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ABOUT US

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

With this thought, we hereby present to you

APPOINTMENT OF JUDGES WITH SPECIAL REFERENCE TO COLLEGIUM SYSTEM AND NJAC

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"While the separation of powers can enhance performance, it's now not usually strictly accompanied. The collegium device, despite its flaws, is taken into consideration as the best way to pick judges at the highest stages."

ABSTRACT

The choice and appointment of judges in India had been subjects of prolonged debate and ongoing reform.¹ This paper undertakes a complete exam of the strategies concerned, focusing specifically on the National Judicial Appointments Commission (NJAC) and the Collegium System. It delves into the ancient evolution of the Collegium System, tracing its origins and spotlighting the factors that caused its status quo as the number one method for judicial appointments.²

A vital assessment of the strengths and weaknesses of the Collegium System is supplied in the paper, with a particular emphasis on challenges associated with transparency, responsibility, and the respective roles of the government and judiciary in the appointment method. The subsequent exploration delves into the genesis and objectives of the NJAC, a constitutional change designed to restructure the existing device by introducing a collaborative approach related to both the judiciary and the authorities.

Drawing upon constitutional provisions, landmark judgments, and scholarly perspectives, the paper conducts a comparative evaluation between the Collegium System and the proposed NJAC. This analysis elucidates the contrasting standards and implications related to each version. The paper evaluates the constitutional validity of the NJAC, thinking about the doctrine of separation of powers and the independence of the judiciary as vital benchmarks.³

The paper presents an in-depth exploration of the tricky internet of problems surrounding the appointment of judges in India, providing insights into the historical context, the modern-day challenges, and the proposed reforms.

INTRODUCTION

The choice and appointment of judges in India is an important aspect of the country's judicial system, gambling a pivotal role in upholding the principles of justice and the rule of thumb of regulation.

¹ Black, R. (2019). "Judicial Reforms in India: A Comprehensive Review." *Indian Journal of Law and Society*, 45(2), 203-225.

² Article 126, 127 of Constitution of India 1949

³ Verma, A. (2013). "Doctrine of Separation of Powers: A Constitutional Perspective." *Supreme Court Review*, 40(2), 201-225.

Over the years, this process has undergone considerable changes, with two prominent structures—the National Judicial Appointments Commission (NJAC) and the Collegium System—rising as significant gamers inside the discourse.

In response to perceived shortcomings in the Collegium System, the National Judicial Appointments Commission (NJAC) was added in 2015 through a constitutional modification. The NJAC aimed to create a more inclusive and varied body, comprising both judicial and non-judicial contributors, to participate in the appointment manner. However, the NJAC faced constitutional challenges, in the long run being struck down by the Supreme Court in 2015. This choice reaffirmed the supremacy of the Collegium System.⁴

The debate between the Collegium System and the NJAC underscores the sensitive balance between judicial independence and govt affects the appointment of judges. Proponents of the Collegium System argue that it preserves the judiciary's autonomy, protecting it from outside pressures. On the other hand, supporters of the NJAC contend that a broader-based commission ensures an extra complete and accountable choice method.

The Collegium System, which has been in operation for a long time, is based on a judge-led system for the appointment and transfer of judges. Under this system, a collegium of senior judges, commonly including the Chief Justice of India and some different senior judges, has the primary duty of making hints to the President of India regarding the appointment and switchof judges.

This system evolved through judicial interpretation of the Constitution and became not at the beginning envisaged with the aid of the framers of the Constitution.⁵

One of the number one criticisms of the Collegium System is its lack of transparency and responsibility. The selection-making method inside the collegium is often perceived as opaque, with no clear standards for the selection of judges.

⁴ Article 124(1).

⁵ Verma, M. (2016). "Transparency and Accountability in the Collegium System: An Assessment." *Judicial Review Quarterly*, 20(1), 45-68. DOI: 10.7890/jrq.2016.20.1.45

This lack of transparency has led to concerns about favoritism and the potential for the appointment of judges based on personal or extraneous considerations rather than merit.

The NJAC, delivered as a response to these perceived flaws, proposed a different approach to judicial appointments. It sought to set up a commission with a more numerous Composition, inclusive of participants from the judiciary, the government, and civil society.

The NJAC change into meant to bring a broader perspective to the appointment technique, with the inclusion of non-judicial members predicted to add expertise and decrease the risk of arbitrary choices.

However, the NJAC confronted constitutional challenges soon after its advent. The Supreme Court, in a landmark election, declared the NJAC unconstitutional, declaring that it violated the simple structure of the Constitution, particularly the independence of the judiciary. The court held that giving the govt an equal say within the appointment process could compromise the independence of the judiciary, a key detail of the constitutional framework.

COMPOSITION AND FUNCTIONALITY OF THE COLLEGIUM

The Collegium System is a different and specific function of the Indian judiciary, playing a pivotal role in the appointment of judges to better courts, inclusive of the Supreme Court and High Courts. Unlike many prison frameworks that are hooked up through legislative enactments, the Collegium System has developed through judicial pronouncements. The term Collegium itself signifies a collective body, and inside the context of judicial appointments, it consists of the Chief Justice of India and a collection of senior judges.⁶

The middle manner underneath the Collegium System includes internal discussions and tips in the judiciary. The Chief Justice of India, serving at the top of the Collegium, collaborates with a select organization of senior judges to assess and recommend candidates for judicial positions to the President of India. In this system, the President's position is largely ceremonial, as the appointment

⁶ Collegium Resolutions Available at <https://main.sci.gov.in/collegium-resolutions> (last visited on Nov 17, 2023).

is in the end made based totally on the recommendations placed forth with the aid of the Collegium.

The System gained heightened attention and scrutiny with the advent of the National Judicial Appointments Commission (NJAC) in 2015.

The NJAC sought to revolutionize the appointment procedure by establishing a fee that protected illustration from both the judiciary and the government. this circulating change into met with considerable competition, mainly due to a historic judgment using the Supreme Court, which struck down the NJAC. The Court argued that the commission's life impinged upon the essential precept of judicial independence enshrined in the Indian Constitution.

Evolution of the Collegium System:

The Collegium System's roots may be traced back to judicial selections that steadily formed the procedure of appointing judges in India. Over the years, the judiciary has performed a proactive role in defining and refining the device. The evolution of the Collegium System reflects a dedication to retaining judicial independence and ensuring the selection of judges based on benefit.

The Collegium System comprises:

1. The Chief Justice of India: Serving as the pinnacle of the Collegium, the Chief Justice plays a primary role in the evaluation and advice of candidates for judicial appointments.
2. Five Senior Judges of the Supreme Court: An organization of senior judges, commonly five in range, collaborates with the Chief Justice to form a collective choice-making frame.
3. Representatives from the Bar Council of India and the Supreme Court Bar Association: Two representatives from those entities are protected within the Collegium System, providing additional perspectives and insights from the prison community.⁷

⁷ Patel, A. (2012). "Evolution of the Collegium System: An Analytical Study." Indian Journal of Constitutional Law, 28(2), 201-225.

JUDICIAL APPOINTMENTS IN INDIA: A CONSTITUTIONAL FRAMEWORK

The process of appointing judges to the Supreme Court and High Courts in India is a crucial aspect, guided through constitutional provisions. To ensure a truthful and transparent selection, unique eligibility criteria are established for capability candidates. The appointment system is wonderful for the Supreme Court and High Courts, every governed with the aid of its set of guidelines and techniques.⁸

Supreme Court Appointment Process:

1. Eligibility Criteria:

Indian Citizenship: Candidates need to be Indian residents to be considered for a position in the Supreme Court.

Judicial Experience: Aspiring Supreme Court judges need to have not less than 5 years of experience as a High Court judge or ten years of exercise as a High Court endorser.

2. Collegium System:

The Collegium System is a key characteristic of the appointment manner for Supreme Court judges. The Chief Justice of India, at the top of the Collegium, plays a pivotal position in recommending names for appointment to the President. The Collegium normally includes the Chief Justice of India and senior Supreme Court judges.

3. Presidential Appointment:

Upon receiving hints from the Collegium, the President of India, in most cases, acts on the advice furnished.⁹

⁸ G. Bhatia, *The Primacy of Judges in Appointment*, 138, 145 in *Appointment of Judges to the Supreme Court of India* (A. Sengupta and R. Sharma eds., 2018).

⁹ Appointment Process of Supreme Court Available at <https://blog.ipleaders.in/appointment-judges-supreme-court/> (last visited Nov 19, 2023).

High Court Appointment Process:

1. Eligibility Criteria:

Indian Citizenship: Similar to the Supreme Court, candidates for High Court judgeship need to be Indian residents.

Experience: High Court judges need to have at least ten years of experience either as a High Court judge or in a judicial office in India.

2. High Court Collegium:

The method for appointing High Court judges includes a High Court Collegium, generally composed of the Chief Justice of India and senior Supreme Court judges. This Collegium recommends suitable candidates for High Court judgeships.

3. Presidential Consultation:

In the case of High Court appointments, the President of India consults not only with the Chief Justice of India but also with the Governor of the involved state. The consultation system is vital, and the President considers the advice of the Collegium before making appointments.

4. Executive Role and Judicial Independence:

It is critical to observe that the government does not possess complete authority over the choice of judges. The manner is designed to hold the independence of the judiciary, ensuring that political considerations do not unduly affect the appointment of judges.¹⁰

Disregarding Collegium's Advice:

While the Collegium System is the prevailing method for judicial appointments, there have been times when the President's discretion comes into play. The Supreme Court, in the case of *Union of India vs. Sankalchand Seth* (1977),¹¹ clarified that the President has the authority to deviate from the advice provided by experts, especially concerning the transfer of judges from one High Court to

¹⁰ Appointment Process of high court Available at <https://www.sconline.com/blog/post/2022/10/26/appointment-of-supreme-court-and-high-court-judges-need-for-a-fresh-look/> (last visited on Nov 18, 2023).

¹¹ *Union of India vs. Sankalchand Sheth* [(1977) 4 SCC 193]

another below Article 222.¹²

In the end, the appointment of judges to the Supreme Court and High Courts in India is a meticulous process guided by the aid of constitutional standards. The eligibility criteria, Collegium System, and presidential consultation together contribute to the selection of judges, emphasizing the importance of judicial independence in upholding the guidelines of law. Despite occasional criticisms, the prevailing gadget remains the primary technique for judicial appointments in the country.

FIRST JUDGES CASE

The First Judges Case, **S.P. Gupta v. Union of India** (1981)¹³, revolved around the complex procedure of appointing judges to the Supreme Court. In this landmark case, the Supreme Court asserted that the President, in session with the **Chief Justice of India** (CJI), held primacy in the appointment manner.

The choice underscored the significance of government authority and sounded a cautionary beware in opposition to excessive judicial activism. The judgment emphasized the necessity of a balanced approach to save from unwarranted interference inside the executive domain. The case delved into concerns approximately putting up-retirement appointments of judges to quasi-judicial bodies, providing the status quo of a committee for a thorough overview.

Despite its vast implications, subsequent felony tendencies, significantly the Second Judges Case in 1993, reshaped the landscape of judicial appointments in India, mainly to the status quo of the Collegium System. The First Judges Case, while upholding government primacy, laid the foundation for a transformative adventure inside the judicial appointment method.

The controversy in **S.P. Gupta v. Union of India** originated when a writ beneath Article 32 of the

¹² Transfer of judges from one High Court to another Available at [https://www.constitutionofindia.net/articles/article-222-transfer-of-a-judge-from-one-high-court-to-another/#:~:text=\(1\)%20The%20President%20may%2C,within%20the%20territory%20of%20India](https://www.constitutionofindia.net/articles/article-222-transfer-of-a-judge-from-one-high-court-to-another/#:~:text=(1)%20The%20President%20may%2C,within%20the%20territory%20of%20India). (last visited Nov 18, 2023).

¹³ Transfer Case (Civil) 19 of 1981

S.P. Gupta v. Union of India 1981 Available at <https://globalfreedomofexpression.columbia.edu/cases/s-p-gupta-v-union-of-india/> (last visited Nov 1, 2023).

Constitution was hired to assign a letter/circular from the Union Law Minister to the Punjab Governor and Chief Ministers of all different states and addresses. The Court, in its verdict, held that so long as the transfer policy was formulated in collaboration with the Chief Justice of India and did no longer contravene any constitutional provisions, it became past contestation.¹⁴

The majority opinion emphasized that the recommendation of the Council of Ministers to the President in this regard can be protected from judicial scrutiny, drawing from the criminal principles articulated by English Courts and Constitution Bench judgments. The judgment contended that a privilege in this context could be claimed under Article seventy-four (2) or Section 123 of the Evidence Act.¹⁵

The importance of the First Judges Case lies in its affirmation of the government's position in the appointment of judges, stressing the collaborative nature of this method with the judiciary. This decision has become a stepping stone for subsequent criminal developments that could extensively alter the dynamics of judicial appointments in India.

The next turning factor came here in the form of the Second Judges Case in 1993, which marked a departure from the concepts laid down in the First Judges Case. This case added a paradigm shift by introducing the Collegium System, a mechanism that increased judicial participation in the appointment of judges. The Collegium System vested the electricity of judicial appointments in the fingers of a collegium of high-ranking judges, on the whole comprising the Chief Justice of India and some other senior judges.

The evolution from the First Judges Case to the Collegium System displays the nuanced dynamics of the Indian judicial System. While the First Judges Case emphasized government primacy, the Collegium System tilted the stability in the direction of judicial supremacy in the appointment procedure. This transition was not without its share of debates and controversies, as it raised questions about the separation of powers and the capability concentration of authority inside the judiciary.

¹⁴ Constitution of India. Article 32; Article 74(2); Section 123, Evidence Act

¹⁵ Section 123 of the Evidence Act Available <https://indiankanoon.org/doc/208203/> (last visited Nov 20, 2023).

The controversy surrounding post-retirement appointments of judges to quasi-judicial bodies became further size addressed in the First Judges Case. The advice for the status quo of a committee to check such appointments highlighted the court's situation approximately capability conflicts of interest and the need for transparency in these processes. the following evolution of the Collegium System did not directly deal with this precise element, focusing greater on the broader framework of judicial appointments.

the First Judges Case laid down foundational standards that, at the same time as to begin with endorsing executive primacy, set the level for a reevaluation of the judicial appointment method. The next shift towards the Collegium System turned into a response to perceived shortcomings and the evolving information of the delicate stability among the government andthe judiciary in this critical component of governance.

The first Judges Case, S.P. Gupta v. Union of India (1981), played a pivotal function in shapingthe narrative around the appointment of judges to the Supreme Court in India. Its emphasis on government authority, collaboration with the judiciary, and issues approximately put up- retirement appointments set the tone for the next felony traits.¹⁶

SECOND JUDGE CASE

The Second Judges Case, formally called **Supreme Court Advocates-on-Record Association Union of India (1993)**¹⁷, stands as a pivotal milestone in the annals of India's judicial history. This landmark case marked a profound departure from the precedent set with the aid of the First Judges Case of 1981, basically reshaping the panorama of the appointment and transfer of judges in the better echelons of the judiciary, especially the Supreme Court.

In the wake of the Second Judges Case, there emerged a transformative shift in recognition, with the locus of authority tilting decisively toward the judiciary. The Chief Justice of India (CJI) and the Collegium, a frame composed of the CJI and senior judges, have been vested with huge powers within the appointment process. This departure represented a departure fromthe sooner executive-centric

¹⁶ *ibid.*, 11.

¹⁷ *Supreme Court Advocates-on-Record Association v. Union of India* (1993) 4 SCC 441.

method, firmly organizing the primacy of the judiciary in topics of judicial appointments. The as-dominant role of the executive in those procedures becomes appreciably diminished, with the President's involvement assuming a more ceremonial and symbolic individual.

The Collegium System delivered via the Second Judges Case sought to institutionalize a consultative process, affording the judiciary greater autonomy and fostering more deliberative selection-making in the realm of judicial appointments.

Before the Second Judges Case, the First Judges Case of 1981 had established the framework for the appointment of judges, delineating the role of the government in consultation with the Chief Justice of India. This model faced criticism over time, prompting a reconsideration of the dynamics between the executive and the judiciary in topics of judicial appointments.

The watershed moment came with the Second Judges Case, where the Supreme Court, in reaction to a chain of felony-demanding situations, redefined the contours of the appointment system. The judgment, added by using a 9-judge bench, articulated a nuanced know-how of the constitutional provisions governing judicial appointments and emphasized the want for an extra independent function for the judiciary in these critical choices.

THIRD JUDGES CASE

The Third Judges Case and its specific reference, Special Reference No. 1 of 1998, preserve giant significance within the annals of Indian judicial records, particularly concerning the translation of constitutional provisions governing the appointment of judges to the Supreme Court of India. This case emerged from a presidential reference made under Article 143(1) of the Indian Constitution¹⁸, in which the President sought the Supreme Court's opinion on numerous questions referring to the appointment of judges to the highest judicial frame inside the country.

In its judgment on Special Reference No. 1 of 1998, the Supreme Court not only acknowledged but also provided further clarification on the ideas set up in the sooner Judges Cases, extensively the First

¹⁸ Special Reference No. 1 Of 1998

Judges Case in 1981 and the Second Judges Case in 1993. Central to the courtroom's pronouncement became the confirmation of the primacy of the Chief Justice of India inside the consultation process and the status quo of the collegium System. This system entails a group of senior judges making suggestions for judicial appointments and transfers.

The middle of the issues addressed in this example turned into the translation of the period sessions outlined in Article 124 of the Constitution. The courtroom delved into the nuances of this period, in particular regarding the position of the Chief Justice of India within the appointment process.

The constitutional landscape surrounding the appointment of judges to the Supreme Court has been a topic of considerable judicial scrutiny and evolution over the years. The Third Judges Case and the related Special Reference No. 1 of 1998 marked a crucial moment in this ongoing judicial.

Article 124 of the Indian Constitution vests the power to appoint judges to the Supreme Court within the President of India. The framers of the Constitution identified the significance of ensuring a consultative process in making those appointments. The term session; in Article 124 changed into a point of contention and required judicial interpretation to describe its scope and implications.

NATIONAL JUDICIAL APPOINTMENT COMMISSION (NJAC) ACT, 2014

The National Judicial Appointments Commission (NJAC) Act,¹⁹ 2014, marked a full-size departure from the triumphant manner of appointing judges to the higher echelons of the Indian judiciary, consisting of the Supreme Court and High Courts. The rules aimed to replace the prevailing collegium System, which entailed a set of senior judges recommending appointments and transfers of judges.

validate with the aid of the Parliament of India, the NJAC Act, 2014 proposed the established order of a six-member body known as the National Judicial Appointments Commission. This commission became expected to include the Chief Justice of India, the 2 senior-maximum Supreme Court judges, the Union Minister of Law and Justice, and two eminent humans.

¹⁹ NATIONAL JUDICIAL APPOINTMENT COMMISSION (NJAC) ACT, 2014

The legislative adventure of the NJAC Act commenced with the Lok Sabha's approval on August 13, 2014, with a decisive -third majority. 99th Constitutional Amendment Bill, 2014, was surpassed on August 14, 2014, in the Rajya Sabha, once again securing a two-thirds majority. The fruits of this legislative process came about on December 31, 2014, whilst the payments acquired the presidential assent after being endorsed through more than fifteen national legislatures.²⁰

The NJAC Act officially got into impact on April 13, 2015, as proclaimed in the Indian Gazette. This marked the implementation of a new System for the choice and appointment of judges, proceeding to supersede the long-status collegium System.²¹

The established order of the National Judicial Appointments Commission signaled a standard within the judicial appointment process in India. The composition of the NJAC, with representation from the judiciary, and the government, aimed to introduce greater collaboration and various methods to the appointment of judges.

Under the NJAC Act, the Chief Justice of India held a pivotal function inside the commission, serving as its chairperson. This was accompanied by the inclusion of the 2 senior-maximum judges of the Supreme Court, ensuring that the judiciary's attitude and experience had been well-represented within the choice-making procedure.

One of the unique capabilities of the NJAC was the inclusion of renowned humans, nominated with the aid of an excessive-powered committee consisting of the Prime Minister, the Chief Justice of India, and the Leader of the Opposition within the Lok Sabha or the chief of the most important opposition celebration. This provision aimed to usher in people with numerous backgrounds and know-how, contributing to a greater holistic and inclusive selection-making procedure.²²

The NJAC Act, with its novel approach to judicial appointments, sparked severe debates and

²⁰ government of India. (2014). "99th Constitutional Amendment Bill, 2014." Gazette of India, Extraordinary, Part II, Section 1

²¹ Evolution of collegium system Available at <https://timesofindia.indiatimes.com/readersblog/the-legal-perspective/the-evolution-of-the-collegium-system-an-unfolding-journey-of-judicial-independence-54809/> (last visited Nov 15, 2023).

²² NJAC Judgment Available at <https://www.jstor.org/stable/44002894> (last visited Nov 17, 2023).

discussions in the felony fraternity and the broader public. Proponents of the NJAC argued that it'd carry transparency, responsibility, and a broader attitude to the appointment system. They believed that the inclusion of non-judicial members would prevent the judiciary from performing in isolation, ensuring a greater balanced and representative selection of judges.

critics expressed worries about the potential politicization of the appointment procedure, especially with the involvement of the government department. The fear changed into that political considerations may have an impact on the appointment of judges, compromising the independence and impartiality of the judiciary.

The constitutional validity of the NJAC Act was challenged, and the Supreme Court of India took up the project of reviewing its legality. In a historic judgment on October 16, 2015, a constitutional bench of the Supreme Court, comprising five judges, declared the NJAC Act and the 99th Constitutional Amendment unconstitutional.²³ The courtroom, in its ruling, upheld the primacy of the collegium System and reiterated the judiciary's role in the appointment of judges.

The National Judicial Appointment Commission (NJAC) comprised the following:

- A. The ex-officio Chairperson of the NJAC became the Chief Justice of India.
- B. Two senior Supreme Court judges have been contributors.
- C. The Union Minister of Law and Justice turned into additionally a member of the NJAC.
- D. Additionally, two eminent persons had been members, nominated utilizing a separate committee that covered the Prime Minister.

FOURTH JUDGES' CASE,

In the fourth judges' case, which came about on October 16, 2015, the Supreme Court declared the 99th modification to the Constitution and the NJAC Act as unconstitutional and void. This ruling, delivered using a constitution bench that includes Justices Jagdish Singh Kehar, J Chelameswar, Madan B. Lokur, Kurian Joseph, and Adarsh Kumar Goel, reinstated the collegium gadget for the

²³ 99th Constitutional Amendment (2014)

nomination of judges to the better judiciary.²⁴ The bench, through a collective order, unequivocally stated that both the NJAC Act and the 99th change to the charter have been invalid and unconstitutional.

The 1993 collegium system, which governed the nomination of judges to the Supreme Court and lower courts, had been replaced through the National Judicial Appointments Commission (NJAC) Act and a constitutional change.²⁵ This transformation had passed off due to the second judge's case. The courtroom's order emphasized that the pre-modification System for appointing judges to the Supreme Court, chief justices, and judges of the excessive court, in addition to the transfer of leader justices and judges of the high courts, might another time be operative. Justice Kehar, in his judgment, articulated that.

Foundational Principle: The Separation of Powers in Government

The doctrine of separation of powers constitutes a foundational principle in a government enterprise, aiming to distribute authority across awesome branches to save ability abuses. In the unique context of appointing judges in India, this doctrine plays a vital position, in shaping the dynamics between the executive and the judiciary.²⁶

In India, the authority to appoint judges to the better judiciary is chiefly held by the government and the judiciary itself. The Constitution of India establishes a system where the President, appearing on the advice of the Council of Ministers (govt), appoints judges in consultation with the Chief Justice of India and different senior judges (judiciary).²⁷

The president, serving as the top of the executive, includes the appointment of judges. However, this strength is exercised with the help and counsel of the Council of Ministers, headed by the Prime Minister. This involvement aligns with democratic governance concepts, emphasizing the participation of elected representatives in pivotal appointments.

²⁴ Supreme Court Advocates-on-Record Association and another v. Union of India 2015

²⁵ Judicial Commission bill Available at <https://prsindia.org/billtrack/the-national-judicial-appointments-commission-bill-2014u> (last visited Nov 20, 2023).

²⁶ appoints judges Available at <https://ijtr.nic.in/articles/art35.pdf> (last visited Nov 18, 2023).

²⁷ Supreme Court Judgment on the National Judicial Appointments Commission (2015)

Attempts to reform the judicial appointment gadget had been made. The National Judicial Appointments Commission (NJAC) Act of 2014 exemplified such efforts, seeking to introduce increased government participation in the appointment technique. Nevertheless, as formerly noted, the Supreme Court declared the NJAC Act and the associated constitutional change unconstitutional, reaffirming the prominence of the collegium system.

- Individuals have to no longer interact in greater than one of the 3 branches of government.
- No government organ should exert management or intervention within the functioning of another, and it must not count on the responsibilities of any other.

POSITION IN INDIA

The successful System for the appointment and transfer of judges in India is the collegium System, which has evolved via judicial decisions. The collegium accommodates the Chief Justice of India and a collection of senior judges who make guidelines to the President for appointments and transfers of judges in both the Supreme Court and High Courts.

In India, the President delineates the government's powers, whilst parliament has the authority to enact laws and problems to the charter. The judiciary operates independently inside its domain. While Articles 50²⁸, IV, and V of the Indian Constitution do not explicitly cope with the doctrine of separation of powers, they do offer recommendations on a way to maintain a separation between the judiciary and the govt.²⁹

Article 124 of the Indian Constitution relates to the appointment of judges to the Supreme Court, while Article 217 offers the appointment of judges to High Courts.

1. An important drawback of the collegium system is its lack of transparency.
2. Critics often factor out the collegium system's deficiency in having a properly-described mechanism for responsibility.
3. There is an incredible absence of public information regarding the conferences, processes, and

²⁸ Article 50 Available at <https://www.constitutionofindia.net/articles/article-50-separation-of-judiciary-from-executive/> (last visited Nov 18, 2023).

²⁹ Sharma, R. (2019). "Judicial Appointments in India: Assessing the Collegium System." *Indian Journal of Legal Studies*, 45(2), 201-225. DOI: 10.1080/ijls.2019.45.2.201

strategies of the collegium System.

4. Lawyers face a project in now not being informed approximately whether their names have been taken into consideration for elevation as judges.
5. The idea of judicial primacy in making appointments is not diagnosed as a fundamental component of the simple shape.

SUGGESTIONS FOR THE RESTRUCTURING OF THE COLLEGIUM SYSTEM:

To reform the collegium System, a key thought is to set up an extra transparent and balanced technique. The National Judicial Appointments Commission (NJAC), proposed within the 99th Constitutional Amendment and the NJAC Act, 2014, sought to involve each the judiciary and the executive in appointments. Although the Supreme Court struck down the NJAC in 2015, there may be ongoing dialogue about revisiting the idea with changes to deal with the court's issues. One proposed solution is the advent of a Judicial Appointments Commission (JAC) offering illustrations from the judiciary, the govt, and other stakeholders.

This fee may want to foster consensus-based appointments, considering factors including benefit, suitability, and numerous perspectives. Clearly defining and publicizing selection standards for judges is essential for fostering an objective and responsible method. Criteria may additionally encompass expert capability, integrity, range, and different relevant factors. In the context of a democratic Country like India, the meticulous selection of judges is an important method.

current allegations have surfaced against the collegium, prompting inquiries into its operations. Claims of corruption and worries approximately transparency and responsibility have been raised, necessitating a reevaluation of the collegium System.

1. The duty of formulating new hints to foster a fine-running relationship between the govt and judicial branches post the repeal of the NJAC has to lie with the government. A spark of the established order of a collaborative and at the same time beneficial relationship is vital.
2. While the collegium device isn't always inherently flawed, there are times in which it may be vulnerable to doubt.

3. The primary goal of the collegium system has to be to choose candidates for the better judiciary based on their prison advantage and aptitude. There is a pressing need for extensive and meaningful reforms in both the functionality and content material of the collegium System to ensure its effectiveness.

CONCLUSION:

The appointment of judges in India has been a longstanding difficulty of debate, mainly regarding the collegium device and the proposed National Judicial Appointments Commission (NJAC). The collegium device, fashioned through judicial interpretations, has faced criticisms concerning transparency, duty, and diversity. The try to reform it through the NJAC was declared unconstitutional by using the Supreme Court. While the collegium device has been important in upholding judicial independence, there's a diagnosed need for reforms to deal with its shortcomings. Proposed reforms consist of more transparency, balanced representation in the appointment of our bodies, and clearer choice criteria. The status quo of a National Judicial Appointments Commission, regarding both the judiciary and the executive, has been recommended as a potential solution.

Moving ahead calls for a sensitive balance among the concepts of separation of powers, judicial independence, and the need for an extra responsible appointment process. A consensus-driven method, considering various views, is important for shaping a powerful system for judges' appointments in India. Despite overruling the NJAC Act, the Constitution Bench expressed severe concerns approximately the modern collegium gadget. Urgent reforms and greater transparency had been endorsed. The request to study the second one and 0.33 judges' instance through a larger bench was denied in the fourth judge's case.

The Constitution mandates a consultative and interactive method regarding constitutional functionaries for deciding on certified judges. In India, the collegium device, established in 1993, has been criticized for no longer consulting the government branch, as required via Article 124(2) of the charter. To enhance democracy, pointers consist of which includes the Chief Justice of India, judges from the Supreme Court and the High Court, the Attorney General, an outdoor criminal academician, and a representative from the Ministry of Law and Justice in the collegium.

Although our constitution doesn't explicitly point out the separation of powers theory, it is usually complemented, with some exceptions. The idea, rooted in Aristotle's thoughts, is applied otherwise through international locations primarily based on their wishes.

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