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Judiciary

The Constitutional framework of Indian Polity is neither revolutionary nor evolutionary in its character but a product of a legal tender, adopt an integrated judicial structure based on the hierarchy of courts for both union & states.

This integrated system of court administer both Union & state laws & act as a guardian of Constitution & champion of Rights & Liberty. This hierarchical structure is not only administratively connected but also judicially linked up.

Judiciary is a watchdog of Democracy & authorised to interpret the Constitution in much more progressive with the purpose to apply some pressure over other organs of the govt.

Supreme Court

Appointment of judges :-

Article 124, (1), (2) & (3) regulates the matters related to appointment of Chief Justice of India (CJI) & other judges of S.C. Article 124(3) provides that

CJI shall be appointed by President & for this purpose if the President deems necessary then he can consult some other judges of Supreme Court or high courts. It should be noted that after independence the principle of seniority had been adopted by respective govt. to appoint the CJI. It is regarded as a more transparent, accountable, responsive & unbiased procedure for judicial appointment.

Although In 1956 Law Commission of India in its report suggested that while appointing CJI, other criterias like merit, ability, judicial competence etc. could be taken into consideration with the principle of seniority.

Govt. of India by taking the reference of the same suggestion, appointed A.N. Ray as CJI by superseding 3 senior most judges of Supreme Court.

This decision had been taken just after the adjudication of S.C. in Keshwanand Bharati Case, 1973, where

all these 3 senior most judges have supported the doctrine of Basic Structure.

In 1977 again, M.U. Beg was appointed ~~by~~ as CJI by superseding the senior most judge H.R. Khanna.

This ~~by~~ decision was also an encroachment on Judicial independence because Justice Khanna tried to uphold the rights of citizens under Article 20 & 21.

S.C. in Advocates On Record Association,

Case 1993, further clarified the legal position of Article 124(2) & held that

The senior most judge of S.C. fit to hold the office should be appointed

apex court remains a landmark legal instrument by which the independence of Judiciary gets protected.

Appointment of Judges

Article 124(2) provides that other judges of S.C. shall be appointed by President of India & for this purpose President shall take the consultation of CJI. Constitution under this Article has not clarified the nature of consultation provided by CJI to President of India. Although S.C. in several of its adjudications determined the nature & and implication of consultation provided to President of India.

In S.P. Gupta Case 1981, (1st Judges case)

S.C. held that the consultation is nothing but exchange of views & can't be considered as concurrence. However, in Advocate on Record Association Case, 1993

Court reversed its earlier adjudication & held that consultation is of the nature of concurrence. Subsequently,

the advice tendered by CJT would be binding over President of India, although before tendering the consultation it is required for the CJT to take the opinion of two other senior most judges of S.C. This case provides a way for Collegium system in India by which the power of appointment of judges was transferred to Judiciary. In the same case privacy/privacy is given to the opinion of CJT.

In Presidential Reference case, 1998, (3rd Judges case), S.C. again clarified the basic subject matter of Article 124(2) & re-examine its earlier adjudication of 2nd judges case. In this case, the privacy of opinion given to the CJT was diluted in favour of collective opinion of the collegium system. Court held that the consultation should include the plurality of judges

& for this purpose, a collegium should be created comprising 4 senior most judges of S.C. & CJI. If any of the 2 judges out of 4 are giving negative opinion then the consultation should not be communicated to CJI.

Similarly, for the appointment of High court judges, the collegium should comprise 2 senior most judges of S.C. & CJI. Similarly, for the transfer of H.C. judges the collegium would include be 4 + 1 + 2. By this pronouncement of S.C. the judiciary gets the power to appoint its own colleagues.

A legislative attempt had been made by 99th constitutional amendment Act, 2014, with a purpose to replace the collegium system & to provide representation to every stakeholders in the matter of appointment & transfer.

Art. 124 (A) was incorporated to provide constitutional base for National Judicial Appointment Commission.

(NJAC). NJAC was a 6 member body constituted to replace the collegium system & to create an equilibrium between executive authority & judicial assertiveness.

This legislative instrument was held as unconstitutional by S.C. on the ground of independence of judiciary. In this case, S.C. has taken the reference of Bhim Singh case where the court held that the test of violation of separation of power is that if any organ takes over an essential function of the other, leads to the lapse in constitutional accountability. In this case court held that appointment of judges is a core function of judiciary & the provisions of 99th Amendment Act 2014, undermines the independence of judiciary.