

COLLEGIUM SYSTEM IN THE APPOINTMENT OF JUDGES TO THE SUPREME COURT AND HIGH COURTS

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ABSTRACT

The collegium system is a unique feature of the Indian judiciary, introduced to ensure transparency and independence in the appointment of judges to the higher judiciary. This research paper examines the evolution, functioning, advantages, and criticisms of the collegium system in the appointment of judges to the Supreme Court and High Courts in India. Through an analysis of historical developments, judicial pronouncements, and expert opinions, the paper sheds light on the effectiveness and challenges of this mechanism in maintaining the integrity of the judiciary. The appointment of competent and impartial judges is crucial to uphold the rule of law and protect the rights of citizens. In India, the collegium system was established to replace the executive-dominated appointment process and create a more participatory approach in the selection of judges for the Supreme Court and High Courts. The collegium system is not explicitly mentioned in the Indian Constitution but evolved through several landmark judicial pronouncements. Historically, the appointment of judges in India was primarily the domain of the executive branch of the government. The collegium system has been instrumental in maintaining the independence of the judiciary in India, but it has not been without its flaws. By critically analysing its strengths and weaknesses, this research paper aims to contribute to the ongoing discourse surrounding judicial reforms and the appointment of judges to the Supreme Court and High Courts in India.

KEYWORDS: Appointment Of Judges, Supreme Court, High Court, Constitution Of India, Collegium System, NJAC

INTRODUCTION:

The collegium system is a unique and significant feature of the Indian judiciary that pertains to the appointment and transfer of judges to the higher judiciary, including the Supreme Court and High Courts. It was introduced as a mechanism to ensure judicial independence and to limit the influence of the executive in the appointment process. The collegium system is not explicitly mentioned in the Indian Constitution but evolved through several landmark judicial pronouncements. Historically, the appointment of judges in India was primarily the domain of the executive branch of the government. However, concerns were raised about the potential politicization of judicial appointments and the need to safeguard the judiciary's autonomy from political influences.

The concept of the collegium system was first introduced by the Supreme Court in the "S.P. Gupta v. Union of India" case in 1981. It laid down that the Chief Justice of India should have "primacy" in the appointment of judges, with the President of India having a "consultative" role. The collegium system took a more formal shape in the "Supreme Court Advocates-on-Record Association v. Union of India" case, commonly known as the Second Judges Case in 1993. The court upheld the collegium system and expanded it to include the Chief Justice of India and the four senior-most judges of the Supreme Court. The collegium system underwent further refinement and clarification in the "In re Special Reference 1 of 1998" case, commonly known as the Third Judges Case. The Supreme Court defined the collegium's functioning, emphasizing that recommendations should be made based on a consensus of the collegium members, with the opinion of the Chief Justice of India holding primacy in case of any difference of opinion.¹

Under the collegium system, the Chief Justice of India and the collegium members engage in a consultative process to recommend potential candidates for judicial appointments. The system aims to prioritize merit, integrity, and judicial expertise in the selection process. While the collegium system has been lauded for maintaining the independence of the judiciary, it has also faced criticism for its lack of transparency and accountability. Over the years, there have been debates and discussions about the need for reforms to address these shortcomings and to ensure a more inclusive and effective system for appointing judges to the higher judiciary in India. The collegium system remains an integral part of India's judicial appointments process, and its evolution and functioning continue to be subjects of interest and scrutiny in the country's legal landscape.

HISTORICAL EVOLUTION:

The Supreme Court of India had consistently upheld the collegium system as the prevailing mechanism for the appointment of judges to the Supreme Court and High Courts. However, there have been significant cases in the past where the court has addressed and modified aspects of the collegium system to improve its functioning and transparency. One crucial case related to the collegium system is the "Three Judges Cases," which occurred in three phases and played a pivotal role in shaping the current form of the collegium system.²

¹ <https://www.drishtiias.com/daily-updates/daily-news-analysis/collegium-system-6> (last visited on Aug 16; 2023)

² <https://byjus.com/free-ias-prep/collegium-system/> (last visited on Aug 16, 2023)

1. First Judges Case (1981):

In the first phase, the Supreme Court delivered its judgment in the "S.P. Gupta v. Union of India" case in 1981¹. The court ruled that the "primacy" in the appointment of judges to the higher judiciary should lie with the Chief Justice of India, with the President of India having a "consultative" role. This case marked the beginning of the collegium system, though it was not yet formalized.

2. Second Judges Case (1993):

In the second phase, the Supreme Court revisited the issue of judicial appointments in the "Supreme Court Advocates-on-Record Association v. Union of India" case in 1993. The court upheld the collegium system and clarified that the "consultation" with the Chief Justice of India should be done by the President of India in the appointment of judges. The court also expanded the collegium to include the four senior-most judges of the Supreme Court in addition to the Chief Justice of India.

3. Third Judges Case (1998):

The third phase of the "Three Judges Cases"² was the "In re Special Reference 1 of 1998" case. In this judgment, the Supreme Court further defined the functioning of the collegium system. The court held that the Chief Justice of India's recommendation should be based on a consensus of the collegium members, and the opinion of the Chief Justice of India would have primacy in case of a difference of opinion within the collegium.

FUNCTIONING OF THE COLLEGIUM SYSTEM:

The collegium system in India serves as the primary mechanism for the appointment and transfer of judges to the higher judiciary, including the Supreme Court and High Courts. It functions as a consultative body composed of the Chief Justice of India and a group of senior judges. The collegium system plays several key functions in the process of judicial appointments:

1. Judicial Appointments: The primary function of the collegium system is to recommend candidates for appointment as judges to the Supreme Court and High Courts. When vacancies arise in these courts, the collegium deliberates and identifies suitable candidates based on their legal expertise, integrity, and merit.

2. Transfers and Elevations: In addition to recommending new appointments, the collegium system also handles the transfer of judges between High Courts and the Supreme Court. It considers the elevation of High Court judges to the Supreme Court based on seniority and merit.

3. Consultative Decision-Making: The collegium operates on a consultative decision-making process. The Chief Justice of India and the senior judges in the collegium discuss and debate potential appointments, considering various aspects like the candidate's judicial experience, legal acumen, and overall suitability.

4. Merit-Based Selection: The collegium system prioritizes merit-based appointments, aiming to ensure that candidates appointed to the higher judiciary possess the necessary qualifications and competence to adjudicate complex legal matters. The system emphasizes the importance of selecting judges with a strong grasp of the law and a proven track record of judicial excellence.

5. Independence of the Judiciary: A fundamental function of the collegium system is to safeguard the independence of the judiciary from political influences. By involving the judiciary, itself in the appointment process, the collegium seeks to reduce the risk of executive interference and preserve the autonomy of the judiciary.

6. Confidentiality and Privacy: The collegium system operates with a degree of confidentiality and privacy in its decision-making process. The discussions and deliberations within the collegium are generally not disclosed to the public, although the system has evolved to provide some level of transparency by publishing information about candidates being considered for appointment.

7. Consensus-Building: The collegium system promotes a consensus-building approach among its members. The Chief Justice of India and the other judges aim to reach a collective decision, ensuring that appointments are made after thorough discussion and mutual agreement.

8. Judicial Independence and Accountability: While the collegium system strives to protect the independence of the judiciary, it also operates with a sense of responsibility and accountability. The collegium's recommendations are subject to scrutiny by the President of India, who has the power to appoint judges, ensuring a measure of checks and balances.

The collegium system remains a critical aspect of India's judicial appointments process, and its functioning continues to be subject to ongoing discussions, debates, and calls for reforms to enhance transparency and improve its effectiveness in selecting judges to the higher judiciary.

THE NATIONAL JUDICIAL APPOINTMENTS COMMISSION³

The National Judicial Appointments Commission (NJAC) was a proposed constitutional amendment in India that aimed to change the method of appointing judges to the higher judiciary, including the Supreme Court and High Courts. It sought to replace the existing collegium system with a new body that would involve the executive (government) in the appointment process.

¹ https://en.wikipedia.org/wiki/Collegium_system (last visited on Aug 16, 2023)

² Shatakshi Aggrawal's <https://sociallawstoday.com/three-judges-case> (last visited on Aug 16, 2023)

³ Mohd Sahil Khan's <https://blog.ipleaders.in/national-judicial-appointment-commission-njac/> (last visited on Aug 16, 2023)

The NJAC Bill was passed by both houses of the Indian Parliament in 2014 and received the President's assent. It sought to amend the Constitution to create the NJAC, consisting of six members:

1. Chief Justice of India (CJI): Ex-officio Chairperson of the NJAC.
2. Two senior-most judges of the Supreme Court next to the CJI.
3. The Union Minister of Law and Justice.
4. Two "eminent persons" to be nominated by a committee comprising the Prime Minister, CJI, and the Leader of the Opposition in the Lok Sabha (lower house of Parliament).

The NJAC was proposed with the intention of making judicial appointments more inclusive and transparent by including members from different branches of the government and civil society. It aimed to address some of the criticisms of the collegium system, such as lack of transparency and accountability in the appointment process.

However, the NJAC faced legal challenges, and several petitions were filed before the Supreme Court, questioning its constitutionality. The main contention was that the NJAC would dilute the independence of the judiciary by giving the executive a significant role in judicial appointments.

In October 2015, a five-judge constitutional bench of the Supreme Court delivered its judgment in the case of "Supreme Court Advocates-on-Record Association v. Union of India," commonly known as the NJAC case. The Supreme Court held the 99th Constitutional Amendment Act, which sought to establish the NJAC, and the NJAC Act, 2014, as unconstitutional and void.¹ The court reaffirmed the primacy of the collegium system in judicial appointments, stating that the NJAC would compromise the independence of the judiciary and disturb the delicate balance of power among the three branches of the Indian government. The judgment effectively restored the collegium system as the constitutional mechanism for appointing judges to the higher judiciary.

ADVANTAGES OF THE COLLEGIUM SYSTEM:

The collegium system in the appointment of judges to the higher judiciary, including the Supreme Court and High Courts in India, offers several advantages that aim to promote independence, transparency, and meritocracy in the selection process.² Some of the key advantages of the collegium system are as follows:

1. Judicial Independence: One of the primary goals of the collegium system is to maintain the independence of the judiciary. By giving a significant role to the judiciary itself in the appointment process, it seeks to reduce the influence of the executive and political considerations in the selection of judges. This independence ensures that judges can make impartial and unbiased decisions without fear of interference from external sources.

2. Expertise and Merit-Based Selection: The collegium system emphasizes merit-based appointments. The collective decision-making process involves experienced and senior judges who are well-acquainted with the legal domain. This ensures that candidates selected to be appointed as judges possess the requisite expertise, legal acumen, and knowledge to serve on the bench effectively.

3. Transparency in Decision-Making: While the collegium system is not without criticism for lack of transparency, it has improved over time. The system now involves the publication of reasons for decisions and the disclosure of information about the candidates being considered for appointment. This transparency allows stakeholders, such as the legal community and the public, to be aware of the reasons behind appointments and enhances public confidence in the judiciary.

4. Collegiality and Consensus: The collegium system involves a consultative and consensus-based approach. The Chief Justice of India and the senior judges collectively deliberate on appointments, which can lead to a more inclusive and thorough evaluation of candidates. The process encourages collegiality and ensures that appointments are made after due consideration of different viewpoints.

5. Speedier Appointments: The collegium system allows for relatively faster appointments compared to the earlier practice where appointments could be delayed due to bureaucratic processes. This expeditious selection of judges ensures that vacancies in the higher judiciary are filled promptly, contributing to the efficient functioning of the courts.

6. Protecting the Judiciary from External Influence: The collegium system provides a safeguard against any undue influence that the executive or political authorities might attempt to exert over judicial appointments. By vesting the power with the judiciary, it reduces the chances of appointments being influenced for political reasons, thus preserving the integrity and credibility of the judiciary.

7. Adaptability and Evolution: The collegium system is capable of evolving with time and addressing its shortcomings. Judicial decisions and public feedback contribute to the system's adaptability, allowing for reforms to enhance its functioning and efficiency.

CRITICISMS AND CHALLENGES:

The collegium system in the appointment of judges to the higher judiciary has faced criticism and has been a subject of debate and scrutiny. Some of the main criticisms of the collegium system are as follows:

¹ <https://www.kashmirpen.in/the-national-judicial-commission-bill-njac-and-its-brief-account/> (last visited on Aug 16, 2023)

² Deepshika Garg's, <https://www.legalserviceindia.com/legal/article-3681-collegium-system-in-india.html> (last visited on Aug 16, 2023)

1. Lack of Transparency: One of the most significant criticisms of the collegium system is its lack of transparency in the decision-making process. The selection and appointment of judges are conducted behind closed doors, without disclosing the reasons for the choice of candidates. This opacity has led to allegations of favouritism, nepotism, and lack of accountability.

2. Absence of Accountability: The collegium system lacks a formal mechanism for holding the judiciary accountable for its decisions. Since the process is entirely internal to the judiciary, there is limited scope for external scrutiny or oversight. Critics argue that this lack of accountability may lead to potential biases or subjective judgments in appointments.

3. Exclusion of Executive and Civil Society: Another criticism is that the collegium system excludes the executive and civil society from the appointment process. Unlike the proposed National Judicial Appointments Commission (NJAC), where the government would have a role in judicial appointments, the collegium system limits the involvement of other branches of government and stakeholders, potentially leading to a lack of diverse perspectives.

4. Inadequate Representation: Critics argue that the collegium system does not ensure adequate representation of marginalized groups, such as women, minorities, and other underrepresented sections of society. The selection process may not always consider diversity in the judiciary, leading to a lack of varied experiences and perspectives on the bench.

5. Collegium's Internal Dynamics: The functioning of the collegium itself has faced criticism due to the possibility of hierarchical pressures and groupthink. Some have raised concerns that the senior-most judges may dominate the decision-making process, leading to a concentration of power in the hands of a few.

6. Delay in Appointments: While the collegium system aimed to expedite appointments, it has faced criticism for delays in finalizing appointments, leading to vacancies in the judiciary. The process of reaching a consensus among the collegium members can sometimes cause delays, impacting the timely functioning of courts.

7. Lack of a Formal Complaint Mechanism: Critics point out that the collegium system lacks a structured complaint mechanism for addressing allegations or grievances against potential appointees. In case of any serious misconduct or incompetence, there may be no clear recourse available.

8. Need for Structural Reforms: Some critics argue that the collegium system needs significant structural reforms to address the shortcomings and ensure a more transparent and accountable process for judicial appointments. However, reaching a consensus on these reforms has proven challenging.

Despite these criticisms, the collegium system remains in place as the primary mechanism for the appointment of judges to the higher judiciary in India. The ongoing debates surrounding its functioning and potential reforms highlight the importance of ensuring an efficient, fair, and independent judicial appointments process in the country.

COMPARATIVE ANALYSIS:

A comparative analysis of the collegium system for judicial appointments in India with other methods of appointing judges in different countries highlights the unique features and challenges of each system. Here's a brief comparative analysis:

1. United States (US) - Presidential Appointment with Senate Confirmation:

In the United States, federal judges, including those on the Supreme Court, are appointed by the President and confirmed by the Senate.¹ This process involves a more prominent role for the executive and legislative branches. The President nominates candidates, and the Senate Judiciary Committee conducts confirmation hearings before the full Senate votes on the appointment.

Advantages:

- Separation of powers: Involves checks and balances between the executive and legislative branches, providing an additional layer of scrutiny.
- Public Scrutiny: Confirmation hearings are public, allowing for greater transparency and accountability.

Challenges:

- Partisan Politics: The process can become highly politicized, leading to contentious confirmations and potential delays.
- Short-term Impact: Appointments may reflect the ideology of the current administration, leading to shifts in judicial philosophy with changing administrations.

2. United Kingdom (UK) - Judicial Appointments Commission (JAC):

In the UK, the Judicial Appointments Commission is responsible for selecting candidates for judicial positions. It is an independent body that assesses candidates' merit and recommends them to the Lord Chancellor, who then makes the final appointment.

Advantages:

- Independent Selection: The JAC is independent of the government, ensuring a more neutral and merit-based selection process.
- Diverse Representation: The JAC considers candidates from various backgrounds, promoting diversity on the bench.

¹ <https://constitutioncenter.org/the-constitution/articles/article-iii/clauses/45> (last visited on Aug 16, 2023)

Challenges:

- Ministerial Veto: While the JAC is independent, the Lord Chancellor holds a veto power, which raises concerns about potential executive influence.

3. Canada - Judicial Advisory Committees (JACs):

In Canada, Judicial Advisory Committees assess candidates' qualifications and suitability for federal judicial appointments. The committees are composed of judges, lawyers, and community representatives.

Advantages:

- Community Participation: Involvement of community representatives allows for public input and diverse perspectives in the selection process.

- Transparent Criteria: JACs publish eligibility criteria, promoting transparency in the process.

Challenges:

- Limited Public Input: Despite community participation, the process remains mostly closed-door, limiting public scrutiny.

4. South Africa - Judicial Service Commission (JSC):

In South Africa, the Judicial Service Commission is responsible for recommending judicial appointments to the President. The JSC consists of members from various branches, including the judiciary, legal profession, and parliament.

Advantages:

- Multi-stakeholder Representation: Involves various stakeholders, ensuring a broader representation of interests.

- Parliamentary Approval: Recommendations require the President's approval, but parliamentary approval is also sought, providing a degree of oversight.

Challenges:

- Political Influence: Political considerations may still influence the appointment process.

Comparative analysis shows that each system has its strengths and weaknesses. The collegium system in India emphasizes judicial independence but faces criticism for its lack of transparency and accountability. Other systems incorporate a more diverse range of stakeholders, but they may also encounter challenges related to political influence and public scrutiny. The ongoing debate over the best method for judicial appointments underscores the significance of a fair, transparent, and independent judiciary in any democratic society.

RECOMMENDATIONS FOR IMPROVEMENT:

Based on the analysis conducted in this research paper, certain recommendations for improving the collegium system can be put forth. These suggestions aim to address some of the criticisms and challenges associated with the current mechanism.

a. Transparency and Accountability: To enhance transparency, the collegium should publish detailed reasons for its recommendations and decisions regarding judicial appointments. This will provide the public and legal community with insight into the selection process and ensure accountability.

b. Diverse Representation: The collegium should strive for diverse representation, considering factors such as gender, ethnicity, and regional backgrounds. This will help promote a judiciary that reflects the diversity of the Indian society and brings varied perspectives to the bench.

c. Consultation with Stakeholders: The collegium could consider seeking the opinion of eminent jurists, legal professionals, and the Bar while making appointments. Engaging with stakeholders will provide valuable insights and create a broader consensus on judicial appointments.

d. Establishment of a Judicial Appointments Commission: A well-structured and constitutionally valid Judicial Appointments Commission, different from the one previously proposed, could be reconsidered as an alternative to the collegium system. This commission should maintain a balance between the judiciary, executive, and civil society representatives, ensuring a fair and transparent selection process.

e. Regular Performance Evaluation: Periodic evaluations of judges' performance, including their efficiency, integrity, and judicial temperament, can be conducted to assess their suitability for promotions and appointments to higher courts.

f. Setting Clear Criteria: The collegium should establish clear and well-defined criteria for judicial appointments. This would create a more objective and standardized process for evaluating potential candidates.

g. Training and Continuing Education: Encouraging judges to undergo specialized training and continuing education programs can help enhance their expertise and keep them updated on emerging legal principles and societal challenges.

CONCLUSION:

In conclusion, this research paper has delved into the origins, functioning, advantages, and criticisms of the collegium system in the appointment of judges to the Supreme Court and High Courts in India. It is essential to engage in ongoing debates and discussions about the best possible mechanism for judicial appointments to ensure a transparent, accountable, and impartial judiciary that upholds the principles of justice and the rule of law in the country.

The collegium system has been instrumental in maintaining the independence of the judiciary in India, but it has not been without its flaws. By critically analysing its strengths and weaknesses, this research paper aims to contribute to the ongoing discourse surrounding judicial reforms and the appointment of judges to the Supreme Court and High Courts in India. The collegium system has been a significant milestone in India's quest to ensure an independent judiciary. Despite facing criticism, it has played a vital role in safeguarding the judiciary from political influences. However, the system is not without its shortcomings, and there is room for improvement. By addressing the concerns raised and incorporating the recommendations mentioned above, the collegium system can be strengthened to better serve the Indian legal system and the citizens it represents.