
JUDICIAL APPOINTMENTS IN INDIA AND THE U.S AND UK: INDEPENDENCE, TRANSPARENCY, AND ACCOUNTABILITY

Veeresh A, LLM (Constitutional and Administrative Law),
School of Law Christ (Deemed to be) University, Bengaluru

ABSTRACT

In this paper, the critical analysis is whether or not collegium system is a valid procedure of giving these two traits of independence and democratic transparency and accountability in appointing judges in the higher judiciary in India. The history of the collegium system is preceded by four historic Supreme Court cases that comprise the Use of the First Judges Case, 1981, which declared that executive primacy, and the Second Judges Case, 1993, which transfers the appointment powers to the judiciary by requesting a binding recommendation of the Chief Justice of India, and the Third Judges Case, 1998, which extended the collegium composition, and the Fourth Judges Case, 2015, which invalidated the National Judicial Appointments Commission (NJAC) once This paper will draw a comparative analysis of the judicial appointment process in India and the United States with regard to the deficiency of transparency in the process, as well as the deficiency of rational disclosures in India. These weaknesses have contributed to institutional legitimacy and popular confidence of judicial system. The paper also discusses the proposed reforms which are aimed at enhancing transparency and consultation with the stakeholders without interfering with the judicial independence. The need to organize the information sharing, the publication of the appointment rationales, and the increased contact with the civil society and the legal academia is pointed out. The paper argues that there is indeed a need to have reforms, which are graded rather than a complete revolution of the collegium system to put it in the same tune with the constitutional norm and the democratic aspirations. The paper ends by concluding that an independent and publicly accountable judiciary is significant in the process of maintaining democratic legitimacy. Through implementing certain reforms in enhancing the collegium system, it will be possible to ensure that the appointment of judges is not just a guarantee of institutional honesty, but is also a sign of open and participatory type of government.

Keywords: Collegium system, Article 124, Independence of judiciary, Transparency, Accountability.

Introduction:

The judicial system is the main cornerstone of the democratic governance and it takes the matter of constitutional values, human rights protection, and legislative, executive, and judicial balances seriously. In India, the judiciary can interpret the Constitution and its jurisdiction is great, making the position more radical. It is because the method of judicial appointment and transfer is at the centre of judicial integrity and efficiency and as an institutional process has a direct impact on judicial independence, popular trust and the rule of law. Since the collegium system was adopted, the selection of judges in India has been functioning under the diversified system of the judiciary without much interference by the executive and the legislature. This model was to ensure that the judiciary is not affected by politics in respect to fairness. However, overtime, the collegium system has been subjected to tremendous criticism due to its opaque nature, absence of written rules, as well as, untransparency. The system, according to critics, fosters the atmosphere of susceptibility to favoritism, elitism and arbitrarily of rulings that undermine the credibility of the judicial institutions and nullify the democratic value of checks and balances.¹

This current research paper shall critically evaluate how the collegium system can address the needs of transparency and accountability in judicial independence and needs of democracy. It deals with the issue whether the current system is responsive enough as to the constitutional ideal or is somehow going to undermine the integrity of the judicial selection. Comparing that model of the collegium in India with the system of judicial appointment in the United States where a less sustained merit-based and publicly reviewed system is in use, the research seeks to discover other viable options that would not undermine the institutional trust. The paper is based on legal and empirical studies. It relies on new judicial revelations, popular discussions, and academic criticisms to find out the organizational and procedural inadequacies of the collegium. It also observes the spillover impacts of these deficiencies that include low trust rates among the population, absence of diversity on the bench and even compromised judicial impartiality.²

It is against this relative background that this paper suggests a list of reforms that includes the codification of the appointment procedures by statute, transparency in the criteria used to select

¹ Rangin Tripathy & Soumendra Dhanee, *An Empirical Assessment of the Collegium's Impact on Composition of the Indian Supreme Court*, 32 NAT'L L. SCH. INDIA REV. 119 (2020).

² Arghya Sengupta, *Judicial Independence and the Appointment of Judges to the Higher Judiciary in India: A Conceptual Enquiry*, 5 INDIAN J. CONST. L. 99 (2011-2012).

them and provision of checks and balances in the form of civil society. Notably, the paper notes that judicial independence does not require transparency and accountability to be adversarial. Instead, thought out reforms can support the legitimacy of the judiciary, its inclusiveness and restore trust that people have in the judicial process. This is not so as to undermine the independence of the judiciary system but so that its work processes can be in agreement with the provisions of the democratic norms that demand transparency and equality. This re-adjustment is necessary with the view of turning the judiciary into a powerful advocate of the constitutional principles and an effective dispensator of justice. Altogether, the research paper will add to the current debate of the judicial system reform; it will inevitably provide a comprehensive evidence-based reflection on the collegium system, and it will also suggest recommendations of effective changes that should be implemented. It leads to the necessity to rethink the process of judicial appointment in India as a procedural requirement but as a democratic one as the whole nature of justice delivery in India is redefined.³

1. Assessment of the Balance of the Collegium System in India with Independence, Transparency and Accountability.

It is the system of collegium, in its concern with appointments and transfers, which has been the subject of intense scholarly and popular discussion, particularly as to whether it can reconcile both the demands of judicial independence and the requirements of the democratic process, in terms of transparency, and accountability. This discussion is a critical evaluation of the workability of the collegium system to meet constitutional expectations based on an extensive survey of academic and policy-based literature such as *Understanding Collegium, Collegium-System-in-India-Criticism-Comparison-and-Future*,⁴ *An Empirical Assessment of the Impact of the Collegium in Composition and The Supreme Court Collegium and Transparency: A Non-Committal Rel.* The idea behind this system, conceived by judicial interpretation in the Three Judges Cases, was that a system needed to be in place to insulate the judiciary against the influence of the executive and hence protect their independence. Although it has certainly led to a clamping of unabashed political power, it has created a closed and opaque system that lacks institutional accountability. An analysis of the collegium decision made statistically, indicates that there is a tendency towards regional disequilibrium, gender inequality, and insularity which in paper like *Cons of the Collegium System in India and*

³ V.S. Deshpande, *High Court Judges: Appointment and Transfer*, 27 J. INDIAN L. INST. 179 (1985).

⁴ Aarya Maheshwari & Saksham Sharma, *Collegium System in India: Criticism, Comparison and Future*, 6 INT'L J.L. MGMT. & HUMAN. 3463 (2023).

Challenges in Ideology has shown that there is loss of a sense of public trust and democratic legitimacy.

The unwillingness to publish causes of choices or rejection as shown in The Supreme Court Collegium and Transparency indicates an insincere concern regarding transparency, despite the fact that civil society and Law Commission still insist on reform. In comparison the experience of the Appointment in India and US will be given weights by the difference that is offered by systems like Confirmation process in the US Senate which, in spite of being politically inclined, is a process that is publicly accountable. The failed move to replace the collegium with the National Judicial Appointments Commission (NJAC) which was declared unconstitutional by the Supreme Court as usurping judicial primacy is an example of the judiciary opposition to encroachment by the executive on its area of operation and its timidity in not working together to effect change. Other articles like Transforming of Judicial and Accountability propose a reform in the system that aims at achieving the dual objective of maintaining the independence of the judicial system and establishing the features of transparency, like published selection protocol, performance-based evaluation, and institutional control. The constitution of collegiums in their present shape, as it is reflected in such an article as Appointment of Judges to Higher Judiciary and Appointment and Transfer of Judges, is rather convention than constitution, which lacks statutory support, and lacks clarity on procedural unanimity. This vagueness has created arbitrary practices that avoid the protection of democratic accountability, even though the practices have been accused of being based on nepotism and unreasonable patronage. Finally, even though the collegium system has made the judiciary immune to political adventuring, the fact that the constitutional demands of transparency and accountability are achieved only by reluctance remains a contentious issue. Only a reconstituted collegium, regulated by outsiders, frustrated by formal norms, disclosed publicly, would be closer to the constitutional ideal of an independent judiciary democratically responsible.⁵

2. The structure of judicial appointments in India and the United States: the lack of a democratic process and the systemic implications.

The collegium system used in the appointment and transfer of judges at the higher judiciary in India has been an issue of intense academic debate and controversy among the people,

⁵ Ritwika Tripathy, *Supreme Court Collegium and Transparency: An Empirical Inquiry*, 56 ECON. & POL. WKLY. 42 (2021).

especially in the question whether the collegium system can create a balance between judicial independence and the democratic requirement of transparency and accountability. Having numerous books and articles on the topic by scholars and policy makers at its disposal, including the books, articles *Understanding Collegium, Collegium-System-in-India-Criticism-Comparison-and-Future, An Empirical Assessment of the Collegium Impact on Composition, and The Supreme Court Collegium and Transparency*.⁶ A NonCommittal, this paper will critically evaluate the performance of the collegium system in relation to the constitutional expectations. The system was an invention of judicial interpretations in the Three Judges Cases and was to secure judicial appointments against the influence of the executive therefore safeguarding judicial independence. Nevertheless, despite the fact that it has managed to avoid the open political interference, it has also formalized a closed and opaque system, which is not answerable to the institutions of the latter. The repetitiveness in the trend of discrepancies per region, gender of inequality and the tendencies of isolation in the overview of the collegium determinations show that merit and diversity might not necessarily be the focus. In addition to that, the lack of codified criteria and procedures in the area of transparency is also mentioned in the works like *Cons of the Collegium System in India and Challenges in Ideology* which damages the trust in the government and the validity of the democracy.

What is interesting is that the collegium is not keen on providing reasons, be it in regards to rejection or on the selections of choices as seen in *The Supreme Court Collegium and Transparency*; the lackadaisical attitude of the collegium on the matter of transparency has been witnessed despite the consistent demands to reform the collegium. Comparative lessons of both India and the US in terms of both appointment assists in further highlighting the contrasting face of such systems as the U.S. Senate confirmation system that even though it has a politicking nature offers an opportunity to the citizenry to question it. The failure to replace the collegium with the National Judicial Appointments Commission (NJAC), which the Supreme Court found unconstitutional because it threatened judicial primacy, evidences also the long-standing judicial apprehension at encroaching by the executive, as well as itself being unready to cooperate in any attempt of reform. Articles such as those named *Transforming of Judicial and Accountability* believe that there should be a recalibration of the system that includes the independence of the judiciary and at the same time the system has the aspect of transparency that may be in the form of publicly-available criteria of the selection, performance-based

⁶ Devishi Sharma & Shashwat Mishra, *Constitutionality of the Collegium System in India*, 6 INT'L J.L. MGMT. & HUMAN. 2638 (2023).

assessments and institutional checks. The current incarnation of collegium in the two documents referred to in Appointment of Judges to Higher Judiciary and Appointment and Transfer of Judges is not a statutory provision and a rooted procedure; it is more of a convention. It is also in this grey area that discretionary practices can exist and democracy can not put checks on them and this is where nepotism and favoritism comes in. All in all, though the collegium system has contributed significantly in making the judicial system independent, its appropriateness on the constitutional principles of transparency and accountability is contentious. An implicit answer to the research question of whether or not the Collegium system would survive on constitutional expectations would, then, be said to be that it is not fully up to the mandate of judicial independence, lacking it is not transparency and accountability and that structural reforms are necessary to the Collegium system without infringing on the mandate of judicial independence but instead further democratization. It can also not be simply a superior embodiment of the constitutional conception of an autonomous and accountable judiciary, but a reformulated Collegium, possibly regulated outside, institutionalized standards, and exposed to the citizens whom it serves.⁷

3. Finding the right balance between Independence and Accountability: Reforming Judicial Appointment in India to be more Transparent and Trustworthy.

Indian judicial appointing system, and in particular, the collegium system constitute a complex interface on the safeguarding of the independence of the judiciary and at the same time offer democratic accountability, transparency and citizen confidence. The collegium system is a a body of senior judges in the Supreme Court that was established to ensure that the appointment process of the judges is not interfered by the executive branch, which is the subject of three articles: Understanding Collegium, Collegium-System in India Criticism Comparison and The Supreme Court Collegium and Transparency: A Non-Commitment Rel. Even though this system has been useful in ensuring autonomy, it has also led to the culture of secrecy and discretion since it has not been anchored in any statutory provisions but rather they lack procedural clarity.⁸ Poor publicity about the use of selection criteria, appointment or rejection reasons, and institutional control has led to massive criticism as experienced in Cons of the Collegium System in India and Challenges in Ideology.

⁷ Yashi Srivastava, *Challenges in Judges Appointment: Identity, Ideology and Conflict*, 2 LAWFOYER INT'L J. DOCTRINAL LEGAL RSCH. 606 (2024).

⁸ Varun Vaish & Rishabh Sinha, *Transparency, Independence and Diversity: Does the United States Have It Better? - A Comparative Analysis of the Process of Appointment of Judges to the Supreme Court in the United States and India*, 3 NLIU L. REV. 102 (2013).

Corrupt scandals like unexplainable delays, territorial and sex disparity, and controversial transfers are brought into the limelight in both Appointment and Transfer of Judges and The Transforming of Judicial, which removes any illusion of trust towards the system. Comparative evidence of the two countries as depicted by the article Appointment in India and US indicates that the U.S system is susceptible to the influence of partisanship, yet, this notwithstanding, there is the transparency of the process and the involvement of people in the procedures through open hearings and recorded debates. In India, the collegium is not an open door committee and is not very accountable towards the society or the parliament. To address these shortcomings, policy analysts and researchers have developed recommendations of changes in statutes and institutions to support the balance between independence and accountability. These consist of making the procedures of the collegium codified, establishing a judicial commission to conduct appointments in such a way that the people to be appointed are represented by the judiciary, the executive and the civil society, and must disclose the selection criteria and the reason behind the appointments to the public. Both the arguments in Accountability and An Empirical Assessment of the Impact of the Collegium on Composition present that these reforms are not harmful to judicial independence since they enhance meritocracy, diversity, and transparency. The aborted NJAC experiment, which transgressed the primacy of the judiciary, is the lesson of the significance of joint reform in opposition to unilateral control.⁹ This re-conceptualized model of appointment-grounded according to the values of the constitution, institutional checks and democratic legitimacy-would be well placed to win the trust of the people and strengthen the judiciary as the defender of rights and rule of law. In brief, the idea of the reconsideration of the appointment system and the promotion of suggestions, in their turn, precondition the emergence of the idea that the judicial independence cannot be confused with the system of institutional opaqueness; on the contrary, it should be supported by the system of accountability and transparency as well as responsiveness to the spirit of democracy.

United Kingdom

1. Judicial Appointment System in the United Kingdom: the Effect of Independence, Transparency, and Accountability.

The Constitutional Reform Act 2005 brought about a watershed change in judicial governance within the UK, radically re-configuring the relationship between the judiciary, the executive

⁹ Fahad Nahvi & Yagnesh Sharma, *The Collegium Vs The Njac: Navigating Judicial Independence Amidst Judicial Appointments*, SPRF (July 2023).

and the legislature and introduced new institutional structures in the way the judiciary is appointed.¹⁰ Before this reform, judicial appointments in England and Wales had been described by critics as the so-called tap on the shoulder system which was an opaque and informal system of appointments where appointments were often done through personal connections and informal networks as opposed to being based upon transparent and merit-based criteria.¹¹ Although this system maintained the independence of judicial bodies without any influence of politics there were allegations of elitism, non-diversity and non-accountability to the democratic requirements. In 2005, the reforms formed the Judicial Appointments Commission (JAC), an autonomous public agency that chooses the candidates to the judicial office in England and Wales. The composition of the JAC was characterized by the intent to strike a balance between judicial experience on the one hand and a wider representation of society in the JAC. The Commission comprises of 15 members, among them, the judges, law professions, and the lay members who represent the civil society viewpoints. This is a blend composition and it is a major break compared to the judge only controlled selection, as it brings in external accountability with adequate judicial involvement to ensure the institutions independence. The JAC has a very systemized and merit-based process of selection that focuses on five key attributes which the candidates should exhibit: intellectual capacity, personal attributes of integrity and independent mind, the ability to understand and treat all parties fairly, power and communication skills and efficiency. Such published guidelines offer transparency to what is being sought in judicial applicants and serves to both assist the applicants in knowing what is expected of them and also allow the community to easily question any appointment choices. The most common activity in the selection process is the review of the application, shortlisting (according to the pieces of evidence which are documented), and evaluation using different techniques such as situational judgment tests, role-playing, and structured interviews. Importantly, the interest of the JAC is to recommend candidates but not to appoint them directly. The Lord Chancellor (now the Secretary of State for Justice) has the final word on most judicial appointments, which could be either acceptance, rejection or reconsideration of recommendation. In senior judicial appointments, such as Supreme Court justices, this is done by ad hoc selection commissions which are better represented by the judiciary. It is an institutionally checking structure that maintains judicial control over high-level appointments, which tries to balance accountability and independence.

¹⁰ Constitutional Reform Act 2005, c. 4 (UK).

¹¹ See Rangin Pallav Tripathy, *The Supreme Court Collegium and Transparency: A Non-Committal Relationship*, 17 SOCIO-LEGAL REV. 1, 2 (2021).

The UK system is significantly more transparent than the collegium mechanism of India exhibits with several institutional characteristics. In the first place, selection criteria are publicly written and published so that candidates and the civil society know on what basis judicial selection is made. Second, the JAC releases annual reports which provide the statistics on the appointments, including data on the diversity attributes, the number of applications and success rates of all the categories. Such reports allow conducting empirical evaluation of appointment rates and contribute to open discussion of judicial composition. Third, feedback is provided to the unsuccessful applicants about their applications, and it generates personal responsibility to decision-making on selections. Although the reasons behind individual appointments are not necessarily made public, the methodological criteria and evaluation procedures bring much more transparency compared to discretionary systems of selecting individuals. Fourth, the lay membership in the commission of selection makes sure that non-judicial views are included in decision making of appointments that bring a certain element of democratic accountability to systems entirely dominated by judges. The UK system is not devoid of transparency constraints though. The critics observe that the phenomenon of informal judicial institutions and networks still affects judicial culture and selection practices even after the formal changes. The deliberation discussions of selection panels are confidential and the subjective evaluation of such qualities as integrity and independent mind presents discretionary judgment which is not necessarily transparent. Also, the power of the Lord Chancellor to reject, which is rarely used, will provide an element of executive discretion, which may jeopardize independence, when abused. This was explicitly reinforced through the Constitutional Reform Act 2005 that removed the Lord Chancellor as a judicial figure and provided better separation of powers.¹² This separation was further reinforced by the independent institution of the UK Supreme Court which was not affiliated with the House of Lords. The system of appointments helps to provide the independence by isolating the selection decisions against the immediate political influence without losing the professional standards or the independence of the institution.

The JAC has a specific mandate that incorporates the issue of diversity and the Commission should be in a position to receive applications of diverse backgrounds and to consider diversity during the process of making selections, as long as the process of making selections should be based on merit. The statistical data indicate that there is a slight improvement in the English

¹² Judicial Appointments Commission, *Annual Report and Accounts 2020-2021* (2021); see also C. Raj Kumar, *Future of Collegium System: Transforming Judicial Appointments for Transparency*, 50 *ECON. & POL. WKLY.* 31, 32 (2015).

and Welsh judicial diversity since 2006 with slow growth in the number of women in courts and ethnic minorities, but the disparities are still considerable, especially at the higher ranks. The homogeneity even in the face of the reforms does prove that professional cultures and structural obstacles to a judicial career might be too profound to be conquered with the help of a mere change in the procedure.¹³ Relative comparison shows that the UK system has not reached the level of complete representative diversity, but this system is more progressive and transparent with the concern of diversity practices compared to systems with no explicit diversity requirements and with no public reporting demands. Diversity statistical publication exerts accountability pressure and allows civil society in advocacy of further reform.¹⁴

2. Comparative Indian and UK Judicial appointment System: Democratic Deficits and Systemic Consequences.

The key difference between the collegium system and the JAC model of the UK and India is in the fact that they adopt different approaches to achieving balance between the independence of judicial and democratic accountability. The system of India was formed based on the judicial rulings which attempted to defend the appointments against the influence of the executives, and as a result, a self-selection system where judges selected themselves was formed.¹⁵ The UK strategy came about as a result of legislative reform that aimed at streamlining the processes of appointment but ensuring the independence of the judiciary is not compromised by piling the judicial monopoly.¹⁶ Indian collegium The collegium system in India comprised of the Chief Justice of India and the four senior-most Supreme Court judges in case of Supreme Court appointments and consultations with the High Court Chief Justices in case of High Court appointments. In this structure, appointment power is concentrated on the senior judiciary to itself but with very little external involvement or procedural formalities. The system does not have any statutory basis, but is based on the interpretations of the Supreme Court in the Second and Third Judges Cases. The criteria can mostly be considered uncodified, as decisions are made according to the seniority, merit, and the representation of the region, which is not publicly defined nor always applied. In comparison, JAC in the UK has a statutory authority and a set of procedures, published selection criteria, and multi-stakeholder involvement. Although judges are part of JAC selection panels, they are not the sole decision makers and lay

¹³ Judicial Appointments Commission, *Selection Process*, JAC.GOV.UK, <https://judicialappointments.gov.uk/> (last visited July 4, 2025).

¹⁴ Constitutional Reform Act 2005, § 63 (UK).

¹⁵ Supreme Court Advocates-on-Record Ass'n v. Union of India, (1993) 4 S.C.C. 441

¹⁶ Special Reference No. 1 of 1998, Re, (1998) 7 S.C.C. 739

members make sure that other non-judicial views are also a factor in decisions. The statutory system offers procedural clarity and legal responsibility that is missing in the system of conventions in India. An effort to bring aspects of the UK model multi-stakeholder involvement, statutory processes and external accountability- into the Indian appointment system was the proposed introduction of the National Judicial Appointments Commission (NJAC) under the 99th Constitutional Amendment.¹⁷ Members of the NJAC would have comprised judicial members, Law Minister and eminent personalities nominated by committee comprising of Prime Minister, Chief Justice and Leader of Opposition. The Supreme Court however, invalidated the NJAC in the Fourth Judges Case based upon the opinion that executive involvement posed a threat to judicial independence and that the NJAC structural framework did not have adequate safeguards.¹⁸

The choice shows some radically different notions of independence. The Indian judiciary considers independence to demand exclusive or almost exclusive judicial authority in appointment matters and any such external involvement is perceived to be dangerous. The UK paradigm, in turn, views independence as being consistent with actually improved by procedural openness, published standards, and the involvement of multiple stakeholders, as long as institutional protections can ward off the influence of politics.¹⁹ The difference of the transparency of the two systems is deep. In the UK system, they post their selection criteria, annual statistics, diversity data, and procedural guidelines.²⁰ Candidates know the criteria of evaluation and the civil society can evaluate the pattern of appointment on empirical basis. The collegium system, on the other hand, is not run in a transparent manner. The criterion of selection is not specified, discussion within collegium is closed and the motivation of the choice or refusal is not usually divulged. The government may also send back suggestions by the collegium to reconsider without clear reasons, thus making an opaque institution by both the judicial and executive.²¹

This darkness has created a longstanding criticism on the lack of accountability in the system of India. Collegium decisions are hard to evaluate, and claims of favoritism, nepotism, or

¹⁷ The Constitution (Ninety-ninth Amendment) Act, 2014 (India); National Judicial Appointments Commission Act, 2014, No. 40, Acts of Parliament, 2014

¹⁸ Supreme Court Advocates-on-Record Ass'n v. Union of India, (2016) 5 S.C.C. 1

¹⁹ Compare Diana Woodhouse, *The Constitutional Reform Act 2005—defending judicial independence the English way*, 5 Int'l J. Const. L. 153, 155–58 (2007), with Srishti Maheshwari & Ojasvi Chhabra, *A Critique on the NJAC Judgement*, 3 Indian J.L. & Legal Rsch. 1 (2021).

²⁰ See Judicial Appointments Commission, *Annual Report and Accounts 2023–24* (2024), <https://judicialappointments.gov.uk/annual-reports-and-accounts/>.

²¹ *Fourth Judges Case*, (2016) 5 S.C.C. 1, ¶ 569

arbitrary decision making are hard to evaluate or disprove, as there is no published criteria or rational decision making. The convention-based character of the system does not offer any formal system of appealing decisions or providing uniformity in the enforcement of unstated standards. The implications of such differences of transparency are important to the institutional legitimacy. Even with the ongoing diversity issues, the UK system has a higher degree of trust in its population due to the accountability systems and transparency of the procedures. The collegium in India is experiencing a lack of credibility in its appointment choices by facing consistent questions of lack of legitimacy and there is a lack of trust in its decisions made by the collegium.

Both systems aim at maintaining a system of judicial independence, however, by other mechanisms and with varying success in balancing independence and accountability. The collegium in India was created specifically to avoid executive interruption because of political influence of the appointments during the Emergency era. This has helped to deter blatant politics on individual appointments. This, however, is at a price of substituting possible executive maleficence with judicial parochialism and unaccountability.

The UK system upholds independence by the institutional design instead of judicial monopoly.²² The independent nature of the JAC, statutory procedural rights, judicial involvement in the selection and the narrowness of executive involvement provide structural constraints to political interference and at the same time provides greater opportunity of participation. The Lord Chancellor is now limited in the exercise of discretionary rejection of recommended candidates by statutory criteria and Convention. The NJAC controversy seems to have managed to remain independent and made more strides towards transparency and diversity than judge-only systems. The Indian Supreme Court considered the inclusion of the members of the executive and civil society in the NJAC endangering the independence even with wide-ranging safeguards. Critics claimed this was the judicial opposition to accountability as opposed to reasonable independence issues, with many multi-stakeholder commissions in other democracies, such as in the UK, being able to maintain independence and increase transparency. An experience in the UK indicates that independence and accountability do not necessarily come into conflict, with institutional design including sufficient safeguards.

²² Patrick O'Brien, *The JAC for England and Wales: Reflecting on (Nearly) Two Decades*, 8(2) Irish Jud. Stud. J. 167, 169–71 (2024).

3. Relative Indian and UK Judicial appointment System: Democratic Deficit and Systemic Implication.

It is the major distinction between the collegium system and the JAC model of the UK and India that they take different methods of balancing between the two principles of judicial and democratic accountability. The India system was established after the judicial decisions that were trying to protect the appointments against the will of the executives and consequently there was developed a self-selection system in which judges chose themselves. UK approach was a consequence of the legislative review that was to be used in order to facilitate the ability to stream the appointment procedures without interfering with the ultimate independence of the judiciary through the accumulation of the judicial monopoly.²³ Indian collegium The collegium system in India was made up of the Chief Justice of India and the four senior-most Supreme Court judges in case of Supreme Court appointments and consultation in the High Court with the Chief Justices of High Courts in case of High Court appointments. Under this structure, the appointment of power is centralized on the senior judiciary to itself with minimal or no outside interference and formalities. The system lacks statutory foundation, but is founded upon the views of the Supreme Court in the Second and Third Judges Cases.²⁴ The criteria can be largely regarded as uncodified wherein the decisions are made based on the seniority, merit, and the representation of the region which is not publicly spelt out and is not always followed.²⁵ Comparatively, JAC in UK has statutory authority and procedures, published selection criteria, and multi stakeholder involvement. Even though judges sit on JAC selection panels, they are not the only decision makers but lay members ensure that other non-judicial opinions are taken into consideration. As compared to the system of conventions in India, the statutory system has procedural clarity and legal responsibility.²⁶ One of the attempts at introducing elements of the UK model multi-stakeholder participation, statutory procedures and external accountability- into the Indian system of appointing judges was the proposed establishment of the National Judicial Appointments Commission (NJAC) through the 99th Constitutional Amendment. Judicial members, Law Minister, and eminent personalities nominated by committee comprising of Prime Minister, Chief Justice and Leader of Opposition

²³ Koustubh Sharma & Anil Kumar Dixit, *The Comparative Analysis on Judicial System in Indian and UK*, 7 INT'L J. L. MGMT. & HUMAN. 112, 114 (2024).

²⁴ Constitutional Reform Act 2005, c. 4, § 61 (UK) (transferring the power of judicial appointments from the Lord Chancellor to an independent commission).

²⁵ *In re Special Reference No. 1 of 1998*, (1998) 7 SCC 739

²⁶ Arpita Saha, *Transparency and Accountability in the Indian Judicial System*, 10 INT'L J. RES. & REV. 422, 425 (2023)

would have constituted the members of the NJAC.²⁷ The Supreme Court however struck down the NJAC on the Fourth Judges Case on the grounds that the involvement by the executive was a menace to the independence of the judiciary and that the NJAC structural framework lacked proper safeguards.²⁸

The decision reveals certain radically different concepts of independence. The Indian courts view independence as requiring exclusive or nearly exclusive judicial power in the appointment issue and any form of extraneous intervention is viewed as a threat. UK paradigm, in its turn, perceives independence as aligned with factually enhanced by the openness of procedures, published standards, and the participation of various stakeholders provided that the institutional safeguards can serve to block the effects of politics. The distinction of the transparency of the two systems is profound. The UK system requires them to publish their selection criteria, annual data, diversity data and procedural guidelines. The candidates are informed of the standards of assessment and the pattern of appointment can be assessed by the civil society on empirical grounds. The collegium system, however, is not conducted in an open way. It is not stated what criterion of selection is used, what is said in collegium is not discussed and the reasons behind the decision to select or not to select is not normally disclosed. It can also be useful in the government recalling the suggestions by the collegium back to rethink without naming any specific reasons, thereby creating an opaque institution by both the judicial and the executive.

This darkness has brought about an age old criticism on the lack of responsibility in the system of India. Decisions made by collegium are difficult to assess and allegations of favouritism, nepotism or arbitrary decision making are difficult to judge or refute since there is no published criteria or rational decision making. The convention nature of the system does not provide any institutionalized structure of decision appealing or offers consistency in the application of unstated norms. Such differences of transparency have implications that are significant to the institutional legitimacy. Irrespective of the current diversity problems, the UK system enjoys more levels of trust among its citizens thanks to accountability systems and organization of the processes. The collegium in India is lacking credibility in its appointment decision making as it is being questioned on the regular basis of lacking in legitimacy and there is no trust in its collegium made decision.

²⁷ Diana Woodhouse, *United Kingdom: The Constitutional Reform Act 2005—Defending Judicial Independence the English Way*, 5 INT'L J. CONST. L. 153, 158 (2007).

²⁸ Supreme Court Advocates-on-Record Ass'n v. Union of India, (2016) 5 SCC 1

Both systems are interested in the taking of a system of judicial independence, but by alternative means, and with less or more success in the taking of independence and accountability with each other. The collegium in India was organized to prevent executive interference due to political interference of the appointments during the Emergency period. This has assisted in discouraging the blatant politics on individual appointments. This however comes at a cost of replacing potential maleficence in the executive with judicial parochialism and invincibility.

The UK system supports independent by the institutional design rather than judicial monopoly. The independent character of the JAC, the statutory procedural rights, the interests of the judiciary in the selection and the limited nature of the executive interests give structural limitation on the political interference and a certain degree of opportunity of participation at the same time. Statutory provisions and Convention now restrict the exercise of discretionary rejection of recommended candidates by the Lord Chancellor. It appears that the NJAC controversy has been able to stay independent and has done more to achieve transparency and diversity than systems without the judges. The Indian Supreme Court concluded that the presence of the members of the executive and civil society in the NJAC was a threat to the independence despite far-reaching protection. The critics asserted that this was the judicial resistance to accountability as compared to the reasonable independence concerns, and that most multi-stakeholder commissions in other democracies including that of the UK were capable of ensuring independence and enhancing transparency. A practice in the UK suggests that independence and accountability are not always in conflict, and institutional design must incorporate adequate provisions.

Conclusion and Suggestions

Comparative analysis of the judicial appointment systems in the UK and India indicates that there is a certain conflict between the imperative of ensuring transparency in democracy in the country and the need to preserve judicial independence. Although the collegium system in India has been effective in keeping the judiciary out of the reach of executive influence, as it is needed due to Emergency era, it has perpetrated the existence of an opaque, convention-driven model of self-selection. This absence of written standards and social explanation has resulted in structural deficiencies of regional and gender imbalance, and a deteriorated institutional legitimacy. Conversely, the Judicial Appointments Commission (JAC) in the UK shows that although independence and accountability are not the same concepts, they do not go against

each other. Through statutory body employing many stakeholders, such as lay members, the UK has created a more merit-based mechanism, which is quite transparent and therefore continues to win the trust of the people amidst the challenges of diversity.

Suggestions on reform in India:

Statutory Codification: Take the collegium off a convention-based system on to a statutory one in order to make procedural clarity and legal responsibility.

Publicity of Standards: The published selection standards and the basis of appointments or terminations must be physically publicized to dispel the notion of favors or connections.

Multi-Stakeholder Consultation: Investigate a graded reform that comprises of an orchestrated consultation with civil society and legal academia without being taken up of ultimate primacy by the judiciary.

Diversity Requirement: Have proactive practices and provincial public disclosure of diversity statistics such as in the UK system to make sure the bench represents democratic desires.

Finally, the Indian court system needs to take the direction of a reformed conceptualization, a model in which the independence of the court is still sponsored by transparency and accountability, but not contravened.