

THE COLLEGIUM SYSTEM VERSUS THE JUDICIAL APPOINTMENTS COMMISSION BILL

The judiciary is perhaps the only institution in our country to which the citizens accord utmost credibility. It is indeed the most trusted and respected institution. Then why does the selection of judges to serve in the Supreme Court and the High Courts take place through an impenetrable process? Questions have been raised time and again on the genuineness and transparency of the existing collegium system for appointment of the judges to the Supreme Court and the High Courts. Justice Rumpa Pal has rightly remarked that the process of appointments of judges to the superior courts is the best kept secret in the country. The Judicial Appointments Commission, Bill 2013 has been introduced to replace the existing collegium system by an independent Judicial Appointments Commission. The collegium system undoubtedly gives supreme power to the judiciary in making the appointments and there is an immediate need for a complete overhaul of this system. But is the Judicial Appointments Commission a better successor?

CONSTITUTIONAL PROVISIONS AND JUDICIAL INTERPRETATION

The constitution of India provides under Article 124(2) that the judges of the Supreme court shall be appointed by the President in consultation with such of the judges of the Supreme court and the High Courts as he may deem necessary provided that in case of appointment of a judge other than the Chief Justice, the Chief Justice of India shall always be consulted and Article 217(1) provides that the judges of the High Courts shall be appointed by the President after consulting the Chief Justice of India, the Governor of the State concerned and in case of appointment of a judge other than the Chief Justice of the High Court to which the appointment is to be made. Thus the Constitution has vested the power of appointments with the executive in consultation with the Chief Justice and such other judges deemed necessary by the President.

A question came before the Supreme Court in **S.P. GUPTA V. UNION OF INDIA** that whose opinion amongst the various functionaries participating in the process of appointment should have primacy? It was held by the Supreme Court that the opinion of the Chief Justice of India and the Chief Justice of the High Court are MERELY CONSULTATIVE and the power resides solely and exclusively in the Central Government. Thus, a literal interpretation was given to the word consultation.

In 1993, a nine judges Bench OVERRULED this decision in **SUPREME COURT ADVOCATES-ON-RECORD-ASSOCIATION v. UNION OF INDIA** and conferred wide powers on the judiciary in making the appointments. The Supreme held that:

- That the opinion of the Chief Justice of India should have the greatest weight as he is best suited to know the worth of the appointee,
- The selection should be made as result of a participatory consultative process in which the Executive has the power to act as a mere check on the exercise of power by the Chief Justice of India
- In case of a conflict the primacy must lie in the final opinion of the Chief Justice of India and this primacy in effect means primacy of the opinion of the Chief Justice of India formed collectively after taking into account the views of his senior colleagues who are required to be consulted by him.