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COLLEGIUM SYSTEM VS NJAC: A CONSTITUTIONAL DEADLOCK

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ABSTRACT

This paper examines the contentious debate surrounding the judicial appointments process in India, focusing on the Collegium System and the National Judicial Appointments Commission (NJAC). The Collegium, evolved through judicial precedent, ensures judicial independence but faces criticism for its opacity and lack of diversity. The NJAC, introduced through the 99th Constitutional Amendment, aimed to bring transparency and accountability by involving the executive and eminent persons in appointments. However, it was struck down by the Supreme Court in 2015 for violating the basic structure doctrine.¹ Keywords: Collegium, NJAC, Judicial Appointments, Constitutional Law, Basic Structure Doctrine, Judicial Independence.

INTRODUCTION

The debate over how judges are appointed to India's higher judiciary is one of the most contentious and complex constitutional issues the country has faced in recent years. On one side is the long-standing Collegium System, a mechanism developed by the Judiciary Itself to ensure its Independence. On the other is the National Judicial Appointments Commission (NJAC), a more recent but short-lived attempt by Parliament to reform the system in favor of transparency and accountability. This ongoing battle has created a constitutional deadlock, one that reflects a deeper struggle between two fundamental values: the Independence of the judiciary and the need for democratic accountability. As a student of constitutional law, I find this debate fascinating because it challenges our understanding of the basic structure of the 1 Constitution, the separation of powers, and the limits of judicial self-regulation. It is not just a legal issue-it also touches upon politics, governance, and the evolving expectations of a democratic society.

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ORIGINS AND EVOLUTION OF THE COLLEGIUM SYSTEM

The Collegium System, which currently governs the appointment and transfer of judges to the Supreme Court and High Courts, was not explicitly created by the Constitution of India. Instead, it evolved through judicial decisions, most notably in the "Three Judges Cases"-S.P. Gupta v. Union of India (1981), Supreme Court Advocates-on-Record Association v. Union of India (1993) 4 SCC 441, and In re Presidential Reference (1998). In the 1993 judgment, the Supreme Court held that the Chief Justice of India (CJI), in consultation with the two senior-most Judges of the Supreme Court, would have primacy in the appointment of Judges. This principle was later expanded to include a larger Collegium of five judges for appointments to the Supreme Court, and a similar system was adopted for High Courts. The idea behind this was to insulate the judiciary from executive interference, especially in light of the political misuse of appointments during the Emergency. While the Intentions were noble, the outcome has been increasingly criticized.

CRITICISM

One of the main criticisms of the Collegium System is that it lacks transparency. The discussions and criteria used to select judges are not made public, and no formal record is maintained to explain why one candidate is chosen over another. This has led to widespread allegations of nepotism, favoritism, and bias. Reports suggest that many Judges appointed through the Collegium have familial ties to existing or retired judges, giving rise to the term "uncle Judges." This undermines public faith in the Judiciary and gives an impression of elitism, where only those with the right connections can make it to the top. Furthermore, the system has failed to ensure diversity within the judiciary. Women, Scheduled Castes, Scheduled Tribes, and minorities remain grossly underrepresented. As of 2025, there are only four women out of 34 judges in the Supreme Court, and the high Courts show a similar underrepresentation. This raises serious questions about Inclusiveness and whether the judiciary is truly reflective of the society it serves.

WHAT CHANGES WERE PROPOSED

In the Constitution: To address these concerns, Parliament passed the 99th Constitutional Amendment in 2014, which introduced the National Judicial Appointments Commission (NJAC).

The NJAC was meant to replace the Collegium and provide a more broad-based and transparent appointment process. It comprised six members: the Chief Justice of India, two senior judges of the Supreme Court, the Union Law Minister, and two eminent persons (nominated by a committee including the Prime Minister, CJI, and Leader of Opposition). The idea was to balance judicial and executive roles while incorporating civil society through the inclusion of "eminent persons." This system was hailed by many as a step forward-It aimed to break the judicial monopoly over appointments and introduce much-needed accountability. However, this move did not last long. In 2015, the Supreme Court struck down the NJAC Act and the 99th Constitutional Amendment in a 4:1 majority judgment, declaring it unconstitutional.

IF POLITICIANS ARE INVOLVED, WHAT ABOUT JUDICIAL INDEPENDENCE

The judiciary representatives in the NJAC the Chief Justice and two senior-most judges can veto any name proposed for appointment to a judicial post if they do not approve of it. Once a proposal is vetoed, it cannot be revived.

THE 2015 BENCH - NJAC STRUCK DOWN:

The main reason the Supreme Court struck down the NJAC was that It violated the "basic structure of the Constitution, particularly the Independence of the judiciary. According to the majority opinion, giving the executive a say in judicial appointments-especially through the Law Minister and the two "eminent persons"-created a risk of politicization. The court feared that allowing such influence could lead to a compromise in impartiality, especially in politically sensitive cases. However, not everyone agreed with this. Justice J. Chelameswar, in his powerful dissent, argued that the judiciary cannot be the sole authority in its own appointments. He pointed out that the Collegium had become an opaque, unaccountable system that was not serving the interests of the people or the Constitution.

POST JUDGEMENT REFORMS

After the NJAC verdict, the Collegium System was restored, but the Supreme Court acknowledged the need for reform. It invited suggestions from the public and legal community to improve the

process. As a result, certain procedural reforms were proposed, Including a new Memorandum of Procedure (MoP) for judicial appointments. These suggestions included greater transparency, a permanent secretariat to maintain data on candidates, fixed eligibility criteria, and a mechanism to handle complaints. Some steps were implemented, such as publishing Collegium recommendations on the Supreme Court website with brief justifications. However, these efforts have been inconsistent. At times, detailed reasons are given, while in other cases, recommendations are made without any explanation. Moreover, there has been no significant change in diversity or delays in appointments.

CONSTITUTIONAL DEADLOCK

This brings us to the constitutional deadlock we find ourselves in today. On one hand, the judiciary insists that its Independence cannot be compromised by executive influence. On the other hand, the government argues that judges cannot be above scrutiny and must be accountable to the public. Both sides make valid points, but neither has been willing to compromise. This stalemate has real consequences. As of mid-2025, more than 30% of High Court judge posts remain vacant. Justice delivery is being delayed, case backlogs are increasing, and public trust is eroding. While the Constitution does not specifically lay out the exact procedure for judicial appointments, Article 124(2) and 217 leave it open to Interpretation, which has led to the current confusion. Instead of resolving the matter through consensus, both branches have dug in their heels, making meaningful reform nearly impossible.

WHAT ARE THE CURRENT CONSTITUTIONAL PROVISIONS FOR APPOINTING JUDGES:

Articles 124 and 217 of the Constitution deal with the appointment of judges to the Supreme Court and high courts of the country. Article 124(2) states that "every Judge of the Supreme Court shall be appointed by the President" after "consultation" with the judges of the Supreme Court and the high courts, "as the President may deem necessary"

OTHER COUNTRIES JUDICIAL SYSTEM

It is also worth looking at how other countries handle judicial appointments. In the United Kingdom, an independent Judicial Appointments Commission handles the process with significant transparency and public input. In South Africa, a judicial appointments body includes members of Parliament, the legal profession, and civil society. These models demonstrate that judicial independence does not necessarily mean a closed system. Rather, it can coexist with openness and participation from different stakeholders. In fact, giving diverse voices a seat at the table may enhance the judiciary's legitimacy. In contrast, India's current system lacks any form of parliamentary oversight or external checks, which makes it highly unusual among democratic nations.

MY OPINION

So, what is the way forward? In my opinion, neither the Collegium nor the NJAC, in their current or past forms, are ideal. The Collegium protects independence but fails in transparency and diversity. NJAC tried to improve these aspects but did so in a way that threatened judicial autonomy. The solution lies in a middle path. A revised NJAC could be introduced with better safeguards. For instance, the "eminent persons" could be selected through a more transparent, inclusive, and depoliticized process. The judiciary should retain primacy, but the executive and civil society should have limited, structured roles. Criteria for appointment must be clear, published, and based on merit, integrity, and representation. At the same time, a permanent body—perhaps a constitutional commission—can be created to manage appointments, data, and feedback. This would reduce the burden on individual judges and streamline the process.

RECENT CONTROVERSY

The recent attacks on the collegium system and the Supreme Court are disconcerting as they come from the Law Minister and the Vice-President. The collegium system has been criticised in the past and so has the Supreme Court for having struck down the 99th constitutional amendment that created the National Judicial Appointments Commission (NJAC) and was voted almost unanimously in both Houses of Parliament.

Vice President and Chairman of the Rajya Sabha Jagdeep Dhankhar stated that the 'cash-in-outhouse' controversy surrounding Justice Yashwant Varma could have been avoided if the Supreme Court had not struck down the National Judicial Appointment Commission (NJAC) in 2015. After the cash was reportedly discovered during a firefighting operation at Justice Varma's official residence, the Supreme Court Collegium led by Chief Justice Sanjiv Khanna acted swiftly. Justice Sanjiv Khanna acted swiftly. Justice Varma was transferred to Allahabad High Court from Delhi. The CJI also initiated an in-house inquiry. The NJAC aimed to replace the Collegium system, under which the senior-most sitting judges of the Supreme Court recommend judges to be appointed to the higher judiciary. A body of the five senior-most judges recommend judges to the Supreme Court, whereas the senior-most judges recommend judges to be appointed to the higher judiciary. A body of the five senior-most judges recommend judges to the Supreme Court, whereas three senior-most judges recommend judges to the high courts.

The Collegium system was developed through three Supreme Court judgements which are popularly known as the First (1981), Second (1993) and Third (1998) Judges cases.

CONCLUSION

In conclusion, the debate between the Collegium and NJAC is not just about legal mechanisms; It is about values-how we balance independence with accountability, secrecy with transparency, and merit with diversity. The current constitutional deadlock has exposed the weaknesses of both systems and the urgent need for reform. As a democratic nation committed to justice, we cannot afford to have our judiciary trapped in a battle of egos between institutions. What we need is a judicial appointments process that is fair, open, efficient, and trustworthy. That will not only uphold the Constitution but also restore faith in one of its most vital pillars-the Judiciary.