41

POLITICS OF JUDICIARY: THE ORIGIN AND DEVELOPMENT OF COLLEGIUM SYSTEM

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Abstract

Since its beginnings, India's Collegium System has been a source of contention and dispute. Since the 1980s, the notion of the Collegium System has evolved via significant Supreme Court decisions. The Collegium is led by the Chief Justice of India and consists of four senior-most Supreme Court judges when selecting a judge in the Supreme Court and two senior-most Supreme Court judges when appointing judges in the High Courts. There have been several legislative proposals, all of which have failed to eliminate the Collegium System. The Supreme Court rejected the most recent endeavour of the Government, the Constitutional Amendment 99 that established the National Judicial Appointments Commission was declared unconstitutional and void by the Apex Court.

The proponents of the system assert that it protects the judiciary's independence and prohibits political involvement in the nomination and transfer of judges. The chapter examines the history and growth of the Collegium System, as well as the criteria for selecting and appointing judges. It also provides an outline of the Collegium System, how it came into existence and the current scenario. Furthermore, all noteworthy cases are analysed in connection to the nomination of Supreme Court and High Courts judges and the recent developments are discussed.

This research is primarily based on the theoretical method. Primary sources such as legislative texts, committee reports, and case laws form the basis of the study. According to the research findings, while the Collegium System has protected the independence of the judiciary, it has also come under fire for a lack of transparency and accountability.

Keywords: Collegium, NJAC, Supreme Court, High Courts, Appointment of Judges.

Introduction

In India, there has been a heated national discussion about the process of choosing judges for the Supreme Court and High Courts. When the Indian Supreme Court was first established, the executive had the primary power to appoint judges. The Collegium System, which the Supreme Court instituted in 1993, allows the Chief Justice of India and senior Supreme Court judges to appoint new justices to both the Supreme Court and the High Courts. In 2014, Parliament amended the Constitution and approved a bill to establish a commission for selecting judges; however, the Indian Supreme Court ruled that the law was unconstitutional.

The Supreme Court used judicial independence as a major justification for rejecting the proposed commission. The candidates appointed under the Pre-Collegium and Collegium Systems reflect India's geographical and religious diversity. Both, however, have neglected to take gender diversity into account. The lack of equal representation of women after the Collegium was established is harder to justify than it might have been prior to the Collegium due to societal changes and an increase in the number of women in the Bar. The path to the Supreme Court also seems to have become more congested because Pre-Collegium judges typically spend less time in private practice and on the Bench than judges appointed during the Collegium period.[1]

Although the term "Collegium" is not explicitly stated in the Constitution, it has become effective due to Judicial Pronouncements. On October 17, 1981, during a national conference of lawyers in Ahmedabad, the Bar Council of India issued proposals that can be linked to the system's inception. The nomination of Supreme Court judges should be done through a Collegium System, according to the following authorities:

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

Later, on December 30, 1981, Justice Bhagwati of the Supreme Court emphasized the importance of establishing a collegium system in India in the Case of *S.P. Gupta v. Union of India*.[2] The recommendation of such a Collegium System should be binding on the President, though he may request reconsideration on certain grounds. Bhagwati J, agreed with Krishna Iyer J's assertions

[1]SENGUPTA ARGHYA, INDEPENDENCE AND ACCOUNTABILITY OF THE INDIAN HIGHER JUDICIARY, (Cambridge University Press 2019).
[2] S.P. Gupta v. Union of India, 1982 AIR 149.

in *Union of India v. Sankal chand Himmatlal Sheth*,[1] saying "We agree with what Krishna Iyer, J. said in Sankalchan Sheth Case that: consultation is different from consentaneity."

Bhagwati J, however, voiced his disapproval with the existing "mode of appointment of judges in India" in the First Judges' Case, where the President has sole discretion in selecting judges, whose selection "may be incorrect or inadequate" and "may also sometimes be imperceptibly influenced by extraneous or irrelevant considerations."

The Appointment Procedure at The Supreme Court and High Courts

Several proposals for the appropriate method of appointing judges to the Supreme Court and the High Courts were made during the drafting of the Constitution. The framers were concerned that the selection procedure should guarantee that the best candidate was appointed to this critical constitutional position while at the same time guaranteeing that judicial independence from other branches of Government is maintained. They discussed and rejected ideas like having the Chief Justice of India exercise a veto over judicial appointments or allowing the President to appoint judges on her own initiative without the assistance and counsel of the Council of Ministers. They also discussed and rejected ideas like having appointments confirmed by one or both Houses of Parliament.[2]

In the end, the framework that was incorporated into the Constitution mandated that the Chief Justice of India and the President, acting on the advice and aid of the Council of Ministers, in "consultation" with the Chief Justice of India. The President could also consult other Supreme Court and High Court judges at her discretion.[3] The judiciary's role in the appointment process was to offer the President aid and advice. The advice of the Chief Justice or any other judge was not binding on the President. In actuality, the Chief Justice would send the Minister for Law and Justice recommendations. If the Minister approved of the proposed name, he would recommend it to the President, who would then appoint the person with the Prime Minister's approval. If the Minister disagreed with the Chief Justice's opinions, he could seek the advice of additional judges, discuss those opinions with the Chief Justice, or suggest a different candidate to the Chief Justice to get his opinion. After advising the Prime Minister and receiving the Prime Minister's approval, the Minister of Law and Justice would ultimately advise the President on who to appoint. Thus, the Executive-led Appointment System was used.[4]

The Law Commission of India argued that this system of appointments did not allow for the appointment of the best talent to the Court and that, frequently, the appointment of some judges was the result of "executive influence exerted from the highest quarters" as early as 1958. The Law Commission also objected to the emphasis on "communal and regional considerations" when choosing candidates for the Supreme Court.[5]

The Supreme Court in 1977, in the Case of *Union of India v. Sankal Chand Seth*,[6] which concerned the transfer of a judge from one High Court to another under Article 222, held that the President has the right to disagree with the recommendations made by the advisors. The Court further held that *"the consultation implies consultation of two or more persons to find a satisfactory solution. Consultation is different from consentity."* The Constitution of India does not lay down a very definitive provision for the purpose as it merely says that the President is to appoint the judges of the Supreme Court in consultation with the Chief Justice and "such" other Judges of the Supreme Court and of the High Courts as "The President may deem necessary." Whose opinion among the concerned parties is to be given weight is not made clear by this provision. After the case of Sankal Chand, the Supreme Court has given this important question some thought in other cases.

The First Judges Case

The first dispute occurred in the landmark case of *S.P. Gupta v. Union of India*,[7] in which a letter/circular from the Union Law Minister to the Governor of Punjab and the Chief Ministers of all other states and addresses were contested via writ under Article 32 of the Constitution. In the letter, the addressee was informed, among other things, that "...one-third of the judges of the High Court should as far as possible be from outside the state in which the High Court is situated," and he or she was asked to get permission from all other judges currently serving on the High Court to be appointed as permanent Judges in any other High Court across the nation.[8]

The prime concern, in this case, involved the constitutionality of the Central Government's directive regarding the non-appointments and temporary transfers of judges to the High Courts. The majority decision by 5:2, in this case, held the non-extension of an additional judge. Justice Pathak and Tulzapukar held that the opinion and advice of the Chief Justice of India must be given importance and supremacy over the advice given by anyone else. At the same time, Justice Bhagwati recommended a Collegium to recommend names of candidates to the President for the appointment of judges in the Supreme Court and High Courts. When discussing the meaning of the word "consultation," it was unanimously agreed that it meant full and effective consultation. Constitutional functionaries are required to consider all relevant information before making decisions.

P.N. Bhagwati, J., speaking for the majority, opined on the independence of the judiciary, the meaning of the term consultation, and the consultation process:

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[1] Union of India v. Sankal chand Himmatlal Sheth, 1977 AIR 2328.
[2] B. SHIVA RAO, THE FRAMING OF INDIA'S CONSTITUTION, 1967, volume 2, pp. 587, 590 (Indian Institute of Public Administration, 1968).
[3] INDIA CONST. art 124, cl 4.
[4] Law Commission of India, *The Method of Appointment of Judges,* Report No. 80 (1979), available at https://lawcommissionofindia.nic.in/report_eighth/ (last visited 25th July, 2023).
[5] Law Commission of India, *Judicial Administration Volume 1,* Report No 14, (1958), available at https://indianculture.gov.in/reports-proceedings/law-commission-india-fourteenth-report-reform-judicial-administration-vol-i (last visited 26th July, 2023).
[6] Union of India v. Sankal Chand Seth, 1977 AIR 2328.
[7] S.P. Gupta v. Union of India, 1982 AIR 149.
[8] Deshpande, V. S. *High Court Judges: Appointment and Transfer.* JOURNAL OF THE INDIAN LAW INSTITUTE, 27(2), 179–197, (1985).

> *"The concept of independence of judiciary is a noble concept which inspires the Constitutional scheme and constitutes the foundation on which rests the edifice of our democratic polity. On the issue of appointment of Judges of the Supreme Court, it was concluded that consultation with the Chief Justice of India was a mandatory requirement. But while making an appointment, consultation could extend to such other judges of the Supreme Court, and of the High Courts, as the Central Government may deem necessary. It was felt that consultation with the Chief Justice of India alone, was not satisfactory mode of appointment because wisdom and experience demanded that no power should rest in a single individual howsoever, high and great he may be and howsoever honest and well-meaning".*

It was recommended that it would be more suitable if Collegium would make the President's recommendations regarding appointments to the higher judiciary, and the recommending authority should be broader based. If the Collegium was made up of people who knew people who might be suitable for appointments to the Bench and who possessed the qualities required for such an appointment, it would go a long way towards securing the right kind of truly independent judges.[1] In light of discussions at the Chief Justices Conference, the States Reorganization Commission's recommendation, and the study team's findings on national integration, the SC upheld the circular/letter that called for one-third of judges to be appointed from outside the state.

The Court ruled that the transfer policy is not subject to challenge as long as it was developed in consultation with the Chief Justice of India and did not contravene any constitutional provisions. The majority held that the privilege in this regard can be claimed under Article 74(2) or under Section 123 of the Evidence Act and that the material that constitutes the Council of Ministers' advice to the President in this regard can therefore be held from judicial scrutiny by the Court considering the enunciation of law by English Courts and Constitution Bench judgment.

Thus, in this case, the Court observed that the executive must not appoint judges to preserve the judiciary's independence, which is one of the fundamental and vital features of a democracy. In order to maintain the judiciary's independence, they emphasized the need for a separate process for the appointment of judges and their transfer. The idea and concept of the Collegium System were introduced in this case to ensure the independence of the judiciary and prevent the executive from meddling in the selection of judges. It was a turning point in India's precedent history as the idea of a Collegium System was first introduced in this case.[2]

The Second Judges Case

In *Subhash Sharma v. Union of India*,[3] a three-judge Bench cast doubt on the validity of the first judge's argument and suggested that a larger Bench review the First Case. In the *Supreme Court Advocates on Records Association v. Union of India*,[4] also known as the Second Judges Case, the petitioners contended that the executive had improperly discharged its obligation to promptly fill judicial vacancies in the High Courts and had failed to select the most qualified Judges. A nine-judge bench of this Court overturned the judgment in the First Judges Case by a vote of 7:2.

In order to "protect the integrity and guard the independence of the judiciary," the nine-judge Bench not only overturned S.P. Gupta's Case but also established a specific process for the appointment of Supreme Court judges. For the same reason, the Chief Justice of India's primacy was deemed essential. The Bench held that the Chief Justice of India should make the recommendation in that regard after consulting with his two senior-most colleagues and that the executive should typically follow the recommendation. On the primacy issue, the Court concluded that the Chief Justice of India has a unique, singular, and primary role in appointing Supreme Court judges. However, he also participates in the process with the executive on a level of togetherness and mutuality, and neither he nor the executive can make an appointment against the other's wishes. For the first transfer and any subsequent transfers from one High Court to another High Court, the consent of the Judge being transferred is not necessary. Any transfer carried out on the Chief Justice of India's recommendation is not to be regarded as punitive and not subject to any legal challenge.

The majority comprised of Justices JS Verma, Yogeshwar Dayal, GN Ray, Dr. AS Anand, and SP Bharucha, along with concurring opinions from Justices S. Pandian and Kuldip Singh, held that the "primacy" issue in SP Gupta's Case is overruled. The minority consisting of Justices Ahmadi and Punchhi, held that the executive had primacy over the opinion of the Chief Justice of India while on the matter of the fixation of judge strength, Punchhi did not express a view, Ahmadi, J concurred with Venkataramaiah, J in SP Gupta's Case allowing a limited mandamus to the issue.

The Court held that judicial independence is part of the unamendable basic structure of the Constitution, and to protect this principle, the judiciary should have 'primacy' over the appointment process. The process of appointments of judges to the High Courts and the Supreme Court is a cohesive participatory consultative process for selecting the best and most suitable persons available for appointment. The term "consultation" with the Chief Justice was interpreted to mean that the Chief Justice had to concur in the appointment of the Judge. In turn, the Chief Justice's opinion was not his individual opinion but that of the Chief Justice in consultation with a Collegium of the two senior-most Supreme Court judges and the senior-most judge of the Supreme Court from the High Court of the candidate. The recommendation could be sent back to the Collegium if the Government had a different opinion. The Government would be required to abide by the ruling if the Chief Justice reiterated it. This decision established the system of collegium-led appointments.[5]

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[1] SENGUPTA, *Supra Note* 1.
[2] Kumar, C. R. *Future of Collegium System: Transforming Judicial Appointments for Transparency.* ECONOMIC AND POLITICAL WEEKLY, 50(48), 31–34, (2015).
[3] Subhash Sharma v. Union of India, 1991 AIR 631.
[4] Supreme Court Advocates on Records Association v. Union of India, 1993(1) SC 474.
[5] Chandrachud Abhinav, *"The Informal Constitution*," OUP INDIA**, (**2020).

The Third Judges Case

The Union of India had many questions regarding the Second Judges case's interpretation, the President of India, acting in accordance with his authority under Article 143, referred nine questions to the Supreme Court *In Re: Special Reference No. 1 of 1998*[1] for its decision. An extensive response from a bench of nine judges to the presidential reference addressed the majority in Supreme Court Advocates on Records Association case with regard to all issues, including the consultative appointment process, non-appointment, the binding force of recommendations, the justiciability and transfer of judges, as well as the Chief Justice of High Courts.

The Court unanimously held that, the expression "consultation with Chief Justice of India" in Articles 124(2) and 217(1) of the Constitution necessitates consultation with a plurality of judges in the formation of the opinion of the Chief Justice of India. The Chief Justice of India's sole opinion does not qualify as "consultation" in the context of the aforementioned Articles. The transfer of puisne judges is judicially reviewable only to the extent that the recommendation made by the Chief Justice of India in the matter was not made in consultation with the four senior-most puisne judges of the Supreme Court and/or that the views of the Chief Justice of the High Court from which the transfer is to be effected and the Chief Justice of the High Court to which the transfer is to be effected were not obtained. The Chief Justice of India must consult with the four senior-most puisne judges of the Supreme Court before recommending the appointment of a Supreme Court judge and the transfer of a Chief Justice or puisne Judge of a High Court.

The Court also held that the Chief Justice of India is not authorized to act merely in his separate capacity, without consultation with other Judges of the Supreme Court, regarding materials and information conveyed by the Government of India for non-appointment of a judge recommended for appointment. The Chief Justice of India is required to consult with his colleagues who are likely to be familiar with the matters of the relevant High Court. This requirement does not only apply to judges who have that High Court as their parent High Court. Judges who have previously held the position of Judge or Chief Justice of that High Court can also be consulted.[2]

National Judicial Appointment Commission Act, 2014

The appointment of Supreme Court and High Court judges, as well as the transfer of judges from one High Court to another, had to be done in accordance with Articles 124, 217, and 222 of the Indian Constitution. Prior to the NJAC, judges were appointed by the President in consultation with the Chief Justice and other judges. Similarly, the President made the transfers after consulting with the Chief Justice.

On April 13, 2014, the National Judicial Appointments Commission Act, 2014 (the "NJAC Act") was published in the official gazette (99th Constitutional amendment).[3] New questions about judicial independence and accountability were raised in light of the controversy surrounding the judicial appointment process outlined in this Act. Article 124A of the Indian Constitution provides for a National Judicial Appointments Commission comprised of the Chief Justice of India, two other senior Supreme Court Judges, the Union Minister of Law and Justice, and two eminent persons nominated by a committee comprised of the Indian Prime Minister, the Chief Justice of India, and the Leader of the Opposition in the House of People, and if no such Leader is there then the Leader of the single largest Opposition Party in the Lok Sabha. The NJAC Act governs the NJAC's procedure for recommending individuals for appointment as Supreme Court and High Court judges, as well as their transfers.

The Fourth Judges Case

On October 16, 2015, in the Fourth Judges Case i.e., *Supreme Court Advocates-on-Record-Association v, Union of India (UOI),*[4] the Supreme Court ruled in favour of the petitioners by a vote of 4:1, the Court declared the Constitution's 99th amendment and the NJAC Act unconstitutional and void, restoring the Collegium System for appointing judges to the higher judiciary. The Court observed that if Article 124A is struck, the entire amendment will be reversed. The Court determined that clauses (a) and (b) of Article 124A do not deliver satisfactory representation to the jurisdictive component of the National Judicial Appointments Commission, which is insufficient to maintain the pre-eminence of the judiciary and thus violates the independence of the judiciary, which is a fundamental part of the Constitution.[5] Similarly, Articles 124A (c) and (d) are unconstitutional because they include a Union Minister in charge of law, which violates the separation of powers that is the foundation of the Constitution. The Constitution Bench of Justices Khehar, Chelameswar, Lokur, Joseph, and Goel ruled in a "collective order" (4 concurring opinions and a dissenting opinion by Justice Chelameswar, who upheld the validity of the amendment) that the 99th amendment to the Constitution and the NJAC Act are unconstitutional and void.

The Constitution Amendment and National Judicial Appointments Commission Act were introduced to substitute the Collegium System for the appointment of judges to the Supreme Court and High Courts that evolved after the Second Judges Case. Since judicial independence is a part of the fundamental structure of the Constitution that cannot be changed, the Amendment and the statute created as a result are invalid. The Court stated that*, "the system of Appointment of judges to the SC, Chief Justices and judges of the High Courts and the transfer of Chief Justices and judges of the High Courts that existed prior to the amendment begins to be operative"*. Justice Kehar in his judgment, stated that:

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[1] In Re: Special Reference No. 1 of 1998, AIR 1999 SC 1.

[2] Chandra, A., Hubbard, W., & Kalantry, S. (2018). *From Executive Appointment to the Collegium System: The Impact on Diversity in the Indian Supreme Court. CORNELL LEGAL STUDIES RESEARCH PAPER NO. 19-26 (2019), University of Baltimore School of Law Legal Studies Research Paper, Available at http://dx.doi.org/10.2139/ssrn.3417259.* (Last visited on 5th August, 2023).

[3] "New judicial panel gets President's nod, collegium system ends". TIMES OF INDIA. PTI. 31 December 2014. (Last visited 6th August, 2023).

[4] Supreme Court Advocates-on-Record-Association v, Union of India, AIR 2015 SC 5457.

[5] Sengupta, A. *Judicial Primacy and the Basic Structure: A Legal Analysis of the NJAC Judgment.* ECONOMIC AND POLITICAL WEEKLY, 50(48), 27–30, (2015).

> *"I have independently arrived at the conclusion, that clause (c) of Article 124A(1) is ultra vires the provisions of theConstitution, because of the inclusion of the Union Minister in charge of Law and Justice as an ex officio Member of the NJAC. Clause (c) of Article 124A(1), in my view, impinges upon the principles of "independence of the judiciary", as well as, "separation of powers". It has also been concluded by me, that clause (d) of Article 124A(1)which provides for the inclusion of two "eminent persons" as Members of the NJAC is ultra vires the provisions of the Constitution, for a variety of reasons. The same has also been held as violative of the "basic structure" of the Constitution."*

Recognizing the concerns about the Collegium System, the Court held a "consequential hearing" and solicited suggestions from the wider populace on necessary collegium reforms. While the Court ultimately left the decision of finalizing the procedure for working of the Collegium to the Government in consultation with the Collegium (an issue that has yet to be resolved), the Court opined that reform of the Collegium should focus on specifying eligibility criteria for appointments, introducing a transparent process for decision-making, establishing a permanent secretariat to assist the Collegium in better managing the appointments system.[1]

Present Scenario

The primary benefit of this system to our country is that it protects and safeguards the separation of powers between our Government's three organs, which is the basic structure of the Constitution. It ensures that the Legislature or the Executive does not compromise the Judiciary's independence. Justice Sathasivam believes that because the Collegium System has become more transparent and consultation has been broadened, it will be best suited for the appointment of judges.[2] The Collegium mechanism ensures that the right person is appointed to the position of Supreme Court or a High Court Judge. Compared to the CJI and the Apex Court's senior most judges, the executive branch lacks knowledge of or expertise in the needs of the Judge.

The Collegium's resolutions have been posted on the Supreme Court website by the Supreme Court since October 2017.[3] These resolutions are generally worded and provide some insight into the rationale behind a candidate's recommendation for the Supreme Court. They do not, however, discuss the information upon which the recommendations are based. So, the acceptance or rejection of a potential judge's candidature would be noted in the minutes. The explanations would still not be disclosed. If a lawyer with a respectable practice or reputation at the Bar consented to being elevated, she would only be committing herself to a process of public humiliation if the Collegium rejected her name. The minutes documenting her rejection would be made public, forever tarnishing her reputation. If the reason of her rejection is out, it might also affect her legal practice. Unlike a judicial verdict, in which an affected party has the right to know the case against her, the right to represent herself against such a case, and the right to a reasoned order, the secretive Collegium System provided her with none of these rights.

Recently extracts from intelligence reports sent by the Government to Chief Justice Chandrachud led Collegium to support its veto on some candidates recommended for judicial appointment were made public in declarations made by India's Supreme Court.[4] The Law Minister was alarmed at the sensitivity of the shared intelligence, which was ironic considering that the then Law Minister wanted more transparency in the judicial appointments over the last few months. While the Apex Court have complained that the Centre sit on the files and interferes with judicial appointments.

In 2019, the Union Government rejected the Collegium's recommendation to appoint Justice Kureshi to the Madhya Pradesh High Court as Chief Justice. Instead, the Collegium appointed Justice Kureshi as Chief Justice of the Tripura High Court, a smaller court with fewer cases. Seniority, merit, and representation are important factors in the Collegium's decision on which Judges are elevated to the Supreme Court. Justice Kureshi has been among the country's most senior High Court Judges since 2019. Regardless, the Collegium has never recommended his name for appointment to the Supreme Court. Justice Kureshi's non-appointment raised eyebrows even among members of the Collegium. Justice Nariman reportedly vetoed all recommendations for Supreme Court elevation for two years, insisting that Justice Kureshi's name is recommended first. Almost immediately after Justice Nariman's retirement in August 2021, the Collegium recommended and the Executive approved the appointment of nine new Judges. In 2022, Justice Kureshi retired as the Chief Justice of the Rajasthan High Court.[5]

In 2022, the law minister stirred up the conversation around the Collegium System by stating that the Collegium System is alien to our Constitution.[6] His sentiment was echoed shortly afterwards in Parliament by Vice President and Rajya Sabha Chairman Jagdeep Dhankar, who stated that it was "never too late to reflect" on the NJAC. He said the Supreme Court's 2015 judgement striking down the NJAC Act was a "severe compromise: of parliamentary sovereignty and disregard of the "mandate of the people".[7] Soon after Dhankar's remarks, the Supreme Court asserted, without naming anyone, that it is the "final arbiter" of the law under the Constitution, and that under the law, the Government will "have to appoint" all names reiterated by its

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[1] Sathe, S. P. *Appointment of Judges: The Issues*. ECONOMIC AND POLITICAL WEEKLY, 33(32), 2155–2157, (1998).

[2] ECONOMIC TIMES, *No need to change collegium system: Justice Sathasivam*, https://economictimes.indiatimes.com/news/politics-and-nation/no-need-to-change-collegium-system-justicesathasivam/articleshow/20891377.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst. (Last visited 8th August, 2023).

[3] Collegium Resolutions, https://main.sci.gov.in/collegium-resolutions.(Last visited on 9th August, 2023).

[4] 'Making intelligence reports public a matter of grave concern': Rijiju on SC collegium resolutions, January 24, 2023, https://www.theweek.in/news/india/2023/01/24/making-intelligence-reports-public-a-matter-of-grave-concern-rijiju-on-sc-collegium-resolutions.html. (Last visited on 9th August, 2023).

[5] Aarathi Ganesan and Ayushi Saraogi, *Justice Akil Kureshi Retires Without Elevation to the Supreme Court*, SUPREME COURT OBSERVER, (2022).

[6] OUTLOOK INDIA, Collegium System Alien To Constitution: Rijiju, https://www.outlookindia.com/national/collegium-system-alien-to-constitution-rijiju-news-240160. (Last visited on 13th August, 2023).

[7] INDIAN EXPRESS, *Jagdeep Dhankhar salvo at SC: Striking down NJAC glaring disregard of mandate, House sovereignty*, https://indianexpress.com/article/political-pulse/rajya-sabha-chairman-jagdeep-dhankhar-judiciary-8311350/. (Last visited on 14th August 2023).

Collegium. A three-judge bench headed by Justice S K Kaul asked Attorney General R Venkataramani to advise Union ministers who criticize the Collegium system to keep their cool.

Conclusion

The appointment of judges is a critical process in a democratic country like India, and it should be handled with utmost care and attention. It is critical to ensure that the judges are capable of handling the various issues that arise daily. The appointment of Judges must be made correctly, and great care must be taken in selecting the judges. Judges should not be transferred unnecessarily, and transfers should be made only when necessary. Personal and political reasons should not be used to transfer judges. Following the decision of the Fourth Judges case, the Collegium System was the only option left. No single process for the judicial appointments can be considered the best mechanism because each has advantages and disadvantages. Despite this, the Collegium System has proven to be an effective tool for judicial appointment that ensures judicial independence.

It is critical to implement reforms to the Collegium System's operation. It goes without saying that when bringing reforms, the core Constitutional values of independence of the judiciary and integrity and effectiveness of judicial review must be kept in mind. Once the criteria are finalized, and the method for appointing judges is revealed, it is difficult, if not impossible, for those with appointment power to appoint whomever they want. The need of the hour is to seriously consider each of the suggestions, weigh their benefits and drawbacks, and implement the necessary reforms.

Recently, Former Chief Justice of India Uday Umesh Lalit opined that there is no better system for appointing judges than the current Collegium System. "If we don't have anything qualitatively better than the Collegium System, we must work to ensure that it survives. Today, the model on which we work is nearly perfect," Justice Lalit stated. The judges are the best people to decide whether a candidate is qualified for the position. Speaking from his experience as a member of the Collegium (he mentioned seeing at least 325 names), Justice Lalit stated that the recommendations are filtered through a selection process that includes input from State and Central Government levels. Supreme Court Collegium consults the judges in the Supreme Court who are familiar with that particular High Court. According to Justice Lalit, the judiciary is in a better position to judge the merits of the candidates because it has seen them perform over the years. The executive may be unable to make such an assessment.[1]

Senior Advocate and former Law Minister Kapil Sibal agreed with this view; according to him even though the Collegium System is not perfect, having complete control over the appointment of judges is preferable. "The current Government controls all public offices, and capturing the judiciary by appointing their own judges will be dangerous for democracy". However, the former Law Minister expressed his dissatisfaction with the current Collegium System. He stated that the system was not without flaws. Nonetheless, it was preferable to having the Government appoint judges.[2]

The Collegium is in its third decade. Questions about the validity of its existence have dominated the discourse at this time, to the point where an examination of its operation has been overlooked. It is critical that the Collegium be questioned and held accountable for the merits of its policies. That requires an empirical examination of how the Collegium may have influenced the composition and functioning of India's higher judiciary. The Collegium's critique is reduced to anecdotal narrations and sporadic reactions without such inquiries.

At present it is the best way to appoint judges with judicial independence, even though the Executive have found ways to block or delay appointments, most recent example being of Justice S. Muralidhar, who was recommended for transfer as Madras High Court Chief Justice on September 28, 2022 by a Supreme Court Collegium led by then Chief Justice of India U.U. Lalit.[3] The Government did not act let the transfer happen, after about 7 months in April 2023, the Collegium led by CJI D.Y. Chandrachud recalled its recommendation for his transfer. Justice Muralidhar retired as the Chief Justice of Orissa High Court in August 2023. Many lawyers and eminent legal scholars were upset with this. Writing for Indian Express Fali S Nariman, Justice (retd) Madan B Lokur and Sriram Panchu asked the Collegium why Justice Murlidhar was not brought to the Supreme Court, they also questioned why the Collegium recalled its recommendation of his transfer to a bigger Charter High Court of Madras instead of pursuing the case.[4] They believe the after this fiasco the Collegium had much to answer.

The Collegium system is still the best system there is to appoint judges at the higher level. The CJI and senior most judges spend a good amount of time on research and analysis of each and every name that comes to them. They know what it takes to work at the highest level and makes sure the quality of judges is maintained. The Executive time and again tries to use its pocket veto but they have to accept the proposal once the Collegium sends back the recommendation. It can be concluded that despite its shortcomings the Collegium System is a necessary evil we need to maintain balance of power and separation of power among the three organs of democracy in India.

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[1] LIVELAW, *Present Model Of Appointing Judges Is Near Perfect : Former CJI UU Lalit Defends Collegium System,* https://www.livelaw.in/top-stories/cji-uu-lalit-collegium-system-judges-appointment-present-model-appointing-judges-near-perfect-221905. (Last visited on 14th August, 2023).

[2] LIVELAW, *'Don't Want The Court To Be Saffron': Kapil Sibal Says Collegium System Better Than Govt Controlling Judges' Appointments*, https://www.livelaw.in/top-stories/kapil-sibal-says-collegium-system-better-than-govt-controlling-judges-appointments-217047. (Last visited on 14th August, 2023).

[3] INDIAN EXPRESS, *SC Collegium recommends transfer of seven High Court judges; Justice Nikhil S Kariel not on list,* https://indianexpress.com/article/india/sc-collegium-transfer-of-judges-nikhil-kariel-8288115/. (Last visited on 15th August, 2023).

[4] INDIAN EXPRESS, *A question for the collegium: Why was Justice S Muralidhar not brought to the Supreme Court?*, https://indianexpress.com/article/opinion/columns/a-question-for-supreme-court-8894242/ (Last visited on 17th August, 2023).