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Balancing Justice: Evolution of the Judicial Appointment Process in India

The Judiciary is a branch of the government that is responsible for interpreting the law in a country, protecting the rights of the citizens, and administering justice to all. It is the guardian of the constitution and is similar to an impartial umpire when deciding disputes.

The Independence of the Judiciary is an important pillar in every democratic and federal nation which is an established Rule of Law. The Judges play a very important role in upholding this function of the judiciary, which makes their appointment very crucial. Thus, many times, a question that arises and is frequently in debate is the involvement of the Executive of the State and whether it affects this independence.

Appointment of Supreme Court Judges:

The procedure for the appointment of the Judges of the Supreme Court is given under Article 124(2) of the Constitution of India. The President, after consultation with the judges of the Supreme Court and High Courts, makes informed appointments.

Evolution of this Procedure:

The Indian Constitution was adopted in 1950 following the country's independence in 1947. The Chief Justice of India and the other Supreme Court justices were appointed by the President, following the Constitution, after consultation with the CJI. The Constitution's prescribed procedure was adhered to until 1973, after which it was subjected to a series of modifications due to several court rulings.

1. Appointment of CJI [Until 1973]

- Up until 1973, the ruling Government and the Chief Justice of India were in agreement and the established norm was that the senior-most judge of the Supreme Court would be appointed as the Chief Justice of India.

- However, in 1973, when A.N. Ray, who was not the senior-most judge, was appointed as the Chief Justice of India there were several debates as to whether the said norm was causing friction.
- Subsequently, in 1977, another chief justice was appointed who was not the senior-most judge of the court and had superseded his seniors.
- As a result, there was a conflict between the Judiciary and the Executive.

2. First Judges Case, 1981¹

- In 1981, a petition was filed in the Supreme Court of India in the case S.P. Gupta v. Union of India, famously known as the First Judges case. For the subsequent twelve years, this decision granted the Executive precedence over the Judiciary in terms of judicial appointments.
- The question before the Supreme Court of India was whether the word “consultation” in Article 124 of the Constitution means “concurrence”.
- The Supreme Court rejected the argument and held that consultation does not imply concurrence and held that the President could override the views of the consultees. The Supreme Court's advice did not mandate the President to make a decision. It stated that for ‘cogent reasons’, the ‘primacy’ of the Chief Justice of India's recommendation for judicial appointments and transfers may be rejected.
- The Supreme Court's ruling that a High Court Judge may be transferred to any other state high court, even against his will, was another crucial topic in this case's discussion, thus also known as the ‘Judge Transfer Case’.

3. Second Judges Case, 1993²

- Another petition was filed in 1993 by the Supreme Court Advocates on Record Association challenging the correctness of the order in the First Judges Case, wherein the Supreme Court overruled its earlier verdict and held that the meaning of consultation includes concurrence.
- A nine-judge bench of the Supreme Court, by a majority of 7:2, rendered the judgement on October 6, 1993. The primacy in the matter of appointment of judges to the higher judiciary was transferred from the executive to the Chief Justice. Therefore, now the President was bound by the consultations of the CJI. This gave birth to the Collegium System.

¹ S.P. Gupta v. Union of India, AIR 1982 SC 149

² Supreme Court Advocates-on-Record Association vs Union of India, AIR 1994 SC 268

- In addition to this, the court also held that it was not the CJI's individual opinion, but instead an institutional opinion formed after consultation with the two senior-most judges in the Supreme Court.

4. Third Judges Case, 1998³

- This was an opinion delivered by the Supreme Court of India in response to the question of law raised by the then President of India, K. R. Narayanan, in July 1998, regarding the collegium system. Under his constitutional powers given in Article 143 of the Constitution, the presidential reference to the Supreme Court was issued questioning the meaning of the word consultation in articles 124, 217, and 222 of the Constitution.
- The court held that during the consultation process, the chief justice won't be the sole participant and the Constitution requires the consultation with a plurality of judges in the establishment of the opinion of the Chief Justice of India.
- In the verdict, the Supreme Court laid down stringent guidelines for the appointment of Judges under the Collegium System and expanded the Collegium to a five-member body, comprising the CJI and four of his senior-most colleagues. The CJI will not recommend any opinion to the government if it has been opposed even if by two of the judges.

❖ Collegium System

- The appointment of Judges of the higher judiciary takes place through the collegium system. The term "collegium" is not defined in the Constitution but has been established through judicial pronouncements.
- The collegium consists of the Chief Justice of India and the four senior-most judges of the Supreme Court and together they decide on appointments, elevations, and transfers of Judges.
- The collegium then recommends the names of the candidates to the Central Government.

However, the Collegium System faced a lot of criticism from the government and also from the civil society due to the 'Lack of Transparency and Accountability'. The appointment process was long since there wasn't a fixed time limit prescribed. If the Collegium resends the same name then the government has to give its assent to the names.

³ Special Reference No. 1 of 1998, In re, (1998) 7 SCC 739

❖ **National Judicial Appointment Commission Act, 2014**

- The National Judicial Appointments Commission (NJAC) was put forward to replace the collegium system.
- Consequently, the 99th Constitutional Amendment Act was passed by the Lok Sabha on August 13, 2014, and by the Rajya Sabha on August 14, 2014. It came into force from April 13, 2015.
- It replaced the collegium system of appointing judges to the Supreme Court and High Courts with a new body called the National Judicial Appointments Commission (NJAC). It was established to achieve better transparency and accountability in the process of appointment.
- NJAC would similarly recommend names for the Appointment of Supreme Court Judges and the Appointment and Transfer of a High Court Judge.
- Composition of NJAC
 - The Chief Justice of India
 - 2 senior-most judges of the Supreme Court
 - The Law Minister of India
 - 2 eminent members that the Selection Committee chooses

5. Fourth Judges Case, 2015⁴

The 99th Constitutional Amendment Act of 2014 introduced the new system of the appointment of Judges which replaced the Collegium system. The court struck down the NJAC on the grounds that it was against the “Independence of Judiciary”. The NJAC was inconsistent with the Principles of Basic Structure. Since the Law Minister of the country was one of the members of the committee, it involved the Political Executive in the appointment of Judges. Hence, the essential principle of the Independence of the Judiciary which is part of the basic structure of the Constitution was violated. The Independence of the Judiciary is also a feature of a federal nation which is again a basic structure⁵.

Therefore, in the fourth judge case, on October 16, 2015, a five-judge Constitutional bench of the Supreme Court by a 4:1 majority declared the 99th Constitutional Amendment and the NJAC Act as void and unconstitutional and upheld the collegium system. Consequently, making the collegium system operative again.

⁴ Supreme Court Advocates-on-Record Assn. v. Union of India, (2016) 5 SCC 1

⁵ Kesavananda Bharati Sripadagalvaru and Ors v. State of Kerala and Anr., AIR 1973 SC 1461

Subsequently, the collegium system has been a topic for debate many times owing to the lack of transparency and accountability. The appointment is carried out by a select group of judges, and there are no formal criteria or guidelines for the selection of judges which often lead to allegations of bias and nepotism in the selection process. The collegium system also lacks diversity as there is a tendency to favor candidates with similar backgrounds and experiences. Additionally, the collegium system has been criticized for being slow and inefficient. The process of selecting judges can take a long time, and vacancies in the judiciary can remain unfilled for extended periods. This can lead to a backlog of cases and delays in the delivery of justice.

To conclude, the evolution of the judicial appointment process in India has been a long and complex journey. From the executive having the power to appoint judges to the establishment of the collegium system, the judiciary has come a long way. The independence of the judiciary is crucial to uphold the rule of law, and the appointment of judges plays a significant role in ensuring this independence. Although there have been challenges and debates in the past, the current system ensures that the judiciary has the final say in the appointment of judges. Overall, while the collegium system has its strengths, it is not without its flaws and has faced severe criticism for biasness and inefficiency.