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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **JUDICIAL APPOINTMENTS AT CROSSROADS: THE CALL FOR REFORM**

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## **ABSTRACT**

The judiciary is the sentinel of the Constitution in India, entrusted with the profound responsibility of interpreting laws, protecting fundamental rights, ensuring justice prevails over arbitrary power and ensuring that the principles of natural justice are not violated. Judicial independence is not a ceremonial ideal; it is the very bedrock of constitutional democracy, which is practiced in India. However, the procedure by which judges are nominated to the higher judiciary in India remains mired in controversy, criticism, and calls for reform. This paper presents an encompassing analysis of the judicial appointment procedure, emphasizing the imperative need for structural reform that reinforces transparency and accountability while preserving judicial independence.

The existing system, dominated by the collegium, has been celebrated for safeguarding the judiciary from executive interference and criticized for operating within a cloak of secrecy, lacking standardized procedures, and failing to reflect the Diversity of Indian society. The paper examines key constitutional provisions, significant judicial pronouncements, including the three Judges' Cases, and the rise and fall of the National Judicial Appointments Commission (NJAC). It explores how these developments have shaped the evolution of the appointment procedure.<sup>1</sup>

In addition to assessing institutional machineries, the paper delves into the more profound sociopolitical implications of judicial appointments. It contends that an inclusive and transparent appointment procedure is necessary for efficient justice delivery and maintaining public faith in democratic institutions. The paper synthesizes insights from multiple committee reports, including those of the Law Commission, the Malimath Committee<sup>2</sup>, and international comparative frameworks from countries like the UK, South Africa, and Canada.

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<sup>1</sup> Rajeev Kumar, (Feb. 1, 2025), <https://www.ijfmr.com/papers/2025/1/36293.pdf>.

<sup>2</sup> Microsoft Word - 197\_07\_27112002.doc, (Mar. 30, 2010), [https://rsdebate.nic.in/bitstream/123456789/86026/1/PQ\\_197\\_27112002\\_U810\\_p94\\_p97.pdf](https://rsdebate.nic.in/bitstream/123456789/86026/1/PQ_197_27112002_U810_p94_p97.pdf).



Further, the research investigates the impact of indispensable judicial delays and case backlogs, linking them directly to vacancies caused by appointment bottlenecks. It offers a roadmap for reform rooted in constitutional values, empirical evidence, and democratic theory. The paper proposes codified appointment criteria, judicial performance evaluations, statutory timelines, institutional restructuring, and digitization.

Ultimately, this paper affirms that reforming the judicial appointment procedure is not a peripheral issue but a democratic imperative central to India's constitutional promise. The judiciary's credibility, legitimacy, and resilience in the twenty-first century depend on its ability to renew itself through principled, participatory, and practical reforms.

### **Keywords**

Judicial independence, Collegium system, Transparency and accountability, Judicial Appointments Commission (NJAC), Diversity in judiciary

## **INTRODUCTION**

The judiciary in any constitutional democracy plays a vital role in maintaining the delicate balance of power among the branches of government, protecting individual rights, and ensuring that laws are implemented fairly and impartially. In India, this role is particularly significant given the vast diversity of its population, the persisting social and economic inequalities, and the sheer volume of legal disputes that arise across a complex federal structure. In such a context, the procedure by which judges are selected for the High Courts and the Supreme Court becomes central to the administration of justice.

Inspired by the common law tradition, India's judicial system is rooted in the principles of judicial independence and separation of powers. However, achieving a genuinely independent and impartial judiciary requires more than constitutional pronouncements—it demands a robust, transparent, and accountable appointment procedure that ensures that only the most qualified, ethical, and reputable individuals ascend to the bench. Historically, India has struggled with maintaining such a procedure, oscillating between executive-dominated systems and insular judicial methods.

Significant turning points have marked the journey of judicial appointments in India. The post-independence era saw the executive exercise discretion over appointments, a legacy that led to several controversial decisions, including the supersession of judges during the Emergency. This period brought



forth a judicial reassertion, culminating in the landmark series of judgments, the Judges' Cases, which transferred primacy in judicial appointments to the judiciary itself through the collegium system.

While the collegium system was initially seen as an anchor against executive overreach, its functioning has revealed deep structural flaws over time. Lack of transparency, absence of formal criteria, delays in decision-making, and the exclusion of diverse voices have prompted widespread criticism from civil society, the legal fraternity, and even the political class. The attempt to reform the procedure through the NJAC was struck down by the Supreme Court, proclaiming the primacy of judicial independence but also exposing the judiciary's resistance to participatory reform.

At the same time, the judiciary is grappling with mounting challenges. With over 4.7 crore cases pending in courts nationwide, the need for swift and efficient justice has never been more imperative. Judicial vacancies primarily caused by procedural ambiguities and indispensable inefficiencies in the appointment procedure compound the burden on the existing judicial workforce. This has a cascading effect on the justice delivery mechanism, leading to erosion of public faith in the judiciary.

Therefore, any serious discourse on judicial reform must prioritize restructuring the appointment procedure. Such reform should be holistic, encompassing procedural adjustments and cultural shifts within the judiciary that embrace accountability as a companion to independence. It must draw on both domestic experiences and comparative global practices, recognizing that the legitimacy of a democratic judiciary lies in its transparency, accessibility, and responsiveness.

This paper is crafted around a critical analysis of the historical, constitutional, and institutional dimensions of judicial appointments in India. It explores the origins of the collegium system, evaluates its effectiveness, and examines the NJAC's rise and fall. It further investigates how principles of merit, diversity, transparency, and public accountability can guide indispensable reform. In doing so, the paper aims to offer a blueprint for judicial reform that is both constitutionally sound and democratically robust.<sup>3</sup>

## **HISTORICAL PERSPECTIVE ON JUDICIAL APPOINTMENT AND REFORM**

Judicial reform in India is not recent; it has evolved through a long and complex history of colonial legacies, constitutional innovations, and postindependence judicial activism. One of the earliest attempts

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<sup>3</sup> Rajeev Kumar, (Feb. 1, 2025), <https://www.ijfmr.com/papers/2025/1/36293.pdf>.

to address indispensable issues in the justice delivery mechanism was the establishment of the Rankin Committee in 1924<sup>4</sup>. This committee, chaired by Justice Rankin, was tasked with investigating the causes of delays in civil litigation and proposing measures for improving the speed and efficiency of judicial proceedings. It underscored the importance of streamlined procedures, better recordkeeping, and reducing unwarranted adjournments.

Post-independence, the challenges of a rapidly growing democracy began manifesting within the judicial system. The Government of India constituted the Arrears Committee of 1949<sup>5</sup> to address the mounting backlog of cases in High Courts. It recommended increasing the strength of judges and simplifying procedural laws. Nevertheless, these proposals remained inadequately implemented.

The 14th Law Commission Report (1958), one of the most influential documents in India's legal history, laid a strong foundation for institutional reform. The report emphasized the need for creating an All India Judicial Service, standardizing recruitment, enhancing training for judges, and separating the judiciary from the executive. It also called for more rigorous scrutiny of candidates before appointment to ensure only the most competent and ethical individuals joined the bench.

Subsequent reports, such as those by the Satish Chandra Committee (1986) and the Malimath Committee (2003)<sup>6</sup>, reiterated these concerns and further emphasized judicial accountability, performance review machineries, and modernization of court infrastructure. The Malimath Committee, in particular, recommended the adoption of alternative dispute resolution machineries, setting up fast-track courts, and strengthening the judicial appointment procedure to avoid delays in justice delivery.

The Law Ministers' Conferences in the 1990s and early 2000s served as platforms for interstate dialogue on reforms. They often concluded with resolutions to adopt better court management systems and advocated greater cooperation between the judiciary and the executive for appointments. Nevertheless, implementation gaps persisted.

Despite these well-meaning recommendations, the pendency of cases and judicial vacancies continued to

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<sup>4</sup> Example Domain, <https://indianculture.gov.in/rarebooks/report-civil-justice-committee-1924-25-appendix-no-2-oral-evidence-vol-iii-vol-iii-madras>

<sup>5</sup> The Code of Criminal Procedure, 1973, Law Library <https://www.advocatekhaj.com/library/lawreports/codeofcriminalprocedure/index.php?Title=The%20Code%20of%20Criminal%20Procedure,%201973>

<sup>6</sup> Microsoft Word - 197\_07\_27112002.doc, (Mar. 30, 2010), [https://rsdebate.nic.in/bitstream/123456789/86026/1/PQ\\_197\\_27112002\\_U810\\_p94\\_p97.pdf](https://rsdebate.nic.in/bitstream/123456789/86026/1/PQ_197_27112002_U810_p94_p97.pdf).

mount. As India's population grew and sociolegal issues became more complex, the judicial system struggled to cope with the sheer volume and Diversity of litigation. The absence of a transparent, efficient, and accountable appointment system became a central bottleneck, underscoring the need for deep, structural reform.

## **RESEARCH METHODOLOGY:**

This research paper adopts a qualitative, doctrinal research methodology, which is particularly suited for legal analysis and normative inquiry into constitutional law and judicial reforms. This research aims to critically examine the framework, evolution, and ongoing debates concerning the appointment of judges in the higher judiciary of India, with a view to identifying indispensable flaws and proposing reforms that balance independence with accountability.

The study is primarily based on secondary sources and involves a detailed examination of constitutional provisions, landmark judicial pronouncements, legislative texts, and scholarly commentaries. Articles 124 and 217 of the Indian Constitution<sup>7</sup> form the constitutional backbone of this analysis, guiding the exploration of the executive's and judiciary's roles in the appointment procedure. The interpretation of these provisions through the three Judges Cases and the NJAC judgment is the central axis around which the doctrinal inquiry is crafted.

In particular, this paper undertakes an in-depth case law analysis of S.P. Gupta v. Union of India (1981)<sup>8</sup>, Supreme Court Advocates on Record Association v. Union of India (1993)<sup>9</sup>, and In re Special Reference No. 1 of 1998, along with the Supreme Court's 2015 decision invalidating the NJAC Act.<sup>10</sup> For each case, the research identifies the facts, legal issues, reasoning, and implications for the appointment procedure. This case-centric analysis clarifies how judicial interpretations have transformed the balance of power between the executive and judiciary in appointments.

In addition to doctrinal sources, the paper draws upon historical policy documents and reports such as the Rankin Committee Report (1924)<sup>11</sup>, Arrears Committee Report (1949)<sup>12</sup>, 14th Law Commission Report

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<sup>7</sup> Law & Justice2.pmd, (Jan. 7, 2009), [https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution\\_of\\_india.pdf](https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution_of_india.pdf).

<sup>8</sup> <http://www.sconline-com-culp.knimbus.com/DocumentLink/TApc5gLd>

<sup>9</sup> <http://www.sconline-com-culp.knimbus.com/DocumentLink/0GS57U5h>

<sup>10</sup> <https://www.indiacode.nic.in/bitstream/123456789/2142/4/a2014-40.pdf>.

<sup>11</sup> Example Domain, <https://indianculture.gov.in/rarebooks/report-civil-justice-committee-1924-25-appendix-no-2-oral-evidence-vol-iii-vol-iii-madras>.

<sup>12</sup> The Code of Criminal Procedure, 1973, Law Library <https://www.advocatekhaj.com/library/lawreports/codeofcriminalprocedure/index.php?Title=The%20Code%20of%20Criminal%20Procedure,%201973>.



(1958)<sup>13</sup>, Satish Chandra Committee Report (1986)<sup>14</sup>, and the Malimath Committee Report (2003)<sup>15</sup>. These documents offer insights into the justice system's recurring administrative and procedural problems and underscore the longstanding nature of the crisis in judicial appointments.

The study also includes comparative legal analysis by examining the appointment frameworks in other democratic jurisdictions such as the United Kingdom, South Africa, and Canada. This comparative lens identifies best practices that could be contextualized and adapted for the Indian scenario. It highlights how other democracies have institutionalized transparency, merit, and public involvement in the judicial selection without compromising judicial independence.

The research incorporates academic literature and policy papers published in leading law journals, judicial reform white papers, and critiques by legal scholars and former judges to supplement doctrinal and comparative analysis. This ensures that the study is not merely descriptive but critically evaluative, considering diverse perspectives and addressing counterarguments.

Thus, the methodology integrates constitutional analysis, judicial reasoning, historical context, and comparative insights to offer a holistic critique of the existing judicial appointment system and develop pragmatic, constitutionally sound recommendations for reform.

## **CONSTITUTIONAL PROVISIONS GOVERNING THE APPOINTMENT OF JUDGES**

The Constitution of India lays down a crafted yet flexible framework for judicial appointments. Article 124(2)<sup>16</sup> provides that the President shall nominate judges of the Supreme Court after consultation with such judges of the Supreme Court and High Courts as the President may deem necessary. Crucially, in the case of appointing a judge other than the Chief Justice, the Chief Justice of India must be consulted. For High Courts, Article 217(1)<sup>17</sup> stipulates that the President shall appoint a judge in consultation with the Chief Justice of India, the Governor of the concerned state, and, in the case of judges other than the

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<sup>13</sup> Example Domain, <https://indianculture.gov.in/reports-proceedings/law-commission-india-fourteenth-report-reform-judicial-administration-vol-i>.

<sup>14</sup> A presentation by the, (June 25, 2014), <https://www.mcrhrdi.gov.in/fcg2/studymaterial/week2/ARC-State&District%20Admin.pdf>.

<sup>15</sup> Microsoft Word - 197\_07\_27112002.doc, (Mar. 30, 2010), [https://rsdebate.nic.in/bitstream/123456789/86026/1/PQ\\_197\\_27112002\\_U810\\_p94\\_p97.pdf](https://rsdebate.nic.in/bitstream/123456789/86026/1/PQ_197_27112002_U810_p94_p97.pdf).

<sup>16</sup> Law & Justice2.pmd, (Jan. 7, 2009), [https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution\\_of\\_india.pdf](https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution_of_india.pdf).

<sup>17</sup> Law & Justice2.pmd, (Jan. 7, 2009), [https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution\\_of\\_india.pdf](https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution_of_india.pdf).

Chief Justice, the High Court Chief Justice.

Initially, this system envisioned a consultative model in which the executive and judiciary would collaborate, with the President (acting on the advice of the Council of Ministers) having the final say. However, the ambiguity around "consultation" became a source of contention and ultimately, judicial interpretation.

The constitutional framework was meant to balance judicial independence and executive oversight. However, judicial interventions over time, primarily through the Judges' Cases, transformed the appointment procedure, shifting control decisively towards the judiciary. This development was a response to past experiences of executive overreach and politicization, especially during the Emergency. Nonetheless, critics argue that this rebalancing has led to a lack of transparency and accountability. The absence of clear criteria for selection, opaque deliberations, and an absence of public scrutiny have fueled the call for reforms that align with the original constitutional spirit while adapting to contemporary needs.

## **NEED FOR INDEPENDENCE OF THE JUDICIARY IN** **APPOINTMENTS**

The independence of the judiciary is a foundational principle enshrined in the fundamental structure doctrine of the Indian Constitution. It ensures that judges can decide cases impartially without external pressures from the executive, legislature, or other powerful interests. In the context of appointments, judicial independence demands that the procedure be insulated from political manipulation and patronage. This need was particularly evident during the Emergency period (1975–77), when several judges were superseded or transferred for not toeing the government line. These actions were widely criticized as direct attacks on judicial independence, prompting the judiciary to reassert its autonomy through subsequent judgments.

Judicial independence must be understood in both its individual and institutional dimensions. Individually, judges must enjoy tenure security, financial independence, and freedom from coercion. Institutionally, the judiciary must control appointments, promotions, and disciplinary machineries to function effectively.

At the same time, independence cannot be a shield for unaccountability. The procedure of judicial appointments must be guided by transparent criteria such as integrity, competence, impartiality, and sensitivity to constitutional values. The appointment method ensures the judiciary retains its legitimacy as

a fair and impartial institution.

## **THE APPOINTMENT PROCEDURE: EVOLUTION AND CONTROVERSIES**

Three significant Supreme Court judgments—the Judges' Cases—have significantly shaped the appointment procedure.

(i) S.P. Gupta v. Union of India (1981) – First Judges Case<sup>18</sup>

**Facts:** The case arose from the executive's nonappointment and transfer of judges, which was perceived as arbitrary. The petitions challenged the nature and scope of the President's powers in judicial appointments.

**Issues:** Whether the term "consultation" under Article 124<sup>19</sup> Meant concurrence. Whether the executive had primacy over the judiciary in appointments.

**Judgment and Analysis:** The Court held that "consultation" did not mean "concurrence" and that the executive had the final say. This gave primacy to the executive in judicial appointments.

**Relevance:** It reached a low point for judicial independence and set the stage for future pushback.

(ii) Supreme Court Advocates on Record Association v. Union of India (1993) – Second Judges Case<sup>20</sup>

**Facts:** A writ petition was filed challenging the primacy of the executive and demanding a more independent system of judicial appointments.

**Issues:** Should the judiciary have primacy in appointments to the higher judiciary?

**Judgment and Analysis:** The Supreme Court overruled S.P. Gupta and held that the Chief Justice of India must have the final say, thereby creating the collegium system.

**Relevance:** It significantly enhanced judicial independence but lacked provisions for transparency or accountability.

(iii) In re Special Reference 1 of 1998 – Third Judges Case

**Facts:** The President of India sought clarification on the functioning of the collegium system.

**Issues:** How should the collegium function, and how many judges should it comprise?

**Judgment and Analysis:** The Court clarified that the collegium must include the Chief Justice of India, four seniormost judges for Supreme Court appointments, and the Chief Justice and two seniormost judges for High Court appointments.

**Relevance:** It institutionalized the collegium but failed to address its opacity and lack of external

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<sup>18</sup> <http://www-sconline-com-culp.knimbus.com/DocumentLink/TApc5gLd>

<sup>19</sup> Law & Justice2.pmd, (Jan. 7, 2009),

[https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution\\_of\\_india.pdf](https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution_of_india.pdf).

<sup>20</sup> <http://www-sconline-com-culp.knimbus.com/DocumentLink/0GS57U5h>



oversight.

Together, these cases shifted the appointment procedure away from executive control and firmly into judicial hands, reinforcing the principle of judicial independence. However, the lack of statutory backing and public accountability remains a point of contention and reform.

## **NJAC AND ITS INVALIDATION**

In response to growing criticism of the collegium system, the Parliament passed the 99th Constitutional Amendment and the NJAC Act, 2014<sup>21</sup>. NJAC sought to include judiciary, executive, and civil society members in the appointment procedure. However, in 2015, the Supreme Court struck it down in a 4:1 verdict, holding it unconstitutional for violating the fundamental structure doctrine, particularly judicial independence.

The judgment reignited the debate between judicial independence and democratic accountability, with critics arguing that the collegium system lacked transparency and offered no recourse for oversight or reform.

## **DRAWBACKS OF THE COLLEGIUM SYSTEM**

The collegium system has been criticized for its secrecy, lack of Diversity, and absence of standardized criteria. There is no formal application procedure, and candidates are often selected without clear justification. This has led to allegations of favoritism, lack of representation for marginalized communities, and non-inclusion of meritorious candidates from outside the legal elite.<sup>22</sup>

Additionally, the collegium's recommendations are not subject to external scrutiny or binding timelines, causing appointment delays and judicial vacancies. The absence of public participation or legislative oversight makes the system opaque and inconsistent with democratic norms.

## **RECOMMENDATIONS FOR REFORM**

A balanced approach to judicial appointments should enhance transparency and meritocracy while preserving judicial independence. Scholars, legal experts, and former judges have highlighted several areas where reform can make a meaningful difference. Effective reforms must address who is nominated to the bench and how they are selected, their backgrounds, their performance monitoring, and the timelines

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<sup>21</sup> <https://www.indiacode.nic.in/bitstream/123456789/2142/4/a2014-40.pdf>.

<sup>22</sup> Rajeev Kumar, (Feb. 1, 2025), <https://www.ijfmr.com/papers/2025/1/36293.pdf>.

within which appointments must be completed.

### **1. Codification of Transparent Selection Criteria**

A foundational reform is the formal codification of clear, objective, and transparent criteria for appointing judges to the higher judiciary. The current collegium system lacks published benchmarks or a standardized framework for evaluating candidates, leading to perceptions of arbitrariness and opacity. Codifying criteria would involve specifying not only the minimum qualifications, such as years of legal practice or judicial service, but also the qualities and competencies expected of judges, including integrity, professional competence, temperament, and commitment to constitutional values. Such codification would ensure that appointments are based on merit and suitability rather than personal connections or subjective preferences. It would also allow for public scrutiny and foster greater confidence in the integrity of the procedure. International best practices, such as those in the UK and South Africa, demonstrate that publicly available selection criteria can enhance both transparency and the legitimacy of judicial appointments. This reform would require collaboration between the judiciary, executive, and legal academia to develop an encompassing and contextually relevant framework that is periodically reviewed and updated to meet evolving societal needs.

### **2. Revamping the Collegium System with an Inclusive Appointments Commission**

While designed to protect judicial independence, the collegium system<sup>23</sup> has come under sustained criticism for its lack of transparency, accountability, and susceptibility to insularity. A widely recommended reform is the establishment of a Judicial Appointments Commission (JAC) or a similar multistakeholder body. Such a commission would include senior judges and representatives from the executive, eminent jurists, members of the Bar, and possibly civil society. This would democratize the procedure, reduce the risk of nepotism, and bring diverse perspectives to bear on appointments. The National Judicial Appointments Commission (NJAC) was a step in this direction, but was struck down by the Supreme Court on the grounds of judicial independence. However, carefully crafted to balance independence with accountability, a reimagined commission could address these concerns. Comparative models from the UK, South Africa, and France, where commissions with broad representation select judges, provide valuable templates. The commission should operate with clear rules, publish its procedures, and provide reasons for its recommendations, ensuring transparency and public trust.

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<sup>23</sup> Rajeev Kumar, (Feb. 1, 2025), <https://www.ijfmr.com/papers/2025/1/36293.pdf>.

### **3. Institutionalizing Diversity and Social Reintegration**

Another critical recommendation is to institutionalize Diversity in judicial appointments. The higher judiciary in India has historically been dominated by individuals from specific social, economic, and regional backgrounds, leading to underrepresentation of women, Scheduled Castes (SCs), Scheduled Tribes (STs), Other Backward Classes (OBCs), and minorities. To address this, the appointment procedure should proactively ensure that the bench reflects the Diversity of Indian society. This could be achieved by setting diversity targets, creating databases of eligible candidates from underrepresented groups, and mandating the inclusion of diverse voices in the appointments commission. Such measures would not only enhance the reestablishment of the judiciary but also improve the quality of justice by bringing a broader range of experiences and perspectives to judicial decision-making. Diversity in the judiciary is essential for strengthening public confidence and ensuring that the bench is attuned to the realities faced by all sections of society.

### **4. Enhancing Accountability and Transparency through Statutory Timelines and Public Disclosure**

Delays in judicial appointments have contributed significantly to the backlog of cases and the inefficiency of the justice delivery system. One reform is introducing statutory timelines for each stage of the appointment procedure, from the initiation of recommendations to final approval by the President. This would prevent unwarranted delays, ensure timely filling of vacancies, and reduce the burden on the existing judiciary. Additionally, the procedure should include machinery for public disclosure of shortlisted candidates, the criteria used for selection, and the reasons for appointments or rejections, subject to reasonable confidentiality in sensitive cases. Bringing the appointment procedure under the purview of the Right to Information Act (RTI) could further enhance transparency, provided adequate safeguards are in place to protect judicial independence and personal privacy. Such reforms would make the procedure more accountable to the public and reduce the scope for arbitrary decisions.

### **5. Reforming the Memorandum of Procedure<sup>24</sup> (MoP) and Consultation Mechanisms**

The Memorandum of Procedure<sup>25</sup> (MoP) governs appointing judges to the higher judiciary. However, disagreements between the executive and judiciary over its provisions have led to delays and deadlocks. A

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<sup>24</sup> Apoorva Mandhani, What's Memorandum of Procedure & why it's at heart of govt-SC tussle over judges' appointments, (Jan. 18, 2023), <https://theprint.in/judiciary/whats-memorandum-of-procedure-why-its-at-heart-of-govt-sc-tussle-over-judges-appointments/1320886/>.

<sup>25</sup> Apoorva Mandhani, What's Memorandum of Procedure & why it's at heart of govt-SC tussle over judges' appointments, (Jan. 18, 2023), <https://theprint.in/judiciary/whats-memorandum-of-procedure-why-its-at-heart-of-govt-sc-tussle-over-judges-appointments/1320886/>.



comprehensive reform of the MoP is needed to clarify roles, streamline procedures, and incorporate machineries for resolving stakeholder disputes. The revised MoP should include clear timelines, transparent procedures for consultation, and provisions for dealing with disagreements. It should also provide for periodic review and adaptation to changing circumstances. Reforming the MoP would ensure that the appointments procedure is not derailed by institutional friction and that vacancies are filled efficiently and fairly.

## **6. Performance Evaluation and Post-Retirement Roles**

To ensure continued judicial excellence and accountability, there should be a system for periodic performance evaluation of judges, based on objective criteria such as case disposal rates, quality of judgments, and conduct. These evaluations inform decisions on elevation to higher courts and assignment of essential cases. Furthermore, creating a crafted cadre of public service roles for retired judges, such as in tribunals, commissions, and statutory bodies, would allow the judiciary to benefit from their experience while maintaining transparency in postretirement appointments. This would also deter the perception that judicial decisions are influenced by the prospect of postretirement benefits, strengthening judicial independence and integrity.

## **7. Leveraging Technology for Efficient and Transparent Appointments**

Adopting technology can significantly enhance the efficiency and transparency of the appointment procedure. An online portal could be established for the submission, tracking, and status updates of judicial appointment applications. This portal could also serve as a repository of information about vacancies, eligibility criteria, and the status of ongoing appointments. Technology can facilitate data-driven decision-making, reduce bureaucratic delays, and provide a transparent interface for all stakeholders. The success of the e-Courts Mission Mode Project in digitizing court procedures demonstrates the potential of technology to modernize judicial administration. It should be extended to the appointment procedure as well.

## **8. Comparative Learning and Periodic Review**

Finally, the appointment procedure should be subject to periodic review and benchmarking against international best practices. A standing committee or independent body could be tasked with studying global models, assessing the effectiveness of existing machineries, and recommending updates to keep the system responsive to changing needs. Comparative learning from jurisdictions like the UK, Canada, and South Africa can provide valuable insights into balancing independence, accountability, and Diversity in judicial appointments. Regular review would ensure that the procedure evolves in line with democratic

values and public expectations 15.

If implemented holistically, these reforms would address the deep-seated challenges of opacity, delay, lack of Diversity, and inefficiency in the judicial appointment procedure. They would strengthen the credibility, legitimacy, and effectiveness of the Indian judiciary, ensuring it remains a robust guardian of constitutional democracy in the 21st century.

## **Conclusion**

The integrity and credibility of the judiciary hinge on the robustness of the procedures through which its members are nominated. Judicial appointments are far more than administrative or bureaucratic formalities—they are foundational actions that shape the judiciary's capacity to uphold constitutional values, ensure justice, and maintain public trust. In a democracy as complex and vibrant as India's, where the courts often act as protectors of civil liberties and arbiters of sociopolitical conflicts, selecting judges must be held to the highest standards of transparency, fairness, and inclusivity.

An independent judiciary is universally acknowledged as the cornerstone of constitutional democracy. However, judicial independence must not exist in a vacuum, detached from the equally vital principles of transparency and accountability. Independence that is not balanced with scrutiny can inadvertently foster insularity, perpetuate elitism, and erode public trust. This is precisely the paradox India faces today. The collegium system, which was created through judicial pronouncements to safeguard judicial autonomy, has become an opaque mechanism that lacks formal structures for evaluation, participation, or oversight. While it was initially a necessary corrective to protect judges from executive interference, over time, it has failed to evolve into a system that reflects democratic legitimacy.

One of the key criticisms against the collegium system is its lack of transparency. Decisions are made behind closed doors without public disclosure of the criteria for selection, performance records of prospective appointees, or reasons for selection and rejection. This creates a perception of arbitrariness and reduces public confidence in the system's impartiality. Moreover, the collegium has not effectively ensured Diversity on the bench. The higher judiciary continues to be dominated by a narrow demographic—mostly upper-caste, male, and metropolitan individuals—with very little representation from women, minorities, or underprivileged communities. This lack of representation undermines the judiciary's ability to relate to and serve the diverse Indian populace.

The failed experiment of the National Judicial Appointments Commission (NJAC) in 2015 was a missed

opportunity to reform the procedure. The NJAC was a bold attempt to broaden the appointment structure by including executive and civil society representatives alongside the judiciary. The intention was to inject a measure of transparency, accountability, and pluralism into the appointment procedure. However, the Supreme Court struck down the NJAC as unconstitutional, primarily because it compromised the principle of judicial primacy in appointments—a fundamental aspect of the basic structure doctrine.

While the Supreme Court's concerns about executive interference were valid, the outright rejection of the NJAC also indicated an institutional resistance to oversight. Notably, the NJAC failed not because the concept was inherently flawed, but because the final design lacked sufficient safeguards to preserve judicial independence. A reimagined NJAC, carefully crafted through consensus among all stakeholders and fortified with checks and balances, could still provide the middle path between insular judicial control and intrusive executive power.

Judicial appointments determine not only the existing functioning of courts but also their future direction—how they will interpret the Constitution, balance the separation of powers, and protect the rights of citizens. Therefore, reform in this domain is not optional but essential. A multipronged strategy is required—one that introduces structural changes in the appointment framework, codifies eligibility and evaluation criteria, integrates technology for data-driven decision making, and institutionalizes transparency through public disclosures and consultations.

Further, reform must not be confined to institutional structures alone. A cultural transformation within the judiciary must accompany it. The values of accountability, humility, and service to the public must become embedded within the judicial ethos.

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