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# UNDERSTANDING THE INDIAN COLLEGIUM SYSTEM: A COMPREHENSIVE OVERVIEW

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## I. ABSTRACT:

The entire approach followed for appointing and transferring of judges in the Supreme and High Court has been questioned for its transparency and answerability. It is crucial for a fair trial that the judges must be independent, competent, and impartial. Thus, the adopted process for the appointment of judges shall be free from all types of direct or indirect influences from either the judiciary or government. The Indian Constitution of 1860 empowers the president for the appointment of judges after consulting with the Chief Justice of India. This study is based on doctrinal research to examine the effectiveness of the adopted appointment process i.e., collegium system, and to analyze the merits and demerits of the said process. This study is done in three steps viz. collecting data from different sources such as SCC Online, and Manupatra, analyzing the data, and finally report writing. This study traces the history of the collegium system and the long hassle between the judiciary and executive. It is argued that the collegium system has originated and evolved through various landmark judgments, namely first, second, third, and fourth judge's cases. Because of the pitfalls in the collegium system the executive, through the ninety-ninth amendment introduced the National Judicial Appointment Commission Act of 2014 to replace it. However, it was declared unconstitutional in the fourth judge's case. It is argued that the collegium system separates the judiciary from the executive safeguarding its decency and autonomy intact which also prevents further politization and biased judgments, but it may be subjected to nepotism and favoritism and lacks transparency and accountability, proving that there is a strict need to reform it. Furthermore, this paper analyzes the application of RTI, considering the collegium

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system in India. This study concludes with suggestions that make the collegium system more transparent and accountable.

## II. KEYWORDS:

Fair Trial, Judiciary, collegium System, Transparency, Indian Constitution.

## III. INTRODUCTION:

The procedures followed for appointing judges for the higher judiciary have always been controversial from the very independence of the country. Currently, India follows a well-established process called as collegium system for appointing and transferring judges to higher judiciary. The main intent behind it was to safeguard the judiciary's independence and integrity. It protects the judiciary from any type of bias and direct and indirect influence of either political or non-political nature.<sup>3</sup> However, still, it remains controversial. It was established and evolved through various landmark judgments, namely the "Three Judges' Case" for appointing and transferring judges for the Supreme and High Court.<sup>4</sup>

The collegium system has fully given the complete authority to the judiciary for appointing and transferring of judges. However, the Indian Constitution of 1860 was the opposite of it and solely empowered the president to appoint judges after consulting with the CJI. The term "consultation" in Art. 124(2) and 217 of the Indian Constitution is now interpreted as "concurrence" which means the recommendation given by the collegium is going to be obligatory on the president.<sup>5</sup> The CJI with four other senior judges constitutes the Apex Court collegium, while the High Court collegium is comprised of the CJI with two other senior judges of the same court.<sup>6</sup> They make recommendations to the president for appointing and transferring judges and he is bound to accept the recommendations.

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<sup>3</sup> Sapna Kumari, *Understanding the Collegium System in India*, 6 IJLMH 3104, 3110 (2023).

<sup>4</sup> Dr. Dharmendra Kumar Singh and Dr. Amit Singh, *Appointment of Judges and Overview of Collegium System in India: A Need to Reform*, 5 INT. J. ADV. RES. 900, 900-901(2017).

<sup>5</sup> Supreme Court Advocates on Record Association v. Union of India, (1993) 4 SCC 441.

<sup>6</sup> Aaj Sikri and Ayush Lahoti, *Debating the Collegium System: A Comparative Analysis*, MANUPATRA (Jan. 14, 2024, 6:15 PM), [Debating the Collegium System: A Comparative Analysis \(manupatra.com\)](https://www.manupatra.com).

Accordingly, this study is divided into four chapters. The first part deals of the study deals with the procedure established for appointing judges in the Indian Constitution. Articles 124(2) and 217 of the Indian Constitution solely empower the President to appoint judges in higher courts after consulting with CJI. Second, this study traces the history and evolution of the procedures for appointing judges and the long hassle between the executive and judiciary. Indian Constitution solely empowers the president to appoint judges and the Collegium System is not mentioned anywhere and this part deals with the origin and development of the same. Third, the collegium system is analyzed with the application RTI. The office of the CJI and the final resolutions of the collegium signed by all the members come under the purview of RTI. Fourth, the merits of implementing a collegium system for appointments have been analyzed. It is argued that the collegium helps to maintain judicial independence and integrity and also prevents biased judgments. Fifth, this study analyzes the flaws and argues that this procedure is not transparent and accountable which can create a chance of favoritism and nepotism, and lastly concludes with suggestions.

This paper aims to provide a comprehensive study of the procedure followed for appointing and transferring judges for both SC and HC and its development through various judicial pronouncements, what are the irregularities and why this collegium system is criticized by critics, what are the merits and flaws in the collegium system, and suggests some recommendations that make the approach more credible and answerable and safeguard the independent and integrity of the judiciary from influences. This study attempts to discuss the concept of the collegium system from the lens of law and also sheds light on how the collegium system can be reformed. This paper is relevant to the open discussion of the collegium system and its best reform. The paper's objective is to offer a new perspective from which the concept of the collegium system is looked at.

#### ❖ **Research Methodology:**

Any research's reliability and trustworthiness are solely dependent upon the method that has been used to examine the issue. Keeping the issue in mind, the researcher adopted a multi-pronged strategy to collect data from different sources and

coordinate and establish linkages to highlight the issue. To examine and for a better understanding of the collegium system, purely doctrinal research was conducted. This study is descriptive and critical.

The study was conducted in three steps: data collection, data analysis, and report writing. Both primary and secondary data were used to study this topic. This research involved a critical and comparative analysis of qualitative information obtained from books, articles, judgments, websites, newspapers, and law journals. This information was collected from online databases such as SCC Online, Manupatra, and other web resources.

❖ **Research Objective:**

- To explore the landscape of the collegium system.
- To explore the merits and flaws of the collegium system.
- To track the evolution of the collegium system.
- To explore the collegium with the application of RTI.
- To explore the reforms to make the process more transparent and accountable.

❖ **Research Question:**

- What is the collegium system and its origin and development?
- Does the Collegium fall under the purview of RTI?
- What are the merits and demerits of the appointment of judges through the collegium system?
- What are the reforms needed to make the process transparent and more answerable?

❖ **Literature Review:**

1. **Sapna Kumari, *Understanding the Collegium System in India (2023)***:- The collegium system is the procedure of appointing and transferring judges in upper courts which had originated and developed through various landmark judgments. This collegium system is full of flaws as it is non-transparent, and judges cannot be held accountable for their decisions. This entire process is done in secrecy, so there may be a chance of nepotism and favoritism. Finally,

it deals with the reforms that can make this process more transparent and accountable.

2. **Dr. Dharmendra Kumar Singh & Dr. Amit Singh, *Appointment of Judges and Overview of Collegium System in India: A Need to Reform (2017)***:- This study analyzed the procedure of appointing and transferring judges in upper judiciary. The four judges' cases had fully changed the landscape of the appointment procedure. Further, the author critically analyzed different judgments and NJAC. It also describes the composition of the collegium and finally concludes with the suggestion that make this process more transparent and accountable.
3. **Lalith Kumar & Mahima Makhija, *Collegium System:- The Unveiled Darkness (2017)*** - The researcher argued that because of the opaque and non-transparent nature of the procedure, the legal professionals and judges had encountered various social and legal challenges. He further critically evaluates the advantages and shortcomings of it and also offers various measures to make it better.
4. **Varun Chhachhar, *Appointment of Judges in India Through Collegium System: A Critical Perspective (2018)***:- The researcher explores the appointment procedure of judges for higher judiciary. This study critically analyzes the cases of political interference and judicial corruption where judges are appointed neglecting All India Seniority. Furthermore, it critically analyzes the collegium system as it lacks transparency and accountability.

#### IV. THE INDIAN CONSTITUTION AND APPOINTMENT OF JUDGES:

The Indian Constitution of 1860 laid down different provisions for appointing and transferring of judges to the higher judiciary. Art. 124(2) and 217 of the Constitution of India solely empowers the president to appoint the judges for both SC and HC. For the appointment of judges to the Apex Court the president shall first undergo consultation with the CJI while for appointment in the High Court, he shall consult it with the CJI and the Governor of the state and then appoint.

Art. 124(2) states that to appoint the next CJI, the president shall first undergo consultation with Supreme and High Court judges, whom he may deem necessary,

and to appoint judges he shall first consult with CJI and other judges if he wishes. Here, the CJI must be consulted, albeit he need not accept it.<sup>7</sup> Furthermore, Art. 217 states that before appointing a Chief Justice for HC, the Governor of the state and the CJI shall be consulted. To appoint judges the CJ of the High Court shall be consulted. If there is the same HC for multiple states then each governor shall be consulted.<sup>8</sup> Eventually, Art. 124(2) and 217 of the Constitution fully empower the president to appoint judges after consulting it with the CJI and the consultation is not binding on him. The constitution and different statutes have not mentioned anything about appointments by the collegium. Now a question arises as to why judges are appointed by the collegium system, which is opposite to the constitutional provisions where the executive has a very minimal role and the president is bound to consultation. To understand this, it is essential to track down the history of the collegium system. The next part deals with the origination and development of the collegium system. It has evolved through various landmark judgments namely “four judges’ case” that gave a new shape for appointing judges.

## V. HISTORICAL CONTEXT: TRACKING EVOLUTION

Issues regarding the selection and elevation of judges for higher courts first came to light in 1968 when Justice Zafar Imam's health stopped him from being elected as CJI. Again in 1973, just after the landmark judgment of the Kesavananda Bharti Case, the president selected Justice AN Ray as the CJI, suppressing three senior judges namely Justice Shelat, Justices Grover, and Justice Hegde, as he was one of the judges who found favorable to the government’s argument.<sup>9</sup> Similarly, Justice Beg was nominated as CJI by overlooking the other senior judge i.e., Justice Khanna. Justice Khanna, in his autobiography, stated that the main reason for his suppression was his distinct opinion in the Haebus Corpus Case.<sup>10</sup> For years, the appointment procedure was

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<sup>7</sup> INDIA CONST. art. 124, cl. 2.

<sup>8</sup> INDIA CONST. art. 217, cl. 1.

<sup>9</sup> Varun Chhachhar, *Appointment of Judges in India Through Collegium System: A Critical Perspective*, 1 SML. L. REV. 208, 211 (2018).

<sup>10</sup> Id.

surrounded by controversy, and then the four judges' cases came and gave birth to the collegium system.

In the *S.P. Gupta v. Union of India or First Judges' Case*<sup>11</sup>, in a circular sent to all state chief ministers and the governor of Punjab, Shri Shiv Shankar stipulated that one-third of a High Court's judges must be from other states, and judges must give their permission to be selected to serve as permanent judges in any other court in the nation. Several writs were filed challenging the constitutional validity of the circular, and the Supreme Court under Article 139(a) curbed all the writs and transferred them to itself. The Hon'ble Court was of the view that the discussion with CJI is merely his thoughts and the president is not bound to follow it, and in case of any disagreement between them then the ultimate power is vested upon the president to decide. Further, the court held that for any cogent reasons, the transfer of judges may be refused.

Again, due to vacancies in the higher judiciary and the disagreement between the judiciary and legislature, various writs were filed that questioned the primacy of the views of CJI. The Apex Court established a specific method for appointment known as the "Collegium System" to safeguard the independence and integrity of the judicial system by overruling the previous decision of the First Judges' Case. The Hon'ble Court further held that the term "consultation" mentioned in Art. 124(2) and 217 shall be now interpreted/referred to as "concurrence" and the views of CJI shall have primacy and he shall first consult it with two senior judges of SC making it a collective opinion rather than a collective opinion. The executive can send the names for reconsideration, but if they get the same names, they must accept them.<sup>12</sup>

In *Re: Special Reference case or third judges' case*<sup>13</sup>, by the provisions of Article 143, President KR Narayan issued a presidential reference in which the interpretation of the term "consultation" was questioned. The issue was regarding the scope of the term "consultation", it was asked whether the only views of CJI constitute consultation or whether it is the collective opinions of CJI with other senior judges. The Hon'ble

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<sup>11</sup> *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

<sup>12</sup> *Supreme Court Advocates on Record Association v. Union of India*, (1993) 4 SCC 441.

<sup>13</sup> *Special Reference No. 1 of 1998, In Re, Manu/SC/1146/1998: (1998) 7 SCC 739.*



Court expanded the scope and finalized the memorandum of procedure for the collegium. The court held that the only views of CJI shall not constitute consultation, it is mandatory for him to first consult it with the rest of the collegium. For appointing and transferring judges to the Apex Court CJI shall consult it with the other four senior judges while for the High Court, he shall consult it with the other two senior judges. If CJI has not consulted with the other judges and made recommendations to the president, then these recommendations are not binding on the president. This important ruling successfully developed the collegium system for appointing and transferring judges to the higher courts.

The executive has strongly opposed the collegium system as the appointment procedure followed was not transparent, which is one of the major reasons behind vacancies in the upper court. Following several challenges, the government, through the 99<sup>th</sup> Constitutional Amendment, replaced the collegium system with the National Judicial Appointment Commission Act of 2014 with the intent to reform the appointment procedure by making it more transparent, effective, and with equal representation from both the executive and judiciary. This commission was composed of the CJI, the Union Minister of Law and Justice, two senior judges from SC, and two eminent personalities. These eminent personalities were separately selected by a selection committee. The main functions of the commission are to nominate the next Chief Justice of both SC and HC and to appoint and transfer judges to upper courts.<sup>14</sup>

However, in *SC Advocates on Record Association v. Union of India* or the fourth Judges case, the Hon'ble Court declared the ninety-ninth constitutional amendment unconstitutional and void as it gave too much power to the commission, which undermined the integrity and independence of the judicial system and reintroduced the collegium system for appointing and transferring of judges to upper courts. The court also ruled that any type of involvement from the executive in the selection procedure might create a culture of reciprocity and hamper the independence of judges. However, Justice Chamleswar was of the view that NJAC is constitutional and

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<sup>14</sup> J. Lalith Kumar and Mahima Makhija, *Collegium System – The Unveiled Darkness*, 3 IJARIIE 736, 739 (2017).

pointed out that the procedure followed for the appointment lacks transparency as it is not made available to the public. The exclusion of the check and balance principle in the collegium system may result in a breach of the constitution's basic structure.<sup>15</sup>

## **VI. ANALYSING THE COLLEGIUM SYSTEM WITH RTI:**

This controversy started when the famous activist Subhash Chandra Agarwal filed an RTI with the Central Public Information Officer (CPIO) to reveal the information regarding the selection/elevation of three SC Judges. Here, Justice Lodha, Justice H.L. Dattu, and Justice Ganguly were appointed while ignoring the “All India Seniority” of Justice A.P. Shah, A.K. Patnaik, and V.K. Gupta and this was also objected to by the Prime Minister. In these appeals, three issues were raised before the Supreme Court: whether judicial independence may be interfered with by disclosing information regarding the collegium and Chief Justice’s office to the public. Furthermore, it was questioned whether the required information is exempted from being disclosed under Section 8(1) (j), and, lastly, whether the information required restrains or prevents constitutional authorities from free and frank expression.

The Supreme Court affirmed of Delhi HC ruling and held that the Chief Justice is subject to RTI, but collegium is not. The court held that the discussion/consultation should not be open to the public, and only the final resolution signed by the collegium falls under the purview of RTI. The opaque nature and unknown process of the collegium are still protected. The main reason behind this judgment was privacy and security, and if the reasons were made available to the public, it would be inconsistent with the “independence of the judiciary.” Likewise, the Registry of the Apex Court stated that the functioning of the judicial system would be hampered and interfered with if the information regarding the collegium had been disclosed to the public.<sup>16</sup>

## **VII. EXPLORING THE MERITS OF THE COLLEGIUM SYSTEM:**

The doctrine of separation of power which separates the three organs of the government is one of the major parts of the basic structure of the Indian Constitution.

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<sup>15</sup> SC Advocates on Record Association v. Union of India, AIR 2016 SC 117.

<sup>16</sup> CPIO v. Subhash Chandra Agarwal, 2019 (16) SCALE 40

Article 50 deals with the separation of power and authorizes the state to keep the executive and judicial organs apart for the public services of the state.<sup>17</sup> Various landmark judgments of “judges’ cases” also revolved around the doctrine of separation of power to safeguard the integrity and independence of the judicial system. One of the main advantages of the collegium system is that it prevents political or non-political organizations from having any direct or indirect influence over the selection of new judges, hence ensuring the independence, competence, and impartiality of the court.<sup>18</sup>

The Collegium System prevents the politicization of the judiciary and biased judgments. If the executive is going to be involved in appointing judges to higher courts, then the judiciary will be directly influenced by politicization and the transfer and appointment of judges will be done with the sole purpose of political gain and reasons, which sow a seed of corruption in the Indian judiciary and further it led to the failure of justice and constitutional spirit. Politicization may create a culture of reciprocity that causes biased judgments backed by political reasons. The collegium consisting of CJI and senior judges has more knowledge and is more competent to appoint judges based on their work and competence, unlike the appointment by the executive, where the appointment is done by favoritism and political reasons.<sup>19</sup> This system makes the process for appointment more effective, efficient, and speedy as there are not any different levels for approval.

### VIII. EXPLORING THE FLAWS OF THE COLLEGIUM SYSTEM:

Many critics argued that the incumbent judges of higher courts have deep relationships either in the judiciary or executive, which questioned the accountability and transparency of the appointment’s procedure. In addition, Union Minister Kiren Rijiju stated that as long as the collegium system exists, the appointing procedure will always remain controversial. He further linked the “Uncle Judge” syndrome with the

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<sup>17</sup> INDIA CONST. art. 50

<sup>18</sup>Sarthak Awasthi, *Collegium System for Appointment of High Court and Supreme Court Judges*, MANUPATRA (Feb. 2, 2024, 5:21 PM), [Collegium System for Appointment of High Court and Supreme Court Judges. \(manupatra.com\)](https://www.manupatra.com).

<sup>19</sup> Id.

collegium system and stated that the judges in the collegium system will only recommend those whom they know, and it is not necessary that they are suitable for this role. Few judges also agreed that reforming the collegium system was necessary due to its numerous shortcomings. Justice Kurian Joseph also supported this appointing procedure but also admitted that it is not a healthy practice and needs to be improved. It lacks objectivity, transparency, and accountability and noted that some allegations such as fit deserving candidates are ignored, and sometimes the appointment is purposely delayed.

Another major criticism is that it lacks transparency as the entire process of selecting and transferring of judges to higher courts is completed in full secrecy. The information, procedures, and eligibility criteria are not accessible to the public, and there is no slight chance that public scrutiny has led to the wide scope of favoritism and nepotism, creating doubt in the public about whether the collegium is an independent body or not or is it subjected to any kind of influence.<sup>20</sup> Another major flaw in the Indian Collegium System is that it lacks accountability and there is no procedure for the redressal of grievances. The general question that is raised is the collegium system is to whom they are answerable and what are the ways to hold them back for their actions. This lack of accountability further led to a lack of diversity in the judiciary. It is believed that the collegium recommends only the senior candidates for the appointment of judges overlooking young and more eligible candidates.<sup>21</sup>

## IX. CONCLUSION AND SUGGESTIONS:

The Indian Constitution solely authorizes the President to appoint judges to higher courts after consulting with CJI and the views of the CJI are not binding on him at all. With the issue of the appointment of judges neglecting All India Seniority, controversy has arisen between the executive and judiciary. The Collegium System originated and evolved through four judges' cases that solely authorized the CJI to appoint judges in the higher court after consulting it with the rest of the collegium. The word

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<sup>20</sup> Tanu Saini, *Collegium System in India – Know About It*, SOCIAL LAWS TODAY (Jan. 27, 2024, 6:00 PM), [Collegium System in India- Know about it - Social Laws Today](#)

<sup>21</sup> Id.

“consultation” is now interpreted as “concurrence” making the consultation mandatory for the president to accept. To appoint judges for the Supreme Court CJI has to consult with other four senior judges whereas for appointing judges for the High Court, the CJI shall first consult with two senior judges. The collegium does not fall under the jurisdiction of RTI; only the decisions or resolutions signed by all members are made available to the public. It is done with the intent to safeguard the integrity and independence of the Indian courts. This collegium system safeguards the judiciary from direct or indirect influence from political or non-political groups and prevent the politicization of the judiciary and biased judgments. However, it is criticized by arguing that this process is not transparent and that the judges appointing other judges cannot be held accountable toward anyone. The process of appointment is fully done in secrecy, which can create opportunities for nepotism and favoritism. Therefore, there is a strict need to reform it.

After discussing the collegium system, several recommendations that improve accountability and transparency while preserving the integrity and independence of the judicial system are discussed below:-

- Minutes of every proceeding of the collegium shall be made available to the public through the websites of higher courts and these proceedings may be available in the form of recordings, documents, and any other means that should be easily accessible to the public.
- A Secretariat shall be constituted that should be free from all types of influences and should not be pressurized to keep a check on the procedure adopted for appointment and support the collegium. A proper record of the applicants applying for the position of judge in the higher courts must be kept by the secretariat and the collegium.
- Proper procedure, rules, format, and eligibility criteria should be followed for the appointment of judges, which should be made available to the public, and there should be a mechanism for the redressal of grievances.
- The collegium should be accountable to the people and open to public scrutiny.

- All transfers and appointments of judges shall be made as per the law, minimizing the scope of favoritism and nepotism.

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