

THE INFLUENCE OF CASTE IN JUDICIAL APPOINTMENTS

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ABSTRACT

The judiciary's job is to decide cases according to the letter of the law. Legislation gives the judiciary enough latitude to exercise independent judgement and do justice to the particular factual circumstances in each case, even while the law establishes broad regulations. In using their discretion, judges are guided by their own worldview and life experiences. Our heterogeneous society, where each person has a different political viewpoint based on several types of hierarchy, cannot be appropriately represented by the judiciary's monolithic, uniform perspective. In India, caste has a significant impact on the development of the socio-political hierarchy and is taken into account from the time of an individual's birth till their passing. The judiciary is not spared from this caste-based prejudice either. For instance, it has been noted by many that the privilege of the predominantly upper-caste judiciary, which does not understand the routine violence and systemic oppression meted out to lower caste communities, is largely responsible for the low rates of conviction for crimes committed against members of the Scheduled Caste and Scheduled Tribe communities. Numerous studies have also shown that marginalised socioeconomic groups, particularly SC and ST individuals, are more adversely affected by death sentence convictions. Using these conclusions as a guide, this essay aims to assess the statistical representation of judges from SC and ST populations in the legal system and determine whether their underrepresentation or absence affects how courts issue judgements. This paper also critically looks at how caste played a decisive role in appointment of judges to Supreme Court of India, based on Indian legal history and puts forward a new way out to have adequate representation of these depressed communities based on international practices followed in judicial appointments. The Indian courts have frequently expressed criticism of the reservation regime in recent years, which has served to legitimise the upper caste narrative and language around caste and reservations. Even though caste-based reservations have never been held to be illegal by the courts in any of these cases, the ongoing judicial scrutiny of reservations shows how majoritarian myths have influenced caste and reservations. How many generations will there be in which reservations are made? It also shows a certain judicial bias in favour of upper caste prejudice against reservations when suggestions are made to create quota policies based on economic reasons. These opinions can be diluted or dismissed in the public domain when they are presented as dialogue.

The judiciary is not spared from this caste-based prejudice either. For instance, it has been noted by many that the privilege of the predominantly upper-caste judiciary, which does not understand the routine violence and systemic oppression meted out to lower caste communities, is largely responsible for the low rates of conviction for crimes committed against members of the Scheduled Caste and Scheduled Tribe communities. Numerous studies have also shown that marginalised socioeconomic groups, particularly SC and ST individuals, are more adversely affected by death sentence convictions. Based on Indian legal history, this essay also critically examines how caste played a significant role in the appointment of judges to the Supreme Court of India and suggests a novel solution to ensure adequate representation of considering the worldwide standards used for judge nominations, these depressed communities.

Keywords: Caste, Judicial Appointments, Indian Judiciary, Scheduled Caste and Scheduled Tribe communities

1:INTRODUCTION

Any democratic constitution must have an independent and impartial judiciary. The administration of justice and the interpretation of the Constitution and other laws must be done by the court without fear or favour in order for it to successfully execute its constitutional right to judicial review. The appointment of judges, their terms of office, their relationships with other governmental entities, the judiciary's independence from the executive branch's influence and interference, as well as other comparable issues, are crucial in preserving the independence and integrity of the judicial system. The Supreme Court was asked to review the appointment of judges in the higher judiciary in a number of cases, which led to the establishment of the "Judges Collegium" to make recommendations for judicial appointments in the higher judiciary. This body is now intended to be replaced by the "National Judicial Appointments Commission" through an amendment to the Constitution as well as a separate enactment. This essay reviews and evaluates the constitutional framework, the National Judicial nominations Commission, which the Supreme Court later ruled was unconstitutional, and the two-decade-old Judges' Collegium system for judicial nominations.

1.1.JUDICIAL APPOINTMENTS UNDER THE INDIAN CONSTITUTION

According to Articles 124(2) and 217(1) of the Indian Constitution¹, the President may appoint the Chief Justice of India, other Supreme Court judges, and judges of the High Court after consulting with the Chief Justice of India, the Governor of the State, and the Chief Justice of the High Court, as well as any other judges of the Supreme Court and High Courts in the States that the President may deem necessary for the purpose. (except when the Chief Justice of the High Court himself is to be appointed). In addition, before appointing any judges other than the Chief Justice, the President must always contact the Chief Justice of India.

It is important to notice some of the criticisms and recommendations made by academics and members of the Constituent Assembly when formulating the aforementioned clauses of the Constitution at this point. Justice H. J. Kania, a former Chief Justice of the Federal Court, emphasised that, in order to avoid the influence of provincial politics in the selection process and to ensure the independence of the judiciary, the Chief Justice of the High Court should be in direct contact with the Governor when appointing High Court judges.

Additionally, it was suggested that the Chief Justice of India and the President should agree before the President appoints a High Court judge. In the instance of the appointment of Supreme Court judges, a similar clause was proposed. When the Constitution was being drafted, many recommendations of this nature were made, but the Drafting Committee rejected all of them. Mehboob Ali Baig Sahib, a member of the legislature, attempted to submit an amendment that would have required the Chief Justice of India's approval before any judge could be appointed, but it was denied.

¹The Constitution of India, Article 124(2) and , Article 217(1)

The chairman of the drafting committee, Dr. Babasaheb Ambedkar, referenced the executive- controlled practise of appointments in England and the executive-legislative model of judicial appointments (appointment by the executive with the approval of the Senate) in the United States while discussing the issue of judicial appointments. He came to the conclusion that:

Giving the President complete discretion to nominate people only on the advice of the executive of the day, without any restrictions or limitations, would be perilous. In a similar vein, I don't think it's a very good idea to require the legislature's approval for any appointments the administration chooses to make. In addition to being time-consuming, it raises the chance that political pressure and other political factors could affect the appointment. Therefore, the draught article takes a midway road.

The ideas were turned down, and the clause was kept in its current form and added to Articles 124 and 217 of the Constitution. According to Article 124(2)² of the Constitution, the Chief Justice of India must always be consulted when the President appoints a judge other than the Chief Justice of the Supreme Court, along with any other judges of the Supreme Court and the High Courts in the States that the President may deem necessary for the appointment.

This shows that, as long as consultation is conducted as necessary, the Constitution gives the President—effectively, the Central Government—the authority to designate Supreme Court judges.

According to Article 217 (1)³ of the Constitution, the President must consult with the Chief Justice of India, the Governor of the State, and, in the event that a judge other than the Chief Justice is to be appointed, the Chief Justice of the High Court. This shows that the Central Government also has the authority to appoint judges to High Courts, but that this authority can only be used after consultation with the Chief Justice of India, the Governor of the State, and the Chief Justice of the High Court.

The aforementioned constitutional provisions state that the President must appoint Supreme Court justices on a temporary basis following consultation with the Chief Justice of India, other justices of the Supreme Court, and, if he so chooses, judges of the State's high courts. It's because the Chief Justice of India might be absent from one of the nation's provinces and might not be able to make recommendations for Supreme Court judges. The Chief Justice alone would not be able to provide the President with the guidance they required; instead, the President would need to speak with the judges of the several High Courts. It also implies that the outgoing Chief Justice should not be consulted when appointing the Chief Justice who would be his successor; rather, the President should consult the puisne justices because no one of a higher rank may be consulted than the Chief Justice.

² The Constitution of India, Article 124(2)

³ The Constitution of India, Article 171(1)

However, there is no justification for not consulting the current Chief Justice while choosing the next Chief Justice of India. However, the recently revised Memorandum of Procedure for Appointment of Chief Justice of India and Supreme Court Judges stipulates that the senior-most Supreme Court Judge must be deemed qualified to serve in the position as well as the Union Minister of Law, for the selection of the new Chief Justice of India, Justice and Company Affairs must get the advice of the departing Chief Justice of India. The Chief Justice and any other judges the Central Government may feel the need to consult are only constitutional functionaries with a consultative role, according to the Supreme Court's ruling in S P Gupta, and the Central Government alone has the sole and exclusive power to appoint them. However, later legal rulings have rejected this particular view.

1.2 RESEARCH PROBLEM

India is a cultural diversity nation. Different caste, religion, regionality people resides here. As we know Article 16 says about the equal opportunity to all citizens. But India being home of all types of people creates confusion during appointments in public sectors. This shows the problems faced in judicial appointments due to reservation.

1.3 LITREATURE REVIEW

The Supreme Court is primarily made up of Brahmins and members of the upper class, according to **Justice Krishna Iyer**, who wrote about the influence of caste in judicial appointments (above). (no Scheduled Caste judge had been appointed to the court at that time). Justice AP Sen came to the opposite conclusion, believing that judges' backgrounds have an impact on their judgements. Brahmin justices from Bombay have been given preference at the Supreme Court since Chief Justice PB Gajendragadkar's tenure,

according to Justice Madon. His anger towards Chief Justice [YV] Chandrachud for wanting to appoint Brahmin judges from Bombay to the Supreme Court looked to be particularly directed at Chandrachud. He claimed that many High Court Chief Justices had caste-based considerations in their recommendations for judicial appointments, and that it wasn't just the government that did this.

"Over 50 years of progress in education, however tardy, has certainly produced adequate number of persons of the SC, ST, and OBC in every State who possess the necessary qualification having necessary integrity, character, and acumen required for judges of Supreme Court and High Court for appointment as judges of the supreme court," writes former **Chief Justice of India Justice M. N. Venkatachaliah, chairman of the National Commission to Review the Working of the Constitution (NCRWC)**.

Justice Khalid, a Kerala native from the Kannur state, said the Supreme Court's Brahmin majority in 1988 and indicated that Chief Justices Chandrachud and Pathak preferred Brahmin judges. Justice Hidayatullah said that Nehru pushed him aside in favour of

Wanchoo, a Kashmiri Brahmin, despite the fact that his name was put forward for nomination to the Supreme Court before those of Justices K Subba Rao and KN Wanchoo.

1.4 SCOPE OF THE STUDY

The scope of this research paper, however, is not to argue the merits of this secretive collegium system or executive primacy in appointing judges. Rather, it seeks to explore what are the criteria, both written and unwritten, used to determine who should be appointed as a judge, whoever be their selecting authority.

1.5 OBJECTIVE OF THE STUDY

- To research how caste was a deciding factor in judges' nomination to the Indian Supreme Court
- To investigate the influence of Brahmins on judicial appointments

1.6 RESEARCH QUESTIONS

1. What do the statistics suggest about Brahminic influence on judicial appointments?
2. What are the "unwritten" criteria of gender, religion, caste and regionality in appointments to the Supreme Court ?

1.7 HYPOTHESIS

The Indian Supreme Court is responsible for ensuring the protection of civil rights for all Indians in its capacity as an activist court in a nation where the Constitution grants and guarantees fundamental rights to the most persecuted and underprivileged of its residents. In order to achieve the best results in terms of a Court tilted more in favour of Non-Brahmins (non-elites) than Brahmin justices, it appears that the Court - or the Chief Justice - would be more likely to assign judges to cases based more on their caste identification than their jurisprudential experience. (elites).

1.8 RESEARCH METHODOLOGY

The descriptive and critical analysis methods are used throughout this research paper. Both primary and secondary data are used as the study's foundation. The primary sources for this paper's construction were statutes, court decisions, and books, while secondary sources included articles, blogs, websites, and journals. All of these facts have been used to comprehend the context of the study and to help formulate the

research questions. In-depth research for this research paper was made possible by these facts or sources, which also aided in the work's comprehension of the present social situation related to the research issue. Since the focus of this study is primarily on already-existing circumstances and rules, no field research has been done.

II: What do the statistics suggest about Brahminic influence on judicial appointments?

It is clear that caste bias has a significant impact and negatively affects the process for delivering judgements. Some scholars contend that the only way to address biases and prejudices based on caste, class, religion, gender, and sexual orientation is for judges to remedy their own mistakes. In addition to self-correction, Dalits and Adivasis must have enough representation on the benches that hear their cases. Additionally, there is a need for judges from these underrepresented communities to be adequately represented. Because of this, it's vital to consider how caste, rather than the merit argument, determines who is appointed to the judiciary, especially to the High Court and Supreme Court, based on the history of judicial appointments.

There aren't many academic studies on judicial appointments by Indian scholars, such as Rajeev Dhavan and Alice Jacob⁴, S P Sathe, who looked into each judge's background, the rationale for their selection, who appointed whom, and other questions. Despite the collegiums' recent efforts to make their resolutions more widely known, the entire process of appointing judges remains opaque. In addition to the stated requirements outlined by the Indian Constitution, there are numerous other unwritten criteria and considerations that affect the nomination of judges. Caste is a significant factor in it. In the 1980s, George H. Gadbois Jr⁵. conducted research on this topic while conducting in-depth interviews with nearly every judge who served on the Supreme Court of India from 1950 to 1989. He made an effort to sketch each judge's biographical portrait, which is not available in public or even in official archives. Gadbois spoke with 66 judges of the Supreme Court of India, 19 of whom had held the position of chief justice, during more than 116 interviews. Gadbois' investigation revealed that Brahmins, who make up one-ninth of the country's population, possessed 42.9% of the judgeships. Non-Brahmin advanced castes made up 49.4% of the population while OBCs made up just 5.2%. The position of the Dalit and Adivasi communities is appalling; until 1989, they held only 2.6% and 0.0% of the judgeships, respectively.

⁴ Rajeev Dhavan, Alice Jacob, *Selection and Appointment of Supreme Court Judges: A Case Study*, NMTripathi, 1978.

⁵ In February 2017, Gadbois, a professor emeritus in the department of political science at the University of Kentucky, died due to a terminal disease. His typewritten notes survive him

At the highest level, judges have overwhelmingly been Brahmins.

Justice HJ Kania became the Chief Justice of India (CJI) after we ratified the Constitution and gained our independence, and five other judges of the Federal Court were appointed to the Supreme Court. Justices MP Sastri, S Fazl Ali, MC Mahajan, BK Mukherjea, and SR Das were among them. The Federal Court has always had a "Muslim seat," thus the appointment of Justice Fazl Ali satisfies this requirement. So, the judges were all upper caste Hindus and one Muslim. Two of them were Brahmins. (Sastri and Mukherjea JJ). Therefore, 2 out of the first 6 judges, or 33.33%, were Brahmins. Following this, Justice N Chandrasekhara Aiyar was appointed as the first addition, bringing the total to 3. Therefore, 3 out of 7 judges, or 42.85%, were Brahmins.

This demonstrated that the Supreme Court had a predetermined, covert percentage earmarked for Brahmins. This unstated quota for Brahmins has been kept in place up to this point.

At least 14 of India's 47 Chief Justices to date have been Brahmins.

The whole Supreme Court vowed to quit following the sudden death of Justice Kania. As CJI, Justice Patanjali Sastri appointed Justice TL Venkatarama Ayyar to the Supreme Court, preserving the balance of power and Brahmin representation. As a result, at least 13 Brahmins have served as Chief Justices of India out of the country's 47 Chief Justices to date. (Justices Sastri, BK Mukherjea, PB Gajendragadkar, KN Wanchoo, AN Ray, YV Chandrachud, RS Pathak, ES Venkataramaiah, Sabyasachi Mukherjee, Ranganath Misra, MN Venkatachaliah, Dipak Misra and SA Bobde). This accounts for about 27.6% of all CJIs to date. We will have had at least 15 Brahmin CJIs by the time the 50th one is chosen. Brahmins will make up a percentage of the Chief Justices around 30% then.

After a change, the Supreme Court might have had up to 14 judges between 1950 and 1970. The number of Brahmin judges significantly increased throughout this time period. Justice B. Jagannadhadas, TL Venkatarama Ayyar, PB. Gajendragadkar, K.N. Wanchoo, N. Rajagopala Ayyangar, J.R. Mudholkar, V. Ramaswami, J.M. Shelat, V. Bhargava, CA. Vaidialingam, and AN. Ray were the individuals appointed.

A substantial rise in the number occurred between 1971 and 1989. During this period, Justices DG Palekar, SN Dwivedi, AK Mukherjea, YV Chandrachud, VR Krishna Iyer, PK Goswami, VD Tulzapurkar, DA Desai, RS Pathak, ES Venkataramaiah, RB Misra, Sabyasachi Mukherjee, RN Misra, GL Oza, LM Sharma, MN Venkatachaliah, S Ranganathan and DN Ojha were appointed. All of them were Brahmins. Naturally, there were other upper caste candidates appointed as well, but no caste had such a high representation.

There were 17 Supreme Court justices in 1988, and nine of them were Brahmins. (Justices RS Pathak, ES Venkataramaiah, S Mukharji, RN Misra, GL Oza, LM Sharma, MNR Venkatachaliah, S Ranganathan and DN Ojha). The Supreme Court now has more than 50% Brahmin participation as a result.

It goes without saying that this has occurred numerous times. The following few appointees after Justice DN Ojha were non-Brahmins, suggesting that it was only after this that it was possibly realised that Brahmins are over-represented. The fact that B Shankaranand and P Shiv Shankar, who belonged to the Scheduled Caste (SC) and Other Backward Classes (OBC) communities, respectively, served as the Law Ministers in 1988 and 1989, may have partly contributed to this. Despite this, 7 out of 25 judges (28%) were Brahmins at the end of 1989.

No judges from the OBC or SC communities existed prior to 1980. Many castes are still without representation, despite Brahmins continuing to have the most representation among judges at the highest level. For instance, the Gurjar group has only ever had one judge from the Supreme Court, Justice BS Chauhan. It is significant to note that there may have been even more Brahmin sitting High Court justices who received offers and were in the running to become Supreme Court judges. Numerous people would have declined for various reasons.

It should be noted that until 1980, neither the OBC nor the SC group had a judge.

In terms of Scheduled Castes, the first SC person was appointed as a Supreme Court judge only in 1980. (Justice A Vardarajan). After 30 years of independence, something happened! Justice BC Ray of the same village "replaced" him two months after he retired. This may have been the beginning of one judge from the SC community's covert representation. The first member of the SC community to serve as Chief Justice of India was Justice KG Balakrishnan. Future Chief Justice of India from the SC community is Justice BR Gavai.

However, there have been several irregularities in the application of this one seat representation.

At the Supreme Court, the Brahmin quota has consistently been between 30 and 40 percent.

At least the following 27 judges are Brahmins at the moment: Justices V Ramasubramanian, Indira Banerjee, DY Chandrachud, SK Kaul, and UU Lalit. In 2022, two of these are slated to become Chief Justices. Justices Ashok Bhushan, Navin Sinha, and Krishna Murari are three of the Kayastha judges.

Justices MR Shah, Hemant Gupta, Vineet Saran, Ajay Rastogi, and Dinesh Maheshwari are among the at least five Baniya/Vaishya judges.

According to Gadbois, "the typical explanation for the overrepresentation of Brahmins is that they were the privileged group prior to the British arrival, that they were the first to learn English and take advantage of modern education, and as a result, they quickly secured high positions in the professions, particularly law where English was the language of the courts.

Prior to independence, Scheduled Castes and Tribes did not receive any English-language schooling. Those who would eventually be classified as OBC weren't much better off. There were no Scheduled Tribes judges among the almost 400 high court judges in 1983, according to the then-law minister who testified before the legislature. Using information from *The Hindustan Times*⁶, Gadbois⁷ concluded his discussion of the influence of caste on judicial appointments by stating that there isn't enough evidence to conclusively show that Brahmins were given preference because of their caste. He also made the counterargument that judges of higher rank aren't necessarily representative of the social structure of their countries.

⁶ Ibid.

⁷ 17th August 1983.

But what Justice V R Krishna Iyer has said in his book *Law Versus Justice*¹⁹ contradicts Gadbois's assertion that Brahmins and other forward castes receive preferential treatment in judicial appointments. According to Krishna Iyer, who wrote: "I remember one Chief Justice telling me long ago that he owed his position to his caste and family, it is clear how judges are chosen.

The significance of including underrepresented communities in the selection of judges' panels

Some ministers had a significant impact on the selection of SC and OBC judges. Law Minister Shiv Shankar, an OBC, submitted a letter to the top justices of the high court in August 1980 pleading for the appointment of additional Scheduled Caste and Schedule Tribe judges⁸. Due to his insistence on nominating judges from the Scheduled Caste community, B. Shankaranand, a member of the SC community⁹, who was the law minister at the time, delayed several appointments in 1988. This delay contributed to Justice S. R. Pandian, an OBC judge, being nominated to the Supreme Court¹⁰. Additionally, Chief Justice Pathak informed Gadbois that the same B. Shankaranand had delayed the nomination of N.P Singh who is a Bhumihar Brahmin because he wanted justices from the Scheduled Castes to be nominated to the Supreme Court.

⁸ Granville Austin, *Working a Democratic Constitution: A History of the Indian Experience* (New Delhi: Oxford University Press, 2003 reprint).

⁹ Interview with Justice Y.V. Chandrachud (8 December 1988)

¹⁰ Interview with Chief Justice R.S. Pathak (22 December 1988)

III: Exploring the “unwritten” criteria of gender, religion, caste and regionality in appointments to the Supreme Court

India is one of the few democracies where judges can appoint judges using a custom body of law they have developed themselves. There is a collaborative procedure between the Executive and the Judiciary in selections, according to Articles 124 and 217 of the Indian Constitution, which respectively control appointments to the Supreme Court and High Courts. The collegium system of nominations has been established, nonetheless, thanks to constitutional interpretations crafted against the backdrop of fierce power struggles between these two pillars of the State. The Constitution's guidelines are restricted to

Articles 124 and 217, which call for the "written" eligibility of Indian citizenship and a specific set of professional qualifications, such as a specific number of years of experience as a judge or an advocate. These standards hardly go far enough in explaining the appointment processes of the many judges throughout history. As a result, in addition to these clearly stated criteria, the evolution of the Indian court over time has made certain "unwritten" factors like gender, religion, caste, and area more apparent. In an effort to contextualise the claim of judicial independence, I shall quickly discuss the four "Judges cases" from the 1980s and 1990s.

The current Collegium system resulted from a period of disagreement with the executive. The famous Kesavananda Bharati case ¹¹of 1973 was the last of several verdicts against the union government that led to "punitive" supersessions of judges during the 1970s.

The word "punitive" should be used with caution because, while it was constitutionally permissible for the executive to name the Chief Justice it wished, this was not the practise. The seniority norm, an unwritten criterion that the senior most puisne judge becomes the next Chief Justice, had never been deviated from, with limited exceptions (such as in the case of Justice Syed Jafer Imam, who was to become Chief Justice of India [CJI] following Justice

B.P. Sinha's retirement, but was persuaded to resign by then Prime Minister J.L. Nehru due to his ill health, and physical and mental incapacitation. Justice P.B. Gajendragadkar, the next- most senior judge, was appointed CJI. After that, the custom had evolved into an unwritten rule. In 1973, the Supreme Court displeased the ruling administration by concluding in Kesavanda Bharati that while Parliament had the authority to change the Constitution, it could not alter its "basic structure." As a result, the seniormost justices who wrote the majority verdict, Justices J.M. Shelat, K.S. Hegde, and A.N. Grover, were punitively superseded, and Justice A.N. Ray, whose dissenting opinion supported the administration, was named the next Chief Justice of India. All three of the replaced judges submitted their resignations.¹

The state of emergency was declared in 1975, and the subsequent period was notable for the suppression of fundamental rights, restrictions on media coverage, and politically motivated arrests of dissenters, as well as wholesale transfers of judges at the government's direction.

¹¹ Kesavananda Bharti case 1975

The four Judges Cases were determined against the turbulent backdrop of the executive and judicial branches' relationship.

The first Judges case, also known as S.P. Gupta v. Union of India (1981)¹², discussed the appointment of additional judges to the High Courts under Article 217.(1). The Supreme Court's Constitution bench of seven judges ruled in this case that the executive branch alone has the authority to nominate judges. According to the Article's text, the President effectively referred to the union government, whose power was given precedence, with the Chief Justice of India, the Governor, and the Chief Justice of a high court being the only officials entitled to meaningful consultation. Where the consultation procedure differed, it was up to the union government to decide whether or not an appointment should be made.

Regarding the likelihood that a plan under Article 217(1) would weaken the independence of the judiciary, the court decided that this issue needed to be resolved within the Constitution's core framework. In this regard, the court noted that while it must be protected from the executive's effects and other external pressures, complete isolation could give rise to a "ivorytower attitude."

The second Judges case, also known as Supreme Court Advocates-on-Record Association v. Union of India (1993)¹³, largely overturned its predecessor and determined that the Chief Justice of India had priority in the selection of judges as well as the consultative procedure under both Articles 124 and 217. Since the Chief Justice of India's opinion had to be followed, no judge could be appointed to the Supreme Court or the high courts. Due to the inclusion of the perspectives of two brother judges, this viewpoint was referred to as

being multifaceted in character. As a result, a developing collegium structure was created.²

The religion and caste of all judges chosen to the higher judiciary are not at all well- documented in authoritative literature, notwithstanding how easily it is anticipated that a discussion on this unwritten criterion can occur. Other than the list of names of the judges appointed (from which it is necessary to infer the majority of information on gender, religion, and caste), the specifics of the current and previous high courts, and finally tenure, no official record is kept on any basis. In response to requests and letters made under the Right to Information Act, the government asserts that because appointments to the Supreme Court and High Courts are made in accordance with Articles 124 and 217, which do not specify any criteria for any form of reservation, it does not keep a database of such information about the appointees.

¹² S.P. Gupta v. Union of India (1981)

¹³ Supreme Court Advocates-on-Record Association v. Union of India (1993)

CONCLUSION

The aforementioned statistics show how backward groups in society are still institutionally marginalised. The Collegium's actions, whether made by commission or omission, lack any discernible pattern. People from higher castes or classes have been appointed across all religions. The oppressed lack adequate representation before the highest court. Other "known but hidden" elements like political relationships, descent from legal or judicial dynasties, etc. cannot be denied.

The National Judicial Appointment Commission or the Collegium System, appropriate representation of judges from SC and ST groups is urgently needed. It is crucial not only because the Supreme Court of India needs to be more representative, but also because, as is clear from many of the cases discussed above, the underrepresentation of judges from these communities at the highest levels of the judiciary is negatively affecting the system for delivering judgements in a number of different ways. Therefore, reserving for underrepresented communities like SC and ST communities must be introduced as recommended by the Kariya Munda committee and reiterated by the National Commission for Scheduled Castes in 2011. This is necessary for the top level of Indian judiciary to administer justice more effectively. The idea of an All-India Level Judicial Examination should also be taken into consideration, but it's important to make sure that underrepresented communities are represented.

2. REFERENCES

STATUTES

- The constitution of India, 1950

CASE LAWS

- Kesavananda Bharati case
- S.P. Gupta v. Union of India (1981)
- Supreme Court Advocates-on-Record Association v. Union of India (1993)

ARTICLES AND JOURNALS

- Caste and Judiciary: Looking for Dalit and Adivasi Judges in Supreme Court of India, by Adv C Ahamed Fayiz
- JUDICIAL APPOINTMENTS MECHANISM IN INDIA AND INDEPENDENCE OF JUDICIARY - A CRITICAL ANALYSIS Dr. Harunrashid A. Kadri
- Disproportionate representation at the Supreme Court: A perspective based on Caste and Religion of

judges, by Namit Saxena

- Caste of Indian Courts – What Is Wrong With The Indian Judicial System?, by Jayanti Pathri

WEBSITES

<https://www.roundtableindia.co.in/caste-and-judiciary-looking-for-dalit-and-advansi-judges-in-supreme-court-of-india/>

<http://ncsc.nic.in/files/Reservation%20in%20Judiciary.pdf>

<https://m.economictimes.com/news/india/no-provision-for-reservation-in-judiciary-kiren-riju/articleshow/97771126.cms>

<https://pib.gov.in/PressReleasePage.aspx?PRID=1812040> <https://www.clearias.com/judicial-appointments-in-india/>

<https://www.legallyindia.com/supreme-court/judiciary-remains-a-major-brahmin-bastion-no-sc-st-judge-has-been-elevated-to-apex-court-in-7-years-20180124-9045>

<https://theshudra.com/trending/why-only-few-castes-dominate-the-indian-judiciary-big-question-arose-after-the-caste-wise-list-of-judges-out/>

