

Judicial Transparency and The Collegium System: A Critical Legal Analysis

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ABSTRACT

The independence of the judiciary is a cornerstone of constitutional democracies, yet the process by which judges are appointed must also reflect transparency, accountability, and inclusiveness. In India, the Collegium system evolved through judicial interpretation has faced persistent criticism for its opaque functioning and lack of institutional checks. This research paper explores the evolution, critique, and constitutional basis of the Collegium system, and contrasts it with global practices in judicial appointments. It further analyses the National Judicial Appointments Commission (NJAC) debate, the Supreme Court's 2015 verdict, and recent efforts toward reform. Drawing lessons from comparative jurisdictions such as the United Kingdom, Canada, and South Africa, the study argues for a balanced model that safeguards judicial independence while ensuring democratic legitimacy. The paper concludes by recommending codified criteria, broader representation, and public reasoning as necessary steps toward meaningful reform.

Keywords: Judicial Appointments, Collegium System, Transparency, Judicial Independence, NJAC Reform

INTRODUCTION

The process of judicial appointments in India has evolved considerably since independence. Initially, the executive held substantial control over appointments, with the President acting in consultation with the Chief Justice of India under Articles 124 and 217 of the Constitution¹. However, this model was reshaped by a series of Supreme Court rulings most notably in the *Second Judges Case (Supreme Court Advocates-on-Record Association v. Union of India, 1993)*² which established the Collegium system. This system transferred the power of judicial appointments and transfers largely to senior judges of the Supreme Court, with the intent to safeguard judicial independence from executive interference (Bhuwania, 2017)³.

While judicial independence is essential for the health of any constitutional democracy, it must be balanced with transparency and accountability. The Collegium system has been widely criticised for its opacity, with decisions taken behind closed doors, often without clear criteria, publicly accessible records, or external checks. In a democratic framework, transparency in the judicial appointment process is critical to maintain public trust, institutional legitimacy, and the rule of law (Krishnaswamy, 2011)⁴.

Research Questions

This paper seeks to address the following questions:

¹ The Constitution of India, Articles 124 and 217.

² Supreme Court Advocates-on-Record Association v. Union of India, (1993) 4 SCC 441.

³ Bhuwania, A. (2017). *Courting the People: Public Interest Litigation in Post-Emergency India*. Cambridge University Press.

⁴ Krishnaswamy, S. (2011). Institutional integrity, public confidence and judicial appointments in India. *Indian Journal of Constitutional Law*, 5(1), 22–39.

- Does the Collegium system align with the transparency standards expected in a constitutional democracy?
- What reforms or alternative models could ensure greater accountability in the appointment of judges?

Objective of the Study

The core objectives of this research are:

- To trace the constitutional and judicial evolution of judicial appointments in India.
- To critically assess the strengths and shortcomings of the Collegium system.
- To evaluate recent developments, including the Supreme Court's rejection of the NJAC.
- To examine comparative practices from other democratic jurisdictions.
- To propose balanced reforms that reinforce both transparency and independence in judicial appointments.

This study aims to contribute to contemporary legal discourse by advocating for a more accountable and participatory judicial appointment framework in India.

Evolution of the Collegium System

Constituent Assembly Debates: Original Intent

During the Constituent Assembly debates, there was considerable discussion on ensuring judicial independence while preventing absolute discretion. Dr. B.R. Ambedkar stated that while the President would appoint judges, this process must occur “in consultation with the Chief Justice of India,” indicating a balance between the executive and judiciary (Constituent Assembly Debates, 1949)⁵. Articles 124 and 217 of the Constitution, which govern appointments to the Supreme Court and High Courts respectively, reflect this consultative framework without granting primacy to either branch.

However, the framers did not envision an entirely judge-controlled process. The phrase “consultation” was deliberately chosen over “concurrence” to avoid judicial overreach in appointments (Austin, 1999)⁶. Thus, the current Collegium system has developed not from constitutional text but through judicial interpretation over time.

Landmark Judgments and the Shift in Interpretation

S.P. Gupta v. Union of India (1981) – Executive Primacy

Known as the *First Judges Case*, the Supreme Court held that the executive had the final say in judicial appointments and that consultation with the Chief Justice was not binding (S.P. Gupta v. Union of India, 1981)⁷. This marked an era of executive primacy.

⁵ Constituent Assembly Debates. (1949). Volume 8. Retrieved from <https://cadindia.clpr.org.in/>

⁶ Austin, G. (1999). *Working a Democratic Constitution: The Indian Experience*. Oxford University Press.

⁷ S.P. Gupta v. Union of India, (1981) Supp SCC 87.

Supreme Court Advocates-on-Record Association v. Union of India (1993) – Collegium Introduced

In the *Second Judges Case*, the Court overturned its previous position, holding that "consultation" effectively meant "concurrence" and gave rise to the Collegium system, where a group of senior judges would recommend appointments. This judgment emphasised the need to insulate the judiciary from political influence (Supreme Court Advocates-on-Record Association v. Union of India, 1993)⁸.

In Re Presidential Reference (1998) – Expansion of Collegium

In the *Third Judges Case*, the Supreme Court clarified the structure of the Collegium: it would consist of the Chief Justice of India and the four most senior judges of the Supreme Court for Supreme Court appointments, and similarly structured groups for High Court appointments. The decision formalised conventions around the Collegium's operation, although the process still lacked statutory backing (In Re Presidential Reference, 1998)⁹.

Constitutional Basis and Convention

The Collegium system is not codified in the Constitution, statutes, or rules. It functions solely based on judicial precedents and internal conventions of the Court. This has led to persistent criticism, particularly regarding its lack of transparency, lack of clearly defined criteria, and inaccessibility to public scrutiny (Sathe, 2002)¹⁰.

While the Collegium seeks to preserve judicial independence, its informal and secretive nature has left it vulnerable to allegations of favouritism, nepotism, and unaccountability.

Criticism of the Collegium System

Despite its objective of safeguarding judicial independence, the Collegium system has attracted significant criticism for lacking transparency, accountability, and inclusivity. These deficiencies have raised concerns about the system's compatibility with democratic norms and the principles of institutional integrity.

Lack of Transparency

One of the foremost criticisms of the Collegium system is its opaque functioning. The selection process for judges is conducted entirely behind closed doors, with no publicly available criteria or reasoning behind appointments or rejections. While some meeting resolutions are now published on the Supreme Court website, they offer limited insight into the rationale behind key decisions (Bhatia, 2019)¹¹. This secrecy fuels public distrust and undermines the legitimacy of the judiciary in the eyes of citizens and aspiring judges alike.

Transparency is vital for accountability in a constitutional democracy. The absence of objective and verifiable standards in judicial appointments has made the process vulnerable to perceived arbitrariness and bias (Kumar, 2020)¹².

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

⁹ In Re Presidential Reference, (1998) 7 SCC 739.

¹⁰ Sathe, S. P. (2002). *Judicial Activism in India: Transgressing Borders and Enforcing Limits*. Oxford University Press.

¹¹ Bhatia, G. (2019). *The Transformative Constitution: A Radical Biography in Nine Acts*. HarperCollins India

¹² Kumar, R. (2020). *Opacity in the Collegium System and the Need for Reforms*. Indian Journal of Constitutional Law, 12(1), 23–39.

Accountability Issues

The Collegium system operates without any formal external oversight. Unlike in other constitutional bodies where checks and balances are integrated, the Collegium remains a judge-controlled process with minimal scrutiny from the executive, legislature, or civil society. This lack of institutional accountability has led to frequent allegations of nepotism, favouritism, and regional bias in the selection process (Abraham, 2016)¹³. The absence of an appeal or review mechanism exacerbates this issue.

In 2015, the Supreme Court struck down the National Judicial Appointments Commission (NJAC), which attempted to introduce a more broad-based selection body. While the decision was based on the need to protect judicial independence, it did not address the core deficiencies of the Collegium system itself (*Supreme Court Advocates-on-Record Assn. v. Union of India*, 2015)¹⁴.

Impact on Diversity

Another significant concern is the underrepresentation of women, Dalits, Adivasis, and minority communities in the higher judiciary. Although India is a diverse democracy, the Collegium has failed to reflect that diversity on the bench. As of 2024, less than 12% of judges in the higher judiciary are women, and appointments from marginalized communities remain extremely limited (Jaising, 2021)¹⁵. Without transparency in selection criteria, it is difficult to assess whether adequate efforts are being made to promote representational justice.

Judicial diversity is not merely symbolic; it contributes to more inclusive interpretation of laws and enhances the public's faith in the justice system.

The NJAC Debate

The NJAC Act, 2014: A Move Toward Transparency and Participation

The National Judicial Appointments Commission (NJAC) was a landmark legislative initiative aimed at replacing the existing Collegium system for appointing judges to the higher judiciary in India. Enacted through the 99th Constitutional Amendment Act, 2014, and operationalized by the NJAC Act, 2014, this reform was a response to growing public and institutional criticism of the Collegium's non-transparent and self-perpetuating nature.

The NJAC sought to institutionalize a more open and participatory mechanism for judicial appointments by expanding the decision-making body to include not just judges, but also representatives from the executive and civil society. Its composition was designed to strike a balance between judicial independence and democratic accountability. The commission included:

- The Chief Justice of India (Chairperson),
- The two senior-most judges of the Supreme Court,
- The Union Minister of Law and Justice, and
- Two eminent persons to be nominated by a committee comprising the Prime Minister, the Chief Justice of India, and the Leader of Opposition in the Lok Sabha.

¹³ Abraham, B. (2016). *The Colonial Origins of the Judicial Appointments Process in India*. Economic and Political Weekly, 51(9), 15–18.

¹⁴ *Supreme Court Advocates-on-Record Assn. v. Union of India*, (2015) 4 SCC 1.

¹⁵ Jaising, I. (2021). *Lack of Diversity in Judiciary Threatens Democratic Values*. The Leaflet. <https://theleaflet.in/lack-of-diversity-in-judiciary-threatens-democracy/>

One of the primary motivations behind this structure was to diversify inputs into the appointment process and reduce the perception of insularity and elitism in judicial selection. By involving members from outside the judiciary, the NJAC intended to introduce external oversight and encourage a broader understanding of merit, representation, and public interest (Chandrachud, 2015)¹⁶. The inclusion of two eminent persons ideally from diverse socio-economic and professional backgrounds was envisioned as a way to bring societal perspectives into what had traditionally been an opaque, internal process.

Moreover, the NJAC framework attempted to curb concentration of power within a small judicial elite, and to ensure that appointments reflected constitutional values such as diversity, inclusivity, and impartiality. Supporters of the NJAC believed that a transparent appointment process, informed by various branches of governance and public representatives, would enhance public confidence in the judiciary and make it more accountable without compromising independence (Gupta, 2016)¹⁷.

In essence, the NJAC was not merely a structural change but a conceptual shift in how judicial independence and accountability could be harmonized. It sought to institutionalize mechanisms of checks and balances, thereby reinforcing the legitimacy of the judiciary in the eyes of a democratic society.

Supreme Court's 2015 Verdict: Reaffirmation of Judicial Primacy

The Supreme Court's decision in *Supreme Court Advocates-on-Record Association v. Union of India* (2015)¹⁸ was a pivotal moment in the constitutional discourse surrounding judicial appointments in India. By a 4:1 majority, the Constitution Bench declared the 99th Constitutional Amendment and the National Judicial Appointments Commission (NJAC) Act, 2014, unconstitutional, thereby invalidating the NJAC framework and reinstating the Collegium system.

The Court's central reasoning was grounded in the "basic structure doctrine", a principle evolved through prior jurisprudence which holds that certain fundamental features of the Constitution cannot be altered even by constitutional amendments. One such inviolable feature, as reiterated in this case, is the independence of the judiciary. The bench held that the composition of the NJAC particularly the inclusion of the Union Law Minister and two eminent persons posed a serious threat to judicial independence by allowing executive and external interference in the appointment process (Gupta, 2016)¹⁹.

Justice J.S. Khehar, writing the lead opinion for the majority, emphasized that the judiciary must have primacy in appointments to maintain both the separation of powers and public confidence in judicial impartiality. He argued that permitting non-judicial actors to have an equal or decisive say in the selection of judges could result in political influence, favouritism, or compromise on merit and independence (Krishnaswamy, 2016)²⁰. This concern was heightened by the lack of safeguards in the NJAC Act to ensure that the "eminent persons" would act independently of political or ideological pressure.

Despite striking down the NJAC, the Court did not dismiss criticisms of the existing Collegium system. The judgment recognized the opacity, inconsistency, and lack of objective criteria in Collegium decisions, and

¹⁶ Chandrachud, A. (2015). *The Informal Constitution: Unwritten Criteria in Selecting Judges for the Supreme Court of India*. South Asian History and Culture, 6(1), 103–121.

¹⁷ Gupta, A. (2016). *Judicial Appointments and the Basic Structure Doctrine: NJAC Verdict Revisited*. Indian Constitutional Law Review, 1(1), 67–78.

¹⁸ *Supreme Court Advocates-on-Record Assn. v. Union of India*, (2015) 4 SCC 1.

¹⁹ Gupta, A. (2016). *Judicial Appointments and the Basic Structure Doctrine: NJAC Verdict Revisited*. Indian Constitutional Law Review, 1(1), 67–78.

²⁰ Krishnaswamy, S. (2016). *NJAC Verdict: Between Judicial Independence and Democratic Accountability*. NUJS Law Review, 9(2), 115–139.

explicitly acknowledged the need for internal reforms. The Court even invited the legal community and the government to suggest ways to improve transparency and accountability within the Collegium framework (Bhatia, 2015)²¹.

However, critics of the judgment argue that the Court missed a crucial opportunity to **institutionalize meaningful reform**. By rejecting a participatory structure without proposing a codified alternative, the judiciary reasserted its **exclusive control** without establishing mechanisms for transparency or diversity in appointments. This reaffirmation of judicial primacy, while constitutionally defensible, has continued to fuel debates over **accountability, elitism, and the absence of public oversight** in the judicial system (Datar, 2016)²².

Critiques of the Judgment: Judicial Overreach and Missed Opportunity?

The Supreme Court's 2015 decision to strike down the National Judicial Appointments Commission (NJAC) sparked widespread debate, not only over the interpretation of the Constitution's basic structure but also regarding the **institutional accountability** of the judiciary itself. While the Court's emphasis on safeguarding judicial independence was constitutionally rooted, many legal scholars, political commentators, and former judges raised concerns about **judicial overreach** and a **lack of institutional introspection**.

One major critique stems from the fact that the NJAC was not a unilateral executive proposal but a product of **overwhelming democratic consensus** passed unanimously in both Houses of Parliament and ratified by a majority of Indian states. This near-universal support indicated a constitutional moment of rare national agreement on the need to reform the opaque Collegium system. By invalidating the amendment, the Court appeared to **assert judicial supremacy** over the will of the people, raising concerns about the judiciary acting as an **unelected and unaccountable constitutional gatekeeper** (Mehta, 2016²³; Datar, 2016).

Furthermore, critics argue that the judgment **missed a crucial opportunity** to design or recommend a reformed system that could balance **independence with transparency**. The decision struck down the NJAC without offering a **viable or improved alternative**, thereby reinstating a system that had already been criticized by the Court itself for being **non-transparent, arbitrary, and lacking diversity**. The Collegium's operation conducted behind closed doors without recorded reasoning or criteria continues to function without **codified procedures** or **external oversight** (Bhushan, 2016)²⁴.

There is also concern about the message this sends regarding **judicial accountability**. By invalidating even a limited form of participatory oversight, the Court seemingly reinforced a culture of **judicial exceptionalism**, where the judiciary is seen as beyond the scope of democratic checks and balances. This stance, some argue, is incompatible with **contemporary constitutionalism**, which values openness and dialogue between institutions (Choudhry, 2017)²⁵.

Additionally, the judgment's heavy reliance on the "chilling effect" of executive presence in judicial appointments has been questioned. Critics suggest that adequate safeguards could have been incorporated into the NJAC structure to **preserve judicial primacy** while still enhancing transparency. For instance, fixed

²¹ Bhatia, G. (2015). *The Transformative Constitution: A Radical Biography in Nine Acts*. HarperCollins.

²² Datar, A. (2016). *Judicial Appointments in India: A Constitutional Crisis*. Indian Journal of Constitutional Law, 8(1), 21–34.

²³ Mehta, P. B. (2016). *The Crisis of Accountability in India's Judiciary*. Seminar, (683), 18–23.

²⁴ Bhushan, P. (2016). *Judicial Appointments and Judicial Reforms: The NJAC Judgment Revisited*. Economic and Political Weekly, 51(8), 14–17.

²⁵ Choudhry, S. (2017). *Balancing Independence and Accountability: The Future of Judicial Appointments in India*. Indian Journal of Constitutional Law, 11(1), 45–60.

eligibility criteria, recorded reasons, and a codified appointment procedure could reduce arbitrariness without ceding control to political actors.

In sum, while the verdict upheld a fundamental constitutional value judicial independence it arguably did so at the **cost of democratic legitimacy** and much-needed **institutional reform**. It closed the door on a rare moment of national consensus, reinforcing an insulated system with little obligation for reform. The long-standing demand for greater **diversity, openness, and accountability** in judicial appointments remains largely unmet.

Comparative Perspectives on Judicial Appointments

Across democracies, the process of appointing judges to higher courts reflects a country's constitutional culture, institutional maturity, and balance between independence and accountability. While India has relied on the **Collegium system**, several other jurisdictions have adopted **more transparent or participatory models** that aim to preserve judicial independence while enhancing public trust and legitimacy. Below is a comparative exploration of judicial appointments in the **UK, USA, Canada, and South Africa**, along with potential takeaways for India.

United Kingdom

In the UK, the **Judicial Appointments Commission (JAC)** is an independent body responsible for selecting judges. Created under the **Constitutional Reform Act, 2005**, the JAC uses **transparent procedures**, including advertisements, written applications, interviews, and selection criteria based on merit. Importantly, **non-judicial and lay members** are involved, reinforcing the idea that the judiciary is accountable to the public while remaining independent from political control. The JAC model shows that **independence and transparency** need not be mutually exclusive.

United States

Judicial appointments to the **U.S. Supreme Court** involve **presidential nomination** followed by **Senate confirmation hearings**, which are televised and scrutinized publicly. Although this system allows for transparency, it is also criticized for being **highly politicized**, especially in recent decades. Nevertheless, it ensures that judicial philosophy, past judgments, and ethical conduct are debated publicly, enabling democratic accountability, even if it risks ideological polarization.

Canada

Canada has adopted a **hybrid approach**. The **Judicial Advisory Committees (JACs)** consisting of lawyers, judges, and laypersons advise the Minister of Justice on appointments. In recent reforms, **public disclosures and interviews** have increased, particularly for Supreme Court appointments. While the executive still makes the final decision, the process emphasizes **diversity, merit, and regional representation**, along with greater openness than before.

South Africa

Post-apartheid South Africa implemented a transformative model through its **Judicial Service Commission (JSC)**, which conducts **public interviews** for judicial candidates. This model emphasizes **representative diversity** (race, gender, region) and aims to rebuild public confidence in institutions. The presence of civil society and legislative members in the process reflects a **broad-based consultative structure** one that upholds both independence and inclusiveness.

Comparative Table: Judicial Appointment Systems

Country	Appointment Body	Key Features	Transparency Level	Independence Level	Remarks
India	Collegium System	Judges appoint judges; no formal criteria; closed-door decisions	Low	High	Lacks accountability and diversity
UK	Judicial Appointments Commission	Independent body with lay participation; merit-based open applications	High	High	Balanced and depoliticized
USA	President + Senate Confirmation	Political nomination and televised hearings	High	Medium	Transparent but politically polarizing
Canada	Judicial Advisory Committees	Mixed body recommends names; government decides	Medium-High	Medium-High	Emphasizes diversity and expertise
South Africa	Judicial Service Commission	Public interviews; includes civil society; diversity-focused	High	High	Transparent and inclusive post-apartheid model

Lessons for India: Balancing Judicial Independence with Public Accountability

India's judicial appointments process, governed by the Collegium system, has long been celebrated for protecting judicial independence from executive interference. However, the absence of transparency, codified norms, and public oversight has led to growing concerns over nepotism, arbitrariness, and lack of diversity in judicial selections. The resulting public distrust highlights the urgent need for reform not in dismantling judicial autonomy, but in enhancing the legitimacy and credibility of the selection process.

Comparative experiences from countries like the UK, Canada, South Africa, and even the USA suggest that **transparency and independence are not mutually exclusive**. The UK's Judicial Appointments Commission operates as an independent body guided by published criteria, publicly advertised vacancies, and interviews all while ensuring appointments are made on merit. Similarly, South Africa's Judicial Service Commission includes representatives from the judiciary, executive, legislature, and civil society, and conducts **public interviews**, creating a participatory framework without unduly politicizing the process.

From these models, India can derive valuable insights:

Codification of selection procedures and the publication of criteria for elevation can introduce consistency and reduce discretion.

Limited participation of non-judicial actors such as eminent persons or members of civil society in an advisory capacity can foster inclusivity while preserving the primacy of the judiciary.

Public disclosure of reasons for selections or rejections would enhance institutional credibility and reduce speculation of favouritism or bias.

Establishment of an independent secretariat for managing appointments could provide institutional support, data collection, and maintain neutrality.

Rather than rejecting outside participation altogether as was the case in the NJAC judgment India should explore **hybrid models** that reinforce constitutional principles while ensuring **greater openness and public trust**. Reform does not mean undermining the judiciary, but rather **strengthening it through transparency, diversity, and democratic legitimacy**. A well-designed mechanism can uphold the sanctity of judicial independence while addressing the systemic opacity that currently undermines the judiciary's accountability to the people it serves.

Recent Developments and Proposed Reforms

Statements by Judges & Law Commissions

Over the years, several judges and institutions have voiced concerns about the lack of transparency and accountability in the Collegium system. One of the most notable voices was that of **Justice J. Chelameswar**, who dissented in the NJAC verdict and publicly criticized the opaque manner in which the Collegium operated. He famously refused to attend Collegium meetings in protest, calling the process “absolutely opaque and inaccessible both to public and history” (Chelameswar, 2015)²⁶.

Similarly, **former Chief Justice R.M. Lodha** advocated for a more structured and transparent appointment process, proposing the establishment of a **Judicial Appointments Commission** that preserves judicial independence while incorporating public scrutiny and accountability (Lodha, 2014)²⁷.

The **Law Commission of India**, in its **214th Report (2008)**, also acknowledged the deficiencies of the current system and recommended a statutory body to oversee appointments and transfers of judges. The report emphasized the need for a **clear, transparent, and consultative mechanism** that balances independence with accountability (Law Commission of India, 2008)²⁸.

Current Transparency Initiatives

In response to growing public and internal criticism, the Supreme Court initiated a **modest reform in 2017** publishing Collegium decisions and resolutions on its official website. While this was seen as a positive step, many observers regard it as **cosmetic rather than substantive**. The published resolutions often lack detailed reasoning or justification for decisions, continuing to leave much of the process shrouded in ambiguity (Bhuwania, 2019)²⁹.

Proposed Reforms

Several reforms have been proposed by jurists, scholars, and civil society actors to enhance the Collegium's credibility:

²⁶ Chelameswar, J. (2015). Dissenting opinion in *Supreme Court Advocates-on-Record Assn. v. Union of India*, (2015) 6 SCC 733.

²⁷ Lodha, R.M. (2014, August). *Public Speech at National Law School of India University, Bangalore*.

²⁸ Law Commission of India. (2008). *214th Report on Proposal for Reconsideration of Judges Cases I, II, and III*. Government of India. Retrieved from lawcommissionofindia.nic.in

²⁹ Bhuwania, A. (2019). *Courting the People: Public Interest Litigation in Post-Emergency India*. Cambridge University Press.

Codification of Selection Criteria: A widely accepted reform proposal is to codify the eligibility and evaluative criteria for appointments and elevations, which would reduce discretion and ensure merit-based selections (Rai, 2020)³⁰.

Inclusion of Civil Society and Bar Members: A balanced representation that includes eminent members of civil society, bar associations, and even non-partisan legal scholars can introduce broader perspectives and reduce the risk of insular decision-making.

Greater Role for Parliament with Safeguards: While judicial independence must be preserved, a Parliamentary oversight mechanism with strong constitutional safeguards can provide an accountability layer, akin to the U.S. Senate confirmation process but suitably tailored to Indian conditions (Bhatia, 2016)³¹.

These reforms seek to preserve the judiciary's independence while embedding democratic legitimacy and public confidence in the appointment process. If implemented thoughtfully, such measures can correct the structural deficits of the Collegium system without exposing it to executive overreach.

Balancing Independence with Accountability

Doctrinal Dilemma: Judicial Independence vs. Democratic Accountability

The central tension in judicial reform lies in the **doctrinal dilemma** of balancing **judicial independence** with **democratic accountability**. On one hand, the judiciary must remain **free from political and executive interference** to fairly adjudicate disputes and uphold the Constitution. On the other hand, it functions within a democratic system, where institutions are expected to be **transparent, representative, and responsive to public scrutiny** (Sathe, 2003)³².

This tension becomes particularly visible in the context of **judicial appointments**. If judges are appointed through **opaque, internal procedures**, it may preserve independence but erode public trust. Conversely, increased external oversight may increase transparency but potentially expose the judiciary to **partisan or political pressures** (Baxi, 2008)³³. Hence, the challenge is to strike a **functional balance** that protects the core values of both principles.

THEORETICAL FRAMEWORKS

Separation of Powers

The doctrine of **separation of powers**, as conceptualized by Montesquieu, underlines that the three branches of government legislature, executive, and judiciary must function independently to prevent tyranny and preserve liberty. In India, this doctrine is **not absolute but functional**, allowing for **checks and balances** without strict separation (Austin, 1999)³⁴.

Judicial independence is a critical facet of this framework. However, in a **constitutional democracy**, independence cannot mean **total insulation**. Instead, it should be accompanied by internal mechanisms of

³⁰ Rai, P. (2020). Judicial Appointments and the Collegium: Prospects for Reform. *Journal of Constitutional Law and Governance*, 3(2), 55–68.

³¹ Bhatia, G. (2016). *The Transformative Constitution: A Radical Biography in Nine Acts*. HarperCollins.

³² Sathe, S. P. (2003). *Judicial Activism in India: Transgressing Borders and Enforcing Limits*. Oxford University Press.

³³ Baxi, U. (2008). *The Indian Supreme Court and Politics*. Eastern Book Company.

³⁴ Austin, G. (1999). *Working a Democratic Constitution: A History of the Indian Experience*. Oxford University Press.

institutional accountability (Chandrachud, 2019)³⁵. As observed in *S.P. Gupta v. Union of India* (1981), the independence of the judiciary is not an end in itself but a means to ensure impartial justice.

Checks and Balances in a Constitutional Scheme

India's Constitution envisions a **system of checks and balances**, where no institution is supreme. Articles 124 and 217, which govern judicial appointments, were deliberately framed to **distribute power between the executive and judiciary**, not concentrate it within the judiciary alone. This equilibrium was disrupted by the advent of the **Collegium system**, which tilted power exclusively toward the judiciary (Krishnaswamy, 2016)³⁶.

True accountability does not require sacrificing independence; it calls for **transparent mechanisms, peer review, reasoned decision-making, and public disclosure**. These can reinforce public faith and improve the **quality of appointments**, while preserving the judiciary's core function of unbiased adjudication.

Can Transparency Be Achieved Without Diluting Independence?

The answer lies in **designing institutions** that incorporate **accountability frameworks without external domination**. For instance:

Codifying selection criteria and ensuring **public disclosure** of reasons for appointment can enhance transparency.

Independent commissions that include retired judges, academicians, and civil society members may provide oversight without executive interference.

Periodic performance audits, non-binding consultations with the bar, and **legislative feedback** (not control) can improve systemic trust.

As comparative models show, **independence and transparency are not mutually exclusive**. In the UK, the **Judicial Appointments Commission** operates independently while maintaining an open, consultative process. Canada and South Africa also involve public interviews and mixed commissions, ensuring both **merit-based selection** and **democratic legitimacy** (Jacob, 2017)³⁷.

CONCLUSION

The debate over judicial appointments in India lies at the heart of preserving the **integrity of the judiciary** and ensuring the **legitimacy of democratic governance**. Through an examination of the Collegium system, it becomes evident that while it has been successful in **safeguarding the judiciary from executive interference**, it has simultaneously **suffered from a lack of transparency, accountability, and inclusiveness**.

SUMMARY OF FINDINGS

The **Collegium system**, born out of judicial interpretations rather than legislative enactment, operates within a **closed and opaque framework**. It concentrates decision-making in the hands of a few senior judges, which, although protective of independence, **undermines public confidence** due to the absence of codified criteria, reasoning for selections or rejections, and representation from diverse sections of society. As this paper has shown, both **internal criticisms** (such as Justice Chelameswar's dissent) and **external observations**

³⁵ Chandrachud, A. (2019). *Due Process of Law*. Eastern Book Company.

³⁶ Krishnaswamy, S. (2016). Constitutional Morality and the NJAC Verdict. *Economic and Political Weekly*, 51(3), 10–14.

³⁷ Jacob, D. (2017). Comparative Judicial Appointments: Lessons for India. *Indian Journal of Constitutional Law*, 11(1), 85–112.

(including Law Commission reports and scholarly critiques) highlight the system's **elitist and exclusionary tendencies**.

The **rejection of the NJAC**, though rooted in constitutional fidelity to judicial independence, was widely seen as a **missed opportunity for reform**. It reinforced judicial primacy without offering a tangible roadmap for improvement, thereby perpetuating the very flaws it acknowledged. Comparative insights from countries like the **UK, South Africa, and Canada** show that **judicial independence can coexist with transparency**, provided the system is designed with adequate safeguards.

Final Thoughts

For India to truly uphold the ideals of a **constitutional democracy**, it must evolve a **judicial appointment mechanism that is independent yet publicly accountable**. A **balanced framework** rooted in **merit, procedural transparency, and societal representation** is not only desirable but imperative.

Such a system would:

- Maintain the **institutional independence** of the judiciary,
- Ensure **diverse representation** reflective of India's social fabric,
- Build **public trust** through openness and objectivity,
- And most importantly, reaffirm the judiciary's role as an **impartial guardian of constitutional values**.

The path forward lies not in reverting to executive control or maintaining judicial monopoly, but in **institutional innovation** developing a **hybrid model** that respects constitutional boundaries while responding to the democratic demand for transparency and justice.

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