

Appointment of Judicial Officer

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ABSTRACT

The three pillars of India's democratic system are the legislative, administration, and judicial, with their respective authorities and duties explicitly defined in the constitution. However, the debate rages on, particularly when it comes to the nomination of judges by the administration and judiciary. Following the adoption of the Constitution, the administration had a major voice in appointing judges. Later, the judiciary interpreted the Constitutional requirements and created the collegiums system, which limits the executive's role in appointing judges to the higher courts. The judiciary's standing was reinforced by the removal of the executive role. The purpose of this article is to analyze the Constitutional Provision, the function of the executive branch, as well as the importance of legal interpretations in the selection of justices.

KEYWORDS

Constitution, Executive, Judicial Interpretation, Judicial Appointment Commission.

1. INTRODUCTION

In the modern age, India is one of the globe's biggest democracies. The three foundations of every democracy administration are the legislature, administrative, and judicial branches. The government's machinery is built on these three pillars. These systems' abilities and responsibilities are defined by the Indian Constitution, which is the country's ultimate legislation. The legislature's principal duty is to enact legislation, the manager's is to instrument it, and the bench's is to enforce it[1]. The Constitution assigns the court the following key duties in upholding the legislation passed by the legislature:

- Constitutional interpreter.
- As a defender of the people's fundamental rights, as provided by the Constitution.
- To settle any issues that have arisen as a result of an appeal.

The judiciary evaluates the activities of the legislative and executive while performing the above-mentioned duties[2]. If a legislation is found to be in violation of the Constitution, the judiciary has the authority to declare it invalid. It has recently become a topic of heated debate, as it has been alleged that the bench is meddling in the business of the legislative and the administration. The current article discusses judicial individuality, particularly laws concerning the nomination of judges to the higher judiciary, as well as legislative vs. judicial responses to such legislation[3].

2. DISCUSSION

2.1. Constitutional Provisions and Nomination of Members to the Supreme Court

Judges for the higher courts have been appointed in a variety of ways in various countries. The Crown, which is the executive branch of the British government, can appoint judges without limitation in the United Kingdom. The President of the United

States of America appoints Supreme Court judges with Senate approval. The Indian Constitution's founders noticed flaws in each of these approaches, so they chose a medium ground. The English procedure appears to offer the administration a blank check, but the American system is complex and entails the possibility of political interference and pressure on court appointments. The Indian approach, as outlined in article 121 (2), neither grants the administration unlimited power nor allows the assembly to inspiration the selection of adjudicators. The managerial is obligated to seek counsel from those who are well-qualified to provide it.

2.1.1. Appointment of Supreme Court Justices

Every Supreme Court judge in India is appointed by the President. The President's ability to select Supreme Court judges is not unrestricted. The President is required by the Constitution to confer with as many additional He may appoint Highest Council and Supreme Tribunal members as he sees fit. A collegium comprising of the Judge and four more experienced Supreme Court judges begins the procedure of choosing a High Court judge. The President is bound by the collegiums' recommendations. The method for appointing the Chief Justice of India is not specified in the Constitution. When a vacancy in the Supreme Court arises, it is customary for the senior most puisne judge to take over as Chief Justice[4].

2.1.2. Judges for the High Courts are appointed

After contacting the Supreme Court of Ireland, the government of the territory in issue, and, if a court other than the Head Judge of the High Council is to be selected, the Chief Judge of the Supreme Court to whom the nomination is to be made, the Chancellor selects judges to the Supreme Courts.

2.2. Judicial Interpretation and Judges Appointed to the Higher Judiciary

Judges' appointments to India's Highest Courts and High Courts have long been a cause of controversy among the court and the government. For the judiciary's independence and objectivity to be ensured, judges must be chosen on the basis of merit, with political factors eliminated in the selection process. Justices for the High Council and the Supreme Court are appointed is not governed by any specific method established by the Constitution. In discussion with the Supreme Judge of India and as many additional Highest Council members as he considers appropriate, the President shall designate Superior Court members, according to the Constitution. The foregoing rules were unclear as to who's view would ultimately In the case of a dispute between the persons concerned, the latter will win. In a number of instances, the Superior Council has tackled this problem [5]:

2.2.1. Union of India v. S. P. Gupta

The Supreme Court's major question Who would have the final word in the selecting procedure among the several authorities engaged in the procedure of nominating justices to the Constitutional Council and the Supreme Courts in this case? The bench, which involved Judicial Bhagvati, Justice Fazal Ali, Judicial Desai, and Judicial Venkstarmiah, held that the opinions of the Chief Justice of India and the Chief Justice of

the High Court were simply advisory, and that "the strength of meeting dwells purely and unilaterally in the Executive," and that the Central Government might supersede the Constitutional functionaries' honest opinion.

2.2.2. *Union of India v. Subhash Sharma*

In this case, the Highest Court challenged the Highest Court's decision in *S. P. Gupta v. Union of India*. In this judgment, the Highest Court underlined the need of an independent, non-political court in maintaining India's democratic political system. The panel concluded that the Supreme Judge of India's involvement in appointing judges to the Superior Court and provincial high courts should be considered crucial. When it comes to appointing Highest Council and High Court judges, the Supreme Court stated that the Chief Justice of India's opinions should take precedence. This would help in judge selection[6].

2.2.3. *Union of India v. Supreme Court Advocate-on-Record Association*

In this decision, the Supreme Court interprets the judicial provisions of the Constitution broadly. In article 217 (1), the word "consultation" was given a broader definition. The majority argued that the Constitution's primary interest is the appointment of the most qualified individuals for the higher judiciary. The Supreme Court ruled that while deciding on a qualified candidate for appointment, the Chief Justice of India's judgment should be given the most weight because he is most suited to the appointee's merit. The court further stated that the Chief Justice of the concerned High Court must initiate the proposal for the appointment of High Court judges.

2.2.4. *Concerning the Presidential Reference*

In this case, another nine-judge panel discussed the Supreme Court's decision in the Superior Court attorney on record matter concerning the election of High Court judges.

The Supreme Court established the following principles for the selection of Supreme Court judges:

- The Chief Fairness of India necessity make a proposal to employ a Supreme Court judge after consulting with the Supreme Court's four senior most puisne justices.
- When the Government of India provides materials and information for the nomination of justices, the Supreme General of India is not permitted to act alone on his own without contacting other Highest Court judges.
- If a majority of the collegiums opposes a certain individual's appointment, that person will not be appointed. The court further stated that if even two of the judges who make up the collegiums express strong views against the nomination of a specific individual for legitimate grounds, The Supreme Judge of India will oppose such a nomination.

The National Judicial Appointments Commission is tasked with appointing judges around the country[7].

The 121st Constitutional Amendment Bill 2014 is passed by parliament with the goal of replacing the collegium system for appointing judges to the Supreme Court and High Court. The law aims to promote equitable involvement of the judiciary and the executive, as well as more participative, transparent, and objective appointments to the higher courts. The law adds a commission to Article 124 (2) of the Constitution, which would be called as the National Judicial Appointment Commission (NJAC).

2.2.5. *NJAC's composition*

The NJAC will comprise of six representatives: the Chief Judge of India, two of the High Court's most experienced justices, the Minister of Law and Women, and two renowned personalities.

One of these two notable figures would be a woman or a member of the SC/ST/OBC or ethnic population. These notable people will be chosen for a four-year tenure and may not be re-elected[8].

2.2.6. *NJAC's Functions*

The NJAC is given the following responsibilities under the bill:

- Nominating people for the positions of India's Chief Justice and additional High Tribunal judges.
- Recommendation that the Chief General and accompanying High Court judges be moved from one Supreme Court to others.
- Assuring that the people recommended are capable and trustworthy.

2.3. NJAC is declared unconstitutional

The Supreme Court questioned the NJAC's legality in *High Court Proponents v. Union of India*.

13 The 99th Constitutional Amendment was knocked down as extra vires to the Constitution by a five-judge Supreme Court bench in a momentous decision. NJAC was found to be interfering with the judiciary's independence, which included the appointment of judges and the judiciary's primacy in making such appointments. Justice J. Chelmaswar, on the other hand, issued a dissenting opinion, stating that the ever-increasing number of cases pending needed a "comprehensive overhaul of the system" and upholding the legality of NJAC. He disagreed with the majority, claiming that the Chief Justice of India's primacy is not a fundamental feature of the Constitution and that the judiciary's control over nominations is not the only way of establishing an independent and effective judiciary[9].

The essential holding of the judgment is that:

- Nominations to the judiciary, which are an essential part of legal autonomy, are a component of the fundamental structure.
- The fundamental structure includes judicial supremacy in judicial appointments with executive cooperation.
- By retaining judicial supremacy through the collegiums, the collegiums allow for executive engagement.
- By eliminating judicial supremacy through its veto provisions, the NJAC breaches the essential structure.

Justice Khehar cites five reasons why the second judge's decision was correct:

- For starters, he claimed that judicial priority in appointment had been established in the past.
- Second, he claimed that collegiums do not violate the Constitution by excluding the executive, since if his visions and other requirements are satisfied, the Presidents, working on the guidance and aid of the cabinet of ministers, may still object to recommended names.
- Finally, judicial nominations were expressly considered in the context of judicial independence during the constituent assembly deliberations, demonstrating that the Constitutional scheme views judicial appointment as an important component of judicial independence.
- Fourth, while the term consultation was being debated in the Constituent Assembly, Dr. Ambedkar said unequivocally that it was designed to restrict the executive's will. Dr. Ambedkar was apprehensive about granting the Chief Justice of India total veto power. By placing predominance in the hands of judges, the collegiums achieves the ideal balance between the two roles.

- Fifth, since India's independence, the Chief Justice of India has had the last word on judicial appointments[10].

3. CONCLUSION

The independence of the court is a well-known reality that ensures In a democracy country, the different institutions of administration exercise their powers in a free and fair manner. The founders of the India Constitutional were concerned about the sort of judiciary they wished to create at the time of its creation. " There can't be any disagreement in the parliament that our legal system should be both independent of the administration and competent in its own right," Dr. Ambedkar said in response to the members' concerns. From the beginning of the Constitution, however, there has always been a disagreement between the judiciary and the administration over the selection of judges. This squabble is the result of prior mistakes made by both of these organs. The Supreme Court's judges were originally After India 's freedom, the seniormost justices of the High Tribunal became Chief Justices of Indian. This method, according to an Indian law panel in 1958, merit was not taken into consideration. In 1973, the then leader threw a wrench in the process by choosing General A.N. Ray as Judge, which resulted in the removal of three senior justices. Justice H.M. Beg, who succeeded Justice Khanna as Chief Justice of India, was re-appointed in 1975.

After being stung by such apparent abuses of authority, the court had three chances to rectify the wrongs in the judge's cases in 1981, 1993, and 1998. The collegiums system arose as a result of the judge's decisions. It has almost completely eliminated the executive's involvement in appointing members of the upper judiciary. No other judiciary in the world enjoys the same level of leeway in appointing judges as the Indian court has now. Whatever it's termed - judicial activism or judicial overreach - the NJAC's demise has added yet another chapter to the ongoing debate over the nomination of judges to India's higher judiciary.

ACKNOWLEDGMENT

Authors acknowledge the immense help received from the scholars whose articles are cited and included in references to this manuscript. The authors are also grateful to authors/ editors / publishers of all those articles, journals and books from where the literature for this article has been reviewed and discussed.

REFERENCES

- [1] G. E. Metzger, "Appointments, innovation, and the judicial-political divide," *Duke Law J.*, vol. 64, no. 8, pp. 1608–1643, 2015.
- [2] M. A. Aliyu, N. A. Abdullah, and H. M. Anuar, "An appraisal of the constitutional and regulatory mechanisms for the appointment of Judicial Officers in Nigeria and associated challenges," *UUM J. Leg. Stud.*, vol. 9, pp. 91–114, 2018, doi: 10.32890/uumjls.9.2018.9106.
- [3] A. P. Singh, "Appointment of Judges in Supreme Court in India: A Review of Collegium System," *Int. J. Trend Sci. Res. Dev.*, 2018, doi: 10.31142/ijtsrd17004.
- [4] S. A. Akkas, "Appointment of Judges: A Key Issue of Judicial Independence," *Bond Law Rev.*, 2004, doi: 10.53300/001c.5462.
- [5] K. Kelemen, "Appointment of constitutional judges in a comparative perspective - With a proposal for a new model for Hungary," *Acta Juridica Hungarica*, 2013, doi: 10.1556/AJur.54.2013.1.2.

- [6] A. Chmielarz-Grochal, M. Laskowska, and J. Sutkowski, "Appointment of Constitutional Judges: Legal and Political Aspects of the Nomination Crisis in the selected European countries," *Estud. Const.*, 2018, doi: 10.4067/S0718-52002018000200481.
- [7] A. A. Hovhannisyan, "Constitutional grounds for judicial independence as a guarantee for proper administration of justice (comparative legal analysis). The Armenian experience," *Int. J. Court Adm.*, 2018, doi: 10.18352/ijca.250.
- [8] J. A. E. Marún, "Appointment of the judges of the constitutional court by the government. Notes about the nomination made in 2014," *Rev. Estud. Políticos*, 2015, doi: 10.18042/cepc/rep.170.08.
- [9] N. Tiwari, "Appointment of Judges in Higher Judiciary: An Interpretational Riddle," *SSRN Electron. J.*, 2011, doi: 10.2139/ssrn.1485395.
- [10] M. Beenstock and Y. Haitovsky, "Does the appointment of judges increase the output of the judiciary?," *Int. Rev. Law Econ.*, 2004, doi: 10.1016/j.irl.2004.10.006.