
APPOINTMENT OF JUDGES IN INDIAN JUDICIARY: A CRITICAL ANALYSIS

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ABSTRACT

An independent judiciary is pivotal in any democracy, acting as the guardian of constitutional values and ensuring genuine separation of powers. The process of judicial appointments greatly influences how independent the judiciary remains. India, with its extensive Constitution and status as the world's largest democracy, follows its own distinct process for appointing judges. The Constitution specifies that the President appoints High Court and Supreme Court judges after consulting the Chief Justice of India. However, several decades after the Constitution's implementation, debates emerged about the original intent behind these provisions. Key Supreme Court judgments—such as the "Judges Cases" and the NJAC verdict—have reshaped the appointment process. This analysis aims to identify the most effective system for independent, transparent, and expedient judicial appointments, which will contribute to reducing case backlogs and enhancing the overall efficiency of the judiciary.

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Introduction

The drafters of India's Constitution recognized the critical need for a judiciary both independent from the executive and capable in itself. Dr. B.R. Ambedkar noted in the Constituent Assembly Debates the challenge of protecting both of these characteristics. Recent controversies—especially after the introduction and invalidation of the National Judicial Appointments Commission (NJAC) have reignited fundamental questions regarding judicial autonomy. Notably, between 1981 and 1998, authority over judicial appointments swung from executive primacy to judicial primacy, highlighting the need for a more balanced and fair appointment mechanism.

The **appointment of judges** in the Indian judiciary is a subject of great importance, directly influencing the quality, independence, and integrity of the judicial system. As the final interpreters of the Constitution and protectors of fundamental rights, Indian judges play a crucial role in upholding democracy and the rule of law. The process of selecting these individuals, especially to higher courts, has long attracted scrutiny and debate due to its complexity and evolving nature.

Historically, the method for appointing judges in India has undergone significant changes, shifting from the executive-centric approach in the early years after independence to the present collegium system, shaped largely by landmark Supreme Court judgments. The current system aims to protect judicial independence but has also been criticized for its lack of transparency and accountability. Issues such as political influence, limited public participation, and the absence of clear criteria for selection have brought calls for reform and greater openness in the process.

A critical analysis of the appointment mechanism is essential not only to understand the **constitutional framework and judicial precedents** but also to assess its effectiveness in selecting competent and impartial judges. This discourse explores the constitutional provisions, the evolution of the appointment process, recent controversies, and ongoing reforms, highlighting the delicate balance between judicial independence and accountability in the Indian context.

This paper examines the current appointment system and advocates for an improved method that grants balanced authority to both the executive and the judiciary. It is argued that the

collegium system tends to concentrate power within the judiciary and can foster elitism and lack of openness, which contradicts constitutional ideals of equality and democracy. The paper also reviews comparative appointment models from the USA, South Africa, and the UK, emphasizing that executive involvement in selection does not inherently compromise judicial independence. Recommendations are made for limiting executive participation strictly to appointments and not to transfers or the selection of Chief Justices.

Research Methodology

This research is primarily doctrinal, relying on analysis of legal texts, case law, and constitutional debates. Primary materials include constitutional provisions and pivotal judicial decisions, while secondary materials consist of authoritative books, journals, and commentaries.

Research Questions

1. How has the judicial appointment process under the Indian Constitution evolved over time?
2. What are the "Three Judges Cases"?

Research Objective

To discuss and analyse the Three Judges Cases.

The Evolution of Judicial Appointments In India - A Constitutional Perspective.

The Indian Constitution stands as one of the most detailed written constitutions globally. Its quasi-federal framework delineates the roles, duties, rights, and powers of the three key state organs. Among these, the judiciary's foundation, authority, and constraints are clearly outlined. Although the constitution mandates a process for appointing judges, this system has undergone significant modifications, especially with the development of the collegium system. Interestingly, the method of appointing judges that has been practiced over the last three decades was not originally part of the constitution. To understand the constitutional provisions related to the appointment of judges to the Supreme

Court and High Courts, it is essential to closely analyze the Constituent Assembly's original intentions.

During the constitution's drafting, the Constituent Assembly members meticulously analyzed the social, economic, political, and legal implications of every article. After broad consensus, the constitution was adopted as a pact made on behalf of "We the People." There were extensive discussions concerning the criteria for judicial appointments, and a clear consensus emerged about the selection and appointment procedures. Jawaharlal Nehru emphasized that judges must possess "the highest integrity" and be courageous enough to stand against the executive, legislature, or any other authority obstructing justice. Despite recognizing the need for judicial independence, the Assembly was not in favor of complete insulation of the judiciary from other branches.

Dr. B.R. Ambedkar similarly opposed a suggestion that would grant the Chief Justice of India binding authority over judicial appointments, arguing this would be risky. He warned, "It would be dangerous to leave appointments solely to the President, acting on the advice of the current executive government without any reservations or limitations." He also expressed concerns about placing appointments under legislative control, doubting its soundness. While some proponents of Chief Justice consent relied on his impartiality and judgment, Ambedkar cautioned that no judge's appointment should give the Chief Justice unchecked authority, which neither the President nor the government should wield.

These deliberations culminated in Articles 124 and 217, which prescribe a consultative process for appointing judges to the Supreme Court and High Courts, respectively. Under this scheme, the executive branch holds the appointing power but must consult the Chief Justice of India for Supreme Court appointments and the Chief Justice of the relevant High Court for High Court appointments. The expectation was that this consultative system involving multiple high-ranking constitutional officials—likely to be apolitical—would ensure the appointment of highly qualified judges.

Article 124(2) states:

"Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose, and shall hold office

until he attains the age of sixtyfive years: Provided that in the case of appointment of a Judge other than the

Chief Justice, the Chief Justice of India shall always be consulted.” Similarly, Article 217(1) provides:

“Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court.”

The Law Commission of India, in its fourteenth report titled "Reform of Judicial Administration," expressed concern that the intended constitutional appointment mechanism was being undermined, especially due to excessive executive involvement at the state level. They suggested that this might have initiated the idea that the judiciary, through its representatives, is best placed to decide its own structure, thus safeguarding judicial independence

Three Judges Cases:

First Judges Case (S.P. Gupta v. Union of India):

The petitioners claimed that "consultation" should imply "concurrence," advocating for judicial veto over appointments. The Supreme Court, however, upheld executive primacy, ruling that if a dispute arose, the executive's view would prevail.

Second Judges Case (Supreme Court Advocates-on-Record Association v. Union of India, 1993):

On reconsideration, the Court found that executive control had led to concerns about merit being overlooked. It decided that the judiciary should have greater authority in appointments, establishing that the Chief Justice of India (CJI), after consulting a collegium of senior judges, would have primacy in the decision, with only limited possibilities for executive dissent.

Third Judges Case (1998):

Through an advisory opinion, the Supreme Court clarified that the collegium for

Supreme Court appointments would comprise the CJI and the four senior-most judges. Seniority and merit remained core selection criteria, but exceptions could be made for outstanding merit or diversity requirements.

THE THREE JUDGES CASE - ANALYSIS

In 1973, the government interfered with the judicial system by appointing Justice A. N. Ray as the Chief Justice of India, bypassing three senior judges. Later, in 1975, Justice H.M. Beg took over as Chief Justice from Justice Khanna. Feeling the impact of this misuse of authority, the judiciary was presented with three critical cases in 1981, 1993, and 1998 that provided opportunities to address these issues. These landmark judgments eventually led to the establishment of the collegium system, significantly reducing the executive's role and influence in the appointment of judges to higher courts. Regarding judicial appointments, the Indian judiciary has successfully maintained its autonomy — a unique position globally, as no other judiciary has the sole power to appoint judges internationally. This context gave rise to the creation of the National Judicial Appointments Commission.

Critique of the Collegium System and NJAC

Judicial appointments to higher courts are formally entrusted to the President, who is required to consult with senior members of the judiciary. Early implementation saw significant executive dominance, as confirmed by the First Judges Case. However, this began to shift after politically motivated appointments and concerns around judicial independence arose. The Second and Third Judges Cases effectively gave the judiciary decisive power, limiting executive involvement.

The collegium system, however, has faced criticism for being opaque and potentially nepotistic, fostering an atmosphere where a select few judges hold disproportionate influence over appointments. Conversely, executive dominance also invites risks of politicization and erosion of judicial neutrality. Neither extreme is ideal.

In response, the NJAC was envisaged as a compromise, introducing a commission with representation from both the judiciary and the executive. Parliament passed the NJAC Act and a constitutional amendment, but the Supreme Court invalidated both, arguing that significant executive involvement infringed upon judicial independence and violated the basic structure

of the Constitution.

The NJAC also faced its own critiques: ambiguity in defining the "eminent persons" group, potential for excessive executive control, and insufficient judicial representation. The amendment's procedural flexibility also drew concern for facilitating easier changes to appointments, potentially undermining stability.

Proposal for Reform

Currently, the "Judges appoint Judges" model predominates. The Supreme Court has recognized serious flaws with the collegium approach, such as its insularity and lack of transparency. While executive participation does not inherently obstruct judicial independence, a proportionate role for the executive is crucial for ensuring checks and balances. International models, such as the U.S. system (where the President nominates judges with Senate approval), demonstrate the viability of executive involvement without compromising judicial impartiality.

Historical practice also shows that the Constitution originally envisioned executive input, believing that accountability and balance are best served through shared responsibilities. The judiciary's administrative and removal safeguards further protect its independence, preventing undue executive pressure.

The need for checks and balances is underlined by the risk that unchecked control by any single branch (executive or judiciary) could undermine democratic governance. Therefore, a balanced, transparent, and neutral mechanism is essential for appointments.

Prospective Method of Appointments in the Higher Judiciary: Suggestions and Way Forward

The Chief Justice of India (CJI), along with the four most senior Supreme Court judges, constitutes the collegium. These five judges have the critical responsibility of adjudicating cases, delivering justice, and managing the judiciary's workload. Beyond their judicial duties, the CJI also oversees the administrative functions of the judiciary. It is evident that the Supreme Court judges face a substantial burden in fulfilling these essential constitutional responsibilities and public obligations.

Additionally, this group of five senior judges plays a key role in ensuring that appointments of

impartial and competent judges are made. There is a broad consensus among the judiciary, legislature, executive, and legal fraternity that the existing collegium system requires reforms. Nonetheless, the collegium's meeting minutes and the reasons provided by its members lack sufficient transparency. This study is dedicated to proposing several recommendations aimed at refining the collegium system to uphold the highest standards of fairness and integrity in the judicial appointment process.

Conclusion

After 50 years of constitutional operation, reforms to the judicial appointment system were considered necessary. A five-member National Judicial Appointments Commission was recommended but twice unsuccessful in replacing the collegium system, with the Supreme Court ultimately striking down the NJAC as unconstitutional. Scandals involving judicial appointments and the practical difficulties in removing judges have highlighted persistent weaknesses in the current approach.

This cycle of failed reform and controversy over appointments calls for a fundamental reassessment of the process, aiming to achieve both judicial independence and robust accountability in a manner true to the constitutional vision and the demands of modern democracy.

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