

## INDIA'S COLLEGIUM SYSTEM: EXPLORING ITS HISTORY, FUNCTIONING, BENEFITS, AND DRAWBACKS

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### Abstract

*The Indian Collegium System, a distinctive framework for judicial appointments, has been lauded and criticized since its inception. This paper aims to provide an in-depth exploration of the Collegium System, tracing its historical development, examining its operational mechanics, and evaluating its benefits and drawbacks. The system emerged from a series of landmark Supreme Court judgments, namely the First, Second, and Third Judges Cases, which collectively shifted the power of judicial appointments from the executive to the judiciary. This transformation was intended to enhance judicial independence by minimizing political interference. However, the Collegium System's functioning has been marked by several contentious issues. While it has successfully ensured a judiciary free from executive overreach, it has also been criticized for its lack of transparency and accountability. The decision-making process within the Collegium is often perceived as opaque, with little public insight into the criteria and deliberations involved in the selection of judges. This has led to allegations of nepotism, favoritism, and inefficiency, raising questions about the system's overall effectiveness. Moreover, the Collegium's structure and processes have faced scrutiny regarding their ability to address the growing demands of India's judicial landscape. The paper discusses these criticisms in detail, highlighting the various dimensions of the debate surrounding the Collegium System. Despite its shortcomings, the system's role in maintaining judicial independence remains a significant achievement. The exploration also includes proposed reforms and alternative models to enhance transparency and accountability while preserving the core principle of judicial independence. This comprehensive study of the Indian Collegium System seeks to contribute to the ongoing discourse on judicial reforms in India. By examining its history, functioning, and myriad perspectives on its efficacy, the paper aims to provide valuable insights for policymakers, legal practitioners, and scholars interested in the quest for a more transparent, accountable, and effective judicial appointment process.*

**Keywords:** Indian Collegium System, judicial appointments, judicial independence, Supreme Court of India, transparency, accountability,

### Introduction –

The Indian judiciary, renowned for its independence and pivotal role in upholding the Constitution, operates within a complex framework to balance various state powers. Central to this framework is the mechanism for appointing judges to the higher judiciary, a process that has significant implications for the functioning and credibility of the judicial system. The Collegium System, a unique method for judicial appointments in India, emerged as a solution to ensure the judiciary's

autonomy from executive interference. Instituted through a series of landmark Supreme Court judgments, this system has become a cornerstone of India's judicial architecture. The evolution of the Collegium System can be traced back to three critical decisions by the Supreme Court, known collectively as the Judges Cases. The First Judges Case (1981) affirmed executive primacy in judicial appointments. However, the Second Judges Case (1993) marked a radical shift, vesting the power of appointment in a

collegium of senior judges. The Third Judges Case (1998) further clarified and expanded the collegium's composition and functioning. These decisions collectively established a judicial-led appointment process to safeguard the judiciary's independence by insulating it from political and executive pressures. Despite its noble intentions, the Collegium System has been the subject of intense debate and scrutiny. Critics argue that the system lacks transparency and accountability, with its proceedings shrouded in secrecy. The absence of a formalized procedure for selecting judges and the opaque nature of its deliberations have led to allegations of nepotism, favoritism, and inefficiency. These criticisms have fueled calls for reform, with some advocating for a more structured and transparent process. Conversely, proponents of the Collegium System emphasize its role in protecting judicial independence, a cornerstone of democratic governance. They argue that the system, despite its flaws, has succeeded in preventing undue executive influence over the judiciary. The ongoing debate highlights the need to balance independence, accountability, and transparency in judicial appointments. This paper aims to comprehensively examine the Collegium System, exploring its historical development, operational dynamics, and various perspectives on its effectiveness. The paper seeks to contribute to the broader discourse on judicial reforms in India by delving into its benefits and drawbacks. The goal is to offer insights that can inform future efforts to enhance the judicial appointment process, ensuring it remains robust, fair, and aligned with the principles of democratic governance.

### Judicial System Before 1947

1911, under the Indian High Courts Act<sup>2402</sup>, three High Courts were established at Patana, Lahore, and Rangoon. This act enabled the

<sup>2402</sup> 'Indian High Courts Act 1911' <<https://www.legislation.gov.uk/ukpga/Geo5/1-2/18/contents/enacted>> accessed 26 May 2024.

government to develop new High Courts and raise the strength of judges from fifteen to twenty. For specific reasons, the British government was reluctant to change the Indian legal system in terms of respecting local laws and customs. The British government made no change in the composition of High Court judges till the independence in the provisions of the Act 1861<sup>2403</sup>.

### The Government of India Act, 1935<sup>2404</sup>:

- i) Under the Government of India Act of 1935, the government abolished the old proportional arrangements of judges of high courts.
- ii) Thus, the old rule of appointing the Chief Justices exclusively from barristers or advocates was modified to the extent that they now might be appointed either from among the leaders of High Courts or among the officers of the Indian Civil Service.
- iii) An essential judicial system change was proposed to stabilize the federation. Sections 200 and 203 of the Government of India Act, 1935, provided for the creation of a Federal Court, which was usually to be located at Delhi and was to consist of a Chief Justice and not more than six puisne judges.
- iv) The qualification of judges: it would be at least five years' experience as a judge of the high court, at least ten years of experience as a barrister and advocate of Scotland, or at least ten years of experience as a leader of the high court of a province.
- v) The eligibility of the chief justice would be at least fifteen years' experience as a pleader, barrister, or advocate.

### - The Federal Court:

- i) On 1st October 1937, the Federal Court<sup>2405</sup> was constituted. The chief justice and Judges of the Federal Court were to be appointed by the

<sup>2403</sup> 'The Emergence And Evolution Of High Courts In India Before The Constitution Of India Came Into Effect' <[https://www.legalserviceindia.com/legal/article-7006-the-emergence-and-evolution-of-high-courts-in-india-before-the-constitution-of-india-came-into-effect.html#google\\_vignette](https://www.legalserviceindia.com/legal/article-7006-the-emergence-and-evolution-of-high-courts-in-india-before-the-constitution-of-india-came-into-effect.html#google_vignette)> accessed 26 May 2024.

<sup>2404</sup> 'Government of India Act 1935' <<https://www.legislation.gov.uk/ukpga/Geo5and1Edw8/26/2/part/IX/chapter/II/enacted?view=plain>> accessed 26 May 2024.

<sup>2405</sup> 'The Federal Court in India' <<https://www.aironline.in/legal-articles/The+Federal+Court+in+India>> accessed 26 May 2024.

Crown and hold office till the age of 65 (sixty-five).

ii) Sir Maurice Gwyer was essential in drafting the 1935 Act for India. Hence, he became the first chief justice of the federal court of India.

iii) The Privy Council interprets the Constitution.

iv) The final appellate authority of the Privy Council was kept intact while it should vest in the Federal Court, as it is required in the federation.

v) Macaulay's words reflect the British government's thinking on the future of India. "We are trying to give a good government to people of India to whom we cannot give a free government".

vi) The federal court declared the 'defense of India rules' as ultra vires, proving its independent and impartial authority, indeed was a turning point for the judicial development in India.<sup>2406</sup>

## **2.1 HISTORY OF INDIA'S COLLEGIUM SYSTEM**

The collegium system is the system of appointment and transfer of judges that has evolved through judgments of the Supreme Court (SC), not by an Act of Parliament or a provision of the Constitution.

The word Collegium is nowhere mentioned in the Constitution; it has come into force as per Judicial Pronouncement. The origin of the concept for establishing the system may be traced to the Bar Council of India's recommendations on 17 October 1981 during a national seminar of the lawyers at Ahmedabad. It was recommended that there should be a collegium system for the appointment of the Supreme Court Judges by the following authorities:

- a. The Chief Justice of India
- b. Five senior Judges of the Supreme Court
- c. Two representatives would represent the Bar Council of India and the Supreme Court Bar Association.

The recommendation of such a Collegium

system should be binding on the President, though he can say for reconsideration on specific grounds.<sup>2407</sup>

The collegium system evolved from a series of Supreme Court judgments called the "Judges Cases." The collegium came into being through the interpretations of the relevant provisions of the Constitution that the Supreme Court made in these Judges' Cases.

Four judge cases over the years are as follows: The first case, the "Judges' Transfer Case," *S.P. Gupta v. Union of India* (1981), created a precedent for the collegium system. The second case, 1993, rendered the system operational in the nation. The third case, in 1998, clarified the system's flaws. The National Judicial Appointment Commission, which aided the President in choosing judges for the Supreme Court and High Courts, was disbanded in the fourth case of 2015 by the Court.<sup>2408</sup>

## **2.2 FUNCTIONING OF INDIA'S COLLEGIUM SYSTEM**

The functioning of the Collegium System involves several stages. When a vacancy arises in the higher judiciary, the collegium initiates the process of selecting a suitable candidate. This typically involves consultations among the collegium members to identify candidates with the requisite qualifications, integrity, and judicial temperament. The collegium then recommends the names of the selected candidates to the President of India for appointment.

One of the critical features of the Collegium System is its lack of transparency. The deliberations of the collegium are confidential, and the reasons behind the selection or rejection of candidates are not disclosed to the public. Critics argue that this opacity undermines accountability and opens the door to favoritism and nepotism in judicial

<sup>2406</sup> Judicial System Before 1947  
<<https://www.legalserviceindia.com/article/1138/Judicial-System-Before-1947.html>> accessed 21 May 2024.

<sup>2407</sup> 'Collegium System in India'  
<<https://www.legalserviceindia.com/legal/article-3681-collegium-system-in-india.html>> accessed 21 May 2024.

<sup>2408</sup> 'Collegium System for Appointment of High Court and Supreme Court Judges.'  
<<https://articles.manupatra.com/article-details/Collegium-System-for-Appointment-of-High-Court-and-Supreme-Court-Judges>> accessed 21 May 2024.



appointments.<sup>2409</sup>

Studying the collegium system in India is significant for several reasons, both within the context of India's judiciary and its broader political landscape. Here are some critical areas of importance:

#### **Understanding Judicial Independence:**

- The collegium system, where judges appoint judges, is unique and grants significant autonomy to the judiciary. Studying its functioning sheds light on how effectively this independence is maintained and its impact on judicial decision-making.
- Analyzing its successes and limitations in safeguarding judicial independence helps assess its long-term sustainability and potential reforms.

#### **Transparency and Accountability:**

- The system has been criticized for lacking transparency in its appointments and promotion processes. Examining its opacity and potential avenues for bias or nepotism is crucial for ensuring public trust in the judiciary.
- Studying proposals for reform, such as introducing an independent commission or citizen participation, can inform debates on enhancing transparency and accountability within the system.

#### **Constitutional Balance and Power Dynamics:**

- The collegium system raises questions about the balance of power between the judiciary and the executive. Studying its impact on inter-branch relations and the potential for encroachment on executive authority helps understand the broader dynamics of India's constitutional framework.
- Assessing the system's role in safeguarding judicial independence from political interference can inform debates on maintaining a healthy separation of powers.

#### **Separation Of Powers- Indian Constitution**

The Indian constitution is a meticulously crafted document that delineates distinct responsibilities for the three branches of

government: the Legislature, Executive, and Judiciary. Each branch is clearly defined in its powers, privileges, and duties. The Parliament is responsible for enacting laws, the Executive enforcing them, and the Judiciary interpreting them. The Constitution aims to prevent any overlap or encroachment of powers between these branches. However, in recent times, there has been an unprecedented level of confrontation between the Judiciary and the Executive or Legislative branches, pushing the boundaries of power separation to an alarming extent.

Justice Mukherjee observed, "It does not admit of any serious dispute that the doctrine of separation of powers has, strictly speaking, no place in the system of Government that India has at the present day." Lellala Vishwanadham / VSRD Technical & Non-Technical Journal Vol. 3 (6), 2012 239.<sup>2410</sup>

The theory of checks and balances has been observed in the Indian constitutions. There is no rigorous separation of powers. For instance, parliament has the judicial power of impeachment and punishment for contempt. The president has the legislative powers of ordinance-making. Thus, the Indian constitution has not applied the doctrine of separation of powers in its strictest form.<sup>2411</sup>

#### **Judiciary – Importance and Its Need**

**Judiciary – Its Importance:** There is a current effort to bring attention to the functioning of the judicial system in India amidst rising concerns about judicial corruption and delays in the dispensation of justice. The Indian judiciary has, until now, managed to maintain the public's trust while carrying out its constitutional duties. As an institution, the judiciary has consistently garnered significant respect from the nation's populace.

The high regard for the judiciary is rooted in its members' impartiality, independence, and

<sup>2409</sup> 'Collegium System in India' <<https://www.legalserviceindia.com/legal/article-3681-collegium-system-in-india.html>> accessed 25 May 2024.

<sup>2410</sup> Lellala Vishwanadham, 'Doctrine of Separation of Powers and Significance and Importance of Judicial Powers in India' (2012) 3 Available ONLINE [www.vsrjournals.com](http://www.vsrjournals.com) VSRD-TNTJ 237 <[www.vsrjournals.com](http://www.vsrjournals.com)> accessed 21 May 2024.

<sup>2411</sup> 'Separation of Powers in India' <<https://www.legalserviceindia.com/legal/article-6034-separation-of-powers-in-india.html>> accessed 25 May 2024.

integrity. In a democratic society governed by the rule of law, the judiciary acts as a bulwark against the executive branch's abuse or misuse of power and protects citizens from government lawlessness. The Indian judiciary is widely regarded as the guardian of the rights of Indian citizens, a role that has been explained, argued, and emphasized in various contexts.

### **Independence Of Judiciary**

The three pillars of Indian democracy are interconnected and work together to ensure the effective and organized functioning of the government. The judiciary holds significant authority to examine and nullify executive and legislative decisions and actions that violate the Constitution. The ability to conduct "judicial review" of legislative and executive action is crucial for upholding the principle of separation of powers and the rule of law.

An independent judiciary ensures a justice system not controlled by the other arms of the government or any political authority while being accountable to the Constitution. Such independence also ensures no misuse of power by any section of the government.<sup>2412</sup>

The question is not whether some good has come out of all this. The issue is whether the courts have an arrogated vane and uncontrolled powers over themselves, undermining Democracy and the Rule of law. The question is not undermining Democracy and the Rule of Law, including the powers exercised under the doctrine of separation of powers.<sup>2413</sup>

### **Importance Of the Doctrine of Separation Of Power**

As initially conceived, the concept of the separation of powers is quite stringent, which is why many countries worldwide do not fully adopt it. According to Montesquieu's Doctrine of Separation of Powers, the primary goal is to establish a government based on the rule of law rather than the arbitrary authority of

officials. Another essential aspect of this doctrine is the independence of the judiciary, ensuring that it operates free from influence by other branches of the government, thus enabling the fair administration of justice.

The judiciary is the scale through which one can measure the actual development of the state. If the judiciary is not independent, it is the first step towards an authoritarian government, i.e., power is concentrated in a single hand. If so, there is a percent chance of misuse of power.

Hence, the doctrine of separation of power plays a vital role in creating a fair government, and fair and proper justice is dispensed by the judiciary as the judiciary is independent. Also, the importance of the above-said doctrine can be traced back to as early as 1789, when The constituent Assembly Of France in 1789 believed that "there would be nothing like a Constitution in the country where the doctrine of separation of power is not accepted."<sup>2414</sup>

The concept of the separation of powers was introduced in the American Constitution in 1787 during its drafting. Similarly, the Indian constitution also incorporates provisions related to the doctrine of separation of powers. The government is upheld by three main pillars: the Legislature, the Executive, and the Judiciary. The Legislature, or Parliament, is responsible for creating laws, while the Executive enforces these laws. The Judiciary, on the other hand, interprets the laws.

In India, the Judiciary interprets the law and acts as a guardian of the Indian Constitution, which necessitates an independent and unified judiciary for the nation.

The three pillars of Indian democracy do not work in isolation but are interdependent to ensure the proper and systematic functioning of the government. However, the judiciary has broad powers to review and strike down executive and legislative decisions and actions if they are found to breach the Constitution.

<sup>2412</sup> 'India's Independent Judiciary - IndBiz | Economic Diplomacy Division | IndBiz | Economic Diplomacy Division' <<https://indbiz.gov.in/indias-independent-judiciary/>> accessed 26 May 2024.

<sup>2413</sup> Vishwanadham (n 26).

<sup>2414</sup> 'Separation of Power in India & USA' <[https://www.legalservicesindia.com/article/483/Separation-of-Power-in-India-&-USA.html#google\\_vignette](https://www.legalservicesindia.com/article/483/Separation-of-Power-in-India-&-USA.html#google_vignette)> accessed 21 May 2024.

The power of “judicial review” of legislative and executive action is considered essential for preserving the doctrine of separation of powers and the rule of law.<sup>2415</sup>

Under the system of checks and balances, each branch opposes the powers of the other two. The president can either sign the legislation of Congress, make it law, or veto it. The Congress, through the Senate, has the power of advice and consent on presidential appointments and can, therefore, reject an appointee. The courts, given the sole power to interpret the Constitution and the laws, can uphold or overturn acts of the legislature or rule on actions by the president. Most judges are appointed; therefore, Congress and the president can affect the judiciary. Thus, at no time does all authority rest with a single branch of government. Instead, power is measured, apportioned, and restrained among the three government branches. The states also follow the three-part model of government through state governors, state legislatures, and the state court systems.<sup>2416</sup>

The system of government in the United States is primarily credited to James Madison and is sometimes called the Madisonian model. Madison set forth his belief in the need for balanced government power in *The Federalist*, No. 51. However, the concept of separation of powers did not originate with Madison. It is often attributed to the French philosopher Baron Montesquieu, born in 1748. At the Constitutional Convention of 1787, Madison persuaded most Framers to incorporate the concept into the Constitution.<sup>2417</sup>

### **2.3 BENEFITS OF INDIA'S COLLEGIUM SYSTEM**

**Benefits of the Collegium System:** Proponents argue that it enhances judicial independence

<sup>2415</sup> ‘India’s Independent Judiciary - IndBiz | Economic Diplomacy Division | IndBiz | Economic Diplomacy Division’ <<https://indbiz.gov.in/indias-independent-judiciary/>> accessed 26 May 2024.

<sup>2416</sup> Tej Bahadur Singh, ‘PRINCIPLE OF SEPARATION OF POWERS AND CONCENTRATION OF AUTHORITY’.

<sup>2417</sup> ‘Introduction: A Madisonian Constitution for All | Constitution Center’ <<https://constitutioncenter.org/news-debate/special-projects/a-madisonian-constitution-for-all/essay-series/introduction-to-a-madisonian-constitution-for-all>> accessed 25 May 2024.

by insulating the judiciary from political interference. Unlike systems where the executive has a significant role in judicial appointments, the Collegium System ensures that judges are selected based on merit and judicial competence rather than political considerations.

Moreover, the Collegium System allows for greater autonomy and self-regulation within the judiciary. By vesting the power of judicial appointments in the hands of senior judges, the system fosters a sense of collegiality and peer review, ensuring that only the most qualified candidates are appointed to the bench.

Furthermore, the Collegium System has been credited with promoting diversity within the judiciary. Since the collegium considers a wide range of candidates from diverse backgrounds, including gender, religion, caste, and region, it has helped broaden the representation of marginalized groups in the higher judiciary.

There are many cases in which the judges of the Supreme Court were transferred because of political influences. So, the power given to the executive organ for transferring the judges would also decrease the judiciary’s independence, and it would stop the judiciary organ from working effectively. A fair-functioning collegium system would be best as it ensures autonomy and allows judges to perform their duty without fear, interference, or influence.<sup>2418</sup>

**Promotion of Judicial Independence:** One of the primary arguments favoring the Collegium System is its role in promoting judicial independence. Unlike systems where the executive branch plays a significant role in judicial appointments, the Collegium System ensures that judges are selected based on merit, integrity, and judicial competence rather than political considerations. This independence is essential for the judiciary to

<sup>2418</sup> ‘Collegium System in India’ <<https://www.legalserviceindia.com/legal/article-3681-collegium-system-in-india.html>> accessed 25 May 2024.



check the powers of the other branches of government and to uphold the rule of law impartially.

**Flexibility and Adaptability:** Another advantage of the Collegium System is its flexibility and adaptability to changing circumstances and judicial needs. The collegium can swiftly respond to vacancies in the higher judiciary and select suitable candidates to fill those positions. This agility is crucial for maintaining the efficiency and effectiveness of the judiciary, ensuring that justice is dispensed without undue delay.

**Peer Review and Collegiality:** The Collegium System fosters a culture of peer review and collegiality within the judiciary. The system encourages constructive dialogue and consensus-building among judicial peers by involving senior judges in the selection process. This collaborative approach ensures that appointments are made after carefully considering the candidates' qualifications, experience, and suitability for the position. Moreover, the process's collegial nature helps build trust and cohesion among judges, enhancing the overall functioning of the judiciary.

#### **2.4 DRAWBACKS OF INDIA'S COLLEGIUM SYSTEM**

*What are the arguments against the collegium system?*

Despite its perceived benefits, the Collegium System has been criticized on several fronts. One of the primary criticisms is its lack of transparency and accountability. The secretive nature of the collegium's functioning has led to allegations of opacity, favoritism, and arbitrariness in judicial appointments.

Moreover, the Collegium System has been accused of perpetuating a culture of elitism within the judiciary. Critics argue that the system tends to favor candidates from elite legal circles, overlooking talented individuals from diverse backgrounds who may not have access to the same networks and opportunities.

Another criticism against the Collegium

System is its alleged inefficiency and delay in judicial appointments. Selecting and appointing judges through collegium consultations can be time-consuming and prone to bureaucratic hurdles, leading to vacancies in the higher judiciary and affecting the administration of justice.

The lack of checks and balances in the Collegium System has raised concerns about the concentration of power in the hands of a few senior judges. Without adequate mechanisms for oversight and accountability, there is a risk of abuse of power and lack of diversity in judicial appointments.<sup>2419</sup>

**Lack of Accountability and Transparency:**

One of the most significant criticisms of the Collegium System is its lack of accountability and transparency. The process of judicial appointments and transfers is shrouded in secrecy, with little to no public scrutiny or oversight. This opacity undermines public trust in the judiciary and raises questions about the fairness and impartiality of the selection process. Without adequate transparency mechanisms, there is a risk of perceptions of favoritism, nepotism, and arbitrariness in judicial appointments.

**Exclusion of Stakeholder Input:**

One of the significant drawbacks of the Collegium System is the lack of extensive stakeholder input in the judicial selection process. While other systems engage in broader consultations with legal experts, bar associations, and civil society organizations, the Collegium System predominantly relies on internal discussions among judges. This exclusionary approach can result in a limited diversity of perspectives and the neglect of valuable input from external stakeholders who may offer crucial insights into the suitability of candidates for judicial office.

**Insularity and Elitism:**

Critics argue that the Collegium System perpetuates a culture of insularity and elitism

<sup>2419</sup> 'JUDICIAL APPOINTMENTS IN INDIA' <[https://loksabhadocs.nic.in/Refinput/New\\_Reference\\_Notes/English/14032023\\_111226\\_102120526.pdf](https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/14032023_111226_102120526.pdf)> accessed 25 May 2024.

within the judiciary. The system tends to favor candidates from elite legal circles, often overlooking talented individuals from diverse backgrounds who may not have access to the same networks and opportunities. This elitist bias undermines efforts to promote diversity and inclusivity within the judiciary, leading to a lack of representation of marginalized groups and communities.<sup>2420</sup>

The systemic errors highlighted by experts include

- The significant administrative burden involved in appointing and transferring judges is compounded by the lack of a dedicated secretariat or intelligence-gathering mechanism to efficiently collect and verify potential appointees' personal and professional backgrounds.
- The absence of a formal and transparent system leads to a closed-door affair without clear guidelines and procedures.
- The collegium's selection pool for Supreme Court appointments is restricted to only the most senior judges from the High Court, disregarding the potential talent and capabilities of numerous junior judges and advocates who could also serve effectively in such roles.

## 2.5 COLLECTIVE ANALYSIS OF THE JUDGES

### CASES I, II, III & IV

The series of landmark judgments known as the Judges' Cases have profoundly shaped the judicial appointment process in India, emphasizing the balance between judicial independence and accountability. These cases—S.P. Gupta vs. Union of India (1981), Supreme Court Advocates-on-Record Association vs. Union of India (1993), In re Special Reference 1 of 1998 (1998), and Supreme Court Advocates-on-Record Association vs. Union of India (2015) collectively addressed critical issues related to the appointment and transfer of judges in the

higher judiciary.

### **JUDGES' CASE 1: S.P. GUPTA VS. UNION OF INDIA (1981)**

#### **Background**

The first Judges' Case, also known as the S.P. Gupta Case, dealt with the interpretation of Article 124 and Article 217 of the Constitution, which govern the appointment of judges to the Supreme Court and High Courts, respectively. The central issue was the meaning of "consultation" between the executive and the Chief Justice of India (CJI) in the appointment process.<sup>2421</sup>

#### **Key Points**

**Executive Primacy:** The Supreme Court, in a majority decision, held that the term "consultation" did not mean "concurrence." Therefore, the executive had the final say in judicial appointments and transfers.

**Judicial Independence:** Critics argued that this decision undermined judicial independence by giving the executive substantial control over the judiciary.

#### **Implications**

The judgment led to concerns about potential executive overreach and political interference in judicial appointments, prompting calls for reforms to ensure greater judicial independence.

### **JUDGES' CASE 2: SUPREME COURT ADVOCATES-ON-RECORD ASSOCIATION VS. UNION OF INDIA (1993)**

#### **Background**

The second Judge's Case emerged as a response to the criticisms of the first. This case fundamentally redefined the appointment process by interpreting the Constitution's provisions on judicial appointments that emphasized judicial independence.<sup>2422</sup>

#### **Key Points**

**Collegium System:** The Supreme Court introduced the Collegium System, which vested the power of judicial appointments in a

<sup>2420</sup> 'A Self-Selecting Elite: The Higher Judiciary Today Precludes an MS Dhoni, an Outsider Who Rises in the Ranks' <<https://timesofindia.indiatimes.com/blogs/toi-edit-page/a-self-selecting-elite-the-higher-judiciary-today-precludes-an-ms-dhoni-an-outsider-who-rises-in-the-ranks/>> accessed 25 May 2024.

<sup>2421</sup> 'Digital Supreme Court Reports' <[https://digisr.sci.gov.in/view\\_judgment?id=Njk1Mg==](https://digisr.sci.gov.in/view_judgment?id=Njk1Mg==)> accessed 25 May 2024.

<sup>2422</sup> 'Supreme Court Advocates-On-Record ... vs Union Of India on 6 October, 1993' (n 22).



panel of senior judges, including the CJI.

**Judicial Primacy:** The judgment established that the opinion of the CJI, along with the Collegium, would have priority in judicial appointments and transfers, effectively reducing the role of the executive to a consultative one.

### Implications

This decision significantly enhanced judicial independence by ensuring that the judiciary primarily managed appointments, thereby minimizing executive interference. The Collegium System, however, was criticized for its opacity and lack of accountability.

### JUDGES' CASE 3: IN RE SPECIAL REFERENCE 1 OF 1998 (1998)

#### Background

The third Judge' Case was a Presidential reference under Article 143 of the Constitution seeking clarity on the Collegium System established by the second Judge' Case.<sup>2423</sup>

#### Key Points

**Collegium Composition and Procedure:** The Supreme Court clarified that the Collegium would consist of the CJI and the four senior judges of the Supreme Court.

**Binding Recommendations:** The judgment reiterated that the recommendations made by the Collegium would be binding on the executive, except in rare cases where the executive could ask for reconsideration.

#### Implications

The clarification strengthened the Collegium System by outlining its composition and procedures to ensure a more systematic approach to judicial appointments. Despite these clarifications, criticisms about the Collegium's lack of transparency and formal procedures persisted.

### JUDGES' CASE 4: SUPREME COURT ADVOCATES-ON-RECORD ASSOCIATION VS. UNION OF INDIA (2015)

#### Background

The Fourth Judges' case arose in the context of

the 99th Constitutional Amendment and the National Judicial Appointments Commission (NJAC) Act, 2014, which sought to replace the Collegium System with a new mechanism involving the judiciary and the executive.<sup>2424</sup>

#### Key Points

**Striking Down NJAC:** The Supreme Court struck down the NJAC Act and the 99th Constitutional Amendment, declaring them unconstitutional for compromising judicial independence.

**Reaffirmation of Collegium:** The judgment reaffirmed the Collegium System as the mechanism for judicial appointments, emphasizing the need to protect judicial independence from executive interference.

#### Implications

The judgment reiterated the importance of judicial primacy in appointments and transfers, rejecting attempts to introduce executive influence.

Calls for reforms within the Collegium System were acknowledged, highlighting the need for greater transparency and accountability.

#### Comparative Analysis and Implications

##### Judicial Independence vs. Executive Influence

Across the Judges' Cases, the central theme has been the protection of judicial independence from executive influence. The first Judge' Case allowed for significant executive control, which was subsequently curtailed by the second and third Judges' Cases, establishing the Collegium System to ensure judicial primacy. The fourth Judge's Case reinforced this principle by striking down the NJAC.

#### Collegium System: Strengths and Criticisms

**Strengths:** The Collegium System, as established and refined through these cases, has been instrumental in safeguarding judicial independence by placing the power of appointments primarily in the hands of the

<sup>2423</sup> 'In The Supreme Court Of India (In Re: ... Vs Civil Advisory Jurisdiction on 28 October, 1998' <<https://indiankanoon.org/doc/829952/>> accessed 10 May 2024.

<sup>2424</sup> Jagdish Singh Khehar, 'JUDGMENT REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL ORIGINAL JURISDICTION WRIT PETITION (CIVIL) NO. 13 OF 2015 Supreme Court Advocates-on-Record-Association and Another ... Petitioner(s) versus Union of India ... Respondent(s) With WRIT PETITION (C) NO'.

judiciary.

**Criticisms:** The system has faced ongoing criticism for its lack of transparency, accountability, and formalized procedures, leading to calls for reforms to address these issues without compromising judicial independence.

#### **Need for Reforms**

**Transparency and Accountability:** A broad consensus exists on enhancing transparency and accountability within the Collegium System. Suggestions include public disclosure of appointment criteria, maintaining detailed records of deliberations, and providing reasons for selections and rejections.

**Broader Representation:** Proposals to include a more comprehensive range of voices within the Collegium, such as retired judges or eminent legal community members, aim to provide diverse perspectives and improve the credibility of the appointment process.

#### **Key Takeaways from Each Case**

##### **First Judges' Case (S.P. Gupta vs. Union of India, 1981)**

- **Issue:** Executive primacy in judicial appointments.
- **Outcome:** Established executive control over appointments, leading to concerns about judicial independence.
- **Implication:** Highlighted the need for judicial autonomy from the executive.

##### **Second Judges' Case (Supreme Court Advocates-on-Record Association vs. Union of India, 1993)**

- **Issue:** Reinterpreting "consultation" to ensure judicial independence.
- **Outcome:** Established the Collegium System, emphasizing judicial primacy in appointments.
- **Implication:** Enhanced judicial independence by reducing executive influence.

##### **Third Judges' Case (In re Special Reference 1 of 1998)**

- **Issue:** Clarifying the Collegium System's composition and procedures.
- **Outcome:** Defined the Collegium as the

CJI and the four senior-most Supreme Court judges.

- **Implication:** Strengthened the Collegium System, but criticisms of lack of transparency remained.

##### **Fourth Judges' Case (Supreme Court Advocates-on-Record Association vs. Union of India, 2015)**

- **Issue:** Constitutionality of the NJAC and the 99th Constitutional Amendment.
- **Outcome:** Struck down the NJAC, reaffirming the Collegium System.
- **Implication:** Reiterated the importance of judicial independence while recognizing the need for Collegium reforms.

The collective analysis of the Judges' Cases highlights the judiciary's evolving efforts to balance independence with accountability in the appointment process. The shift from executive primacy in the first Judge' Case to judicial importance in the subsequent cases underscores the judiciary's commitment to maintaining its autonomy. The NJAC case further reinforced this principle by rejecting legislative attempts to alter the established system. However, the persistent criticisms of the Collegium System regarding its lack of transparency and accountability indicate that the quest for an ideal appointment process continues. Future reforms should address these concerns while preserving the independence crucial for the judiciary's role as the guardian of the Constitution and the rule of law.