



An analytical overview of untangling the labyrinth of judicial appointments in India

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Abstract

The article "Untangling the Labyrinth of Judicial Appointments in India" discusses the complex and intricate process of appointing judges in the Indian judiciary. The article begins by providing a brief historical background of the Indian judiciary and the appointment process, and then delves into the various constitutional provisions and laws that govern the process. It highlights the role of the Judiciary Collegium, which is responsible for selecting and recommending candidates for appointment as judges in the Supreme Court and High Courts. It also discusses the controversies and criticisms surrounding the Collegium system, including allegations of lack of transparency and accountability. This goes on to discuss recent attempts at reforming the appointment process, including the *National Judicial Appointments Commission (NJAC) Act*, which was struck down by the Supreme Court in 2015. The article concludes by arguing that there is a need for greater transparency, accountability, and diversity in the appointment process, and suggests some possible solutions to achieve these goals.

Keywords: Indian judiciary, judiciary collegium, transparency, accountability controversies

Introduction

The process of judicial appointments in India has been a topic of discussion and controversy for many years. The Indian Constitution provides for an independent judiciary, and the appointment of judges is a critical component of this independence. However, the process of judicial appointments in India has been plagued by political interference and lack of transparency, leading to questions about the fairness and impartiality of the judiciary. In this article, I will provide an analytical overview of the labyrinth of judicial appointments in India.

Historical background

Before I delve into the current process of judicial appointments in India, it is essential to understand the historical background. In 1973, the Supreme Court of India delivered a landmark judgment in the case of *Kesavananda Bharati v. State of Kerala*. The judgment held that the Constitution of India could not be amended to the extent that it would alter the basic structure of the Constitution. This judgment led to the establishment of the collegium system for judicial appointments in 1993.

Collegium system

Under the collegium system, the appointment of judges to the higher judiciary, including the Supreme Court and High Courts, is the responsibility of a collegium of judges. The collegium comprises the Chief Justice of India and four senior-most judges of the Supreme Court. The collegium system has been in place for almost three decades, and it has undergone several changes during this period.

Main objectives of NJAC Act in India

The *National Judicial Appointments Commission (NJAC) Act* was enacted by the Indian Parliament in 2014 with the aim of replacing the existing collegium system of appointment of judges with a new, more transparent, and accountable

system. The main objectives of the NJAC Act were as follows.

To establish a National Judicial Appointments Commission: The NJAC Act sought to establish a six-member commission, consisting of the Chief Justice of India, two senior-most judges of the Supreme Court, the Union Law Minister, and two eminent persons nominated by a committee consisting of the Prime Minister, the Chief Justice of India, and the Leader of Opposition in the Lok Sabha.

To provide for a more transparent and accountable system of appointment of judges: The NJAC Act aimed to make the process of appointment of judges more transparent and accountable by involving the executive and civil society in the selection process.

To ensure the independence of the judiciary: The NJAC Act sought to ensure the independence of the judiciary by providing for a system of checks and balances in the appointment of judges and by ensuring that the executive did not have complete control over the appointment process.

To bring greater diversity to the judiciary: The NJAC Act aimed to bring greater diversity to the judiciary by providing for the appointment of judges from diverse backgrounds and communities. However, the Supreme Court of India struck down the NJAC Act in 2015, holding that it was unconstitutional and violated the principle of separation of powers. The collegium system of appointment of judges has since been restored.

National Judicial Appointments Commission

In 2014, the Parliament of India passed the *National Judicial Appointments Commission (NJAC) Act*, which sought to replace the collegium system with a new system. The NJAC comprised six members: the Chief Justice of India, two senior-most judges of the Supreme Court, the Union Minister of Law and Justice, and two eminent persons nominated by a committee consisting of the Prime Minister,

the Chief Justice of India, and the Leader of the Opposition in the Lok Sabha.

However, the NJAC Act was struck down by the Supreme Court in 2015, citing concerns about the independence of the judiciary under the proposed system. The Supreme Court held that the NJAC Act violated the basic structure of the Constitution and restored the collegium system.

Current system

Under the current system, the appointment of judges to the higher judiciary is the responsibility of the collegium, which comprises the Chief Justice of India and four senior-most judges of the Supreme Court. The collegium recommends names for appointment to the President of India, who is bound to appoint the recommended judges.

The current system has faced criticism for lack of transparency and accountability. The collegium system operates behind closed doors, and there is no public disclosure of the criteria used for judicial appointments. There have also been allegations of nepotism and favouritism in judicial appointments, leading to questions about the fairness and impartiality of the judiciary.

Recent developments

In 2019, the Supreme Court introduced a new system for the appointment of judges to High Courts. The system involves a permanent secretariat that is responsible for collecting and collating information about potential candidates for judicial appointments. The secretariat then prepares a report, which is sent to the collegium for consideration.

The new system has been hailed as a step towards greater transparency and accountability in judicial appointments. However, it only applies to appointments to High Courts, and the system for appointments to the Supreme Court remains unchanged.

Conclusion

The process of judicial appointments in India has been a subject of much debate and controversy. The collegium system has been in place for almost three decades, and it has undergone several changes during this period. The system has faced criticism for lack of transparency and accountability, and there have been allegations of nepotism and favouritism in judicial appointments.

Critical analysis of Judicial appointments in India

The process of judicial appointments in India has been a subject of criticism and debate for many years. The appointments of judges to the higher judiciary, particularly to the Supreme Court, are made by a collegium system consisting of senior judges, without any external oversight or accountability. One of the main criticisms of the collegium system is its lack of transparency. The process of judicial appointments is largely opaque, with little information available about the criteria and process of selection. The public and other stakeholders have no visibility into the deliberations of the collegium, which can lead to questions about the fairness and impartiality of the appointments.

Another criticism of the collegium system is its lack of accountability. Since the appointments are made by a group of judges without any external oversight, there is no mechanism for reviewing the quality of appointments or for holding the collegium accountable for its decisions. This

lack of accountability can lead to concerns about the quality and integrity of the judiciary. There are also concerns about the influence of politics on judicial appointments. The collegium system has been criticized for being susceptible to political pressure and influence, particularly given the opaque nature of the appointments process.

In recent years, there have been efforts to reform the process of judicial appointments in India. The National Judicial Appointments Commission (NJAC) Act was enacted in 2014 to replace the collegium system with a more transparent and accountable system for judicial appointments. However, the Supreme Court struck down the NJAC Act, citing concerns about the independence of the judiciary.

Despite the criticisms and challenges, the Indian judiciary has played a vital role in upholding the rule of law and protecting the rights of citizens. There is a need for continued efforts to reform the process of judicial appointments to ensure that it is transparent, objective, and free from political influence, while upholding the independence and integrity of the judiciary.

References

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