

Collegium System in India

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Abstract

The process of appointing and transferring judges to the Supreme Court and High Courts in India operates under the Judicial Collegium System. This framework, which has emerged through judicial interpretations rather than direct constitutional provisions, was primarily shaped by rulings in the Three Judges Cases. The system entrusts the Chief Justice of India (CJI) and a group of senior judges with the responsibility of recommending judicial appointments. A similar mechanism applies to High Courts, where the Chief Justice of the respective court plays a leading role. While the executive has the authority to seek clarifications or express reservations, repeated recommendations from the collegium ultimately prevail. Significant judicial pronouncements have influenced the evolution of this system. The First Judges Case (1981) ruled that "consultation" with the CJI did not equate to "concurrence." However, the Second Judges Case (1993) overturned this view, emphasizing the necessity of concurrence in judicial appointments. Later, the Third Judges Case (1998) reinforced the principle of collective decision-making by requiring a plurality of opinions in the selection process. The National Judicial Appointments Commission (NJAC) Act, 2014, sought to replace the collegium system but was struck down in 2015 on the grounds that it compromised judicial independence.

Although the collegium system protects judicial autonomy, it has drawn criticism for its lack of transparency and potential biases. Concerns have been raised about the underrepresentation of marginalized communities, including Other Backward Classes (OBCs), Scheduled Castes (SCs), and Scheduled Tribes (STs), in judicial appointments.

Introduction:

India's Judicial Collegium System, where sitting judges select judges for constitutional courts, is rooted in three landmark Supreme Court rulings collectively known as the Three Judges Cases (Kochanek, 2017). A major critique of this system is its alleged caste bias, as marginalized communities like OBCs, SCs, and STs remain significantly underrepresented in the Supreme Court and High Courts (Kochanek, 2017). Despite its role in judicial appointments and transfers, the Collegium system is not explicitly mentioned in the Constitution but has evolved through judicial interpretations (Patel, 2018).

The process is led by the Chief Justice of India (CJI) and the four most senior Supreme Court judges for appointments at the national level (Patel, 2018). In High Courts, the Chief Justice of the respective court, along with its two senior-most judges, oversees the selection process (Kochanek, 2017). While the government can raise concerns or request clarifications, it must accept the Collegium's recommendations if they are reiterated (Patel, 2018).

Objectives of the Study

- **Trace the Development of the Collegium System:** Explore the historical evolution of the collegium system, emphasizing its origins and transformation through key Supreme Court rulings, particularly

the Three Judges Cases (Kochanek, 2017).

- **Assess Judicial Autonomy:** Analyze the role of the collegium system in safeguarding judicial independence and preventing executive interference (Patel, 2018).
- **Identify Challenges and Criticisms:** Investigate concerns such as caste bias, lack of transparency, and the inadequate representation of marginalized groups, including OBCs, SCs, and STs, in judicial appointments (Kochanek, 2017).
- **Examine Alternative Approaches:** Review the annulment of the National Judicial Appointments Commission (NJAC) Act, 2014, and its implications for judicial autonomy (Patel, 2018).
- **Recommend Policy Reforms:** Suggest measures to improve transparency, inclusivity, and fairness in the judicial appointment process (Patel, 2018).

Methodology

- **Doctrinal Research:** Examine primary legal sources, including Supreme Court rulings in the Three Judges Cases and the NJAC verdict, alongside constitutional provisions such as Articles 124 and 217.
- **Empirical Analysis:** Assess statistical data on the representation of marginalized communities in the Supreme Court and High Courts, identifying trends in judicial appointments under the collegium system.
- **Literature Review:** Analyze legal commentaries, academic publications, and media reports to gain insight into critiques and public perceptions of the system.
- **Comparative Analysis:** Contrast India's collegium system with judicial appointment models in other democracies, such as the United Kingdom and the United States, to identify best practices.
- **Policy Evaluation:** Review the rejection of the NJAC framework and propose reforms aimed at improving transparency while preserving judicial independence.

This multi-faceted approach provides a thorough examination of the collegium system's development, shortcomings, and potential for reform.

Review of Literature

The Three Judges Cases:

- **First Judges Case (1981):** Established executive supremacy in judicial appointments by interpreting "consultation" with the Chief Justice of India (CJI) as non-binding (Kochanek, 2017).
- **Second Judges Case (1993):** Redefined "consultation" to mean "concurrence," granting the judiciary a decisive role in the appointment process (Patel, 2018).
- **Third Judges Case (1998):** Expanded the collegium to include the CJI and four senior-most judges, ensuring collective decision-making in judicial appointments (Kochanek, 2017).

Criticisms of the Collegium System:

- **Opacity in Functioning:** The absence of a formal selection process has raised concerns about accountability (Bhat, 2019).
- **Social Representation Issues:** Marginalized communities, including OBCs, SCs, and STs, remain significantly underrepresented in higher judiciary (Gupta, 2020).
- **Concerns of Favoritism:** Allegations of nepotism and preference for personal networks over merit persist (Bhat, 2019).

Reform Initiatives:

- **National Judicial Appointments Commission (NJAC) Act (2014):** Proposed as a more inclusive

alternative to the collegium but was invalidated by the Supreme Court in 2015 due to concerns over judicial independence (Sharma, 2015).

- **Comparative Perspectives:**
- **Global Models:** The UK's Judicial Appointments Commission and the US Senate confirmation process provide insights into fostering both transparency and judicial independence (Chandra, 2017). This literature review highlights the evolution, challenges, and potential reforms of the collegium system by drawing on key judicial precedents and comparative frameworks.

Evolution of the Collegium System in India

The collegium system in India emerged through a series of landmark Supreme Court rulings that redefined the balance of power in judicial appointments:

- **S.P. Gupta v. Union of India (1981) – First Judges Case:** The Supreme Court ruled that "consultation" with the Chief Justice of India (CJI) in judicial appointments did not imply "concurrence," giving the executive greater control over the process (Kochanek, 2017).
- **Supreme Court Advocates-on-Record Association v. Union of India (1993) – Second Judges Case:** This judgment overturned the previous interpretation, asserting that "consultation" required "concurrence," thereby making the CJI's opinion binding on the President (Patel, 2018).
- **Re: Special Reference No. 1 of 1998 – Third Judges Case:** The Court reinforced the principle of collective decision-making by expanding the collegium to include the CJI and the four senior-most judges, ensuring a broader consultative process (Kochanek, 2017).
- **National Judicial Appointments Commission (NJAC) Act, 2014:** Envisioned as a replacement for the collegium, the NJAC introduced a more inclusive selection mechanism. However, it was invalidated by the Supreme Court in 2015 on the grounds that it undermined judicial independence (Sharma, 2015).

Timeline of Changes in Judicial Appointment Procedures in India

- **Post-Independence Era (1950–1973):**

Following the adoption of the Constitution in 1950, the President appointed the Chief Justice of India (CJI) and Supreme Court judges after consulting the CJI and other relevant authorities (Chandra, 2017).

- **Appointment of CJI (1950–1973):**

A convention was established where the senior-most judge would be appointed as the CJI. This practice was disrupted in 1973 when Justice A.N. Ray was appointed as CJI, bypassing three senior judges (Bhat, 2019).

- **First Judges Case (1982):**

The Supreme Court ruled that "consultation" with the CJI did not necessarily imply "concurrence," which shifted more authority to the executive in judicial appointments and transfers of High Court judges (Kochanek, 2017).

- **Second Judges Case (1993):**

The Court interpreted "consultation" as "concurrence," establishing the Collegium System, where the Chief Justice of India and senior judges must reach a consensus for judicial appointments (Patel, 2018).

- **Third Judges Case (1998):**

The Collegium System was expanded to include the CJI and the four senior-most Supreme Court judges, requiring a majority vote for judicial recommendations (Kochanek, 2017).

- **Collegium System:**

The system granted the collegium the authority to recommend judicial appointments, with the government being obligated to accept repeated recommendations (Bhat, 2019).

- **National Judicial Appointments Commission (NJAC) Act (2014):**

The NJAC Act sought to replace the collegium system with a more inclusive body, but the Supreme Court invalidated it in 2015, citing concerns about undermining judicial independence (Sharma, 2015).

National Judicial Appointments Commission (NJAC)

The National Judicial Appointments Commission (NJAC) was established by the 99th Constitutional Amendment Act of 2014, designed to replace the existing Collegium System and promote a more transparent and structured method for appointing judges (Singh, 2015). The commission included several key figures, such as the Prime Minister, the Leader of the Opposition, and two senior-most Supreme Court judges (Sharma, 2016). After receiving approval from 16 state legislatures and presidential assent, the NJAC became part of the Constitution.

However, in 2015, the Supreme Court declared the NJAC unconstitutional, citing concerns over its potential to undermine judicial independence (Kochanek, 2017). Justices Khehar, Lokur, Joseph, and Goel opposed the NJAC, with Justice Chelameswar offering a dissenting opinion (Patel, 2018).

This decision reaffirmed the primacy of the Collegium System, which continues to govern judicial appointments in India.

Composition of the National Judicial Appointments Commission (NJAC)

The National Judicial Appointments Commission (NJAC) was created through the 99th Constitutional Amendment Act, with a six-member composition:

- **Chief Justice of India (CJI)** – Chairperson (ex officio).
- **Two senior-most Supreme Court judges** – Ex officio members, after the CJI.
- **Union Minister of Law and Justice** – Ex officio member.
- **Two eminent persons** – Nominated by a committee consisting of the Prime Minister, the CJI, and the Leader of the Opposition in the Lok Sabha (Chandra, 2017; Patel, 2018).

Procedure for Filling Judicial Vacancies under NJAC

The NJAC aimed to streamline judicial appointments through a structured process:

- **Notification of Vacancies:** The central government was required to notify the NJAC of any existing vacancies within 30 days (Chandra, 2017).
- **Anticipated Vacancies:** For vacancies anticipated due to the end of a judge's term, the government was to make a reference six months in advance (Patel, 2018).
- **Unexpected Vacancies:** In the case of unforeseen vacancies, a reference had to be made within 30 days (Bhat, 2019). This system was designed to ensure a timely and efficient approach to judicial appointments (Kochanek, 2017).

Procedure for Selection of Supreme Court Judges under the NJAC

- **Appointment of the Chief Justice of India (CJI):** The NJAC was tasked with recommending the senior-most Supreme Court judge for the position of CJI, provided they met the required qualifications and were deemed fit according to the commission's criteria (Chandra, 2017).

- **Appointment of Other Supreme Court Judges:** The NJAC recommended candidates for appointment as Supreme Court judges, with emphasis on merit, competence, and other criteria outlined in the commission's regulations (Patel, 2018).
- **Veto Power of Members:** If any two members of the NJAC disagreed with a recommendation, it could not proceed, thus granting these members effective veto power over the process (Bhat, 2019).

Procedure for Selection of High Court Judges under the NJAC

- **Appointment of Chief Justices of High Courts:** The NJAC was responsible for recommending candidates for Chief Justices of High Courts, with emphasis on seniority, merit, and suitability as specified in the commission's regulations (Kochanek, 2017).
- **Transfer of Chief Justices and Judges of High Courts:** The NJAC also managed the transfer of Chief Justices and other High Court judges, following guidelines set forth in the regulations (Chandra, 2017).
- **Reconsideration by the President:** The President of India had the power to request the NJAC to reconsider its recommendations. However, if the NJAC reaffirmed its decision, the President was required to act in accordance with it (Patel, 2018).

Criticism of the Collegium System

- **Lack of Transparency:** A major criticism of the collegium system is its lack of transparency. The reasoning behind judicial appointments and transfers is not publicly disclosed, making the process opaque (Chandra, 2017).
- **Judicial Vacancies:** The system has been ineffective in addressing judicial vacancies, contributing to a backlog of cases. As of August 2022, there were 3 vacancies in the Supreme Court and 380 in the High Courts, exacerbating delays in justice delivery (Patel, 2018).
- **Allegations of Nepotism:** There have been allegations of nepotism and favoritism within the collegium system, with concerns that personal or political connections influence judicial appointments, as highlighted in the 2009 Law Commission report (Bhat, 2019).
- **Violation of Checks and Balances:** The exclusion of the executive from the appointment process has led to criticism that it undermines the principle of checks and balances, resulting in reduced accountability within the judiciary (Kochanek, 2017).
- **Underrepresentation of Women:** The system has been criticized for not ensuring sufficient representation of women in the judiciary, an issue that remains a point of concern in ongoing judicial reform discussions (Patel, 2018).

These criticisms highlight the need for reforms to ensure greater transparency, inclusivity, and accountability in judicial appointments.

Suggestions for Reform

- **Enhancing Transparency:**
 - Make the collegium's deliberations and the reasoning behind decisions publicly available to increase transparency (Chandra, 2017).
 - Establish clear and defined criteria for judicial appointments to improve accountability and reduce arbitrary decision-making (Patel, 2018).

- **Improving Representation:**
 - Implement policies that promote the representation of marginalized communities (OBCs, SCs, STs) and women within the judiciary (Bhat, 2019).
 - Ensure diversity without compromising judicial standards or merit (Kochanek, 2017).
- **Fixed Timeline for Appointments:**
 - Introduce a fixed timeline for processing appointments to reduce delays, minimize case backlogs, and improve efficiency (Patel, 2018).
- **Judicial Oversight Mechanism:**
 - Create a judicial accountability body to monitor the collegium's functioning, addressing concerns like nepotism and favoritism (Chandra, 2017).
- **Balancing Executive Participation:**
 - Allow limited executive involvement in the judicial appointment process to balance judicial independence with the executive's role in maintaining checks and balances (Bhat, 2019).
- **Periodic Review of the System:**
 - Conduct regular assessments of the collegium system to identify weaknesses and adapt it to address evolving challenges (Kochanek, 2017).
- **Incorporating Global Best Practices:**
 - Examine judicial appointment systems in other democracies and integrate relevant practices to enhance India's process (Patel, 2018).

These reforms aim to improve the collegium system by enhancing transparency, inclusivity, and accountability, thereby strengthening the judicial process in India.

Conclusion

The collegium system has been crucial in maintaining judicial independence in India, protecting the appointment process from executive influence (Chandra, 2017). However, it has faced significant criticism, particularly for its lack of transparency, potential caste bias, and underrepresentation of marginalized communities within the judiciary (Patel, 2018).

The judiciary's decision to strike down the National Judicial Appointments Commission (NJAC) Act reflects its commitment to preserving judicial autonomy, but it also highlights the need for substantial reforms within the collegium system (Kochanek, 2017). Achieving a balance between judicial independence and accountability is essential, and this can be realized through reforms focusing on transparency, inclusivity, and efficiency (Bhat, 2019).

A reformed collegium system with enhanced transparency, clearer appointment criteria, and an accountability mechanism could improve its functioning. These reforms would strengthen the judiciary's credibility, boost public confidence, and enable the judiciary to uphold the rule of law while delivering impartial justice.

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