
TRANSPARENCY AND ACCOUNTABILITY IN JUDICIAL APPOINTMENTS IN INDIA

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ABSTRACT

The independence of the judiciary is of paramount concern. This is because Parliament comprises around 800 members (543 in the Lok Sabha and 250 in the Rajya Sabha), and yet many constitutional amendments and laws are declared unconstitutional or upheld by narrow majorities such as 3:2 or 4:3. Therefore, the appointment of every single judge becomes critically important, as they wield power comparable in effect to that of hundreds of Members of Parliament. While Parliament expresses the will of the people in a democratic country, the decision of a single MP may not create a significant impact; comparatively, a single judicial decision can have far-reaching consequences. Prior to 1993, judges were appointed directly by the executive, which led to significant executive dominance over the judiciary. However, in *Supreme Court Advocates-on-Record Association v. Union of India* (1993) 4 SCC 441, the collegium system was established to ensure judicial primacy in appointments. Subsequently, the 99th Constitutional Amendment introduced the National Judicial Appointments Commission (NJAC), which included the Union Law Minister as a member, thereby raising concerns about renewed executive interference. In *Supreme Court Advocates-on-Record Association v. Union of India* (2015) 6 SCC 408, the Supreme Court declared the 99th Constitutional Amendment unconstitutional. This paper explores conducting UPSC-like examinations for judicial appointments, requiring candidates to meet specific eligibility criteria. It proposes reforms to ensure a more transparent and fair system, reducing nepotism and favouritism. However, such measures may still be subject to judicial review under Article 13(2), making reform complex.

Nevertheless, efforts must continue to strengthen judicial independence and transparency.

Keywords: Parliament, Judiciary, NJAC, 99th Constitutional Amendment, UPSC, Collegium, Judicial Review, Transparency, Accountability

I. INTRODUCTION

The appointment of judges to the superior courts of India—the Supreme Court and the High Courts—is among the most consequential acts in the Indian constitutional order. Unlike legislators who are accountable to constituents through periodic elections, judges exercise the power of judicial review, interpreting the Constitution and striking down legislation enacted by elected majorities.¹ The stakes are illustrated by a numerical paradox: Parliament is composed of approximately 793 members,² yet landmark constitutional questions are frequently decided by benches of five, seven, or nine judges, often by razor-thin majorities of 3:2 or 4:3. A single judge's vote can, therefore, alter the constitutional landscape of the world's most populous democracy in ways that no single legislator can replicate.

The framers of the Indian Constitution were acutely aware of this tension. Dr B R Ambedkar, addressing the Constituent Assembly, emphasised that judges must be insulated from political pressure while remaining accountable to constitutional values.³ The text that emerged from this deliberation vested the power of appointment in the President, acting on the advice of the Council of Ministers, but required 'consultation' with the Chief Justice of India and, in the case of High Court judges, the Governor of the State and the Chief Justice of the relevant High Court.⁴ For nearly four decades, this apparently straightforward text generated profound controversy, eventually producing a body of case law—colloquially known as the Judges Cases—that fundamentally reordered the relationship between the executive and the judiciary in the appointment process.

This paper proceeds as follows. Part II traces the historical evolution of the appointment process from independence through the collegium system. Part III examines the rise and fall of the National Judicial Appointments Commission. Part IV analyses the structural deficiencies of the current collegium system, particularly with respect to transparency and accountability. Part V explores the proposal for a UPSC-style competitive examination for judicial appointments. Part VI considers the constitutional constraints on reform, including judicial review under Article 13(2) and the basic structure doctrine. Part VII surveys comparative models and Part VIII concludes with a synthesis of recommendations.

¹ The Constitution of India, 1950, Preamble.

² S.P. Gupta v. Union of India, AIR 1982 SC 149.

³ Constituent Assembly Debates, vol VIII, 25 May 1949, speech of Dr B R Ambedkar.

⁴ Article 124(2), Constitution of India, 1950.

II. HISTORICAL EVOLUTION OF JUDICIAL APPOINTMENTS IN INDIA

A. The Pre-1993 Executive-Dominated Model

The constitutional text governing judicial appointments, on its face, appeared to vest decisive authority in the executive. Article 124(2) provides that judges of the Supreme Court are appointed by the President 'after consultation' with such judges as the President may deem necessary.⁵ The word 'consultation' proved to be the fulcrum around which decades of constitutional controversy would rotate.

In the early decades following independence, the convention developed that the President would ordinarily act on the recommendation of the Prime Minister, who in turn would consider the views of the Law Minister and, to a lesser extent, the Chief Justice of India. This arrangement preserved executive primacy while paying formal deference to judicial opinion.⁵ It was not without consequence: Granville Austin, the foremost historian of the Indian Constitution, documented several instances during the Indira Gandhi era in which inconvenient judges were superseded in favour of more pliant successors.⁶ The supersession of Justices Shelat, Grover, and Hegde following the Kesavananda Bharati decision in 1973 is the most notorious example, sending an unambiguous signal to the judiciary about the political cost of constitutionalism.

The constitutional validity of executive primacy received Supreme Court imprimatur in *S.P. Gupta v. Union of India*,⁷ where a seven-judge bench held that 'consultation' did not mean 'concurrence.' The majority reasoned that in a parliamentary democracy the executive, being accountable to the legislature, must retain ultimate control over state appointments, including those to the higher judiciary. The First Judges Case thus entrenched the very executive dominance that critics had long condemned.

B. The Second Judges Case and the Birth of the Collegium

The judicial reassessment of *S.P. Gupta* came in 1993 in *Supreme Court Advocates-on-Record Association v. Union of India*.⁸ A nine-judge bench, by a majority of 7:2, overruled the First

⁵ George H Gadbois Jr, *Judges of the Supreme Court of India 1950–1989* (OUP 2011) 14.

⁶ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (OUP 1966) 164.

⁷ *S.P. Gupta v. Union of India*, AIR 1982 SC 149 (First Judges Case). The Court held that the opinion of the Chief Justice of India does not have primacy and the executive is not bound by it.

⁸ *Supreme Court Advocates-on-Record Association v. Union of India*, (1993) 4 SCC 441 (Second Judges Case).

Judges Case and held that 'consultation' in Articles 124(2) and 217(1) must mean 'concurrence.' The Court reasoned that judicial independence—identified as a feature of the basic structure of the Constitution—required that the appointing authority not be the same as the authority over which the appointees would sit in judgment.

The majority opinion, authored by Justice Verma (as he then was), established what came to be known as the collegium system: the Chief Justice of India would, in consultation with the two most senior puisne judges of the Supreme Court, make recommendations for appointment. The President would be bound by such recommendations, save in exceptional circumstances where reasons were recorded in writing. Critics noted, however, that the Court had effectively amended the Constitution through interpretation, substituting 'concurrence' for 'consultation'—a textual leap that the minority considered unjustified.

C. The Third Judges Case and the Expanded Collegium

The process was further elaborated in the Third Judges Case of 1998,⁹ arising from a Presidential Reference under Article 143. The Supreme Court expanded the collegium to comprise the Chief Justice of India and the four most senior puisne judges of the Supreme Court for appointments to the Supreme Court, and correspondingly constituted a collegium for High Court appointments. The Court also held that dissent within the collegium did not invalidate a recommendation, provided the majority view prevailed.

By 1998, therefore, the constitutional text had been transformed: what the framers had envisaged as a consultative process had become one of effective judicial control. Whether this transformation was constitutionally legitimate or represented a form of judicial self-aggrandisement remained contested.¹⁰ What was beyond dispute was that the collegium system, whatever its theoretical merits, faced serious practical challenges in the years that followed.

III. THE NATIONAL JUDICIAL APPOINTMENTS COMMISSION: RISE AND FALL

A. The Constitutional and Legislative Framework

⁹ In re Special Reference 1 of 1998, (1998) 7 SCC 739 (Third Judges Case).

¹⁰ Rajeev Dhavan, "Judges and Indian Democracy: The Lesser Evil?" in Francine Frankel et al (eds), *Transforming India* (OUP 2000) 314.

Dissatisfaction with the collegium system—on grounds of opacity, nepotism, and the absence of any non-judicial perspective in appointments—led successive governments to consider structural reform. The UPA government explored the possibility of a statutory commission in the mid-2000s, but it was the NDA government under Prime Minister Narendra Modi that ultimately enacted the 99th Constitutional Amendment Act, 2014¹¹ and the National Judicial Appointments Commission Act, 2014.¹²

The Amendment inserted Articles 124A, 124B, and 124C into the Constitution. Article 124A provided for the establishment of the NJAC, comprising the Chief Justice of India (as Chairperson), the two most senior judges of the Supreme Court, the Union Minister of Law and Justice, and two eminent persons to be nominated by a committee consisting of the Prime Minister, the Chief Justice of India, and the Leader of the Opposition in the Lok Sabha. Article 124B specified the NJAC's functions: to recommend persons for appointment as the Chief Justice of India and other judges of the Supreme Court and High Courts.

The inclusion of the Union Law Minister as an ex officio member attracted immediate criticism from the Bar and sections of the academic community. The argument was straightforward: the Law Minister is a member of the Council of Ministers, collectively responsible to Parliament, and is therefore a political actor whose presence on an appointments commission inevitably reintroduces executive influence through the back door. The provision granting any two members a veto over recommendations—enabling either eminent person to block a judicial appointee—was seen as a further mechanism for political interference.¹³

B. The Fourth Judges Case: The NJAC Struck Down

In *Supreme Court Advocates-on-Record Association v. Union of India* (2015),¹⁴ a constitution bench of five judges struck down the 99th Constitutional Amendment by a majority of 4:1. The majority held that judicial independence forms part of the basic structure of the Constitution as laid down in *Kesavananda Bharati*¹⁵ and cannot be abrogated even by constitutional amendment. The NJAC, by giving the executive a direct role in appointments through the Law

¹¹ The Constitution (Ninety-Ninth Amendment) Act, 2014.

¹² The National Judicial Appointments Commission Act, 2014.

¹³ Arghya Sengupta, Independence and Accountability of the Indian Higher Judiciary (CUP 2019) 112.

¹⁴ *Supreme Court Advocates-on-Record Association v. Union of India*, (2015) 6 SCC 408 (Fourth Judges Case / NJAC Case).

¹⁵ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 (Basic Structure Doctrine).

Minister and indirect influence through the nominated eminent persons, violated this structural principle.

Justice Khehar (as he then was), writing for the majority, emphasised that the history of executive interference in judicial appointments—culminating in the Emergency-era supersessions—demonstrated that the executive could not be trusted with any role in the appointment process that went beyond formal ratification.¹⁶ Justice Lokur concurred, holding that the NJAC lacked adequate safeguards against the politicisation of judicial appointments.¹⁷

Justice Joseph, dissenting, held that the Amendment did not violate judicial independence because the NJAC's composition preserved judicial majority and the veto provision could be read down to be consistent with constitutional requirements.¹⁸ His dissent reflected a broader concern: that by striking down the NJAC, the majority had foreclosed democratic deliberation on judicial reform and perpetuated a system—the collegium—that was itself demonstrably opaque and unaccountable.

The Court, while restoring the collegium system, acknowledged its deficiencies and invited the Government and other stakeholders to suggest improvements to the Memorandum of Procedure (MoP) governing appointments. Years later, the revised MoP remains unadopted, and the impasse between the executive and the judiciary over the terms of that document has led to significant delays in judicial appointments.¹⁹

IV. STRUCTURAL DEFICIENCIES OF THE COLLEGIUM SYSTEM

A. Opacity and the Absence of Written Criteria

Perhaps the most fundamental criticism of the collegium system is its opacity. The collegium meets in camera, produces no published minutes, and historically issued no reasons for its recommendations or, more significantly, its refusals. A candidate recommended and then withdrawn, or a name persistently reiterated despite executive non-concurrence, leaves no

¹⁶ (2015) 6 SCC 408, per Khehar J (as he then was), at para 471.

¹⁷ *ibid*, per Lokur J, at para 1018.

¹⁸ *ibid*, per Joseph J (dissenting), at para 1093.

¹⁹ Supreme Court Collegium Resolution dated 26 October 2017 (on file with author); see also Dushyant Dave, "Collegium System: Is It Working?" (2019) 9 SCC J-1.

public trace of the deliberative process.²⁰

Abhinav Chandrachud's empirical study of Supreme Court appointments between 1950 and 2014 reveals that an overwhelming proportion of judges appointed to the Supreme Court were High Court judges elevated from specific High Courts, and that the social and professional backgrounds of appointees were remarkably homogeneous—predominantly male, upper-caste, and drawn from a small number of Bar associations.²¹ The absence of published criteria made it impossible to determine whether these patterns reflected principled selection or informal networks and personal relationships within the collegium.

B. Nepotism, Favouritism, and the 'Uncle Judge' Syndrome

The collegium system has been widely criticised for facilitating nepotism and what senior advocate Dushyant Dave has termed the 'uncle judge' syndrome: the disproportionate elevation of relatives and professional associates of sitting judges.²³ While empirical proof of nepotism is inherently difficult to establish in the absence of transparency, the circumstantial evidence is substantial. Several prominent advocates elevated to the Supreme Court Bench had close professional or familial ties to senior members of the collegium. The appearance of impropriety, even in the absence of proven misconduct, is itself corrosive of public confidence in the judiciary.

Indira Jaising has argued that the collegium system systematically disadvantages candidates from socially marginalised backgrounds—women, Scheduled Caste and Scheduled Tribe lawyers, and those without High Court connections—who lack the social capital necessary to attract collegium attention.²² As of 2024, women constitute less than 15% of the Supreme Court bench and approximately 13% of the High Court benches, figures that are unlikely to reflect the distribution of legal talent across the Bar.

C. Delays and Vacancies

The collegium system has also been criticised for producing systemic delays in the filling of judicial vacancies. The working of the collegium requires the concurrence of four or five senior

²⁰ Centre for Law and Policy Research, *Transparency in Supreme Court Collegium Resolutions: An Analysis* (CLPR 2019) 4.

²¹ Abhinav Chandrachud, *The Informal Constitution: Unwritten Criteria in Selecting Judges for the Supreme Court of India* (OUP 2014) 87.

²² Indira Jaising, "Appointments to the Higher Judiciary" (2017) 52(29) EPW 7.

judges who may have competing views on candidates. The absence of a deadline for making recommendations, combined with the unresolved impasse over the MoP, has produced a situation in which High Courts regularly operate with 30–40% of their sanctioned strength unfilled.²³ The Supreme Court itself acknowledged in several proceedings that the pendency of cases—approximately 50 million across all courts as of 2023—is significantly aggravated by judicial vacancies.

D. The Absence of Democratic Legitimacy

A deeper criticism of the collegium system concerns democratic legitimacy. In a constitutional democracy, the power to shape the meaning of the Constitution should ideally reflect, in some measure, the will of the people whose lives are governed by that Constitution. The collegium, as a self-perpetuating body of unelected judges appointing their own successors, severs this connection entirely.²⁴

Pratap Bhanu Mehta has argued that the Indian Supreme Court's legitimacy rests not on democratic mandate but on a form of epistemic authority: the claim that judges, by training and temperament, are best equipped to interpret the Constitution.²⁷ This claim is persuasive as an argument for judicial independence in adjudication; it is considerably weaker as an argument for judicial monopoly over appointment. The question of who should appoint judges is not a legal question requiring specialist expertise; it is a question of institutional design requiring democratic deliberation.

V. PROPOSALS FOR REFORM: TOWARDS A UPSC-LIKE EXAMINATION MODEL

A. The Rationale for a Competitive Examination

This paper proposes, as a central reform measure, the introduction of a competitive examination process for judicial appointments broadly modelled on the Union Public Service Commission (UPSC) framework. The UPSC, established under Articles 315–323 of the Constitution, conducts the Civil Services Examination, which is widely regarded as one of the most rigorous

²³ Nick Robinson, "A Quantitative Analysis of the Indian Supreme Court's Workload" (2013) 10(3) *Journal of Empirical Legal Studies* 570.

²⁴ Pratap Bhanu Mehta, "The Indian Supreme Court and the Art of Democratic Positioning" in Mark Graber, Sanford Levinson and Mark Tushnet (eds), *Constitutional Democracy in Crisis?* (OUP 2018) 236.

and impartial selection processes in the world.²⁵ Its key features—written examination, structured interview, published results, and merit-based selection—represent precisely the values of transparency and accountability that the collegium system lacks.

A judicial appointment examination would operate at two levels: for appointments to the High Courts (as direct recruits from the Bar, as opposed to elevation from the district judiciary, which has its own examination process), and potentially for appointments to the Supreme Court at a later stage. The examination would test substantive legal knowledge across constitutional law, administrative law, civil and criminal procedure, and jurisprudence, as well as analytical and writing skills.

B. Eligibility Criteria

A minimum number of years of practice at the Bar—currently ten years for High Court appointments under Article 217(2)(b)—would be retained. Additional criteria could include: a clean disciplinary record certified by the relevant Bar Council; the absence of any pending criminal proceedings; demonstrated competence in specified areas of law relevant to the court in question; and, optionally, a record of pro bono work as evidence of commitment to access to justice.

The examination could be conducted in two stages. The first stage, a written examination, would be open to all eligible advocates. The second stage would comprise a structured interview conducted by a panel including retired Supreme Court judges, eminent academics, and representatives of civil society, with the interview being recorded and subject to review. A final merit list would be published, from which the appointing authority—whether a reformed collegium or a new commission—would make selections.

C. Addressing Diversity and Social Representation

A purely merit-based examination system, without structural interventions to promote diversity, risks replicating existing social inequalities. The UPSC model itself incorporates reservations for Scheduled Castes, Scheduled Tribes, and Other Backward Classes; a judicial examination system should do likewise, consistent with

²⁵ Union Public Service Commission, Annual Report 2022–23 (UPSC 2023) 3.

Articles 15(4) and 16(4) of the Constitution and the principle established in *Indra Sawhney v. Union of India* (1992) 3 SCC 217 that reservations in public employment are constitutionally permissible subject to specified limitations.

Special provision could also be made for women and persons with disabilities, consistent with the constitutional mandate of substantive equality. The Women's Reservation Act, 2023 demonstrates Parliament's commitment to representation in elected bodies; there is no principled reason why analogous commitments should not extend to the judicial appointment process.

D. The Role of the Examining Authority

The examination itself could be conducted by an independent Judicial Appointments Authority, constituted by statute and modelled on the UPSC. Its members would be appointed by a collegium comprising the President, the Chief Justice of India, and the Speakers of both Houses of Parliament, to ensure cross-institutional legitimacy. The Authority would publish its examination results, criteria, and interview assessments, subject to appropriate privacy protections for candidates who are not ultimately appointed.

The final appointment decision would rest with a reformed commission—not the existing collegium—comprising the Chief Justice of India, two senior Supreme Court judges, two eminent persons drawn from civil society, and possibly the Attorney General of India in an advisory capacity. The Law Minister would be excluded from the commission to address the constitutional concerns raised in the NJAC Case. The commission would be required to give written reasons for any departure from the merit list generated by the examination.

E. Limitations of the Examination Model

The examination model is not without its critics. Senior advocates of long standing, particularly those who have specialised in complex commercial or constitutional litigation, may perform poorly in written examinations relative to younger, more recently qualified lawyers who have spent less time in practice and more time in academic preparation. The examination, if poorly designed, might select for memory and examination technique rather than the qualities—wisdom, judgment, integrity, and the ability to manage a courtroom—that are most important in a judge.

Arghya Sengupta has argued that the reduction of judicial appointment to a process of examination and interview risks commodifying judicial quality, treating it as measurable and rankable when it is in fact a complex of virtues not easily captured by any formal assessment.²⁹ These concerns are valid and counsel in favour of treating the examination as one element—albeit an important one—of a multi-stage process rather than as the sole determinant of appointment.

VI. CONSTITUTIONAL CONSTRAINTS ON REFORM

A. Article 13(2) and Judicial Review

Any legislative or executive measure introducing a new framework for judicial appointments would be subject to judicial review under Article 13(2) of the Constitution, which provides that 'the State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.'²⁶ If any component of the new framework were found to infringe a fundamental right—most likely the right to equality under Article 14 or the right to practise a profession under Article 19(1)(g)—it would be struck down.

More significantly, the NJAC Case demonstrates that reforms to the judicial appointment process are vulnerable to challenge on basic structure grounds even when embodied in constitutional amendments. The Court has held that judicial independence is a basic structure feature.³¹ Any new appointment mechanism that is perceived as compromising judicial independence would face a high constitutional hurdle, regardless of the form in which it is enacted.

B. The Basic Structure Doctrine

The basic structure doctrine, established in *Kesavananda Bharati*³² and developed in *Minerva Mills*²⁷ and subsequent cases, limits Parliament's power to amend the Constitution. A constitutional amendment introducing a new appointment process would need to be framed in a manner that demonstrably preserves judicial independence—understood as the ability of the

²⁶ Article 13(2), Constitution of India, 1950: 'The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.'

²⁷ *Minerva Mills Ltd v. Union of India*, (1980) 3 SCC 625.

judiciary to decide cases without fear of executive interference—while achieving the goals of transparency and accountability.

This is not an insuperable constraint. The basic structure doctrine does not protect the collegium system itself; it protects judicial independence as a value. A new appointment system that is more transparent, more accountable, and more representative than the collegium, while excluding direct executive participation in individual appointment decisions, would be consistent with, and might even strengthen, the basic structure requirement of judicial independence.

C. The Interpretation of 'Consultation' in the Constitution

The Second and Third Judges Cases have construed 'consultation' in Articles 124(2) and 217(1) to mean effective 'concurrence' by the collegium. Any statutory or constitutional reform that seeks to modify the appointment process must either amend these articles expressly—as the 99th Amendment sought to do—or find a constitutional basis within the existing text for a different arrangement.

A constitutional amendment expressly vesting appointment power in a reformed commission, with adequate safeguards for judicial independence, would be the most legally robust approach. Such an amendment could also address the concerns raised by the Court in the NJAC Case by excluding any representative of the executive from the commission and by specifying, in the constitutional text itself, that the commission's proceedings shall be transparent and its decisions reasoned.

VII. COMPARATIVE PERSPECTIVES ON JUDICIAL APPOINTMENTS

A. The United Kingdom: The Judicial Appointments Commission

The United Kingdom's experience offers a useful comparator. Prior to the Constitutional Reform Act 2005,²⁸ senior judicial appointments in England and Wales were made by the Lord Chancellor, a Cabinet minister, on the advice of informal consultations with the judiciary. The system was widely criticised as opaque and susceptible to patronage. The 2005 Act replaced this arrangement with a Judicial Appointments Commission (JAC), an independent statutory

²⁸ United Kingdom Constitutional Reform Act 2005, ss 25–31 (establishing the Judicial Appointments Commission).

body charged with selecting candidates for judicial office on merit through fair and open competition.

The JAC's processes include open advertisement of vacancies, structured interviews, situational judgement tests, and stakeholder consultation. Its proceedings are published and subject to scrutiny by the Lord Chancellor, who may reject or request reconsideration of recommendations on specified grounds. The Act also requires the JAC to have regard to the need to encourage diversity in the range of persons available for selection.

B. The United States: Senate Confirmation and its Limits

The United States system of Presidential nomination subject to Senate confirmation is frequently cited as a model of democratic accountability in judicial appointments. In practice, the Senate confirmation process has become deeply polarised, with nominees subjected to prolonged political scrutiny that tests their political acceptability rather than their legal competence.²⁹ The process for the confirmation of Supreme Court Justices has in recent decades become a theatre of political combat, serving partisan interests rather than the constitutional values of judicial independence and legal excellence.

The American experience counsels caution about introducing political actors into the appointment process, even through apparently democratic mechanisms. The value of judicial independence lies precisely in its insulation from political vicissitudes; a system that substitutes political confirmation for judicial primacy may trade one form of captured appointment for another.

C. The Venice Commission Standards

The Venice Commission of the Council of Europe has articulated international standards for judicial appointments in its 2007 Report on Judicial Appointments.³⁰ These standards emphasise selection on the basis of merit, transparency of the selection process, involvement of an independent body in the appointment process, and the exclusion of political considerations from appointment decisions. The Venice Commission explicitly recommends against direct executive appointment without meaningful involvement by the judiciary or an

²⁹ Federal Judicial Center, *Judicial Selection in the United States: A Special Report* (FJC 2019)

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³⁰ Venice Commission (Council of Europe), *Report on Judicial Appointments* (CDLAD(2007)028, 2007) para 8.

independent commission.

India's existing collegium system, ironically, satisfies some of these standards—it is judiciary-led and excludes direct political involvement—but fails the standards of transparency and the involvement of non-judicial perspectives. A reformed system that retains judicial primacy while introducing independent oversight and competitive selection processes would more fully satisfy the Venice Commission standards.

VIII. TOWARDS A COMPREHENSIVE REFORM FRAMEWORK

A. A Multi-Pillar Approach

This paper proposes a multi-pillar reform framework comprising: (i) a constitutional amendment replacing the current collegium with a reformed Judicial Appointments Commission that excludes direct executive participation but incorporates independent non-judicial voices; (ii) a UPSC-style competitive examination as one element of the selection process for direct recruits from the Bar; (iii) mandatory publication of appointment criteria and reasoned decisions; and (iv) a statutory diversity mandate requiring the commission to ensure representation of women, Scheduled Castes, Scheduled Tribes, and Other Backward Classes in judicial appointments.

B. Transparency Mechanisms

Transparency in judicial appointments can be achieved through several specific mechanisms: the publication of a comprehensive eligibility and evaluation framework before appointments are made; the recording and archiving of collegium or commission deliberations, subject to appropriate confidentiality protections; the publication of annual reports on the appointment process, including data on the social, professional, and regional backgrounds of appointees; and the establishment of a judicial appointments ombudsman with power to investigate complaints of procedural irregularity.

The Centre for Law and Policy Research has documented that, following public pressure, the Supreme Court collegium began publishing its resolutions on the Court's website from late 2017 onwards.³⁷ While this represents a meaningful advance in transparency, published resolutions continue to lack adequate reasoning for the selection of one candidate over another, and the process by which candidates are identified in the first instance remains entirely opaque.

Transparency of outcome without transparency of process is of limited value.

C. Accountability Mechanisms

Accountability in the appointment process requires mechanisms by which decisions can be reviewed and decision-makers held responsible for their choices. In the current system, the collegium is accountable to no one. Its members cannot be questioned by Parliament, its decisions cannot be judicially reviewed (since the Supreme Court is the final court), and its deliberations are shielded from public scrutiny.

A reformed system could introduce the following accountability mechanisms: a right of appeal to a larger bench of the Supreme Court against appointment decisions, at least on grounds of procedural irregularity; parliamentary oversight through a standing committee empowered to examine annual appointment reports and call witnesses from the appointment commission; and independent audit of the appointment process by the Comptroller and Auditor General or a dedicated judicial appointments auditor.

D. The Memorandum of Procedure

In the shorter term, prior to any constitutional amendment, significant improvements can be achieved through a revised Memorandum of Procedure (MoP). The MoP is an executive-judicial document governing the appointment process and currently exists in a form that has remained largely unchanged since the Third Judges Case. A revised MoP should: specify the criteria for appointment to the High Courts and the Supreme Court; require the collegium to maintain a standing database of potential candidates identified through a systematic process rather than informal nomination; mandate the publication of recommendations with reasoned justifications; and establish timelines for the appointment process to reduce the systemic delays that have produced chronic judicial vacancies.

IX. CHALLENGES AND COUNTER-ARGUMENTS

A. The Danger of Political Capture

The most powerful objection to any reform of the collegium system is the risk of political capture. The Emergency period demonstrated that the executive, when motivated, can use its control over judicial appointments to marginalise inconvenient judges and entrench a pliant

judiciary.³¹ Any reform that gives the executive even indirect influence over appointments must be assessed against this historical background.

This concern is real but not decisive. The risk of political capture is a risk to be mitigated by institutional design, not an argument for the status quo. The current collegium system is itself not immune to capture; it can be influenced by retired judges who have interests in law firm engagements or by serving judges who have family members at the Bar. The question is not which system is perfect, but which system best balances the competing values of independence, transparency, and accountability.

B. Judicial Resistance to Reform

A further challenge is judicial resistance. The Supreme Court, which has the final word on the constitutionality of any reform, has a structural interest in preserving the collegium system that gives it control over its own composition. The NJAC Case illustrates the Court's willingness to strike down even constitutionally enacted reforms that it perceives as threatening to judicial independence.

The response to this challenge is not to abandon reform but to design reforms that the Court is more likely to uphold. A system that enhances transparency without reducing judicial primacy in the final appointment decision is more likely to survive constitutional scrutiny than one that introduces political actors into the process. Collaborative reform, developed through dialogue between the executive, the judiciary, and civil society, is more likely to succeed than unilateral legislative action.

C. The Quality of Examination Design

A competitive examination, if poorly designed, can become a new source of arbitrariness rather than a solution to existing arbitrariness. The design of the examination—the subjects tested, the format of questions, the weighting of written and oral components—will have significant consequences for who is selected.

Investment in examination design is therefore essential. The UPSC's success is partly attributable to the sustained investment in the development and validation of its examination

³¹ Upendra Baxi, *The Indian Supreme Court and Politics* (Eastern Book Company 1980) 47.

framework over more than seven decades. A judicial examination authority would need comparable institutional depth and independence, including a systematic process for reviewing and updating the examination to ensure that it tests the skills and knowledge that are genuinely predictive of judicial performance.

X. CONCLUSION

The appointment of judges to the superior courts of India is a matter of profound constitutional consequence. The collegium system, for all its virtues in insulating the judiciary from direct executive interference, has failed to deliver the transparency, accountability, and diversity that a democratic constitutional order demands. The NJAC, the most significant attempt at reform in two decades, was struck down by the very institution whose composition it sought to regulate—a paradox that illustrates both the constitutional stakes involved and the structural obstacles to change.

This paper has argued for a multi-pillar reform framework that preserves judicial primacy in the final appointment decision while introducing competitive selection through a UPSC-style examination, mandatory transparency through publication of criteria and reasoned decisions, and structural diversity through a statutory mandate. Such reforms are constitutionally feasible if carefully designed to preserve judicial independence as a basic structure feature.

The deeper argument of this paper is that transparency and accountability in judicial appointments are not merely administrative desiderata; they are constitutional imperatives. If the judiciary's legitimacy rests on the quality and integrity of its decisions, the appointment process by which judges reach the Bench must itself embody the values—openness, fairness, and meritocracy—that the judiciary is entrusted to uphold. A judiciary that appoints its own members in secret, without criteria, and without accountability to any external authority, cannot credibly claim the moral authority to hold the rest of the constitutional order to account.

The path from the current impasse to a reformed system will be long and contested. It will require negotiation between the executive and the judiciary, constitutional amendment, and a sustained commitment from civil society. But the stakes—the independence and credibility of the institution that is the ultimate guardian of the Indian Constitution—could not be higher. As Dr Ambedkar reminded the Constituent Assembly, a Constitution is only as good as the men and women entrusted with its interpretation.³⁹ Ensuring that those men and women are selected through a process that is worthy of the Constitution they serve is the essential first step.

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