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Collegium System Through the Lens of the Basic Structure Doctrine

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Amidst the many papers criticising the collegium system based on handpicking potential judges by existing judges, this paper will view the collegium system through the lens of the basic structure of the Indian constitution set up in 1973, namely the doctrine of separation of power. The problem to conquer would be whether the existing trend violates the basic structure or comes under the periphery of the usual practice of checks and balances envisaged by the Constitution. Rummaging through the evolution of the Collegium the basic structure and comparing on a scale the basic checks and balances with separation of power, the validity of the collegium vis a vis NJAC and other systems would be elucidated. Such a question becomes of immense importance because all fundamental rights and the fulcrum of the nation itself are hinged on the judiciary. A faulty appointment would indirectly cripple the whole nation. Solutions to the conflict would be listed, taking into cognisance the perplexities at hand. The answer to all such questions would remain for the interpreter of the Constitution to answer.

Keywords: *collegium system, basic structure doctrine, appointment of judges.*

INTRODUCTION

India, throughout its constitutional history, has witnessed frequent power tussles between several entities of the government. Judicial appointments are one such power tussle that needs

to be mulled over. The said conflict has been a bone of contention between the executive and the judiciary since the enactment of the constitution. Starting with the nuances of the basic features, weaving through the evolution of the appointment procedure, and ending the voyage with suggestions, This paper will be aimed at sensitising and pointing towards the way ahead.

THE BASIC STRUCTURE

The discussion commences from what the basic structure doctrine is since, once we delve into the collegium system from the mere view of its evolution, violation of such doctrine and other flaws are evident.

On 24 April 1973, with a sign on the whooping 703-page judgement after hearing for over 28 long days, the then Chief Justice, Hon'ble Justice S.M. Sikri, gave birth to the landmark case 'The Kesavananda Bharti Case'[1]. Justice Sikri, along with seven of his peers, established the fundamental components of the Indian Constitution's structure in the Kesavananda[2] case, which is strictly not to be tempered while exercising parliament's amending power under Article 368[3]. The list so created was a non-exhaustive catalogue and is open to addition, which is evident in future landmark cases. Some basic elements include:

- Supremacy of Constitution;
- Republican and Democratic form of Government;
- Secular Character of the Constitution;
- Separation of Powers among the Three organs;
- Federal Character.[4]

After the landmark Kesavananda[5] judgement, cases like Indira Gandhi v Raj Narayan[6], Minerva Mills v Union of India[7] and other landmark cases helped develop an understanding of what

[1] *Kesavananda Bharati v State of Kerala* AIR 1973 SC 1461
[2] *Ibid*
[3] Constitution of India, 1950, art 368
[4] *Kesavananda Bharati v State of Kerala* AIR 1973 SC 1461
[5] *Ibid*
[6] *Indira Gandhi v Raj Narayan* (1975) 2 SCC 159
[7] *Minerva Mills v Union of India* AIR 1980 SC 1789

more could constitute the essential, and with the final nail in the coffin, the S.R. Bommai case[8] the nation got an addition to the list of basic features:

- Secularism;[9]
- Sovereign and Democratic form of Government;
- Free and Fair Elections;
- Judicial Review;
- A balance between Fundamental Rights and DPSPs.[10]

Among the features we would be most concerned with is the 'Separation of Powers among the judiciary, executive & legislative'. The bench in the same Kesavananda Bharti judgement observed that even though the constitution does not explicitly mention separation of powers, it envisages such separation to some degree. Justice Sikri further observed, 'There is ample evidence in the Constitution itself to indicate that it creates a system of checks and balances because of which powers are so distributed that none of the three organs it sets up can become so pre-dominant as to disable the others from exercising and discharging powers and functions entrusted to them.'[11] From that moment on, the tussle between the three organs stemming from the overexercise of power under the disguise of checks and balances has been a common title in newspapers. Even though this paper has judicial appointments as the focal point, it still boils down to the discussion of 'Separation of powers versus Checks and balances'. With the concept of the basic structure set, we could now analyse the coming about of the collegium system and weigh it.

THE COLLEGIUM

The promulgation of the Regulating Act 1773[12] by the king of England, India witnessed the establishment of the first apex court at Calcutta, followed by supreme courts at Madras and

[8] *S.R. Bommai v Union of India* (1994) AIR 1918
[9] *Ibid*
[10] Venkatesh Nayak, 'The Basic Structure Doctrine' (*Constitution Net*) <https://constitutionnet.org/vl/item/basic-structure-indian-constitution> accessed 25 February 2024
[11] 'Supreme Court of India' (*SCI*) <https://main.sci.gov.in/> accessed 25 February 2024
[12] The Regulating Act 1773

Bombay. The Indian High Court Act of 1861[13] changed the landscape of the Indian judiciary by creating high courts and abolishing the supreme court in Calcutta, Madras and Bombay. The Federal court acted as the court to hear appeals from high courts[14]. Before the Constitution of India came into being, the power of appointing judges was vested in his majesty. Once the constitution was enacted, article 217[15] and article 124[16] became the premier laws governing the appointment of judges in the top hierarchy. Article 217 lays down 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 the High Courts in the States as the President may deem necessary for that purpose and shall hold office until he attains the age of sixty-five years'[17]. Hence, it is the president's job to appoint the judge, but he shall consult the judges of the Supreme Court or the High Court. But are these statutory words acted upon as laid?

First Judge's Case:[18] The first judge's[19] case had the issue of interpreting the word 'consult' as laid in Article 217. The argument put forward by the petitioner (lawyers and judges) in the said case was that the executive should have no role in appointment decisions of top judges, and the power should lie in the hands of the judiciary.

In the constituent assembly debates, Dr. B. R. Ambedkar said, while debating over the said articles, 'I feel no doubt that the Chief Justice is a very eminent person. But after all, the Chief Justice is a man with all the failings, all the sentiments and all the prejudices that we as common people have, and I think to allow the Chief Justice practically a veto upon the appointment of judges is really to transfer the authority to the Chief Justice which we are not prepared to vest in the President or the Government of the day...' To help avoid veto power in a single hand, the assembly entrusted the executive to take part in the process. The Chief justice in the First judge's case, Justice Bhagwati, had a similar stand; he deemed it imprudent to grant authority, especially

[13] The Indian High Court Act 1861
[14] 'History' (*Supreme Court of India*) <https://main.sci.gov.in/pdf/Museum/m2.pdf> accessed 12 March 2024
[15] Constitution of India 1950, art 217
[16] Constitution of India 1950, art 124
[17] *Ibid*
[18] *S.P. Gupta v President of India and Ors* AIR 1982 SC 149
[19] *Ibid*

for essential and delicate nominations like judicial appointments, to a lone person without implementing limitations and oversight on the use of that power and the first judge case clarified that 'consultation' means thorough and effective dialogue rather than agreement, emphasising that while the Chief Justice's opinion is essential, it is not obligatory to follow. This stance is in consonance with what was concluded in the International Congress of Jurists held in January 1959.

Second Judges Case: The saga of interpreting consultation continued through the second judge's case or the SCOARA case[20]. Authored by Justice J.S. Verma, the judgement put the judiciary on the pedestal by interpreting consultation as 'concurrence'. The said judgement, overruling the previous judgement, mandated the nod of the chief justice before the president could appoint a judge. The fact that elicits a giggle is that the same J.S. Verma who mandated the system made a statement saying ''judicial appointments have become judicial disappointments' and that 'working of the judgment now for some time is raising serious questions, which cannot be called unreasonable; therefore, some kind of rethinking is necessary. It is to wonder that among the nine judges on the bench who ruled in favour of the judiciary, three of them were future Chief justices, while the other constituting members were senior judges. These judges bolstered the judiciary's position in appointing judges or, in other words, crowned themselves for the coterie-to-appoint-judges would consist of the same judges pronouncing the judgement. There was no sign of the checks and balances when needed. The same was in the next link in the chain, the Third Judges Case[21].

Third Judges Case: In 1998, then President K.R Narayna, under the exercise of Article 143(1)[22], asked for the Supreme Court's advice in yet another case. This time, the Supreme Court used the word Collegium to expand the independence of the judiciary. The number of judges increased to 5, with four senior-most judges accompanying the chief justice. Hence, the collegium we know now is majorly attributed to the third judge case.

[20] *Supreme Court Advocates-On-Record Association & Anr v Union of India* AIR 1994 SC 268
[21] *In Re Special Reference No 1 of 1998* AIR 1999 SC 1
[22] Constitution of India 1950, art 143(1)

NJAC

In April 2015, through the 99 Amendment[23], the concept of checks and balances in appointing the judiciary was brought in the form of the National Judicial Appointments Commission (NJAC). The body was in furtherance of the recommendation made by the Law Commission in its 121 Report[24], where an autonomous body for judicial appointments was talked about.

The NJAC would consist of:

- Chief Justice of India (Chairperson, ex-officio);
- Two senior-most judges;
- Union Law Minister (ex-officio);
- Two eminent persons*

***The two eminent persons to be selected by a committee of:**

- Chief Justice of India;
- Prime Minister;
- Leader of Opposition.[25]

Ensure that such an eminent person is from SC/ST/OBC or any minority or woman.

The amendment was made to make the process of judicial appointment inclusive by using the power vested by the constitution of checks and balances on the judiciary. When the law minister and the two eminent personalities were included, the appointing body was not just the judiciary itself but the executive, too. Before the NJAC could function and inclusively appoint the next judge, it was challenged in court in the Fourth Judges case[26]. The Supreme Court of India Struck down the NJAC, considering it violative of the basic structure, observing that even though the Judiciary had more share to the composition than the other two organs, the power was vested to any two individuals to veto upon appointments which could lead to the heavy influence of

[23] The Indian Constitution (Ninety-Ninth Amendment) Act 2015
[24] Law Commission of India, *A new forum for judicial appointments* (Law Com No 121, 1987)
[25] Constitution of India 1950, art 124A
[26] *Supreme Court Advocates-on-record Association & Anr. v Union of India* (2016) 5 SCC 1

the executive on decisions. This was considered unconstitutional and violative of the concept of separation of powers and hence struck down.

SEPARATION OF POWERS VS CHECKS AND BALANCES

From the First Judge case's to the Fourth Judge's case, the tussle between the three organs had at its fulcrum the cry of separation of powers and the checks and balances. While the NJAC was struck down because it was too penetrative in the judiciary's functioning, it came into being by the claim of a check on the unrestrictive power of the collegium. While interpreting such, check the judgement in 'Jagdish Singh v State of Himachal Pradesh and Ors'[27]. The Himachal High Court observed that, '...This is a system of checks and balances where each can check the other, but it must be clearly understood that none of the three organs can encroach upon the jurisdiction of the other'[28]. To evaluate the NJAC now, we must see whether the power of checks and balances wielded by the executive and the legislature encroach upon the judiciary's jurisdiction. The apex court, in the fourth judge's case, saw it as an encroachment because, to them, it is the job of the judiciary to appoint future judges and intervention by the executive in the form of NJAC violates the separation of powers. The current trend, instituted by the fourth judge's case, where the collegium decides the name and the president appoints it, is turning out to be a replica of what happened with NJAC.

The First Citizen: Even though the procedure does not allow the President to exercise much power in judicial appointment, since he is given a name by the collegium which they can accept or reject if rejected, the name could be given again by the collegium, and once given back it could not be refused by the President of India. Since the president's power was limited to a nod, he found a loophole and started sitting on the decision or, as the new term has been coined for such exercise, pockets the name. The delay in accepting or rejecting a name is a clear indication of disapproval by the president.

It is the president who, at the end of the process, appoints the judge. The president is deemed to be a politically neutral entity, but the reality is based on the statutory words. Since 1977, all

[27] *Jagdish Singh v State of Himachal Pradesh and Ors* CWP No 2623/2020
[28] *Ibid*

the presidents have had some affiliation with the ruling political party. An example could be our current president, Mrs. Murmu from the ruling party, Ram Nath Kovind from the ruling party, Pranab Mukherjee from Congress, the then ruling party, and the show goes on. Even though on the face, the presidential elections, under article 54[29], look like an unbiased affair where any party could see their candidate as a president, such has not been the case in the last few years. The electing population for the president consists of all elected members of the following:

- Rajya Sabha;
- Lok Sabha;
- All State Assemblies.[30]

Even though the Electoral College is more than just the ruling party, evidence shows it does not make much difference. The value assigned to each vote is calculated by.

M.P's = Total value of votes of all MLAs of all states/ total number of elected MPs

MLA's= Total population of the state/Total number of elected members in SLA x 1/100[31]

In the 2022 presidential elections, out of the total vote value of 1,081,991, B.J.P held 50% of the vote share (536,447). In the 2017 elections, the two states with the biggest vote share, Rajasthan and U.P. (25,800 & 83,824 respectively), were ruled by the ruling party. All evidence shows how the presidential election is but a formality to enthrone the ruling party's candidate.

Since the lone representative of checks and balances in the collegium, the president has made his place as more than just a nod merchant, overexercising the checks and balances as enunciated in Jagdish Singh's case. The constitution envisaged the president consulting the judiciary and not the other way around. The president has turned to act as the one being consulted as the power to check the exercise has been leapt over, and Kripal's case is evidence of it.

[29] Constitution of India 1950, art 54
[30] Constitution of India 1950, art 55
[31] *Ibid*

Centre: The appointment of senior advocate Saurabh Kripal to the Delhi High Court bench has been a contentious issue in the context of judicial appointments. He could have been the first openly gay judge of India if not for the pocket veto exercised by President[32]. Delhi High Court recommended Kripal's name in October 2017; after being approved by the Supreme Court collegium in 2021, the centre returned his name in November 2021. The Government has stated that it lacks information on whether they have returned Kripal's appointment recommendation to the Collegium for reconsideration or sent it to the President for confirmation.[33] This implies that the Government has not taken any action on the Collegium's recommendation and is simply holding onto it.

Justice S.K. Kaul, now retired, has another series of events that add to the nation's woes. A matter pertaining to a petition against the union government's delay in appointing judges, which was listed by the collegium to be heard by Justice Kaul, was deleted from his cause list without any notice[34]. Justice Kaul said, 'I had not deleted it or expressed unwillingness to take it up. I am sure the CJI is aware of it (the deletion). Some things are best left unsaid...'[35]. This is certainly an encroachment on the part of the centre on judiciary's jurisdiction. But why would a politically fueled centre be against some names while being enthusiastic towards others? An obvious answer would be 'support'. Even though judges are meant to be a politically neutral party, the centre has left no stone unturned to disrupt the balance; Justice Kaul labelled it the centre's 'pick and choose' attitude. The last five years witnessed new High Court judges, 79% of whom belong to the upper caste.[36] If that's not enough, another figure shows that out of 650

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[32] Paras Nath Singh, 'Is the Centre Exercising Its Pocket Veto by Not Appointing Saurabh Kirpal as HC Judge, Even Four Months after the Supreme Court Collegium's Recommendation?' *The Leaflet* (31 May 2022) <https://theleaflet.in/is-the-centre-exercising-its-pocket-veto-by-not-appointing-saurabh-kirpal-as-hc-judge-even-four-months-after-the-supreme-court-collegiums-recommendation/> accessed 12 March 2024

[33] *Ibid*

[34] 'Some Things Better Left Unsaid": Justice Kaul on Why Judges' Appointment Delays Matter Unlisted' *The Wire* (06 December 2023) <https://thewire.in/law/some-things-better-left-unsaid-justice-kaul-on-why-judges-appointment-delays-matter-unlisted> accessed 15 March 2024

[35] Abhimanyu Hazarika, 'I Did Not Delete It, Some Things Best Left Unsaid: Justice SK Kaul on Deletion of Judges Appointments Case from His Cause List' *Bar and Bench* (05 December 2023) <https://www.barandbench.com/news/i-did-not-delete-justice-sk-kaul-deletion-judges-appointments-case-from-cause-list> accessed 15 March 2024

[36] Apurva Vishwanath and Manoj C G, 'Last 5 Years, 79% of New HC Judges Upper Caste, SC and Minority 2% Each' *The Indian Express* (10 January 2023) <https://indianexpress.com/article/india/last-5-years-79-of-new-hc-judges-upper-caste-sc-and-minority-2-each-8371593/.> accessed 15 March 2024

High Court judges, only 76 women managed to seep in, which constitutes merely 11.7% of the total strength.[37] The problem is evident; the source may be the collegium or the centre. Whatever the case may be, the whole system is to blame.

Isn't this interference enough to constitute an exceeding of powers under checks and balances and a blatant violation of the concept of separation of powers? What more must the centre do to consider the collegium system an extended version of NJAC and, hence, unconstitutional?

Transparency: Justice Chalmeshwar, the only dissenting judge in the fourth judge case, said on the collegium system, 'Transparency is a vital factor in constitutional governance. Transparency is an aspect of rationality. There is a need for transparency in the appointment process. Proceedings of the Collegium were opaque and inaccessible to the public and history, barring occasional leaks.'[38] Other heavyweights like the current vice-president, Mr Jagdeep Dhankhar and our former Law minister of India- Mr Kiren Rijiju, have lashed out at the judiciary wielding transparency as yet another flaw.

The State of U.P. v Raj Narayan[39] stated in an unambiguous manner that to know every particular public transaction is a right of the people of this country; concealing the ordinary operations of business under a veil of secrecy does not serve the public's interest. Since the basic structure is open to interpretation, it would not be wrong to say that transparency in the functioning of every governmental organ is a part of the basic features of the Constitution. Further, the free and fair election', which is a vital part of the basic structure, means that the representatives in the legislature should be appointed in a just and fair manner. Extending the same idea covers the appointment of every public officer in a fair manner following due process, and this encompasses the judges as well.

[37] Gauri Kashyap, '11.7% of High Court Judges Are Women' (*Supreme Court Observer*, 24 June 2024) <https://www.scobserver.in/journal/11-7-of-high-court-judges-are-women/.> accessed 15 March 2024
[38] D. Ananda, 'Judges Appointments: Collegium System versus National Judicial Appointments Commission' (2023) 13(1) The GNLU Journal of Law, Development and Politics
[39] *State of U.P. v Raj Narayan* (1975) AIR 865

Transparency is crucial to a democracy; a democracy functions well when the people castigate its functioning; this is the spirit of a free democracy. However, by hiding the information pertaining to such functioning, the government suppresses democracy itself.

WHAT NEXT?

India is the only nation where judges appoint judges. The USA has a mechanism where the President appoints judges, the Senate confirms it, and the judiciary is not consulted. Elections are conducted in Germany; the federal government and ministers of law appoint judges in Canada, while the U.K. has a five-member selection committee. Are these alternative systems better? It is a different discussion, but at least the decision is not concerned and stays within the walls of the organ concerned- the judiciary. Reforms are imperative to beat the allegations of excessive secrecy no or more-than-required checks and balances. The following could be a good way forward.

RTI: When an RTI application was filed against the collegium's working, the potential judge's list, etc., invoking the Right to Information Act 2005[40] to keep the function within the four walls of the judiciary, the Supreme Court employed the Sec 8(1)(b) of the act[41] to escape leaking information to the public. Section 8(1)(b) of the act lays out that the organisation concerned would not be bound to give citizens the information if such information had been forbidden by the Court of Law. The Supreme Court, on several occasions, has apprised the public that RTI doesn't apply to the collegium's functioning. The former attorney general claimed that opening the collegium to RTI would hinder judicial independence. I wonder what could destroy judicial independence more than the collegium system itself.

Including collegium in the ambit of RTI and making it open to criticism could make the system better. The collegium should disclose why it recommended such a name and rejected the other. Immunisation of such recommendation from condemnation could lead to situations like in the case of Kumar Padma Prasad v Union of India and Ors[42], wherein the High Court's

[40] Right to Information Act 2005
[41] Right to Information Act 2005, s 8(1)(b)
[42] *Kumar Padma Prasad v Union of India and Ors* (1992) AIR 1213

recommendation suffered from non-fulfilment of qualifications laid under article 217 (2) (a)[43]. The impugned recommendation did not hold a judicial office as envisaged under the said article. This is one of many reasons why judicial appointments ought to be open to public perusal.

Section 4 of the Act[44] mandates every public authority to dispense out relevant information to the citizens, while the ambit of 'public authority'[45] encompasses anybody given birth to by the constitution, legislature, state assembly or body substantially financed by the government. The Supreme Court of India established under article 124 (1)[46] and the apex taking decision on itself and absolving its liability to dispense out information is nothing but a brazen violation of natural justice under the maxim 'Nemo Judex in Causa Sua'.

Fourth Branch Institutions: Another measure to mend the collegium could be setting up an independent commission resembling the election commission. Such a commission could materialise the checks and balances envisaged in the Keshavananda Bharti judgement in a way that would not invoke allegations of violation of the separation of power since it is the independent commission abridged from every organ. The commission would monitor not only the judicial appointments but every public office appointment. To appoint with due process is yet another feature of the constitution that could qualify to be 'basic'.

The body would be devoid of any political pressure or influence with the sole aim of monitoring proper appointments and taking corrective actions. The election commission has done its part in ensuring free and fair elections and allows other such commissions to come in.

Such a commission ensures that the trend in the judiciary where the son inherits the father's position ('son' and 'father' because of male dominance) could not repeat. A report by advocate Mathews J Nedumpra stated that '50% of judges in the high court and 33% of judges in Supreme court are family members of those in higher echelons of the judiciary'[47].

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[43] Constitution of India 1950, art 217(2)(a)
[44] Right to Information Act 2005, s4
[45] Right to Information Act 2005, s 2(h)
[46] Constitution of India 1950, art 217(1)
[47] Soibam Rocky Singh, '50% HC Judges Related to Senior Judicial Members: Report' *Hindustan Times* (19 June 2015) <https://www.hindustantimes.com/india/50-hc-judges-related-to-senior-judicial-members-report/story-S8RP2Ir9cEuIN4NewFnvML.html.> accessed 16 March 2024

The body named the 'Appointment Commission' would be composed of no retired personnel or people who have already served in any of the organs but independent people specially trained in the appointment process. Considerable power would be vested in the commission so that no other organ could overshadow its functioning. Such composing members themselves would have to be appointed in a just and fair manner. Such members should have due qualifications and must follow an appointment procedure similar to that of UPSC, going through a series of exams and interviews. Such evaluating exams could be pertinent subjects like constitutional law, etc. The Interviewing coterie could consist of members from every stratum, including-

- A Member from the Judicial Fraternity [Preferably retired];
- A Member from the Administrative Branch [preferably retired IAS];
- A Member of the Executive.
- A Member from both Houses.
- A Nigh-Ranking Police Officer [IPS, DG, ADG etc.]
- Instead of the Eminent Personality as in the trend in NJAC, eminent legal practitioners could take part in the process.
- Previous Position Holders.

The might of such a commission would encompass no appointment made through public elections, which would defeat the purpose of the election commission, rather than every other public office, including judges, IASs, every police position, etc.

There could be a Chief Appointment Commissioner (CAC) who would act as the head of the commission and would oversee other constituting members. Other members could include an Appointment Commissioner (AC) for every state and union territory, acting as head of each assigned UT or state. Further down the hierarchy could be assisting members of the AC, i.e. the Appointment Officer (AO) for every district.

Employing such an arrangement could make use of unrecognised talents in India and eliminate the ever-lasting battle between the separation of organised and checks and balances while at the same time ensuring the right person is held in the right position. Nepotism and the 'jack culture'

would stand destroyed since the appointers would stand accountable to somebody for the appointments made. Such a commission would administer a strict Right to Information culture, dispensing out all the information it has revolving around government appointments, from a mere *tehsildar* to high-ranking officers like DGP, Judges, etc.

Fourth-branch institutions have shown how, out of the concrete three-organ system, other branches, such as the election commission, could be devised to ensure that the three branches function as wanted by the constituent assembly. Such gelling up between organs would prevent them from indulging in conflicts among each other at the expense of the nation and upholding the constitution and the nation's integrity.

Filing Nomination: Just like the procedure of elections where the candidates file a nomination, such is advisable in the judiciary, too. Such a measure would ensure that the person is willing to play the part of the judge. Moreover, such nominations would disclose to the public every relevant detail of such a potential judge.

Disclosure of all relevant information, including qualifications, age, relations, etc., would open the gates for criticism. Such would ensure the spirit of democracy is upheld and the right candidate is chosen. The current trend discloses the name when the decision is made, instituting the said procedure to ensure the public has such information throughout the process and not when the harm has been done. Pulling the veil from the process would ensure people know what is going on in the judiciary and who would be at the helm of the justice-dispensing authority.

There are several other means devised by legal practitioners to mend the ways and make the judiciary tread on the path envisaged by the Constitution.

CONCLUSION

Appointments are, without doubt, a reliable pillar of a nation. The whole functioning of a nation has appointments at its fulcrum. If there is an error in the appointment of any official, let alone the judges of higher echelons -an eventual outcome could be the debacle of the entire democracy.

India has a constitution that is so detailed that it is the most comprehensive one compared to other nations. Every procedure and power are meticulously laid out to avoid confusion, but the history of Indian democracy has seen several misinterpretations of the provisions. Is the topic at hand an example of that? This is a question for the interpreter of the Constitution to answer. But when the provision to interpret causes a power tussle, it entails a tug of war at the expense of the nation.

From the institution of the constitution in 1950 to the first judge case in 1981, the nation has come a long way, witnessing such tussles in different forms. It is expected of members of such organs to keep the nation and its constitution before this tug-of-war for power and, at the same time, respect the unamendable basic features of India's supreme document. What is warranted is reform in the collegium by ensuring the already continuing brawl between the separation of the three organs and checks and balances is not fueled. NJAC had its flaws, but what we want is to uphold what it aimed for, which is an inclusive process without confining it within four walls. 'Thus, there is a need for people working on constitutional posts or under constitutional trust to be truthful. In this way, the fundamental solution to the problem is less legal and more ethical'[48]. Even though NJAC failed, the future is still in our hands, and opportunities are ripe. Appointments in other nations and their failure or success need to be analysed, for it is time for reform in India.

[48] Dr. Santosh Kumar, 'Reforms in the Collegium System: Less Legal, More Ethical' (2023) 11(3) International Journal of Creative Legal Thoughts 465-470 <https://ijcrt.org/papers/IJCRT2303275.pdf> accessed 12 March 2024