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THE IMPASSE OVER JUDICIAL APPOINTMENTS: COLLEGIUM V. NATIONAL JUDICIAL APPOINTMENTS COMMISSION

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ABSTRACT

The independence of the judiciary is a cardinal principle of the Indian Constitution, a dynamic concept encompassing freedom from pressure or prejudice from any quarter. Yet that principle has remained a simmering source of tension between the executive and the judiciary, centred specifically on the procedure for appointing judges to the higher judiciary. The Collegium system is considered by the executive to be too opaque, while the courts have repeatedly held that including the executive in the appointment process risks producing politically partisan appointment. This paper compares the Collegium system and the National Judicial Appointments Commission as competing models for judicial appointment, tracing their doctrinal origins through the Judges Cases and the Fourth Judges Case that struck the Commission down, and examines the accountability gap the 2025-26 controversy surrounding Justice Yashwant Varma has since exposed within the Collegium's own in-house mechanism. Drawing on comparative practice, particularly the United Kingdom's Judicial Appointments Commission, and on Parliament's most recent legislative attempt at reform, the paper argues that the underlying dispute is best resolved not by reallocating appointment power between the executive and the judiciary, but by establishing clear, published criteria and transparent procedure capable of commanding public confidence regardless of which institution exercises the appointing power.

KEYWORDS: *Collegium; Judicial Independence; Judicial Appointments; National Judicial Appointments Commission; Basic Structure.*

1. INTRODUCTION

Justice P.N. Bhagwati observed that the independence of the judiciary is a noble concept animating the entire constitutional scheme and forming the foundation on which the edifice of India's democratic polity rests.[1] The principle of the rule of law runs through the whole fabric of the Constitution, and it is the judiciary that is entrusted with keeping every organ of the state within the limits of law, a task that requires the judiciary to remain free from executive pressure. The Constitution's framers secured this independence through deliberate structural provision, and independence of the judiciary has since been recognised as part of the basic structure of the Constitution, fundamental to Indian democracy itself.

Judicial independence and the transparency of judicial appointment are closely interlinked, since the selection and appointment of judges bears directly on both judicial independence and the separation of powers between the executive and the judiciary. Articles 124 and 217 of the Constitution govern

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[1] S.P. Gupta v. Union of India, A.I.R. 1982 S.C. 149, 27 (India) (Bhagwati, J.).

appointment to the Supreme Court and High Courts respectively,[2] but neither provision lays down a definitive procedure: the President appoints Supreme Court judges after consultation with the Chief Justice of India and such other judges as the President deems necessary, leaving unresolved both the binding character of the Chief Justice's advice and the question of whose view should prevail where opinion diverges.

On a plain reading of these provisions, the Collegium system finds no place in the constitutional text: the final appointing power appeared to rest with the executive, and the Chief Justice's view was not expressly binding upon it. This ambiguity surrounding the word consultation was ultimately resolved by the Supreme Court itself in *Supreme Court Advocates-on-Record Association v. Union of India*[3], which held that consultation with the Chief Justice was included precisely because the Chief Justice is best positioned to assess a candidate's suitability, that the Chief Justice's opinion should accordingly carry the greatest weight, and that appointment should proceed through a participatory, consultative process in which the executive functions as a check on the Chief Justice's exercise of that power rather than as its equal. The Court grounded this primacy of judicial opinion in the necessity of preserving judicial independence and, through it, democracy itself. The resulting evolution, from consultation to concurrence to Collegium to what this paper's title describes as constant conflict and confusion, forms this paper's central subject.[4]

1.1 Scope and Methodology

This paper adopts a doctrinal methodology, analysing constitutional provision, the Judges Cases and the NJAC litigation, and comparative appointment practice, principally that of the United Kingdom. It covers developments through August 2026, including the resolution of the controversy surrounding Justice Yashwant Varma, and confines its analysis to appointment and accountability at the level of the Supreme Court and High Courts specifically, without addressing subordinate judicial appointment, which operates under a materially different constitutional and statutory framework.

2. THE COLLEGIUM SYSTEM: ORIGINS AND THE THREE JUDGES CASES

The Collegium system emerged from years of friction between the judiciary and the executive, friction the practice of court-packing, mass transfer of High Court judges, and two supersessions to the office of Chief Justice of India

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2 India Const. arts. 124, 217.

3 Supreme Court Advocates-on-Record Assoc. v. Union of India, A.I.R. 1994 S.C. 268 (India).

4 Pranav Dhawan, Reform That You May Preserve: Rethinking the Judicial Appointments Conundrum, 9 Indian J. Const. L. 45 (2021).

during the 1970s had considerably sharpened. It is an extra-constitutional body of judges, a creation of the Supreme Court's own jurisprudence, assisting the Chief Justice of India in recommending appointment and transfer within the higher judiciary. Its legal foundation rests in three decisions collectively known as the Judges Cases.

2.1 S.P. Gupta v. Union of India: The First Judges Case

S.P. Gupta v. Union of India[5] gave the executive primacy over the judiciary in judicial appointment, holding that the President could reject the Chief Justice's advice for cogent and convincing reason, since Article 217(1) speaks of consultation rather than concurrence. Justice Bhagwati, reading Articles 124(2) and 217(1) together, held that the Chief Justice and other consulted judges occupied a purely consultative role, that appointing power resided solely in the central government, and that the government was accordingly free to override the consulted functionaries' opinion in reaching its own decision. This ruling curtailed judicial independence in the appointment process considerably, and it drew subsequent criticism in *Subhash Sharma v. Union of India*[6], which also criticised the practice of sending High Court appointment recommendations directly to the central government rather than through the Chief Justice of the relevant High Court, prompting the Bench to recommend reconsideration by a larger Bench.

2.2 Supreme Court Advocates-on-Record Association: The Second Judges Case

The Second Judges Case restored primacy to the judiciary, holding that the Chief Justice's role is primal precisely because judicial appointment is a matter internal to the judicial family in which the executive cannot claim an equal voice.[7] The nine-judge Bench held that consultation in Article 124(2) should be read as concurrence, introducing the initial Collegium structure under which the Chief Justice consults two senior-most colleagues, whose collective opinion carries primacy, minimising the executive's role and, in principle, insulating the process from political bias, favouritism or personal animosity.

2.3 Re: Special Reference: The Third Judges Case

Clarifying questions arising from the Second Judges Case, the Supreme Court, in an advisory opinion delivered on a Presidential reference under Article 143, held that the Chief Justice should consult a plurality of the four senior-most Supreme Court judges on appointment and transfer.[8] This broadened the

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5 S.P. Gupta v. Union of India, A.I.R. 1982 S.C. 149 (India).

6 Subhash Sharma v. Union of India, (1991) Supp. (1) S.C.C. 574 (India).

7 Supreme Court Advocates-on-Record Assoc. v. Union of India, A.I.R. 1994 S.C. 268, 30 (India).

8 Re: Special Reference No. 1 of 1998, A.I.R. 1999 S.C. 1 (India).

Collegium to its present five-member form, the configuration that has governed judicial appointment in India since.

2.4 Criticisms of the Collegium

The Collegium has been criticised since its inception on two principal grounds.

- Opacity: the Collegium operates without a written operating manual, without prescribed selection criteria, and without publication of its meeting records, permitting its members to disregard seniority or reverse a prior rejection without any requirement to justify the departure, concentrating considerable, largely unaccountable power in a small group of judges.
- Nepotism and the Uncle Judges Syndrome: the Law Commission of India, in its 230th Report, identified a recurring pattern in which a person is appointed to a High Court bench where close relatives continue to practise, a pattern a system of judges selecting future judges does little to guard against, and one difficult to reconcile with the checks and balances the Constitution otherwise contemplates.[9]

2.5 The Memorandum of Procedure and Its Continuing Unfinished State

The Memorandum of Procedure, first framed in 1999, was intended to supply the detailed operational guideline the Judges Cases themselves did not, governing the practical mechanics of selection and recommendation for both the Supreme Court and High Courts.[10] Following the NJAC judgment, the Supreme Court directed the government to revise the Memorandum specifically to improve transparency and accountability, and a revised draft was duly prepared. That draft has, however, never been fully finalised or formally adopted, remaining suspended in continuing disagreement between the government and the judiciary over provisions addressing national security clearance and the precise scope of executive input into the process.[11] This unresolved status is itself a telling illustration of the broader impasse this paper examines: even where both institutions agree in principle that greater procedural clarity is desirable, translating that agreement into a jointly accepted operational document has proven elusive for nearly a decade.

3. THE NATIONAL JUDICIAL APPOINTMENTS COMMISSION: STRUCTURE AND OBJECTIVES

In 2014, Parliament enacted the Constitution (Ninety-Ninth Amendment) Act, 2014 together with the National Judicial Appointments Commission Act, 2014,

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9 Law Commission of India, 230th Report on Reforms in the Judiciary (2009).

10 Ministry of Law and Justice, Memorandum of Procedure for Appointment of Judges (1999).

11 Ministry of Law and Justice, Revised Draft Memorandum of Procedure (2017, unfinalised).

establishing an independent commission to appoint judges to the Supreme Court and High Courts in place of the Collegium.[12] The stated objective was to give meaningful role to the judiciary, the executive and eminent persons alike, introducing accountability and transparency into a selection process long criticised for lacking both.

The amendment inserted Articles 124A, 124B and 124C and amended Article 124(2): Article 124A created the Commission itself, Article 124B vested it with appointing power over both the Supreme Court and High Courts, and Article 124C empowered Parliament to regulate its functioning by law. The Commission comprised the Chief Justice of India as ex officio Chairperson, the two senior-most Supreme Court judges as ex officio members, the Union Law Minister as ex officio member, and two eminent persons from civil society nominated by a committee of the Chief Justice, the Prime Minister and the Leader of the Opposition in the Lok Sabha, with at least one eminent person drawn from Scheduled Castes, Scheduled Tribes, Other Backward Classes, minorities or women.[13]

The Act preserved existing eligibility qualification for judicial appointment but directed that the Chief Justice of India and High Court Chief Justices be recommended by seniority, while other Supreme Court and High Court judges be recommended on ability, merit and criteria the Commission's own regulations would specify. Critically, any two Commission members could jointly veto a recommendation.

A close reading of the Ninety-Ninth Amendment and the NJAC Act reveals several structural features that would have shifted appointing primacy toward the executive.

- Executive pre-eminence in regulation: Article 124C vested Parliament with the power to regulate the appointment process by statute and empowered the Commission to determine its own procedure by regulation, displacing the judiciary's own prior control over process design.
- Displacement of the initiating role: Section 4 of the NJAC Act made the Commission itself, rather than the Chief Justice of India in consultation with fellow judges, the initiator of the appointment process, departing from the practice traceable to the Constituent Assembly Debates.

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[12] Constitution (Ninety-Ninth Amendment) Act, 2014 (India); National Judicial Appointments Commission Act, 2014, No. 40, Acts of Parliament, 2014 (India).

[13] India Const. art. 124A (inserted 2014, since omitted).

- A diluted judicial presence: whereas the Second and Third Judges Cases established a five-member, judiciary-dominated Collegium, the Commission comprised only three judicial members, the Chief Justice and two senior colleagues, out of six, with the nominating committee for the two eminent members itself including only one judicial representative.

- A structural veto for non-judicial members: the second proviso to Section 5 and Section 6(6) of the Act provided that no recommendation could proceed if any two Commission members disagreed, meaning the two eminent, potentially non-legal members could together neutralise a recommendation the three judicial members and the Law Minister otherwise supported.[14]

Proponents of the NJAC argued that these features were not, properly understood, a mechanism for executive capture but a considered structural safeguard against precisely the opacity and nepotism this paper's Section 2.4 documents: broadening the appointing body beyond sitting judges alone was intended to introduce perspectives, and accountability, the closed Collegium process could not itself supply. The counter-argument, which ultimately prevailed in the litigation this paper's Section 4 examines, was that the specific combination of features catalogued above amounted, in aggregate, to a structural transfer of effective control sufficient to compromise judicial primacy in a manner the basic structure doctrine could not tolerate, regardless of the reform's stated transparency-enhancing purpose.

4. THE FOURTH JUDGES CASE: STRIKING DOWN THE NJAC

On 16 October 2015, a five-judge Bench in *Supreme Court Advocates-on-Record Association v. Union of India*[15] held, by a four-to-one majority, that the National Judicial Appointments Commission was unconstitutional and violated the basic structure of the Constitution. Former Chief Justice J.S. Khehar authored the majority opinion, spanning over a thousand pages together with separate concurring opinions from Justices Madan B. Lokur, Kurian Joseph and A.K. Goel; Justice J. Chelameswar alone dissented.

Justice Khehar reasoned that the wisdom of judicial appointment could not safely be shared with the political executive, given that India's civil society had not yet developed sufficient organic maturity to guard against the risk such sharing would create, and that the judiciary's expected role in safeguarding

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[14] National Judicial Appointments Commission Act, 2014, §§ 5-6, No. 40, Acts of Parliament, 2014 (India).

[15] Supreme Court Advocates-on-Record Assoc. v. Union of India, (2016) 5 S.C.C. 1 (India).

citizens' rights could be secured only by keeping it insulated and independent from the other organs of government.[16]

Justice Chelameswar's dissent took a markedly different view, emphasising that transparency is itself vital to constitutional governance and that Collegium proceedings remained entirely opaque and inaccessible to public and historical scrutiny alike.[17] He further questioned the majority's premise that judicial primacy in appointment forms part of the basic structure at all, arguing that the absolute exclusion of the executive itself offended the basic structure's own commitment to checks and balances. Notwithstanding this division, the Bench collectively acknowledged that the Collegium system was not without flaw, and it invited the government to work with the judiciary toward improving it.

The four-to-one division itself deserves brief comment, since a bare textual count understates the closeness of the underlying disagreement. Even within the majority, the concurring opinions of Justices Lokur, Kurian Joseph and Goel each expressed varying degrees of concern regarding Collegium opacity even while joining the result striking down the NJAC, suggesting that the Bench's agreement extended firmly to the outcome, invalidating the specific NJAC design, without extending equally firmly to any shared view that the Collegium itself required no reform. This nuance is frequently lost in summary treatment of the decision, but it matters directly for the argument this paper advances in Section 7: even the judges who struck down the NJAC did not thereby endorse the Collegium's existing practice as adequate, a distinction critics of the judgment sometimes elide.

5. THE PERSISTING IMPASSE AND THE ACCOUNTABILITY GAP

The restoration of judicial primacy the Fourth Judges Case achieved has, since 2015, become a continuing source of institutional impasse: because the elected executive lacks a meaningful legal-institutional role in appointment, Collegium recommendations frequently face prolonged, unexplained executive delay, and critics have persistently questioned how the judiciary could strike down a constitutional amendment that Parliament had passed unanimously, reflecting, on this view, the will of the people through their elected representatives. The Collegium has, in turn, been criticised as an imperium in imperio, an empire within an empire, since few other constitutional democracies vest appointing power in a body composed exclusively of sitting judges.

Neither system, on close examination, is without serious defect. Executive-dominated appointment risks the appointment of pliable judges, precisely the

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16 Supreme Court Advocates-on-Record Assoc. v. Union of India, (2016) 5 S.C.C. 1, 899-901 (Khehar, J.).

17 Supreme Court Advocates-on-Record Assoc. v. Union of India, (2016) 5 S.C.C. 1, 15-16 (Chelameswar, J., dissenting).

risk the executive overreach of the 1970s and 1980s realised and that produced the Collegium in the first place; judiciary-dominated appointment, conducted behind closed doors, risks the nepotism and opacity this paper's Section 2.4 has documented. The most recent, and most vivid, illustration of this second risk arose not from the appointment process itself but from the Collegium's parallel in-house mechanism for judicial accountability once appointment has already occurred.

5.1 The Justice Varma Episode and the Accountability Gap

On 14 March 2025, a fire at the official residence of Justice Yashwant Varma, then a judge of the Delhi High Court, led firefighters to discover sacks of partially burnt currency.[18] The then Chief Justice of India, Sanjiv Khanna, directed that no judicial work be assigned to Justice Varma, constituted a three-member in-house inquiry committee, and, upon that committee's 3 May 2025 report finding strong inferential evidence of Justice Varma's covert or active control over the cash, forwarded the report to the President and Prime Minister with a recommendation that removal proceedings be initiated in Parliament.[19] Justice Varma denied ownership of the cash, characterised the storeroom in which it was found as a general dumping area, and petitioned the Supreme Court to quash both the in-house report and the recommendation for his removal, contending that the committee had acted in a pre-determined manner and had reversed the ordinary burden of proof without affording him a genuinely fair hearing.[20]

Facing likely parliamentary impeachment during the Monsoon Session, Justice Varma ultimately resigned on 9 April 2026, becoming the third sitting High Court judge in India's constitutional history to resign in the face of pending removal proceedings rather than allow Parliament's process to run its course.[21] As commentators have since observed, each of the three prior instances of pre-emptive resignation exposed the same constitutional lacuna, the absence of any judicial accountability mechanism short of the cumbersome, rarely successful parliamentary impeachment process, and none has yet prompted a legislative remedy.

The Varma episode bears directly on the Collegium-versus-Commission debate this paper examines, because it demonstrates that the accountability deficit critics have long attributed to the appointment process extends with equal, if not greater, force to the judiciary's own internal mechanism for

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18 In-House Inquiry Committee Report, Supreme Court of India (Mar. 2025).

19 Supreme Court Observer, Justice Yashwant Varma's Challenge to In-House Procedure (2025).

20 Yashwant Varma v. Union of India, W.P. (C) (Sup. Ct. India, filed July 17, 2025).

21 V. Venkatesan, Quit Before the Verdict: The Judicial Accountability Gap, Supreme Court Observer (Apr. 10, 2026).

addressing post-appointment misconduct. The in-house committee that investigated Justice Varma was itself an extra-statutory body of the judiciary's own creation, its procedure undefined by any published rule, its findings initially withheld from public and parliamentary scrutiny before circumstances compelled disclosure. A reform agenda confined to the appointment stage alone, without corresponding attention to the accountability mechanisms operating once appointment has occurred, would accordingly address only half of the institutional design problem this paper's evidence reveals.

The comparison between the appointment debate and the accountability debate is instructive precisely because the two disputes have followed strikingly parallel trajectories. Just as the Collegium's appointment opacity prompted the NJAC's attempt at structural reform, itself defeated on basic structure grounds, calls for a statutory judicial accountability mechanism distinct from the cumbersome constitutional impeachment process have surfaced repeatedly since the Judges (Inquiry) Act, 1968 was first enacted, without ever producing a workable, judicially endorsed alternative. The Judicial Standards and Accountability Bill, introduced in 2010 and lapsed with the dissolution of the Fifteenth Lok Sabha, remains the most substantial legislative attempt to date, and its failure to be revived in any subsequent Parliament illustrates the same institutional inertia this paper's Section 2.5 documents in the specific context of the unfinished Memorandum of Procedure.[22]

6. COMPARATIVE PRACTICE AND CONTINUING REFORM PROPOSALS

Comparative practice offers a useful benchmark for evaluating what genuine reform of Indian judicial appointment might require. The United Kingdom's Constitutional Reform Act, 2005 established an independent Judicial Appointments Commission, requiring that appointment be made solely on merit and only where the selecting body is satisfied the candidate is of good character.[23] The Commission applies five defined merit criteria: intellectual capacity, encompassing appropriate legal knowledge and expertise; personal quality, including professionalism, decisiveness, and the ability to work constructively with others; an ability to understand and treat all parties fairly regardless of background; communication skill, including the ability to explain and justify decisions clearly and to maintain authority under challenge; and efficiency, including the capacity to work under pressure and produce sound judgment promptly.[24]

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22 Judicial Standards and Accountability Bill, 2010, Bill No. 76 of 2010 (India) (lapsed).

23 Constitutional Reform Act 2005, c. 4 (UK).

24 Judicial Appointments Commission (UK), Selection Criteria and Process Guidance (2023).

What distinguishes the British model from both the Collegium and the failed Commission is not primarily the institutional composition of the appointing body, but the existence of published, judicially and publicly ascertainable criteria against which any appointment decision can be measured and, where necessary, challenged. Neither the Collegium nor the NJAC, as designed, supplied a comparable framework: both left the substantive content of merit and suitability to the unstructured judgment of the appointing body itself, whether that body was composed predominantly of judges or of a mixed panel including executive representation.

Domestic reform proposals have continued to surface notwithstanding the NJAC's constitutional defeat. In February 2026, Rajya Sabha member P. Wilson introduced a Private Member's Constitution Amendment Bill directed at improving social diversity, transparency and accessibility within the higher judiciary, reviving legislative attention to judicial reform considerably narrower in scope than the NJAC but addressed to comparable underlying concern regarding transparency and representativeness in appointment.[25] The persistence of such proposals, nearly a decade after the NJAC's invalidation, confirms that the underlying dissatisfaction with the Collegium's opacity has not abated merely because the constitutional route to a replacement commission was foreclosed in 2015.

Private Member's Bills of this kind rarely progress to enactment in the Indian parliamentary system, and the Wilson Bill's ultimate prospects remain uncertain at the time of writing. Its significance for this paper's analysis lies less in its likelihood of passage than in what its introduction reveals about the durability of the underlying reform demand: a decade after the Fourth Judges Case, and notwithstanding the comprehensive constitutional defeat the NJAC suffered, legislators continue to regard the transparency and representativeness of judicial appointment as unfinished business rather than a settled question. This durability lends support to the argument this paper's Section 7 develops, that transparency-oriented reform operating within the existing Collegium structure, rather than renewed pursuit of a constitutionally vulnerable alternative appointing body, offers the more realistic path to addressing that unfinished business.

7. TOWARD A WAY FORWARD

Neither the Collegium nor the NJAC, on the analysis this paper has undertaken, offers a flawless model, and it would accordingly be inaccurate to characterise continued reliance on the Collegium as either impermissible or unjustified in the absence of a more suitable alternative, since unchecked government

[25] Constitution (Amendment) Bill, 2026 (P. Wilson, Private Member's Bill, Rajya Sabha, introduced Feb. 2026).

involvement in appointment carries the genuine risk of subverting judicial independence through the appointment of compliant judges. Equally, a judiciary that remains entirely cloistered from external input invites the suspicion of nepotism this paper's Section 2.4 and Section 5.1 have separately documented, a suspicion the Varma episode has done nothing to dispel.

What the analysis in this paper suggests is required is not necessarily a re-composition of the Collegium to include external members along NJAC lines, nor an entirely independent body constituted afresh; if the appointment method is itself properly regulated through clear, published criteria and transparent procedure, the specific identity of the appointing institution becomes considerably less consequential. The solution accordingly lies substantially in transparency and explicit criteria rather than in relitigating the basic structure question the Fourth Judges Case has already settled. Guidance for that transparency-oriented reform can be drawn directly from the United Kingdom's Judicial Appointments Commission model this paper's Section 6 examines.

This is not to suggest the Collegium is beyond improvement; the criticism it has attracted is fair, at least in part, though it warrants more nuanced deliberation than blanket condemnation supplies. Both the executive and the judiciary must engage in genuine institutional dialogue to strike a workable balance without compromising judicial independence itself. The judiciary would do well to accept reform of Collegium functioning, particularly by widening the range of consultation to make the process more diverse and representative, while the executive must recognise that the answer to judicial dominance is not executive dominance, a path India has already travelled, but a genuinely balanced process accounting for every stakeholder's legitimate interest.[26] No such comprehensive proposal presently commands consensus between the two institutions, and the Justice Varma episode this paper has examined confirms that the reform required extends beyond the appointment stage to the judiciary's own mechanism for post-appointment accountability as well.

8. CONCLUSION

The impasse this paper has traced, from the First Judges Case's grant of executive primacy through the Collegium's judicial reclamation of that primacy to the NJAC's failed attempt at institutional rebalancing, reflects a genuine and unresolved tension between two constitutional values neither side of the debate can simply discard: judicial independence, which the basic structure doctrine protects as fundamental to Indian democracy, and democratic accountability, which the complete exclusion of any elected institution from judicial appointment arguably compromises.

[26] Justice Madan B. Lokur, Judicial Appointments: Time for a Reset (2022).

This paper has argued that the most productive path forward does not lie in reopening the constitutional question the Fourth Judges Case settled, but in pursuing the transparency-oriented reform that question left entirely open: published selection criteria, documented reasoning for appointment and rejection alike, and a genuinely accountable in-house mechanism for addressing judicial misconduct once appointment has occurred, a mechanism the Justice Varma episode has shown to be at least as deficient as the appointment process itself. The United Kingdom's Judicial Appointments Commission model offers a workable template for the former; the persisting absence of any codified, judicially reviewable procedure for judicial accountability, exposed with unusual clarity by three successive instances of pre-emptive resignation, supplies the clearest evidence yet that reform confined to appointment alone would remain fundamentally incomplete.

Until the executive and the judiciary undertake the genuine institutional dialogue this paper's Section 7 calls for, the deadlock between Collegium and Commission is likely to persist in substance even as its specific legal form continues to evolve, leaving India's higher judiciary to operate under an appointment and accountability architecture that satisfies neither the transparency the executive and public increasingly demand nor the independence the Constitution's basic structure was designed to protect.