

## JUDICIAL APPOINTMENTS AND INDEPENDENCE IN INDIA: REVISITING THE COLLEGIUM DEBATE ON EXECUTIVE INFLUENCE

**AUTHOR** – ASHISH CHANDRA DEWANSHU, STUDENT AT AMITY UNIVERSITY NOIDA

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### Abstract

The question of judicial appointments in India has generated constitutional debates regarding judicial independence and separation of powers. This essay highlights the development of the appointment process in India with particular emphasis on the collegium system of appointments evolved judicially by the Supreme Court of India.<sup>228</sup>

The analysis of significant judicial pronouncements such as the judgment in cases of Supreme Court Advocates-on-Record Association v. Union of India and Supreme Court Advocates-on-Record Association v. Union of India has shown that they have contributed greatly in shaping the present-day system of appointments. In fact, the former case has placed judicial primacy in appointments while the latter one has upheld it by declaring the validity of the National Judicial Appointments Commission Act, 2014 as unconstitutional.

Despite the intended purpose of making the process free from executive control, the collegium process has been criticized owing to its opaque nature, accountability issues, and lack of criteria in the decision-making process.

This paper reexamines the issue of the role of the executive in the judicial appointments process to find out if there is any scope of creating a balanced and constitutionally sound procedure which respects the principle of judicial independence without sacrificing transparency and accountability.

This research paper, however, concludes that what is needed at this stage is a pragmatic approach to reforming the system through introducing certain changes in the current process, such as adding a procedural element of transparency and using objective standards and limited institutional oversight. These changes will contribute to improving both the judicial independence and public confidence in the process of appointing judges.

**Keywords:** Judicial Appointments; Judicial Independence; Collegium; Supreme Court of India; Separation of Powers; Executive Interference; Constitutional Principles; Supreme Court Advocates-on-Record Association v. Union of India; Supreme Court Advocates-on-Record Association v. Union of India; National Judicial Appointments Commission Act, 2014; Transparency; Accountability; Judicial Review; Constitutional Governance; India

<sup>228</sup> INDIA CONST. arts. 124, 217.

## 1. Introduction

The concept of judicial independence is central to any form of constitutional democracy. This is because judicial independence guarantees that the judiciary operates as an impartial arbiter, free from pressure and capable of ensuring the supremacy of law. As it relates to India, judicial independence is not just a theoretical notion; rather, it is a constitutional requirement which is part and parcel of the basic structure doctrine enshrined in the Constitution. Judicial independence is essential since it protects the basic rights of the people and ensures that there are checks and balances in governmental institutions.

The Indian Constitution grants vast powers to the judiciary. Indeed, the judiciary performs the roles of being the custodian of the Constitution, protector of fundamental rights and interpreter of law. Given the power of judicial review vested in the judiciary through the Constitution, this institution plays an important and significant role in the Indian constitutional scheme.

Judicial appointments can never be separated from the idea of judicial independence. How the judges are appointed determines their autonomy, integrity, and legitimacy as a whole. First of all, according to the Constitution, the system of appointments included the involvement of both the executive and the judiciary. However, gradually, there have appeared concerns about the dominance of the executive and its possible interference, leading to a change in the existing scheme.

The development of the judicial appointments process in India greatly depends on the role of judicial interpretation. There have been a number of landmark cases such as Supreme Court Advocates-on-Record Association v. Union of India that determined that the judiciary, not the executive branch, is responsible for the nominations. In addition, the

collegium system was introduced in order to strengthen the independence of the judiciary.<sup>229</sup>

It should be noted that the collegium system is quite controversial in itself. First of all, it is based on a collegial principle when senior judges together decide about nominations and reassignments. Secondly, despite the fact that it was supposed to ensure the independence of the judiciary, the system is quite problematic as it lacks transparency and procedures.

However, the collegium system has been heavily criticized on the basis that it functions in an opaque manner without any set standards of selection or public scrutiny.

From this point of view, the importance of this paper cannot be denied. The issue of judicial appointments has always had a constitutional dimension because it involves balancing the principles of independence and accountability. Further, with the recent Supreme Court's decision regarding the striking down of the National Judicial Appointments Commission Act, 2014 in Supreme Court Advocates-on-Record Association v. Union of India, the debate is likely to continue.

The purpose of this research is to analyse the current situation, its problems and limitations, and to determine whether there is a possibility of developing a mechanism that would satisfy all parties involved without violating the principle of judicial independence.

## 2. Statement of Problem

The mechanism of judicial appointments in India is currently subject to constant constitutional debate, as there are no established mechanisms that ensure both judicial independence and institutional accountability. While the Constitution provides for consultation-based process, the courts have changed the scenario to a certain extent, and this is how the collegium system was introduced.

<sup>229</sup> Supreme Court Advocates-on-Record Ass'n v. Union of India, (1993) 4 S.C.C. 441 (India).

Despite the fact that the collegium system was established in order to ensure minimal influence of the executive branch of power, it has long been the subject of criticism due to its closed nature and lack of objective criteria for evaluating applicants.

At the same time, any efforts towards introducing more executive participation, especially after the establishment of the National Judicial Appointments Commission Act in 2014, were rejected because of the fear that the increased role of the executive branch would endanger the independence of the judiciary.<sup>230</sup>

Thus, a constitutional quandary appears since on the one hand, too much judicial independence is unlikely to result in sufficient transparency and accountability; on the other hand, too much executive influence threatens judicial independence.

### 3. Research Objectives

The research objectives include the following:

1. Examination of the concept of judicial independence in India, as well as its constitutional significance
2. Investigation into the evolution of appointment mechanisms over history
3. Evaluation of the functioning of the collegium system and its limitations
4. Assessment of the level of executive influence on judicial appointments
5. Suggestion of the necessary reform of the existing appointment system

### 4. Research Question

The research study is premised on the following question:

1. Is the collegial system an effective balance of independence and accountability?
2. What role does the involvement of executives play in judicial independence?

3. What is the most appropriate model for ensuring both transparency and independence?

### 5. Literature Review

The question of judicial appointments and independence has attracted much academic discussion in relation to judicial autonomy and democratic accountability. Researchers have consistently pointed out that judicial independence is an essential element of constitutionalism and that it constitutes the basic structure of the Indian Constitution according to the Apex Court in India.

Several authors in literature have criticized the collegium system due to its lack of transparency and secrecy. Researchers argue that the absence of transparent criteria and reasons behind judicial appointments leads to an appearance of arbitrary appointments. Additionally, the issues of favouritism and nepotism in the collegium system have often been criticized by academics as they indicate that the collegium system does not always follow the merit principle.

On the other hand, a few authors justify the collegium system based on its effectiveness in ensuring insulation of the judiciary against any external pressures. According to them, in light of a powerful executive, judicial supremacy in making judicial appointments is essential for maintaining independence. Nevertheless, even supporters admit the necessity for certain internal changes which would make the process more transparent and accountable.

A third stream in academic discussion emphasizes the importance of having limited participation of the executive in the appointment process of judges. Advocates claim that an absolute rejection of the participation of the executive violates the theory of separation of powers and limits democratic accountability. The combination of both judicial and executive involvement could provide the optimal mechanism for addressing the problem.

<sup>230</sup> Supreme Court Advocates-on-Record Ass'n v. Union of India, (2016) 5 S.C.C. 1 (India).

The contribution of constitutional scholars and expert organizations, such as the Law Commission of India, should be emphasized. Different reports issued by the Law Commission have analyzed the need for reform in judicial appointments, providing possible solutions for existing problems.

Nevertheless, several gaps are evident in the present research. Most studies provide either strong support to judicial supremacy or propose executive involvement in the appointment process, leaving very little space for building an institutional.

## 6. Research Methodology

The research employs a doctrinal method that concentrates on examining legal rules, constitutional provisions, and judicial precedents concerning judicial appointments.

The research uses primary sources like the Constitution of India, significant cases decided by the Supreme Court of India, and other relevant reports to identify the legal framework for the development of the process of appointment.

Moreover, secondary sources such as books, scholarly articles, and other academic literature are used to analyse academic viewpoints and criticisms of the topic. Additionally, the Law Commission of India's reports have been evaluated to comprehend recommendations concerning the same.

Comparative methodologies have been applied to compare judicial appointment systems in the UK and the USA. This would help to identify good practices that can be applied in the Indian setting.

## 7. Conceptual Framework

### 7.1 Concept of Judicial Independence

Judicial independence can be defined as the freedom of the judiciary to function without external interference, especially from the executive and the legislature. It is aimed at ensuring fairness in decision-making and safeguarding constitutional principles.

### 7.2 Forms of Judicial Independence

**Institutional Independence:** This means the independence of the institution of the judiciary from other organs of government.

**Personal Independence:** It involves the personal independence of individual judges in decision-making.

### 7.3 Doctrine of Separation of Powers

According to the doctrine of separation of powers, different branches of government exercise distinct functions. The concept of judicial independence is integral to this doctrine.

### 7.4 Constitutional Provisions

1. Article 124: This deals with the appointment of Supreme Court judges.<sup>231</sup>
2. Article 217: This addresses the appointment of judges to High Courts.<sup>232</sup>

Initially, these provisions entailed a consultation process between the executive and the judiciary, but later they have been interpreted differently.

Critical and analytical methodologies have been adopted to critically evaluate the benefits and drawbacks of the collegium system and suggest possible reform options.

## 8. Development of Appointment of Judges in India

### 8.1 Prior to Collegium

In its initial years, the appointment of judges was done by the executive itself and vested the President with powers that could result in dominance over the judiciary.

### 8.2 Appointment of Judges and Emergence of Collegium

It was the following judgments that made the change:

1. S.P. Gupta v. Union of India  
Set up executive supremacy in appointment of judges.<sup>233</sup>

<sup>231</sup> Indian Constitution Art. 124.

<sup>232</sup> Indian Constitution Art. 217.

2. Supreme Court Advocates-on-Record Association v. Union of India  
Reversed the previous judgment and set up judicial supremacy in appointment of judges, thereby giving birth to the concept of collegium.
3. In re Presidential Reference  
Provided guidance regarding collegium in terms of its structure and working.<sup>234</sup>

### 8.3 NJAC and Constitutionality Issues

Supreme Court Advocates-on-Record Association v. Union of India

Declared the National Judicial Appointments Commission Act, 2014, as unconstitutional for being violative of the principle of judicial independence.

Thus, there arose an issue of constitutional controversy between judiciary and executive.

### 9. Analysis

In India, the collegium system has significantly contributed to the maintenance of judicial independence by keeping the appointment process of judges mostly within the realm of the judiciary. This ensures that the appointment process is shielded from any executive intervention, thus safeguarding the judiciary from any political influences and external factors that could compromise its independence. The significance of judicial independence cannot be underestimated since it helps ensure that constitutional governance is maintained since the judiciary acts as a counterbalance to the legislative and executive branches of government. The development of the collegium system based on various judicial pronouncements of the Supreme Court of India demonstrates how the judiciary seeks to preserve the basic structure of the Constitution, which includes judicial independence.

Nevertheless, the collegium system has not been immune to criticisms, especially regarding issues of transparency and accountability. The selection of candidates for judgeships and

transfers has lacked transparency since there are no publicly available criteria for selecting candidates.

In the absence of adequate institutional controls and procedures, these problems are further aggravated, thereby giving rise to serious concerns with regard to the validity of the process and the credibility of the system. While judicial primacy guarantees independence, it is also characterized by closure, thus making it difficult for the process to be subject to democratic control and public inspection.

The controversial topic of executive involvement in judicial appointments is yet another complicating factor here. Though some might advocate for the inclusion of the executive in the appointment procedure due to the resulting democratic character of the process, others might see it as posing a threat to the independence of the judiciary due to the possible politicization of the procedure. The problem took an acute turn after the passing of the National Judicial Appointments Commission Act, 2014<sup>235</sup> and its invalidation in the case of Supreme Court Advocates-on-Record Association v. Union of India.

An analysis of judicial appointment processes in other countries might prove helpful in reforming our current system.

The Judicial Appointments Commission in the United Kingdom provides for an impartial and meritocratic process, minimizing room for arbitrariness. On the other hand, the American system entails executive appointment with legislative approval, thus ensuring democratic accountability albeit making way for politics. Both examples emphasize the idea that while no approach to judicial appointments is perfect, balance between transparency, accountability, and independence can definitely be achieved.

From the above discussion, it can be observed that despite the effectiveness of the collegium

<sup>233</sup> S.P. Gupta v. Union of India, AIR 1982 SC 149 (India).

<sup>234</sup> In re Presidential Reference, (1998) 7 S.C.C. 739 (India).

<sup>235</sup> The National Judicial Appointments Commission Act, No. 62 of 2014, INDIA CODE (2014).

system in promoting judicial independence, several weaknesses that cannot be overlooked are present in the said system. First, there is the problem of transparency and accountability, which is why public faith is not guaranteed, while the second pertains to the total disassociation of the judiciary from the executive, which is problematic in itself.

### 9.1 Advantages of the Collegium System

The collegium system has been important in safeguarding judicial independence through:

- Judicial supremacy in appointments
- Political neutrality
- Institutional independence

### 9.2 Disadvantages of the Collegium System

Notwithstanding its advantages, the collegium system has come under heavy criticism because of:

- Opaque decision-making process
- Accountability vacuum
- Claims of favouritism and nepotism

These criticisms have questioned the credibility of the collegium system.

### 9.3 Executive Involvement in Judicial Appointments

There is an ongoing debate over executive influence in judicial appointments. This controversy arises from a clash between:

- Democratic oversight
- Executive interference with judicial processes

This conflict highlights the fundamental trade-off between independence and accountability.

### 9.4 Comparative Analysis

1. United Kingdom: Judges are appointed by an independent Judicial Appointments Commission to ensure transparency and meritocracy.
2. United States: Judges are appointed by the executive branch and confirmed by the Senate to maintain accountability.

#### Lessons for India:

- Transparency in procedure

- Checks and balances
- Independent accountability

## 10. Conclusion & Recommendations

### 10.1 Conclusion

The above analysis of the appointment of judges in India has demonstrated that judicial independence is critical for the functioning of the Indian Judiciary. The creation of the collegium by the Indian Supreme Court is significant because it has helped shield the judicial branch from executive interference. It is vital to emphasize that judicial primacy has ensured the autonomy of the judicial branch and protected the fundamental structure of the Constitution. In addition, the collegium system has enhanced the credibility of the judiciary because it has ensured the judicial body acts as an impartial guardian of the constitution

Nonetheless, there are weaknesses in the collegium system since the process lacks transparency, and there are no clear criteria for selecting judges. In addition, the collegium system lacks accountability mechanisms, which has generated much criticism due to claims of favouritism and corruption. While judicial independence is essential, it should not be at the expense of the public's trust in the institution's integrity.

It is worth noting that a constitutional controversy has emerged because of the passing of the National Judicial Appointments Commission Act, 2014, which was later declared unconstitutional in *Supreme Court Advocates-on-Records Association v. Union of India*.

In summary, despite being an excellent instrument in protecting the independence of judges in the judiciary, the collegium process is plagued by certain weaknesses that ought to be remedied. On one hand, having an absolute judiciary-controlled process lacks proper accountability, and having too much executive involvement undermines independence. Thus, the future of judicial appointments in India requires finding a perfect balance between independence and accountability.

## 10.2 Recommendations

1. Increasing Transparency in the Collegium System  
It is essential for the collegium to provide reasons for making judicial appointments, transferring judges and rejecting some of them.
2. Establishing An Independent Appointments Commission  
An alternative mechanism can be put in place through which judicial supremacy would prevail without undermining the role of the executive.
3. Developing Criteria for Judicial Appointments  
It is important to come up with objective criteria to guide the appointment of judges with regard to issues such as integrity, competence, experience and diversity.
4. Improving Accountability Mechanisms  
Accountability mechanisms should be instituted in such a way as not to undermine judicial independence.
5. Adopting Lessons from Other Jurisdictions  
It is important to adapt the practices from other countries like the UK and US.

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