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APPOINTMENT AND REMOVAL OF JUDGES IN INDIA: TRANSPARENCY, ACCOUNTABILITY, AND THE COLLEGIUM DEBATE

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I. ABSTRACT

Judicial independence is the cornerstone of any constitutional democracy, be it that of India or anywhere else. Thereby the processes of appointment as well as removal of Judges has been a central topic of debate regarding separation of powers as propounded by Montesquieu. This paper critically examines the constitutional framework overseeing judicial appointments under the ambit of Articles 124 and 217 and the removal of these judges through impeachment procedure under clause (4) of Article 124 and the Judges Inquiry Act, 1968. This paper further traces the 'evolution' trajectory of the now hotly debated 'Collegium system' from Sankalchand Seth Case to all the way over the 4 landmark cases involving the issue of 'consultation whether amounts to concurrent' and the creation of a Collegium, which are famously known as the 'Judges Cases'. The study underpins the tension between judicial independence and democratic accountability. It also takes into account the 'comparative perspective' from the United States of America, United Kingdom and South Africa for understanding the need for transparency and involving the relevant stakeholders through participation in the appointment process. This paper further explores the reformatory proposals which are comprised of statutory codification of the appointment procedure of Judges; Disclosing the entire reasoning behind candidature on digital platforms; Reimagining the NJAC with apt safeguards. By positing India's experience with that of the USA, UK and South Africa, this study argues for a nuanced approach towards reforms while maintaining a fine balance between Judicial independence and accountability so as to ensure Judicial legitimacy.

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II. KEYWORDS

Collegium System, Judicial Appointments, NJAC, Separation of powers, Judicial independence and accountability

III. INTRODUCTION AND RESEARCH PROBLEM

Judicial independence is considered to be the bedrock of any constitutional democracy because it ensures that the judiciary remains isolated from political and executive influence. In fact, the framers of the constitution were very sure of this from the start and that is why in order to ensure this, they put a lot of safeguards in the constitution to make sure that judiciary remains insulated from both the Legislative and the Executive, since President is one stone that binds together both of them. This made it quintessential that Judiciary remains separate from both of them.

The framers of the constitution envisioned judiciary to be the 'guardian' of the constitution, especially the fundamental rights and hence they put forth Article 32 in part III of it, which makes it so that a person upon the violation of his fundamental rights (under Part III) can directly approach the supreme court without following any hierarchy. Apart from that, the Supreme court was to be the apex court and the topmost body of the judicial hierarchy. However, to ensure all this, there was a need to ascertain that judges of both the constitutional courts, i.e., the Supreme Court and the High Courts, are appointed in such a manner that both the separation of power principle as well as the balance of power remains intact. This is why there were elaborate safeguards which were put in place from Articles 124-147 (for Supreme Court) and Articles 214-231 (for High Courts). However, with time and the emergence of 'Collegium system', all this has been a part of intense controversy between the Legislative and the Judiciary.

The appointment of judges to the higher echelons of judiciary has been an evolutionary process because it has gone through a tremendous metamorphosis. This is because, initially the Executive had the upper hand in the appointment of judges because as we know it, the President is the one who appoints them with the 'advice' from the Chief Justice of India (CJI) and we also know that President alone doesn't act

and has to work in collaboration with the Council of Ministers as per the mandate of Article 74. This meant that the Executive had primacy in judicial appointments. However, this all changed with a series of landmark cases, known as the 'Judges case' which introduced the 'collegium system' which comprises of CJI and other senior judges of the Supreme Court whose advice has to be 'accepted' upon. Meaning thereby, it was not a mere recommendation, rather it had to be concurred with.

This system, although looked like a very good alternative to what the constitution offers under Article 124 has nonetheless become a subject matter of controversy because of its opacity, nepotism and lack of accountability regarding the selection process. Many argue that it is the hub of nepotism in judiciary because it only appoints those judges who are from the family of other judges. Equally important is the arduous and strenuous procedure of removing the judges which is formally known as the 'impeachment'. That process is deliberately made strict to follow so as to prevent arbitrary interference with the judiciary.

This paper seeks to critically examine this very system that we know as 'Collegium system'. It asks the question whether collegium system has succeeded in preserving judicial independence OR whether it has just fostered a culture of nepotism and opacity. Consequentially, the paper argues for a reformatory approach that should balance out independence with transparency of procedure of appointment, thereby ensuring accountability.

A. Research Objectives

1. To critically examine the constitutional framework that is governing the process of appointment and removal of Judges in India.
2. To trace the trajectory of evolution from which the Collegium system came into being.
3. To evaluate the tension that exists between judicial independence and democratic accountability in Indian democracy.
4. To analyze the models of judicial appointments in countries like the USA, UK and South Africa with a comparative paradigm.

5. To assess the critical opinion of scholars regarding opacity, nepotism and the lack of accountability in the judicial appointment process.
6. To propose reformatory measures so as to strike a balance between judicial independence alongside ensuring transparency.

B. Research Questions

1. Whether the collegium system adequately safeguards judicial independence in India.
2. What is the extent of opacity fostered by the collegium system in the process of judicial appointments?
3. How efficacious is the constitutional framework for the removal of judges in light of ensuring accountability?
4. What can India learn from the comparative study of judicial appointments in USA, UK and South Africa?
5. What shall be the reformatory approach of judiciary for balancing transparency with accountability?

C. Research hypotheses

1. **Primary hypothesis:** The Collegium system albeit successful in insulating the process of judicial appointments from Executive interference has somewhere compromised transparency and accountability, therefore necessitating reforms.
2. **Secondary hypothesis:** Comparative study of the models of judicial appointments suggest that independence and accountability of Judiciary can go side-by-side through structural transparency and the participation of relevant stakeholders.

D. Research methodology

1. **Doctrinal analysis:** scrutinizing the constitutional provisions under Articles 124, 217 and their related clauses, as well as the judicial precedents that kick started the collegium system.
2. **Comparative method:** studying the appointment and removal mechanism of judges in the USA, UK and South Africa, to take lessons for India.

3. **Normative inquiry:** evaluating the transparency of the norms and the incidental concerns raised by the Scholars and Judicial precedents.
4. **Critical review of the literature:** engaging with contemporary scholarship on the Collegium system, the debates on NJAC and reformatory proposals.
5. **Analytical approach:** synthesis of doctrinal, comparative and normative paradigms in order to propose reforms that strike a fine balance between judicial independence with accountability.

E. Literature Review

1. Historical and Doctrinal foundations

Kanishk Mor traces the historical development that the Collegium system has went through, highlighting its rise from the 1st, 2nd and 3rd Judges cases. He points out that although the system was although, designed to insulate the appointment process from executive interference, it has now fostered concerns about transparency and accountability in the whole process. His work posits the collegium system within a broader ecosystem of judicial independence in India.³

Per Contra, Pritam Ghosh underpins the origins of collegium system, pointing out that it is nothing but a product of 'judicial interpretation' rather than 'explicit' constitutional mandate. This analysis by him, helps understand the 'operational mechanism' of how this system works, especially the role of the Chief Justice of India (CJI) and the other Senior Judges for recommending names for appointment as judges. He lays emphasis on the tension that is now prevalent between the Judiciary and the Executive.⁴

2. Comparative and normative paradigm

Sikha Tiwary provides a comparative understanding of judicial appointments, positing the Indian Collegium system par with global models like the U.S.A. Senate confirmation process and the United Kingdom's 'Judicial appointments commission'.

³ Kanishk Mor, 'INDIA'S COLLEGIUM SYSTEM: EXPLORING ITS HISTORY, FUNCTIONING, BENEFITS, AND DRAWBACKS' (2024) 4 INDIAN JOURNAL OF LEGAL REVIEW.

⁴ Parvejur Rahman and Sagufta Mehnaz, 'International Journal for Multidisciplinary Research (IJFMR)' [2024] SSRN Electronic Journal <https://doi.org/10.2139/ssrn.5054029> accessed 19 April 2026.

Her argument is that even though the Indian model of collegium system no doubt prioritizes the independence of judiciary it definitely lacks the institutional mechanism of 'checks' which are prevalent in other models such as especially that of the UK.⁵

3. Critiques regarding transparency and accountability

There are several instances where the scholars have criticized the collegium system for its opaque reasoning and lack of accountability. It is a general consensus that due to the lack of accountability and prohibition from questioning the decision of the Collegium, the judiciary in this regard is considered as less accountable. Critics often state there has been a fostering of a culture of insulation, thanks to the collegium system. This is because in this system, the appointments are made without proper scrutiny and if there is scrutiny in place then there is a lack of reasoning and transparency for the same. This critical view was reinforced following the abolition of the National Judicial Appointment Commission (NJAC) in 2015 in the Fourth Judges Case, *Supreme court advocate on record association v. Union of India*.⁶

4. Reformatory approach by the Scholars

The literature also reflects a growing consensus regarding the need to reform the collegium system. There are proposals ranging from 're-introducing' a modified NJAC to strengthening the transparency aspect of the Collegium system.⁷ Although, one thing is clear that all scholars are on the same page that no matter what reforms take place, judicial independence is of paramount importance.⁸

⁵ Shikha Tiwary, 'Judicial Appointments and the Collegium System in India: A Comparative Study' (2025) 6 International Journal of Research Publication and Reviews 4844 <https://doi.org/10.55248/gengpi.6.0925.3539>

⁶ Supreme Court Advocates-on-Record Association v Union of India (2015) 8 SCC 1 (SC).

⁷ Vibhantika Dwivedi, 'Transparency and Accountability in The Indian Judicial System: A Renewed Debate on Collegium System' (2023) 10 International Journal of Research and Review 424 <https://doi.org/10.52403/ijrr.20230944>

⁸ IJLLR Journal, 'Judicial Appointments In India: A Comparative Analysis Of The Collegium System and The NJAC' (IJLLR Journal, 21 March 2025) <https://www.ijllr.com/post/judicial-appointments-in-india-a-comparative-analysis-of-the-collegium-system-and-the-njac> accessed 19 April 2026.

IV. RESEARCH & ANALYSIS

A. Constitutional Framework

The appointment as well as the removal of judges (formally known as 'impeachment') is a carefully crafted constitutional process, safeguarded by its provisions in order to maximize the independence of judiciary. The provisions pertaining to Supreme Court are given from Articles 124-147, *per contra*, the same for High Courts are given from Articles 214-231 in the constitution of India, 1950.

B. Judges Appointment

As per the text of Article 124(2), it is the President who appoints the judges for the Supreme Court.⁹ However, we also know that, as per the mandate of Article 74, the President 'has to' act on the aid and advise of the Council of Ministers, headed by the Prime minister.¹⁰ This is how and this is where the Executive's interference is manifested in the appointment process.

However, to bypass this apparent influence of the Executive, there is a caveat in this provision of Article 124 that such an appointment has to be done only after 'consultation' with the Chief Justice of India (CJI) AND any other judges of the Supreme Court 'as the president may deem necessary'. On a similar line, Article 217 provides for the appointment of High Court judges only after consulting the CJI, the Governor of that State and the Chief Justice of that State's High Court.¹¹

This 'consultation' was meant to be a meaningful 'check' on the power of the executive by the makers of the constitution because as is a known fact, our constitution also follows the doctrine of 'separation of powers' as propounded by Montesquieu himself. However, the issue arose when the interpretation of the term 'consultation' was brought forth in question. The main question was whether consultation amounts to concurrence or whether it's a mere recommendation of sorts.

⁹ Constitution of India 1950, art 124(2).

¹⁰ Constitution of India 1950, art 74.

¹¹ Constitution of India 1950, art 217.

This led to a series of cases known as the 'Judge Cases. It all started with the matter of transfer of high court judges in the *Sankalchand Seth Case*.¹² Then came the first case directly addressing the meaning of 'consultation', namely the *SP Gupta Case*¹³, which controversially held that 'consultation' does not amount to 'concurrence'. The Court treated the opinion of the Chief Justice of India as advisory rather than binding, thereby preserving executive primacy in judicial appointments. This led to considerable controversy, as the judiciary perceived a weakening of its institutional independence under the guise of checks and balances.

The second case was *Supreme Court Advocates on Record Association case*¹⁴ which overruled the *SP Gupta* ruling by the Supreme Court. Here, it was directed by the Supreme court that there shall be a collegium comprising of Chief Justice of India + 2 Senior most judges of the Supreme Court who shall be 'consulted' with by the President for appointing judges for Supreme Court of India. This case also stated that 'consultation' means 'concurrence', meaning thereby that if the Collegium says something, it has to be complied with.

The third case in this series of cases was *Special Reference no.1 of 1998*¹⁵, which clarified and solidified the position of the Collegium system further. It stated that for the appointment of Judges to the Supreme Court, there has to be consultation with the Collegium comprising of the CJI+4 seniormost judges of the Supreme court. *Per Contra*, in case of High Court, a Collegium shall consist of CJI+2 Seniormost judges. This case, famously known as the 3rd Judges case, solidified the Collegium system as we know today.

The fourth case was the *Supreme Court Advocates on Record Association v. Union of India*¹⁶ which held National Judicial Appointment Commission OR the NJAC as 'unconstitutional' and violative of the basic structure of the Constitution. This also

¹² Union of India v Sankalchand Himatlal Sheth (1977) 4 SCC 193 (SC).

¹³ SP Gupta v Union of India AIR 1982 SC 149 (SC)

¹⁴ Supreme Court Advocates-on-Record Association v Union of India (1993) 4 SCC 441 (SC).

¹⁵ In Re Special Reference No 1 of 1998 (1998) 7 SCC 739 (SC).

¹⁶ Supreme Court Advocates-on-Record Association v Union of India (2015) 8 SCC 1 (SC).

meant that the entirety of the 99th Constitutional amendment¹⁷ was held as unconstitutional.

C. Removal of Judges

Removal of Judges is governed by the provisions of clause (4) of Article 124 for Supreme Court judges, *per contra*, in case of High Court judges, the same is governed by the provisions of sub-clause (b) of Clause (1) of Article 217. These provisions mandate that a judge of either court (s) can only be removed by the order of the President, which shall be further supported by 2/3rd majority of the members of both the houses of Parliament, present and voting as well as the majority of the total membership of the House. This procedure is formally known as the 'impeachment' of judges and the grounds upon which a Judge can be impeached are 'proven misbehavior OR incapacity'.

This process of impeachment is further streamlined by the *Judges Inquiry Act of 1968*.¹⁸

This law provides that a 'Committee' shall be formed in order to investigate the charges of impeachment against a Judge of either Supreme Court OR any of the High Courts. The good thing about this law is that the mechanism is 'deliberately' onerous, which means that it is quite hard to impeach a judge, especially insulating this process from political interventions. However, in practice, it has been found out that this law is questionable in its efficacy to actually impeach a judge who is found guilty of proven misbehavior OR incapacity because in the case of *Justice V. Ramaswami (1993)*¹⁹ even when it was apparent that he was involved in financial impropriety, the impeachment failed.

The same practical limitation was evident in the cases of Justice Soumitra Sen (2011)²⁰ and Justice P.D. Dinakaran.²¹ In Justice Soumitra Sen's case, the Rajya Sabha had already passed the motion for his removal, but his subsequent resignation prevented

¹⁷ Constitution (Ninety-Ninth Amendment) Act 2014.

¹⁸ Judges (Inquiry) Act 1968 (India).

¹⁹ Sub-Committee on Judicial Accountability v Justice V Ramaswami (1993)

²⁰ Motion for Removal of Mr Justice Soumitra Sen Rajya Sabha Official Report (18 August 2011) cols 1-50 accessed 19 April 2026.

²¹ D Dinakaran v Judges Inquiry Committee (2011) 8 SCC 1 (SC) [para 24].

the matter from being taken up by the Lok Sabha. In Justice Dinakaran's case, he resigned while the inquiry proceedings were still pending, rendering the removal process infructuous.

D. Doctrinal takeaways

The constitutional framework sets a fine equilibrium between maintaining judicial autonomy and having Executive involvement, so as to ensure the 'checks and balances' as envisioned by the makers of the constitution while deliberating upon the 'Separation of powers' doctrine by Montesquieu.

It is clear that in case of appointments there is a clear primacy of Judiciary over the Executive, *per contra*, in case of impeachment, it's the Parliament alone i.e., the Legislature that has the sole power to impeach, making them 'act' like a quasi-judicial body while doing so. Thereby upholding the 'Separation of powers' doctrine by Montesquieu.

E. Comparative study

The process of judicial appointments and impeachment are not unique to India of course. There are other models too, from where we can learn how they have managed the fine line between Judicial independence and Executive/Legislative oversight and struck a balance between the two.

First comes the case of USA, wherein the President first appoints the Supreme Court judges and later on their appointment has to be confirmed by the Senate. This means that USA follows a model of 'Executive nomination' initially and later on 'Legislative confirmation' is given via Senate confirmation.²² This is in stark contrast from the Indian practice of only involving the Executive (President as well as the Council of Ministers) and the Judiciary (via Collegium system). However, even this process is criticized these days owing the influence of legislative while confirming the decision of nomination by the President.²³

²² US Constitution, art II, § 2(2).

²³ Michael J Gerhardt, *The Federal Appointments Process: A Constitutional and Historical Analysis* (Duke University Press 2003) <https://doi.org/10.1215/9780822384977> accessed 19 April 2026.

Then comes the case of the United Kingdom, where the Judicial Appointments Commission (JAC) functions as an independent body responsible for selecting candidates on merit for judicial offices in courts and tribunals in England and Wales below the Supreme Court level. Appointments to the Supreme Court of the United Kingdom are made through a separate selection commission constituted under the Constitutional Reform Act 2005. This institutional framework reduces executive influence while maintaining a transparent and merit-based appointment process.

In case of South Africa, a similar body is found by the name of 'Judicial Service Commission' OR the JSC which integrates stakeholders from multiple positions like the Judges, lawyers and lawmakers in order to ensure that there is a 'balanced' process of appointing judges.²⁴

Therefore, comparative study²⁵ of these countries suggests us that while Indian approach to Collegium system prioritizes judicial independence but it does so at the cost of 'lack of transparency' and no participation from the actual stakeholders in the legal fraternity like the lawyers themselves. This very fact makes it highly inefficient in the sense that it upholds opacity and insulates the entire process of appointment.

V. SUGGESTIONS AND RECOMMENDATIONS

The entire debate around 'reforming' the process of judicial appointments has been utterly intensified since the striking down of the 99th Constitutional Amendment Act by the Supreme Court and thereby declaring NJAC as 'unconstitutional' and violative of the 'basic structure' of the constitution of India, as was propounded in the famous *Kesavananda Bharati Case*.²⁶ Critics often cite that albeit flawed in design, the NJAC was a 'good step' forward towards judicial accountability and appointment process which is 'participatory' in nature. The following reforms²⁷ are suggested:

²⁴ Constitution of the Republic of South Africa 1996, s 174

²⁵ Richard H Fallon, *The Dynamic Constitution: An Introduction to American Constitutional Law* (Cambridge University Press 2004) <https://doi.org/10.1017/CBO9780511511103> accessed 19 April 2026.

²⁶ *Kesavananda Bharati v State of Kerala* AIR 1973 SC 1461 (SC) or (1973) 4 SCC 225 (SC).

²⁷ InsightsIAS Editorial, 'Collegium System in India: Evolution, Challenges & Reforms' (InsightsIAS, 19 March 2026) <https://www.insightsonindia.com/2026/03/19/collegium-system-in-india-evolution-challenges-reforms> accessed 19 April 2026.

1. **Statutory clarity:** There is no statutory provision which actually ‘states’ the appointment procedure with clear-cut criteria taking into account merit, diversity and most importantly integrity while appointing judges.
2. **Capacity building at an Institutional level:** The administrative support for the Collegium should be strengthened and independent secretaries shall be introduced.
3. **Judicial guidelines:** There shall be transparent norms regarding selection of a candidate as a judge, transfer mechanism so as to prevent another *Sankalchand Seth* dilemma, thereby reducing arbitrariness.
4. **Digital disclosure:** Mandate shall be there for ‘disclosing’ the deliberations that took place while selecting a candidate akin to the *ratio decidendi* in judgements. This shall satisfy the requirement of transparency for Civil society to take part in.
5. **Community participation:** Involving Bar Associations OR even the civil society members such as Professors in a ‘consultative’ role will go a long way in ensuring the right candidate is selected as a judge.²⁸
6. **Redesigning NJAC:** A totally redesigned NJAC with proper safeguards against Executive dominance while simultaneously preserving judicial autonomy would be a good step forward post 2015 ruling of the 4th Judges Case.²⁹

VI. CONCLUSION

The appointment and impeachment of the Judges in India embodies the vision of the makers of the Constitution of ‘balancing’ independence and autonomy of the Judiciary with the accountability. The collegium system which was brought forth by the Supreme Court in the 2nd Judges Case has no doubt safeguarded the independence of Judiciary but at what cost? The price of ensuring such independence is transparency and inclusivity. The removal mechanism itself, though highly robust on paper,

²⁸ Rohinton F Nariman, ‘Collegium Reform Proposal’ (Bar & Bench, 2025) <https://www.barandbench.com/news/collegium-reform-rohinton-nariman-proposal> accessed 19 April 2026.

²⁹ Law Commission of India, *Proposal for Reconsideration of Collegium System* (Report No 214, 2008) <https://lawcommissionofindia.nic.in/reports.htm> accessed 19 April 2026.

remains inefficacious in reality owing to the political hurdles that are manifested during the impeachment proceedings. Study of comparative models of the world in this regard suggests that removing accountability from the equation of independence of judiciary is not the solution. In fact, it can be done while including it because structural transparency in the entire procedure will ensure legitimacy on the part of the Collegium system.

This study underpins the need for the hour, the need for nuanced reforms. Reforms such as codifying the clear cut procedure which has to be followed while appointing a candidate as a Judge; Involvement of a broader part of the Civil Society as a whole, especially the lawyers, professors and lawmakers, not just judges; Embracing 'digital transparency' like the Government has done with its 'E-Governance', thereby making every deliberation and reasoning on part of the Collegium system visible to people online.

Finally, the legitimacy of the Judiciary is of paramount importance because it is what builds trust in the eyes of the citizens who rely on the judgements of it. This means that it is high time that Indian judiciary, especially the Supreme Court embraces the concept of 'Judicial Accountability' which is scarcely missing from the Indian jurisprudence.

Therefore, the hypotheses propounded by this paper stand to be proved.

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