

CONSTITUTIONALITY OF THE COLLEGIUM SYSTEM IN INDIA

Kumar Nishant*

ABSTRACT

The judiciary established the collegium system to provide a structured procedure for the appointment and relocation of judges in superior courts. The collegium system aims to preserve the judiciary's independence from the executive branch by giving judges a sizable amount of influence over appointment decisions. Judicial independence calls for judges to be free from any type of direct or indirect influence from political or non-political bodies when administering justice, and the appointment of judges is an essential part of this. For judges to be able to perform their duties successfully, impartially, and without fear or favor, the judiciary must be independent. The government and judges have been engaged in a protracted dispute over the appointment of the judges. The ongoing dispute between the Center and the Supreme Court over who should be appointed to the High Court and the Supreme Court has once again brought attention to the Indian judicial appointment process.

Keywords: Collegium, Supreme Court, Collegium System, Judges, HC, SC, CJI, Chief Justice of India.

INTRODUCTION

Journal of Legal Research and Juridical Sciences

The Bar Council of India recommended the creation of the collegium system at a national seminar for lawyers held in Ahmadabad in 1981. It is intended to protect the independence of the judiciary and was developed through a series of decisions by the Supreme Court of India, not through legislation passed by Parliament or a provision in the Constitution. In the Collegium system, which is also referred to as "Judges- selecting- Judges" in India, judges are solely in charge of choosing and appointing judges.¹ The collegium, which is a group of senior judges, makes the majority of decisions regarding the appointment and transfer of judges to the Supreme Court and High Courts. The Supreme Court and High Court judges are appointed by the President; however, the collegium system is consulted before the appointment is made.

*BA LLB, FIRST YEAR, MAHARASHTRA NATIONAL LAW UNIVERSITY, AURANGABAD.

¹ Law Commission of India Report No. 214 'Proposal for Reconsideration of Judges cases I, II and III', November 2008

HOW COLLEGIUM SYSTEM WORKS

According to Sec. 124 of the Indian Constitution, Every Judge of the Supreme Court shall be appointed by the President by warrant under his/her hand and seal after consultation with such of the Judges of the Supreme Court and of the High Court in the States as President may deem necessary for the purpose and shall hold office until he attains the age of 65 years. In judicial appointments, it is obligatory for the President to take into account the opinion of the Chief Justice of India.

The President, in consultation with the Chief Justice of India (CJI), and the Governor of the State, shall appoint the judge of a High Court, as provided for in Article 217 of the Constitution. The Chief Justice of the High Court is consulted in cases involving the appointment of judges other than the Chief Justice.²

In the "second judges case" and "third judges case," the Supreme Court determined that "consultation" with the Chief Justice of India in Articles 124(2) and 217(1) regarding the appointment of Judges of the higher judiciary began to be interpreted as vesting primacy with the judiciary.

The CJI and the other SC judges are chosen by the Indian President. The departing CJI endorses his successor in terms of the CJI. Since the supersession controversy of the 1970s, seniority has been the only factor in actual practice.

In order to appoint SC judges, Four of the SC's most senior judges and the CJI make up the collegiums. The proposal is started by the CJI for the other SC judges. The CJI consults the rest of the Collegium members, as well as the senior-most judge of the court hailing from the High Court to which the recommended person belongs. The Collegium sends the recommendation to the Law Minister, who forwards it to the Prime Minister to advise the President.³

According to the policy of having Chief Justices from outside the respective States, the Chief Justice of the High Court is appointed. The Collegium makes the decision regarding the promotion. A Collegium made up of the CJI and the two most senior judges makes recommendations for High Court judges. However, the proposal was started by the departing

² Ibid

³ Judicial Appointments in India: Imperatives for Reforms, Journal of Politics & Governance

Chief Justice of the relevant High Court after consulting with two of her most senior colleagues. The Chief Minister receives the recommendation and advises the Governor to forward it to the Union Law Minister.

HC judges are also appointed by the President who consults the HC collegium comprising of CJ of HC and 4 senior-most HC judges, CJI (consults other SC collegium members), and the Governor of the respective state.

EVOLUTION OF THE COLLEGIUM SYSTEM

In 1950, India ratified the Constitution after gaining independence. In accordance with the Constitution, the President appointed the Chief Justice of India and the remaining Supreme Court justices before 1973 after consulting with the CJI and any additional judges he felt were necessary.

To prevent judicial appointments from being influenced by politics, the constituent assembly adopted a consultative process. In addition to giving the Chief Justice a veto, it avoided legislative interference.

The executive government showed the propensity to dissuade from the established practices from time to time. When the 7:6 verdict was delivered by the 13-judge panel in the Keshvananda Bharati case in 1973. Instead of following tradition and selecting the senior-most judge to serve as Chief Justice of India, the Indra Gandhi-led government chose Justice A.N. Ray, who replaced three other senior-most judges. The three judges who were ignored belonged to the majority, which had seven judges to the minority's six.⁴ Justice Ray belonged to the minority group of 6, which was, in a sense, in favor of the Council of Ministers. Judges who were ignored resigned. Similarly to this, it is believed that Justice Khanna's opinion in the ADM Jabalpur case led to the government of Indra Gandhi choosing Justice M.U. Beg over the senior Justice.

THE FIRST JUDGE'S CASE

The First Judge Case, also known as S.P. Gupta v. Union of India, was heard by the Supreme Court of India in 1981. The case's central issue was whether or not the Chief Justice of India's

⁴ Judicial Appointments in India: Imperatives for Reforms, Journal of Politics & Governance, 3, 183, 2014

(CJI) opinion should take precedence when selecting new judges and transferring existing ones.

The Supreme Court ruled that, when it came to judicial appointments and transfers, the CJI's opinion was neither the only nor the deciding factor. The court, on the other hand, emphasized the significance of consulting a collegium of judges, including the CJI, when making these decisions. According to the court, the president of India shouldn't deviate from the collegium's recommendations unless there are exceptional reasons for doing so, such as threats to national security or accusations of corruption.

The collegium system was established by the First Judges Case as a way to guarantee the independence of the judiciary in the appointment and removal of judges. This ruling, however, drew criticism for failing to outline a clear framework for the collegium system's operation and failing to adequately address the issue of appointment process transparency.⁵

THE SECOND JUDGE'S CASE

The "Second Judges Case" refers to a landmark case in Indian constitutional law that took place in 1993. The case is officially known as Supreme Court Advocates-on-Record Association v. Union of India and is also known as the "Second Judges Case" because of its importance in relation to judicial appointments and the collegium system. The First Judges Case (1981) was followed by the Second Judges Case, which sought to address some of the flaws and ambiguities in the earlier ruling. The case's main focus was on how the Chief Justice of India (CJI) and the collegium should be interpreted in terms of their roles in the selection and promotion of judges to the Supreme Court and High Courts.

The Supreme Court's ruling expanded and clarified the collegium system while reiterating the CJI's primary responsibility for appointing judges. The court ruled that the executive branch of government should have a limited role in the decision-making process and that the CJI's opinion should be given significant weight.

The verdict supported the idea that the CJI's recommendation would have a significant influence on judicial transfers and appointments. The CJI must, however, consult with a collegium of senior judges before forming an opinion. The CJI and the four senior-most Supreme Court judges were to make up the collegium. The judgment emphasized that in

⁵ S P Gupta v. President of India and others, AIR1982SC149

decisions regarding appointments and transfers, the collegium's consensus should be followed. The executive branch's participation was limited, and it was only responsible for gathering the necessary data and checking the backgrounds of the suggested candidates.⁶

The collegium system remains the standard procedure for appointing judges in India as a result of the Second Judges Case. The lack of transparency, accountability, and diversity in the system has raised concerns in light of subsequent cases and discussions, though, sparking ongoing discussions and demands for changes to the appointment procedure.

THE THIRD JUDGE'S CASE

"Third Judges Case" is a significant judgment in Indian constitutional law that took place in 1998. The official name of the case is Supreme Court Advocates-on-Record Association v. Union of India. In order to address specific issues and provide more clarity regarding the appointment and transfer of judges in the higher judiciary, the Third Judges Case (1998) was built on the precedents established by the First Judges Case and the Second Judges Case (1993).

The decision strengthened the collegium system as the main method for appointing judges. It placed emphasis on the collegium's collective opinion during decision-making processes, which consists of the Chief Justice of India (CJI) and several senior judges. The court stated that a "Memorandum of Procedure" (MoP) was required to regulate the operation of the collegium system and of the judicial appointment process. The MoP would offer recommendations on various topics, such as the requirements for eligibility, the consultation procedure, and transparency.⁷ The decision emphasized the significance of consulting with judges who have worked with the recommended candidates to get their opinions on whether they are qualified for the position. The executive branch's only responsibilities were to gather data and check the references of the suggested candidates. The collegium held the decision-making authority, but the executive was required to provide it with all pertinent information.

The Third Judges Case was instrumental in improving India's collegium system and establishing standards for the appointment and transfer of judges. It should be noted, though, that the collegium system has continued to be the focus of debates, criticisms, and demands for changes to address issues with process transparency, accountability, and diversity.

⁶ Supreme Court Advocates-on-Record - Association and another v. Union of India 1993

⁷ Supreme Court Advocates-on-Record - Association and another v. Union of India 1998

NJAC

Due to its lack of accountability and transparency, the Collegium System came under heavy fire from both the government and civil society. As a result, the National Judicial Commission Act (NJAC), which replaced the collegium system for appointing judges, was passed as the 99th Constitutional Amendment Act in 2014.

The Indian Parliament approved the NJAC Act, in 2014, and the president ratified it in August of the same year. It aimed to create the NJAC as a brand-new entity in charge of selecting and moving judges. The Chief Justice of India (CJI), two senior Supreme Court judges, the Union Minister of Law and Justice, and two eminent individuals were proposed as members of the NJAC. These individuals were chosen by a committee made up of the Prime Minister, the CJI, and the Leader of the Opposition in the Lok Sabha (lower house of Parliament) or the leader of the largest opposition party.

The NJAC Act, however, was contested in the Supreme Court through a number of petitions, with the argument that it infringed the judiciary's independence as guaranteed by the Constitution. In a major decision known as the "Fourth Judges Case" or "Supreme Court Advocates-on-Record Association v. Union of India" case, a constitutional bench of the Supreme Court invalidated the NJAC Act in October 2015. The NJAC Act was declared illegal by the Supreme Court in its decision, which reinstated the collegium system as the primary procedure for appointing judges. The NJAC Act was invalidated by the court because of concerns about potential influence from the executive branch and the necessity to preserve the independence of the judiciary.⁸ Since the Supreme Court's ruling, India has continued to nominate judges using the collegium system, however, there have been ongoing arguments about its effectiveness and the need for changes to increase openness and accountability.

INDEPENDENCE OF JUDICIARY

The idea of judicial independence is the idea that judges should be free from outside pressures and influences so they may make unbiased decisions based only on the law and the evidence before them. A democratic society's core pillar of judicial independence is essential to sustaining the rule of law and delivering justice.

⁸ Vaidya Gullapalli & Jayaprakash Narayan., A National Judicial commission Judicial appointment and oversight

The executive, legislative, and judicial departments of government must be clearly separated in order to uphold the idea of separation of powers. By keeping the two branches separate, the judiciary is protected from unwarranted intervention or control by other branches. Political or other forces should not be allowed to affect the selection or removal of judges.⁹ Merit, credentials, and honesty need to be the determining factors in judicial selections. To be able to make decisions without fear of retaliation, judges should have tenure security that protects them from arbitrary dismissal.

To keep the judiciary independent, it must get adequate funds. Without being subject to the whims or interests of other parts of government, the court should have enough funding to function efficiently. Judges ought to be protected against unlawful pressures, such as political coercion, bribery, and threats. They must be able to render decisions without bias or concern for their own safety.

Judges must follow high ethical norms, such as avoiding conflicts of interest, maintaining integrity, and acting impartially and fairly. Although the court is supposed to be independent, it is also subjected to checks and balances. Judicial decisions can be reviewed by higher courts, and disciplinary measures exist to address judicial misconduct or violations of ethical norms.¹⁰

The judiciary's independence is critical for upholding justice ideals, guarding individual rights, and sustaining public trust in the legal system. It assures that judges can make decisions free of favoritism, political influence, or external pressures, favoring the impartial administration of justice in the end.

CRITICISM OF THE COLLEGIUM SYSTEM

The collegium system, which is used in the Indian higher courts for judicial nominations and transfers, has been the subject of various criticisms throughout the years.

Lack of Transparency: One of the biggest accusations leveled at the collegium system is its lack of transparency. The collegium's decision-making process, including the criteria and reasons for selecting or rejecting candidates, is not open to the public. This lack of transparency has raised worries about favoritism, nepotism, and a lack of responsibility.

⁹ Prof. Y.P.Rama Subbaiah & Dr.K. Sivananda Kumar, *Judicial Appointments and Some Disappointments: A Threat to Independence of Judiciary*, 2014

¹⁰ Shreeja Sen, *Supreme Court identifies four ways to improve collegium system*, Live Mint, November 4, 2015

Absence of Executive Role: Critics contend that the collegium system marginalizes the executive branch of government, resulting in a power imbalance. The system's design provides the court major authority in making appointments, relegating the administration to a consultative role.¹¹ This has been regarded as a violation of the separation of powers principle.

Lack of Diversity: The collegium system has also been chastised for its lack of diversity and restricted representation in the appointment process. Some say that the system fails to take into account elements like regional representation, gender diversity, or inclusivity, resulting in a lack of diverse opinions in the judiciary.

Inefficiency and Delay: Due to lengthy decision-making processes, the collegium system has been accused of causing appointment delays. Critics believe that the lack of clear timeframes and accountability systems causes vacancies to go vacant for long periods of time, resulting in a backlog of cases and harming the general efficiency of the judiciary.

Need for Reforms: Many critics argue for revisions to the collegium system in order to solve its flaws. Reform proposals include the establishment of a national judicial appointments commission with adequate checks and balances, as well as the construction of an independent and transparent framework for the nomination and appointment of judges.¹²

While the collegium system has been criticized, it is also supported by some who feel it protects the independence of the judiciary and prevents excessive political meddling in judicial selections. In India, the debate over the collegium system and potential reforms rage on, with ongoing conversations about improving openness, accountability, and inclusivity in the judge selection process.

CONCLUSION

The collegium system, as formed by the three-judges cases, particularly the second judge's case and clarified by the third judge's case, has several flaws, including a lack of transparency, non-accountability, and so on, but its most serious flaw is the question of its constitutionality. The primary criterion for appointing judges in this system is the judiciary's independence, which is regarded as of utmost importance. In the NJAC decision, the

¹¹ Law Commission of India Report No. 230 'Reforms in the Judiciary - Some Suggestions', August 2009

¹² Ibid

Supreme Court identified four areas where the collegium system may be improved to make it more effective. Transparency, qualifying standards, a secretariat to help the collegium, and dealing with complaints against those being considered for appointment were all part of this. As stated by Justice Khehar, these enhancements must remain within the bounds of previous procedures. These enhancements were proposed after considering the suggestions of the government, distinguished members of the legal profession, and others. However, the question of whether these proposals should evolve into a new system or be retained with minor changes remains unanswered. Although the collegium system protects the independence of the judiciary, it lacks a clear method for the nomination of Higher Judiciary, which is critical because they are the WatchGuard of the Constitution, and hence the system is criticized for its lack of transparency. On the one hand, if judicial independence ensures this, it is critical that the current system fix such flaws and a stronger system is built to ensure that people's faith in the legal system is not shaken.

