

Collegium System and Judicial Appointments: An Overview

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Abstract

The collegium system in India selects and promotes judges to the SC and HC. The CJI and a few SC justices recommend judicial appointments and transfers. The executive branch appointed members of the higher courts, raising concerns about political meddling. In 1993, the SC established the collegium system to address this issue. Under the collegium system, the CJI and other senior SC justices propose judges for the higher judiciary. After receiving recommendations, the Indian President appoints official appointments. Since only a few judges issue unreviewable recommendations, the system has been criticized for being unaccountable and opaque. In 2014, the Indian parliament approved the National Judicial Appointments Commission (NJAC) Act, which sought to replace the collegium system with a mixed-member panel. The SC overturned the NJAC Act in 2015 because it endangered the judiciary's independence and was unconstitutional. Since then, India has largely appointed judges by collegium. However, collegium system improvements, including more accountability and transparency in judge appointment, have been debated.

Introduction

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Judicial Independence Under The Constitution

Judicial selections and the collegium system are essential components of preserving India's judicial independence, which is guaranteed by the Indian Constitution. According to Article 50

¹ Kaler, S. Judicial Independence and Collegium System of India.

of the Constitution, the State must take action to keep the executive branch and judiciary separate in its public services.

To ensure that the court can carry out its duties impartially and without undue influence from the executive or any other external institution, the judiciary must be independent. The nomination of judges to the higher judiciary is essential to maintaining the independence of the judiciary since the judiciary plays a key role in upholding the rule of law and defending individuals' fundamental rights.

In India, the collegium system is seen as a crucial guarantee for judicial independence. The method makes guarantee that judges are chosen without regard for political or governmental influence and instead on the basis of their qualifications, integrity, and merit. According to the SC, maintaining the judiciary's independence requires giving it priority when appointing and transferring judges.

However, the collegium system has also come under fire for lacking accountability and openness. There have been worries that the collegium's recommendations won't receive enough review or public discussion, which could damage the judiciary's reputation. To address these issues, several experts have suggested for changes to the collegium structure.²

Consequently, it is possible that the collegium system and judge selections are essential to preserving judicial independence in India. Maintaining the rule of law and defending citizen rights depend on the judiciary's independence. To improve the legitimacy and credibility of the court, there is also a need for increased transparency in the selection process for judges.

Appointment of judges by the Head of the state (British system adopted)

A characteristic of the British form of government, which was adopted in various nations, notably India, during the colonial era, is the appointment of judges by the Head of the state. In this system, judges for the higher judiciary are appointed by the Head of the state, usually a monarch or president, based on suggestions made by the executive part of the government.

Up until the early 1990s, the British system of choosing judges predominated in India. To address concerns about political interference in the judiciary, the SC then created the collegium system. Under the collegium system, the President of India receives suggestions for judicial appointments and transfers from the CJI and a few senior SC judges before making a formal appointment.

The collegium system was implemented in India with the intention of increasing the judiciary's independence and minimizing political interference in judicial appointments. The SC has ruled that the selection of judges must be a fair, impartial procedure that is based on the qualifications and qualifications of the candidates.

Although the British method of choosing judges has come under fire for having the potential to erode the independence of the court, it is nevertheless used in other nations. The Head of the state may occasionally have the authority to dismiss judges from their positions, but this rarely happens because of the rarity of the situation.

² Collett, T. S. (2009). Judicial independence and accountability in an age of unconstitutional constitutional amendments. *Loy. U. Chi. LJ*, 41, 327.

Evolution of Collegium system, case analysis SC on Record association v UOI

The SC's 1981 S.P. Gupta v. UOI³ judgement shaped the Indian collegium system. In this case, the SC declared that only the executive branch could select higher judiciary judges.

However, the ruling was criticized for giving the executive branch wide latitude to choose judges, which could lead to political influence over the court. In 1993, the SC established the collegium system to address these concerns.

The SC found that the judiciary had priority in appointing and transferring judges and that the executive had a limited role. The collegium system ensured that judges were selected based on qualifications, honesty, and merit, not political or governmental interference.

The collegium system has developed due to SC orders clarifying and improving judge appointment procedures. In 2015, the Supreme Court invalidated the NJAC (NJAC) Act, which had proposed a multi-member panel to replace the collegium system. Judiciary independence was threatened, and hence the Supreme Court ruled that the NJAC Act was unconstitutional.

In SC Advocates-on-Record Association v. UOI⁴, the SC said the collegium system needed improvement to increase transparency and accountability in judicial nominations. The Court suggested consulting the executive and bar in the collegium system.

The collegium system in India was created due to concerns about political meddling in the court and the need for increased judicial independence. Several SC decisions have strengthened the system to ensure judges are appointed on merit. However, improvements to increase transparency and accountability in appointing judges have been discussed.

Origin of system-Justice P.N Bhagwati

In India, the collegium system dates back to Justice P.N. Bhagwati's 1981 ruling in the case of S.P. Gupta v. UOI.⁵ Justice Bhagwati ruled in this case that the executive part of the government, not the judiciary, had the authority to nominate judges to the higher judiciary.

Justice Bhagwati later had a change of heart, however, and started to support more judicial independence in the selection of judges. He believed that judicial nominations should be made with more input from the judiciary and should be made on the basis of qualifications such as merit, integrity, and fitness rather than political influence.

In 1993, the SC followed Justice Bhagwati's suggestions and instituted the collegium system for judicial nominations in the case of SC Advocates-on-Record Association v. UOI.⁶ Under the collegium system, the President of India receives suggestions for judicial appointments and transfers from the CJI and a few senior SC judges before making a formal appointment.

The development of the collegium system was significantly aided by Justice Bhagwati, whose ideas on judicial independence and the necessity of an impartial, transparent selection procedure for judges have had a long-lasting influence on the Indian court.

³ AIR 1982 SC 149

⁴ AIR 1994 SC 868

⁵ Supra note 3

⁶ Supra note 4

The theories of Justice P.N. Bhagwati, who pushed for greater judicial independence in the selection of judges, can be linked to the development of the collegium system in India. In order to ensure that judges are nominated primarily on their merit and appropriateness, rather than political influence, the SC's collegium system, which was first implemented in 1993, has since evolved.

Art 124(2) and 217 (1) amendment

In an effort to do away with the antiquated collegium system, the National Democratic Alliance (NDA) administration of 2014 proposed the New Jersey Supreme Court Administrative Commission (NJAC) Bill. Judiciary independence was at issue when the Supreme Court declared the NJAC Act unconstitutional in 2015.

After this judgement, the NDA administration tried to modify Articles 124(2) and 217(1) of the Constitution to create a NJAC and reduce the judiciary's power over judicial appointments. However, the legal profession strongly opposed these proposed changes, arguing that they would compromise judicial independence and allow political interference in judge appointments. After opposition, the government scrapped the changes.

The proposed modifications to Articles 124(2) and 217(1) of the Constitution, which would decrease the judiciary's participation in judicial appointments and empower the executive branch, challenged the judiciary's independence. The argument opposing these revisions was that the collegium system had been successful in appointing judges based on merit and appropriateness, and that any changes should only be implemented after careful consideration and consultation with all relevant parties.⁷

The legal profession strongly opposed the proposed modifications to Articles 124(2) and 217(1) of the Constitution because they threatened the judiciary's independence. The withdrawal of the amendments illustrates that the collegium system is still the preferred way for appointing judges in India and that any changes should be made after careful consideration and consultation with all stakeholders.

Second Judges Transfer, Third Judges Transfer Case

The Second and Third Judges Transfer cases shaped India's collegium system of judicial appointments.

The 1993 Second Judges Transfer case arose from a dispute between the executive and judiciary about transferring judges between HC. The SC declared that objective standards should be used to transfer justices, with the CJI's recommendations taking precedence. The executive branch could not transfer judges without the CJI's assent, the court concluded.

The Third Judges Transfer Case (1998) transferred one judge from one high court to another. The SC decided in 1993 that the collegium system was the best way to ensure judicial independence during judge selection and transfer. The court found that the president could not

⁷ Srivastava, A. (2022). Appointment of Judges in India. *Jus Corpus LJ*, 3, 689.

unilaterally reject the collegium's recommendations and should prioritize them in judicial appointments and transfers.⁸

These cases confirmed the importance of judicial independence and the collegium system in judge nominations and transfers. Since then, several rulings, including the SC Advocates-on-Record Association case in 1993 and the Presidential Reference case in 1998, have changed the collegium system to ensure that judges are nominated on merit rather than political influence.

These cases reinforced judicial independence and the collegium system's dominance.

Government initiatives 2003

The 2003 Constitution (98th Amendment) Bill filed by the Indian government will replace the collegium system for appointing and transferring judges with the National Judicial Commission (NJC).

The planned NJC included the CJI, two senior SC justices, the Union Law Minister, and two notable individuals picked by the Prime Minister and Leader of the Opposition. The NJC was intended to improve judge selection transparency.

The legal profession vigorously opposed the plan, arguing that it would give the executive branch too much power and weaken the court. The bill was dropped after failing to get two-thirds support in both chambers of Parliament.⁹

In 2015, the SC rejected the government's 2014 NJAC replacement for the collegium system. In 2003, the Government of India formed the National Judicial Commission (NJC) to replace the collegium system to improve judicial recruitment accountability and openness. The bill was scrapped after legal professionals slammed it. The government tried to replace the collegium system with the NJAC (NJAC), which the SC also dismissed.

National judicial council

For the appointment and transfer of judges in India, there are two main processes: the National Judicial Council (NJC) and the collegium system.

The Government of India suggested the NJC as a successor for the collegium system in 2003. A commission would be created within the NJC to offer suggestions for the appointment and transfer of judges. The commission would consist of other judges, legal professionals, and government representatives, with the CJI serving as its chairman. The NJC was created with the intention of fostering greater accountability and openness in the selection of judges.

On the other side, India currently appoints and transfers judges through the collegium system. Under this arrangement, suggestions for appointments and transfers are made by the CJI and a group of senior judges. The system has come under fire for being untransparent and unaccountable, and some claim that it gives the judiciary too much power.

⁸ Kumar, G. A. (1983). Transfer of High Court Judges and Independence of the Judiciary. *Cochin University Law Review*, 7, 251-280.

⁹ Devadoss, P. R., Pan, S. L., & Huang, J. C. (2003). Structural analysis of e-government initiatives: a case study of SCO. *Decision support systems*, 34(3), 253-269.

The planned NJC was rejected by the SC in 2015 on the grounds that it would have compromised the independence of the judiciary. The court determined that the collegium system was the most effective way to guarantee the independence of the judiciary during the appointment and transfer of judges.¹⁰

It is clear that the National Judicial Council and the collegium system are two distinct methods used in India to nominate and remove judges. The SC has ruled that the collegium system is the best way for safeguarding the independence of the judiciary, despite the NJC being offered as a replacement for the collegium system to promote greater transparency and accountability.

Advantages And Disadvantages Of Collegium System

Advantages of the Collegium System:

1. Independence of the Judiciary: The Collegium System contributes to preserving the independence of the judiciary throughout the selection and promotion of judges. The system gives judges the authority to propose judges for appointment and promotion without intervention from the government's executive branch.
2. Expertise and Meritocracy: With the help of the Collegium System, the judiciary is able to choose the best and most qualified individuals for judicial appointments based on their qualifications and merit.
3. Transparency: The Collegium System is somewhat transparent because it entails discussions and suggestions being made for the appointment and transfer of judges by senior SC judges.

Disadvantages of the Collegium System:

1. Lack of Accountability: As there is no independent organization or outside scrutiny involved in the Collegium System's process of recommending judges for appointment and transfer, it lacks accountability.
2. Lack of Diversity: The Collegium System lacks any provisions that would guarantee variety of caste, religion, or gender among the judges. As a result, judges from a certain background may be appointed, compromising the representation of different societal groups in the judiciary.
3. Opaque Process: The Collegium System is secretive in that the public is unaware of the criteria used to choose individual applicants for judicial positions. This may raise questions about the system's objectivity and fairness.¹¹

Conclusion

The "Collegium System" and "Judicial Appointments in India" select and appoint judges to the SC and HC in India. The SC of India created the Collegium System in the early 1990s to nominate and remove judges.

Under the Collegium System, the CJI and senior SC justices propose judges for the HC and SC. Judicial independence, which allows the court to nominate and remove justices without executive branch interference, underpins the system.

¹⁰ Ramakrishnan, A., & Bhardwaj, P. (2011). Need for a National Judicial Commission: The Struggle for Primacy and Unconstitutionality of the Collegium System. *NLIU L. Rev.*, 2, 242.

¹¹ Kaler, S. Judicial Independence and Collegium System of India.

The Collegium System has been criticized for lacking openness and accountability. Critics say the judiciary has too much power and no independent external review of the justice selection process.

However, the SC upheld the Collegium System as the best approach to ensure judicial independence during judge appointments and transfers.

Reforming the Collegium System has been debated for years. In 2015, the government proposed the NJAC to replace the Collegium System. The SC invalidated the NJAC and approved the Collegium System as the best means to ensure judicial independence.

In conclusion, the Collegium System and Judicial Appointments are necessary for judicial independence and the appointment of India's most qualified and experienced judges. The system has pros and cons, but it is crucial to the Indian legal system, and any revisions must be founded on openness, responsibility, and judicial independence.

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