts. Collegium system is responsible for the appointment of such experts. India has single integrated judicial system which consists of Supreme Court, High Courts and followed by District and Lower Courts. India consists of pyramidal judicial structure where the Supreme Court is at the top, below that is High Court and then followed by the subordinate courts. The lower courts function direct under the superintendence of high court. The Collegium System is not rooted in the Constitution, instead has evolved through supreme court judgments. Based on the rulings of First judge Case (S.P Gupta vs Union of India, 1981), Second judge case (Record association vs Union of India, 1993) and Third judge case, 1998 emerged as a solution to judicial autonomy from executive interference in the matter of appointment of judges. Before the establishment of the Collegium system in India, Union cabinet or the law minister was responsible for the appointment and transfer of high court judges. However, the judiciary would be informally consulted during the process before the establishment of the Collegium system. This lead to the lack of independence of judiciary in the process of appointment of judges. The Executive (President and Union Cabinet) exhausted its power in the process which instigated certain question and allegations on the government. In the British Raj, legal and administrative systems were gradually established under the British colonial rule. Judicial system in India was amplified and several provision and statue were formed. The court system in India was structured to serve the colonial administrations interests while maintaining British control over the legal system. British Crown was responsible for the appointment of judges and the British

Government in London as responsible for their approval. Executive head of the government had a major role in the appointment and transfer of judges which lead to the supremacy of the executive in the judicial matters. After Indian independence, India obtained sovereignty over territorial extent and internal affairs. Thus, independent judiciary was constituted and judiciary had a say in the appointment of judges. India followed a procedure rooted in the legal framework established by the Indian Constitution in 1950 for judicial appointments. Noted in the Article 124(2) of the Indian Constitution,

The President of India has the authority to appoint judges to the Supreme Court, but the appointment must be made in consultation with other judges of the court, including Chief Justice of India (CJI). Before the establishment of the Collegium System, the term 'consultation' was unclear, leading to a series of judicial cases that shaped the current system. Executive without no proper acquaintance held the decisive power to appoint and transfer judges to the supreme court and high court. This triggered the subjugation of the judiciary by the executive. Even in the cases of appointment of High Court Judges, as per noted in Article 217 of the Indian Constitution, High Court judges should be appointed by the President after consultation with the CJI and the Governor of the state. The Chief Justice of the High Court concerned too should be consulted.

Friction between the judiciary and the executive:

The friction between the judiciary and the executive in India has been an ongoing issue, particularly concerning the balance of power and the independence of the judiciary. The tension has manifested in various instances throughout India's constitutional history, including key cases, institutional conflicts and judicial decisions. The Doctrine of separation of powers (refers to the separation of Legislative, Judicial and Executive functions of the government into independent bodies) often leads to tension in the matters such as Judicial Appointments, Judicial Activism and constitutional interpretation. The judiciary often interprets laws expansively to fill policy gaps, which is known as judicial activism. Courts have taken proactive steps in areas like environmental protection, human rights, and governance reforms through Public Interest Litigations (PILs). The judiciary has accused the executive of deliberately delaying judicial appointments to exert pressure on the courts. The executive has argued that the Collegium System lacks transparency and accountability, as judges appoint themselves without external oversight. The executive and judiciary both play essential roles in upholding the Constitution, but their conflicting interests often lead to tensions. While the executive pushes for more control over judicial appointments and criticizes judicial activism,

the judiciary resists executive influence to protect its independence. The challenge lies in striking a balance where judicial independence is maintained while ensuring accountability and transparency in judicial functioning. Efforts for reform, such as greater transparency in appointments and judicial self-regulation, could help reduce friction between the two pillars of democracy. For a Democratic country, it is of utmost importance to have a proper functioning judicial appointment system to ensure transparency and accountability in the Judiciary.

Collegium System as a Concept:

Collegium System is a method of appointing and transferring judges to higher courts in India. This is covered under constitutional law. Under this system, the Chief Justice of India and a group of senior judges of the Supreme Court and High Courts have the power to make recommendations for the appointment and transfer of judges. The Collegium System as a method of judicial appointment does not have a single global origin, but the concept of a judicial body independently selecting judges can be traced back to various historical and modern legal traditions. The idea emerged primarily to ensure judicial independence from the executive and legislative branches. There are some nations where the procedure of appointing and transferring judges is different. For some countries, the appointment of judges by the head of state is a common practice. But in India, the appointment of judges to the higher judiciary, including the Supreme Court and the High Courts, follows a procedure that involves both the executive and the judiciary. The term Collegium is not codified in the Indian Constitution primarily, but has evolved through Landmark Judgements of the Supreme Court.

The First Judge Case: (SP Gupta vs Union of India, 1982)

This landmark case signifies the importance of consultation of the judiciary in the judicial appointments. Honorable Justice Desai clarified the meaning of the word 'consultation' in the present case. He observed that decisions taken by the president in consultation with the Chief Justice of India should be result oriented, meaningful and purposeful. It was also clarified that President can differ from the opinion of the others and give responsible reasons.

The Honorable Court held that the writ petitions raise issues of great constitutional importance affecting the independence of the judiciary. The Court found that the decision not to appoint an Additional Judge for a further term can be assailed on the grounds of lack of consultation and mala fide or based on irrelevant considerations. The Court held that a Judge cannot be

transferred from one High Court to another without his consent. The Court found that the impugned transfer of a High Court Judge was valid under Article 222(1) of the Constitution. Article 222(1) of the Indian Constitution:

The President may, (on the recommendation of the National Judicial Appointment Commission referred to in Article 124-A), transfer a judge from one High Court to any other High Court.

The Honorable brought up the concept of open and responsible government. Government must be just and maintain equal weightage in the process of judicial appointments. The Honorable Justice Bhagwati observed and said that, in this particular case the advice was given by the Chief Justice of India and Chief justice of Delhi High Court. Justice because the advice was given by the Chief Justice of India, does not mean that his advice will be favoured or given more importance than the advice given by the latter. The Honorable Court observed that the appointment of the judges in the High Courts should not be done by the executive or it will destroy the independence of the judiciary. It must consist of such people who are not biased to anyone and provide just, meaningful, and purposeful decision.

The present case is considered as a milestone in the history of precedents which introduced the concept of Collegium System in India for the appointment of judges in the Supreme Court and High Courts. By means of the present case, apprehension was conveyed that if the Executive had the authority and power in the matters of judicial appointments, it might also interfere in the working of the Judiciary and hamper the independence of the judiciary. Thus, the First Judge Case helped the judiciary to achieve its goal ensuring the independence of the judiciary, but still procedure for the appointment of judges cannot be seen free from loopholes.

Second Judge Case. (Record association vs Union of India, 1993)

The case concerns the function of rendering 'advice' relating to appointment of Judges under Articles 124(2) and 217(1) of the Constitution. The court held that the function stands confined to the judicial functionaries and excluded from the scope of advice rendered by the Council of Ministers under Article 74(1) of the Constitution. The Honorable Court held that rendering 'advice' relating to appointment of Judges under Articles 124(2) and 217(1) of the Constitution is confined to the judicial functionaries. The opinion of the CJI is entitled to have the right of primacy in the matter of selection of Judges to the Supreme Court as well as the High Courts.

The executive is bound by the advice/recommendation of the Chief Justice of India in the

process of consultation under Articles 124(2) and 217(1) of the Constitution.

Article 124(2) of the Indian Constitution:

No act or proceedings of the National Judicial Appointments Commission shall be questioned or be invalidated merely on the ground of the existence of any vacancy or defect in the constitution of the commission.

Article 217(1) of the Indian Constitution:

Every judge of a High Court shall be appointed by the president by warrant under his hand and seal (on the recommendation of the National Judicial Appointments Commission referred to in Article 124-A), and (shall hold office, in the case of an additional or acting Judge, as provided in Article 224, and in any other case, until he attains the age of (sixty-two years)).

The Counsel for petitioner contended that the deliberate requirement of consultation with constitutional authorities i.e. the Judicial functionaries was one of the constitutional foundations for the principle of judicial independence. They contended that the term 'consultation' includes and implies advice as well. The respondents contended that the post-retirement safeguard should be taken into considerations while evaluating or discussing the independence of the judiciary.

The decision in the present case was delivered in the ratio of 7:2 wherein the majority opinion overruled the judgment of *SP Gupta vs Union of India*, 1982. The Honorable Court in the present case contended that the role of the Chief Justice of India in the Judicial appointments is Unique Singular, Primal but participatory with regards to the Executive on a level of togetherness and mutuality and neither the Chief Justice of India nor the Executive can push through an appointment in derogation.

Third Judge Case. (Under Article 143(1) vs Unknown, 1998)

A Presidential reference was issued in the year 1998 by the then President K.R. Narayanan regarding the word 'Consultation' used in the Constitution. The debate was whether the consultation of the CJI was sufficient or was there a need for consulting other judges as well. The Nine Judge held that merely the singular opinion of the Chief of India was not sufficient. The Court in this decision laid down the guidelines for the Collegium System. The court further developed the Collegium System to comprise four senior most judges along with the Chief

Justice of India.

Article 143(1) of the Indian Constitution:

If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that court for consideration and the court may, after such hearing as it thinks fit, report to the President its opinion thereon. The President of India sought the Supreme Court's opinion on how judicial appointments should be made. The case created the present system of a Collegium of the Chief Justice of India and two senior judges of the Supreme Court.

Supreme Court on President's reference expanded the Collegium to a 5 member body, comprising the Chief Justice of India and four of his senior most colleagues. The Supreme Court also laid down strict guidelines for the appointment of judges of the Supreme Court.

Existing Collegium System in India:

The Collegium system is a system for the appointment and transfer of judges in the Supreme Court and High Court. It is not rooted in the Constitution. Instead, it has evolved through judgments of the Supreme Court. Under the system, the Chief Justice of India (CJI), along with four senior-most Supreme Court judges, recommends the appointment and transfer of judges. A High Court Collegium, meanwhile, is led by the incumbent Chief Justice and the two seniormost judges of that court. The Government can also raise objections and seek clarifications regarding the Collegium's choices, but if the Collegium reiterates the same names, the government is bound to appoint them to the post.

National Judicial Appointment Commission:

National Judicial Appointment Commission was a body which was proposed for the appointment of the Chief Justices, Supreme Court Judges and High Court Judges in a more transparent manner than of the existing collegium system and replace the Collegium System. NJCA was proposed with the National Judicial Appointment Commission Bill, 2014 by then minister of Law and Justice, Ravi Shankar Prasad. Bill was passed in the both the houses, Lok Sabha and the Rajya Sabha, and also received president's endorsement.

The Constitution (ninety-ninth amendment) Act, 2014:

Amendment of Article 124:

In Article 124 of the Constitution, in clause (2),

(a) for the words “after consultation with such of the Judges of the Supreme Court and of the High Courts in the states as the President may deem necessary for the purpose”, the words, figures and letter “on the recommendation of the National Judicial Appointment Commission referred to in Article 124(A)” shall be substituted.

As per 124(B) of the Indian Constitution, Functions of Commission:

It shall be the duty of the National Judicial Appointment Commission to-

- a) recommend persons for appointment as Chief Justice of India, Judges of the Supreme Court, Chief Justice of High Courts and other Judges of High Courts.
- b) recommend transfer of Chief Justices and other Judges of High Courts from one High Court to any other High Court.
- c) ensure that the person recommended is of ability and integrity.

The National Judicial Appointments Commission (NJAC) was introduced in 2014 to reform judicial appointments, but the Supreme Court struck it down in 2015, reinstating the Collegium System.

Transparency and Accountability Concerns:

The underlying reason of National Judicial Appointment Commission proposed by then Law and Justice, Ravi Shankar Prasad was to correct the defects of the Collegium system initiated back then. Collegium system raised many transparency and accountability concerns which lead to the formation of NJCA. With a series of Supreme Court judgment, Executives say in the process of the appointment of judges of Supreme Court and High Court was rendered weak and the importance was shifted to Chief Justice of India. After series of Supreme Court judgments, the term ‘consultancy’ (Article 124(2) of the Indian Constitution) got more defined definition, that in the matters of Judicial appointments Chief Justice of India and his Collegium are responsible. there is no mechanism for background checks, as the system lacks an independent body to verify the credentials, integrity, and past conduct of candidates. This raises concerns about potential bias or appointments based on personal preferences rather than merit. Another issue is judicial overreach, where critics argue that the judiciary has taken over a function originally intended to be shared with the executive. By having the final say in appointments, the judiciary effectively limits the government's role, reducing the scope for

checks and balances. Furthermore, the system often leads to the exclusion of talent, as it primarily follows a seniority-based approach, which may overlook highly competent junior judges and experienced advocates who could bring fresh perspectives to the judiciary. Lastly, the administrative burden on judges involved in the Collegium process is significant, as there is no dedicated secretariat to assist them. This forces senior judges to manage appointment-related work alongside their judicial duties, affecting both efficiency and decision-making. These issues highlight the need for reforms to enhance transparency, accountability, and efficiency in judicial appointments.

Nepotism:

One of the most persistent criticisms of the Collegium System is its susceptibility to nepotism and favoritism, often referred to as the issue of "judicial dynasties." Since judges themselves select new judges without external oversight, there are concerns that appointments are influenced by personal relationships, family ties, or favoritism rather than merit and competence. The absence of transparency in the Collegium System has led to instances where the children or relatives of judges are frequently appointed to high judicial positions. This has created a perception that the system favors the relatives of sitting and retired judges, making it difficult for equally competent but unrelated candidates to enter the higher judiciary. Many critics argue that this results in a "hereditary judiciary", where judicial positions are passed within families. Since there are no recorded reasons for why a candidate is selected or rejected, it becomes easier for Collegium members to favor individuals they know personally, rather than focusing purely on merit. Addressing this issue requires structural reforms that introduce transparency, accountability, and fair selection processes while maintaining the judiciary's independence.

Conclusion:

Currently the Collegium System is responsible of the appointment of Chief Justices and Judges in Supreme Court and High Courts. After series of Supreme Court judgments, this process involves both The Judiciary (Collegium) and The Executive (President and the Government of India). Although, Supreme Court Collegium has the final in the matter of judicial appointments and transfer. Collegium System has played a crucial role in ensuring the independence of the judiciary by keeping judicial appointments free from political influence. It represents an attempt to secure judicial independence by giving the judiciary primacy in its appointments.

While it plays a pivotal role in maintaining the autonomy of the judiciary, its shortcomings in transparency and accountability remain a cause for concern. Reforming the system without compromising the independence of the judiciary is the need of the hour. A balance must be struck between judicial primacy and executive accountability to ensure that the higher judiciary functions in a fair, transparent, and merit-based manner. However, its lack of transparency and accountability has raised serious concerns about nepotism, favoritism, and inefficiency. While the system was established to protect judicial integrity, the absence of a clearly defined selection process and public scrutiny has led to calls for reforms. A balanced approach is needed—one that preserves judicial independence while enhancing transparency and accountability. Possible solutions include codifying the appointment process, setting objective criteria for selection, and introducing external oversight mechanisms. As India's democracy evolves, reforming the Collegium System could strengthen public trust in the judiciary and ensure that judicial appointments are fair, merit-based, and efficient.

