The Collegium System: Constitutional Evolution of Judicial Appointments in India

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***Abstract*—The Bedrock of a constitutional democracy is the rule of law, and central to the rule of law is a judiciary that decides independent of the political winds of the day. This article examines the collegium system, the mechanism by which judges of the Supreme Court and the High Courts in India are appointed and transferred. It begins with the constitutional text governing appointments — Articles 124(2), 217(1) and 233–234 — which requires the President to act "in consultation with" designated judges without defining what that consultation entails. It then traces how the meaning of "consultation" was worked out by the Supreme Court across three pronouncements known as the Three Judges Cases: the First Judges Case (1982), which held consultation to be non-binding on the President; the Second Judges Case (1993), which reversed that position and read "consultation" to mean "concurrence," giving primacy to the opinion of the Chief Justice of India; and the Presidential Reference of 1998, which finally settled the composition and functioning of the collegium as it exists today. The article also examines the short-lived attempt, through the Ninety-Ninth Constitutional Amendment, to replace the collegium with a National Judicial Appointments Commission, and the Supreme Court's invalidation of that amendment in 2015 on the ground that it violated the basic structure of the Constitution, restoring the collegium system that continues to operate at present.**

I. INTRODUCTION

The bedrock of our democracy is the rule of law, and central to it is the idea that judicial decisions must be independent of the political winds that happen to be blowing at a given moment. The Constitution of India provides for the appointment of judges through several distinct provisions: for the Supreme Court, Article 124(2)[*]; for the High Courts, Article 217(1)[†]; and for the subordinate judiciary, Articles 233 and 234[‡]. The word "collegium" simply means a group of people who take decisions or make recommendations. The collegium of judges, therefore, is a group of judges who make recommendations, and the collegium system is best understood as a system of judicial personnel management — that is, a system for appointing judges to, and making recommendations for, the higher judiciary.

II. THE CONSTITUTIONAL MANDATE FOR APPOINTMENT OF JUDGES

The constitutional starting point for the appointment of Supreme Court judges is Article 124(2), which provides that "every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose."[§] On a plain reading, the President appoints the judges of the Supreme Court, and which High Court judges are to be consulted is left entirely to the President's discretion. This is how the Constitution originally envisaged the appointment of Supreme Court judges.

Article 217 governs the appointment of High Court judges. It requires the President to act under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and — in the case of the appointment of a judge other than the Chief Justice — the Chief Justice of that High Court.[**] These three functionaries, then, are to be consulted whenever a judge of a High Court is to be appointed. The question

that would come to dominate Indian constitutional law for the next several decades was what this "consultation" actually required of the President.

III. THE GENESIS OF THE COLLEGIUM: THE THREE JUDGES CASES

The collegium system, as it exists today, was not created by any single constitutional provision. It emerged instead from three landmark pronouncements of the Supreme Court, commonly referred to as the First, Second and Third Judges Cases, culminating in the Presidential Reference of 1998. It was only after this advisory opinion that the collegium system was fully formulated and finalised in the form in which we recognise it today.

A. The First Judges Case: S.P. Gupta v. Union of India (1982)

The first of the Three Judges Cases arose out of S.P. Gupta v. Union of India (1982).[††] S.P. Gupta was a former Advocate General of Uttar Pradesh; he passed away in January 2022. The case was heard by a seven-judge Bench, and the leading judgment was authored by Justice P.N. Bhagwati, who later became Chief Justice of India and was also a pioneer of innovations such as Lok Adalats and public interest litigation.

On the meaning of "consultation," the Supreme Court held that while the President is bound to consult the judges named in the Constitution — consultation being mandatory — the President is not bound to concur with the advice tendered by the Supreme Court or the High Courts.[‡‡] In other words, even after consultation, the President could appoint or decline to appoint a particular candidate, and the opinion of the Supreme Court and High Court judges was not binding on the President.

Even so, S.P. Gupta was significant for another reason: it was in this case that the Supreme Court, for the first time, observed that there ought to be a group of people — a collegium of sorts — to make recommendations to the President when appointing a Supreme Court or High Court judge. The Court did not say that this collegium should consist of judges alone; instead, it said that the collegium should be broad-based, with consultation reflecting a wider set of interests, and that it should largely comprise people who have knowledge of what kind of person is fit to be a Supreme Court or a High Court judge and who possess the qualities relevant to such appointments. Beyond this passing reference, however, the Court said nothing further about how such a collegium was to be constituted, and nothing concrete came of the observation at the time.

B. The 121st Law Commission Report and the Lapsed Sixty-Seventh Amendment Bill

In 1987, the Law Commission of India, in its 121st Report, suggested the creation of a body it called a Judicial Commission — a group of people who would make recommendations to the President, on the basis of which the President could appoint judges.[§§] Building on this report, Parliament introduced the Constitution (Sixty-Seventh Amendment) Bill in 1990. The Bill lapsed, however, on the dissolution of the Ninth Lok Sabha and never became law.[***] The idea had nonetheless been put forward, and it was now firmly on the table that the government was considering the creation of a body along the lines of a Judicial Commission. This background gave rise to what came to be known as the Second Judges Case.

C. The Second Judges Case: SCAORA v. Union of India (1993)

The question that came before the Supreme Court in Supreme Court Advocates-on-Record Association v. Union of India (1993) was what exactly "consultation" meant: was it mere consultation, or was the President bound by the opinion of the judges consulted? And whom, precisely, was the President required to consult — any judge, or specific judges only?[†††] A nine-judge Bench, revisiting S.P. Gupta, answered these questions by a 7:2 majority, overruling the earlier judgment on the central point.

The Court held that the word "consultation" in Articles 124 and 217 in fact means "concurrence": the opinion tendered by the Supreme Court judges is binding on the President. This reversed S.P. Gupta's holding that consultation was non-binding. The Court went on to address who must be consulted, holding that primacy

of the Chief Justice of India's opinion was essential, since the Chief Justice is best placed to evaluate which judges are fit to sit on the Supreme Court or the High Courts. The criteria the Court identified were seniority and "institutional fitness," though the judgment did not spell out precisely what institutional fitness required. The Court also held that, because the Central Government is itself a litigant in a large number of cases, it would not be appropriate for the Government to be a party to the appointment of judges.

Finally, mindful that the Chief Justice's own discretion needed a check, the Court held that the Chief Justice should consult two of the senior-most judges of the Supreme Court before tendering advice to the President. It was at this point that the collegium, in substance, first came into being.

D. The Third Judges Case: The Presidential Reference of 1998

The Second Judges Case left a number of questions unanswered. Was consultation with two judges enough, or should more judges be involved? How was the transfer of judges from one High Court to another to be handled?

What was to happen if the two judges of the collegium disagreed with the Chief Justice? To resolve this uncertainty, the President invoked the advisory jurisdiction of the Supreme Court under Article 143 of the Constitution, asking the Court to clarify, once and for all, the meaning and working of the collegium — for appointments to the Supreme Court, for appointments to the High Courts, and for the transfer of judges from one High Court to another.‡‡‡ It was in this Presidential Reference that the collegium system, in the form it takes today, was finally settled.

IV. THE COLLEGIUM SYSTEM AS IT OPERATES TODAY

Formal appointment continues to be made by the President of India. As for the office of Chief Justice of India, the senior-most judge of the Supreme Court — senior by virtue of length of service on that Court, not by age — is, by convention, appointed Chief Justice.

A. Appointment of Supreme Court Judges

For appointments to the Supreme Court, the collegium consists of the Chief Justice of India and the four senior-most judges of the Supreme Court. If the Chief Justice recommends a name, that recommendation is, in all likelihood, given effect, provided the Chief Justice has the backing of at least three of the other four judges. If, however, the Chief Justice does not recommend a name, that name will not be forwarded to the President even if the remaining four judges are in favour of it — the Chief Justice, in this sense, holds the decisive voice.

B. Appointment of High Court Judges

For the appointment of High Court judges, the collegium consists of the Chief Justice of India and the two senior-most judges of the Supreme Court. Names cleared by this collegium are forwarded for appointment as judges of the relevant High Court.

C. Transfer of High Court Judges

The transfer of a judge from one High Court to another is handled by the same five-member collegium that deals with Supreme Court appointments. Two constraints apply. First, a transfer cannot be used as a punitive measure. Second, the Chief Justice of India cannot order a transfer unilaterally; the other four judges of the collegium must be consulted, as must the Chief Justice of the High Court to which the judge is being sent and the Chief Justice of the High Court from which the judge is being transferred. To illustrate: if a judge is being transferred from the Karnataka High Court to the Bombay High Court, the collegium will consult the Chief Justice of the Bombay High Court, which is to receive the judge, and the Chief Justice of the Karnataka High Court, from which the judge is being transferred. The views of these two Chief Justices are sought, but it is the opinion of the five members of the collegium that ultimately governs. Where the transfer concerns the Chief Justice of a High Court, no such consultation is required; the collegium may transfer that Chief Justice from one High Court to another directly. This, in essence, is the collegium system as it functions today.

V. THE NATIONAL JUDICIAL APPOINTMENTS COMMISSION AND THE FOURTH JUDGES CASE

A further chapter was added to this history through the Ninety-Ninth Constitutional Amendment, 2014, which created the National Judicial Appointments Commission (NJAC).[§§§] The amendment inserted Article 124A, which set out the composition of the NJAC: the Chief Justice of India as Chairperson; two senior-most judges of the Supreme Court as members; the Union Minister of Law and Justice; and two "eminent persons," a term the Constitution left undefined. These eminent persons were to be selected by a committee comprising the Prime Minister, the Leader of the Opposition in the Lok Sabha, and the Chief Justice of India.[****] Article 124B set out the NJAC's functions, which included making recommendations for the appointment of Supreme Court and High Court judges and for the transfer of High Court judges.[††††] Notably, the Chief Justice of India was given no veto power over the Commission's decisions.

The amendment was challenged before the Supreme Court almost immediately. The Court held, first, that the frequent interaction between the executive and the judiciary that the NJAC's composition would entail was constitutionally problematic: with the Union Law Minister sitting as a member of a body that also included judges, and with the government being a litigant in a majority of cases before the courts, such interaction risked compromising the independence of the judiciary. Second, the Court questioned why the Chief Justice of India had been denied a veto. Third, the Court noted the absence of any definition of "eminent person," observing that it was entirely possible for the Prime Minister and the Leader of the Opposition to agree on a nominee who, together with the Law Minister and the second eminent person, could combine to override any recommendation made by the judicial members.

In what came to be known as the Fourth Judges Case, the Supreme Court struck down the Ninety-Ninth Amendment as unconstitutional, holding that it violated the basic structure of the Constitution by compromising the independence of the judiciary.[‡‡‡‡] The Court's decision restored the collegium system, which continues to operate today.

VI. POST-2015 DEVELOPMENTS: TRANSPARENCY, THE STALLED MEMORANDUM OF PROCEDURE, AND RECENT CONTROVERSIES

The Fourth Judges Case did not end the story. On the same day it struck down the Ninety-Ninth Amendment, the Constitution Bench issued a supplementary order directing the Government of India to finalise a revised Memorandum of Procedure (MoP) — the document that governs the practical workings of the collegium — "in consultation with the Chief Justice of India," so as to improve the collegium's transparency, accountability, and the criteria for eligibility.[§§§§] More than a decade on, this revised MoP remains unfinalised: the judiciary and the executive have exchanged drafts but continue to disagree on key points, including the government's demand for a "national security" ground on which it could return or withhold a name. Vacancies have piled up in the interim — well over 250 High Court vacancies persisted as of early 2026 — and members of the executive, including the Vice-President and the Law Minister, have periodically renewed calls to revisit something resembling the NJAC.

A second, quieter development concerned the collegium's opacity. In Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal, a five-judge Constitution Bench held that the Office of the Chief Justice of India is a "public authority" under the Right to Information Act, 2005, and that correspondence between the collegium and the government — including the reasons for recommending or superseding a candidate — is not automatically beyond the reach of the Act.[*****] Disclosure remains subject to a case-by-case balancing of the public interest in transparency against the judge's privacy under Section 8(1)(j) of the RTI Act, but the judgment nonetheless marked a modest judicial acknowledgment of the criticism, aired since

S.P. Gupta itself, that the collegium's own workings are not visible to the public it appoints judges for.

The tension between the collegium and calls for an executive-inclusive alternative resurfaced sharply in 2025. In March that year, firefighters dousing a blaze at the official residence of Justice Yashwant Varma, then a judge of the Delhi High Court, discovered several sacks of partially burnt currency. The Chief Justice of India constituted a three-member in-house committee to inquire into the matter, and the collegium simultaneously recommended Justice Varma's repatriation to his parent High Court at Allahabad pending the outcome. The committee found that Justice Varma had "tacit or active control" over the store-room in question and recommended that removal proceedings be initiated; a writ petition by the judge challenging the committee's report and process was dismissed by the Supreme Court as not maintainable in a judgment delivered on 7 August 2025.†††† The episode reignited the wider debate examined in this article: critics of the collegium pointed to the case as evidence that a body drawn exclusively from sitting judges lacks an adequate mechanism for accountability, while others noted that the controversy concerned individual misconduct and its in-house handling, not the process of appointment as such, and that an NJAC-style body would not, by itself, have prevented it.

VII. CONCLUSION

The collegium system was not the product of a single constitutional design but of a decades-long dialogue between the text of Articles 124 and 217 and the Supreme Court's evolving understanding of judicial independence. What began, in S.P. Gupta, as a passing observation about the desirability of a broad-based advisory body became, through the Second Judges Case and the Presidential Reference, a settled mechanism in which the primacy of the Chief Justice of India's opinion, tempered by consultation with senior colleagues, determines who is appointed to — and transferred within — the higher judiciary. The attempt to replace this mechanism with the National Judicial Appointments Commission tested, and ultimately reaffirmed, the proposition that judicial independence forms part of the basic structure of the Constitution. Yet, as the unfinished Memorandum of Procedure and the controversy surrounding Justice Varma illustrate, the settlement of 1998 resolved the question of who appoints judges without fully resolving the accompanying questions of transparency and accountability. Whatever the merits of the continuing debate over whether a collegium of judges or a broader commission is the better custodian of judicial appointments, that debate is conducted within the framework the Supreme Court settled in 1998 — a framework that remains, for the present, the law of the land.

REFERENCE

[1] INDIA CONST. art. 124, cl. 2.

[2] INDIA CONST. art. 217, cl. 1.

[3] INDIA CONST. arts. 233–234 (appointment of district judges and other persons to the judicial service of a State).

[4] INDIA CONST. art. 124, cl. 2.

[5] INDIA CONST. art. 217, cl. 1.

[6] *S.P. Gupta v. Union of India*, AIR 1982 SC 149 (commonly cited as the First Judges Case).

[7] *S.P. Gupta*, AIR 1982 SC 149 (per Bhagwati, J., on the non-binding character of consultation under arts. 124 and 217).

[8] Law Commission of India, *A New Forum for Judicial Appointments*, Report No. 121 (1987).

[9] The Constitution (Sixty-Seventh Amendment) Bill, 1990, which sought to create a National Judicial Commission, lapsed on the dissolution of the Ninth Lok Sabha in 1991 and was never enacted.

[10] Supreme *Court Advocates-on-Record Ass'n v. Union of India*, (1993) 4 SCC 441 (the Second Judges Case).

[11] In re Special Reference No. 1 of 1998, (1998) 7 SCC 739 (Presidential Reference under INDIA CONST. art. 143, the Third Judges Case).

[12] The Constitution (Ninety-Ninth Amendment) Act, 2014 (inserting arts. 124A–124C).

[13] INDIA CONST. art. 124A (composition of the National Judicial Appointments Commission), as inserted by the Ninety-Ninth Amendment.

[14] INDIA CONST. art. 124B (functions of the National Judicial Appointments Commission), as inserted by the Ninety-Ninth Amendment.
[15] Supreme Court Advocates-on-Record Ass'n v. Union of India, (2016) 5 SCC 1 (the Fourth Judges Case or NJAC judgment), decided Oct. 16, 2015.
[16] Supreme Court Advocates-on-Record Ass'n v. Union of India, (2016) 5 SCC 1, supplementary order dated Dec. 16, 2015 (directing finalisation of the Memorandum of Procedure).
[17] Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal, 2019 SCC OnLine SC 1459, decided Nov. 13, 2019 (Constitution Bench).
[18] Yashwant *Varma v. Union of India*, Supreme Court of India, judgment dated Aug. 7, 2025 (Dipankar Datta and A. G. Masih, JJ.) (Writ petition challenging the in-house inquiry committee's report dismissed as not maintainable).