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With this thought, we hereby present to you

REASSESSING THE COLLEGIUM: A CRITICAL STUDY OF JUDICIAL APPOINTMENTS, CONTROVERSIES, AND THE PATH TO REFORM IN INDIA

AUTHORED BY - ANUBHAV KAR BHOWMIK

Abstract

The appointment of judges to the higher judiciary in India has long been a subject of institutional friction between the executive and the judiciary. While the Constitution of India originally envisaged a consultative model under Articles 124 and 217, judicial interpretation over time has given rise to the Collegium system, under which present judges appoint future judges. This paper traces the evolution of the appointment process through the landmark “Three Judges Cases” and subsequent developments, including the invalidation of the National Judicial Appointments Commission (NJAC) in 2015. It highlights how judicial independence, a cornerstone of the Constitution’s basic structure, has been preserved but also rendered vulnerable due to allegations of opacity, nepotism, casteism, and executive interference.

Recent controversies involving scandals of High Court judges and non-elevation of meritorious candidates have reignited the debate on whether the Collegium system adequately safeguards the credibility and integrity of the judiciary. Through interviews with former Chief Justices, Justice Akil Kureshi and Justice Subhasis Talapatra, this paper explores pragmatic reforms aimed at enhancing transparency, reducing delays, and ensuring accountability in judicial appointments. Comparative perspectives, particularly from the United States, are also examined to assess the strengths and limitations of India’s current framework.

Ultimately, the paper argues that while the Collegium system is imperfect, dismantling it in favour of executive dominance risks undermining judicial independence. Instead, reforms that introduce procedural clarity, accountability, and a structured Memorandum of Procedure can strike a balance between transparency and judicial autonomy. The independence of the judiciary, as envisioned by the framers of the Constitution, must remain paramount to preserve democracy and public trust.

Keywords: Judicial appointments, Collegium system, NJAC, judicial independence,

constitutional law, India, executive-judiciary conflict, transparency in judiciary.

Introduction and Historical Background

The process of judicial appointments in India has always been central to the debate on the separation of powers and the independence of the judiciary. The framers of the Constitution sought to strike a delicate balance between executive authority and judicial autonomy while ensuring that appointments to the higher judiciary were made based on merit and impartiality. However, over the years, the interpretation of constitutional provisions relating to appointments has evolved significantly, giving rise to what is now known as the Collegium system.

At the time of India's independence, the founding fathers drew inspiration from the British model, where judges were appointed by the Crown on the advice of the executive. Yet, the Indian Constitution, under Articles 124 and 217, laid down a consultative mechanism in which the President would appoint judges after consultation with the Chief Justice of India (CJI) and other judges as deemed necessary.¹ The intention was not to give absolute power to any one branch of government, but to create a system of mutual checks and balances.

The early years of the Republic witnessed limited conflict between the executive and the judiciary regarding appointments.² The genesis of the Judges Cases began in 1967 by the Judgement of the Supreme Court in the landmark case of *Golaknath v. State of Punjab*³ in which the Court ruled that Parliament could not amend or take away Fundamental Rights enshrined in the Constitution. The judgement was overruled in what is considered to be one of the most landmark cases of the Supreme Court in the case of *Kesavananda Bharati v. State of Kerala*.⁴ In *Kesavananda* the Court ruled that the Parliament had the right to curtail fundamental rights but there were some basic features of the Constitution that could not be altered. This famous case established the "basic structure doctrine", which purports that the Constitution has a basic structure of principles and values that cannot be altered by any Act of the legislature or the executive.

The verdict was not well-received by the government of the day, led by Indira Gandhi, which

¹ M.P. Jain, *Indian Constitutional Law* (8th edn, LexisNexis 2018) 165.

² Granville Austin, *Working a Democratic Constitution: The Indian Experience* (Oxford University Press 2000) 312.

³ *Golaknath & Ors. vs. State of Punjab & Anrs.* (1967) AIR 1643.

⁴ *Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala & Anr.*, (1973) 4 SCC 225.

viewed it as a curtailing of its powers.⁵ What followed was a series of unprecedented events: on 26 April 1973, one of the judges who dissented in the Kesavananda Bharati case, Justice Ajit Nath Ray, was promoted to the position of Chief Justice of India. The convention was that when the Chief Justice of India demits office the senior-most judge, in terms of tenure, next to him shall be appointed as the next Chief Justice. But Ray was not the senior-most judge. His elevation was made possible by superseding three more senior judges – Justice J.M. Shelat, Justice K.S. Hegde, Justice A.N. Grover⁶ - three judges who had ruled in favour of the basic structure doctrine that the government so despised. This was a blatant attack on judicial independence by the executive and is considered to be the darkest phase of Indian Judiciary.

In the First Judges Case i.e, S.P. Gupta v. Union of India (1981),⁷ The Supreme Court held that the word “consultation” in article 124(2) and 217(1) does not mean concurrence. In the event of a disagreement the ultimate power would rest with the Union Government and not the CJI. Thus, in the First Judges’ case the Supreme court acted against its own interests. 12 years later the Supreme court would change its stance. In the year 1993, a 9 judge bench by a majority of 7-2 overruled its 1981 judgement in “Supreme Court Advocates-on-Record Association v. Union of India”⁸, stating that in the event of a disagreement between the President and the Chief Justice of India regarding appointment of judges, it was the Chief Justice whose opinion would not only outweigh but be determinative in this matter. Thus, the Supreme court regained the reigns of appointment of judges in 1993 from the hands of the executive.

This interpretation gave birth to the Collegium system, wherein a group of senior judges, headed by the CJI, would collectively decide on appointments and transfers in the higher judiciary. The process was further refined in the Third Judges Case (1998 Presidential Reference)⁹, which expanded the Collegium to five members. The judiciary thereby assumed near-complete control over appointments, marking a decisive shift from the consultative model originally intended by the Constitution.¹⁰

While the Collegium system was established to protect judicial independence, it soon drew

⁵ “What Is The Collegium System In India?” The Logical Indian, <https://thelogicalindian.com/collegium/>

⁶ A.G. Noorani, ‘Supersession of Judges and Its Impact on Judicial Independence’ (1974) 16(2) Journal of the Indian Law Institute 203.

⁷ S.P. Gupta v. Union of India AIR 1982 SC 149.

⁸ Supreme Court Advocates-on-Record Association v. Union of India (1993) 4 SCC 441.

⁹ Re: Presidential Reference (1998) 7 SCC 739.

¹⁰ D.D. Basu, Shorter Constitution of India (16th edn, LexisNexis 2019) 431.

criticism for its lack of transparency and accountability.¹¹ To address these issues, the Parliament introduced the National Judicial Appointments Commission (NJAC) Act, 2014, through the 99th Constitutional Amendment¹², which sought to replace the Collegium with a commission involving members from both the judiciary and the executive. However, in the landmark Fourth Judges Case (2015)¹³, the Supreme Court struck down the NJAC, holding it unconstitutional as it violated the basic structure of the Constitution by undermining judicial independence.

The Supreme Court's insistence on judicial primacy reaffirmed the importance of an independent judiciary in a constitutional democracy.¹⁴ However, the verdict also acknowledged the flaws within the Collegium system and emphasized the need for greater transparency.¹⁵ Since then, the debate over judicial appointments has continued, with the government often accused of delaying recommendations and selectively approving names, leading to an ongoing tug-of-war between the two branches.¹⁶

In essence, the evolution of judicial appointments in India reflects the nation's constant struggle to balance judicial independence with institutional accountability. The issue remains highly relevant today, as recent controversies involving judicial transfers, non-elevations, and public criticism of the Collegium's functioning show that the quest for an ideal system is still ongoing.

The Evolution of the Collegium System

The interpretation of Articles 124 and 217 of the Indian Constitution¹⁷ has been at the heart of the judicial transformation that led to the creation of the Collegium system. These Articles, which outline the appointment procedure for judges of the Supreme Court and the High Courts respectively, were originally framed to give the President the authority to appoint judges "after consultation" with the Chief Justice of India and such other judges as deemed necessary. However, the ambiguity surrounding the word consultation became the foundation for decades

¹¹ Justice J.S. Verma, 'Judicial Independence and Accountability' (1998) 40(4) Journal of the Indian Law Institute 541.

¹² The Constitution (Ninety-Ninth Amendment) Act 2014.

¹³ Supreme Court Advocates-on-Record Association v. Union of India (2016) 5 SCC 1.

¹⁴ Arghya Sengupta, 'Reforming Judicial Appointments in India' (2016) The Indian Journal of Constitutional Law 54.

¹⁵ Law Commission of India, Report No. 230: Reforms in Judicial Appointments and Transfers (2015) 8.

¹⁶ Rajeev Dhavan, 'Executive Delay and Judicial Appointments: A Constitutional Dilemma' (2017) Economic and Political Weekly 45.

¹⁷ M.P. Jain, Indian Constitutional Law (8th edn, LexisNexis 2018) 673

of judicial debate and constitutional litigation. Through successive landmark decisions—collectively known as the “Judges Cases”—the judiciary redefined this term to assert its primacy over the executive in matters of judicial appointments, thereby laying the groundwork for the present Collegium system.

The first significant interpretation came in *S.P. Gupta v. Union of India* (1981)¹⁸, where the Supreme Court took a view favouring the executive. The Court held that “consultation” did not mean “concurrence,” implying that the President was not bound by the opinion of the Chief Justice of India.¹⁹ This ruling effectively vested the final say in judicial appointments with the central government. The judgment reflected an era when the judiciary, emerging from the shadow of the Emergency, displayed restraint and deference toward the executive’s constitutional role.²⁰ However, the aftermath of the decision soon revealed its flaws, as the executive began to exercise considerable discretion in appointments and transfers, often guided by political considerations.²¹ Many scholars argued that *S.P. Gupta* represented an overcorrection to perceived judicial overreach and compromised the very independence the judiciary sought to protect.²²

Twelve years later, in *Supreme Court Advocates-on-Record Association v. Union of India* (1993), the Court decisively shifted its stance.²³ A nine-judge bench overruled the 1981 verdict, holding that in matters of judicial appointments, the opinion of the Chief Justice of India would have primacy.²⁴ This interpretation of “consultation” effectively transformed it into “concurrence.” The Court reasoned that judicial independence, a basic feature of the Constitution, could not be safeguarded if the executive retained control over the appointment process.²⁵ As a result, the Court created an institutional mechanism—the Collegium—comprising the CJI and the two senior-most judges of the Supreme Court, to collectively recommend appointments and transfers.²⁶ This judgment was celebrated as a reassertion of judicial autonomy, but it also marked the judiciary’s self-empowerment through interpretation,

¹⁸ *S.P. Gupta v. Union of India* AIR 1982 SC 149

¹⁹ D.D. Basu, *Shorter Constitution of India* (16th edn, LexisNexis 2019) 436.

²⁰ Granville Austin, *Working a Democratic Constitution* (Oxford University Press 2000) 311.

²¹ A.G. Noorani, ‘The Supersession of Judges’ (1974) 16(2) *Journal of the Indian Law Institute* 203.

²² Soli Sorabjee, ‘Judicial Appointments and the Separation of Powers’ (1982) 24 *Indian Bar Review* 15.

²³ Upendra Baxi, *The Indian Supreme Court and Politics* (Eastern Book Company 1980) 198.

²⁴ *Supreme Court Advocates-on-Record Association v. Union of India* (1993) 4 SCC 441.

²⁵ Law Commission of India, Report No. 230: *Reforms in Judicial Appointments* (2015) 6.

²⁶ Sujit Choudhry, *The Oxford Handbook of the Indian Constitution* (Oxford University Press 2016) 682.

raising questions about the limits of judicial law-making.²⁷

The contours of the Collegium were clarified further in the *Re: Presidential Reference (1998)*, often referred to as the Third Judges Case.²⁸ Responding to a reference made by the President under Article 143, the Supreme Court expanded the Collegium to a five-member body—comprising the CJI and the four senior-most judges of the Supreme Court. The Court justified this expansion on the ground that collective decision-making would minimise individual bias and ensure a broader institutional perspective.²⁹ Importantly, it also laid down that if the Collegium reiterated a recommendation after reconsideration, the executive would be constitutionally bound to accept it.³⁰ This ruling cemented the judiciary's dominance over appointments, turning what was once a consultative exercise into a judicially controlled procedure.

After 1998, the Collegium system became the *de facto* and *de jure* procedure for judicial appointments in India.³¹ Although the Constitution itself remains silent about such a mechanism, the Supreme Court's interpretations gave it constitutional legitimacy. In subsequent years, the Court repeatedly reaffirmed its commitment to protecting judicial independence through this model, notably in cases such as *In re Special Reference No. 1 of 2002* and *Supreme Court Advocates-on-Record Association v. Union of India (2016)*. However, even as the judiciary consolidated its control, criticisms began to surface regarding the lack of transparency, accountability, and diversity within the Collegium's decision-making. Scholars like Arghya Sengupta and Abhinav Chandrachud have argued that while judicial interpretation succeeded in insulating appointments from political interference, it simultaneously created an insulated elite system that operated without external checks.

In 2014, Parliament enacted the 99th Constitutional Amendment and the National Judicial Appointments Commission Act³² to replace the Collegium with a six-member commission that included representatives of the executive and civil society. However, the Supreme Court, in its

²⁷ Justice J.S. Verma, 'Judicial Independence and Accountability' (1998) 40(4) *Journal of the Indian Law Institute* 543

²⁸ P.P. Rao, 'Collegium System and Judicial Accountability' (1999) *Supreme Court Cases (Journal Section)* 7.

²⁹ *Re: Presidential Reference (1998)* 7 SCC 739.

³⁰ Justice M.N. Venkatachaliah, *Constitutional Law and Judicial Process* (Universal Law Publishing 2010) 257.

³¹ Ruma Pal, 'An Independent Judiciary and the Collegium System' (2015) *NUJS Law Review* 12.

³² The National Judicial Appointments Commission Act, 2014, No. 40 of 2014, India Code (2014).

2015 judgment³³ striking down the NJAC, reaffirmed that judicial primacy in appointments was integral to the basic structure of the Constitution. While the Court acknowledged the Collegium's opacity, it held that any mechanism allowing executive dominance would threaten judicial independence. Thus, the very interpretation of Articles 124 and 217 once again evolved—not by amending the text, but by reinforcing the judiciary's interpretative supremacy.

Challenges and Controversies in the Appointment Process

The Indian judiciary, despite its celebrated independence, has repeatedly found itself under scrutiny for the lack of transparency and consistency in its appointment processes. The collegium system, intended to shield judicial appointments from political interference, has paradoxically given rise to a host of issues including opacity, favouritism, and allegations of nepotism.³⁴ These controversies are not isolated incidents; rather, they reveal a systemic problem that challenges the balance between judicial independence and institutional accountability.³⁵

3.1 Controversial Appointments and the Question of Transparency

The controversy surrounding judicial appointments is best illustrated by several high-profile instances that brought the collegium system into public debate.³⁶ One of the most prominent examples is the case of Justice Akil Kureshi.⁴ Justice Akil Kureshi was appointed as a judge of the Gujarat High Court in 2004. In 2010, Justice Kureshi had sent Amit Shah, then a minister of Gujarat, to police custody in the controversial Sohrabuddin fake encounter case.³⁷ It is alleged by many in the legal fraternity that Amit Shah and thereby the current Union government kept this in mind and sought revenge when the opportunity arose.

In 2018 Justice Kureshi who was the senior most judge after the Chief Justice in the Gujarat High Court was expected to be appointed as the Acting Chief Justice when the then Chief Justice Subhash Reddy was recommended to be elevated to the Supreme Court. Instead, he was transferred to the Bombay high court, and Justice A.S. Dave, the senior-most judge after Justice Kureshi, was appointed the Acting Chief Justice.³⁸

³³ Supreme Court Advocates-on-Record Association v. Union of India, (2016) 5 SCC 1.

³⁴ M.P. Jain, Indian Constitutional Law (8th edn, LexisNexis 2018) 711.

³⁵ D.D. Basu, Commentary on the Constitution of India (LexisNexis 2020) 1123.

³⁶ S.P. Gupta v. Union of India AIR 1982 SC 149.

³⁷ The Hindu (2010) 'CBI gets two-day custodial remand of Amit Shah', *The Hindu*, 7 August.

³⁸ Hindustan Times (2023) 'Akil Kureshi to be acting Chief Justice of Gujarat High Court till his transfer', *Hindustan Times*, 14 March.

After the Chief Justice of India expressed his displeasure over the move, the Centre quickly rescinded its notification, and appointed Justice Kureshi as the Acting Chief Justice of the Gujarat High Court until he took over as the Judge of the Bombay high court, within two weeks. That was followed by the even more controversial recommendation of Justice Kureshi as Chief Justice of the Madhya Pradesh High Court that was made by the Supreme Court Collegium. The central government sat over the recommendation that was made in May 2019 for three months and then rejected the recommendation and sent it back for reconsideration on the 27th of August 2019. The Supreme court Collegium instead of reiterating his name for the appointment changed their stance and now recommended him as Chief Justice of the High Court of Tripura.³⁹

In his autobiography titled 'Justice for the Judge', former Chief Justice of India Justice Ranjan Gogoi who headed the Collegium when the proposal for Justice Kureshi's elevation as Chief Justice of Madhya Pradesh High Court was rejected wrote as follows "In the process of consultation, the law minister in his letter dated 23 August 2019 expressed the objection of the Union government to the recommendation. The objection was based on a negative perception flowing from certain judicial orders passed by Justice Kureshi. It would have done nobody any good if the objection of the government had come into the public domain. The learned judge, at that time, still had several years of service left.

I, therefore, requested a senior member of the Collegium to take up the matter with the government. It is to the credit of all concerned that we could avoid a confrontation between the two constitutional bodies. Justice Kureshi's recommendation was modified and he was appointed Chief Justice of the Tripura High Court on 8 November 2019."⁴⁰

The Supreme Court Collegium failed to elevate a single judge to the apex court during the 14 months tenure of Chief Justice S.A. Bobde. There have been insider reports suggesting that this happened because the Collegium could not reach consensus on the appointment of Justice Kureshi as a Supreme Court Judge. Justice R.F.Nariman who was the senior-most judge after the Chief Justice and thereby a member of the Collegium decided to not approve any other name until the name of Justice Kureshi was recommended for elevation. This continued until

³⁹ SC Observer (n.d.) 'Justice Kureshi transfer reconsidered', *SC Observer*.

⁴⁰ India Today (2021) 'Former CJI Ranjan Gogoi's autobiography: reflections on collegium tenure', *India Today*, 8 December.

the superannuation of Justice Nariman on the 12th of August 2020. In his farewell speech Justice Nariman said "I believe there is a legitimate expectation in the people of India and the litigating public to get a certain quality of justice from this final court. For that, it is very clear, merit must predominate, subject of course to other factors. But merit always comes first."

The Supreme Court Collegium headed by Justice N.V.Ramanna on August 17 for the first time recommended the names of 8 Judges and 1 senior advocate as judges of the apex court. For the first time the Collegium also added 3 female judges in that recommendation, one of whom, Justice B.V.Nagarathna shall take oath as the first female Chief Justice of India in 2027. While this was heavily applauded by everyone in the legal fraternity and the public, one point that also raised everyone's eyebrows was overlooking Justice Kureshi in those 9 names. Justice Kureshi was the 2nd senior-most judge in the All India list of seniority of High Court judges at that time.⁴¹

Justice Bela Trivedi was one of the 3 female judges elevated by the Collegium among the 9 appointees. Justice Trivedi was elevated to the bench of Gujarat High court on 17th February 2011 and was 67th in the all India list of High Court judges. Justice Kureshi was 3 months her senior in age but 7 years her senior as a High court judge and preceded her by 65 in All India seniority.

Justice Kureshi demitted office on attaining superannuation on the 6th of March 2022. In his retirement speech which he made during the full court reference he had said "Recently, a former Chief Justice of India has written his biography (probably referring to "Justice for the Judge" by former CJI Ranjan Gogoi). I have not read it but going by the media reports he has made certain disclosures. Regarding changing my recommendation for Chief Justice of MP High Court to Tripura High Court, it is stated that the Government had some negative perceptions about me based on judicial opinions. As a judge of the Constitutional Court whose most primary duty is to protect the fundamental and human rights of the citizens, I consider it a certificate of independence."⁴²

Justice Kureshi's non elevation to the Supreme court will be remembered in history as another dark chapter in the independence of judiciary.

⁴¹ The Hindu (2024) 'Centre clears all nine names recommended by the Supreme Court Collegium', *The Hindu*.

⁴² Hindustan Times (2022) 'Leaving with pride intact: Justice Kureshi', Hindustan Times.

Similarly, the case of Justice S. Muralidhar drew nationwide attention when he was transferred from the Delhi High Court to the Punjab and Haryana High Court in February 2020.⁴³ The transfer order came just days after his bench had delivered a strongly worded judgment directing the Delhi Police to take action against political leaders accused of hate speech during the Delhi riots. Critics viewed the timing of his transfer as indicative of executive displeasure, while the government maintained it was a routine administrative decision. This incident reignited debates about the lack of transparency in the transfer process and the potential chilling effect such actions can have on judicial independence.

Earlier examples, such as those involving Justice A.M. Bhattacharjee and Justice V. Ramaswami, had already exposed vulnerabilities in the system when allegations of corruption and impropriety surfaced.⁴⁴ These controversies highlight that while the collegium system may have succeeded in curtailing overt executive dominance, it has failed to ensure transparency and consistency in judicial appointments.

3.2 Lack of Elevation of Meritorious Candidates

A recurring criticism of the collegium process is the non-elevation of highly qualified judges and advocates.⁴⁵ The absence of a transparent and codified selection mechanism allows personal and institutional biases to overshadow merit. Legal scholars have pointed out that many capable jurists have been overlooked without clear justification, perpetuating a perception that the system favours conformity over excellence. The cases of Justice Kureshi and Justice Muralidhar serve as cautionary examples of how merit and seniority can be undermined by political sensitivities and institutional hesitations.

Furthermore, the lack of objective evaluation criteria and the absence of diversity among the appointees have led to a narrowing of perspectives within the higher judiciary.⁴⁶ Committees have long recommended a structured and transparent mechanism to assess judicial competence, but such reforms remain unimplemented.⁴⁷

⁴³ New Indian Express (2020) 'Judge hearing Delhi riots case moved to Punjab and Haryana HC; Congress hits out at Modi government', New Indian Express.

⁴⁴ In re Justice V. Ramaswami (Inquiry), (1993) 4 SCC 441.

⁴⁵ Granville Austin, *Working a Democratic Constitution* (Oxford University Press 2000) 325.

⁴⁶ Justice M.N. Venkatachaliah, *Constitutional Law and Judicial Process* (Universal Law Publishing 2010) 268.

⁴⁷ Supreme Court Advocates-on-Record Association v. Union of India, (2016) 5 SCC 1.

3.3 Nepotism and the Problem of Judicial Dynasties

The concentration of judicial appointments among a select group of families has raised legitimate concerns about nepotism.⁴⁸ Studies reveal that a significant number of judges in High Courts and the Supreme Court come from established judicial lineages, which has created an informal system of privilege.⁴⁹ Although familial background need not automatically negate merit, the lack of equal access for first-generation lawyers raises questions about the inclusivity of the judiciary. Prominent jurists such as Fali Nariman and Justice Ruma Pal have criticised this culture of insularity, arguing that it diminishes public faith in the institution.⁵⁰

The collegium's opacity compounds this issue, as there are no publicly available records explaining the rationale behind specific appointments or rejections. The absence of such transparency has allowed perceptions of nepotism to persist, undermining the moral authority of the judiciary.⁵¹

3.4 Executive Interference and the Struggle for Institutional Balance

The interplay between the judiciary and the executive continues to be marked by tension and mistrust.⁵² Despite the collegium's constitutional primacy, the executive retains a degree of influence through delays, selective objections, or non-implementation of recommendations.⁵³ The confrontation reached its peak during the enactment of the National Judicial Appointments Commission (NJAC) Act, 2014, which sought to replace the collegium with a commission comprising judicial and non-judicial members.⁵⁴ In *Supreme Court Advocates-on-Record Association v. Union of India*, (2016) 5 SCC 1, the Supreme Court struck down the NJAC as unconstitutional, reaffirming judicial independence as part of the basic structure of the Constitution.⁵⁵

However, this verdict also highlighted a paradox — while the judiciary successfully resisted external interference, it remained resistant to internal reform. The continued absence of a transparent Memorandum of Procedure (MoP) reflects an institutional stalemate between the

⁴⁸ Law Commission of India, Report No. 230: Reforms in Judicial Appointments (2015) 8.

⁴⁹ Nick Robinson (2015) 'Judicial Appointments in India: A Theoretical Analysis', Harvard Law School Program on the Legal Profession.

⁵⁰ P.P. Rao (1999) 'Collegium System and Judicial Accountability', SCC (Journal).

⁵¹ N. Ram (2022) 'A Clash of Powers: The Executive and the Judiciary', The Hindu.

⁵² Law Commission of India (2015) *Report No. 230: Reforms in Judicial Appointments*.

⁵³ Sujit Choudhry (2016) *The Oxford Handbook of the Indian Constitution*, Oxford University Press.

⁵⁴ The Constitution (Ninety-Ninth Amendment) Act, 2014 (NJAC Act).

⁵⁵ *Supreme Court Advocates-on-Record Association v. Union of India* (2016) 5 SCC 1.

judiciary and the executive, leaving the process vulnerable to delay and politicisation.

Contemporary Debates and Comparative Perspectives

The debate surrounding judicial appointments in India has evolved into one of the most contentious constitutional questions in recent years. The collegium system, designed to preserve judicial independence, has increasingly come under criticism for its opacity, subjectivity, and lack of institutional accountability.⁵⁶ While the Supreme Court has repeatedly upheld the system's primacy, dissenting voices within the judiciary, the executive, and academia continue to highlight its inherent flaws.⁵⁷ These debates have only intensified in light of recurring controversies involving the non-elevation or delayed appointments of judges, exposing fault lines between the judiciary and the executive.⁵⁸

4.1 Criticisms of the Collegium System

The collegium system has faced sustained criticism from within and outside the legal fraternity. Former judges and senior advocates have pointed out that it lacks transparency in the selection and transfer of judges, with no publicly available criteria to assess merit.⁵⁹ The process, conducted behind closed doors, has often been seen as arbitrary and prone to favouritism.⁶⁰

Prominent among the recent controversies was the non-elevation of Justice Akil Kureshi, whose transfer to smaller High Courts despite seniority sparked nationwide debate.⁶¹ Likewise, the transfer of Justice S. Muralidhar soon after his judgment in the Delhi riots case was perceived as an instance of executive overreach and intimidation.⁶² These incidents underscore concerns that political sensitivities sometimes influence the collegium's decisions, contradicting the principle of judicial independence.⁶³

Critics also argue that the collegium has perpetuated a culture of judicial exclusivity.⁶⁴ The tendency to select candidates from within a narrow professional and social circle has led to

⁵⁶ M.P. Jain, *Indian Constitutional Law* (8th edn, LexisNexis 2018) 712.

⁵⁷ D.D. Basu, *Commentary on the Constitution of India* (LexisNexis 2020) 1125.

⁵⁸ Rajeev Dhavan, 'Judicial Appointments and the Politics of Interpretation' (2016) *EPW* 33.

⁵⁹ Ruma Pal, 'An Independent Judiciary and the Collegium System' (2015) *NUJS Law Review* 12

⁶⁰ Law Commission of India, *Report No. 230: Reforms in Judicial Appointments* (2015) 6

⁶¹ Gautam Bhatia, 'Justice Akil Kureshi and the Question of Judicial Independence' (2019) *The Hindu* (New Delhi, 12 November 2019).

⁶² Krishnadas Rajagopal, 'Justice Muralidhar's Transfer Sparks Debate' (2020) *The Hindu* (27 February 2020)

⁶³ A.G. Noorani, 'The Collegium and the Executive' (2019) *Frontline* (7 September 2019).

⁶⁴ Fali S. Nariman, *India's Legal System: Can It Be Saved?* (Penguin 2006) 201.

allegations of nepotism, with several appointments involving relatives of sitting or retired judges. Justice Ruma Pal famously described the process as “one of the best-kept secrets in the country.”⁶⁵ The lack of objective evaluation mechanisms and the absence of diversity — particularly gender and regional representation — continue to weaken public confidence in the judiciary.⁶⁶

4.2 The Government’s Stance and the Push for Reform

The executive has repeatedly argued that the collegium system operates without accountability and lacks the transparency expected of constitutional institutions.⁶⁷ The government’s principal contention is that judicial appointments, being a matter of public importance, cannot be confined to a closed group of judges.⁶⁸ In 2014, Parliament enacted the Constitution (Ninety-Ninth Amendment) Act, 2014 and the National Judicial Appointments Commission (NJAC) Act, 2014, seeking to replace the collegium with a more participatory system that included representatives of the executive and the civil society.⁶⁹

However, in *Supreme Court Advocates-on-Record Association v. Union of India* (2016) 5 SCC 1, the Supreme Court struck down the NJAC as unconstitutional, holding that judicial primacy in appointments formed part of the basic structure of the Constitution.⁷⁰ The judgment was hailed by many as a reaffirmation of judicial independence, but it also triggered renewed calls for internal reform.⁷¹

Since then, tensions between the judiciary and the executive have persisted. Law Ministers — most notably Kiren Rijiju in 2022 — have criticised the collegium for lacking transparency and for allegedly encroaching upon executive functions.⁷² The government has also delayed the approval of collegium recommendations, effectively exercising a “pocket veto.”⁷³ Such delays, which have affected the appointments of several High Court and Supreme Court judges, have

⁶⁵ Justice Ruma Pal, ‘Transparency and Accountability in Judicial Appointments’ (2014) *Indian Bar Review* 92.

⁶⁶ Sujit Choudhry (ed), *The Oxford Handbook of the Indian Constitution* (OUP 2016) 695.

⁶⁷ Kiren Rijiju, ‘Judicial Appointments and the Need for Reform’ (Speech, Law Day, New Delhi, 26 November 2022).

⁶⁸ Ministry of Law and Justice, *Press Release on Judicial Appointments*, Government of India (2022).

⁶⁹ P.P. Rao, ‘Collegium System and Judicial Accountability’ (1999) *SCC (Journal Section)* 9.

⁷⁰ Granville Austin, *Working a Democratic Constitution* (Oxford University Press 2000) 325.

⁷¹ Fali S. Nariman, *India’s Legal System: Can It Be Saved?* (Penguin 2006) 198.

⁷² Justice J.S. Verma, ‘Judicial Independence and Accountability’ (1998) 40(4) *Journal of the Indian Law Institute* 545.

⁷³ Justice M.N. Venkatachaliah, *Constitutional Law and Judicial Process* (Universal Law Publishing 2010) 268.

led to administrative stagnation and raised questions about the sincerity of executive compliance.⁷⁴

4.3 Comparative Perspectives: The U.S. and U.K. Models

A comparative analysis of the judicial appointment systems in the United States and the United Kingdom provides valuable insights for reforming India's framework. In the U.S., federal judges, including Supreme Court Justices, are nominated by the President and confirmed by the Senate.⁷⁵ This model ensures democratic oversight but has often been criticised for politicising the judiciary, as confirmation hearings increasingly reflect ideological divides. The recent appointments of Justices Amy Coney Barrett and Brett Kavanaugh highlight how political affiliation and public opinion can dominate judicial selection.⁷⁶ Despite its flaws, the U.S. model demonstrates a high degree of transparency and accountability, as proceedings are conducted in the public eye.⁷⁷

In contrast, the U.K. adopted the Constitutional Reform Act, 2005, which created the Judicial Appointments Commission (JAC).⁷⁸ The JAC is an independent statutory body composed of judges, lawyers, and lay members that recommends candidates based on merit and diversity.⁷⁹ Its selection process is public, structured, and guided by statutory criteria — a sharp contrast to India's collegium system. Scholars have suggested that India could draw lessons from the JAC model to enhance transparency while preserving judicial independence.⁸⁰

Both systems illustrate the tension between independence and accountability. Whereas the U.S. leans towards democratic involvement, the U.K. emphasizes meritocratic professionalism.⁸¹ A hybrid system that blends these approaches — incorporating public scrutiny and institutional checks — could help India address the chronic opacity of its current mechanism.

4.4 Insights from Hon'ble Justice Akil Kureshi

In an interview conducted for this research, Justice Akil Kureshi highlighted several critical

⁷⁴ Granville Austin, *Working a Democratic Constitution* (Oxford University Press 2000) 328.

⁷⁵ U.S. Constitution, Art II, § 2, cl. 2.

⁷⁶ Jeffrey Toobin, *The Nine: Inside the Secret World of the Supreme Court* (Anchor 2008) 144.

⁷⁷ Stephen B. Burbank and Barry Friedman (eds), *Judicial Independence at the Crossroads* (Sage 2002) 65.

⁷⁸ *Constitutional Reform Act 2005* (UK) c 4.

⁷⁹ Judicial Appointments Commission, *Annual Report 2022* (JAC, London 2022).

⁸⁰ Sujit Choudhry (ed), *The Oxford Handbook of the Indian Constitution* (OUP 2016) 701.

⁸¹ Fali S. Nariman, *India's Legal System: Can It Be Saved?* (Penguin 2006) 203.

issues in the current appointments system:

1. Excessive delays after High Court recommendations

Justice Kureshi noted that once a High Court recommends a candidate, the process often drags on for 1.5 to 2 years, leaving the candidate in a state of uncertainty. This prolonged limbo not only disrupts planning for the candidate's professional future but also harms their practice.

He recommended a six-month outer limit for either approving or rejecting a recommendation.

2. Candidates are kept in complete darkness

According to His Lordship, candidates are currently unaware of the stage at which their file stands. They rely on rumours circulating in court corridors. Justice Kureshi proposes that candidates should be formally informed about the status of their recommendation at each stage.

3. Candidates are not informed when they are rejected

Justice Kureshi strongly emphasised that candidates must be notified of any rejection so that they can continue their practice without psychological uncertainty.

4. Publication of Collegium resolutions—benefit and drawback

While he acknowledged that publishing resolutions enhances transparency, he warned that publicising reasons for non-selection severely damages reputations, especially for lawyers who continue in practice.

5. Need for a formal complaint mechanism

Justice Kureshi noted that candidates often face anonymous allegations amounting to character assassination.

He recommends the creation of a formal High Court complaints cell, which would:

- accept only non-anonymous complaints,
- require supporting material, and
- forward only substantiated allegations to the collegium.

6. Delay in finalising the Memorandum of Procedure (MoP)

Despite the NJAC judgment directing the Government to finalise the MoP in consultation with the CJI, nearly a decade has passed without agreement.

Justice Kureshi recommends creating a multi-stakeholder panel, including:

- Supreme Court representatives,
- Chief Justices of High Courts,
- The Executive,

- Leader of Opposition,
- Eminent persons from public life.

This panel should collectively design a modern appointments procedure.

7. High rejection rate of High Court recommendations

His Lordship observed that the Supreme Court often accepts only a handful of names recommended by High Courts, despite the extensive efforts made by High Court collegiums to persuade capable candidates. He suggests that the Supreme Court and High Courts should collaborate to narrow perception gaps, reduce rejections, and ensure the Government promptly acts on reiterated recommendations.

8. Insights from Hon'ble Justice Subhasis Talapatra

Hon'ble Justice Subhasis Talapatra also offered insights informed by comparative perspectives. He pointed to the United States judicial appointments model, particularly the role of the Senate Judiciary Committee, where:

- nominations undergo extensive scrutiny lasting over a year,
- nominees provide comprehensive disclosures,
- the FBI conducts background checks,
- the American Bar Association provides professional ratings, and
- public hearings allow senators to question nominees on judicial philosophy and competence.

Justice Talapatra noted that while the U.S. model may not be directly transplantable to India, its emphasis on documentation, verification, and structured scrutiny could guide Indian reforms.

He further recommended that Collegium discussions be formally recorded—not for public release, but to maintain internal transparency, reduce bias, and create an institutional audit trail.

Conclusions and Recommendations for Reform

The debate surrounding judicial appointments in India reflects a wider struggle to balance judicial independence with democratic accountability. Over the past several decades, India has experimented with multiple models—from executive primacy in the early years to the present collegium system shaped by the Three Judges Cases. While the collegium was crafted to protect the judiciary from political interference, its evolution has revealed serious structural deficiencies such as opacity, inconsistency, and lack of measurable standards for evaluating merit. The controversies analysed throughout this research—including the non-elevation of

Justice Akil Kureshi and the transfer of Justice S. Muralidhar—highlight deep and persistent tensions that demand institutional attention.

It is evident from the preceding chapters that although judicial primacy is vital for safeguarding independence, the collegium's functioning suffers from procedural weaknesses that undermine public confidence. The Supreme Court's decision to strike down the National Judicial Appointments Commission (NJAC) reaffirmed the basic structure doctrine but simultaneously underscored the judiciary's obligation to reform its own internal processes. The legitimacy of the collegium today depends not merely on insulating the judiciary from executive domination, but on demonstrating its willingness to embrace transparency, accountability, and institutional integrity.

Conclusion

Judicial independence is indispensable to India's constitutional democracy, yet independence without transparency risks breeding opacity and mistrust. The collegium system, though constitutionally entrenched, requires meaningful internal reform to align with modern expectations of accountability. A reformed collegium supported by objective criteria, transparent procedures, and institutional infrastructure offers the most balanced and constitutionally faithful path forward. Ultimately, the goal is not to abandon judicial primacy, but to complement it with mechanisms that enhance public trust. A modernised collegium system—transparent, diverse, accountable, and administratively supported—can honour both constitutional principles and the aspirations of a democratic society.

Recommendations

Based on doctrinal analysis, case studies, judicial observations, and contemporary scholarship, this research concludes that structural reform of the judicial appointment system is essential. The following recommendations aim to strengthen independence while enhancing accountability and transparency:

1. Establish a Judicial Appointments Secretariat

A permanent, professional secretariat should support the collegium by gathering performance data, preparing evaluation dossiers, conducting background verification, and ensuring procedural continuity. This would institutionalise the process and reduce the reliance on oral assessments or personal impressions.

2. Publish Clear Selection Criteria

Transparent criteria—including integrity, quality and consistency of judgments, professional efficiency, leadership ability, and constitutional sensitivity—should be publicly available. Clear benchmarks reduce arbitrariness, promote fairness, and help build public confidence in the appointment process.

3. Introduce Limited Oversight

While political involvement must remain restricted to preserve independence, carefully structured oversight by eminent persons or senior advocates can increase legitimacy. Such participation, without granting veto powers, would counter perceptions of insularity within the collegium.

4. Impose Time-Bound Executive Response

A strict 60–90 day timeline must be enforced for the executive to respond to collegium recommendations. This would prevent delays, reduce vacancies, and ensure that the executive does not indirectly influence appointments through inaction.

5. Increase Diversity and Representation

Gender diversity, representation from marginalised communities, inclusion of first-generation lawyers, and regional balance are essential for a judiciary that reflects the demographic and social realities of India. Increasing diversity enhances legitimacy and enriches judicial perspectives.

6. Publish Redacted Collegium Resolutions

Releasing non-sensitive portions of collegium resolutions would strengthen transparency while protecting individual reputations. This practice would allow the public to understand the rationale behind appointments without compromising confidentiality.