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Judicial Independence and the Collegium System in India

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ABSTRACT

The judiciary is a vital component of a nation's legal system, ensuring the supremacy of laws and playing a pivotal role in democratic governance. As per the doctrine of separation of powers, the judiciary is a fundamental organ of the state, alongside the executive and legislature. While the legislature and executive focus on creating and implementing laws, the judiciary oversees their proper adherence. It also interprets and applies laws in diverse legal matters. The principle of separation of powers emphasizes that the judiciary must operate independently, free from external influences.

For a healthy judicial system, the independence of the judiciary plays a crucial role in protecting the sovereignty of the constitution as well as judiciary which is the cornerstone of any democratic society, ensuring that the judiciary remains impartial, free from external influences, and capable of upholding the rule of law. In the context of India, the Collegium System has played a significant role in shaping the appointment and transfer of judges within the higher judiciary, particularly in the Supreme Court and High Courts. This abstract provides a critical analysis of the relationship between judicial independence and the Collegium System in India. The paper begins by delving into the historical evolution of the Collegium System, tracing its roots to judicial interpretations of the Constitution. It explores the constitutional provisions and landmark judgments that have shaped the framework for appointing and transferring judges, highlighting the delicate balance between the need for judicial independence and the role of the executive in the appointment process.

Furthermore, the abstract examines the criticisms and debates surrounding the Collegium System. Critics argue that the lack of transparency, accountability, and participation in the appointment process raises concerns about potential nepotism and favoritism within the judiciary.

The abstract also explores potential reforms and alternative models that have been proposed to address the shortcomings of the current system. Suggestions include introducing a National Judicial Appointments Commission (NJAC) or incorporating more transparent and inclusive mechanisms in the selection and transfer processes.

Key Words: Independent Judiciary, Collegium System, Evolution of collegium system, Reforms, National Judicial Appointment Commission.

INTRODUCTION

To maintain a just and free society, the independence of India's judiciary is paramount, as it guarantees that judges adjudicate fairly, basing their decisions solely on facts and the law, while remaining immune to external pressures. According to Chief Justice D.Y. Chandrachud, this autonomy extends beyond institutional independence to embrace the personal liberty of individual judges to render judgments independently, devoid of political, social, or personal biases. This independence is vital for preserving the judiciary's credibility and fostering trust among citizens, enabling it to serve as a fair arbiter of disputes and dispense timely justice. Moreover, the judiciary's independence is enshrined in the Constitution and statutes, making it a responsibility shared by all governmental and non-governmental entities to respect and honor the judiciary's autonomy.

The Collegium System in India, a distinctive feature of the country's judicial structure, plays a vital role in safeguarding judicial independence and enhancing public trust in the legal system. Originating from the Second Judges Case in 1993, this system has evolved to include the Chief Justice of India and the four most senior judges of the Supreme Court. It replaced the previous practice where judges were appointed solely based on consultation with the Chief Justice by the President of India. This mechanism ensures a democratic process for appointing and transferring judges, aiming to maintain an impartial judiciary free from external influences. Despite criticisms and debates surrounding its transparency and accountability, the Collegium System remains a cornerstone of India's judicial framework, emphasizing the importance of an independent judiciary in upholding the rule of law and ensuring justice for all.

Notable changes have occurred to the Collegium System over time, such as its extension beyond the initially established judge consultation process to include a more inclusive and thorough decision-making framework. Nonetheless, the system has come under fire for alleged infringements on the checks and balances concept, nepotism potential, and lack of transparency.


The National Judicial Appointments Commission (NJAC), which was established in 2014 with the goal of maintaining a balanced relationship between judicial supremacy and executive involvement, was created in response to these difficulties. However, the NJAC was finally declared illegal by the Supreme Court in 2015, confirming the Collegium System's ongoing applicability.

The Collegium System is still the main way that judges are appointed in India, despite continuous discussions over its efficacy and transparency. Addressing flaws and encouraging advancements continues to be a top concern for those who want to fortify the legal system in the country and uphold the core principles of judicial independence. The Collegium System in India ensures judicial independence through several mechanisms:

1. Secrecy and Independence: Proponents argue that the Collegium System enhances secrecy within the judiciary, safeguarding it from political influences and ensuring effective functioning within the institution.
2. Independence from Political Influences: By allowing judges to work without fear or favor, the system upholds the doctrine of the separation of powers, maintaining the judiciary's independence.
3. Specialized Selection: The Collegium, comprising legal experts, is considered better equipped to assess the qualifications and suitability of judicial candidates compared to other selection methods.


Despite these advantages, criticisms of the Collegium System include its lack of transparency, potential for nepotism, and concerns about violating the principle of checks and balances. Efforts for reform have been suggested to address these shortcomings, emphasizing timely appointments, improved background checks, and collaboration between the judiciary and the executive. There have been several rulings on the subject, the most significant of which being the 1993 Second Judges' Case, which established the current Collegium System. The five most senior Supreme Court justices, known as the collegium, vote on the elevation of judges from lower courts, judges from high courts to the Supreme Court, and judges from high courts to the position of Chief Justice. Arguments in favor and against the Collegium System have been made since then. The system's evolution has been marked by ongoing debates on its efficacy and transparency, with stakeholders advocating for reforms to enhance its functioning while preserving judicial independence.


LITERATURE REVIEW

 *Raghvendra Singh Raghuvanshi & Nidhi Vaidya's "Independence of Judiciary—Indian Experience"* emphasizes the critical role of an independent judiciary in upholding the rule of law and ensuring fair justice in society. It covers a number of judicial immunities, including judges' immunity from lawsuits alleging damages arising from their official positions. The concept of absolute privilege in court processes is reviewed as well, guaranteeing that declarations made by lawyers, judges, or witnesses are shielded from derogatory and slanderous acts. The paper also explores the consequences of judicial independence, specifically with regard to judicial activism and judicial review. Courts have the authority to declare legislation that conflict with the constitution invalid through the doctrine of judicial review, which is common in nations with written constitutions. This role shields the constitution from government intrusion and gives legitimacy to government activities. Judicial activism, on the other hand, refers to the proactive role of the judiciary in addressing social, economic, and political issues, often going beyond traditional legal boundaries to promote justice and equality.


The literature also discusses the problem of bias in the judiciary and stresses how crucial it is for judges to remain unbiased in spite of their affiliations or personal convictions. criteria like the "reasonable suspicion" and "real likelihood" criteria are used in the interpretation of bias, according to the text, to assess whether a judge's impartiality may be in jeopardy.

The text concludes by highlighting how important an independent judiciary is to maintaining constitutional values and guaranteeing the just administration of justice. It prompts worries about possible meddling from the administrative and legislative branches, which would jeopardize judicial independence and reduce public confidence in the court.

 *Prakash Singh's "Recent Trends in The Collegium System in India: Assessing Judicial Activism, Judicial Independence, And the Impact on The Justice Delivery System"*, presents a detailed analysis on the recent trends in the collegium system and the evolutionary changes in response to criticisms. The judiciary adopted the Collegium system in the 1990s, and it has since generated a great deal of discussion and analysis. The Collegium system's judicial activism has drawn appreciation as well as criticism. Critics believe that it gives the courts the authority to uphold social fairness, safeguard fundamental rights, and close legislative gaps. Critics worry that the idea of the separation of powers may be compromised by possible encroachment into the legislative and executive branches. Another critical aspect is that the purpose of the Collegium system was to protect the judiciary from political meddling. However, academics challenge the system's lack of accountability and transparency, which might jeopardize independence. Proposals for changes, such as increased accountability, merit-based hiring, and a system of checks and balances, are becoming more and more popular. Recent trends indicate a willingness to adapt and reform, with efforts to enhance transparency through reasons disclosure, widen consultation processes, and foster collegial decision-making. Proposed reforms include establishing a regulatory framework, external oversight, and increased public participation. Emphasizing merit-based selection, judicial education, and performance evaluations are crucial reform elements. Striking a delicate balance between judicial independence and accountability is essential, requiring inclusive dialogue among stakeholders to effectively implement reforms and strengthen public confidence in a competent, accountable, and representative judiciary.

 The literature review on judicial appointments in India reveals a complex and evolving system that has undergone significant scrutiny and reform efforts in recent years. Key themes and issues identified in the literature include-The collegium system, which is the appointment


process used by the Indian judiciary, has come under criticism for being opaque, unaccountable, and lacking clear selection standards, raising suspicions of bias and the exclusion of other viewpoints. The Supreme Court ruled that attempts to alter the system, such as the establishment of the National Judicial Appointments Commission (NJAC) in 2014, were unconstitutional. Numerous suggestions highlight the need for a more transparent and inclusive selection process, reconsidering the judiciary's and the executive branch's relative power. It is a serious concern that the backlog of cases caused by judicial vacancies is causing concerns to ensure that there are enough judges and that appointments are made quickly. A power imbalance has been raised by the collegium system's criticism for missing checks and balances. Better diversity and inclusivity are also required in light of the under representation of women, Scheduled Castes (SCs), and Scheduled Tribes (STs) in the higher courts. The public's trust in the courts is intended to be strengthened by proposals to promote increased transparency in the appointment process, including the release of official records and selection criteria. In conclusion, the literature on judicial appointments in India reflects a complex landscape of challenges and reform efforts aimed at improving the transparency, accountability, and inclusivity of the appointment process. The ongoing debate underscores the importance of balancing judicial independence with accountability and ensuring a diverse and representative judiciary to uphold the principles of justice and fairness.

 In the *International Journal for Multidisciplinary Research (IJFMR)* article by Nikhil Srivastava, the focus is on evaluating the National Judicial Appointments Commission (NJAC) judgement and the Collegium System in India. The article discusses the striking down of the NJAC by the Supreme Court of India, upholding the Collegium System and emphasizing the importance of judicial independence.

The NJAC ruling's dissenting opinion by Justice Chelameswar has analyzed in light of the fundamental tenets of the judicial independence theory. He emphasized the need of judicial independence as a fundamental component of the basic structure and questioned the distinction between the basic structure and basic features of the Constitution. A comparative study of the French and UK judicial appointment processes indicates improvements intended to reduce political influence. In France, judges are chosen through competitive tests or specific qualifications, and the President is dependent on the Conseil Supérieur de la Magistrature's recommendations. In the UK, appointments are made through independent commissions based on merit and good character.

The article also suggests recommendations for reforming the Indian collegium system to enhance transparency and democracy. These recommendations include public participation in candidate selection, involvement of independent committees for interviews, public objections evaluation, and recording and making collegium meetings available to the public for transparency.

Overall, the literature reviewed in this article highlights the complexities and challenges in judicial appointments, the importance of judicial independence, and the need for reforms to ensure transparency and accountability in the appointment process.

 Dr. Dharmendra Kumar Singh and Dr. Amit Singh's detailed report on "Appointment of Judges and overview of collegium system in India: A need to reform", focuses on the appointment of judges and the Collegium System in India:

The study examines the unique Collegium System of the Indian judiciary, in which judges appoint their peers, highlighting the critical role that democracy and transparency play in this process.


The Collegium System is to be reformed, with the addition of current High Court judges, experienced lawyers, the Advocate General, and the Attorney General of India. The intention is to establish a collegium structure that is more transparent and democratic.

A noteworthy development, the Supreme Court's decision to overturn the National Judicial Appointment Commission (NJAC) and preserve the Collegium System has sparked debates regarding the legitimacy of judges participating in appointments and the distribution of power between the judiciary and the executive.

The significance of consultation in these decisions, involving the Chief Justice of India, senior judges, and Chief Justices of relevant High Courts, is highlighted by the restricted judicial review of judge transfers.

The report recommends that the Comptroller and Auditor General (CAG) periodically evaluate the wealth and income of judges of the High Court, Supreme Court, and their close family members in order to maintain financial openness. The purpose of this policy is to prevent undue influence on judge selections and to improve accountability.

In conclusion, the literature reviewed underscores the need for reforms in the Collegium System, the implications of the Supreme Court's verdict on the NJAC, the importance of consultation in judicial appointments and transfers, and the significance of financial transparency in the judiciary. These aspects contribute to the ongoing discourse on judicial appointments and the functioning of the Indian judiciary.

 Vibhantika Dwivedi's research focuses on "Transparency and Accountability in The Indian Judicial System: A Renewed Debate on Collegium System", presents a detailed idea on the transparency and accountability in the Indian judicial system that have been subjects of ongoing debate and scrutiny.

One of the main points of dispute about judicial independence and integrity has been the Collegium System, which involves senior judges in nominations and transfers. The historical background highlights the necessity of an independent court and follows its quest for independence from interference from politics, all the way back to the Dominion Bill of 1925.

The controversial topic of judicial appointments and transfers in the context of the Collegium System gives rise to worries about possible power abuse and an absence of transparency. There is disagreement over executive involvement in these processes, which has led to requests for changes to guarantee

accountability and merit-based hiring. Demands for higher accountability and openness in the court have grown in recent years, emphasizing the necessity of an unbiased judicial system free from political influence in order to safeguard public trust.

Challenges such as the backlog of cases, inadequate judge-to-population ratios, and the need for judicial reforms to enhance efficiency and transparency have been highlighted. The pressure on the judiciary to deliver timely justice while upholding integrity and independence remains a critical issue.

In conclusion, the discussion surrounding accountability and transparency in the Indian judicial system, specifically with reference to the Collegium System, emphasizes how critical it is to preserve judicial independence, respect the rule of law, and rebuild public confidence in the legal system. To protect the rights of the people and preserve democratic values, the judiciary must be strengthened in terms of accountability, transparency, and integrity.

- 📌 *Fahad Nahvi and Yagnesh Sharma's "The Collegium Vs The NJAC: Navigating Judicial Independence Amidst Judicial Appointments"* provides a detailed report on the 3 major cases which led to the establishment of the Collegium System in India. The First Judges Case, spanning from 1979 to 1981, dealt with the appointment and removal of judges, with suggested modifications such as age restrictions and merit-based regional representation. *S.P. Gupta v. President of India (1982)* addressed issues including the public interest in judge transfers, consultation with constitutional functionaries, and the President's non-obligation to follow the Chief Justice's advice.

The 1980s witnessed a crisis of trust in higher courts due to suspicions of politically driven appointments. Chief Justice P.N. Bhagwati's efforts faced opposition, leading to the National Judicial Commission law, which encountered resistance due to government interference. Chief Justice Ranganath Misra raised the appointment issue in 1990, and the Second Judges Case (1993) established the collegium system, granting the Chief Justice authority over judicial nominations. Exceptions were made for conflicts between senior judges, allowing the President to reject the Chief Justice's advice in such cases.

Political instability between 1993 and 1998 provided the judiciary room to grow, evidenced by the Jain Diaries case (*Vineet Narain v. Union of India*), asserting the judiciary's authority in corruption investigations. However, concerns about corruption within the judiciary persisted. The Third Judges case, responding to uncertainties from the Second Judges case, established a collegium with an increased number of judges for consultation, specified its composition, and restricted the President's discretion in disagreement situations. The decision also diluted the importance of seniority, reinforcing the independence of high court judges and the Supreme Court institution. Despite these measures, concerns lingered about potential executive influence through post-retirement benefits for judges.

RESEARCH METHODOLOGY

This research paper on "Judicial independence and the collegium system in India" adopts a mixed-methods approach, incorporating both qualitative and quantitative analysis. The study utilizes secondary sources to gather data and information, offering a comprehensive analysis of the subject matter. The study draws on secondary sources, including scholarly articles, research papers, books, reports, and legal opinions, to examine the history, current practices, and challenges associated with the collegium system. Key aspects of the investigation include:

- **Comprehensive Literature Review:** Examination of contemporary texts related to the evolution and operation of the collegium system.
- **Content Analysis:** Critically analyzing textual material to find themes, patterns, and arguments related to the collegium system.
- **Comparative Analysis:** Comparison of the collegium system with alternative models, such as the National Judicial Appointments Commission (NJAC), to assess their relative merits and limitations.
- **Case Studies:** In-depth examination of particular situations pertaining to the collegium system, including disputes, suggestions for reform, and significant court decisions.

Through this multifaceted analysis, the research aims to reveal the strengths and weaknesses of the collegium system, providing valuable insight into its implications for judicial independence, transparency, and accountability in India.

RESEARCH QUESTIONS

1. What are the Drawbacks of Collegium System?
2. Why there is a need of policy Change?
3. Which alternative procedure for appointment should be adopted in India?

RESEARCH OBJECTIVE

1. To find out the drawbacks of Collegium System and its Implication in Future of Judiciary in India.
2. To find out the best possible way for the appointment of Judges in India rather than Collegium System.

MAIN STUDY

The study "Judicial Independence and the Collegium System in India" provided insightful results that explained the complex interaction between these two essential components of the Indian legal system. As the world's largest democracy, India features a well-functioning judiciary, executive branch, and legislature. In India, where parliamentary democracy is practiced, the legislature appoints the executive, but the court functions independently of the other branches of government. When it comes to judicial independence, the executive and legislative branches of government have no power to restrict or interfere with the judicial system's independence. It is a crucial component of a robust democracy that judges are able to carry out their duties without fear of reprisal or favor. Although the idea of the judiciary's independence is not new, the term "independence" is still vague. The concept of judicial independence emphasizes that the judiciary should be independent of the other arms of government and that neither the government nor any other party may wrongfully influence the courts. Judicial independence has a relationship with and subject to the principle of separation of powers. The theory of separation of powers appears to be the foundation and beginning point of this idea. Thus, it essentially refers to the judiciary's independence from the legislature as well as executive. The main concern of independence is that the judges are able to decide upon a dispute before them according to the law, uninfluenced by other factors.

The establishment of an independent body free from the authority and influence of the legislative and executive branches does not equate to the independence of the judiciary. The fundamental requirement for judicial independence is the ability of judges to make decisions legal disputes in front of them, independent of outside influences. Because of this, the independence of the court is a function of the independence of every single judge. The definition of judiciary independence is dependent upon whether judges are guaranteed this independence just as members of an institution or not. This is one of the most crucial factors to take into account.

The objective of Judicial Independence the judiciary's responsibility is to safeguard the principles of the constitution and its duty to monitor the degree to which democracy is operating in compliance with the rules, regulations, and essential directives of the constitution by limiting the overbearing power of other constitutional officials who fall outside the purview of the document. So, the Judiciary has to act as the "sentinel sine qua vive". Since the courts are charged with upholding the laws and the constitution, they frequently find themselves in conflict with the government when it comes to enforcing orders and demanding adherence. Thus, the necessity of an impartial and independent judiciary staffed with individuals of the highest intellect and character, exhibiting strength, determination, impartiality, and independence, who would administer justice without fear, enthusiasm, ill will, or affection.

Judicial independence can be protected against multiple threats in a number of ways. Among the most frequently used tactics are those that restrict the government's control over judicial salary, impose strict restrictions on the removal of judges from office, establish minimum jurisdiction criteria for courts, and release judges from personal accountability for actions taken while carrying out their official duties. Also, decentralized kind of organizational structures grants greater autonomy to individual judges, which by contrast may make it harder for the government in capturing to co-opt the judiciary as a whole.

The independence of the judiciary is largely dependent on the constitutional status. The judiciary act as a guardian of the law and protects the rights of the people and maintains the balance in the country through laws. Its responsibility is to keep a track on the working of the legislature. So, it becomes an important concept for providing justice, to have an independent judiciary system. Only when the court is immune to outside influence will the public be able to think of justice. An independent judiciary makes sure that all the organs of the country are acting according to their provisions and limitations provided by the law under the constitution of India. Its sole responsibility is to make and implement laws in the country and acts as the guardian of the law. Judiciary is expected to deliver justice in an impartial manner. Which is impossible if the Judiciary is not independent.

There are certain Constitutional provisions that ensure independence of judiciary like Article 124 of the Indian Constitution deals with the Appointment of the judges by the President, Judges have a security of services until retirement(65 years for Supreme court and 62 years for the High court), they enjoy fixed salaries, Power of the Supreme court is present in the Article 138 and power to punish for contempt is from Article 129 and 215, Article 50 deals with the Separation of executive and judiciary, Power of Judicial Review which is rooted in the Constitution, India's independent judiciary exercises extensive judicial review over legislative, judicial, and administrative actions, ensuring a check on the constitutionality of various governmental acts.

Also, there are certain impracticality of judges. Judges are required to abstain from making decisions in matters in which they have a financial or personal stake, or in which they may be biased. The idea that no one should sit as a judge in their own case, or "nemo judex in Sua causa," is a cornerstone of judicial impartiality.

If the judges operated within their authority or jurisdiction, they are likewise exempt from lawsuits. This is still a vague scenario. If a higher court acts outside of its authority, it is not subject to legal action until it learns of the violation of authority. On the other hand, whether intentionally or unintentionally, the judge can get sued if he or she acts outside of his jurisdiction. Other parties involved in the court procedures are granted a portion of the immunity accorded by the judiciary. This pertains to defamation law, which states that all statements made in court are completely confidential. They also enjoy certain protection. They are not required to give reasons for their verdict nor they will be punished for not giving a verdict.

The Collegium System in India is a unique system that exists only in India and was established in the wake of several significant judgements in the previous year. Notably, this system involves a process commonly known as 'judges selecting judges,' where a collegium, comprising senior judges, plays a pivotal role in decision-making. It is the manner of appointing and transferring judges of the Supreme Court and High Courts. It is not mentioned in the Constitution and has evolved through various judicial pronouncements. The Collegium System has been India's primary method for appointing and transferring judges, although not constitutionally mandated. Judges choose other judges under this system, which was established by historic court rulings,

especially the Three-Judges Cases. The Chief Justice of India is a key player in this process. The system allows the judiciary to appoint judges by themselves and not by politicians or bureaucrats, thus maintaining the independence of the judiciary. The deliberations of the collegium are recorded and made public which ensures the process of appointing a judge is open and accountable. The judges also select candidate who have expertise in a particular field of law, ensuring that the judiciary has a competent set of judges who are capable of dealing complex issues. It also provides a system of checks and balance which ensures the appointment of the judge is not influenced by any external influence. The collegium system guarantees speedy appointment-making since it eliminates the need for several layers of approval. Because the judiciary itself controls the nomination process, the collegium system reduces political meddling in the process.

While the Collegium System is acknowledged for preserving judicial independence, debates over its alleged lack of transparency, accountability, and risk of nepotism have persisted. Because the collegium system necessitates the participation of senior judges from other courts, it may result in an inefficient use of resources. Since the public is not involved in the collegium system, there may be a lack of accountability and transparency. Revisions rather than elimination have been advocated in recent talks at the 2018 Rule of Law Convention, with a focus on enhanced background checks, timely appointments, and cooperation between the executive and judicial branches. The Collegium System still exists despite government attempts to implement alternatives, and contrasts with other models underscore how distinctive India's judge recruitment process is.

Evolution of the Collegium System: Case laws have led to the collegium's involvement in judge nomination. The collegium system was established as a result of the following three significant court rulings, together referred to as the "Three Judges Case." The Indian Constitution contains no mention of it.

First Judges Case (1982) - In *S.P. Gupta v. Union of India* (1982), also referred to as the First Judges Case, the seven-judge Constitutional Bench decided that "consultation" does not imply "concurrence" and that the Indian Constitution does not contain the notion of the Chief Justice of India's primacy. Additionally, it was decided that any of the four constitutional functionaries listed in Article 217 can recommend someone for appointment to the High Court, and the Chief Justice of the High Court is not required to make this suggestion. When it came to the appointment of judges, the Judgement shifted the scales in favor of the Executive. For a span of twelve years, this continued.

Second Judges Case (1993) - The Supreme Court overruled the decision in the *S.P. Gupta Case* (1982) by a majority of 7:2 in the Second Judges Case (1993), which involved a nine-judge bench. The case was named *Advocates-on Record Association v. Union of India*. The Chief Justice of India ought to have the lead role in the selection of judges, the court noted. The court cited "primacy" and "justiciability" as the key factors influencing its ruling. After the Supreme Court ruled that "consultation" also refers to "concurrence," the collegium system for appointing judges was established. The collegiums system was established because it displays the views of senior judges who are participating in the judicial selection process collectively, as opposed to individual opinions.

Third Judges Case (1998) - In response to a request from the President in accordance with Article 143 of the Constitution, the nine-judge Supreme Court bench unanimously upheld the ruling in the Second Judges case. It further stated that the Chief Justice of India and his four most senior associates is required to make the recommendation.

Thus, it is established that the sole opinion of the Chief Justice is binding on the Government in the matter of appointment of the Judges of the Supreme Court and High Courts.

Following a landmark decision, the collegium system was introduced, but this system is likewise not thought to be fair and instead establishes a hegemony of Supreme Court judges alone. The term "Collegium" is not explicitly mentioned in the Constitution but has gained prominence through judicial pronouncements. The appointment procedure for judges is essential to maintaining the independence of the judiciary and building public trust in the legal system. Article 124 of the Constitution largely governs the appointment of judges in the Indian context. Senior judges that make up the Collegium provide recommendations for the Central Government to consider when choosing new judges. The government may also submit candidates for recommendation to it. Significant delays can occur when there are no regulations defining a time limit for the appointment process.

Due to its lack of transparency, the collegium system tends to be filled with prejudice. In exchange for small favors, each member of this well-preserved system watches out for the other. It appears that the collegium is not accountable to the Indian people in light of the current issues. It is not the judges' duty to provide an explanation for their decision to accept or reject a candidate's name. The public is not given access to the Collegium's proposal to the President. The Collegium, led by the Chief Justice of India, will have to reevaluate its choice if the President rejects its proposal. However, if the Collegium sends the same recommendation again to the President, then the President is left with no choice but to appoint the recommended judges. Although it has been an unwritten convention to appoint/elevate judges based on seniority, in recent years, the convention has been broken many times without any plausible explanation from the collegium. The primary reason behind this unaccountability is that there are no legislations, rules, or procedures to guide the functioning of the collegium. There is an urgent need to legitimize the collegium system where every member is accountable to the people for his/her actions. There is also a need to create a system similar to the checks and balances, so that, the other two branches viz., the executive and the legislature, can keep a check on the administrative functions of the judiciary.

There have been recent developments in the collegium system, as of the latest information, the Supreme court has affirmed the continuity of this system for the appointment of the judges. They emphasized that there is a need to have improvement rather than a complete overhaul. The court also accepted that the collegium system had flaws and requested recommendations from a range of parties, including the legal community, lawyers and members of the public.

As an alternative National Judicial Appointment Commission was adopted and It was observed that India used the NJAC System to appoint judges, and it consist of Chief Justice of India as Chairperson, two other senior Judges of the Supreme Court next to the Chief Justice of India as Members, the Union

Minister in charge of Law and Justice as Member, and two distinguished individuals as members, chosen by the committee made up of the House Leader of Opposition, the Chief Justice of India, and the Prime Minister. Its goal was to enact changes to the methods for appointing and transferring judges to the higher courts. It would have been responsible for recommending suitable candidates for the positions of chief justice of India, judges of the supreme court, chief justice of high courts, and other judges of high court it would also facilitate the transfer of Chief Justices and other Judges of High Courts from one High Court to another, as required and to ensure that the individual recommended for the nomination fulfill the required criteria, it includes ability, merit, and other qualifications mentioned in the regulations associated with the act.

This system had drawbacks as well, leading to its abolishment. This was done through 4th judge case (2015) i.e., The constitutional validity of both the Ninety-Ninth Constitutional Amendment and the NJAC Act, 2014, was challenged in the Supreme Court on 15 April 2015. A constitutional bench of five judges with a majority of 4:1 vide its judgment dated 16th October, 2015 struck down these two enactments, declaring them unconstitutional and void. This has come to be known as the Fourth Judges Case. The key reasons why the supreme court struck down the NJAC Act was that it gave executive a significant role in the appointment of judges, did not provide for any transparency or accountability in the appointment of judges and also did not provide any safeguards to protect the independence of the judges.

RESULT AND DISCUSSION

India, the largest democracy in the world, has an efficient legislative, executive, and judicial system. The legislature appoints the executive branch in India, a country with parliamentary democracy; however, the judiciary functions independently of the other arms of government. Regarding judicial independence, the legislative and executive branches of government are powerless to restrict or disrupt the independence of the judicial system. A healthy democracy must allow judges to perform their duty without fear of favoritism or retaliation. Even while it's not a novel concept, the word "independence" is nonetheless vague. In India, the Judiciary has a significant function of protecting and enforcing the Fundamental Rights of the people guaranteed to them by the Constitution. The Independence of Judiciary is necessary to maintain the rule of law in the country and to assure that the government runs according to law. Independence of the judiciary comes from the process of its appointment and that's Collegium system. The collegium system which is used for appointing and transferring judges, although not constitutionally mandated. It has its pros and cons. It is a very unique system which has been followed since 1993 for the appointment and transfer of the judges. The primary reason behind this unaccountability is that there are no legislations, rules, or procedures to guide the functioning of the collegium. There is an urgent need to legitimize the collegium system where every member is accountable to the people for his/her actions. There is also a need to create a system similar to the checks and balances, so that, the other two branches viz., the executive and the legislature, can keep a check on the administrative functions of the judiciary.

The system allows the judiciary to appoint judges by themselves and not by politicians or bureaucrats, thus maintaining the independence of the judiciary. The deliberations of the collegium are recorded and made public which ensures the process of appointing a judge is open and accountable. The judges also select candidate who have expertise in a particular field of law, ensuring that the judiciary has a competent set of judges who are capable of dealing complex issues. It also provides a system of checks and balance which ensures the appointment of the judge is not influenced by any external influence. The collegium system guarantees speedy appointment-making since it eliminates the need for several layers of approval. Because the judiciary itself controls the nomination process, the collegium system lessens political meddling in the process.

NEED TO CHANGE POLICY:

Despite of these advantages the collegium system still faces criticism for being non-transparent, no involvement of the public opinion, no female candidate, etc. to make it more reliable NJAC was introduced. When we look at the outcome or the difference from our previous policy shift—that is, from NJAC to Collegium—we find that, despite being done with the best of intentions, it did not alter the statistical difference between the share of judges from the SC between pre- and post-Collegium. It has also been observed that the majority of Supreme Court judges only come from upper Castes, and as collegium favoritism is pervasive, it is nearly hard to overthrow this hegemony.

The gender gap between male and female judges in India is unfortunately still present. We had anticipated that the new appointment system would close this gap as women's participation in the bar had increased and social changes acknowledging women's rights had taken hold, but when it came to the actual calculation of this change in the judicial system, it had little impact in this area. One possible explanation for this could be the male dominance in the judiciary, which is the reason that since the independence we did not get our 1st female chief justice of India. In order to secure the transparency, audio or video recordings of the collegium should be made available to the citizens under RTI Act, 2015. This will make it more reliable and accessible to the general public. The judges should be promoted not because of seniority but on the basis of their merit and intelligence or capability to resolve the cases. Collegium should be reformed wherein Judges, Advocates (Independent) and experts should be present in the committee for appointment of Judges.

CONCLUSION

Judicial independence guarantees that judges are free to determine what constitutes a proper remedy when they conclude that decisions or actions taken by the government (or even by others) violate the law, specifically violating an individual's rights, including their fundamental or human rights. A transparent system that is accessible to the general public needs to replace the Collegium system. A written manual for appointments should be created by the Apex Court, and all meeting minutes related to appointment-related matters should be available to the public. This will ensure much-needed transparency and a rules-based procedure. Sunlight is the best disinfectant, as the saying goes. Thus, the wisest course of action is disclosure. To guarantee

an independent judiciary for the administration of proper justice, the constitution places a strong emphasis on prohibiting both the legislative and executive institutions from meddling in judicial proceedings.

The fundamental belief is that the judiciary's ability to make unbiased decisions may be hindered by any outside interference that introduces a discriminatory element.

However, recent discussions show growing concerns about the judiciary's authority and its frequent encroachment into domains intended for the legislative and executive departments. Unrestrained judicial power is shown to present challenges, even while it is accepted that scrutinizing legislative and executive actions is delicate and divisive. The challenge is in the judiciary's evolving function, which at times operates outside its approved jurisdiction to right social injustices. The public may initially accept such interventions, but in the long run, they may threaten the fundamental tenets and justifications of the judiciary's independence. A fine balance between judicial independence and accountability must be struck in order to preserve the judiciary's effectiveness while respecting its core principles.

The fact that the judicial system's impartiality and behavior are under scrutiny is quite concerning. Since the judiciary is tasked with defending the rights of all others, it ought to be above criticism. The credibility of the judiciary should be established in a variety of ways. All of this, though, is impossible unless people take on a responsible mindset, possess a moral compass, and hold out hope for an enhanced legal system. Not every issue can be resolved by laws alone. It is up to us all to safeguard the independence of the court and seek to boost public trust in it, as this is the only way democracy can be maintained.

The Indian Supreme Court's multiple rulings on the appointment and removal of judges have led to the development of the Collegium system, which is independent of any Constitutional Acts or provisions. Additionally, the collegium system is known as "Judge - choosing - judge." The 99th Amendment to the Constitution established the collegium system by overturning the National Judicial Appointment Commission Act (NJAC), which the court said was invalid and unconstitutional. The Chief Justice of India's recommendation for the appointment of judges is outlined in Article 124(1) of the Constitution. The appointment of judges for Supreme Court and High Court is done by the collegium which is headed by the Chief Justice of India and consists of four other senior judges with the approval of the President

The Law Commission of India also attacked the collegium system in 2008, claiming that personal favoritism and nepotism were prevalent in the institution's operation. Since the judiciary has a disproportionate amount of power, there is no system of checks and balances. It is necessary for a democracy. So, an alternative method of NJAC was introduced but this system also lacked in many ways and the supreme court had to struck down this alternative method of appointing and transferring of the judges. The key reasons why the supreme court struck down the NJAC Act was that it gave executive a significant role in the appointment of judges, did not provide for any transparency or accountability in the appointment of judges and also did not provide any safeguards to protect the independence of the judges. the shift from the National Judicial Appointments Commission (NJAC) to the Collegium system in India, despite good intentions, failed to address the imbalance in the representation of judges from the Supreme Court. The majority of Supreme Court judges still come from upper castes, and collegium favoritism perpetuates this hegemony. The gender gap in the judiciary persists, and the anticipated positive impact of the new appointment system on female representation has been minimal. Male dominance in the judiciary may be a contributing factor, evident in the absence of a female Chief Justice of India since independence. To enhance transparency, it is suggested that audio or video recordings of collegium proceedings be made available under the Right to Information Act, 2015. Additionally, a reform of the collegium system is proposed, including the inclusion of judges, independent advocates, and experts in the committee to ensure a more merit-based and diverse selection of judges.

So, there is a need to reform the policies of the collegium system rather than complete removing this unique method of appointing and transferring the judges.

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