ANALYSING THE EFFECTIVENESS OF THE COLLEGIUM SYSTEM IN ENSURING JUDICIAL INDEPENDENCE IN INDIA

R. Sri Ram[1] & K. Threeshwaran[2], BA. LL. B (Hons.), Saveetha School of Law, Saveetha Institute of Medical and Technical Sciences (SIMATS).

ABSTRACT

This paper vividly explores impediments and hindrances involved in the independence of bar with the intervention of collegium system. Collegium intervention might be a twice edged brand in the bar. The Collegium system has nebulousness, lack of translucency and responsibility which is getting a major issue in the judiciary. The independence of bar is being confined and controlled by the supremacy of the collegium system in numerous ways. The principle of check and balance is violated in this collegium system. The system is largely independent and has come an autocratic body which leads to a smirch over the independence of bar. So this system is getting unconstitutional and suffocating the ultramodern period of Indian bar in numerous ways. This system has come obsolete and lacks in dynamic deliverance of justice to commonfolks. The motive and ideal of the collegium system is going against the formative development of the judicial structure. There was no reforms and emendations made so far in this collegium system. This system is set up with lots of crunches and gaps which led to stagnance in the inflow of justice in India. The system has to be remedied by the independent competent authority of law. , the Chief Justice of India has to superintendence over this matter of concern. The system has to be enhanced with lesser quality and standard. significance has to be given and concentrated. Because the present collegium system lacks translucency, responsibility and objectivity. Collegium system bring an unstable representation substantially women are fairly underrepresented in the advanced judiciary. The process in the system similar as like judicial movables were being delayed due to detention in recommendations by the

[1] R. Sri Ram, BA. LL.B (Honors), Saveetha School of Law, Saveetha Institute of Medical and Technical Sciences (SIMATS).

[2] K. Threeshwaran, BA. LL.B (Honors), Saveetha School of Law, Saveetha Institute of Medical and Technical Sciences (SIMATS)

collegium for the advanced judiciary. This paper illustrates and highlights the colourful impacts of collegium system towards the independence of bar in different aspects and also suggest ways to extemporise the standard of the system.

Keywords: Collegium system Judiciary/ Independence/ translucency/ Responsibility

INTRODUCTION:

Our Constitution recognises a distinction between the powers of these three bodies, videlicet the Administrative, Legislative, and Judiciary; the Collegium System was established with the sole purpose of icing that neither the Administrative nor the Legislative intrude with the appointment of Judges. All three pillars of the popular system are important in our country. still, the bar is regarded and considered as the most important. Independence of the bar is one of the prominent features of democracy. Indian citizens have a high position of trust and faith in the Indian bar. The bar upholds the rule of law and protects citizens' rights. It's critical that the people sitting in the high president are effective and non-biased. It's critical in a republic that the bar and the justice system as a total are unprejudiced and independent of external and internal powers. Judicial independence, on the other hand, presumes that judges have the capability to carry out their judicial duties without the involvement of petitioners, the bar, the government, or influential individualities or pots, similar as large corporations. The power to appoint and transfer judges is granted by the Indian Constitution. The council's power to make opinions regarding the appointment, junking, term, hires, and transfer of high court judges is limited by the Constitution. The beginning of these indigenous vittles concerning state high courts is judicial independence. These transfers aren't unusual in India. still, some transfers have called judicial independence intoquestion. By demonstrating its commitment to popular values and guarding citizens from arbitrary state action, the bar earnings popular legality from the public. In light of judicial movables in India, the Court's power and position in relation to other popular organs. Several indigenous law scholars have written about power struggles between the bar and the superintendent in India during times of political uneasiness, constantly in the environment of judicial independence. The judges of India's High Court and Supreme Court are appointed by a Collegium system, which doesn't live under any legislated law but was established by the court through its decisions. The system has to be enhanced with lesser quality and standard. significance has to be given and concentrated. Because the present

collegium system lacks translucency, responsibility and objectivity. Collegium system brings an unstable representation substantially women are fairly underrepresented in the advanced bar. This paper aims and highlights the colourful impacts of the collegium system towards the independence of bar in different aspects and also suggests ways to extemporise the standard of the system.

2) APPOINTMENT OF JUDGES UNDER THE CONSTITUTION

2. 1) SUPREME COURT JUDGES:

The Constitution of India authorizations and recommends a person must be a citizen of India; they mustn't be aged than 65 times old; they must have been a judge of one or further High courts continuously for five times; they must have been an advocate in the high court for at least ten times; and they must be a distinguished magistrate in the President's opinion. The Constitution of India authorizations colourful procedures for the appointment of Judges in the Supreme Court. The appointment is governed by colourful vittles in the Indian Constitution. Composition 124 of the Indian Constitution deals with the appointment of Chief Justice and Judges of the Supreme Court. The collegium system is still followed for the appointment of the Judges. Composition 124 of the Constitution says only seven judges can be appointed in the Supreme Court and the appointment can be increased when the Parliament deems it to be necessary. The President has the power to appoint Judges after consulting the Chief Justice of India, the other Judges of the Supreme Court and also in certain cases other judges of the High Court. The Judges can hold office until they attain 65 times of age. Composition 127 of the Indian Constitution deals with the appointment of ad- hoc judges in the Supreme Court. Judges are eligible to serve until they reach the age of 65. The appointment of ad hoc judges to the Supreme Court is addressed in Composition 127 of the Indian Constitution. Composition 124 of the Indian Constitution specifies the qualifications that must be met in order to be appointed. The existent who possesses all of the needed

(2.2) HIGH COURT JUDGES:

The Constitution of India mandates certain qualifications which have to be met before a person can be appointed as a judge in the High Courts. Article 217 specifies the qualifications for the appointment.

According to the context,The person appointed must be an Indian citizen; the person appointed must have held a judicial office in Indian territory for at least ten years; and the person

appointed must have been an advocate in the High Court for at least ten years.

The Constitution of India mandates certain procedures for appointing judges to the High Courts as mentioned under Article 217 of the Indian Constitution. This Article states that

The judges of the High Courts can be appointed only by the President's warrant and seal; the appointment can be done only after consulting the Chief Justice of India and the Governor of the State; the appointment of Judges other than the Chief Justice can be done after consulting the Chief Justice of the High Court; and the provisions of this article must be followed even when appointing Additional Judges under Article 224. The person can serve as a judge until he is sixty-two years old; the consultation must be very effective, that is, all necessary information about the person being recommended must be revealed, and no information should be kept hidden in order to facilitate the appointment; the appointed judges must take an oath before the Governor of the State, according to Article 219. The oath must be administered in the manner prescribed in the Third Schedule.

(2.3) TRANSFER OF JUDGES:

The Indian Constitution, in Article 222, provides for the transfer of judges from one High Court to another. The same procedure is followed even when the Chief Justice is transferred. The President has the authority to move Judges from one High Court to another. This transfer can only be made after consulting with the Chief Justice. There is also a provision for compensatory allowances to be provided to Judges who are transferred in addition to their salary[3].

(3) SUPREME COURT GUIDELINES ON APPOINTMENT:

1. In papers 124(2), 217(1), and 222(1), the term" discussion with the Chief Justice of India" requires discussion with a plurality of judges in the confirmation of the CJI's opinion. The CJI's sole, individual opinion doesn't constitute discussion.

2. The CJI may only make a recommendation to appoint a Supreme Court judge or transfer a Chief Justice or puisne judge of a High Court after consulting with the Supreme Court's senior-most judges. In the case of the High Courts, the recommendation must be made in discussion with the two senior-most Supreme Court judges.

[3] Constitution of India,1950

3. Strong and compelling reasons don't need to be recorded as defence for a divagation from the order of senility in the case of each elderly judge who has been passed over. The â€ positive reason for the recommendation must be proved.

4. The views of the consulted judges should be in jotting and conveyed to the Government of India by the CJI, along with his views to the extent set out in the body of this opinion.

5. In making his recommendations, the CJI is needed to follow the morals and conditions of the discussion process.

6. Recommendations made by the CJI in the absence of(similar compliance) aren't binding on the government.

7. The transfer of High Court judges is judicially reviewable only if the CJI made the decision without consulting the other four judges on the Supreme Court collegium, or if the Chief judges of both High Courts(involved in the transfer) weren't consulted. 8. The CJI doesn't have the authority to act solely in his individual capacity, without consulting with other Supreme Court judges, in relation to accoutrements and information conveyed by the Government for the non-appointment of a judge recommended for appointment.

9. On the appointment of an HC judge to the Supreme Court or the transfer of a puisne judge, the CJI may consult with any of his associates. The discussion doesn't have to be limited to associates who have served as a judge or Chief Justice of that particular High Court.

(4) COLLEGIUM SYSTEM IN INDIA:

The term" Collegium" isn't specifically mentioned in the Constitution, it has come into force as a result of a Judicial Pronouncement. The Bar Council of India's recommendations made on 17 October 1981, during a public forum of attorneys in Ahmedabad, can be traced back to the origins of the system. Collegium is a system in which the Chief Justice of India and the Supreme Court's senior-most judges decide on judicial movables and transfers of judges of the Supreme Court and High Court. It's nowhere mentioned in the Indian Constitution. The Supreme Court's Collegium system has the composition made up of five of the country's most elderly judges of the Supreme court, including the Chief Justice of India. They will consider appointing Chief judges Judges of High Courts to the Supreme Court, appointing Judges of High Courts as Chief judges, and appointing Judges. In the event of a disagreement, the maturity opinion will take priority. Because the Constitution requires discussion with the Chief

Justice of India for judicial movables, the collegium modelevolved. The appointment of judges is an important aspect of judicial independence, which requires that when administering justice, judges be independent of any direct or circular influence from political or non-political bodies. The independence of the bar is critical so that judges can be unprejudiced and perform their duties effectively and without fear or favour.

(4. 1) PERFORMANCE OF THE COLLEGIUM SYSTEM:

The Collegium makes recommendations to the Central Government on the names of attorneys and judges. Likewise, the Central Government submits some of its proposed names to the Collegium. The Central Government verifies the data and investigates the names before resending the train to the Collegium. The Collegium considers the Central Government's names or suggestions and resubmits the train to the government for final approval. However, the government must give its blessing to the names, If the Collegium resends the same name. Still, there's no set time limit for responding. This is why the appointment of judges takes so long. It's worth noting that 395 judgeships in the High Courts and 7 in the Supreme Court are presently vacant. Since the last two times, 146 names have been pending blessing by the Supreme Court and the Central Government. Out of these 146 names, 36 are pending with the Supreme Court Collegium, and 110 are still awaiting blessing from the Central Government.

(5)JUDICIAL INTERPRETATION MADE BY THE SUPREME COURT OF INDIA:

The National Judicial Appointments Commission Act, 2014, and the 99th Amendment was declared unconstitutional by a 5-judge bench of the Supreme Court on 16th October 2015, in a highly controversial judgement that could potentially have far-reaching consequences. According to Article 124 of the Constitution, the President "after consultation" with the existing judges must appoint the judges to the Supreme Court. While this may seem simple enough, the meaning and scope of the term "consultation" has been highly debated, and is the subject of the entire debate.

Before the NJAC judgement, there have been three previous cases that seek to define the process of appointment of judges to the courts. The first of these is S. P. Gupta v. Union of

India (the "First Judges Case")[4], which essentially gave primacy in judicial decisions to the Chief Justice of India, insofar as it said that the term consultation essentially meant that the opinion of the Court was binding on other parties.

However, the next case, Supreme Court Advocates-on-Record Association v. Union of India (the "Second Judges Case")[5] reversed this decision by asserting the non-binding nature of the term "consultation".

This decision was reaffirmed by the Court in Re: Special Reference No. 1 of 1998 (the "Third Judges Case")[6] where the Court held that the term consultation meant that the CJI alone did not have primacy, but had to consult the 4 senior most judges of the SC as well before an opinion was submitted.

Following this judgement, the Parliament enacted the 99th Amendment followed by the National Judicial Appointments Commission Act (NJAC Act) which added Articles 124A, 124B, and 124C to the Constitution, and enabled the formation of the National Judicial Appointments Commission, which would consist of the 2 senior most judges of the Supreme Court, the CJI, the Minister of Law, and 2 'other' members appointed by a panel comprising the Leader of the Opposition, the Prime Minister, and the CJI. This appointment is made on no prescribed guidelines whatsoever, and was struck down by the recent judgement on grounds of being vague.

One of the main controversial features of the Act is that it provides that if two or more members of the NJAC veto the appointment of a particular judge, that judge cannot be considered for appointment. This gives way to a tremendous amount of influence to the executive, as any government (whether NDA, BJP, Congress, or otherwise) may via the two 'other' members effectively prevent the appointment of any candidate that they feel would not promote their policies.

(6) STRIKING DOWN OF NJAC ACT:

The Collegium system was established in 2015, when the Supreme Court of India struck down a new law that sought to change the system of judicial movables in India (The National Judicial movables Commission Act, or' NJAC'). The Court ruled that the Act violated the principle of

[4] AIR 1982 SC 149.
[5] (1993) 4 SCC 441.
[6] AIR 1999 SC 1.

judicial independence because the proposed commission's political members had voting power. It was included in the 99th correction to the constitution in 2014 and went into effect on April 13, 2015. Composition 124 A was added as a result of this correction, which states that the chairman will appoint supreme court judges in discussion with the NJAC. It's debatable whether keeping political actors out of appointment systems has successfully saved the ideal of judicial independence in India, and whether the bar has reclaimed power over it as a result. Composition 50 was made a part of the introductory structure doctrine in the Kesavananda Bharati Case, and if anything is kept against the introductory structure doctrine, also congress can not use composition 368, which talks about the amending power of the congress, as it's seen then that the congress has amended composition 124 of the Indian constitution by the 99th correction act by using similar power mentioned in composition 368 of the Indian constitution, and brought NJAC, which actually violates the introductory structure doctrine & indeed the bar will come under state pressure, so because NJAC is violating composition 50 and therefore the introductory structure doctrine, it was abolished, and the collegium system was restored.

(7) REVIEW ON COLLEGIUM SYSTEM:

The Supreme Court's station on the establishment of the Collegium system was viewed as undemocratic in the sense that, in cases of appointment and transfer, the main decision- makers were the judges, i. e. the principal justice and two elderly judges, the maturity of whom aren't responsible to the millions and therefore can not be considered proper and responsible decision-makers. As a result, power can not be concentrated in their hands. A distinction was made between movables and performing, which stated that while the superintendent has no say-so in matters relating to the functioning of the bar, the superintendent's position can not be lowered or ignored when it comes to appointments. Another issue with the council system is that it has prodded to keep up with the stagnant vacuities due to a variety of estate and other political and religious factors. According to the Ministry of Law and Justice, there were 143 vacuities out of 714 total vacuities in 21 High Courts in 2004, counting for nearly 20 of all vacuities. The frame's shot loophole applies to a judge's capability, which can not be determined solely on the base of senility. Because it's hidden from the public eye, this programme can not directly assess legality. There's no intelligence collection process in place to collect and track prospective nominees' specialised and particular histories. The topmost excrescence in this system is that, despite getting a monarchy, judges in India nominate judges.

The Collegium structure has also questioned on procedural grounds by India's 214th law

commission. It claimed that the term 'collegium' was not originally employed by the constitution and that the case of S. P Gupta brought it about by constitutionally reviewing the structure of colleges. The term "collegium" was used in the verdict at paragraph 29: "There must be a collegium to make suggestions, etc. " According to the study, the inclusion of terms is not permitted within the Supreme Court's interpretive jurisdiction. The court must read the constitution directly and not add phrases to give the definition meaning. If the founders of the constitution had wanted to form a commission to pick judges, they would have explicitly stated so in the Constitution. In addition, After recognising the separation of government and the judiciary in accordance with Article 50, the constitution supports the fundamental democratic concept. Thus, under Articles 124(2) and 217, the constitution-makers provided for the nomination of judges. As a result, it allowed for the judiciary's freedom, which is an important trait to keep, but it did not encourage the judocracy that the case of the second judges looks to facilitate.

The collegium system was also questioned by India's Law Commission in 2009, which noted that nepotism and political favouritism were rampant in the college system's operations. By giving the court a strong position, there is no system of checks and balances that is essential for a democracy. The Supreme Court's judgement on the condition of the second judge in the Presidential Contrast, the President broke the balance of authority established by Articles 124(2) and 217(1) of the Constitution.

Former Chief Justice of India, Shri Justice J. S Verma, who made the verdict in the matter of the second judges, claimed in an interview with Frontline Magazine in the 2008 issue, "My 1993 judgement, which holds the area, was very mistaken and misused. " In that regard, I indicated that the functioning of the decision has for some time now created substantial concerns that cannot be dismissed as unreasonable. As a result, a rethink is necessary. My decision states that "the method of nominating judges for the High Court and the Supreme Court is essentially a collaborative or participatory exercise between the government and the judiciary, in which all parties participate. "

In recent years, there has been a rise in the arbitrary transfer of judges. Many learned judges have reportedly resigned in order to protest the moves. One example is the transfer of Madras High Court Chief Justice V K Tahilramani to Meghalaya High Court with only one year of service remaining. As a result of this unprecedented move, Justice V K Tahilramani was obliged to resign.

Other examples have caused suspicions, wrath, and disputes in the past, showing the Supreme Court collegium's arbitrariness in the transfer of High Court justices. Only transfers in the public interest or to aid in the administration of justice should be made. Transfers, such as that of Justice Muralidhar and Chief Justice of the Madras High Court, V K Tahilramani, have occurred on multiple times. Last year, Chief Justice V K Tahilramani of the Madras High Court was unjustly transferred to the Meghalaya High Court with only one year of service remaining. As a result of the unusual transfer, Justice V K Tahilramani was obliged to resign, raising issues about the purpose of such transfers. For the following reasons, the collegium is chastised:

The collegium is not a constitutional body; rather, the Supreme Court established it. It is a dictatorial body. The creation of the supreme court collegium might be understood as a judicial act to govern appointments and transfers in the judiciary.

The core of democracy is jeopardised when a judge picks another judge under the collegium system.

The Indian Law Commission has attacked the collegium. The Law Commission has raised worry over erroneous selections that could be based on favours or nepotism in the past.

The method proposes the appointment of judges without first performing a full analysis of the available talent in the legal system. The system fails to evaluate the qualifications of the candidates.

The Supreme Court's collegium system is exceedingly intriguing. When appointing, raising, and transferring judges, the collegium follows no explicit written procedures, rules, or criteria. The collegium publishes infrequently. The public is ignorant of how frequently the collegium meets or the norms to which it conforms. The collegium was unable to replace the vacant positions with judges.

RECOMMENDATIONS:

A deserving judge must submit a formal application to the collegium for selection or elevation to a higher position, complete with full formal and official bio data and CV.

All collegium meetings should be documented with high-quality audio. Decisions made by the collegium must rigorously comply to due process and best practises.

The Central Government supports this change, which would include current senior High Court

judges, senior attorneys, the Attorney General of India, and state Advocate Generals (for HC appointments) on the collegium, resulting in a democratic and transparent collegium system.

Individual collegium members may propose or support suitable candidates for selection, elevation, transfer to another High Court, and so on, but only in writing to the collegium's chief (Chief Justice), and their recommendations, etc. , must be recorded.

To prevent him from misusing his preeminent position, candidates selected by him must be objectively investigated by other collegium judges, and their judgements (whether favourable or adverse) must be recorded.

The collegium secretariat shall shortlist the nominated candidates based on variables that can be objectively verified, such as case-disposal rate, duration of tenure in current and previous posts, complaints, and so on.

There is no timeline for filling vacancies, which is a continual and collaborative process involving both the government and the judiciary. However, it is time to think about establishing a permanent, independent body to institutionalise the process while ensuring judicial supremacy but not judicial monopoly.

It is responsible for ensuring independence, diversity, professional competence, and honesty.

Rather than deciding how many judges are needed to fill a precise number of vacancies, the collegium must give the President a list of possible names to be nominated in order of preference and other legitimate criteria.

The Supreme Court may recommend guidelines to change the NJAC Act to incorporate safeguards that would make it constitutionally valid, as well as reorganise the NJAC to ensure that the court retains majority power in its judgements.

Members of the collegium must start afresh and engage with one another to ensure transparency. Transparency increases accountability, which is essential for breaking the impasse. Individual debates over names will persist, but care must be taken to avoid jeopardising the institutional requirement of justice.

CONCLUSION:

The Judiciary is regarded as the sole interpreter of the Constitution's language and is the cause of the Basic structure; however, the Judiciary must be docile to the whims and fantasies of the

Parliament and executive, as they are also a poison to democracy, as whenever there is a checking of all the processes, they will invariably lead it down. The Executive, Legislative, and Judicial branches of government must all comprehend the meaning of the Constitution's spirit, as described by Dr. B. R. Ambedkar and the Constitution's founders. The Collegium System was beset by problems such as a lack of openness and accountability, as well as an ambiguous basis for selecting justices. Because of the presence of the Law Minister and two distinguished individuals, The NJAC's presence on this commission would be beneficial in promoting transparency in judicial selections. The Act defers much to the Commission's regulations and is rife with terms like "other criteria," "Commission can, by regulations, specify such other procedure," "any other matter," and so on. The comparison between the two systems is limited since the pre-collegium system differs from the NJAC or another similar system that may be utilised in place of the collegium system. However, the data indicate that the collegium has not done much to make the court more gender balanced. In order to increase gender diversity, outside assistance may be required. It is self-evident that when implementing changes, the key constitutional values of judicial independence, integrity, and judicial review effectiveness must be maintained in mind. Once upon a time, people could choose anybody they wanted.

REFERENCES:

1. Constitution of India,1950
2. Rangin Pallav Tripathy, Supreme Court Collegium and Transparency-An Empirical Inquiry,Economic & Political Weekly EPW MAy 29, 2021 vol lV no 22
3. Shambhu Sharan (Partner) & Gunjan Chhabra (Associate)The National Judicial Appointment Commission - A Critique
4. Varun Chhachhar, APPOINTMENT OF JUDGES IN INDIA THROUGH COLLEGIUM SYSTEM: A CRITICAL PERSPECTIVE 1 SML. L. REV. 208 (2018).
5. P. Puneeth,Collegium System: Suggestions for Reforms,Vivekananda Journal of Research
6. Collegium System–The Unveiled Darkness,Vol-3 Issue-4 2017,IJARIIE-ISSN (O)-2395-4396
7. Manupatra. com