BEYOND BENCHMARKS: UNVEILING THE CONSTITUTIONAL NUANCES OF THE 99TH AMENDMENT AND NJAC

Aryan Vats, B.A.LL.B. (Hons), National University of Study and Research in Law, Ranchi

ABSTRACT

In democracies, the process of appointing judges is always a struggle between the need for judicial independence and the necessity of democratic accountability. India's move to address this issue through the 99th Constitutional Amendment and the creation of the National Judicial Appointments Commission mark an important constitutional turning point. The Supreme Court 2015 decision in 2015 by 4:1 majority to reject the NJAC is considered the basic structure doctrine and thus judicial autonomy was preserved but the court left very few questions unanswered. After ten years of the debate has become louder instead of being resolved and India is facing the same problems. This article traces the evolution of India and its judicial appointment mechanisms from executive primacy through the collegium system to the collapse of the NJAC. By contrasting Justice Khehar's majority opinion with Justice Chelameswar's insightful dissent, the article attempts to uncover the core constitutional issues that lie in the tension between:

- transparency and independence
- accountability and autonomy
- federal balance

Examining developments through 2025 including political consensus for reform and appointment crisis the article demonstrates that the collegium system's opacity and structural limitations continue to undermine judicial legitimacy. Through comparative analysis and examination of international models the article argues that alternative mechanisms can reconcile independence with accountability, offering constitutional pathways for reform that remain constitutionally viable and institutionally necessary.

Keywords: Judicial Appointments, Basic Structure Doctrine, Judicial Independence, Collegium System, National Judicial Appointments Commission

Introduction

The designation of judges in courts is among the most thoughtful measures in democratic governance. However, the balance has been challenged several times within India's constitutional structure, leading to a constitutional puzzle that is still felt in the country's legal discourse. The trouble is about the National Judicial Appointments Commission. The conflict between the autonomy of the judiciary and the accountability of democracy was at its highest point when the Supreme Court, by a majority of 4:1, invalidated the 99th Constitutional Amendment in 2015, thus declaring the NJAC unconstitutional.[1] The example of the judiciary overriding Parliament's power to amend the law highlights the issues about the separation of powers, judicial independence, and the right institutional ways of choosing judges. How a constitutional democracy keeps its judiciary independent of political pressure and still makes it accountable to constitutional principles? Are judicial independence and transparency able to coexist or are these values inherently conflicting? What role should democratic institutions have in the selection of judges? These questions determine the legitimacy of constitutional governance and the level of public trust in the judiciary. These debates took a new turn and became more urgent in 2025 when reform demands got louder than ever. “There is very little transparency in the present collegium system, which is functioning in a way that most people perceive to be characterized by nepotism and arbitrariness. Meanwhile, India’s higher judiciary is severely lacking in gender and caste diversity, with women making up only about 14% of the judges of the higher judiciary, where the inheritance of male and upper-caste predominance continues.”[2] “Vacancies across the court system have reached record high with more than 5600 judicial vacancies across all courts as of 2024.”[3] This article is an exhaustive attempt to cover the constitutional issues that arise from both the 99th Amendment and the NJAC judgment. The article goes back to the very beginning when the India judicial appointments were first introduced and after that compares the two different views of the constitution and dives deep into the still unsolved problems which influence the judicial appointments in India. The article, in fact, situates the NJAC debate at the level of broader constitutional principles, and by looking

[1] *Supreme Court Advocates-on-Record Ass'n v. Union of India*, (2016) 5 SCC 1 (India), https://indiankanoon.org/doc/66970168/

[2] *Representation in the Supreme Court | 2025*, SC OBSERVER (16 Jan 2025), https://www.scobserver.in/journal/representation-in-the-supreme-court-2025/.

[3] *Judiciary Has More Than 5600 Vacancies Across Courts*, VISION IAS (29 Nov 2024), https://visionias.in/current-affairs/news-today/2024-11-30/polity-and-governance/judiciary-has-more-than-5600-vacancies-across-courts.

at the latest changes till 2025, it claims that the basic issues, which were discovered ten years ago, are still there and maybe even cannot be solved by the present institutional structures.

Historical and Constitutional Backdrop

A. The Original Constitutional Design and Executive Primacy (1950 - 1980)

The framers of India's Constitution approached the question of judicial appointments with considerable caution. During the Constituent Assembly debates, members grappled extensively with the tension between independence and accountability. As constitutional historian Granville Austin observed in his seminal work, "keeping politics out of the courts while ensuring proper checks and balances dominated discussions among India's constitutional architects".[4] The result was Article 124(2), which prescribed that judges of the Supreme Court would be appointed by the President in consultation with such judges of the Supreme Court and High Courts as the President might deem necessary. The word consultation carried no specification regarding whether the President's consultations would be binding or merely advisory. During the first three decades post-independence, executive primacy was the adopted and go to means. The consultation model was just a mechanism whereby the executive would seek the judicial opinion and then proceed as it deemed appropriate. The Chief Justice's recommendations carried weight, but they were not determinative.

This arrangement reflected a particular constitutional philosophy prevalent in the post-independence era. The Constitution's framers, themselves products of anti-colonial struggle, were sceptical of unelected institutions with excessive power. Judicial independence was valued, but it was conceived as independence from particular litigants and narrow political interests, and not as independence from democratic institutions themselves. The system functioned reasonably well for several decades, though concerns about executive overreach began surfacing in the 1970s, particularly during Prime Minister Indira Gandhi's infamous tenure. The judicial transfers ordered during the Emergency period i.e. 1975 - 1977 including the controversial transfer of Justice H.R. Khanna from Delhi to Allahabad demonstrated the executive's willingness to use appointment and transfer powers punitively.[5] These incidents

[4] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (1999), https://www.bbau.ac.in/Docs/FoundationCourse/TM/MPDC405/GRANVILLECONSTITU.pdf
[5] *S.P. Gupta v. Union of India*, A.I.R. 1982 SC 149, https://indiankanoon.org/doc/112850760/

planted seeds of concern about executive overreach that would later sprout into demands for judicial autonomy.

B. The Judicial Revolution: The Three Judges Case (1981 - 1998)

"The First Judges Case in 1981 i.e. S.P. Gupta v. Union of India marked a turning point, though not immediately in the direction that would later prevail."[6] The Supreme Court, when faced with the executive's threat to relocate a number of judges, largely agreed with the rule of the executive taking the lead but at the same time expressed a stronger idea of judicial independence. It was ruled by the Court that even though the President is required to seek the Chief Justice's advice, consultation does not necessarily mean agreement. The President was allowed to have the final say in the decisions of appointments and transfers though it is expected that such authority will be exercised fairly and honestly.[7] The court decision was a middle ground. The court acknowledged the significance of judicial independence; however, it placed it under the control of the executive authority within the limits of constitutional reasonableness. The judiciary was to be the weaker hand in the separation of powers with the elected institutions and the latter would be careful in the exercise of their powers keeping judicial views in their mind. Although the Chief Justice's recommendations would not be legally binding, they would be of significant moral influence.

However, the judicial landscape transformed dramatically with the Second Judges Case in 1993 i.e. Supreme Court Advocates-on-Record Association v. Union of India.[8] In an astonishing manner, the highest court turned the wheel of the previous decision around and gave a new meaning to the term consultation. It now means concurrence according to the Supreme Court thereby implying that the Chief Justice's opinion which was formed in consultation with the two senior-most colleagues would be the one that the President has to follow.[9] This change was not just a doctrinal one, but it signalled a fundamental movement of constitutional power from the executive branch to the judiciary. The main opinion in the Second Judges Case had the idea of the judiciary being independent as one of the most important features of the Constitution's framework. The judges reasoned that an independent judiciary could not emerge if the executive possessed the power to make or block judicial appointments based on political

[6] Id.
[7] Id.
[8] *Supreme Court Advocates-on-Record Ass'n v. Union of India*, A.I.R. 1994 SC 268, https://indiankanoon.org/doc/753224/
[9] Id.

considerations. If the executive could appoint judges only to favour governmental positions, then the separation of powers would collapse. The independence protected by the Constitution required that judges not feel obligated to the executive for their positions.[10] This decision marked the rise of the collegium system which is a mechanism operating entirely through informal constitutional conventions rather than statutory enactment. The system functioned as follows:

- The Chief Justice of India would consult with the two senior-most judges and form a collective opinion regarding judicial appointments.
- This opinion would be forwarded to the President, and the President would then issue the formal appointment.
- Legally, the President retained discretionary authority; constitutionally, that discretion was now bound by the Chief Justice's determination.[11]

The Third Judges Case, decided through a Presidential Reference in 1998, further crystallised the collegium system.[12] The Supreme Court expanded the collegium to include five members which constitutes of the Chief Justice and four senior-most judges. This enlarged body would collectively determine recommendations for Supreme Court appointments and transfers of High Court judges. Importantly, the Court also clarified that High Court judges appointed under Article 217 would similarly be appointed upon the recommendation of a collegium comprising the Chief Justice, the concerned High Court Chief Justice and two senior judges from that court.[13] By 1998, the structure of judicial appointments had undergone a remarkable transformation. What had begun as a system of executive primacy had turned into a system of judicial primacy. No statute governed the collegium, no transparent criteria guided appointments and no public participation was contemplated. The system functioned as an entirely internal judicial process.

C. The Criticisms: Opacity, Accountability and Democratic Concerns

By the early 2000s, the collegium system faced criticism. Concerns about opacity, lack of

[10] Id.
[11] *In Re: Presidential Reference*, A.I.R. 1999 SC 1, https://www.scobserver.in/journal/15-times-the-president-referred-questions-to-the-supreme-court/
[12] Id.
[13] Id.

accountability, and the "uncle-judge syndrome" began permeating constitutional discourse.[14] Critics argued that the system was without any legal basis, clear criteria or the involvement of the public. It was said that the choices of the constitutional interpreters were done in secret, without any responsibility towards the public. The whole faith in the system was based on the belief that judges as morally upright would choose wisely.

Moreover, doubts were raised about the collegium system being a body that actually supported the independence of the judiciary. In case judicial independence called for protection from democratic pressures, would it not need total freedom for self-renewal? Some constitutional scholars argued that judicial independence was being confused with judicial imperialism which entailed the aggressive assertion of judicial power beyond its proper constitutional bounds.[15]

Civil society organizations pointed to persistent underrepresentation of women, scheduled castes, scheduled tribes and religious minorities in the higher judiciary. The collegium system, lacking statutory diversity criteria, had produced a bench that looked remarkably similar to judicial benches of past eras which were earmarked predominantly with male, upper-caste and drawn from narrow social strata.[16] This suggested that informal conventions, however constitutionally sound, might perpetuate rather than remedy structural inequalities.

Political discourse expressed frustration. The executive felt excluded from the appointment process despite bearing constitutional responsibility for judicial administration. State governments complained about powerlessness in the appointment of High Court judges for their states. Opposition parties accused the government of fabricating or rigging appointments through the Chief Justice. The public, meanwhile, saw judges appointing judges with minimal transparency or accountability.

The 99th Amendment: Constitutional Architecture and Intent

A. Legislative and Parliamentary Consensus

"Against the criticism and constitutional concern, Parliament enacted the 99th Constitutional

[14] *The Collegium Conundrum*, DRISHTI IAS (6 Jan 2025), https://www.drishtiias.com/daily-updates/daily-news-editorials/the-collegium-conundrum.
[15] Arghya Sengupta, *Judicial Appointments and the Basic Structure*, 50 ECON. & POL'Y WKLY. (2026)
[16] India Needs More Women Judges in the Supreme Court, VISION IAS (2 Sept 2025), https://visionias.in/current-affairs/upsc-daily-news-summary/article/2025-09-03/the-hindu/polity-and-governance/india-needs-more-women-judges-in-the-supreme-court.

Amendment in 2014."[17] "The Amendment was passed unanimously in both houses of Parliament and secured ratification by sixteen state legislatures."[18] This agreement was indicative of a wide political consensus that reform was indispensable. Basically, the opposition party that eventually filed a court challenge against the Amendment, had given its initial nod to the reform as well. The 99th Amendment's narrative is that the discussions in the Parliament were focused on the fact that the judiciary can remain independent while being accountable to the democratic system. The independence did not entail freedom of the judiciary from control but rather that it needed to be protected from an executive power that might act in an arbitrary way. The protection could be there in a body such as a commission with a diverse membership, which apart from providing more safeguards through a wider representation, would also have a higher level of legitimacy.

B. Structural Architecture: The NJAC Framework

The 99th Amendment inserted three new articles into the Constitution that are Articles 124A, 124B and 124C. These provisions established the National Judicial Appointments Commission with the following structural features:

- Composition: The NJAC consisted of six members which included the Chief Justice of India as Chairperson, two judges of the Supreme Court next in seniority to the Chief Justice, the Union Minister of Law and Justice and two "eminent persons" nominated by a Committee comprising the Prime Minister, the Chief Justice and the Leader of the Opposition in the Lok Sabha.[19] The provision requiring "eminent persons" to include representation from scheduled castes, scheduled tribes, backward classes, minorities or women reflected Parliament's commitment to inclusive representation.[20]

- Functions: Article 124B outlined the NJAC's responsibilities. The Commission would recommend appointments to the Supreme Court, recommend appointments to High Courts, recommend transfers of judges and formulate regulations necessary for its functioning.[21] Critically, Article 124B(3) provided that all decisions would be made by

[17] *The Constitution (99th Amendment) Act*, 2014, https://prsindia.org/files/bills_acts/acts_parliament/2014/the-constitution-(99th-amendment)-act,-2014.pdf
[18] Id.
[19] Id. art. 124A
[20] Id. art. 124A(2)
[21] Id. art. 124B

consensus and where consensus could not be reached by majority vote, the Chief Justice would have a casting vote in case of ties.[22]

- Structural Safeguards: The appointment of judges required consensus among the Prime Minister, the Chief Justice, and the Opposition leader, preventing any single entity from dominating the process. The requirement for consensus or majority decision-making prevented unilateral action. The involvement of an Opposition representative theoretically provided political balance.

C. Constitutional Philosophy: Independence, Accountability and Democratic Legitimacy

The constitutional philosophy that informed the 99th Amendment was based on several interrelated premises.

- The framers of the Amendment rejected the idea that judicial independence requires judicial autonomy of a completely independent nature. They maintained that a judiciary that selects itself with a high degree of opacity and without accountability, might become less independent.

- The framers of the Amendment believed that democratic accountability and judicial independence were not necessarily on opposite sides. The commission consisting of executive and civil society representatives could be the checks against judicial self-interest thus ensuring judicial independence from being influenced by partisan considerations. The presence of the Opposition leader ensured that no one political actor could dominate the process.

- The framers of the Amendment believed that openness and the representation of different groups would lead to greater judicial legitimacy. A system that appointed judges through visible, multi-stakeholder processes would generate greater public confidence than an opaque collegium of judges from similar backgrounds.

- The Amendment reflected a particular conception of separation of powers. Rather than viewing separation of powers as requiring maximum isolation of each branch, the Amendment's framers saw separation of powers as requiring balanced institutional

[22] Id. art. 124B(3)

participation. The judiciary would retain significant influence through the Chief Justice's presence and the casting vote provision, but it would not retain monopolistic control.

The NJAC Verdict: Judicial Reasoning and Constitutional Doctrine

A. The Majority Opinion: Justice Khehar's Constitutional Vision

The constitutional validity of the 99th Amendment was challenged immediately. On 16 October 2015, a five-judge Constitution Bench delivered its verdict with Justice J.S. Khehar writing the lead opinion for a 4:1 majority.[23] Justice Khehar's judgment rested on a the premise that judicial independence constitutes part of the Constitution's basic structure and any amendment compromising this independence would itself be unconstitutional.[24]

Justice Khehar voiced several concerns about the NJAC's structure.

- He emphasised the problem of reciprocity. "The presence of governmental representatives in the appointment process would create a web of indebtedness among appointed judges." "Judges knowing that their appointment depended partly on governmental approval would inevitably feel obligated to the government, particularly in cases involving massive financial ramifications or accusations against political leaders."[25] Since the government was the largest litigant in Indian courts, this potential conflict was systemic.

- Second, Justice Khehar worried about the Law Minister's presence on the Commission. "The Law Minister represents the government's legal interests and regularly appears before courts. Having such a person participate in selecting judges created an obvious structural conflict of interes." The Law Minister might support appointments of judges believed sympathetic to governmental positions or block appointments of judges perceived as hostile. This violated principles of natural justice and reasonable procedure.[26]

[23] Supra note at 1.
[24] Id.
[25] Id.
[26] Id.

- Third, Justice Khehar questioned whether the NJAC structure truly ensured judicial independence. The Chief Justice's casting vote provided only nominal protection. If the Chief Justice and two colleagues voted for a candidate and the Law Minister and an eminent person voted against, the Chief Justice's casting vote would break the tie. However, this meant the Commission could block appointments if the judicial minority joined with non-judicial members. Such a structure made the Chief Justice vulnerable to coalitional politics, hardly a foundation for true independence.[27]

- Fourth, Justice Khehar invoked the basic structure doctrine. Drawing on Kesavananda Bharati and subsequent jurisprudence, he held that judicial independence constituted a basic feature of the Constitution.[28] Since judicial independence was basic, no constitutional amendment could dilute it. The 99th Amendment, by empowering non-judicial actors in appointments, violated this basic feature and was therefore unconstitutional even though it was technically a valid amendment.[29]

This holding was constitutionally remarkable. Never before had the Supreme Court invalidated a constitutional amendment passed by the required two-thirds majority in both houses and ratified by states. The Court essentially held that the people's representatives, acting through the amendment process, could not alter the Constitution's fundamental features.

B. Justice Chelameswar's Dissent: An Alternative Constitutional Vision

However, Justice Jasti Chelameswar dissented vigorously, articulating an alternative constitutional vision that challenged several of the majority's assumptions.[30] Justice Chelameswar began by questioning the empirical premises underlying the majority opinion. The assumption of judicial primacy as necessary for independence, he argued, was "empirically flawed."[31]

Justice Chelameswar's critique was multifaceted.

- First, he questioned whether the collegium system had truly enhanced judicial

[27] Id.
[28] Id.
[29] Id.
[30] Id.
[31] Id.

independence. If anything, the system operated with such opacity that it had become a mechanism for perpetuating particular power structures within the judiciary. Seniority, rather than merit, often determined appointments. Judges from particular bar associations or social circles received preferential treatment. The collegium lacked any transparency mechanism to prevent favouritism.[32]

- Second, Justice Chelameswar emphasised the role of transparency in supporting genuine independence. A transparent process, visible to the public, would constrain improper considerations better than a secret process relying on the virtue of judges. If appointments were made through open procedures with stated criteria, judges appointed would be accountable to the public for meeting those criteria and judges making recommendations would face reputational consequences for improper recommendations. In contrast, the collegium's secrecy actually undermined independence.[33]

- Third, Justice Chelameswar rejected the assumption that executive participation necessarily compromised independence. Democratic constitutions worldwide involved multiple stakeholders in judicial appointments. The United Kingdom's Judicial Appointments Commission, Canada's advisory committees and South Africa's commission all involved non-judicial actors, yet judicial independence remained fine in these democracies.[34] Why should executive participation automatically undermine independence in India?

- Fourth, and importantly, Justice Chelameswar questioned whether complete judicial autonomy in appointments was consistent with democratic theory. In a constitutional democracy, the people acting through their elected representatives retain ultimate sovereign authority. Could that sovereign authority be said to have negligible say in selecting judges than unelected judges themselves? Did democracy not require some meaningful role for elected institutions in constituting the judiciary?

- Justice Chelameswar acknowledged concerns about governmental pressure on judges. However, he argued these concerns could be addressed through structural safeguards

[32] Id.
[33] Id.
[34] Id.

rather than through complete judicial monopoly over appointments.[35] The NJAC, with its multi-member structure and Opposition participation, provided such safeguards.

- Finally, Justice Chelameswar raised diversity concerns that the majority opinion overlooked. The collegium system, operating through informal conventions and seniority, had perpetuated underrepresentation of women, minorities and backward classes. The NJAC, with its explicit diversity requirements, offered hope for more representative appointments. By striking down the NJAC, the majority was putting up a system that structurally disadvantaged women and marginalized communities.[36]

Constitutional Tensions and Unresolved Questions

A. Transparency v. Independence: The Constitutional Paradox

The NJAC verdict, instead of resolving debates about judicial appointments, made a constitutional paradox. How can judicial appointments be transparent without compromising the independence they seek to protect? The tension between transparency and independence remained unresolved by the Court's reasoning. Justice Khehar assumed that transparency would lead to political consideration of appointments. “If appointments were public, politicians would openly lobby for candidates, judges would feel pressure to appoint candidates favoured by popular opinion and independence would erode. Better, then, to keep appointments secret, with only judges involved.” Justice Chelameswar's position suggested that transparency and independence were compatible. “Transparent procedures, far from undermining independence, would actually support it by constraining improper considerations and making judges accountable for following stated criteria.” The issue was how to structure transparent processes to protect legitimate independence. In 2025 this tension remains unresolved. The collegium system continues to operate with minimal transparency. Although the Supreme Court began publishing collegium resolutions in 2017 after some public pressure, these resolutions often lack detailed reasoning.[37] Appointments remain a secret from the public. The Supreme Court released an eight-page document in May 2025 containing factors considered in recommendations which included merit, integrity, disposition rates and regional representation,

[35] Id.
[36] Id.
[37] *Collegium Resolutions*, SUPREME COURT OF INDIA, https://www.sci.gov.in/collegium-resolutions/.

but critics argue this remains insufficient to address persistent concerns about favouritism and lack of coherent criteria.[38]

B. Democratic Accountability and Judicial Autonomy

The question of democratic accountability continues to trouble constitutional discourse. In a constitutional democracy should the power to appoint rest entirely with a judicial elite that is only answerable to itself? The NJAC judgment's logic suggests that judicial independence demands isolation from democratic accountability mechanisms. “Judges in this view are constitutional trustees appointed to uphold the Constitution against majoritarian pressures and democratic accountability would compromise this role.” Yet this creates an anomaly wherein a branch of government free from the democratic accountability legitimises power in constitutional democracies. The practical consequences of this immunity have become apparent wherein when vacancies persist or appointments seem arbitrary the judiciary faces no political accountability. The executive cannot refuse to implement appointments, the public cannot vote out judges, the legislature cannot meaningfully challenge appointments. Such asymmetry is, by and large, progressively antagonistic to the norms of democracy. The year 2025 has seen the point of conflict become sharper. In his speech of April 2025 ex-Law Minister Ashwani Kumar was very much in tune with this idea when he said: "It is a time that demands immediate change of the present collegium system, introducing NJAC or a superior one."[39] Across the political spectrum, actors recognise that the current system lacks legitimacy precisely because it is unaccountable.

C. Institutional Legitimacy and Public Confidence

The legitimacy of an institution is fundamentally based on the trust of the public. If the procedures for appointments look to be non-transparent or nepotistic, then this trust is very likely to be eroded. The opacity of the collegium system has been the cause of the continuous allegations of favouritism, personal relationships and prejudices towards certain regions. The issues raised have been instrumental in deepening these worries. It is said that in August 2025,

[38] *Union Appoints Three New Judges to Supreme Court: May 2025*, SC OBSERVER (3 June 2025), https://www.scobserver.in/journal/union-appoints-three-new-judges-to-supreme-court-may-2025-justice-n-v-anjaria-vijay-bishnoi-and-a-s-chandurkar/.

[39] *Time to Replace Collegium System, Bring in NJAC or Something Better: Former Law Minister*, NEW INDIAN EXPRESS (5 Apr 2025), https://www.newindianexpress.com/nation/2025/Apr/06/time-to-replace-collegium-system-bring-in-njac-or-something-better-former-law-minister-ashwani-kumar-2.

Justice Nagarathna disagreed with a collegium recommendation, expressing her concern about the regional imbalance of appointments.[40] The system's conflicts were made clear by the public recognition of the internal collegium disagreement. The question raised was that if several judges were at odds over the right appointments, then how could the public trust appointments that only assert merit instead of politics? Furthermore, concerns about particular appointments have garnered attention time and again. When controversial judges suddenly received promotions or transfers, suspicions about improper criteria arose. The lack of transparent reasoning made it impossible to evaluate whether such appointments reflected legitimate considerations.

D. Federal Balance and State Judicial Administration

India's federal structure adds complexity to judicial appointment questions that was overlooked by the NJAC debate. "High Courts serve as constitutional courts for states, yet their judges are appointed through a process dominated by the Supreme Court collegium and the Union government." State governments have meagre roles and this raises federalism concerns. Should states have participation in selecting judges of their own High Courts? In current times state governments submit panels of candidates, but the Supreme Court collegium forms final recommendations with negligible consideration of state preferences. This arguably violates federal principles requiring state governments' proper involvement in forming or constituting state institutions. The NJAC with its mention of Chief Ministers could have addressed this concern. However, the Supreme Court majority opinion expressed no interest in such federal way.

E. Diversity, Representation and Structural Exclusion

The most unresolved tension is about diversity and representation. Despite constitutional commitments to equality, India's higher judiciary remains overwhelmingly male and upper-caste dominated where women judges constitute only about 14% of the Supreme and High Court bench combined, with women judges extremely rare at senior levels.[41] Justice B.V. Nagarathna is the only woman among the 34-member Supreme Court bench as of 2025.[42]

[40] *A Crack in the Collegium's Wall of Secrec*y, SC OBSERVER (3 Sept 2025), https://www.scobserver.in/journal/a-crack-in-the-collegiums-wall-of-secrecy/.
[41] *Gender Inequality in Judicial Appointments*, CNLU, https://cnlu.ac.in/wp-content/uploads/2025/04/Gender-Inequality-In-Judicial-Appointments-by-Shantanu-Dixit.pdf.
[42] Supra note at 16.

Representation of scheduled castes, scheduled tribes and religious minorities is similarly limited. The collegium operates through informal networks and seniority. These informal mechanisms, structurally advantage judges from privileged backgrounds with access to the relevant networks. Without explicit diversity criteria and transparent selection processes these structural biases continue to perpetuate themselves. The NJAC's diversity requirements represented an attempt to address this problem through structural means, but by striking down the NJAC, the Supreme Court did nothing in favour of women and marginalised communities. Justice Chelameswar's dissent emphasised this concern, but the majority opinion dismissed diversity arguments as secondary to judicial independence considerations.

Developments and Debates in 2025

A. Political Consensus on Reform: The March 2025 Controversy

2025 has caused renewed intensity in debates over judicial appointments. In March 2025, a controversy involving the discovery of large sums of currency at a High Court judge's residence sparked parliamentary discussions about judicial accountability and appointment mechanisms.[43] Vice President Jagdeep Dhankhar convened a meeting with floor leaders from across the political spectrum to discuss the incident. Significantly, leaders across political lines used the occasion to discuss alternatives to the collegium system.[44] Dhankar, the Vice President, made a very clear reference to the NJAC which, in his view, might have changed the present situation by ensuring the presence of independent oversight bodies. This cross-party worry about the issue revealed that those engaged in politics were aware of the shortcomings of the collegium system and were looking for institutional reform. The March 2025 conversation was notable for the fact that it constituted a political consensus that the way in which the appointments were made had to be changed. This convergence suggested that the 2015 verdict failed to settle the political question about whether the collegium system adequately served judicial governance needs.

B. Appointment Backlogs and Crisis in the Judiciary

The Supreme Court's own functioning in 2025 has highlighted the practical consequences of

[43] *Government, Opposition Call for Changing Collegium System*, VISION IAS (25 Mar 2025), https://visionias.in/current-affairs/upsc-daily-news-summary/article/2025-03-25/the-hindu/polity-and-governance/government-opposition-call-for-changing-collegium-system.
[44] Id.

unresolved appointment questions. In May of 2025 the Supreme Court expressed serious concern over the large amount of case backlogs that was continuing to grow due to unfilled judicial vacancies.[45] The Court noted that 29 collegium recommendations made since November 2022 were pending with the government, creating a blockage in appointments. High Courts face particular crisis as in 2024 India's judiciary faced more than 5600 vacancies across all courts.[46] For instance, the Allahabad High Court operated with only 79 judges against a sanctioned strength of 160.[47] These vacancies directly contributed to case backlogs and delayed justice. The appointment crisis raises a crucial question i.e. does the collegium system, by operating through informal conventions rather than statutory procedures, lack mechanisms to compel timely appointment decisions? If the government cannot appoint judges without collegium recommendations and the collegium operates with minimal institutional pressure to finalise recommendations then appointments can face indefinite delays. The system lacks any enforcement mechanism ensuring prompt judicial appointments. Ironically, one justification offered for the NJAC was that it would streamline appointments through structured procedures and fixed timelines. By striking down the NJAC, the Supreme Court may have perpetuated a system prone to appointment delays and resulting vacancies.

C. Transparency Initiatives and Their Limitations

Transparency initiatives in 2025 have made modest progress. "In May 2025, the Supreme Court released an eight-page document detailing factors considered in recommending judges."[48] The document mentioned merit, integrity, disposition rates and regional representation as key considerations. However, critics noted that the document provided minimal information about how these factors were weighed, how disputes within the collegium were resolved or how recommendations were ultimately made. Gender, caste, religion and community representation were mentioned vaguely without clear targets or methodologies suggesting that diversity is a secondary concern in a system primarily organised around merit and seniority. Justice Nagarathna's concerns about regional representation in August 2025 indicated that even within the collegium there was no consensus about appropriate appointment criteria.[49] If the five-

[45] *Clear Judge Appointments Quickly Amid Growing Case Backlog*, BUS. STANDARD (7 May 2025), https://www.business-standard.com/india-news/clear-judge-appointments-case-backlog-supreme-court-centre-125050801153_1.html.
[46] Supra note at 3.
[47] Id.
[48] Supra note at 38.
[49] Supra note at 40.

member Supreme Court collegium could not internally agree on representation questions, how could the broader public have confidence that appointments reflected coherent principles?

D. International Comparison and Judicial Appointments Globally

In 2025 it is pointed to combine judicial independence with transparency and accountability. The United Kingdom's Judicial Appointments Commission established in 2005 selects candidates through transparent merit-based procedures before the Lord Chancellor makes formal appointments.[50] This division of labour preserves judicial independence by ensuring merit-based selection while maintaining democratic accountability through the appointment process. Canada's federal judicial appointment process involves advice from provincial judicial committees and professional bodies where the Prime Minister makes formal appointments.[51] South Africa's Judicial Service Commission includes other stakeholders including civil society and government representatives.[52] The Commission is committed to achieve gender balance and represent diverse communities in the judiciary. These international models suggest that judicial independence and multi-stakeholder appointment processes are compatible hence the question is whether the structure of the NJAC protected independence while enhancing accountability and Justice Chelameswar's dissent answered in favour of this but the majority answered negatively. In 2025 gaps in India's appointment system in comparison to international models have prompted discussion about whether India's constitutional interpretation of independence was overly restrictive. Could India learn from international experience to design appointment mechanisms that balanced independence with accountability?

Conclusion

The constitutional questions surrounding the 99th Amendment and NJAC remain unresolved. The Supreme Court's decision preserved judicial independence but left accountability and transparency concerns unaddressed. In 2025 the urgency of reform has intensified rather than diminished. The collegium system while ensuring judicial autonomy operates with negligible transparency and accountability. Appointments remain a secret to the public, diversity remains

[50] *Judicial Appointments in the Commonwealth: Is India Bucking the Trend?,* COMMONWEALTH L. (31 Oct 2024), https://www.iconnectblog.com/judicial-appointments-in-the-commonwealth-is-india-bucking-the-trend/.
[51] *A Comparative Analysis of Judicial Appointment Processes: India and Beyond*, INDIA J. LEGAL L. REV. (1 Oct 2025), https://www.ijllr.com/post/a-comparative-analysis-of-judicial-appointment-processes-india-and-beyond.
[52] Id.

limited and vacancies keep on growing. Meanwhile, political discourse recognise that reform is necessary and international models suggest that alternatives combining independence with accountability are feasible.

Several reform proposals merit constitutional consideration.

- Fusion or hybrid model may retain the dominion of judiciary over appointments but at the same time it may incorporate mechanisms for transparency. A reconstituted NJAC with a definite majority of the judiciary could maintain judicial control while allowing transparency to be facilitated by established procedures and pre-agreed criteria.

- Statutory recognition of the collegium with codified procedures, objective criteria and mandatory diversity considerations could address opacity concerns while maintaining judicial control.[53]

- To make the appointment process more transparent and based on merit, independent judicial services commissions at the Union and state levels could achieve this while also respecting federal principles.

- The courts interpreting the constitution must be a reflection of the society where they come from. As the diversity of the viewpoints improves the quality and the acceptance of the judiciary, the mandatory aspects of gender, caste, religion, and regional representation should be included in the constitutional framework of the appointments.

The main framework concept, as referred to by the Supreme Court in its decision to strike down the NJAC, calls for re-examination of the idea that independence of the judiciary is indeed one of the essential features of the Constitution but the question of judicial control over appointments to the extent has still to be resolved. Among the issues raised in the dissenting opinion of Justice Chelameswar was the presentation of strong arguments that openness and accountability involving several stakeholders could actually enhance independence rather than weaken it. The discussion on the NJAC exposes the constitutional democracy issues at the core of which are the tensions between:

[53] *Reforming the Collegium System: Enhancing Transparency, Accountability, and Judicial Independence in India*, INDIA J. LEGAL L. REV. (10 Dec 2024), https://www.ijllr.com/post/reforming-the-collegium-system-enhancing-transparency-accountability-and-judicial-independence-in.

- independence and accountability
- judicial autonomy and popular sovereignty
- institutional efficiency and democratic legitimacy

These tensions cannot be resolved completely, but they can be managed through institutional design harmonising the constitutional values. While India is moving ahead with its democratic future, the issue of the authority in charge of appointing judges will be at the core of its constitutional nature. The solution has to weigh these two necessities:

- preserving the independence of a judiciary that stands as guardian of constitutional rights against executive overreach
- maintaining the democratic accountability necessary to sustain public confidence in a constitutional system

The collegium system has achieved the first imperative but neglected the second. Whether India's constitutional law will permit movement toward better balance remains perhaps the most important unfinished question in contemporary Indian constitutional discourse.