TRANSLUCENT JUDICIAL APPOINTMENTS-A PITFALL IN INDIAN JUDICIARY

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"we are living under a constitution but the constitution is what the judges say it is"

-Hughes CJ

Abstract

The constitution being the law of the land in India, established the High Courts and Supreme Court as the defenders of the constitution. It is notable that the judiciary is independent of executive and the legislature of the state. This is to empower the judiciary to dispense justice irrespective of any distinction in the society and also to ensure that the executive and the legislature do not outpace the powers conferred to them. This paper would delve into questions such as; if a judge have gone rogue what about the credibility judgments the judge gave; the trust over the judiciary which is the last resort to justice is shattered not only with Justice Karnan's case, but there were also several instances when judges at the verge of impeachment have resigned quietly and the issues were quite latent; imbalance of power between the judiciary and the executive in regard appointment of judges of High courts and Supreme court; the accumulation power of appointing by either one of them turns to be fatal to the deliverance of justice as it is evident from 1975 internal emergency and various instances of unbecoming conduct and reputation of judges; the interpretation of the constitutional provisions under article 124 and 217 seem to be inappropriate since it doesn't depict the actual intention of the framers of the constitution; the irony that if one wants to challenge the constitutionality of any lacunae in the judiciary, his final resort would be the supreme court which is the apex of the judiciary, because judges are also human beings and it is impossible to create a 'veil of ignorance' as described by John Rawls.

I Introduction

Chanakya said "Law and morality sustain the world". Morality stems from ethical values. The societal perception of judges as being detached and impartial referees is the judiciary's greatest strength. The real source of strength of the judiciary lies in public confidence in the institution. Today it is because of this public perception that the higher judiciary in the country occupies a

position of pre-eminence among the three organs of the state. An independent judiciary is a national asset.[1]

The supreme court of America has been described as the third chamber of its legislature, more powerful than the remaining two whereas no such role is expected to be played by the supreme court of India[2]. It is evident from these lines even in America where the political intervention is more compared to India is able to attain a position as stated above, whereas in India the praised for its appointment procedure of judges had only paved way self-oligarchy of the judges and power play of self-made politicians. The transition from executive primacy[3] to judiciary having primacy [4]in appointing judges is the controversy since the inception of Indian constitutions which questions the credibility of a judge in the judicial system. There had been various instance when the Supreme court tried to interpret the provisions under Article 124 and 217 and failed miserably. The Supreme court usurped themselves by claiming that they are the defenders of the constitution and prevented executive intervention in judicial appointments by upholding basic structure doctrine and separation of powers doctrine[5]. The Supreme Court collegium - a panel of the country's top five judges including the Chief Justice of India - has decided that all its discussions and recommendations will be put up on the top court's website.[6] Though there had been developments as such, "The Supreme Court collegium - a panel of the country's top five judges including the Chief Justice of India - has decided that all its discussions and recommendations will be put up on the top court's website."[7] there is no complete solution to the balancing of power between the judiciary, executive and the parliament in judicial appointments.

II The entrance of judiciary in India

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[1] A.S. Anand, The Indian judiciary in the 21st century, India International Centre Quarterly, Vol. 26, No. 3 (MONSOON 1999), pp. 61-78

[2] Harmandar Singh, Judiciary in India, The Indian Journal of Political Science, Vol. 25, No.3/4, pp. 301-306, (1964)

[3] S.P. Gupta v. Union of India, 1981 Supp SCC 87.

[4] Special Reference No. 1 of 1998, In re, (1998) 7 SCC 739.

[5] Supreme Court Advocates-on-Record Assn. v. Union of India, (1993) 4 SCC 441.

[6] How Judges Are Appointed By Supreme Court To Be Made Public, https://www.ndtv.com/india-news/how-judges-are-appointed-by-supreme-court-to-be-made-public-1759474

[7] How Judges Are Appointed By Supreme Court To Be Made Public, https://www.ndtv.com/india-news/how-judges-are-appointed-by-supreme-court-to-be-made-public-1759474

The Government of India Act, 1935, introduced the federal principle into Indian constitutional law. It also made necessary a Federal Court decide constitutional matters. Under the Constitution of India, 1950, and preceding Indian legislation, the Supreme Court succeeded to the jurisdiction of the Federal Court and the Judicial Committee.[8] The Supreme court was inaugurated by Babu Rajendra Prasad the then president of India on January 28, 1950, at 9:50 am.[9]

III Statutory Provisions

Judicial appointments in the Indian constitution

Bearing in mind that the judiciary as the defenders of the constitution and that too in a democratic country like India, it is necessary to promulgate into the constitutional provisions to establish and determine its nexus with WE THE PEOPLE in the preamble of Indian constitution. The constitutional provisions of judicial appointments are enshrined in Article 124, 217 and a reference is made under Article 224.

Article 124(2) of the Constitution of India

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[10]

Article 217

Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court[11]

There is a reference to Article 224 is being made in Article 217 regarding the appointment of additional and acting judges to any high courts by the president due to circumstances created by

[8] Ibid.
[9] Supreme court of INDIA, http://supremecourtofindia.nic.in/history
[10] INDIA CONST. art. 124, cl. 2.
[11] INDIA CONST. art. 217.

heavy case arrears, the long absence of the sitting judge, and any situation that may arise deem fit by the president. This tenure should be not more than 2 years, and the age of the judge holding office should be not more than sixty-two years.

These constitutional provisions were the subject matter of constitutional assembly debates on 24th and 27th of May, 1949 took the form as mentioned above. This form has been adopted after long debates by which it was intended to curb or circumcise political motivation and intervention in appointing these honourable posts.[12] The architect of Indian constitution, Dr Ambedkar have carefully with full introspection made his point in the debates that the consultations referred in the Articles above did not amount to 'veto power' –that would be a disaster to democracy since it vests unrestricted and unlimited power to a single person which is evident from his speech, "our judiciary must both be independent of the executive and must also be competent in itself. And the question is how these two objects could be secured"[13]

Process of appointment

Whenever a vacancy for the office of judge is created in the Supreme court, the Chief justice would intimate the same to the Ministry of law and justice and recommends a suitable person, if the Minister concurs with the recommendation, the minister with the concurrence of the prime minister advices the president to appoint that person. If the minister does not concur which may deem fit to the situation with the recommendation, he may suggest another person. For the appointment of high court judges, the recommendation starts from the chief minister of a particular state where there is a permanent vacancy is created, to the ministry of home affairs, wherefrom it is communicated to the chief justice and concurrence of prime minister is also obtained at this stage. Once Chief Justice and the Prime Minister concur on the recommendation, advice the president to appoint the recommended person. For the appointment of Chief justice it the same process only the origin of recommendation changes[14]

[12] See Constituent Assembly Debates24th and 27th of May, 1949, http://parliamentofindia.nic.in/ls/debates/debates.htm
[13] Dr B.R. Ambedkar, Reply to the debate on the draft provisions of the Constitution on the Supreme Court, (24-5-1949), in Constituent Assembly Debates, Vol. VIII, 258
[14] See The method of appointment of judges, Eightieth Law Commission report, p.16, 1979

Law Commission of India in its 14th report titled 'Reform of Judicial Administration' raised concern on the mode of appointment in the constitution and in practice is influenced by politics and this is surely eroding the independence of the judiciary. This is the time for the realization of the warnings of Dr Ambedkar regarding this issue[15] and it is pertinent here that the judiciary itself, through its representatives, was best placed to decide on its composition, and thereby secure judicial independence.[16]

This present practice since the enforcement of the constitution, the appointment procedure of president on the advice of the council of ministers and consultation of other judges, the entire process took place "behind the doors".[17]

Present practice

The collegium system is the present way of appointing judges. It is generally "judges appointing judges". This was a product of presidential reference to the Supreme court in 1998 [18]was adopted from that time until now. This practice could be asserted as retaliation to the executive's power play in various instances[19]. This is not considered to be perfect and balanced since it promoted aristocracy and elitism. It is ironical to note here that Supreme court is well aware of the setbacks of the collegium and while striking the NJAC it admitted that there were some "serious issues".[20]

IV Judicial Appointment-The Road Not Taken

There have been two different crucial phases in relation to judicial appointments before NJAC. First: the phase of executive-led appointments (1950-1993) and Second: the collegium mode of appointment of judges (1993-2014).[21]

[15] Supra note 13
[16]JUDICIAL APPOINTMENTS IN INDIA: CONSTITUTIONAL PROVISIONS, Soaham Bajpai, Teaching & Research Associate of Law, Gujarat National Law University, Gandhinagar
[17] See more infra note 22.
[18] Special Reference No. 1 of 1998, In re, (1998) 7 SCC 739.
[19] S.P. Gupta v. Union of India, 1981 Supp SCC 87; see also Prime Minister Indira Gandhi had appointed several Judges, arousing criticism and dissent from judiciary as well as from general public.
[20] Supreme Court Advocates-on-Record Assn. v. Unionof India, (2016) 5 SCC 1.
[21] Supra note 11.

Presidential reference

In 1998, president K.R.Narayanan referred to the Supreme court and sought opinion in regard to issues pertaining to appointment of Supreme and high judges under article 143 of the constitution[22]. Not surprising since judicial appointments were in controversy since the enforcement of the Indian constitution. The law commission in its 14th report had expressed its "indignation" at the way judicial appointments were made.[23] It was due to that Indian constitution (in Article 124 and 217)merely laid down the minimum qualification for appointment as a judge and "there were no norms for the appointment"[24]. Even with presidential reference, the situation was no better since In responding to the presidential reference to it on the appointment of judges, it was highly anticipated that the Supreme Court will once again interpret Articles 124 and 217 of the Constitution. [25]

Power play of politics

Chief justice Gajendragdkar and Subba Rao once said publicly that that almost all the appointments were made in accordance with their recommendations[26]. Those times most of the judicial decisions seldom gave any political implications so it was construed commonly that judicial appointment is an internal matter of the judiciary.

The first-ever time the apex court took over political overtones was in a case[27] where it was held by a thin line majority of 6:5 that "parliament did not have the power to amend the constitution so as to take away or abridge the fundamental rights guaranteed by part III of the constitution".[28] It is much noteworthy here that after delivering this judgment, chief justice Subba Rao resigned immediately and joined the opposition to the ruling party to contest the elections as the presidential candidate, which he failed miserably. But this was not the last episode of the trifled relationship between the parliament and the supreme court. The court's subsequent decisions invalidating the ordinance that

[22] S.P.Sathe, Economic and Political Weekly, Vol. 33, No. 32, pp. 2155-2157(Aug. 8-14, 1998)
[23] See Law Commission of India (1958): 14th Report, Ministry of Law, Government of India.
[24] Ibid.
[25] Supra note 22.
[26] Ibid.
[27] Infra note 28.
[28] Golaknath v India AIR 1967 SC 1643.

provided for bank nationalization and the executive order carrying derecognition of the princes resulting in the abolition of their privy purses intensified the conflict between the parliament and the supreme court.[29]

The black hour

In the 1971 election, Indira Gandhi won more than 2/3 of the seats in Lok sabha. She brought in an amendment[30] to the constitution ulterior to restore to the parliament the unlimited power of constitutional amendment which the Golaknath judgment [31]stripped the parliament off. But eventually, this was also challenged in the famous Keshavanand Bharti case. In this case, a constitutional bench of 13 judges held by 7:6 that "parliament's power of constitutional amendment did not extend to the destruction of the basic structure of the constitution[32]". But this wasn't left as such after all the Indira Gandhi government retaliation was unspeakable, it appointed Justice Ray, who had given an opinion in favour of the unlimited power of constitutional amendment of the parliament since there were three senior-most judges were derogated, who happen to be the authors of the majority opinion of the Keshavanand Bharti case. Next episode of the black hour was in 1976 when chief justice Ray retired. Justice Beg was elevated instead of justice Khanna who was senior-most. This is in nexus with Justice Khanna's opinion in the famous fundamental right case[33]. It even went on to the extent of transferring, terminating services of judges who went against the government. This got even worse when it was coupled with emergency in 1975. "Supersessions and transfers were two swords by the then government for disciplining the judges".[34] But this was not the case all the time. It should be also realized that judges can also be corrupt. One judge of the supreme court was corrupt and was held guilty by the committee of judges appointed under Judges enquiry Act. but he escaped the removal by the parliament because the ruling party bailed him out.

The outbreak of lawyers *(S.P.Gupta case)*

[29] Supra note 22.
[30] The Constitution(twenty fourth amendment) Act, 1971, http://indiacode.nic.in/coiweb/amend/amend24.htm
[31] Supra note 20.
[32] Keshavanand Bharati v Kerala AIR 1973 SC L461.
[33] A D M Jubbalpur v Shiv Kant Shukla AIR 1976 SC 1207.
[34] Supra note 22.

Some lawyers agitated by the scenario of judicial appointments, filed PIL and sought interpretation of the constitutional provisions. The decision in the case[35] was unanimous with regard to the consultations of the president with other judges is to be justiciable, and the court can demand any material proof as to whether real consultations between the chief justice and the government was held, and the decision was divided when it came to as the chief justice won't have any better position in consultations and the ultimate decision was of the government. This decision was no better since the government's discretion in appointments was conceded and such discretion could only be challenged on the ground that it had been exercised mala fide, ironically it wouldn't be easy to prove mala fide on the part of the government [36]in this well established democratic welfare society.

Lawyers didn't stop here. In another case[37] the question of judicial appointments were once again raised in 1993. And to the dismay of the government's discretionary power established in S.P.Gupta case, it was held by a ratio of 7:2 that the consultations with persons must comply with Article 124(2) and 217(1) and the chief justice of India must have primacy overall other opinions. The power conferred to chief justice was not veto since his opinion is formed in consultations with other judges of supreme court[38]

VI Loop Holes

It is to be noted here that the earnings at the bar are said to be at obscene level, yet the judiciary had attracted several men talent and character[39]. Recent and past events have confirmed that something is rotten in the Indian judiciary. Judges going rogue (Justice Karnan case), judges favoring one party (Justice Desai),[40] involvement of crores of money, coercion to favor one party are some of the events that had happened and questions are raised on the credibility of the judiciary as a whole. This credibility roots to the judicial conduct and reputation of the judges, which eventually roots to the judicial appointments.

[35] S P Gupta v India AIR 1982
[36] See supra note 22.
[37] Supreme Court Advocates on Record Association v India (1993) 4 SCC 441.
[38] See supra note 22.
[39] Judging the Judges, Economic and Political Weekly, Vol. 25, No. 24/25 (Jun. 16-23, 1990), pp. 1307-1309
[40] See more supra note 39.

As stipulated in the provisions of Article 124(2) and 217(1), the president will nominate the judges after "consultations" with other senior judges of his "own choice" and this mandatory. The phrases "consultations" and "own choice" are contradicting here since it doesn't indicate by any means that the president must abide by the suggestions of judges. It simply means that if the president doesn't consult others, it is a statutory violation but if he consults and ignore the suggestion and proceed with his own idea there is no violation. It just gives enormous discretion in nominating. This will eventually root to political intervention since the president is much influenced by the prime minister.[41]

The report of law commission reveals that the president's nomination is highly influenced by communal and regional considerations. Quality is the sole criteria for appointment, such external factors have jeopardized the legitimacy of the presidential choice which makes judiciary no better than the executive. [42]

When appointing the high court judges it is evident from the law commission report that the Chief justice had given way to the suggestions of the chief ministers. Though this is in consistent with the provisions of the constitution, this practice was not actually the intention of the framers of the constitution. It is also noteworthy here that some of the great minds of the high courts haven't reached apex court. [43]On occasions, even active politicians have, after electoral defeat, been sent to the high court bench. Such incidents have surely undermined the image of the judiciary which is supposed to remain above politics[44].

The qualification as stipulated under the constitution of India may be perceived as qualifications which eliminate politics in the appointment of judges and are intended to enhance the competence of the judges thus appointed to the highest courts of land on this basis, but one may miss the significance of the words "distinguished jurist" and "in the opinion of the president" paves way for oligarchy of discretionary appointment[45].

[41] See also Nirmalendu Bikash Rakshit, Judicial Appointments, Economic and Political Weekly, Vol. 39, No. 27 (Jul. 3-9, 2004), pp. 2959-2961
[42] Ibid.
[43] See W H Morris, Jones, Government and Politics in India, p 241
[44]Nirmalendu Bikash Rakshit, Judicial Appointments, Economic and Political Weekly, Vol. 39, No. 27 (Jul. 3-9, 2004), pp. 2959-2961
[45] See supra note 2.

As Dr. Dash doubts "even if such a man could be found it is doubtful if he would be viable with those other judges who have been recruited from the bench and the bar". [46]It is to be noted here that the qualification for appointment as to mere presence at the bar no matter what the duration may be and professional competence, doesn't suffice in the future. It may be a fact that till now no judge while in bar had political affiliations but it is a candid fact that Indian bar has a large share for politicians and it is highly likely that once a person consumed by political ideologies, he carries that political bias even when he is elevated to the judiciary.

VII Indian Judiciary & Judiciary Around the World

It is long been envisaged that India judiciary is "apolitical". In the common law countries it is construed that judicial appointment are not controversial since the courts merely enforce the limitations drawn out in the constitution. However it is noteworthy that none have exempted themselves from political influence[47]. The judiciary of England which is the precursor of Indian judiciary, before independence, has been under the influence of political considerations and subsequently are imported into judicial appointments.[48] It had allowed only the appointment by Lord Chancellor who is the governor minister. After 2006 this situation was changed drastically. The nominees would be suggested by an Independent judicial committee which was transparent and statutorily obliged to diversify the range of persons for selection[49]. The lord chancellor holds limited veto power[50]. One setback is that there is no specificity in the qualification of the chairman of the commission. It will be better if the person is from judiciary.

In US judicial appointment are quite straight out of political influences. A nominee for the post had defend himself before a committee of senate and these representations are widely publicized. It is not surprising that American presidents had used this power of judicial appointments to bring in judges who shared their political and social ideologies.[51] To create a balance the nomination by the

[46] ibid
[47] See supra note 22.
[48] See more Griffith, The Politics of Judiciary, Fontana press, London (1997).
[49] See more Judicial appointments: Principles, The Governance of Britain, (October 2007), presented to Parliament by the Lord Chancellor and Secretary of State for Justice by Command of Her Majesty The Queen
[50] See more Judicial Appointments, Courts and Tribunals Judiciary, https://www.judiciary.gov.uk/about-the-judiciary/the-judiciary-the-government-and-the-constitution/jud-acc-ind/jud-appts/
[51]See Supra note 22.

president needs to be approved by the majority vote in the senate.[52] The American model also involves a 15 member committee under provisions of Amercian Bar Association has a function of grading the nominees on their merits so as to ease the process of approval by the senate. Even though the judicial intervention is allowed, its suggestions can be rejected[53].

One of the key characteristic of judge be it anywhere around the world, it is his experience he gets at the expense of the nation. In India it is constitutionally mandatory that judges retire by 65 years of age whereas in America the appointed for their life time or they can choose to retire by 70 years of age[54].

In South Africa a Judicial selection committee comprising of 23 members was set up. Out of 23, 15 are from executive and the chief justice chairs the commission. When it comes to the appointment of specific high court judges, the Premier of the Province together with the Judge President of the Province also sit on the Commission.[55] The appointment is based on "appropriate qualification" and "fit and proper".[56] This may look vague but there would be an interview which tests the candidate's commitment to the constitution by analyzing his support or refrainment for any political decision as judge.[57]

VIII Proposals

Before going into the proposals it is necessary to understand that what is needed is not just an interpretation of the constitutional provisions in regard to judicial appointments, but a constitutional amendment which will check the questions related to appointment of judges like how should the judges be appointed?, who should appoint them?, who should be qualified for such appointments. It also should necessarily check the imbalance of power vested on the CJI and the government because vesting enormous power on government would strip the independence of judiciary and vice versa will shatter the concept of democracy.

National judicial service commission

[52] See Lawrence Baum, The Selection of Justices, The Supreme Court (7th Edn.).
[53] Ibid.
[54] See supra note 2.
[55] Judicial Appointments in South Africa, Middle Temple and SA Conference: Judicial Independence.
[56] The Implication of Judicial Selection, Judicial Selection in South Africa, 13.
[57] The Implication of Judicial Selection, Judicial Selection in South Africa, 20.

It was most awaited proposal which will consist of judges, a representative of the president of India, leader of the opposition, the prime minister and the law minister, a jurist, attorney general of India and some senior members of the bar. In April 7, a three judge bench of the apex court had referred the matter to a five judge constitution bench, the batch of petitions challenging the validity of **National judicial service commission Act** to replace collegium system which is a 20 year old practice. It was signed into an act by former President Pranab Mukherjee on Dec 31, 2014.[58] The constitutional bench by a majority of 4 against one declared NJAC unconstitutional as it violates the basic structure doctrine [59]of the constitution subsequently striking down the 99th amendment[60]. As described in the judgment it is composed of "(a) the Chief Justice of India, Chairperson, ex officio; (b) two other senior Judges of Supreme Court, next to the Chief Justice of India – Members, ex officio; (c) the Union Minister in charge of Law and Justice – Member, ex officio; (d) two eminent persons, to be nominated – Members. If the inclusion of anyone of the Members of the NJAC is held to be unconstitutional, Article 124A will be rendered nugatory, in its entirety". [61]It was held that clauses (a) and (b) of Article 124A(1) is inconsistent with the principle of "independence of the judiciary", clause (c) impinges independence of judiciary as well as "separation of powers" and clause (d) was violative of the "basic structure".

The drastic shift that took place in the manner of judicial appoints recounts to 1981, when Supreme court declared executive primacy over judicial appointments[62], in 1998 judiciary getting the primacy [63]and in 2015 once again judiciary had withheld its primacy thus claiming "independence of judiciary upheld". At this context it is construed that there is a need for a structure a more viable, just and acceptable process of judicial appointments.[64]

Collegium system of appointments

[58] NJAC Unconstitutional, *Live Law,* http://www.livelaw.in/njac-unconstitutional-constitution-bench-41-2/
[59] Supra note 24.
[60] Supreme Court Advocates-on-Record Assn. v. Unionof India, (2016) 5 SCC 1.
[61] Ibid.
[62] S.P. Gupta v. Union of India, 1981 Supp SCC 87.
[63] Special Reference No. 1 of 1998, In re, (1998) 7 SCC 739.
[64] Judicial Appointments in India-A critical Analysis, Shivkrit Rai & Nipun Arora, http://blog.scconline.com/post/2017/05/23/judicial-appointments-in-india-a-critical-analysis/#_ftn1

The collegium system was established in reference to the presidential reference[65] in 1998. It was held in the case that judiciary will be having the primacy, the chief justice along with immediate senior most judges of supreme court would play a primary role in appointments and the executive's role was minimum. Here the judges had interpreted the provisions of the constitution to the extent that it would definitely never depict the intention of the framers. If the framers actually meant a collegium system, they would have explicitly framed it that way. The collegium was not more than self-oligarchy which depicted aristocracy and elitism. This will pave way for favouratism and vise-versa[66]. The legislature claiming to balance the extreme power accumulation in judiciary or executive and bring transparency by NJAC eventually failed[67]. NJAC was not so as it was claimed to be since there was an issue of non-clarity over the phrase "prominent citizens". Questions like who will be prominent citizens and gave biased reliance towards the executive and lacked the representation from the judiciary. Thus it was highly criticized to be not neutral.[68]

IX Conclusion

"the great tides and currents which engulf the rest of men do not turn aside and pass the judges by"

- Justice Cardozo(US Supreme court)

While the importance of independence of judiciary is important, its accountability is no less important.[69] Judges cannot be apolitical, they have to be politically neutral[70]. The high status enjoyed by the judges in a way is not because of constitutional provisions but the actions and conduct of the predecessors of the present occupants of the post[71]. This is due to failure of adopting a code of conduct. Successive chief justices' conferences have thoroughly resisted the suggestion of code of conduct reasoning that formulation of code of conduct is inconsistent with the dignity of high offices of judges. In view of the recent events it is no longer possible and detriment of time

[65] Supra note 43.
[66] See Prashant Bhushan, The Dinakaran Imbroglio: Appointments and Complaints against Judges, 44 EPW 10 (2009); See also Indira Jaising, National Judicial Appointments Commission – A Critique, 49 EPW 6 (2014).
[67] Supra note 40.
[68] See C. Raj Kumar & Khagesh Gautam, Questions of Constitutionality – The National Judicial Appointments Commission, 50 EPW 42 (2015). See also, Indira Jaising, National Judicial Appointments Commission – A Critique, 49 EPW 6 (2014).
[69] Supra note 22.
[70] Ibid.
[71] See supra note 31.

resources to pretend to uphold it will diminish the high dignity or status[72]. If this image is tarnished by recent events, it would definitely lose to attract lawyers of caliber and men which will eventually contribute more to the deterioration of the judiciary. It will also be threatened by executive which was evident in the 1975 internal emergency. It could be said to some extent that the image of the judiciary is destroyed by the members of judiciary itself which is evident from the NJAC Judgement though the pressures from outside can't be underestimated. Even the criticism of a high court judge in his administrative capacity had been held contempt of court by supreme court[73]. Well begun is half done is a famous quote. Applying this, if the judicial appointments were good enough there wouldn't be any questions on the credibility of the judges and various events of the past and present exposed the unbecoming conduct and reputation of judges could have been prevented ultimately the Indian judiciary, subsequently upholds the faith of the common people over the judiciary which is their last hope of justice.

[72] Ibid.
[73] Baradkant Mishra v. Registrar of Orissa high court 1974-1 SCC 374.