

**JUDICIAL APPOINTMENTS IN INDIA:  
CONSTITUTIONAL MANDATES AND RECENT  
TRENDS**

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**Abstract**

*Judiciary is one of the vital organs of the state in a constitutional democracy. It is entrusted with the very crucial role to protect and, preserve the Constitution in course of discharging its functions, in furtherance of the spirit of the Constitutionalism. Indian judiciary is considered as one of the efficient judicial systems of the world, to administer justice effectively in the form of appropriate relief by use of innovative methods and constructive interpretation. Any system cannot be expected to yield satisfactory results, unless inputs given therein are good enough. In the Judicial system inputs are given through the judicial appointments. Judicial appointments in India have been a significant subject matter of debate among legal fraternity in particular and public at large in general, on account of several controversies relating thereto. Therefore the topic of the present discussion bears enormous significance in this context. This paper attempts*

*to examine the recent trends pertaining to judicial appointments and incidental and consequential matters relating thereto and connected therewith in the light of the constitutional mandates in this regard. It would briefly discuss structure of Indian Judicial system, explain the scheme of judicial appointments, highlight the constitutional mandates, point out recent trends and issues relating to topic and, conclude the discussion with some workable suggestions to effectively address those issues.*

**Keywords:** Collegium System, Independence of judiciary, judicial appointment, Transparency, Uniformity.

**I. INTRODUCTION**

**A. Background of the Study**

The Judiciary has vital role to play in ensuring the maintenance of rule of law and better governance of a Constitutional democracy. There are numerous laws, rules, regulations and procedures but whenever disputes arise, they are brought to the Court of Law for adjudication or settlement, as deemed necessary in the case. Indian Judiciary has been demonstrating proactive role and has scrupulously and over jealously guarded the fundamental rights for dignified existence and survival of human being as well as other living creatures in some cases. The scope of several fundamental rights including right to life and personal liberty has been expanded by the judiciary through expansive interpretation of provisions of the constitution and other laws in a number of cases. All these immensely significant contributions towards the development of jurisprudence could be possible only if the judges were competent and, intellectually efficient. In order to ensure such contributions in future also, the judicial appointments should be made, keeping in view the element of competency, suitability, fairness, urgency, transparency and other incidental and consequential factors.

Besides all these contributions, achievements and, developments, Indian judicial system is facing huge

criticism in respect of the matter of judicial appointments and especially to the Constitutional Court and to some extent in subordinate courts also. These criticisms are related to the existing system of judicial appointments and collegium system in particular, regarding the manner of functioning, lack of transparency in such appointments, various forms of biasness, etc. Other current issues like demand of reservation in higher judicial appointments and, judicial infrastructure are also of great significance among other such issues of like nature and of equal importance.

In this background this paper proceeds to examine the recent trends in the Indian judicial system, particularly relating to judicial appointments. The whole discussion in this paper has been divided into six parts. The first part is about introduction of this paper, second deals with Indian Judicial System and briefly explains the Composition, Structure and Jurisdiction of Courts in the hierarchy of Indian Judicial System, third discusses the scheme for judicial appointments, fourth discusses the constitutional mandates regarding judicial appointments, fifth discusses the recent trends and lastly sixth is conclusion & suggestion part.

### **B. Objectives of the Study**

This present study in paper has been conducted with the following objectives:

- To briefly discuss the composition, structure and jurisdiction of courts under Indian judicial system, and scheme for judicial appointments in such courts.
- To point out, and emphasize upon the constitutional mandates regarding judicial appointments.
- To examine and explain the significance of those constitutional mandates in relation to judicial appointments.
- To highlight the recent trends in the Indian Judicial System, particularly those relating to judicial appointments.

- To examine such recent trends in the light of the constitutional mandates in this regard.
- To suggest some effective measures in order to ensure uniformity, transparency, expediency or urgency in the matters of judicial appointment and, to remove disparity, inconsistency therefrom.

### **C. Significance of the study**

Judicial appointments are matter of immense significance, due to direct relation with the noble cause of administration of justice. It involves the consideration of various constitutional mandates and significant issues like rule of law, separation of powers, independence of judiciary principles of natural justice, right to fair and speedy justice, constitutional morality and, other important factors such as uniformity, transparency, expediency, etc. With the passes of time and development of law and legal system in any constitutional democracy the role and, functions of judiciary also increase. Besides those developments some unnecessary and undesirable things also enter and start affecting the efficiency of the judicial system. In order to uphold the constitutional values, judiciary has to be very impartial and independent, while performing such role and discharging such functions. In order to ensure the efficient performance of the judicial system, the judicial appointments necessarily be made through a fair, transparent and expeditious system. Therefore the study is quite significant in this direction examining the recent trends in the light of constitutional mandates and, suggesting the effective measures in this behalf.

## **II. INDIAN JUDICIAL SYSTEM**

Indian judicial system is a three tier system of courts consisting of the Supreme Court at the apex level of hierarchy, High Courts in the middle and District and Subordinate Courts at the bottom of the hierarchy. It is in the form of pyramidal structure referring to the jurisdictional subordination in the hierarchy of courts. The

Supreme Court and High Courts are Constitutional Courts therefore their composition, jurisdiction and powers are defined under the Constitution of India. Some jurisdiction and powers have also been conferred upon these two constitutional courts. The constitution is silent on the point of composition, jurisdiction and powers of District and Subordinate Courts, which have provided under the other different laws. Brief discussion about each level of courts in the hierarchy of the judicial system would help to make discussion meaningful.

### A. The Supreme Court of India

The Supreme Court is the highest Constitutional Court in India. It has been established in 1950 under the provisions of article 124 of the Constitution of India. It consists of a Chief Justice of India and such number of other judges as prescribed under the law by parliament from time to time depending upon the necessity.<sup>114</sup> The seat of the highest court is at Delhi, however it may also be at such other place or places as fixed by the chief Justice of India with the prior approval of the President.<sup>115</sup> It is considered as the guardian of the Constitution as well as the sentinel on the qui vive.<sup>116</sup> It is a court of record and has all such powers including the power to punish for contempt of itself.<sup>117</sup> It performs multifarious roles as assigned under the Constitution as well as under any other laws for the time being in force. Most significantly, in exercise of the power of judicial review, it keeps check and balance on the actions of other two organs of the state. It has been vested with various jurisdictions such as original<sup>118</sup>, appellate<sup>119</sup>, advisory<sup>120</sup>, as well as extraordinary writ jurisdiction<sup>121</sup>. For the purpose of efficient performance of its functions and discharge of constitutional obligations, it has been empowered to issue appropriate directions, orders or writs including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *certiorari*

and, *quo warranto*.<sup>122</sup> For the purpose of doing complete justice, it may also pass such decree or make such order as necessary.<sup>123</sup> It is the supreme authoritative interpreter or of the substantial question of law as to the interpretation of this Constitution<sup>124</sup> or of general importance<sup>125</sup>. Law declared by this court is binding on all courts within the territory of India.<sup>126</sup> It also finally decides all doubts and disputes arising out of or in connection with the election of a President or Vice President.<sup>127</sup> It exclusively adjudicates upon the disputes involving union government and states as well as states *inter se*.<sup>128</sup> It also tenders opinion to the president on a question of law or fact of public importance, which has arisen or is likely to arise.<sup>129</sup> In addition to the above this court keeps on evolving and expounding new principles, expanding the contours of existing principles or provisions of law, and suggesting amendment if any required, from time to time. In the pursuit of its constitutional obligations in course of discharge of its functions, it has immensely contributed to the evolution, development and advancement of the jurisprudence of constitutional and other laws of the country. A strict constitutional mandate is that all civil and judicial authorities in the territory of India shall act in aid of the Supreme Court.<sup>130</sup>

### B. High Court

High court is the highest Constitutional Court in a state and the second highest in the hierarchy of Courts under Indian judicial system. In India for each state a High Court has been established<sup>131</sup> under the Constitution, however there is also provision for a common High Court for two or more states or for two or more states and a Union territory.<sup>132</sup> Every High Court consists of a Chief Justice and such other Judges as the president deem it necessary to appoint from

<sup>114</sup> INDIA CONST. art. 124

<sup>115</sup> *Id.* art. 130

<sup>116</sup> *Keshavananda Bharti v. State of Kerala*, AIR 1973 SC 1461

<sup>117</sup> INDIA CONST. art. 125

<sup>118</sup> *Id.* art. 131

<sup>119</sup> *Id.* arts. 132-134

<sup>120</sup> *Id.* art. 143

<sup>121</sup> *Id.* art. 32, for the enforcement of fundamental rights.

<sup>122</sup> *Ibid.*

<sup>123</sup> INDIA CONST. art. 142

<sup>124</sup> *Id.* art. 132

<sup>125</sup> *Id.* art. 133

<sup>126</sup> *Id.* art. 141

<sup>127</sup> *Id.* art. 71

<sup>128</sup> *Id.* art. 132

<sup>129</sup> *Id.* art. 143

<sup>130</sup> *Id.* art. 144

<sup>131</sup> *Id.* art. 214

<sup>132</sup> *Id.* art. 231

time to time.<sup>133</sup> Every High Court is also a court of record and has all powers of such court including the power to punish for its contempt.<sup>134</sup> High court also exercises power of judicial review to keep check and balances on the actions of other two organs at state level. As a Constitutional Court it has been vested with extraordinary writ jurisdiction<sup>135</sup>, Supervisory jurisdiction<sup>136</sup>, etc. however under the other laws of the land it also exercises original<sup>137</sup>, appellate<sup>138</sup>, reference<sup>139</sup>, revision<sup>140</sup> and other jurisdictions. It has also the power to issue appropriate directions, orders or writs including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *certiorari* and, *quo warranto* for the enforcement of fundamental rights or for any other purpose.<sup>141</sup> Scope of Writ jurisdiction of High Court is wider than that of the Supreme Court. It can interpret any substantial question of law and also can determine the constitutionality of any law challenged before it.

### C. District and Subordinate Courts

In every district a district court and such number of other Subordinate Courts have been established within the territory of India. Although the Constitution does not expressly provide for the establishment of district and Subordinate Courts, but they are under the administrative control of respective High Court. These courts are commonly referred to as “Civil Courts”. However at the bottom of the hierarchy of the Indian Judicial System three classes of Courts are functional, such as Civil Court, Criminal Court and, Revenue Court. Civil Court includes the Court of district judge, additional district judge, Civil Judge (Senior Division) and, Civil Judge (Junior Division) which is empowered to exclusively deal with civil disputes such as rent, property, inheritance, succession, and other matters of like nature, established under the Code of Civil Procedure, 1908. Criminal Court includes the Court of

Session including additional and assistant sessions judge, Chief Judicial magistrate, and judicial magistrates of first and second class, and executive magistrates, which empowered to exclusively deal with criminal matters under the various penal laws for the time being in force, established under the Code of Criminal Procedure, 1973 and various other laws. Revenue Court includes the Board of revenue, Commissioner, Collector, Tehsildar, etc., established under and functioning in accordance with the revenue laws of the concerned state.

## III. SCHEME FOR JUDICIAL APPOINTMENTS

### A. Appointment of Judges of the Supreme Court

The Constitution of India provides for the appointment of Chief Justice, Other Judges, Acting Chief Justice, *Ad hoc* judges<sup>142</sup> and, attendance of retired judges<sup>143</sup> at the Supreme Court. Every Judge including the Chief Justice of India is appointed by the President after *consultation* with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose.<sup>144</sup> Appointment of CJI is made on the basis of principle of seniority as matter of rule. This practice was suddenly broken twice,<sup>145</sup> but now it is being followed. There is also provision for appointment of appointment of Acting Chief Justice, in case of vacancy or absence or inability to perform the duties of the office of the Chief Justice. In such a situation one of the other Judges may be appointed by the President for that purpose.<sup>146</sup> For the appointment as a Judge of the Supreme Court other than the CJI, the person should be a citizen of India and, has been for at least five years a Judge of a High Court or of two or more such courts in succession; or has been for at least ten years an advocate of a High Court or of two or more such courts in succession; or is in the opinion of the President, a

<sup>133</sup> *Id.* art. 216

<sup>134</sup> *Id.* art. 215

<sup>135</sup> INDIA CONST. art. 226

<sup>136</sup> *Id.* art. 227

<sup>137</sup> Election matters, Company matters, etc.

<sup>138</sup> The Code of Civil Procedure, 1908; The Code of Criminal procedure, 1973, etc.

<sup>139</sup> *Ibid.*

<sup>140</sup> *Ibid.*

<sup>141</sup> INDIA CONST. art. 226

<sup>142</sup> INDIA CONST. art. 127

<sup>143</sup> *Id.* art. 128

<sup>144</sup> *Id.* art. 124, § 2

<sup>145</sup> Firstly on 25<sup>th</sup> April, 1973, within few hours of the delivery of the judgment in Fundamental Right case, Mr. A N Ray was appointed as the CJI superseding three of his colleagues Justice Shelat, Hegde, and Grover. Eight hours after the swearing in of Justice Ray, those three Judges resigned. Subsequently in Jan 1977, nine months after delivering lone dissent in Habeas Corpus case, Justice H R Khanna was superseded to the office of CJI by Justice M H Beg, consequent thereto he immediately resigned.

<sup>146</sup> INDIA CONST. art. 126

distinguished jurist. However the Constitution is silent on the point of minimum age of eligibility for such appointments.

### B. Appointment of Judges of High Courts

In the High Courts, there are provisions for the appointment of Chief Justice, Permanent Judge, Additional and acting Judge, retired judges. Every judge of a High Court is appointed by the President after consultation with the Chief Justice of India, Governor of the State, and, in case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court.<sup>147</sup> The Chief Justice of a High Court is also appointed on the basis of principle of seniority. And as a matter of practice, generally the Chief Justice of a High Court belongs to a different parent High Court. For the appointment of a judge of a High Court, the Person must be a citizen of India and, has for at least ten years held a judicial office in the territory of India; or has for at least ten years been an advocate of a High Court or of two or more such courts in succession.<sup>148</sup> Here also on the point of minimum age of eligibility for such appointment the Constitution is silent. The provision for appointment of duly qualified persons to be additional Judges has been made in order to deal with the situation of any temporary increase in the business of High Court or arrears of work therein, when it appears to the president that the number of the Judges of that Court should be for the time being increased. Such appointment is made for a period not exceeding two years.

### C. Appointment of Judges of Subordinate Courts

District and subordinate Courts consist of judges and judicial officers of the rank of district judge or equivalent thereto and judicial officers of the rank below.<sup>149</sup> Appointment, posting, promotion of district judge is made by the Governor of the State in consultation with the High

Court for such State. Appointment to the cadre of district judge is made through three sources such as (a) directly from Bar<sup>150</sup> for 25% (b) through limited departmental competitive examination<sup>151</sup> for 10% and, (c) through time scale promotion<sup>152</sup> for 65% of the total vacancies in a year. For the purpose of appointment as a district judge directly through bar, a person should not already be in the service of the Union or of the State and, if he has been for not less than seven years an advocate or a pleader and is recommended by the High of the State.<sup>153</sup> Appointment of judicial officer other than district judge is made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court of such state.<sup>154</sup> The scheme for such judicial appointments to Subordinate Courts is laid down under the Judicial Service rules of the respective States made by the Governor thereof under article 233 and 234 of the Constitution of India. Therefore the process, manner and mechanism thereof are governed by such rules.

## IV. CONSTITUTIONAL MANDATES

### A. Rule of law

It is one of the fundamental constitutional principles enshrined in the provisions of the Constitution of India.<sup>155</sup> As per the meaning enunciated by Dicey, it means and includes Supremacy of Law, Equality before Law and, Predominance of Constitutional spirit. With respect to the present discussion on judicial appointments, it assumes more significance, because it is very much necessary and

<sup>147</sup> INDIA CONST. art. 217

<sup>148</sup> INDIA CONST. art. 217(2)

<sup>149</sup> Including Sessions Judge, additional district and Sessions Judge, Civil Judge senior division equivalent to additional/Chief Judicial Magistrate or additional/Chief Metropolitan Magistrate on criminal side and, Civil Judge Junior division or Munsiff equivalent to Judicial Magistrate First/Second Class on criminal side.

<sup>150</sup> Through the District Judge (entry level) Exam for advocates having at least 7 years of practice and 35 yrs age.

<sup>151</sup> For Judicial officers with at five years of service as Civil judge (Sr Division) or equivalent thereto.

<sup>152</sup> Also known as regular promotion. Usually, there is no requirement of a minimum number of years of service. But, some states have prescribed a minimum number of years of service in the previous office.

<sup>153</sup> INDIA CONST. art. 233

<sup>154</sup> INDIA CONST. art. 234; For the appointments of Judges in Subordinate judiciary the Constitution neither provides for minimum age of eligibility nor provides for or lay down any other additional conditions of eligibility, rather it merely empowers the Governor of the States to frame rules in this behalf, in order to deal with all other aspects of such appointments.

<sup>155</sup> INDIA CONST. art. 14

unavoidable that this principle should be essentially adhered to in the process of making such appointments. One of the important aspects of this principle was emphasized in *Maneka Gandhi Case*<sup>156</sup> as the requirement of fair, just and reasonable process and absence of arbitrariness. Therefore the process of judicial appointment must include the element of fairness, justness and reasonableness and, the scope of arbitrariness must be excluded. Otherwise dire consequences would ensue, if fundamental tenets of rule of law are not complied with in the process of appointment of judges, who are entrusted with the responsibility to ultimately uphold the rule of law.

### B. Separation of Powers

It is another very important and fundamental constitutional principle enunciated by Montesquieu. It is expressly enshrined in the provision of the Constitution of India. It means all three organs of the state should be separate and independent from each other in their functioning. They should no overlapping or encroachment upon the field assigned to either of them. There is express constitutional mandate that the state shall take steps to separate the judiciary from the executive in the public service of the state.<sup>157</sup> It is also part of basic structure of the Constitution.<sup>158</sup> This doctrine is equally important and relevant in the context of judicial appointments. It is well known fact that generally external or outside interference is undesirable in the matters relating to internal affairs of a body or institution. The issue of judicial appointment is a matter relating to the internal affairs within the judiciary. Therefore it should be left to be dealt with by the judiciary independently. The other two organs of the state should separate themselves and must not claim any stake in the process of such appointment, nor should they create any hindrances or obstruction in order to delay or disturb or unnecessarily interfere with such process.

### C. Independence of Judiciary

<sup>156</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC

<sup>157</sup> INDIA CONST. art. 50

<sup>158</sup> *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299

It is not a new or unknown concept but exactly appropriate and clear meaning is still imprecise.<sup>159</sup> The central point of this concept is apparent in the 'separation of powers'.<sup>160</sup> An independent and impartial judiciary is very essential for ensuring the rule of law and realization of citizen rights in a Constitutional democracy. It can be normally assured through the constitution, but it may also be ensured through other means such as legislation, conventions, and other suitable norms and practices. In India, it is one of the cherished constitutional ideals or goals, although not expressly mentioned, but impliedly enshrined in the constitution. It is part of the basic structure of Indian Constitution.<sup>161</sup> Ultimately independence of the judiciary depends on the totality of a favourable environment created and backed by all state organs, including the judiciary and the public opinion. It also needs to be constantly guarded against the unexpected events and changing social, economic and, political conditions, because it is too fragile to be left unguarded.<sup>162</sup> With respect to the present discussion it assumes more significance, due to the fact that, if at the stage of input into the judicial system, such appointments are influenced by extraneous factors or are not independent therefrom, then ultimately the system has to bear the consequences thereof, in course of its functioning as well as at the output stage of the system i.e. administration of justice, which cannot be said to be fairly and impartially administered.

<sup>159</sup> ROBERT STEVENS, THE INDEPENDENCE OF THE JUDICIARY 3 (1993); The essence of this doctrine is to ensure the freedom of Judges from the influence of the Executive and legislature.

<sup>160</sup> Shimon Shetreet, *Judicial Independence: New Conceptual Dimensions and Contemporary Challenges*, in JUDICIAL INDEPENDENCE: THE CONTEMPORARY DEBATE 594 (Shimon Shetreet & Jules Deschanes eds., 1985) pp. 590-681; According to Shimon Shetreet, judicial independence means independence of both the judges and the Institution of Judiciary together. It means that the Judiciary as an institution has autonomy and independence. In addition to the institutional autonomy, the individual independence of judges also holds utmost significance. He explained the doctrine of independence by stating two principles, Firstly, that the Judiciary should act independent of the Executive and the legislature and secondly, that each and every judge should have individual independence to decide on the matter. The two principles cannot exist without each other and are mutually dependent. The Judiciary should be free of any political pressure, political ideologies, public pressure, media pressure, etc. The judges should also have individual independence and should not be influenced by superior judges in administration of justice.

<sup>161</sup> *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299; *Minerva Mills v. Union of India*, AIR 1980 SC 1789.

<sup>162</sup> M.P. Singh, *Securing the Independence of the Judiciary-The Indian Experience*, 10(2) INT'L & COMP L REV 245, 247, 248 (2000), <https://mckinneylaw.iu.edu/iiclr/pdf/vol10p245.pdf>.

#### D. Principles of Natural Justice

It is a body of principles consisting of mainly three rules (a) rule of fair hearing, (b) rule against bias and, (c) rule of reason decision. Every Constitution or legal authority is expected to observe these rules in course of every transaction in discharge of official duty, and particularly while acting judicially or quasi-judicially or decision making. This principle appears to be relevant in relation to the matter of judicial appointments also and it must hold good in this regard. As widely known to public that Government is the largest litigant, therefore principles of natural justice would demand that it should not be seen to be appointing judges or even participating in the process of judicial appointments, nor should it claim any stake or role in such process as a matter of right.<sup>163</sup> Otherwise such interference by the government would amount to bias, in such a situation there is reasonable likelihood of biasness and, thereby violation of principle of natural justice. Moreover, when the candidature of a person for the judgeship is under consideration, then no such judge, who is related and closely known to that candidate, should form part of the collegium, otherwise there is very reasonable likelihood of biasness with respect to such recommendation.

#### E. Judicial Accountability

In a democracy which contemplates independence of judiciary as part of basic structure of the constitution,<sup>164</sup> need for accountability mechanism cannot be overemphasized. Accountability is *sine qua non* for the efficient functioning of any authority entrusted with responsibility.<sup>165</sup> Need for accountability in judiciary cannot be gain-said as judiciary is bestowed with great faith and confidence reposed by the citizens who seek recourse to

judicial system to enforce their fundamental and legal rights. Judicial independence and judicial accountability are not antithetical to each other rather these are complementary to each other. Judicial accountability promotes judicial independence. It contemplates ensuring institutional transparency and subjecting the institution for the public scrutiny so as to ensure transparent, honest and efficient system which prevents judicial delinquency for making inroads.<sup>166</sup> In this backdrop it can be said that accountability is also a dire need of the hour in the matter of appointments, in order to improve the system. Despite the significant need for judicial accountability, the Constitution of India does not have express provision.<sup>167</sup>

#### F. Transparency

Judiciary commands great respect, faith and, confidence of “we the people” on account of its ability, efficiency and attitude of showing urgency to administer justice. Judicial independence empowers, encourages and, facilitates the judges to administer justice impartially and without any fear or favour. Impartial and transparent system of judicial appointment is thus the *sine qua non* for ensuring judicial independence and has a direct bearing on the impartiality, integrity and independence of judges.<sup>168</sup> Although there is no express provision in the constitution in this regard, but the totality of the provisions implies its existence thereunder. Transparency in judiciary will surely enhance its credibility among the masses paving way for greater judicial independence. Transparency is a cross-cutting principle that is necessary for enhancing the integrity of the judicial system, as well as public confidence in, the process of such appointments. For the purpose of ensuring

<sup>163</sup> Upendra Baxi speaking to Jibby J Kattakayam, *Government is largest litigant, principles of natural justice demand that it is not seen to be appointing judges*, TIMES OF INDIA, November 28, 2017, <https://timesofindia.indiatimes.com/blogs/jibber-jabber/government-is-largest-litigant-principles-of-natural-justice-demand-that-it-is-not-seen-to-be-appointing-judges/?source=app&frmapp=yes>.

<sup>164</sup> *State of Bihar v. Balmukund Shah*, AIR 2000 SC 1296

<sup>165</sup> Shayonee Dasgupta and Sakshi Agarwal, *Judicial Accountability and Independence*, NUJS L. Rev. 779.

<sup>166</sup> Advanced Constitutional Law, Module 32:- “Judicial Appointments and Accountability”,

[http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp\\_content/law/14\\_advance\\_d\\_constitutional\\_law/32\\_judicial\\_appointments\\_and\\_accountability/et/7630\\_et\\_32\\_et.pdf](http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/law/14_advance_d_constitutional_law/32_judicial_appointments_and_accountability/et/7630_et_32_et.pdf) (last visited, July 28, 2022).

<sup>167</sup> In the absence of effective constitutional checks self-regulation mechanism was adopted by Apex Court in 1997 followed by ‘Restatement of Values of Judicial Life; by the Chief Justices Conference in December 1999. Thereafter Bangalore Principles of Judicial Conduct were adopted based on UN Basic Principles of Judiciary. These principles included six values viz. independence, propriety and competence, integrity, equality, impartiality and diligence. However, there is no external authority to keep restrain on judicial impropriety.

<sup>168</sup> Shimon Shetreet, *Judges on Trial* (North-Holland Publishing Company, Amsterdam 1976) 46

transparency in the judicial appointments, the constitution of India provides for the mandatory consultation with various constitutional functionaries, as an integral part of that process.<sup>169</sup>

### G. Legitimate Expectation

The doctrine of legitimate expectation in public law is based on the principle of fairness and non-arbitrariness in governmental actions.<sup>170</sup> Significance of this doctrine was expressly acknowledged by the Supreme Court of India in *S.P. Gupta v. President of India* in relation to judicial appointments.<sup>171</sup> Justice R F Nariman said,<sup>172</sup> "Nobody has any legitimate expectation to come to this court. I believe there is a legitimate expectation in the people of India and the litigating public to get a certain quality of justice from this final court. For that, it is very clear that, merit must predominate, subject to all other factors. The merit must always come first."<sup>173</sup> Due consideration of every legitimate expectation in the decision making process is requirement of the rule of non-arbitrariness and, therefore, this also is a norm to be observed by the Chief Justice of India in recommending appointments to the Supreme Court.<sup>174</sup> Therefore it should be given due consideration in the process of such appointments, if the candidates possess all the essential qualifications and appear suitable in all other respect, then no other extraneous considerations should influence their appointments, otherwise it would amount to grave injustice to them and, to we the people.

### H. Fair and Speedy Justice

Every common man expects Justice from the judicial system. When justice is administered fairly and expeditiously, it is meaningful and has great value in the eye of the people thereby faith and confidence reposed in the system get emboldened, but if is unnecessary delayed or administered without fairness, people get disheartened and their faith get eroded. Therefore fair and speedy justice has been declared to be integral part of fundamental right to life and personal liberty under article 21, and the state cannot take plea of inadequacy of resources or insufficiency of funds, to escape the responsibility in this regard.<sup>175</sup> For the realization of this right the legal and judicial system have to perform very well at least with respect to the matters within their control. The matters relating judicial appointments are some of them, which need urgent and adequate attention of the competent constitutional authorities involved in this process. Therefore this constitutional mandate can be substantially fulfilled by the timely appointments of qualified, competent and suitable persons as judges.

### I. Constitutional Morality

Constitutional morality means adherence to the core principles of constitutional democracy. It has been regarded as a matter of paramount reverence for the Constitution. It provides for a principled understanding for the work of governance. It prescribes the norms for institutions to survive and an expectation of behaviour that will meet not just the text but also the spirit and soul of the Constitution. It also makes the governing institutions and representatives accountable. In recent years this expression was frequently referred by the Supreme Court of India<sup>176</sup> and some High Courts<sup>177</sup> in various judgments. Therefore significance of this concept cannot be ignored in relation to the matters of judicial appointments. The fundamental tenets of this concept must be kept in mind and duly observed by all the constitutional functionaries involved in the decision making process in relation to such appointments, in order to ensure

<sup>169</sup> INDIA CONST. art 124, 217, 233 & 234.

<sup>170</sup> It means that every individual who, as a result of administrative action formed certain expectations regarding future administrative actions may demand that those expectations are met, unless there are compelling reasons of public interest for not allowing this.

<sup>171</sup> AIR 1982 SC 149, para 37, 598, 751, etc.

<sup>172</sup> At an event organised by the Supreme Court Bar Association (SCBA) to bid farewell to him.

<sup>173</sup> Krishnadas Rajagopal, *Merit should predominate judicial appointments: Justice Nariman*, THE HINDU, (Aug 12, 2021), <https://www.thehindu.com/news/national/merit-should-predominate-judicial-appointments-justice-nariman/article35879627.ece>.

<sup>174</sup> Dushyant Dave, *Failing Collegium and a Weakening Judiciary Are Undermining the Administration of Justice*, THE WIRE, Jan 19, 2022, <https://thewire.in/law/failing-collegium-and-a-weakening-judiciary-are-undermining-the-administration-of-justice> (last visited July 28, 2022).

<sup>175</sup> Hussainara Khatoun (II) v. Home Secretary, State of Bihar, AIR 1979 SC 1360; 1979 SCR (3) 169

<sup>176</sup> Navtej Singh Johar v. Union of India, (2018) 10 SCALE 386; Indian Young Lawyers Association v. State of Kerala 2018 SCC Online SC 1690; Government of NCT of Delhi v. Union of India, (2018) 8 SCALE 72, etc.

<sup>177</sup> Naz Foundation v. Govt. (NCT of Delhi), (2009) 160 DLT 277



and, improve the efficiency of Indian judicial system to effectively administer justice.

## V. RECENT TRENDS

### A. Allegations of biasness in Judicial Appointments

Time and again the Collegium system is facing the allegations of Nepotism, favoritism and various other forms of biasness or corruption, in the process of judicial appointments. It is also argued that collegium system lacks transparency and fairness. Selection and appointments through this system are being made on the basis of criteria other than merit such as relationship with sitting or former judges of the Constitutional Courts, or close connection with leader of a political party in power, etc. As long as the process of judicial appointments remains opaque, selection and appointments of judges are made on personal considerations other than merit and capability will continue, we will have to face the same problem of appointments on criteria other than merit like favouritism, nepotism, etc.<sup>178</sup>

### B. The Constitution (Ninety Ninth Amendment) Act, 2014

This Constitutional amendment was brought with a view to bring about changes in the existing system of judicial appointments to the Constitutional Courts. It sought to establish a new institution namely, *National Judicial Appointment Commission*, lay down functions thereof and, empower parliament to make law to regulate procedure for such appointments, transfers and, to empower the commission for making regulations regarding the procedure to be followed in discharge of its functions. For the aforesaid purposes, it amended the provisions of articles 124, 127, 128, 217, 222, 224, 231 and inserted new articles 124A, 124B, 124C and 224 A in the constitution of India.<sup>179</sup>

### C. National Judicial Appointment Commission (NJAC)

This Commission was a proposed body which would have been responsible for the recommendation, appointment and transfer of Judges of the Supreme Court of India and of the High Courts in the States, as the case may be. The NJAC was to replace the pre-existing collegium system. It was established by virtue of the provisions of article 124A of the Constitution of India, inserted through the Constitution (Ninety-Ninth Amendment) Act, 2014. The composition of the Commission was laid down in article 124A.<sup>180</sup> It was also provided that no act or proceedings of the Commission shall be questioned or be invalidated merely on the ground of the existence of any vacancy or defect in the constitution of the Commission.<sup>181</sup> The functions of the Commission as laid down under article 124B, were to (a) recommend persons for appointment as Chief Justice of India, Judges of the Supreme Court, Chief Justices of High Courts and other Judges of High Courts; (b) recommend transfer of Chief Justices and other Judges of High Courts from one High Court to any other High Court; and (c) ensure that the person recommended is of ability and integrity.<sup>182</sup> The procedure for discharge of the function of the commission was to be regulated by parliamentary law.<sup>183</sup> The National Judicial Appointment Commission Act, 2014 was enacted in this behalf. Both the enactments were brought into force with effect from 13.4.2015.

### D. Fourth Judges Case, 2015

In this case<sup>184</sup>, validity of the Constitution (Ninety-Ninth Amendment) Act, 2014 and the National Judicial Appointment Commission Act, 2014 was challenged. The

<sup>178</sup> N. G. R. Prasad, *The costly tyranny of secrecy*, THE HINDU, July 05, 2013, <https://www.thehindu.com/opinion/lead/the-costly-tyranny-of-secrecy/article4881975.ece>.

<sup>179</sup> The Constitution (Ninety Ninth Amendment) Act, 2014, <https://www.egazette.nic.in/WriteReadData/2014/162235.pdf>.

<sup>180</sup> INDIA CONST. art 124A; The NJAC was consisting of the following, namely:— (a) the Chief Justice of India, Chairperson, ex officio; (b) two other senior Judges of the Supreme Court next to the Chief Justice of India—Members, ex officio; (c) the Union Minister in charge of Law and Justice—Member, ex officio; (d) two eminent persons to be nominated by the committee consisting of the Prime Minister, the Chief Justice of India and the Leader of Opposition in the House of the People or where there is no such Leader of Opposition, then, the Leader of single largest Opposition Party in the House of the People — Members: Provided that one of the eminent person shall be nominated from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities or Women: Provided further that an eminent person shall be nominated for a period of three years and shall not be eligible for re-nomination.

<sup>181</sup> *Ibid.*

<sup>182</sup> *Id.* art.124B

<sup>183</sup> *Id.* art. 124C

<sup>184</sup> Supreme Court Advocates on Record Association v. Union of India, AIR 2016 SC 517

Article 124A as introduced in the Constitution by the Constitution (Ninety-ninth Amendment) Act, 2014 impinges on the independence of the judiciary and in the matter of appointment of judges<sup>185</sup> and alters the basic structure of the Constitution. Accordingly it was declared unconstitutional.<sup>186</sup> The other provisions of the Constitutional Amendment cannot stand by themselves and are therefore also declared unconstitutional. Similarly, the NJAC Act, 2014 confers arbitrary and unchartered powers on various authorities under the statute and it violates Article 14 of the Constitution and is declared unconstitutional. Even otherwise, the NJAC Act, 2014 cannot stand alone in the absence of the Constitution (Ninety-ninth Amendment) Act, 2014.<sup>187</sup> The result of this declaration is that the 'collegium system' postulated by the Second Judges case and the Third Judges case gets revived.<sup>188</sup>

#### E. Revival of Collegium System

It is a system of appointment and transfer of judges of Constitutional Courts in India. There is neither any express provision in the Constitution nor any Act of parliament for establishment thereof, therefore it can neither Constitutional nor Statutory body, therefore it may be termed as extra-Constitutional body. It was introduced through the decision in *Supreme Court Advocate on Record Association v. Union of India*<sup>189</sup>, laying down the composition and modus operandi thereof, which was subsequently modified in *re Presidential reference 1998*.<sup>190</sup> The Union of India, then framed a Memorandum of Procedure on 30.6.1999, for such appointments, in consonance with the above two judgments. And appointments came to be made thereafter, in consonance with that Memorandum. Since 1993 such judicial appointments were made through this system. Although in 2014 a new system of NJAC<sup>191</sup> was introduced by 99<sup>th</sup> Constitutional amendment, but no appointments

were made. The aforesaid amendment was declared unconstitutional in *Supreme Court Advocates on Record Association v. Union of India*,<sup>192</sup> thereafter the collegium system was revived, now such judicial appointments are being made through the collegium system.

#### F. Finalization of Memorandum of Procedure

The Memorandum of Procedure, for selection of Supreme Court Judges, provides for a participatory role to the judiciary and the political-executive. It was firstly drawn in 1950, soon after India became independent, and subsequently redrawn in 1999, after the decision in the Second Judges case. It manifest that, the executive had understood and accepted, that selection and appointment of Judges to the higher judiciary would emanate from, and would be made on the advice of the Chief Justice of India. The court observed that although collegium system has been revived as a result of the judgment, however, the procedure for appointment of judges as laid down in these decisions read with the (Revised) Memorandum of Procedure definitely needs fine tuning.<sup>193</sup> Thereafter such appointments and transfers are being made in accordance with the revised Memorandum of Procedure.

#### G. Controversial Appointments and transfers

The law laid down by the Supreme Court binds the collegium as well. Yet, the appointment and transfer of judges to the high courts and Supreme Court have not been strictly in terms of that law. It would be improper to discuss doubtful individual appointments, but one can safely conclude that the constitutional functionaries have not been alive to the serious implications of their obligations nor have they been zealous in the discharge of their obligation so as to ensure "that no doubtful appointment be made" or that "the best amongst those available be selected." Justice Dipankar Datta<sup>194</sup> appointed the Chief Justice of Bombay High Court<sup>195</sup> on April 28, 2020, while Justice Akil

<sup>185</sup> which is a foundational and integral part of the independence of the judiciary

<sup>186</sup> Vide judgment dated October 16, 2015.

<sup>187</sup> Para 568

<sup>188</sup> Para 569

<sup>189</sup> (1993) 4 SCC 141

<sup>190</sup> AIR 1988 SC 1

<sup>191</sup> National Judicial Appointments Commission

<sup>192</sup> AIR 2016 SC 517

<sup>193</sup> *Per se* Hon'ble Justice Madan B. Lokur

<sup>194</sup> He was appointed as Judge of Calcutta High Court in June 2006.

<sup>195</sup> A chartered and important high court,

Kureshi<sup>196</sup> was appointed the chief justice of Tripura high court<sup>197</sup> on November 16, 2019 and as the Chief Justice of Rajasthan High Court on October 12, 2021. The fact that two of India's finest judges, Justice Kureshi<sup>198</sup> and Justice S. Murlidhar, have not been recommended for appointment to the Supreme Court is contrary to the principle stressed by the constitution bench in 1993. There are many such glaring examples, raising serious question marks on the existing system over the years.<sup>199</sup>

## H. Vacancy of Judges

Indian judicial system is currently facing the problem of acute shortage of judges and judicial officer, despite of the huge pendency of cases. The problem of vacancy is persisting at each level of courts in the judicial system. Presently the Supreme Court of India has 3 vacancies and, the High Courts across the states have a total of 380 vacancies of judges.<sup>200</sup> Moreover the situation is aggravated by 5343 vacancies of judges and judicial officers in Subordinate Courts across the country.<sup>201</sup> This issue is affecting the performance of entire judicial system. The root cause of this issue may be located in the delay in judicial appointments.

## I. Delay in Judicial Appointments

This is another recent trend in the Indian Judicial System. Although memorandum of procedure<sup>202</sup> provides for initiation of the process of appointments well in time to

<sup>196</sup> Though made a judge of the Gujarat high court on March 7, 2004

<sup>197</sup> A remote and very small high court in comparison to Bombay High Court.

<sup>198</sup> He stood at number 2 in all-India seniority list of High Court judges. A lack of consensus within the collegium has stalled appointment of judges in the top court ever since.

<sup>199</sup> Dushyant Dave, *Failing Collegium and a Weakening Judiciary Are Undermining the Administration of Justice*, THE WIRE, Jan 19, 2022, <https://thewire.in/law/failing-collegium-and-a-weakening-judiciary-are-undermining-the-administration-of-justice> (last visited July 28, 2022).

<sup>200</sup> Department of Justice, Govt. of India, *Vacancy positions as on 01.08.2022*, <https://cdnbbsr.s3.waas.gov.in/s35d6646aad9bcc0be55b2c82f69750387/uploads/2022/08/2022080180.pdf>

<sup>201</sup> As per Annexure- II of the answer to *Unstarred Question No. 595*, given by Union Minister of Law and Justice on 21<sup>st</sup> July, 2022, [https://www.livelaw.in/pdf\\_upload/au595-426886.pdf](https://www.livelaw.in/pdf_upload/au595-426886.pdf)

<sup>202</sup> Memorandum of Procedure (MoP) of appointment of Supreme Court judges, <https://doj.gov.in/memorandum-of-procedure-of-appointment-of-supreme-court-judges/>; MoP of appointment of High Court judges, <https://doj.gov.in/memorandum-of-procedure-of-appointment-of-high-court-judges/> (last visited on July 31, 2022).

ensure the completion at least one month prior to the date of anticipated vacancy, but in order to complete the process of judicial appointment it takes more than a year in case of judge of constitutional Courts and even more than two years in case of Subordinate courts.<sup>203</sup> The reason for this may be traceable to the lethargy on the part of executive or adamant nature of the government official concerned with this process, as well as to some extent, lack of stringency on the part of judiciary also.

## J. Huge Pendency of Cases

No unit of the judicial system is immune from this problem, from the subordinate courts to the Supreme Court. At present, there are 72,062 cases pending before the Supreme Court of India<sup>204</sup>, 5957304 cases before the High Court<sup>205</sup> and, 42571459 cases before the Subordinate Courts<sup>206</sup> and in total 48600825 cases pending in all courts throughout the country. The gravity of this trending issue is increasing day by day on account of two interrelated factors, one is judicial vacancy and the other is delay in filling of such vacancy and, one independent factor of inadequate sanctioned strength of judges and judicial officers in respect of the vast population contributing to the multiplicity of litigation.

## K. Inordinate Delay in Administration of Justice

This issue has been trending since very long and, its gravity is being aggravated on account of multiple contributing factors such as judicial vacancies, delay in judicial appointments and huge pendency among others. On an average it takes more than a decade to get a civil case decided and, almost a decade for a criminal case in subordinate courts. The situation at superior courts is also not appreciable rather almost a decade time is also taken there to finally dispose a regular appeal. All these consequential issues have direct relation with judicial

<sup>203</sup> For example one may take the case of Bihar Judicial Service Examination, the advertisement for which was notified in March 2020, prelims exam was held in December 2020 and, Main examination in July 2021, but the date of interview is yet to be announced, thereby resulting into the delay by almost two and half years.

<sup>204</sup> As on 01.07.2022, <https://main.sci.gov.in/statistics>

<sup>205</sup> As on 01.08.2022, <https://njdg.ecourts.gov.in/hcnjdgnew/>

<sup>206</sup> As on 01.08.2022, [https://njdg.ecourts.gov.in/njdgnew/?p=main/pend\\_dashboard](https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard)

appointments ultimately affecting efficiency and performance of the judicial system.

#### L. Quest for All India Judicial Service

Although the provision regarding AIJS was inserted through 42<sup>nd</sup> amendment by amending article 312 of the Constitution of India, but hitherto the creation of this new service still remains a dream for the Indian Judicial System. In recent years after the taking charge of the Central Government by NDA<sup>207</sup> this was one of the prominent issues, which were deliberately emphasized upon, time and again by the law minister, CJI and other Constitutional functionaries concerned therewith.<sup>208</sup> But due to lack of consensus among various State Governments and High Courts, the proposal for introducing this new service to the Indian judicial system seems to have been dropped.<sup>209</sup>

#### M. Judicial Infrastructure

This is another recent, prominent and trending issue relating to Indian Judicial System. Adequacy of Judicial Infrastructure is a pre-requisite for the efficiency in the performance of the judicial system including reduction of pendency and backlog of cases in Courts. Though primary responsibility of infrastructure development for the subordinate judiciary rests with the State Governments, the Central Government augments the resources of the State Governments by releasing financial assistance under this Scheme. The scheme aims at improving the physical infrastructure of the Subordinate Courts and also the housing needs for Judicial Officers of District and Subordinate Courts in the country with a view to facilitate better justice delivery.<sup>210</sup>

<sup>207</sup> National Democratic Alliance

<sup>208</sup> As per the news report in THE INDIAN EXPRESS, November 1, 2016, <https://indianexpress.com/article/india/india-news-india/pm-narendra-modi-calls-for-all-india-judicial-service-cji-for-introspection-3731636/> (last visited August 2, 2022)

<sup>209</sup> According to Reply by Union Minister for Law & Justice Kiren Rijju in the Rajya Sabha, <https://www.livelaw.in/news-updates/all-india-judicial-services-judicial-appointments-centre-parliament-kiren-rijju-204419> (last visited August 2, 2022)

<sup>210</sup> Department of Justice, Govt. of India, *Judicial Infrastructure*, <https://doj.gov.in/judicial-infrastructure/#:~:text=The%20scheme%20aims%20at%20improving,to%20facilitate%20better%20justice%20delivery.> (last visited August 2, 2022)

#### N. Demand for Reservation in Judicial appointments to Constitutional Courts

Although the Constitution of India does not provide for reservations on the basis of caste, class or gender in relation to appointment of judges to the Constitutional Courts and,<sup>211</sup> provisions have been made for reservation in subordinate judicial service, but there is a growing trending for the demand in reservation in such appointments also. Many times this has been raised by politicians, MPs and MLAs, but it could not get adequate attention, but it seeks sincere attention of the competent Constitutional authorities, when demand of fifty percent reservation for women, raised by the CJI.<sup>212</sup> A significant step was also taken by recommending and appointing three women judges<sup>213</sup> to the Supreme Court, in one go.<sup>214</sup> Thereafter the Parliamentary Standing Committee on the welfare of Scheduled Castes and Scheduled Tribes<sup>215</sup> has decided to study the representation of SCs and STs in the Judiciary with special reference to the appointment in High Courts and Supreme Court.<sup>216</sup>

### VI. CONCLUSION & SUGGESTIONS

#### A. Conclusion

In the light of the above discussion, it may be concluded that the scheme for judicial appointments to the

<sup>211</sup> Union Minister for Law and Justice Ravi Shankar Prasad reply in Rajya Sabha, <https://www.thehindu.com/news/national/tamil-nadu/constitution-does-not-provide-for-reservations-in-appointment-of-sc-judges/article32901244.ece> (last visited August 2, 2022).

<sup>212</sup> Sanjay Sharma and, Aneesha Mathur, *Women of the world unite: CJI Ramana backs demand for 50% reservation for women in judiciary*, INDIA TODAY, September 26, 2021, <https://www.indiatoday.in/law/story/cji-nv-ramana-calls-for-50-per-cent-reservation-for-women-in-judiciary-1857433-2021-09-26>. (last visited August 2, 2022); Also see Amit Jugnu, *Reservation in Higher Judiciary : A Discussion In The Context Of CJI's Remarks*, GROUNDZERO, September 30, 2021, <https://www.groundzero.in/2021/09/30/reservation-in-higher-judiciary-a-discussion-in-the-context-of-cjis-remarks/> (last visited August 2, 2022).

<sup>213</sup> Ms. Hima Kohli, Ms. Bela M trivedi and, Ms. B V Nagaratra, JJ.

<sup>214</sup> Geeta Pandey, *India appointed three top women judges. Is it too early to celebrate?* BBC News, Delhi, September 13, 2021, <https://www.bbc.com/news/world-asia-india-58498408>

<sup>215</sup> Headed by senior BJP MP Kirit Solanki

<sup>216</sup> A. M. Jigeesh, *House panel to examine SC, ST representation in higher judiciary*, BUSINESS LINE, May 12, 2022, <https://www.thehindubusinessline.com/news/national/house-panel-to-examine-sc-st-representation-in-higher-judiciary/article65407857.ece> (last visited August 2, 2022).

constitutional courts are laid down under the Constitution itself which is procedurally accompanied by the Memorandum of procedures, whereas the judicial appointments to subordinate courts are governed in accordance with the scheme laid down under the rules framed by the Governor in this behalf. It is well known and widely accepted fact that collegium system is an extra constitutional mechanism, idea of which was although not initially conceived at the time of framing of the Constitution, but it is the outcome of decision in *second Judges Case*. Prompted by the severe criticisms of the collegium system since long time, the attempt was made in 2014 to replace that system by introducing NJAC. The aforesaid attempt was not succeeded due to the effect of judgment in *fourth Judges Case*, declaring Ninety ninth Constitutional amendment and NJAC Act unconstitutional on the ground of independence of judiciary and, reviving the collegium system, with the suggestions to improve the system on the aspect of transparency, independence and expediency in the process.

As regards judicial appointments in subordinate courts, several states have inconsistencies, disparities and lack of uniformity in schemes due to variations in rules governing such appointments, which strike at the root of the core vision of unified judicial system in India.

Recent trends are sign of improvement, but not that much satisfactory, as it ought to have been after more than seventy five years of independence, which is expected to be in consonance with the constitutional mandates, therefore requires adequate attention and prompt action by the competent authorities in this direction.

### B. Suggestions

In view of aforesaid discussion and conclusion, to ensure judicial independence through effective mechanism for appointments, I would like to suggest the following measures:

- In the process of judicial appointments, Political interference should be reduced to minimum to ensure transparency and secure judicial independence.
- Uniform Criteria for the judicial appointments to the Constitutional courts should be comprehensively laid down, to ensure uniformity as well as transparency.
- The timeline should be prescribed and strictly adhered, and the process of appointment should be initiated in advance before the due date of vacancy, for the completion process without unnecessary delay.
- State Judicial service rules should be uniform and the scheme for appointment and, promotion, and the syllabus and pattern of examination be made uniform except, the language and local laws of the respective states, in order to remove inconsistency, disparity and, to instill uniformity, transparency and, expediency in appointment process.

### REFERENCES

1. The Constitution of India
2. The Constitution (Ninety Ninth Amendment) Act, 2014
3. The National Judicial Appointment Commission Act, 2014
4. Memorandum of Procedure of appointment of Supreme Court judges,
5. Memorandum of Procedure of appointment of High Court judges,
6. The Code of Civil Procedure, 1908
7. The Code of Criminal Procedure, 1973
8. Government of NCT of Delhi v. Union of India, (2018) 8 SCALE 72
9. Hussainara Khatoon (II) v. Home Secretary, State of Bihar, AIR 1979 SC 1360
10. Indian Young Lawyers Association v. State of Kerala, 2018 SCC Online SC 1690
11. Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299

12. Keshavananda Bharti v. State of Kerala, AIR 1973 SC 1461
13. Maneka Gandhi v. Union of India, AIR 1978 SC
14. Minerva Mills v. union of India, AIR 1980 SC 1789.
15. Navtej Singh Johar v. Union of India, (2018) 10 SCALE 386
16. Naz Foundation v. Govt. (NCT of Delhi), (2009) 160 DLT 277
17. Re Presidential reference 1998, AIR 1999 SC 1
18. S.P. Gupta v. President of India, AIR 1982 SC 149
19. State of Bihar v. Balmukund Shah, AIR 2000 SC 1296
20. Supreme Court Advocate on Record Association v. Union of India, (1993) 4 SCC 141
21. Supreme Court Advocate on Record Association v. Union of India, AIR 2016 SC 517
22. ROBERT STEVENS, THE INDEPENDENCE OF THE JUDICIARY 3 (1993);
23. Shimon Shetreet, *Judicial Independence: New Conceptual Dimensions And Contemporary Challenges*, In *Judicial Independence: THE CONTEMPORARY DEBATE* 594 (Shimon Shetreet & Jules Deschanes eds., 1985)
24. M.P. Singh, *Securing the Independence of the Judiciary-The Indian Experience*, 10(2) INT'L & COMP L REV 245, 247, 248 (2000),
25. Upendra Baxi speaking to Jiby J Kattakayam, *Government is largest litigant, principles of natural justice demand that it is not seen to be appointing judges*, TIMES OF INDIA, November 28, 2017.
26. Shayonee Dasgupta and Sakshi Agarwal, *Judicial Accountability and Independence*, NUJS L. Rev. 779.
27. SHIMON SHETREET, JUDGES ON TRIAL (North-Holland Publishing Company, Amsterdam 1976) 46
28. Krishnadas Rajagopal, *Merit should predominate judicial appointments: Justice Nariman*, THE HINDU, (Aug 12, 2021)
29. Dushyant Dave, *Failing Collegium and a Weakening Judiciary Are Undermining the Administration of Justice*, THE WIRE, Jan 19, 2022, <https://thewire.in/law/failing-collegium-and-a-weakening-judiciary-are-undermining-the-administration-of-justice> (last visited July 28, 2022).
30. N. G. R. Prasad, *The costly tyranny of secrecy*, THE HINDU, July 05, 2013, <https://www.thehindu.com/opinion/lead/the-costly-tyranny-of-secrecy/article4881975.ece>.
31. Dushyant Dave, *Failing Collegium and a Weakening Judiciary Are Undermining the Administration of Justice*, THE WIRE, Jan 19, 2022, <https://thewire.in/law/failing-collegium-and-a-weakening-judiciary-are-undermining-the-administration-of-justice>.
32. Sanjay Sharma and, Aneesha Mathur, *Women of the world unite: CJI Ramana backs demand for 50% reservation for women in judiciary*, INDIA TODAY, September 26, 2021, <https://www.indiatoday.in/law/story/cji-nv-ramana-calls-for-50-per-cent-reservation-for-women-in-judiciary-1857433-2021-09-26>.
33. Amit Jugnu, *Reservation in Higher Judiciary: A Discussion in the Context of CJI's Remarks*, GROUNDZERO, September 30, 2021, <https://www.groundzero.in/2021/09/30/reservation-in-higher-judiciary-a-discussion-in-the-context-of-cjis-remarks/>.
34. Geeta Pandey, *India appointed three top women judges. Is it too early to celebrate?* BBC News, Delhi, September 13, 2021, <https://www.bbc.com/news/world-asia-india-58498408>
35. A. M. Jigeesh, *House panel to examine SC, ST representation in higher judiciary*, BUSINESS LINE, May 12, 2022, <https://www.thehindubusinessline.com/news/national/house-panel-to-examine-sc-st-representation-in-higher-judiciary/article65407857.ece>.