WHO WILL CHOOSE THE JUDGES? THE DEBATE AROUND NJAC AND COLLEGIUM SYSTEM

By *Mohd. Shakeib Naru*[214] & *Shristi Mathur*[215]

INTRODUCTION

"Justice can become 'fearless and free only if institutional immunity and autonomy are guaranteed".

The importance of judiciary in a democratic setup is unparalleled. The judiciary plays an important role of interpreting and applying the law and adjudicating upon controversies. It is the function of the courts to maintain rule of law in the country. Judiciary is a watching tower above all the other limbs of the state. In a country with a written constitution, courts have to safeguard the supremacy of the Constitution by interpreting and applying its provisions. Having regard to the importance and significance attached to the function performed by the judiciary, the Constitution has consciously provided for separation of judiciary from the executive.[216] The separation of powers between these two organs of the government has to be observed with respect to judicial appointments, transfers, retirement et al. The separation between the two organs of the government is insisted so that independence of the judiciary can be maintained. The appointment of judges to the higher judiciary in our country, that is, the Supreme Court and the High Courts of the states has become a contentious issue as there is a constant tug of war between the executive and the judiciary. The issue attracts attention as the service rendered by Judges demands the highest qualities of learning, training and character. Judges are expected to present a continuous aspect of dignity and conduct. Much of the conflict has stemmed from the need to preserve judicial independence. The term has meant different things to different people over time; to several members of the Constituent Assembly, it was a principle to allow judges to adjudicate free from extraneous considerations, to a majority of judges of the Supreme Court over time, a requirement of the rule of law enshrined in the basic structure of the Constitution and to several popularly elected governments, a principle which had to be carefully bypassed, while appointing sympathetic judges to the higher judiciary. Today, these differences have been put in sharp relief in the context of the operation of the Supreme Court collegium as the focal body for judicial appointments, with judicial

[214] 3rd Year BBA LLB Student, College of Legal Studies, UPES Dehradun
[215] 3rd Year BA LLB Student, Nirma University, Ahmedabad
[216] Union of India v. Sankalchand Seth (1978 1 SCR 423)

independence being used both by judges to justify its perpetuation as well as by the political classes and sections of the civil society activists to explain its purported failures.[217]

HISTORY OF APPOINTMENTS OF JUDGES

❖ CONSTITUIONAL ASSEMBLY & ITS RESPECTIVE COMMITTES

Recommendations of Sapru Committee: In the year 1945, the Sapru Committee (constituted to look into this aspect in view of the impending independence of the country) recommended that "Justices of the Supreme Court and the High Courts should be appointed by the head of State in consultation with the Chief Justice of Supreme Court, and, in the case of High Court Judges, in consultation additionally with the High Court Chief Justice and the head of the unit concerned."

Recommendations of the High Powered Committee appointed by the Constituent Assembly: The Constituent Assembly appointed a high-powered '***ad hoc***' committee consisting of outstanding jurists of the country for recommending the best method of selecting Judges for the Supreme Court. The committee submitted a unanimous report opining that it would not be desirable to leave the power of appointing Judges of the Supreme Court with the President alone and recommended for a panel of eleven judges to be selected for appointment.[218]

Recommendations of Federal Court: The draft Constitution was forwarded to the Federal Court for its views. In March, 1948 a conference of Judges of the Federal Court (including its Chief Justice) and Chief Justices of the High Courts was held to consider the proposals in the draft Constitution concerning the judiciary. They stated that Judges should be appointed after the Consolation of CJI and consultation should be treated as concurrence.

Basis adopted in articles 124 and 217: Perhaps, the several proposals mentioned above constitute the basis for the method of appointment devised by Articles 124 and 217. At the same time, the Constituent Assembly chose to employ the expression "consultation" in preference to the expression "concurrence".

---

[217] Arghya Sengputa, Judicial Independence and the Appointment of Judges to the Higher Judiciary in India: A Conceptual Enquiry, 5 INDIAN J. CONST. L. 99, 99 (2011).

[218] B. Shiva Rao: The Framing of India's Constitution. Vol.2 at p. 590

Fourteenth Report of the Law Commission of India[219]: In its Fourteenth Report (1958), the First Law Commission of India, headed by very distinguished jurist and first Attorney General of India, Shri M.C. Setalvad, and composed of some very distinguished personalities of the time. The report recommended that every appointment to the High Court and the Supreme Court should be made with the ***concurrence*** of the Chief Justice of India. In effect, this report sought to revive the idea of 'concurrence', which was not accepted by the Constituent Assembly. Of course, this recommendation was not implemented. ***Administrative Reforms Committee*** also agreed and reiterated the same in the next years.

Several other reports like **Administrative Reforms Commission, Recommendations of High Court Arrears Committee**[220]**, Appointment mechanism suggested by the Convention of the Bar**[221]**, Observations of the Supreme Court in Shamsher Singh's Case**[222]**, 79th Report of the Law Commission of India**[223]**, Recommendations of Bar Council of India for Collegium**[224]

❖ PROVISIONS GIVEN IN THE CONSTITUTION OF INDIA

The judges of the Supreme Court and High Court in India are appointed by President as per article 124(2) and 217 of the constitution. In such appointment, the President is required to hold consultation with such of the Judges of the Supreme Court and of the High Courts in the States as he may deem necessary for the purpose. For example, Article 124 (2) says: 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 and shall hold office until he attains the age of sixty-five years. Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted." In the above description, the buzzword is "consultation". For the president to make appointment, consultation with these judges is must. Initially, the Chief Justice of India used to initiate the proposal for appointments, very often in consultation with his senior colleagues and his

[219] Appointed in the year 1958
[220] Appointed in the year 1970
[221] Appointed in the year 1973, 11-12 August
[222] AIR 1974 SC 2192
[223] Appointed in the year 1979
[224] Bar Council of India organized a national seminar of lawyers at Ahmedabad on 17th October, 1981

recommendation was considered by the President and, if agreed to, the appointment was made. However, president, being the constitutional head, acts upon the aid and advice of Union Council of Ministers. Thus, practically, the proposal of the Chief Justice was to be acceptable to the government. There seemed to be a balance between the executive and the judiciary on the matter of appointments of judges of the higher judiciary. But since the Chief Justice of India used to initiate the proposals, the following questions were raised: Is Chief Justice of India granted primacy over other judges by the Constitution to initiate such proposals? The clear answer is no, because it was a tradition and not constitutional prerogative. Why proposal for appointments in the High Court cannot emanate from any other judges than Chief Justice?

❖ DISCREPANCIES IN APPOINTMENT PRIOR TO THE COLLEGIUM

- Emergency Period[225]
- Senior Most Judges superseded by other Judges
- Arbitrary appointments made by the executive as per their own whims and fancies

THE THREE JUDGES CASE AND THE FORMATION OF COLLEGIUM

❖ FIRST & SECOND JUDGES CASE

The First Judge also called as ***S.P. Gupta V/s Union of India***[226] is popularly known as Judges Transfer case. In the S.P. Gupta vs. Union of India (1982), the majority held that the concept of primacy of the Chief Justice of India is not really to be found in the Constitution. It was held that proposal for appointment to High Court can emanate from any of the constitutional functionaries mentioned in Article 217 and not necessarily from the Chief Justice of the High Court. These functionaries are: Chief Justice of India, Governor of the State and Chief Justice of the High Court. The Supreme Court also held that Consultation is not concurrence. This means that though president will consult these functionaries yet his decision is not to be a concurrence of all of them. This further implied that if President wished to do so, could appoint without agreeing to any of these. Thus, the balance of power in appointments of judges of the High Courts tilted in the favor of the executive because now the executive could consult with the governor or any other functionary among the above and appoint the judges. The office of

[225] Darkest period in the history of India. Courts acted as silent spectator
[226] Justice Hegde, Justice Sheelat and Justice Grover were superseded by the other judges

the Supreme Court of India got diminished in its importance in this matter. After this judgment, few appointments were made by the Executive over-ruling the advice of the Chief Justice of India. Later, in the ***Supreme Court Advocates on Record Association Vs. Union of India*** (1993), the 9 member bench of the Supreme Court not only overruled the decision of ***S.P. Gupta Case*** but also devised a specific procedure for appointment of Judges of the Supreme Court in the interest of "***protecting the integrity and guarding the independence of the judiciary***". Via this judgment: "Primacy of the Chief Justice of India was held to be essential for protecting the integrity and guarding the independence of Judiciary" It was held that the recommendation should be made by the Chief Justice of India in consultation with his two senior-most colleagues and that such recommendation should normally be given effect to by the executive. The Supreme Court relied upon various systems in other countries and also DPSP Article 50, which speaks of separation of judiciary and executive and excluded any executive say in the matter of appointment to safeguard the "cherished concept of independence."

- **THIRD JUDGES CASE**

The significance of "consultation" provided by Articles 124 and 217

'**Consultation' and the concept of independence of judiciary**:

None of the Constitution of the Commonwealth countries, nor the Constitution of U.S.A. (not even the Swiss and Japanese Constitutions), provides for "consultation" with the head of the judiciary or any other member of the judiciary in the matter of appointment of Judges. Only our Constitution does – and it could not have been without a purpose. Many of the leading members of the Constituent Assembly were lawyers of great repute. They knew the conditions in India not only in the world of law but also public life they held eminent positions in public life. Apart from ***Dr. Ambedkar***[227]***, Alladi Krishnaswami Ayyar and K.M. Munshi,***[228] the great political leaders like ***Jawaharlal Nehru***[229] and ***Sardar Patel***[230] were also lawyers. The question arises why did they depart from other countries and provided this innovative procedure, when even the ***Government of India Act, 1935*** [S.220 (2) concerning the appointment of Judges of High Courts] did not provide for such consultation. There can be no explanation for this innovation except that they were anxious to and concerned seriously with

[227] 1st Law Minister of India and Chairman of the Constituent Assembly
[228] Members of the Constituent Assembly
[229] 1st Prime Minister of Independent India
[230] 1st Home Minister of Independent India

the concept of independence of judiciary. This provision is attributable to their conviction that at our stage of development and having regard to the propensities of the Executive (to control every organ of State and every institution of governance) they cannot be vested with the sole power of appointment to judiciary, a co-equal wing of government. True it is that the draft prepared by ***Sir B.N. Rao*** sought to import the ***U.S. model*** but there was practically no support for this model. The requirement of consultation with not only the Chief Justice of India but with certain other Judges at the Supreme Court and High Court level in Article 124 is an added indication of the concern the founding fathers had with the independence of the judiciary. They had before them the U.K., Australian, Canadian, Irish and other Constitutions which did not provide for any such consultation with the head of Judiciary either at federal or provincial level – much less with other judges, but yet chose this particular formulation. Evidently, they did not trust the Executive in India to make proper appointments and hence 'entrenched' the requirement of 'consultation' in the Constitution itself expressly. It is, therefore, perfectly consistent with the Constitution, for the Supreme Court to say, in its 1993 and 1998 decisions referred to hereinbefore, that the Chief Justice of India occupies a pre-eminent position and that the "consultation" contemplated by the said Articles should be a real and full consultation and further that since the Judges would be in a better position to judge the competence and character of the prospective candidates, their opinion should prevail in the matter of appointment. Indeed, as pointed out hereinafter, this is also the policy adopted by the Constitution with respect to the appointment of members of the subordinate judiciary. They are selected by the High Court; only the formal orders of appointment are issued by the Governor/ Government.

THE CRITICAL ANALYSIS OF THE COLLEGIUM SYSTEM

Independence of the judiciary is a basic feature of the Constitution and needs to be safeguarded jealously. Unless the judges are fearlessly independent and upright, justice cannot be even-handed. The first judges case in 1981 created a suffocating situation as the judiciary could not play an effective role in the selection of judges. After 1973 the relations between the judiciary on one side and the executive and legislature on the other were far from cordial. The Indian Bar is always vigilant and vocal. It is the lawyers who fight for justice for citizens and non-citizens alike in courts.

The 20-year-old collegium system has been severely criticized even by Supreme Court judges who were members of the collegium. The main allegation is that there is a total lack of transparency. Members of the Supreme Court collegium have also been accused of exploiting their power to appoint their close relatives or particular lawyers as High Court judges. Similarly, personal animosity has resulted in the delay or denial of appointments to the Supreme Court. Initially, the collegium performed well but later on when short-sighted persons who could not rise above narrow considerations became members, the recommendations lacked quality. The executive became helpless to stall undesirable appointments with the result independence of the judiciary suffered a setback. There have been instances where a candidate rejected by one collegium on account of doubts regarding integrity was picked up by the next collegium. Such appointments tend to shake the confidence of the public and the Bar in the judiciary. The collegium headed by ***Justice KG Balakrishnan***[231] was bent upon pushing through the elevation of ***Justice P.D. Dinakaran***, the then Chief Justice of Karnataka High Court, to the Supreme Court, brushing aside the resolution of the Bar Association of India headed by ***Fali S. Nariman*** of which eminent senior advocates were vice-presidents. The resolution suggested that the recommendation should be kept in abeyance till Justice Dinakaran was exonerated of the charges of corruption. He eventually resigned after receiving the show cause notice from the Judges Inquiry Committee. A judge of the Calcutta High Court, ***Justice Soumitra Sen***, averted impeachment by Parliament by tendering his resignation at the last minute. A few High Court judges who are the products of the collegium system are facing criminal prosecution on charges of corruption. Favoritism and nepotism on the part of the collegium of the Supreme Court and the High Courts have been noticed in some cases. More deserving candidates were held back and less deserving were elevated to the Supreme Court. Therefore, restoring the collegium is not the best option.[232]

The country needs a better system than the collegium and the NJAC. ***The National Commission to Review the working of the Constitution of India***[233] chaired by the most highly reputed former Chief Justice of India, ***Justice M.N. Venkatachaliah***[234], recommended a five-

[231] 37th Chief Justice of India, Retired in the year 2010.

[232] http://www.tribuneindia.com/news/comment/restoring-collegium-not-the-best-option/146873.html

[233] Committee appointed by the NDA government in the year 2000 and chaired by Honorable Justice M N Venkatachaliah.

[234] 25th Chief Justice of India, Retired in the year 1994.

member Judicial Appointments Commission consisting of the Chief Justice of India as the Chairperson, two senior-most judges, the Law Minister and one eminent person as members . The latest judgment is not bad to the extent it has struck down the impugned Constitution amendment and the Act as upholding them would have been a disaster. The decision of the court to hear separately on the measures to improve the collegium system is a silver lining in a dark cloud. The collegium system has been tried for two decades and it has proved to be opaque, unsafe and unaccountable. On several occasions, members of the collegium were perceived to be guided by personal factors and indulging in give and take, compromising on the quality of selection.

The importance given to seniority of High Court judges in the matter of elevation to the Supreme Court has not improved the quality of appointments in many cases. In the ultimate analysis the quality of appointments made reflects the quality and caliber of the selectors. It is necessary to co-opt the Law Minister as a member of the collegium without a right to vote so that with his inputs the recommendations made would go through smoothly. The greatest relief today is the stalemate created due to the pendency of the case has ended.[235]

In the end, the NJAC will destroy the independence of the judiciary. The involvement of the Law Minister, the leader of the Opposition, the Governors and Chief Ministers in the appointment of High Court judges will inevitably lead to serious political manipulation. In 1973, Indira Gandhi struck a major blow to judicial independence by the shameful supersession of judges. Forty years later, Parliament has thoughtlessly created a Commission that the nation will deeply regret. For the judiciary at least, "acche din" may soon be over.[236]

NATIONAL JUDICIAL APPOINTMENTS COMMISSION (NJAC)

❖ THE CONCEPT OF NATIONAL JUDICIAL COMMISSION

The Constitution (67th Amendment) Bill, regarding National Judicial Commission: The concept of National Judicial Commission has been widely debated in our country. The Constitutional 67th Amendment Bill, 1990 (since lapsed) spoke of a National Judicial

[235] http://www.tribuneindia.com/news/comment/restoring-collegium-not-the-best-option/146873.html
[236] http://www.thehindu.com/opinion/op-ed/national-judicial-appointments-commission-a-fatally-flawed-commission/article6326265.ece

Commission. Many other Organizations and several eminent committees too have put forward their own versions about the establishment of National Judicial Appointments Commission. The major committee which put forwarded the recommendation was Justice Venkatacheliah Committee[237] and the Committee to review the working of the constitution[238]. Several reports of law commission of India has also very outspoken recommended for the establishment of NJAC[239], one of the most prominent being 121st report of law commission of India.[240]

Significance of the Composition of National Judicial Commission: When we talk of a National Judicial Commission, what is fundamentally important is its composition. Its composition should not be such as to affect directly or indirectly the independence of the judiciary and the power of judicial review both of which have been held to be the basic features of our Constitution. Our Constitutional system comprises the written Constitution, the conventions which have been developed and are being followed and the interpretation of the Constitution by the Supreme Court. Though Articles 124 and 217 speak of a Judge of the Supreme Court and of the High Court being appointed by the President in consultation with the Chief Justice of India and certain other specified authorities, a convention has evolved over the last 50 years where under the proposal for appointment is initiated by and emanates only from the Chief Justice of the High Court (in the case of appointment to the High Court) and the Chief Justice of India (in the case of appointment to the Supreme Court).

Independence of Judiciary constitutes a basic feature: Independence of judiciary has been repeatedly held by the Supreme Court to be a basic feature of the Constitution.[241] In the famous cases like *Shri Kumar Padma Prasad v/s. Union of India*[242] and *High Court of Bombay v/s. Sri Kumar*[243] the honorable Supreme Court has reiterated this fact. Similarly the power of judicial review vesting in the Supreme Court and High Courts has also been held to be a basic feature in the case of *Chandra Kumar v/s. U.O.I*[244].

[237] Appointed by the NDA Government
[238] *Supra* note
[239] 79th 80th Report of Law Commission of India
[240] 121st Report of Law Commission of India
[241] SCAORA v. Union of India, of 1993 (4) SCC 441, para 331 at page 647, para 421 at page 680
[242] 1992 (2) SCC 428 at 456
[243] 1997 (b) SCC 339 para 13 at page 355
[244] AIR 1997 SC 1125

Composition of the National Judicial Commission to be consistent with the concept of independence of judiciary: Since the independence of judiciary constitutes a basic feature it cannot be taken away or curtailed in any manner by an amendment to the Constitution, it can neither be done directly nor can it be done indirectly. In other words, the independence of the judiciary cannot be affected or curtailed by so changing the method of appointment of judges of the Supreme Court and High Court as to impinge upon their independence. For example, if Article 124 and 217 are amended to take away the consultation with the Chief Justice of India, it would vitally affect the independence of the judiciary. In such a case the appointment would in fact be made by the executive acting alone in the case of Supreme Court and in the case of the High Court the element of executive would predominate and the concept of primacy of Chief Justice of India would disappear. The convention that the proposal should emanate from the Chief Justice of India (in the case of Supreme Court) would also come to naught.

CRITICAL ANALYSIS OF THE NJAC

UNWORKABLE IN PRACTICE[245]

The 99th amendment to the Constitution inserts three new Articles — 124A, 124B, and 124C — and also amends several other Articles under the ostensible objective of providing a "meaningful role to the judiciary, executive and eminent persons to present their viewpoints and make the participants accountable while also introducing transparency in the selection." But the amendments actually contain nothing to ensure either accountability or transparency. The fatal flaw is the failure to give supremacy to the views of the judges in the selection process. Under Article 124A, the NJAC has six members of whom three are judges — the Chief Justice of India (CJI) and two senior most judges. The remaining three are the Union Law Minister and two "eminent persons" who are to be appointed by the Prime Minister, the Leader of the Opposition and the CJI. In the *Madras Bar Association* case, a Constitution Bench of the Supreme Court held that a selection committee to select members for the National Company Law Tribunal (NCLT) must have an equal number of judges and civil servants (Secretaries) with a casting vote to the nominee of the CJI who is the chairperson of that committee. If the views of the judges have to prevail in selecting members to a Tribunal, it is impermissible that they will not prevail while appointing Supreme Court and High Court judges. The National Judicial Commission that was suggested by the Venkatachaliah

[245] http://www.thehindu.com/opinion/op-ed/national-judicial-appointments-commission-a-fatally-flawed-commission/article6326265.ece

Committee was a five-member body consisting of three senior most Supreme Court judges, the Union Minister and one eminent person.

The constitutional amendments will also be unworkable in practice. What happens if there is a deadlock? Is it necessary that all the six members must be present at every meeting? Is there any quorum? What happens if one member absents himself? What happens if the veto power is misused to appoint someone undesirable? How are the regulations to be framed?

Article 124C is most sinister and enables Parliament to empower the commission to make regulations for selecting judges and for "other matters." Thus, constitutional provisions and safeguards can easily be thwarted by regulations framed by the commission.

EMINENT PERSONS[246]

About 70 Acts prescribe the appointment of "eminent persons" and 65 of them require specialized knowledge. For example, the eminent person under the Biodiversity Act has to be eminent in the field of conservation and sustainable use of biological diversity. Shockingly, there is no requirement that the eminent persons on the commission should have any knowledge of law.

This small Act, with just 14 sections, effectively creates a full-time commission with its own staff and regulations. The commission will now totally control the appointment of Supreme Court and High Court judges, Chief Justices of High Courts, the transfer of judges and even the continuance of retired High Court judges under Article 224A.

The NJAC Act is clearly unconstitutional. While Article 124(3) of the Constitution prescribes the minimum requirement of a person to be eligible to be appointed as a Supreme Court judge, Section 5(2) of the NJAC Act, 2014 can now prescribe "any other criteria of suitability as may be prescribed by the regulations." Similarly, additional criteria not mentioned in the Constitution can be added for High Court judges. We now have an absurd situation where the eligibility of Supreme Court and High Court judges will be determined not just by the Constitution but by "regulations" of the Commission.

[246] http://www.thehindu.com/opinion/op-ed/national-judicial-appointments-commission-a-fatally-flawed-commission/article6326265.ece

For the appointment of High Court judges, the NJAC Act, 2014 also requires the views of the Governor and Chief Minister to be given in writing and "as prescribed by the regulations." But the Act is silent as to what happens if the Governor or Chief Minister or both object. It is now mandatory that eminent advocates are consulted while appointing High Court judges. Who are the "eminent advocates"? Well, that will also be prescribed by the regulations.

NJAC DECLARED UNCONSTITUTIONAL

In a jolt to the central government, the Supreme Court on 16th October 2015, in the ***fourth Judges Case***[247] struck down the constitution's 99th amendment and the NJAC Act as unconstitutional and void, restoring the collegium system for appointment of judges to the higher judiciary. In a "collective order", the constitution bench of Justice Jagdish Singh Khehar, Justice J Chelameswar, Justice Madan B Lokur, Justice Kurian Joseph and Justice Adarsh Kumar Goel said that the constitution's 99th amendment and the NJAC Act are unconstitutional and void. The constitution amendment and National Judicial Appointments Commission (NJAC) Act were brought to replace the 1993 collegium system for the appointment of judges to the Supreme Court and the high courts. The court said the system of "appointment of judges to the SC, chief justices and judges of the high courts and the transfer of chief justices and judges of the high courts that existed prior to the amendment begins to be operative". The court sought suggestions from the bar for improved functioning of the collegium system.

Justice Kehar Stated, I have independently arrived at the conclusion, that **clause (c) of Article 124A(1) is ultra vires the provisions of the Constitution, because of the inclusion of the Union Minister in charge of Law and Justice as an ex officio Member of the NJAC**. Clause (c) of Article 124A(1), in my view, impinges upon the principles of "independence of the judiciary", as well as, "separation of powers". It has also been concluded by me, that **clause (d) of Article 124A(1) which provides for the inclusion of two "eminent persons" as Members of the NJAC is ultra vires the provisions of the Constitution**, for a variety of reasons. The same has also been held as violative of the "basic structure" of the Constitution.[248]

Justice Joseph Kurien in his judgment started out with the Latin maxim: "Entia Non Sunt Multiplicanda Sine Necessitate (Things should not be multiplied without necessity)".

[247] Supreme Court Advocate on Record vs. Union of India, 2014.
[248] *Supra* note

Complimenting his brother judges' "masterpiece" judgments, he wrote a very short judgment "leaving all legal jargons and using a language of the common man, the core issue before us is the validity of the Constitution 99th amendment", holding:[249] Direct participation of the Executive or other non-judicial elements would ultimately lead to structured bargaining in appointments, if not, anything worse. Any attempt by diluting the basic structure to create a committed judiciary, however remote be the possibility, is to be nipped in the bud. According to Justice Roberts, court has no power to gerrymander the Constitution. Contextually, I would say, the Parliament has no power to gerrymander the Constitution. The Constitution 99th amendment impairs the structural distribution of powers and hence it is impermissible.[250]

CONCLUSIONS AND SUGGESTIONS

Appointment of Judges is a cardinal process in a democratic country like India and it should be done with utmost care and caution. In a country like India where government is the biggest litigator and the judiciary is the only wing which can provide justice to the people of without any fear, therefore judges should not be under any political influence. Independence of Judiciary & separation of power should be considered while formulating a process in which judges are supposed to be appointed. Though the constitution of India explicitly states about the appointment of Judges under Article 124 & 217, but it was not enough to suffice the purpose of appointments because of the arbitrary actions taken by the executive and made some non-competent appointment as per there won whims and fancies. As a result, judiciary has settled the situation by interpreting these articles beyond doubt and setup the collegium. Executive interference came to an end and the collegium served the need in the proper manner. But now, even the collegium is also under several allegations and people are continuously raising questions over the working process of collegium. Collegium has been blamed of not being transparent and accountable and corruption charges have been levied.

The parliament passed the National Judicial Appointment Commission in such haste and without much debate and discussion. This clearly shows the intention of government about controlling the Judiciary and putting it under the political influence. Parliament was trying to evade the independence of Judiciary with the help of this bill. The weightage should always be

[249] *Supra* note
[250] *Supra* note

given to the judiciary in appointment but this bill was contrary to it and as a result it was struck down by the honorable Supreme Court.

Collegium, in spite of having few faults and flaws, is currently the best option for appointment of judges as compared to the NJAC. We did not demolish the whole building if there is any problem in the construction rather we focus on figuring out the problems and repair them with all available means. Similarly, it would be better to figure out the problems in collegium and correcting them by taking all due actions rather than introducing a whole new system for appointing judges which has designed faults in it and are identifiable at the face of it.

Therefore, I have tried to figure out some problems in existing system of collegium and have given few suggestions accordingly to improve it and make it more effective and efficient.

- Transparency And Accoutabilty In The Appointments
- Proper Methodoly Should Be Given
- Appointment Process Should Start Before The Vacancy Arises
- Resolving The Nepotism And Favoritism Issues
- Resolving The Corruption Issues
- Pre Retirement Decision Should Not Be Influenced By The Post Retirement Benefits
- Working Efficiency Should Be Improved