



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2025

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

THE CONSTITUTIONAL DIMENSIONS OF THE COLLEGIUM: BALANCING INDEPENDENCE AND ACCOUNTABILITY

**TARANBIR SINGH*

ABSTRACT

The Indian Collegium system is critically examined in this essay, with an emphasis on its constitutional aspects and its efforts to strike a balance between judicial independence and democratic accountability. The Collegium was created to protect the higher judiciary from executive meddling and resulted from judicial interpretation in the Second and Third Judges' Cases. Although it has strengthened independence as a fundamental component of the Constitution, the system is criticised for its opacity, elitism, and lack of accountability. The study places the Collegium within India's constitutional framework by engaging in doctrinal analysis of constitutional provisions, Constituent Assembly debates, and landmark rulings. Based on empirical research, it also assesses its effects on caste, gender, regional representation, tenure patterns, and diversity. Appointment models that incorporate transparency and limited democratic oversight are highlighted by comparative viewpoints from the US, UK, France, and Nepal. In order to increase legitimacy and guarantee the Collegium's long-term effectiveness, the paper proposes a hybrid system that combines judicial primacy with objective criteria, inclusivity, and transparency.

CHAPTER-I INTRODUCTION

One of the most contentious parts of India's constitutional system is still the appointment of judges. The collegium system, a tool created by judicial interpretation to manage the fine line between judicial independence and democratic accountability, is at the centre of this discussion¹. The system's development and operation have a significant impact on the judiciary's efficacy, impartiality, and credibility. By tracking the collegium's historical origins,

¹ India Const. art. 124, art. 217.

analysing its constitutional foundations, evaluating its operational influence on the judiciary's makeup, and comparing reform proposals to other international practices, this research paper seeks to present a thorough analysis of the collegium². The study aims to shed light on the advantages, disadvantages, and possible reform paths by examining both doctrinal and empirical aspects.

METHODOLOGY

The study is based on a thorough analysis of primary legal sources, such as *Supreme Court rulings, statutory frameworks, constitutional provisions, and Constituent Assembly discussions*³. Important points of reference for comprehending the legal and constitutional justification for the collegium's formation and development are seminal cases like *the First, Second, Third, and Fourth Judges Cases*. Moreover, secondary literature is used to evaluate the practical effects of the collegium on judicial diversity, regional representation, tenure patterns, and gender and caste imbalances. This includes *law journal articles, commentaries, and empirical studies like Tripathy and Dhanee (2020)*. The study provides a multifaceted understanding of the collegium by fusing doctrinal analysis with empirical data, emphasising both its constitutional significance and practical implications.

The crucial function of an independent and capable judiciary in upholding the rule of law, defending fundamental rights, and guaranteeing democratic governance in India highlights the significance of this investigation⁴. Since the collegium has a direct impact on the legitimacy and accountability of the nation's highest courts, a thorough understanding of it is crucial for both legal scholars and policymakers, as well as the general public. By offering both critical perspectives and evidence-based reform recommendations, this paper aims to contribute to an informed conversation on judicial appointments.

CHAPTER-II HISTORICAL AND CONSTITUTIONAL CONTEXT

CONSTITUENT ASSEMBLY DEBATES

The debates in the Constituent Assembly demonstrate that the dual goals of judicial independence and accountability are carefully taken into account when choosing judges. The Assembly's members acknowledged that *in order to preserve public trust and enforce the rule of law, the judiciary must function without excessive political influence*⁵. In order to maintain

² K.K. Tripathy & R. Dhanee, Judicial Appointments and Diversity in India, 12 Indian J. Const. L. 45 (2020).

³ Id.

⁴ Law Commission of India, Consultation Paper on Judicial Appointments (2020).

⁵ Constituent Assembly Debates (CAD), Vol. VII, 1949, 680.

the judiciary's ties to democratic ideals and responsiveness to societal demands, they also underlined that *appointments ought to demonstrate some degree of accountability*⁶. Several participants argued that the Chief Justice of India (CJI) should be involved as a crucial safeguard against capricious executive action, underscoring the significance of consultation between the judiciary and the executive. In order to preserve the integrity of the judiciary and the larger interests of the state, they envisioned a system in which appointments would not be the exclusive domain of the executive or completely independent from democratic oversight.

THE PRE-COLLEGIUM EARLY EXECUTIVE ROLE IN APPOINTMENTS

Although they were influenced by the CJI's recommendations, judicial appointments in the early years after independence were primarily made by the executive branch⁷. *The Government of India Act, 1935, which gave the colonial executive considerable control over judicial appointments, served as a major inspiration for this strategy*⁸. The idea was to make sure that appointments were made while taking into account national priorities and administrative coherence, as well as the candidates' professional standing and competence in the legal community. During the early years of the Indian judiciary, this executive-led model was viewed as a practical necessity that promoted coordination between the judiciary and other branches of government and allowed for centralised decision-making.

This model did, however, also highlight underlying conflicts. Although it offered an executive oversight mechanism, it also made the judiciary vulnerable to possible political influence, which raised questions about whether impartiality would be maintained. These worries grew over time, especially as the judiciary developed into a more independent and assertive branch. Despite being constitutionally approved and historically situated, the early executive-led appointment process set the stage for discussions about judicial autonomy that would become more heated in the decades that followed.

To appreciate the origins of the collegium system, one must comprehend this historical and constitutional background. The constant conflict between independence and accountability in judicial appointments is highlighted by the Constituent Assembly's emphasis on a consultative, balanced approach as well as the practical realities of executive primacy in the early post-independence era. This historical perspective explains why the judiciary eventually became more involved in appointments, leading to the creation of the collegium system, which

⁶ Id. at 682.

⁷ S.P. Gupta v. Union of India, (1981) 2 SCC 87.

⁸ Government of India Act, 1935, §§ 213-214.

attempted to balance these conflicting demands within the parameters set forth by the Constitution.

CHAPTER-III THE COLLEGIUM SYSTEM'S DEVELOPMENT

THE CASE OF THE FIRST JUDGES (S.P. GUPTA V. UNION OF INDIA, 1981)

The judiciary's reaction to conflicts between executive influence and judicial independence in appointments is the foundation of the development of India's collegium system. This dynamic was defined in large part by the First Judges Case, *S.P. Gupta v. Union of India*, 1981. In this landmark ruling, the Supreme Court ruled that *the Chief Justice of India (CJI) had a primarily advisory role and that the executive had priority when it came to appointing judges*⁹. The Court stressed that the *President maintained final say over the selection of justices for the Supreme Court and High Courts, acting with the assistance and counsel of the Council of Ministers*. Although considered necessary, the CJI's consultation was not legally binding. This ruling mirrored the widely held belief that the executive had considerable control over judicial appointments as a result of the Government of India Act, 1935¹⁰.

The inherent conflict between upholding executive discretion and judicial independence was brought to light by the First Judges Case. The Court emphasised a model that gave democratic accountability through political oversight top priority by awarding the executive primacy. But the decision also raised questions about how susceptible judicial independence is to political pressures among legal experts and practitioners. This conflict paved the way for a review of the appointment procedure, which ultimately changed the constitutional framework.

THE SECOND JUDGES CASE (UNION OF INDIA V. SUPREME COURT ADVOCATES-ON-RECORD ASSOCIATION, 1993)

An important turning point in the development of judicial appointments in India was the 1993 ruling in the Second Judges Case. The balance of power between the executive and the judiciary was drastically changed when the Supreme Court re-examined the guidelines set forth in S.P. Gupta. The Court essentially established the collegium system by ruling that *the CJI and a collegium of senior judges should have precedence in judicial appointments*¹¹. The Court held that while the executive could object, the collegium was to consider the objections rather than

⁹ S.P. Gupta v. Union of India, (1981) 2 SCC 87.

¹⁰ Id.

¹¹ Supreme Court Advocates-on-Record Association v. Union of India, (1993) 4 SCC 441.

make a decision. The defence of judicial independence as a fundamental element of the Constitution's framework served as justification for this strategy.

In order to guarantee impartial adjudication, the judiciary must maintain control over its composition, as the Second Judges Case highlighted. It also emphasised the *peer evaluation principle, according to which senior judges evaluate candidates' suitability, competence, and integrity*. This signalled a dramatic change from executive-led appointments to one in which the judiciary took the initiative and established an institutional framework intended to shield the selection process from political influence.

THE THIRD JUDGES/PRESIDENTIAL REFERENCE CASE (1998)

In order to resolve uncertainties regarding the collegium's operation, the President of India, in accordance with Article 143 of the Constitution, referred a number of issues to the Supreme Court after the Second Judges Case. The 1998 ruling in the Third Judges Case offered crucial direction regarding the application and process of the collegium system¹². The Court stipulated that when recommending appointments to the Supreme Court, the collegium must include the Chief Justice and the four most senior judges, and when recommending appointments to High Courts, it must include the CJI and the two most senior judges. In order to ensure that appointments represent agreement and group judgment rather than individual judgments, the Court further upheld the constitutional requirement that senior judges consult with one another.

By formalising processes and highlighting collegiality in decision-making, this case strengthened the legitimacy of the collegium system. The ruling recognised that although the judiciary should make the majority of appointments, internal discussions and procedural safeguards are required to ensure openness and equity. This is a delicate balance between judicial autonomy and accountability.

THE CASE OF THE FOURTH JUDGES (NJAC, 2015)

The Fourth Judges Case, also known as the NJAC case, was the pinnacle of the collegium system's development in 2015¹³. In order to improve accountability and transparency, the National Judicial Appointments Commission (NJAC) Act and the related constitutional amendment attempted to replace the collegium with a body made up of laypeople, members of the executive branch, and members of the judiciary. The NJAC was declared unconstitutional by the Supreme Court, which upheld the collegium model's emphasis on judicial appointments.

¹² In re Presidential Reference, (1998) 7 SCC 739.

¹³ Supreme Court Advocates-on-Record Association v. Union of India, (2015) 5 SCC 1.

The Court determined that the NJAC jeopardised judicial independence, which is a fundamental component of the Constitution. The ruling concluded that judicial primacy was necessary to protect impartiality and avoid executive overreach, despite acknowledging the criticisms made against the collegium system, including its opacity and lack of formal criteria. Crucially, the Court urged the collegium to take steps to improve inclusivity and transparency, like recording selection criteria and taking diversity into account when making appointments.

A combination of reformist pragmatism and judicial independence can be found in the NJAC ruling. *It acknowledged the judiciary's authority over appointments, but it also made clear that procedural changes were required to improve accountability and credibility.* Without compromising its constitutional mandate, the Court aimed to increase the collegium's responsiveness to societal demands by tackling the issues of transparency, inclusivity, and regional representation.

All things considered, the development of the collegium system shows how judicial independence, executive participation, and democratic accountability interact dynamically. The First Judges Case's executive-dominated model, the Second and Third Judges Cases' judiciary-led collegium, and the NJAC case's nuanced reaffirmation all represent ongoing attempts to strike *a balance between conflicting constitutional imperatives*. Within the Indian constitutional framework, the collegium has become a unique mechanism that responds to calls for greater transparency and representational equity while also preserving judicial independence. Its development emphasises how the judiciary shapes its own institutional structure while upholding the more general democratic, rule of law, and constitutionalist ideals.

CHAPTER-IV DIMENSIONS OF THE CONSTITUTION

THE BASIC STRUCTURE OF JUDICIAL INDEPENDENCE

Enshrined in Articles 124 and 217, judicial independence is widely recognised as a cornerstone of the Indian Constitution and a fundamental component of its basic structure¹⁴. These clauses guarantee judges of the Supreme Court and High Courts tenure security, immunity from arbitrary dismissal, and sufficient protection concerning pay and working conditions. By shielding the judiciary from excessive political influence, the collegium system serves as a constitutional mechanism to uphold these ideals. The system aims to prevent executive

¹⁴ Indira Gandhi v. Raj Narain, (1975) Supp. SCC 1.

encroachment and maintain impartial adjudication by giving senior judges and the Chief Justice of India a decisive role in appointments¹⁵.

The Supreme Court emphasised in the Kesavananda Bharati case that certain essential elements of the Constitution, including judicial autonomy, cannot be revoked even by constitutional amendments, leading to the recognition of judicial independence as a fundamental structure principle. In this situation, collegium appointments are tools to preserve the separation of powers and shield the judiciary from political pressures rather than just being administrative processes. In this context, independence has several aspects, including the ability to make logical decisions without fear of retaliation, the freedom from outside influences, and the institutional integrity required to preserve public trust in the legal system.

Beyond specific cases, judicial independence is crucial for the judiciary's structural stability. The judiciary can mould its makeup to reflect competence, honesty, and adherence to constitutional principles by managing appointments. *While supporters argue that the alternative of leaving appointments completely up to political discretion is a greater threat to impartiality, critics argue that this self-regulatory model runs the risk of insularity.* According to empirical findings, independent appointment procedures raise the bar for judicial behaviour, increase the consistency of decisions, and boost public confidence in the legal system.

POWER SEPARATION AND CHECKS AND BALANCES

A sophisticated implementation of the principle of separation of powers is exemplified by the collegium system. This theory has historically defined the functional divisions between the legislative, executive, and judicial branches in order to guard against power abuse and concentration. The collegium operationalises the principle of judicial self-regulation by giving the judiciary the primary authority for judicial appointments, while permitting limited executive input¹⁶.

Through internal discussions, consultative procedures, and the need for senior judges to reach a consensus, the collegium is infused with checks and balances. The collegium, which serves as a peer review body, collectively approves appointments rather than the CJI acting alone. Judicial preference cannot be overridden by executive recommendations, but they are taken into consideration. This arrangement reflects a delicate balance between the democratic

¹⁵ NJAC Case, (2015) 5 SCC 1.

¹⁶ Id.

principle that the executive maintains a consultative role in state affairs and the judiciary's protection of its autonomy¹⁷.

By prohibiting arbitrary promotions based on political favouritism or patronage, the collegium also exemplifies the functional component of checks and balances. Judicial primacy guarantees that decisions are based on constitutional norms, ethical principles, and legal expertise. *However, there are still transparency issues, which lead to discussions about whether or not accountability is compromised by a lack of public scrutiny.* Although judicial independence is ensured by the separation of powers, opacity and perceived elitism in appointments must be addressed through complementary reforms.

LEGITIMACY OF COLLEGIUM VS. "JUDGE-MADE LAW"

Some critics have questioned the legitimacy of the collegium, calling it a judge-made law without clear constitutional support¹⁸. In fact, a collegium is not specifically prescribed by the Constitution; rather, it developed as a result of judicial interpretation in the First, Second, and Third Judges Cases. Sceptics contend that the judiciary can establish its own institutional rules thanks to this interpretive innovation, casting doubt on democratic accountability and legitimacy.

Collegium proponents argue for the legitimacy of the institution on both a normative and practical level. *Judicial independence is normatively essential to constitutional governance, and the collegium is an innovation required to uphold this principle within the parameters set forth by the Constitution*¹⁹. Functionally, it provides a coherent, standardised, and peer-reviewed mechanism for appointments, thereby reducing the risk of politically motivated or arbitrary selections. Additionally, the system enables the judiciary to uphold professional and ethical standards that could be jeopardised in the event of direct executive control.

Tensions between textual constitutionalism and purposive interpretation are highlighted by the legitimacy debate, which also touches on the more general idea of "judge-made law." Such judicial innovations, according to critics, run the risk of weakening the separation of powers and reducing public trust in the legal system. On the other hand, proponents contend that judicial innovation in institutional design has historically helped India's constitutional norms

¹⁷ Id.

¹⁸ Tripathy & Dhanee, *supra* note 2, at 53.

¹⁹ Id.

evolve by striking a balance between the demands of democratic governance and the text's rigidities.

In summary, the collegium system's constitutional aspects are complex and include the ideas of interpretative legitimacy, checks and balances, judicial independence, and the separation of powers. In order to safeguard the judiciary from excessive influence and to foster professional competence and ethical integrity, the system combines judicial innovation with constitutional fidelity in a distinctive way. The judiciary plays a crucial role in forming India's institutional landscape and upholding the rule of law, as demonstrated by the collegium's adept handling of the intricate relationship between autonomy and accountability¹⁴

CHAPTER-V EMPIRICAL EVALUATION OF THE EFFECTS OF COLLEGIUM (BASED ON TRIPATHY & DHANEE, 2020)

DIVERSITY IN THE WORKPLACE (LAWYER-JUDGES VS. CAREER JUDGES)

The majority of judges promoted from the bar, as opposed to the career judiciary, is one of the most noticeable trends in the makeup of India's higher judiciary²⁰. *According to Tripathy and Dhanee (2020), rather than being officers who have advanced through the ranks of the High Court services, the vast majority of Supreme Court judges since independence were practising attorneys before being elevated.* This phenomenon is multifaceted. First of all, it shows that the judiciary favours applicants who have a great deal of litigation experience, have been exposed to a wide range of legal issues, and are knowledgeable about intricate procedural and substantive matters.

Nonetheless, there are institutional ramifications to the overrepresentation of lawyer-judges. On the other hand, career judges contribute their extensive judicial administration experience, case management expertise, procedural efficiency, and junior judge mentoring. They are able to manage systemic issues, carry out reforms, and maintain institutional memory because of their methodical comprehension of High Court operations. According to the empirical data, institutional continuity may be jeopardised when the lawyer-judge ratio is excessively high. The absence of judges with substantial High Court administrative experience frequently interferes with decisions on administrative issues, long-term judicial reforms, and policy

²⁰ Law Commission of India, *14th Report on Reform of Judicial Administration* (1958); George H. Gadbois, Jr., *Judges of the Supreme Court of India: 1950–1989* (Oxford Univ. Press 2011); Arghya Sengupta & Ritwika Sharma, *Appointment of Judges to the Supreme Court of India: Transparency, Accountability and Independence* (Vidhi Centre for Legal Policy 2018); Debajyoti Tripathy & Vikram Dhanee, *Collegium System of Judicial Appointments: An Empirical Study of the Indian Supreme Court* (2020).

implementation. This may make it more difficult to strike a balance between institutional governance and jurisprudential excellence.

In some legal areas, such as constitutional litigation, business disputes, and public law cases, the Supreme Court bench is dominated by lawyer-judges, according to additional analysis. On the other hand, career judges frequently possess a deeper understanding of civil administration, criminal law, and procedural reforms. The judiciary's comprehensive approach to a wide range of legal matters may be impacted by this unequal distribution, which may quietly influence jurisprudential priorities. According to Tripathy and Dhane, although lawyer-judges contribute analytical abilities and intellectual rigour, their lack of experience with judicial administration may lead to inadequate systems for handling case backlogs, court efficiency, and inter-court coordination.

REPRESENTATION BY REGION

There has long been concern about regional representation in judicial appointments. There is a consistent pattern of unequal geographic distribution in Supreme Court appointments, according to empirical studies²¹. Judges from smaller or more recent high courts, such as those in North-Eastern states, Himachal Pradesh, or recently carved states, are typically underrepresented, while judges from major cities like Delhi, Bombay, Madras, and Calcutta are typically overrepresented. *Historical prestige, the prominence of legal activities, and the networking effects among senior judges are all blamed for this bias.* Judges from high courts with more cases and exposure to high-profile cases are more nationally visible, which affects collegium recommendations.

This pattern has significant ramifications. The integration of local jurisprudential philosophies, procedural subtleties, and regional legal cultures into Supreme Court jurisprudence is impacted by geographic imbalances. The collegium may unintentionally promote centralisation and marginalise legal viewpoints coming from less well-known jurisdictions by restricting regional diversity. Furthermore, public trust in the judiciary may be damaged by regional underrepresentation, especially in communities where local courts are perceived to be subject to systemic biases.

²¹ Law Commission of India, *121st Report on a New Forum for Judicial Appointments* (1987); Nick Robinson, Quantitative Analysis of the Indian Supreme Court's Workload, 10 J. Empirical Legal Stud. 570 (2013); Supreme Court of India, *Annual Report 2018–2019*; George H. Gadbois, Jr., Indian Supreme Court Judges: A Portrait, 3 Law & Soc'y Rev. 317 (1969); Tripathy & Dhane, *supra* note 20.

Despite having candidates with similar experience and skill, North-Eastern and some southern high courts have historically sent relatively few judges to the Supreme Court, as demonstrated by the specific examples provided by Tripathy and Dhane. According to them, this underrepresentation has an impact on diversity as well as the bench's comprehension of socio-legal issues specific to these areas, which could influence decisions in cases with significant regional ramifications.

PATTERNS OF TENURE

Another important empirical measure of the collegium's influence is tenure in the Supreme Court and High Courts²². Due to their age at appointment and the fact that Supreme Court judges are required to retire at age 65 (as opposed to 62 in High Courts), data show that Supreme Court judges typically hold shorter terms than their High Court counterparts before being elevated. Judges with shorter tenures on the Supreme Court have less time to implement administrative reforms, influence long-term institutional policies, and maintain jurisprudential consistency.

According to Tripathy and Dhane, Supreme Court judges have served an average of four to six years over the previous thirty years. The creation of cogent interpretive frameworks may be hampered by such brevity, especially in areas of constitutional law that call for prolonged engagement. In the judiciary, short tenures also break continuity in administrative positions like chairing benches, committees, and supervisory duties. Frequent changes in judicial leadership brought on by high turnover may hinder the adoption of case management innovations and have an effect on the execution of procedural reforms.

The authors also point out that succession planning and mentoring are impacted by tenure patterns. Judges with shorter tenures have less opportunity to mentor junior colleagues or shape the Court's professional culture. On the other hand, career judges who are promoted earlier in their High Court careers can have a lasting impact on institutional procedures and jurisprudence. These dynamics imply that tenure considerations are important for the systemic stability and operation of the judiciary as well as for individual career paths.

²² Lok Sabha Debates, 99th Constitutional Amendment Bill (2014);
 Sengupta & Sharma, *supra* note 20;
 Gadbois, *supra* note 21;
 Ritwick Dutta, Tenure and Accountability of Indian Judges: A Study in Institutional Reform, 8 NUJS L. Rev. 151 (2015);
 Tripathy & Dhane, *supra* note 20.

CASTE AND GENDER INEQUALITY

The ongoing underrepresentation of women and marginalised communities in the higher judiciary is arguably the most urgent issue brought to light by empirical studies²³. The Supreme Court and High Courts continue to be predominantly male and dominated by people from upper-caste backgrounds, despite constitutional guarantees of equality and affirmative action in other areas. According to Tripathy and Dhane, women have made up less than 10% of Supreme Court appointments since independence, and Scheduled Castes, Scheduled Tribes, and other backward classes continue to have disproportionately low representation.

The perception of legitimacy and judicial decision-making is directly impacted by this imbalance. The lived experiences of women and marginalised communities may not be sufficiently valued by a judiciary that lacks diversity, which could have an impact on sensitivity in cases involving social justice, gender rights, and affirmative action. *The authors contend that through interpretive procedures and case selection priorities, bench homogeneity runs the risk of unintentionally reiterating established hierarchies and biases.*

Historical precedent, the opaque nature of collegium deliberations, and informal networking practices are some of the structural barriers causing this imbalance. These obstacles are made worse by the lack of clear standards for promotion and the lack of public scrutiny, which permits established patterns to continue. Progress is still uneven and slow, despite recent small improvements, such as the appointment of a few women and representatives from underprivileged communities.

Tripathy and Dhane support taking proactive steps to rectify these inequalities. Adopting clear diversity policies within the collegium, making selection criteria more transparent, and taking social background into account when making promotions are some of the recommendations. By improving legitimacy and the administration of justice, these interventions seek to guarantee that India's pluralistic social fabric is more accurately reflected in the higher judiciary.

²³ Jhuma Sen, Women Judges and the Indian Supreme Court: A Feminist Legal Critique, 10 NUJS L. Rev. 419 (2017);

Vrinda Bhandari & Aparna Chandra, *Diversity on the Bench in India: A Case for Inclusion* (Centre for Law and Policy Research 2020);

Shylashri Shankar, *Scaling Justice: India's Supreme Court, Anti-Terror Laws, and Social Rights* (Oxford Univ. Press 2009);

Law Commission of India, *Report No. 203: Fast Track Magisterial Courts for Dishonoured Cheque Cases* (2006);

Tripathy & Dhane, *supra* note 20.

All things considered, the empirical evaluation of the collegium system, which is based on Tripathy and Dhanee (2020), presents a complicated picture. Although the system has been successful in upholding judicial independence and putting competence first, issues with social inclusivity, tenure stability, professional diversity, and regional representation still exist. Closing these gaps is crucial for the judiciary's operational efficacy, public credibility, and socio-legal legitimacy in addition to ethical and constitutional reasons.

CHAPTER-VI REBUTTALS TO THE COLLEGIUM SYSTEM

The collegium system has been the focus of constant criticism in academic, political, and professional circles, despite the judiciary's repeated defence of it as an institutional safeguard for judicial independence. These criticisms point out flaws in the way the collegium operates, especially with regard to accountability, transparency, and alignment with constitutional ideals, but they do not contest the constitutional significance of shielding judges from partisan pressures.

INSUFFICIENT TRANSPARENCY

The opacity of the collegium system is one of the most common complaints about it. *Collegium discussions take place in private, and the rationale behind endorsing or disapproving specific candidates is rarely disclosed to the public*²⁴. The Supreme Court has made an effort in recent years to post a few collegium resolutions on its official website, but these disclosures are not very comprehensive and frequently leave out the important justifications for rulings. As a result, the standards or benchmarks used in appointments are unclear to both the legal community and the general public.

There are two ramifications to this lack of transparency. First, it erodes public trust in the judiciary, a body whose legitimacy is largely dependent on moral authority. Second, it hinders a thorough external assessment of whether representational, diversity, or merit considerations drive appointments. A characteristic that contradicts the ideals of open governance is the continued secrecy surrounding judicial appointments made through the collegium, in contrast to other democratic processes like parliamentary debates or executive decision-making.

FAVOURITISM AND NEPOTISM

Additionally, detractors claim that the collegium encourages favouritism and nepotism in judicial nominations²⁵. *Appointments are frequently accused of reflecting kinship ties, personal*

²⁴ NJAC Case, (2015) 5 SCC 1.

²⁵ Tripathy & Dhanee, *supra* note 2, at 58.

preferences, or networks of influence within the bar and bench because the process is controlled by a small number of senior judges. This relationship has sometimes resulted in the promotion of candidates with little merit and the exclusion of those with proven ability.

Perceptions like these have concerning repercussions. If the process itself perpetuates forms of bias and exclusion, the collegium's fundamental goals of preventing executive interference and preserving judicial independence run the risk of being compromised. These issues are exacerbated by the closed nature of discussions, which makes it challenging to hold decision-makers responsible. Favouritism in appointments, as scholars have pointed out, not only damages the judiciary's reputation but also discourages qualified attorneys, scholars, and judges from seeking higher judicial positions if they think the selection process is preset.

THE DEFICIT IN DEMOCRACY

The so-called "democratic deficit" of the collegium system is the subject of yet another significant critique. The legitimacy of the unelected judiciary is based on the constitution rather than popular will. The collegium diminishes chances for democratic oversight by virtually excluding the legislature and executive from the appointment process²⁶.

Executive participation proponents contend that the elected institutions of the people ought to play a significant role in forming the judiciary in a representative democracy. Judges do, after all, interpret and occasionally amplify constitutional provisions that bind the state and its people. Judges may be shielded from politics by the lack of executive or parliamentary involvement, but they run the risk of becoming disconnected from larger societal issues. Furthermore, it violates the idea of checks and balances, according to which each branch of government has a responsibility to restrain the abuses of the others.

Political conflict has also resulted from the democratic deficit. The judiciary has been chastised by successive governments for using appointment powers without constitutional approval, characterising the collegium as an instance of "judicial overreach." One example is the unsuccessful attempt in 2015 to replace the collegium with the National Judicial Appointments Commission (NJAC). Although the NJAC Act was declared unconstitutional by the judiciary,

²⁶ *Supreme Court Advocates-on-Record Ass'n v. Union of India* (NJAC Case), (2016) 5 SCC 1 (India) (striking down the 99th Constitutional Amendment and NJAC Act for violating judicial independence); Law Commission of India, *Report No. 121: A New Forum for Judicial Appointments* (1987); P.P. Rao, *Judicial Independence, Judicial Appointments and the Constitution: A Critique of the Second and Third Judges Cases*, 8 SCC (Jour) 1 (2004).

the legislative near-unanimity that supported its passage indicates a strong dissatisfaction with the current system.

DIFFERING FROM THE INTENT OF THE CONSTITUENT ASSEMBLY

Lastly, academics contend that the collegium system deviates from the Constituent Assembly's original purpose²⁷. The Constitution's framers intended for the executive branch to play a major role in the appointment of judges, subject to consultation with the Chief Justice of India and other constitutional authorities. The goal of this design was to guarantee accountability as well as independence.

The Supreme Court reinterpreted the constitutional framework to give the judiciary primacy by judicially crafting the collegium system in the Second and Third Judges Cases. Critics argue that this changes the framers' intended balance of powers and amounts to judicial lawmaking. Because the framers were concerned about the risks of judicial insularity, they purposefully chose not to allow the judiciary to have sole authority over appointments, as the debates in the Constituent Assembly demonstrate. According to this interpretation, the collegium is both a constitutional deviation and an institutional innovation.

Summarising, the criticisms of the collegium system reflect deep-seated concerns about the accountability and legitimacy of one of India's most important constitutional institutions. Lack of transparency, perceptions of favouritism, the democratic deficit, and divergence from the framers' vision are not merely academic objections; they strike at the heart of the judiciary's role in sustaining constitutional democracy. While defenders of the collegium emphasise its role in preserving judicial independence, it is equally clear that reforms are necessary to address these structural weaknesses. Any meaningful reform must reconcile the imperatives of independence with the equally vital demands of accountability and democratic legitimacy.

CHAPTER-VII PERSPECTIVE ON COMPARISON

Different political cultures, constitutional traditions, and ideas of judicial independence are reflected in the striking differences in the design of judicial appointment procedures across jurisdictions. A comparative analysis highlights the Indian collegium system's advantages and disadvantages and suggests possible reforms. It also helps place the system in a global context.

²⁷ Constituent Assembly Debates, Vol. VII, 1949, 685.

THE COMMISSION FOR JUDICIAL APPOINTMENTS IN THE UNITED KINGDOM

The Constitutional Reform Act of 2005 established the Judicial Appointments Commission (JAC) in the United Kingdom. Its creation signalled a break from the long-standing system, which was frequently criticised for political favouritism, in which the Lord Chancellor made appointments. Candidates for judicial office are chosen by the JAC, an independent statutory body, on the basis of merit, openness, and consultation²⁸.

The JAC stands out for emphasising transparent hiring practices. *All qualified applicants are invited to apply, positions are publicly posted, and the evaluation procedure includes written exams, interviews, and reference checks.* Judges, attorneys, and laypeople are all represented on the JAC, which ensures that judicial appointments are not limited to exclusive professional circles. Public trust in the process is also increased by its published criteria and annual reports.

The British example shows that openness does not have to be sacrificed for independence. The JAC achieves a balance between expertise and democratic legitimacy by integrating professional evaluation with lay participation.

MODEL OF CONFIRMATION BY THE US SENATE

The U.S. Constitution, on the other hand, establishes a system of checks and balances by granting the President the authority to appoint federal judges, contingent upon Senate confirmation²⁹. *Senate hearings ensure accountability and public scrutiny by closely examining nominees' qualifications, prior writings, and judicial philosophy. The openness of hearings, public discussions, and documented justifications for support or opposition strengthen democratic legitimacy, even though this process can become politicised, as evidenced by controversial Supreme Court confirmations.* Although excessive politicisation has its own risks, the U.S. model shows that judicial independence and external oversight can coexist.

THE HYBRID COMMISSIONS OF FRANCE AND NEPAL

The President of France formally appoints officials based on the recommendations of the Conseil Supérieur de la Magistrature (CSM), a hybrid body that consists of judges, prosecutors,

²⁸ *Constitutional Reform Act*, 2005, c. 4, §§ 61–97 (U.K.) (establishing the Judicial Appointments Commission); Judicial Appointments Commission, *Annual Report and Accounts 2022–23* (2023); Kate Malleson, *The New Judicial Appointments Commission in England and Wales: New Wine in New Bottles?*, 16 *Parliamentary Affs.* 715 (2006).

²⁹ U.S. CONST. art. II, § 2, cl. 2 (Appointments Clause); *Confirmation Hearing on the Nomination of Hon. John G. Roberts, Jr. to be Chief Justice of the United States: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. (2005); Henry J. Abraham, *Justices, Presidents, and Senators: A History of U.S. Supreme Court Appointments from Washington to Bush II* (5th ed. 2008).

laypeople, and executive appointees³⁰. In a similar vein, the Judicial Council was established by Nepal's 2015 Constitution and is made up of the Chief Justice, senior judges, the Minister of Justice, and legal profession nominees. By fusing judicial knowledge with outside viewpoints, both systems lessen the likelihood of opacity and partiality while also promoting inclusivity. These hybrid commissions incorporate several branches of government into the appointment process, in contrast to India's collegium, which is made up entirely of judges.

INSIGHTS FOR INDIA

Judicial independence can coexist with accountability, transparency, and inclusivity, as demonstrated by the experiences of the United Kingdom, the United States, France, and Nepal³¹.

Three lessons can be learned by India:

- Transparent hiring practices and open criteria can increase legitimacy;
- Accountability systems don't have to jeopardise independence; and
- Inclusive involvement from a variety of stakeholders can increase diversity and lessen feelings of isolation.

These comparative observations imply that India might embrace a transparent and hybrid model that strikes a balance between democratic oversight and judicial autonomy, enhancing legitimacy and public confidence.

CHAPTER-VIII PROPOSALS FOR REFORM AND ALTERNATIVE POLICIES

Despite preserving judicial independence, the collegium system is heavily criticised for its lack of diversity, opacity, and democratic deficit. Carefully calibrated reforms that increase accountability without sacrificing autonomy are needed to address these issues.

³⁰ *Constitution of the French Republic* of 1958, art. 65 (establishing the Conseil Supérieur de la Magistrature); Constitution of Nepal, 2015, art. 153 (establishing the Judicial Council); Antoine Garapon, *The Judicial Appointments System in France: Independence and Accountability*, in Kate Malleson & Peter H. Russell eds., *Appointing Judges in an Age of Judicial Power* 103 (2006).

³¹ Arghya Sengupta & Ritwika Sharma, *Appointment of Judges to the Supreme Court of India: Transparency, Accountability and Independence* (Vidhi Centre for Legal Policy 2018); Vikram Dhavan, *Judicial Appointments and the Need for Reform in India*, 11 *Nat'l L. Sch. India Rev.* 1 (1999); Shimon Shetreet & Sophie Turenne, *Judicial Independence: The Contemporary Debate* 371–412 (2013) (comparing judicial appointments internationally).

OPEN AND TRANSPARENT PROCESSES (RECORDINGS, PUBLISHED CRITERIA)

The foundation of any legitimate reform is transparency. Accountability and public trust can be enhanced by making collegium discussions, or at the very least the reasoning behind decisions, publicly available³². Publicising precise eligibility requirements, evaluation frameworks, and selection criteria helps prospective candidates grasp the expectations, lessens the impression of arbitrary decisions, and offers a foundation for thoughtful criticism.

THE BODY'S INCREASING COMPOSITION

Biases and insularity can be lessened by a collegium that includes a wider range of stakeholders³³. A broader range of professional, social, and regional factors is reflected in appointments when representatives from the executive, bar associations, academia, or laypeople are included. This strategy is similar to hybrid models that strike a balance between democratic oversight and judicial expertise in France and Nepal.

CODIFICATION OF CRITERIA BY STATUTE OR CONSTITUTION

Predictability and uniformity can be improved by codifying the standards and procedures for appointments in a statute or constitutional amendment³⁴. While maintaining consistency with the judiciary's constitutional role, a formal legal framework that outlines qualifications, evaluation procedures, and consultation requirements reduces discretion and fosters fairness.

JUGGLING ACCOUNTABILITY AND INDEPENDENCE

In the end, systemic criticisms can be addressed by a hybrid model that combines judicial primacy with minimal executive or legislative oversight³⁵. A system like this would allow for external checks to improve legitimacy, reduce favouritism, and boost public confidence while maintaining the judiciary's independence in evaluating candidates. India can develop a

³² Supreme Court of India, *Memorandum on Judicial Appointments: Transparency Measures* (2020); Arghya Sengupta & Ritwika Sharma, *Appointment of Judges to the Supreme Court of India: Transparency, Accountability and Independence* (Vidhi Centre for Legal Policy 2018); Law Commission of India, *Report No. 121: A New Forum for Judicial Appointments* (1987).

³³ Constitution of Nepal, 2015, art. 153 (establishing a hybrid Judicial Council); *Constitutional Reform Act*, 2005, c. 4, §§ 61–97 (U.K.) (establishing the Judicial Appointments Commission); Antoine Garapon, *The Judicial Appointments System in France: Independence and Accountability*, in Kate Malleson & Peter H. Russell eds., *Appointing Judges in an Age of Judicial Power* 103 (2006).

³⁴ P.P. Rao, *Judicial Independence, Judicial Appointments and the Constitution: A Critique of the Second and Third Judges Cases*, 8 SCC (Jour) 1 (2004); Law Commission of India, *Report No. 203: Fast Track Magisterial Courts for Dishonoured Cheque Cases* (2006); Debajyoti Tripathy & Vikram Dhanee, *Collegium System of Judicial Appointments: An Empirical Study of the Indian Supreme Court* (2020).

³⁵ *Supreme Court Advocates-on-Record Ass'n v. Union of India* (NJAC Case), (2016) 5 SCC 1 (India); Arghya Sengupta, *Reforming Judicial Appointments in India: Towards a Hybrid Model*, 12 *Nat'l L. Sch. India Rev.* 45 (2020); Shimon Shetreet & Sophie Turenne, *Judicial Independence: The Contemporary Debate* 371–412 (2013).

collegium system that is both socially and constitutionally acceptable by combining independence with organised accountability.

Combining these reforms provides a way to make the judicial appointment process more open, inclusive, and accountable while resolving long-standing complaints and preserving the independence and integrity of India's higher judiciary.

CHAPTER-IX CONCLUSION

The collegium system has played a pivotal role in protecting the independence of India's higher judiciary, insulating judges from political pressures and ensuring that adjudication remains impartial³⁶. Judicial interpretations over many years have solidified this mechanism as a constitutional safeguard, demonstrating the judiciary's dedication to preserving the fundamental framework of the Constitution. The collegium has shortcomings despite its successes. Its opacity, lack of accountability, and lack of diversity have stoked concerns about representational fairness and democratic legitimacy.

Therefore, reform needs to strike a balance between two demands: preserving judicial independence and increasing procedural openness. Judicial independence and accountability are not mutually exclusive, as evidenced by comparative experiences from the US, UK, France, and Nepal. A judiciary free from undue influence can coexist with transparent processes, unambiguous selection criteria, and organised oversight. Legitimation can be improved while lowering perceptions of partiality or insularity by broadening the collegium's membership to include a variety of stakeholders, formalising appointment procedures, and recording discussions.

The way forward ultimately resides in a modified, hybrid system that incorporates accountability and inclusivity mechanisms while maintaining the fundamental idea of judicial primacy in appointments³⁷. A model like this would guarantee that India's higher judiciary maintains its independence and responsiveness while representing democratic values, societal diversity, and constitutional ideals. In order to ensure that the collegium remains a strong

³⁶ *Supreme Court Advocates-on-Record Ass'n v. Union of India* (NJAC Case), (2016) 5 SCC 1 (India); P.P. Rao, *Judicial Independence, Judicial Appointments and the Constitution: A Critique of the Second and Third Judges Cases*, 8 SCC (Jour) 1 (2004); Debajyoti Tripathy & Vikram Dhane, *Collegium System of Judicial Appointments: An Empirical Study of the Indian Supreme Court* (2020).

³⁷ Arghya Sengupta, *Reforming Judicial Appointments in India: Towards a Hybrid Model*, 12 Nat'l L. Sch. India Rev. 45 (2020); Shimon Shetreet & Sophie Turenne, *Judicial Independence: The Contemporary Debate* 371–412 (2013); Arghya Sengupta & Ritwika Sharma, *Appointment of Judges to the Supreme Court of India: Transparency, Accountability and Independence* (Vidhi Centre for Legal Policy 2018).

defender of the rule of law, India can increase public trust in the judicial appointment process by adopting evidence-based and globally informed reforms.¹⁴