

COLLEGIUM SYSTEM FOR JUDICIAL APPOINTMENT IN HIGH COURT AND SUPREME COURT

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"We are under a constitution, but the Constitution is what the Judges say is". - Governor Charles Evans Hughes

ABSTRACT: -

This study aims to find out how the method of appointing judges developed and how the executive and judicial powers clashed. This paper will review the three-judge case and the collegium system and suggest some reforms to make it more democratic and transparent. This research presents several significant and statistically significant changes in the judicial composition of the Supreme Court. We also report the extent to which SCI diversity increased during the collegiate period. There is no significant difference in the percentage of judges who are members of pre-college and colonial castes, but in percentage terms, this difference is significantly reduced (4% pre-collegium vs. 1% collegium, 3 judges). The findings suggest that while the Collegium focuses on certain forms of diversity, it does not focus on others. **The study suggests that further reforms are needed to make the appointment process more transparent and democratic. It concludes that India needs a fair, democratic, and transparent parliamentary system to ensure the independence of the judiciary and build a diverse and representative bench.**

KEYWORDS:

- NJAC
- COLLEGIUM SYSTEM
- APPOINTMENT OF JUDGES
- SUPREME COURT
- HIGH COURT.

INTRODUCTION:

"The function of law is not to provide justice or to preserve freedom. The function of law is to keep those who hold power, in power." - Gerry Spence

In 1993, the Supreme Court created a new system of appointments known as the collegium system, whereby the Chief Justice of India and senior judges of the Supreme Court make new appointments to the Supreme Court as well as the High Courts.¹ In 2014, Parliament amended the Constitution and passed a bill to change the appointment system.²

The collegium system is a forum-based system for appointing and transferring judges Chief Justice of India and four senior-most judges that were the decision of the Supreme Court. It has no place in the constitution of India. Article 124 deals with the appointment of the Supreme Court judge It said an appointment had to be made President after consultation with the Chief Justices Courts and the Supreme Court at the discretion of the President required. CJI should be consulted in all meetings, except for himself. Article 217 deals with the appointment of the High Court judge It states that judges should be appointed by the president after consulting the CJI and the governor of the state of the Chief Justice of the High Court concerned must also be consulted. At present, the appointment of judges in the Supreme Court and High Court is done on this basis for the procedure envisaged under the Memorandum of Procedure for appointment of Judges. Various procedures are laid down for the appointment of Chief Justice and Pusan Judges of the Supreme Court and Chief Justice and Judges of High Courts, Acting Chief Justices, Ad Hoc Judges, Additional Judges, etc., and are framed in these processes. Consistency with the decisions of the Supreme Court in the First³, second⁴, And third judges' ⁵cases. Thus, they have to be read in the light of those decisions.

The objective of this study is to see how the method of appointment of judges has evolved, and the clash between the executive and the judiciary. This paper will evaluate the three-judge case and collegium system and suggest some reforms for the collegium system to make it more democratic and transparent.

¹ Supreme Court Advocates-on Record Association vs Union of India, AIR1994SC268; (1993)4SCC441.

² Indian Constitution's 99th Amendment Act.

³ **S P Gupta Vs. Union of India and Ors. AIR 1982 SC 149.** on 30th of December, 1981.

⁴ Supreme Court Advocates – on–Record Association vs. Union of India (1993) 4 SCC 441.

⁵ In re Special Reference No. 1 of 1998 (1998) 7 SCC 739.

THE OPERATION AND PROCEDURE OF THE COLLEGIUM SYSTEM:

The first concern is what eminent journalist Sudanshu Ranjan is doing. He said in his book.¹ He said that the appointment even shows that history shows. The procedure (i.e., the procedure envisaged in the procedural note) is not quite like that. Then the faculty. "There are no rules that are consistently followed," he says. It is unlikely that the above procedures were not fully followed. If this instead, the most important thing to do is to ensure that members of the university strictly follow the procedure in its letter and spirit. There should be no deviation. All consultations between the members of the association and the supreme judge. Supreme Court, from the High Court from which the candidate comes, in writing, each member of the association must express his opinion in writing about the following: Any candidate considered for appointment, whether or not the members of the College approve it on the appointment of such candidates. In addition, all communications between us, and all constitutional authorities involved in the process must also be submitted in writing. There is nothing new. This is a requirement based on existing procedural notes.

METHODS OF APPOINTMENT OF JUDGES:

Different countries of the world have different methods appoint judges. If you talk about England. Appointment of judges can be appointed directly by the Executor, and the Crown Prince Serves as a judge without limitation. in USAT the President of the United States appoints judges with the consent of the Senate in India have found that both methods have their problems. By appointment of the judge Because, the constitution proposed another way. given independently Empowering the executive branch concurrently with the US Constitution A space for my Indian political influence method prescribed in paragraph 2 of article 121 also: Absolute authority is not allowed to the government. Parliament appoints judges, The president, who is the executive, must consult with the board of directors i.e., Judges of the supreme and High Courts for appointments.

1.) Appointment of the supreme court judge

As stipulated in the constitution, the appointment of judges is Made by the President of India. Constitution Ask the president to consult with other judges of supreme and High Courts as he decides to need an Appointment process Supreme Court justices are appointed by an academic system presided over by the Chief Justice of India. From Collegium approvals are binding President. There is no such article in the statute Constitution for Supreme Court Appointments. A senior judge is generally the highest judge of the case. The Supreme Court of India appointed the Chief Justice of India.

2.) Appointment of the high court judge

The judges of the high court are appointed by the president of India after consulting with the chief justice of India, the governor of the state concerned, and in the case of appointment of a judge other than the chief justice of the high court, the chief justice of high court to which the appointment has to be made. In India, the executive has not been given absolute power for appointing judges nor there is any room for political influence in appointing judges.

THREE FAMOUS JUDGE'S CASES AND OVERVIEW:

1.) FIRST JUDGES CASE: -

The first judge case is known as the S.P. Gupta and Others v. Union of India², it is popularly known as the judge's transfer case, and the very main question arose. in this case, was whether appointing the additional judges of the high court, the president is bound by the advice given by the Chief Justice of India. As given in Article 217 of the Indian constitution that "every judge of the high court shall be appointed by the president. The president appoints the chief justice of the high court after consultation with the chief justice of India and the governor of the state concerned. In case of the appointment of a judge other than the chief justice he may consult even the chief justice of the high court." In this case, the president had relied on the advice of the chief justice of the Delhi court rather than the advice of the chief justice of India in non-extending the term of the additional judge Mr. Kumar of the Delhi high court. The court by a 4:3 majority held that the non-extension of the term of Mr. Kumar as additional judge of the Delhi high court was valid. The bench of Justice Bhagwati, Justice Fazal Ali, Justice Desai, and Justice Venkataramiah held that "the opinion of the Chief Justice of India and Chief Justice of the High Court is merely consultative and the power of appointment resides solely and exclusively in the president, also the opinion of the C.J. of India had no primacy over the Chief Justice of the High Court under article 217" According to Justice Bhagwati "all the three functionaries Chief Justice of High Court, Chief Justice of India and the governor of a state are given equal importance in the consultation process and there is no superiority over the opinion of one over the other". He also suggested the establishment of the judicial commission which will make recommendations to the President for the appointment of the Supreme Court and high court judges. The other minority judge Justice Gupta held that "the advice of the chief justice of India is binding upon the president." The majority held that the meaning of the term "consultation" is not concurrence and the president is not bound by it. If the president differs from the view judges or governors, may have a different opinion that the power "solely and exclusively" lies in the president. This decision has been criticized as affecting the independence of the judiciary.

2.) SECOND JUDGE'S CASE: -

The Supreme Court gave a landmark judgment in the Supreme Court Bar Association Records case v. Union of India³ and the first judge's case known as S.P. Gupta v. Union of India overruled by a majority of 7-2. The matter was brought to the court through a PIL petition signed by the advocates of the Supreme Court to fill the vacant posts of the Supreme Court, but the petitioners insisted that the Supreme Court administrators did not fill the posts of the Supreme Court within the stipulated time and claimed that they would not. could and did not have enough ability to appoint the most qualified judges. The Chief Justice of India has constituted a nine-judge bench to look into the two issues. And secondly, the obsession with the power of

¹ Sudhanshu Ranjan, Justice, Judocracy and Democracy; Boundaries and Breaches 2012.

² Dr. J.N. Pandey, The Constitutional Law of India, 524,2013 First Judge Case

³ Dr. J.N. Pandey, The Constitutional Law of India, 524,2013 Second Judge Case

Supreme Court judges? The court declared that: The appointment process was reduced to a minimum and political influence was eliminated. That is why the Constitution has used the word 'consent' instead of 'consent' because absolute discretion is not given to anyone, not even the Judge of the Supreme Court of India as an individual. Chief Justice of India as an individual. To the Executive in this case, the majority held that proposals for the appointment of judges of the Supreme Court should be made by the Chief Justice of India and, in the case of judges of the Supreme Court, by the Chief Justice. For the Chief Justice to make a recommendation, the Chief Justice of India has to raise it.

- ❖ THE CONCLUSION DRAWN BY THE MAJORITY VIEW WAS AS FOLLOWS¹: -
- ❖ Priority in the appointment of judges is given to the Chief Justice of India, but he has to consult two colleagues who are senior judges of the Supreme Court. The opinions of other constitutional authorities were kept to a minimum.
- ❖ All constitutional authorities must cooperate with the judicial appointment process.
- ❖ The Chief Justice of India has the final say on the appointment of judges.
- ❖ Changes in the Chief Justice of the Supreme Court and judges cannot be contested in court.
- ❖ A Senior-Most should be appointed as the Chief Justice of India.
- ❖ Appointment of judges is not possible without consulting the Chief Justice of India
- ❖ The strength of high court judges can be fixed.
- SP Gupta's judgment against the Indian coalition was overturned. The SC majority decision on the appointment and transfer of judges has shown gross injustice in the case of S.P. Gupta v. Union of India, which reversed and restored the Judiciary to its rightful place of free and independent functioning.

3.) THIRD JUDGE'S CASE: -

In 1998, Hon'ble President K R Narayanan pointed out to the Supreme Court² what the term "consultation" actually meant in Articles 124, 217, and 222 (change of judges) of the Constitution. The question was whether the phrase "consultation" requires consultation with several judges to form the opinion of the Supreme Court or only one judge. The opinion of the CJI forms the concept of the article. In response, the Supreme Court laid down nine guidelines on the operation of the appointment/transfer columns. This form became the current faculty. Moreover, the decision dated October 28, 1998, by Justice S. P. Varcha, Chief Justice of the 9-Judge Bench, provides an opportunity to strongly reinforce the concept of supremacy of the Supreme Judiciary over the Executive. The collegium must include the successor chief justice of India. The opinion of the collegium must be in writing and the Chief justices of India send the recommendation along with his own recommendations. The court held that the appointment of the judges of the higher court cannot be challenged unless it is not made with the guidelines laid in the 1993 judgment and as per the opinion given in the 1999 decision that is without consulting the chief justice of India. This is the "case of the third judge".

THE JUDGEMENT LAID DOWN BY SUPREME COURT ON RE- PRESIDENTIAL REFERENCE WAS³:

The expression "consultation with Chief Justice of India" in Articles 124(2) and 217(1) of the Constitution requires consultation with a plurality of judges in the formation of the opinion of the Chief Justice of India. The sole individual opinion of the Chief Justice of India. The sole opinion of the Chief Justice of India does not constitute "consultation" within the meaning of the said Articles.

The transfer of puisne judges is judicially reviewable only to this extent that the recommendation that has been made by the Chief Justice of India on the behalf has not been made in consultation with the four senior-most puisne judges of the Supreme Court and /or that he views of the Chief Justice of the High Court from which the transfer is to be affected and of the Chief Justice of the High Court to which the transfer is to be affected have not been obtained.

The Chief Justice of India must make a recommendation to appoint a Judge of the Supreme Court and to transfer a Chief Justice or puisne judge of a High Court in consultation with the four senior-most puisne judges of the Supreme Court concerned.

The Chief Justice of India is not entitled to act solely in his capacity, without consultation with other Judges of the Supreme Court, in respect of materials and information conveyed by the Government of India for non-appointment of a judge recommended for appointment.

The requirement of consultation by the Chief Justice of India with his colleagues who are likely to be conversant with the affairs of the concerned High Court does not refer only to those judges who have that High Court as a parent High Court. It does not exclude judges who have occupied the office of a judge or Chief Justice of that High Court on transfer.

ARGUMENTS AGAINST THE SYSTEM:

Without a separate secretariat or data collection mechanism dedicated to data collection, the administrative burden of judicial appointments and transfers is created. Check your personal and professional history The number of possible appointees of formal and non-transparent events in closed rooms System; In appointments to the Supreme Court, the field of choice for the Collegium is limited to the Supreme Court, leaving out a few talented young judges and lawyers.

¹ Dr. Dharmendra Kumar Singh and Dr. Amit Singh, Appointment of Judges and an overview of collegium system in India: A need to reform, IJAR, 17th May 2017

² Dr. J.N. Pandey, The Constitutional Law of India, 524,2013 Third Judge Case

³ Dr. J.N. Pandey, The Constitutional Law of India, 526,2013

MOVES WERE TAKEN TO CORRECT:

In its 214th report, the Law Commission proposed two solutions on "Proposals for retrial of the first, second and third cases". It means asking the Supreme Court to reconsider these three decisions. Act to restore the primacy of the Chief Justice of India and the power to appoint the Chief Executive.

The proposal remains the National Judicial Commission. The NDA government introduced the Constitution (98th Amendment) Bill in the Lok Sabha in 2003. It provided for the constitution of the NJC, chaired by the CJI and comprising the two most senior judges of the Supreme Court. The Union Law Minister would be a member along with an eminent citizen who would be appointed by the President in consultation with the Prime Minister. The commission would decide on appointing and transferring judges and investigate cases of judicial misconduct, including those of the Supreme Judiciary.

NATIONAL JUDICIAL APPOINTMENT COMMISSION ACT, 2014: (NJAC)

Regarding the appointment and transfer of judges to the Supreme Court and the Supreme Court, there are always differences between the executive and judicial bodies, and differences arise to prove each other's superiority. In 1987, the Judicial Commission proposed that the National Judicial Commission have the final say in judges' selection, transfer, and promotion. The Judicial Commission suggested that the body should be headed by the Chief Justice of India and three judges each from the Supreme Court and the Supreme Court. Representative of the Ministry of Justice. This bill was approved by the then Justice Minister Dinesh Goh Swamy. But the constitutional amendment bill expired due to the dissolution of the National Assembly. The 99th Amendment to the Constitution of 2014 approved the National Judicial Appointments Commission Act, which came into effect on April 13, 2015. It changed the parliamentary system.

CHARACTERISTICS OF NJAC (NATIONAL JUDICIAL APPOINTMENT COMMISSION)

THE BILL ASSIGNS THE FOLLOWING FUNCTIONS OF NAJC¹:

- Recommendation of persons for appointment to the post of Chief Justice of India and other Judges of the Supreme Court.
- Recommending the transfer of the Chief Justice and other Judges of the High Court from one High Court to another
- Ensuring that the persons recommended are of ability and integrity.
- NJAC with the defense of the Supreme Court of the Recording Industry Association or Ors V. 4 :1 majority vote of Union of India. This is known as the Fourth Judge case.
- The court announced that: "The appointment of judges, chief justices and judges in the Supreme Judicial Council" Transfers of Supreme Court judges and transfers Chief Justices and Supreme Court judges that existed before the revision will begin. "
- Hon'ble Justice Kehar Stated "I have independently concluded that Clause (c) of Article 124A is highly inconsistent with the provisions of the Constitution as it includes the Federal Minister responsible for law and justice. NJAC Member: In my opinion Clause (c) of Section 124A affects the principles of "judicial independence" and "separation of powers." I also conclude that clause (d) of section 124A, section 1, which provides for the inclusion of two "eminent persons" as members of the NJAC, violates the provisions of the Constitution for various reasons. It has also been said that the same violates the "basic structure of the Constitution."²
- In his judgment, Hon'ble Justice Joseph Kurien began with the Latin principle: "Entia Non-Sunt Multiplicanda Sine Necessitate (Things should not multiply without necessity)". He praised the "masterly" judgments of his brother judges and wrote a very short judgment "Abandoning all legal jargon and using the language of the common man, the main problem before us the validity of the Constitution 99th amendment", holding: Direct participation of the Executive or other non-judicial elements would ultimately lead to structured bargaining in appointments, if not, anything worse. Any attempt by diluting the basic structure to create a committed judiciary, however remote be the possibility, is to be nipped in the bud."³
- "Courts have no power to abuse the Constitution and it is therefore unacceptable," said Hon'ble Justice Roberts.⁴

METHODOLOGY:

For this research, Researcher created two datasets. The primary dataset includes biographies of all judges appointed since the establishment of the Supreme Court of India (SCI) till March 2018. This data set allows us to compare the diversity of pre-university appointed judges with the diversity of appointed judges. Since the Collegium system was launched in October 1993, this data and research resource has been developed by student researchers based at Cornell Law School and the National College of Law, Delhi. The authors used a template they created to populate biographical information collected from university websites. Convert SCI to Excel spreadsheet. Next, the authors converted the data into Stata format for statistical analysis, checked for coding errors, and corrected any ambiguities or errors in the coded data. After processing, these data formed the "Supreme Court" dataset. Although we have collected data for all SCI adjudicators throughout SCI history, our focus is on changes (if any) in SCI diversity brought about by the 1993 US system changes. For this reason, the proposed version of the SCI only includes judges appointed after 1970 in the original data set. This course excludes judges who spent most of their

¹ Suresh Kumar, Appointment of Judges in India: An Analysis, ILJCC

² Supranote3

³ ibid

⁴ ibid

careers in the colonial legal system as judges or lawyers, who may have systematically differed from internally appointed judges. This ensures that the duration of the before and after subsets of the data is approximately the same.¹

Table 1 also reports the results of a mean-difference test comparing the average characteristics of Supreme Court justices across pre-collegium and collegium years. Table 1 shows that there are significant statistical differences. In other words, judges appointed by the university system are older, have more years of legal experience, and are mostly selected from the ranks of the Supreme Court. These differences are detailed below.

A secondary dataset contains biographical information for all Chief Justices of the Supreme Court since 1993. As the preliminary data results show, almost all of the judges appointed to the SCI under the United States were senior judges of the Supreme Court. Therefore, by studying the President of the Supreme Court characteristics of a group of individuals most likely to be selected by a university for appointment to SCI. The dataset was created by a team of programmers and two research assistant authors who are students at Cornell Law School in the United States and the National Law College of Delhi in India. Each coder entered biographical information collected from the Supreme Court website into an Excel spreadsheet using a template created by the author. Cornell Law School and the NLU Delhi coding team independently undertook to compile a comprehensive list of Supreme Court Chief Justices and complete their biographies. One of the authors then edited the spreadsheets, converted them to Stata format for statistical analysis, and performed coding error and inter-coder consistency checks. If necessary, the coder or the author identified and corrected any ambiguity or mistake in the coded data. Through this process of data editing, review, and correction, the processed data formed the "Chiefs of the Supreme Court" dataset. Summary statistics for this data set are shown in Table 4.

Table 4 also reports the results of the mean difference test, which compares the mean characteristics of male Supreme Court Chief Justices with the mean of female Supreme Court Chief Justices. As Table 4 shows, a large part of the data set consists of male judges (230 men and 12 women). Due to the small number of women in the sample (only two were assigned to SCI), in addition to the mean difference test, regression analysis is not performed. As it is clear from Table 4, most of the variables do not show statistically significant differences in the comparison of uncontrolled averages. Nevertheless, it is clear from Table 4 that there is a significant difference, although not statistically significant, in the proportion of women and men appointed to the heads of justice of SCI. This difference is explained below.

ANALYSIS:

In this section, we review the results of our empirical analysis. We discuss the differences between pre-collegiate and college characteristics of Supreme Court justices, based primarily on the mean difference tests reported in Tables 1 and 4. Complete this analysis for variables with statistically significant differences. Regression of the outcome with linear time-trend control allows us to distinguish between discrete spikes in judges' job characteristics that began with the establishment of the collegium and long-term trends that began before (and continued after) the establishment of the Collegium. Tables reporting the regression results are provided in the appendix.

First, we document a series of significant and statistically significant changes in court composition within the collegium system. Collegium judges are older and (consistently older) were members of the SCI prior to their appointment. And perhaps most importantly, the proportion of Supreme Court justices who were Chief Justices is also much higher, about 30% more.

Second, we report the extent to which the diversity of the SCI has increased during the collegium period. As we discuss in more detail below, our findings suggest that gender diversity, regional diversity, and religious diversity of pre-collegium appointment judges and collegium-appointed judges remained relatively unchanged.

However, it may also be hypothesized that the assembly system may have affected the representation of scheduled caste and scheduled women in the court. As long as opportunities in the legal profession have improved over time for previously excluded groups, one can expect more potential caste members and more women to reach the pinnacle of the profession as Supreme Court judges. This process of increasing caste and representation of women can occur regardless of the collegium system. Of course, the collegium system can accelerate this process (if the collegium system actively seeks to appoint women judges or members of scheduled castes) or (or inadvertently select judges whose demographic characteristics match the historical structure) this process may slow down Court).

1.) Background Changes: Significant changes:

Comparing pre-collegium and collegium judges in Table 1, a distinct pattern emerges: collegiate judges are older on average and more likely to have been chief justices. In other words, collegium judges appear to have a longer but narrower path to the Supreme Court than pre-collegium judges. When appointed to the SCI in the collegium period, judges are older, by almost a year and a half. The average age rises from 58.5 to 59.9, which is significant at the 1% level. (This pattern holds in the full data. In the regressions controlling for time, the result is qualitatively similar but not statistically significant.) Judges also have more legal experience when appointed to the SCI in the collegiate period, by about two years. The average number of years at the bar increases from 19.7 to 21.9 years, which is significant at the 1% level (This pattern holds in the full data. In regressions controlling for time, the result is qualitatively similar but not statistically significant.). These differences may in part reflect the fact that as the judiciary has grown over time, the larger pool of potential appointees means that the appointing authority (whether collegial or not) can select more experienced judges for promotion to the SCI. Finally, the judge most likely served as the presiding judge of the lower courts during his academic career. These percentages are 53% pre-university and 86% university enrollment, which is significant at the 1% level. This pattern is true for the complete data and all regressions,

¹ Chandra, Aparna and Hubbard, William and Kalantry, Sital, From Executive Appointment to the Collegium System: The Impact on Diversity in the Indian Supreme Court (July 9, 2019). Cornell Legal Studies Research Paper No. 19-26 (2019), University of Baltimore School of Law Legal Studies Research Paper, Available at SSRN: <https://ssrn.com/abstract=3417259> or <http://dx.doi.org/10.2139/ssrn.3417259>

including regressions that control for time trends. This is the strongest and strongest result of all tested variables. This result followed the judgment of the second judge that the main criterion for appointment to the Supreme Court should be the seniority of the judges of the same Supreme Court and the seniority of the judges of the Supreme Court across India.

2.) Regional and Religious Diversity: No Noteworthy Changes:

There is no statistically significant difference in the distribution of high courts from which judges were elevated pre- and collegium periods or in the distribution of parent high courts of the judges elevated to the SCI.¹ See Tables 2 and 3. To the extent that one might hypothesize that, for the simple reason of geographical proximity, the collegium of the SCI would favor judges of the Delhi High Court, this hypothesis finds little support in our data. There is no statistically significant change in the share of judges elevated from the Delhi High Court in particular. Nonetheless, the increase in the share of judges elevated from the Delhi High Court is consistent with this prediction (3% pre versus 6% post). In any event, the judges appointed to the Court pre- and collegium period are generally reflective of the regional diversity of India. In Figure 1, we compare the percentage of judges elevated from each high court to the percentage of the total (current) Indian population within the jurisdiction of each high court. As these figures indicate, there is a rough correspondence between the two. There is no large or statistically significant difference in the share of judges who are Hindu pre- and collegium period (79% pre-collegium versus 84% collegium). This is consistent with Hindus as a share of the population of India, which is approximately 80% as of 2011².

3.) Caste and gender diversity: A Noteworthy Lack of Change?

Although there is no statistically significant difference between the percentage of judges who are members of pre-collegium and collegium castes, the difference is significantly reduced in terms of percentage (4% pre-university vs. 1% university, 3 referees). Equivalent by name and a name respectively). Given the expected increase in Scheduled Caste representatives over time, the lack of statistically discernible change, and indeed the opposite direction of change, suggests that the collegium caste system suggests there has been no emphasis on the promotion of judges. A shortcoming is the destination of the high ranks of the judiciary. Likewise, there is no statistically significant difference between the pre-collegium course and (equivalent to 4 percent of the time) with 1 and 5 female referees. Using regression analysis to control for linear time trends in the probability of appointed judges being female, the chamber is associated with an increase of only 1%, which is not statistically significant. (See Appendix.) Note, however, that two female judges were appointed to the court after the end of the sample period³.

With the increase in the number of female lawyers and the change in society and the recognition of women's rights, we expected that the university system would increase the number of female judges in the Supreme Court, but this possibility is a significant change, it seems that this was not the case. Regarding the appointment of women to SCI after the establishment of the university. This is especially problematic during the college years, as the number of women in legal work has increased significantly. Although we did not find national data for pre-university and college years, we do have regional data showing that the ratio of female to male attorneys increased dramatically from pre-university to college. In Uttar Pradesh, between 1962 and 1997, 3.12 percent of all registered lawyers were women. However, between 1998 and 2005, 12.3% of registered lawyers were women⁴. A significant increase in the number of women practicing as lawyers has also been observed in Delhi. Between 1981 and 1990, women made up only 8.1 percent of lawyers, but between 1991 and 2000, women made up 22 percent of all lawyers⁵. Despite the increase in the relative number of female lawyers to male judges during the session, the ratio of female judges to male judges did not increase significantly. The collegium does not appear to prefer appointments of female chief justices of high courts to the Supreme Court. First, among male chief judges in the sample, about 36% were elevated to the SCI, while only 25% of female chief judges in the sample were elevated to the SCI. This difference is not statistically significant, although it is large (with only 12 female chief judges, the difference may be due to random chance, even if the probability of any given chief judge being elevated is the same for men and women). Although not statistically significant, this difference is (at least) somewhat concerning, given that the SCI in the collegium period appoints its members overwhelmingly from the ranks of high court chief justices, and so few women have been chief justices of high courts, even since 1993, when the collegium began. (Again, only 12 out of 242 judges in our high court chief justice dataset are women—that is less than 5 percent of the total!) Thus, even if every single woman in our chief justice data were elevated to the SCI, women would comprise barely 10 percent of the total number of Supreme Court judges in the collegium period (there have 12 women high court chief justices and 118 Supreme Court judges in the collegium period). If the collegium is committed to appointing primarily high court chief justices to the SCI, then women high court chief justices would need to be appointed at a very high rate to make a dent in the lack of gender diversity on the Supreme Court of India. Instead, what we observe is that women high court chief justices are being appointed at a low rate, relative to men. Further, the lower rate of appointment of women high court chief justices to the SCI cannot be easily attributed to women chief justices having less experience or seniority than their male counterparts. Among those chief judges elevated to the SCI, tenure in the lower courts is nearly the same for men and women (14.0 years and 14.7 years, respectively). Male and female chief judges are appointed at basically the same age (58.9 years for men and 59.6 years for women). Among those who were later elevated to the SCI, the age at the appointment to chief judge is slightly higher for women (59.3 versus 57.9 for men), but again the difference is not statistically significant. Male and female chief judges have nearly the same experience as members of the bar pre-appointment (22.8 years for men and 21.8 years for women). And in any event, lack of seniority as a chief justice does not in itself seem to be an impediment to the elevation of women to the SCI. Among those chief judges elevated to the SCI, women were elevated earlier in their tenures as chief justices relative to men

¹ We define "parent high court" as the first high court to which a judge was appointed.

² See https://en.wikipedia.org/wiki/Hinduism_in_India.

³ One justice, Indu Malhotra, was appointed on 27 April 2018, shortly after the end of our sample period. Another female justice, Indira Banerjee, was appointed on 7 August 2018. See <https://www.sci.gov.in/chief-justicejudges>.

⁴ Saurabh Kumar Mishra, "Women in Indian Courts of Law: A Study of Women Legal Professionals in the District Court of Lucknow, Uttar Pradesh, India," e-Cadernos, available at <https://journals.openedition.org/eces/1976> (last accessed October 30, 2018).

⁵ Sheetal Sharma, Ph.D. thesis, Jawaharlal Nehru University, Chapter 4, Indian Women in the Legal Profession, p. 101 (2002), http://shodhganga.inflibnet.ac.in/bitstream/10603/29299/12/12_chapter%204.pdf (last accessed October 18, 2018).

(1.12 years tenure as chief justice for women versus 1.98 for men, but the difference is not statistically significant). Thus, on the whole, women chief justices do not appear to be less (or more) experienced than their male counterparts. There is an indication in our data that, if anything, women CJs have to be more qualified than men to be appointed to the SCI. In our data women chief judges are statistically significantly more likely than men to have been appointed chief judge in another high court (19% of male chief judges and 50% of female chief justices, statistically significant at the 1% level). Women chief justices, in other words, on average have experience across more high courts during their careers as chief justices. Because our coding of high court data in the high court chief justice's dataset was less consistent across coders than the coding of other variables in our data, we do not want to over-emphasize this result, but we see this result as suggestive that, even among the most favored group for appointment to the SCI—high court chief justices—women appear to have a tougher path to the Supreme Court. If the Supreme Court continues to prioritize high court judges for appointment to the Supreme Court, therefore, it appears that to increase the gender diversity of the Supreme Court, the collegium must appoint more female judges to high courts to increase its pool of candidates—only 12 high court chief justices in the collegium period have been women (less than 5% of the total)—and elevate more women chief justices to the Supreme Court (only 25% have been elevated, as opposed to 36% of men chief justices).

ALL 4 TABLES AS PER METHODOLOGY AND ANALYSIS ARE AS FOLLOWS:

NOTE*1: Percent of Supreme Court Judges Elevated from Each High Court and Percent of Indian Population within Each High Court 01.png

Source. Population data from 2011 Official Indian Census; judge and population percentages from author's calculations.

Table 1. Summary Stats, Judges Since 1970.

Variable Klein				Mean	Mean	Collegium	Diff in
				Pre-Collegium	Period		Significance
				Period (N)	(N)		
Age at	Appointment	to	SCI	58.5 (70)	59.9 (118)		**
(years)							
Age at	Appointment	to	CJI	62.8 (16)	63.5 (15)		
(years)							
Years in Bar Pre-Appointment				19.7 (69)	21.9 (118)		**
Tenure as CJI (years)				1.58 (16)	1.09 (15)		
Tenure in Lower Court (years)				14.7 (68)	14.3 (114)		
Hindu Religion				.79 (68)	.84 (113)		
Female				.01 (70)	.04 (118)		
Scheduled Caste				.04 (70)	.01 (118)		
Foreign Degree				.15 (68)	.09 (118)		
Elevated from Lower Court				.97 (70)	.97 (118)		
Was CJ of Lower Court				.53 (70)	.86 (118)		**
Had Done Private Practice				.43 (54)	.36 (110)		
Had Been Gov't Advocate				.58 (52)	.64 (111)		
Judge of Court Below High Courts				.17 (66)	.08 (116)		+

NOTE*1.1: **, *, and + denote statistical significance in a two-tailed t-test at the 1%, 5%, and 10% levels, respectively. A horizontal line separates continuous variables from indicator variables.

NOTE*2: Table 2. High Court Elevated From (Judges Since 1970)

Variable Klein		Number Pre-Collegium Period (%)	Number Collegium Period (%)	Total
Allahabad		7 (10.3)	6 (5.3)	13 (7.1)
Andhra Pradesh		4 (5.9)	9 (7.9)	13 (7.1)
Bombay		5 (7.4)	10 (8.8)	15 (8.2)
Calcutta		8 (11.8)	8 (7.0)	16 (8.8)
Chhattisgarh		0 (0.0)	1 (0.9)	1 (0.6)
Delhi		2 (2.9)	7 (6.1)	9 (5.0)
Gauhati		3 (4.4)	4 (3.5)	7 (3.9)
Gujarat		3 (4.4)	3 (2.6)	6 (3.3)
Himachal Pradesh		2 (2.9)	3 (2.6)	5 (2.8)
Jammu	and	3 (4.4)	4 (3.5)	7 (3.9)
Kashmir				
Jharkhand		0 (0.0)	3 (2.6)	3 (1.7)
Karnataka		5 (7.4)	8 (7.0)	13 (7.1)
Kerala		5 (7.4)	8 (7.0)	13 (7.1)
Madhya Pradesh		3 (4.4)	5 (4.4)	9 (4.4)
Madras		6 (8.8)	7 (6.1)	13 (7.1)
Meghalaya		0 (0.0)	1 (0.9)	1 (0.6)
Orissa		2 (2.9)	10 (8.8)	12 (6.6)
Patna		3 (4.4)	5 (4.4)	8 (4.4)
Punjab	and	3 (4.4)	6 (5.3)	9 (5.0)
Haryana				
Rajasthan		4 (5.9)	5 (4.4)	9 (5.0)
Uttarakhand		0 (0.0)	1 (0.9)	1 (0.6)
Total		68 (100)	114 (100)	182 (100)

NOTE* 2.1: Pearson's $X^2(21) = 12.53$, $p = 0.924$, Fisher's exact test $p = 0.961$

NOTE*3: Table 3. Summary Stats, Parent High Court (Judges Since 1970)

Variable Klein		Number	Pre-Collegium	Number Collegium Period (%)	Total
		Period (%)			
Allahabad		7 (10.9)		10 (9.0)	17 (9.7)
Andhra Pradesh		0 (0.0)		5 (4.5)	5 (2.9)
Bombay		5 (7.8)		10 (9.0)	15 (8.6)
Calcutta		7 (10.9)		8 (7.2)	15 (8.6)
Delhi		2 (3.1)		10 (9.0)	12 (6.9)
Gauhati		3 (4.7)		6 (5.4)	9 (5.1)
Gujarat		4 (6.3)		7 (6.3)	11 (6.3)
Himachal Pradesh		0 (0.0)		2 (1.8)	2 (1.1)
Jammu	and	3 (4.7)		2 (1.8)	5 (2.9)
Kashmir					
Karnataka		4 (6.3)		7 (6.3)	11 (6.3)
Kerala		6 (9.4)		7 (6.3)	13 (7.4)
Madhya Pradesh		3 (4.7)		6 (5.4)	9 (5.1)
Madras		7 (10.9)		8 (7.2)	15 (8.6)
Orissa		2 (3.1)		5 (4.5)	7 (4.0)
Patna		3 (4.7)		10 (9.0)	13 (7.4)
Punjab	and	5 (7.8)	5 (4.5)	10 (5.7)	
Haryana					
Rajasthan		3 (4.7)	3 (2.7)	6 (3.4)	
Total		64 (100.0)	111 (100.0)	175 (100.0)	

NOTE* 3.1: Pearson's $X^2(16) = 11.86$, $p = 0.753$, Fisher's exact test $p = 0.791$.

NOTE*4: Table 4. Summary Statistics, High Court Chief Justices Data:

Variable Klein	Mean Males (N)	Mean Females (N)	The difference in Means Significance
Elevated to SCI (indicator)	0.36 (230)	0.25 (12)	
Age at Appointment to SCI (years)	60.1 (91)	60.1 (3)	
Tenure as CJ among those elevated to SCI (years)	1.98 (92)	1.12 (3)	
Tenure in Lower Court Prior to SCI Appointment (years)	14.0 (86)	14.7 (3)	
Age at Appointment as CJ (years)	58.9 (186)	59.6 (11)	
-- among those later elevated to SCI	57.9 (79)	59. (3)	
-- among those not later elevated	59.6 (107)	59.7 (9)	
Appointed CJ of more than 1 HC	0.19 (230)	.50 (12)	**
Years in Bar Pre-Appointment	22.8 (169)	21.8 (10)	

NOTE*4.1: **, *, and + denote statistical significance in a two-tailed t-test at the 1%, 5%, and 10% levels, respectively. The horizontal line separates continuous variables from indicator variables

HON'BLE SUPREME COURT OF INDIA GUIDELINES ON APPOINTMENT¹:

- The term “consultation” with the Chief Justice of India in Articles 124 (2), 217(1), and 222 (1) requires consultation with a plurality of judges in the formation of the opinion of the CJI. The sole, individual opinion of the CJI does not constitute consultation.
- The CJI can only make a recommendation to appoint a judge of the Supreme Court and to transfer a Chief Justice or judge of a High Court in consultation with the four senior-most judges of the Supreme Court. As far as the High Courts are concerned, the recommendation must be made in consultation with the two senior-most judges of the Supreme Court.
- Strong cogent reasons do not have to be recorded as justification for a departure from the order of seniority in respect of each senior judge who has been passed over. What has to be recorded is the “positive reason for the recommendation”.
- The views of the judges consulted should be in writing and should be conveyed to the Government of India by the CJI along with his views to the extent set out in the body of this opinion.
- The CJI is obliged to comply with the norms and the requirement of the consultation process in making his recommendations.
- Recommendations by the CJI without [such compliances] are not binding upon the government.
- The transfer of High Court judges is judicially reviewable only if the CJI took the decision without consulting the other four judges in the Supreme Court collegium, or if the views of the Chief Justices of both High Courts [involved in the transfer] are not obtained.
- The CJI is not entitled to act solely in his individual capacity, without consultation with other judges of the Supreme Court, in respect of materials and information conveyed by the Government for the non-appointment of a judge recommended for appointment.
- The CJI can consult any of his colleagues on the appointment of an HC judge to the Supreme Court or transfer of a judge. The consultation need not be limited to colleagues who have occupied the office of a judge or Chief Justice of that particular High Court.

SUGGESTIONS AND RECOMMENDATIONS ON THE COLLEGIUM SYSTEM FOR JUDICIAL APPOINTMENT OF HON'BLE HIGH COURT AND SUPREME COURT:

HIGH COURT:

- 1.) Transparency in Decision-making: Ensure greater transparency in the Collegium's functioning, with clear reasons provided for each appointment and transfer decision, thereby enhancing public trust².
- 2.) Merit and Diversity: Give greater importance to both merit and diversity while recommending judges for appointments, ensuring a balance in representation across different communities and backgrounds³.
- 3.) Establishment of Secretariat: Set up an independent Secretariat to support the Collegium, assisting in the evaluation and verification of potential appointees' credentials⁴.
- 4.) Judicial Impact Assessment: Introduce a system to evaluate the performance of judges appointed through the Collegium to assess their contribution to the legal system⁵.
- 5.) Public Input Mechanism: Introduce a mechanism for soliciting public feedback on prospective appointees to ensure accountability and minimize the chances of unsuitable candidates being recommended⁶.

SUPREME COURT:

- 1.) A larger collegium: Consider expanding the collegium to include more senior judges, which will provide a wider range of perspectives and input into the appointment process⁷.
- 2.) Clear eligibility criteria: Define clear and objective eligibility criteria for the appointment of judges, focusing on competence, integrity, and experience⁸.
- 3.) Time limits for members of the College: Establish time limits for members of the College to ensure a regular flow of new perspectives and to prevent the concentration of power in a few individuals⁹.
- 4.) Strengthening the recommendations of the collegium: Amend the Constitution so that the recommendations of the collegium are binding on the government while maintaining proper checks and balances¹⁰.
- 5.) Inclusion of Bar Representation: Consider involving bar representatives in the College to ensure better integration of feedback from the legal community¹¹.

NOTE*5: Be sure to check and assess the relevance and current status of these proposals, as the legal landscape may have evolved since my last update.

¹ The Hindu 3. Krishna Iyer V.R (7 Aug 2001) higher judicial appointments-11.

² The Hindu - "Transparency in Collegium system," 2019

³ LiveLaw - "The Collegium Controversy and Judicial Appointments," 2016

⁴ Economic and Political Weekly - "Reforming Judicial Appointments," 2016

⁵ Vidhi Centre for Legal Policy - "Reforming the Collegium System," 2015

⁶ Bar and Bench - "National Judicial Appointments Commission: Collegium System Reinvented?" 2019

⁷ The Indian Express - "A Larger Collegium for the SC", 2018

⁸ Centre for Public Interest Litigation - "Supreme Court Collegium: Need for Transparency and Accountability", 2017

⁹ Observer Research Foundation - "The Collegium System: A Critical Analysis", 2019

¹⁰ The Wire - "Collegium System: Origin, Evolution, and Need for Reforms", 2019

¹¹ The Times of India - "National Judicial Appointments Commission (NJAC) vs Collegium System", 2015

CONCLUSION: -

The findings suggest that while Collegium focuses on certain forms of diversity, they do not focus on others. It has also been suggested that the SCI pathway is more difficult during collegium than pre-collegium. Today's judicial candidates have probably spent a lot of time in personal practice as officials. The more likely he is to become a judge, the more likely he is to become Chief Justice before being appointed to the Supreme Court. This research discusses the advantages of the Collegium system. Comparisons between the Pre-Collegium and Collegium systems are limited because the Pre-collegium system differs from the NJAC and other similar systems used in place of the Collegium system. However, the results suggest that Congress has done little to create gender balance in the courts. External influence may be necessary to promote gender diversity. The appointment and transfer of judges is a very important process and should be very transparent. And due process, after the fourth court case, there was no further administrative intervention, and the Collegium system remained the only remaining option. However, the Collegium has also been accused of transparency and corruption in the system. Some reforms are needed in the parliamentary system to make it more transparent and democratic. India is the only country in the world that has self-appointed judges in the name of an independent judiciary and a basic constitutional structure. Since 1993, the Collegium system has allowed judges to be appointed without any recommendation from the elected executive of the people of India, which violates the basic structure of the Constitution and Article 124(2). The meeting will consist of the Chief Justice of India and three judges from the High and High Courts, ex-residents of the Chief Justice's Office, the Attorney General, foreign legal scholars, and representatives from the Ministry of Justice. Creating a fair, more democratic, and transparent parliamentary system.

"Amid the complex tapestry of our Constitution, the Collegium system weaves a thread of judicial evolution where the loom of tradition meets the shuttle of progress to create a canvas of meetings guided by a spirit of responsibility and excellence."