

**EDITORIAL: WHAT MAKES A JUDGE? UNDERSTANDING
SUPREME COURT'S DECISION IN ANNA MATHEWS V.
SUPREME COURT OF INDIA**

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“The great tides and currents which engulf the rest of men do not turn aside in their course and pass judges by.”

- Justice Benjamin Cardozo

INTRODUCTION

The celebrated quality of any democratic institution is that it places the responsibility of checks and balances, against arbitrariness and injustice, in procedures rather than on people. Such an endeavour is based on the notion that any democratic polity must be governed by the rule of law and not by the whims of the people. However, we often come across allegations of arbitrariness against such institutions, perhaps because ultimately the responsibility of their functioning falls in the hands of humans, and to err is human, in both wilful and negligent ways. One such instance was the judgement of the Supreme Court of India (“**the Supreme Court**”) in the case of *Anna Mathews v. Supreme Court of India*² (“**Anna Mathews**”), wherein a challenge was made to the appointment of Justice Victoria Gowri to the Madras High Court on the basis of her past political links to the then government and the alleged discriminatory statements made against certain

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² *Anna Mathews v. Supreme Court of India*, (2023) 5 SCC 661.

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minority communities.³ The judgement which followed, dismissed this challenge and allowed for her appointment, leading to a series of criticisms against its rationale, the functioning of the Collegium system responsible for the appointment of judges in India, and the lack of fairness and reasonableness in the process. Furthermore, the concerns pertaining to purportedly unjust/unfair appointments were aggravated after the pronouncement that judicial appointments are not subject to judicial review on the grounds of “suitability” of a prospective candidate, by the Supreme Court of India. This led to doubts regarding thorough examination of political and other biases in a candidate inferred *via* their past conduct and whether the same should be ignored, leaving only the mechanical eligibility of a prospective candidate as the sole criterion for appointment through the Collegium system, as prescribed under Article 217 of the Constitution of India.

This becomes a matter of paramount importance, especially in an era where the legislature’s effectiveness as a check on the executive has decreased owing to the overwhelming majority and diminishing representation of opposition in the legislature. Therefore, the appointment and presence of qualified judges becomes crucial to ensure the democratic nature of the State.

The present editorial aims to analyse and address these issues, wherein *first*, it will evaluate and critique the rationale provided by the Supreme Court in *Anna Mathews*, arguing in favour of examining the suitability of a candidate in the process of judicial appointments. *Second*, it shall address the concerns regarding violations of administrative law principles in the current structure and procedures of judicial appointments by the Collegium system and the subsequent claims for judicial review of the same.

ANALYSING THE RATIONALE OF ANNA MATHEWS

³ The Wire Staff, *Victoria Gowri Takes Oath as HC Judge; ‘Not Entertaining Writ Petitions’ Against Appointment, Says SC*, WIRE (Feb. 07, 2023), <https://thewire.in/law/supreme-court-victoria-gowri-petitions>.

In *Anna Mathews*, the Supreme Court essentially places a limit on the scope of judicial review of judicial appointments made by the Collegium. This is done by the Supreme Court by drawing a distinction between “eligibility” and “suitability” of a candidate, stating that the “*evaluation of the worth and merit of a person is a matter entirely different from eligibility of a candidate for elevation.*” The Supreme Court provides that the scope of judicial review for judicial appointments limits itself to the eligibility criterion of a candidate under Article 217(2) of the Constitution, specifically the minimum threshold which a candidate must fulfil in order to qualify as a prospective candidate for judgeship, which includes holding judicial office or practising as an advocate in the respective High Court for a minimum of ten years and so on.⁴

The court laid down that, “*Eligibility is an objective factor which is determined by applying the parameters or qualifications specified in Article 217(2). Therefore, when eligibility is put in question, the question would fall within the scope of judicial review. However, the question whether a person is fit to be appointed as a judge essentially involves the aspect of suitability and stands excluded from the purview of judicial review.*”⁵ The given reasoning is further substantiated by the characterisation of “eligibility” as the sole objective measure of evaluating a judge-candidate.

The Supreme Court recognises that while Article 217(2) provides for the minimum threshold for eligibility, the preceding clause in Article 217(1) provides for the procedure of appointing a judge-candidate for the High Court, stating that the same is “*designed to test the fitness of a person so to be appointed; her character, her integrity, her competence, her knowledge and the like.*” To support its reasoning, the court relies on the landmark judgement of *Supreme Court Advocates-on-Record Association v. Union of India*,⁶ which established that while the judiciary has primacy in appointing judges, the involvement of multiple judges, including the Chief Justice of India, in the appointment process serves as a natural check against possible arbitrariness. The court further reasons that the logic of judicial review, which is typically used as a mechanism to check executive excesses, cannot be applied in the same manner to the process of judicial appointments, as opening up the given

⁴ INDIA CONST. art. 217, cl. 2.

⁵ *Anna Mathews v. Supreme Court of India*, (2023) 5 SCC 661.

⁶ *Supreme Court Advocates-on-Record Association v. Union of India*, (1993) 4 SCC 441.

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process to litigative debate may compromise judicial independence. Furthermore, the Supreme Court cites its previous decision in *M. Manohar Reddy v. Union of India*,⁷ attempting to reinforce the above-mentioned distinction between “eligibility” and “suitability”, wherein, drawing from the judgement, it provides that “*the consultative process envisaged under Article 217(1) is to limit the judicial review, restricting it to the specified area, that is, eligibility, and not suitability.*”⁸

The interpretation, and particularly the emphasis, by the Supreme Court on “eligibility” under Article 217 as the exclusive criterion for establishing a locus for challenging a judicial appointment diminishes the evaluation of judicial appointments to mere fulfilment of procedural requirements. This perspective is outlined by the court when it provides that “*...judicial review lies when there is lack of eligibility or lack of effective consultation. Judicial review does not lie on ‘content’ of consultation.*”⁹

The Supreme Court’s confidence in the appointment process, including the checks by its functionaries and the balances present in the procedural requirements, suggests that a judge-candidate only needs to meet the minimum threshold of “eligibility” as defined in *Anna Mathews* to be appointed. This begs the question as to whether the baton of democratic decisions should be entrusted to the Supreme Court and its Collegium, with their promised infallibility, or whether it should be placed in the Constitution, which acts as the supreme balancing force, both in text and spirit, against any possible instance of arbitrariness.

Although many may believe in the former, our honourable judges and other respected functionaries of the government are not infallible. This has been highlighted by the works of Abhinav Chandrachud, which emphasises that some judges, in addition to evaluating the merit of a candidate, also consider socio-religious factors and personal motivations when making

⁷ *M. Manohar Reddy v. Union of India*, (2013) 3 SCC 99.

⁸ *Anna Mathews v. Supreme Court of India*, (2023) 5 SCC 661.

⁹ *Id.*

judicial appointments.¹⁰ This assertion is not meant to undermine the exceptional competence and integrity with which the said functionaries carry out their duties, but rather to emphasise the importance of upholding the substantive principles laid down by the Constitution of India, which serves the best safeguard against arbitrariness. In order to advance this notion, I invite the readers to consider a crucial aspect of the *Anna Mathews* judgement, wherein the Supreme Court acknowledges Article 217(1) as the procedure to evaluate the fitness of a judge-candidate.

I. ELIGIBILITY V. SUITABILITY

In the reasoning provided by the Supreme Court for limiting the scope of judicial review for judicial appointments, a certain essential aspect of the procedure has been overlooked, wherein it is stated in sub-clause (b), that a judge may be removed from office by the President as per the procedure under Article 124(4) of the Constitution of India. Article 124(4) provides that:

*“(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity”.*¹¹

The grounds for “*proven misbehaviour*” or “*incapacity*” constitute the factors that may initiate the process for the removal of judge. This implies that these grounds are linked to the erosion of the judicial qualities of a judge, in particular, their ability to provide unbiased, effective, and holistic decisions in the face of questions of law. This raises the question of whether a judge’s appointment can proceed while disregarding past conduct that may involve “*misbehaviour*” or “*incapacity*” before the judge-candidate assumes office. This approach contrasts starkly with the reasoning of the Supreme Court in *Anna Mathews*, which excludes the

¹⁰ ABHINAV CHANDRACHUD, SUPREME WHISPERS, CONVERSATIONS WITH JUDGES OF THE SUPREME COURT OF INDIA 1980-1989 (Penguin, 1st ed., 2018).

¹¹ INDIA CONST. art. 124, cl. 4.

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“*suitability*” of a judge-candidate from the scope of judicial review with respect to their appointment.

While the Constitution may not provide us with an exhaustive definition of “*misbehaviour*”, the same can be reasonably interpreted from the discourse arising out of legal challenges which have led to the evolution of the interpretation and application of Article 124(4). The first and foremost case that defines “*misbehaviour*” is *Krishnaswamy v. Union of India*¹² (“***Krishnaswamy***”), wherein the Supreme Court defined “*misbehaviour*” as misconduct that involves wilful abuse of judicial office, wilful misconduct within the office, corruption, lack of integrity, or any other offence that demonstrates moral turpitude.

It is also established that such misconduct extends to the conduct of the judge outside of the judicial office. While every negligent error may not constitute a charge of “*misbehaviour*”, wilful misconduct involving intentional acts does expose a judge to the charge of “*misbehaviour*”. Similarly, in *C. Ravichandran Iyer v. Justice A.M. Bhattacharjee*,¹³ the Supreme Court recognised that the standards of conduct for a judge, both in the official and personal space, must be defined by the absence of any and every kind of impropriety. It is stated that “*Society is ... entitled to expect that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences.*”¹⁴ The presence of impropriety in the conduct of a judge will eventually lead to the decline of societal trust in the judiciary and an increase in doubts regarding its institutional legitimacy. The test of a judge is not on the basis of their intelligence or their credentials, but their ability to provide judgements free from any form of bias.

The understanding of what constitutes “*misbehaviour*” was further expanded on by the Law Commission of India, as it attempted to define the same after applying the findings of the P.B. Sawant Committee, which was constituted to inquire into the conduct of Justice V. Ramaswami, the first

¹² *Krishna Swami v. Union of India*, (1992) 4 SCC 605.

¹³ *C. Ravichandran Iyer v. A.M. Bhattacharjee*, (1995) 5 SCC 457.

¹⁴ *Id.*

judge against whom impeachment proceedings were initiated in independent India.¹⁵ The definition arrived upon by the Law Commission closely aligns to the definition provided in *Krishnaswamy*, wherein “*misbehaviour*” encompasses conduct or a pattern of behaviour that brings dishonour or disrepute to the Judiciary, eroding public's trust and confidence. It is not just limited to acts prohibited by law, or ones directly related to the judicial office, but includes the public and private activities of a judge as well. The act or omission must be intentional, and this intention can be evidenced through culpable recklessness, negligence, or disregard for established rules or code of conduct. While a single act is not sufficient evidence to prove intention, a series of acts can lead to the inference that the intention existed. The important aspect of this definition is the addition made to the existing notion of “*misbehaviour*”, which provided the understanding that “*misbehaviour*” is not limited to the conduct that occurs after a Judge assumes their current judicial office. It can also encompass acts or omissions during prior judicial offices, if those acts or omissions render the judge ineligible of holding their present judicial office.

This broad interpretation of “*misbehaviour*” is not proposed solely for the sake of argument, but it may also find authority when the provisions of the Constitution are juxtaposed against each other. The provisions relating to the impeachment of a judge from the higher judiciary under Article 124 are starkly different from those for the impeachment of the President under Article 61. The ground for impeaching the President, specifically “*violation of the Constitution*,” is much narrower compared to the broader range of misconduct that can fall under the category of “*misbehaviour*,” which would naturally include “*violating the Constitution*”¹⁶ as well. The process for impeaching the President, outlined in Article 61, is self-contained and comprehensive, unlike the procedure for impeachment of a Supreme Court judge under Article 124(4) and (5), which grants the Parliament the authority to regulate the process for presenting an address and establishing proof of misbehaviour or incapacity. This reflects the idea that the standard of ascertaining the correctness of a judge’s conduct, whether during their tenure, or prior to it, was intended to be subjected to more stringent checks

¹⁵ Law Commission of India, *The Judges (Inquiry) Bill*, Report No. 195 (January 2006), available at https://lawcommissionofindia.nic.in/report_seventeenth/.

¹⁶ Justice R. K. Abichandani, *Judicial Independence of Dependent Judiciary*, 1 GNLU L. REV. 3 (2008).

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than those provided by the present scheme outlined by the Supreme Court in *Anna Mathews*, especially due to the importance and authority attributed to them in the constitutional design.

The justiciability of the result presented by the Inquiry Committee constituted by the Parliament during the impeachment proceedings of a judge of the higher judiciary has been examined by the Supreme Court in *Sub-Committee on Judicial Accountability v. Union of India*.¹⁷ Therein, it declared that there lies no scope for judicial review of the result of an impeachment proceeding as conducted by the Parliament under Article 124(4) as this would undermine the constitutional provision granting Parliament the authority to impeach higher judiciary judges. However, this rationale cannot be applied to the justiciability of the appointment process of a judge, as it lacks sufficient checks and balances and is tainted by the allegations of lack of transparency.¹⁸

Therefore, it is essential that the scope of judicial review for the process of judicial appointments extends beyond the “*eligibility*” of a candidate, which merely involves meeting the minimum threshold and the procedural requirements for appointment of a judge-candidate, as outlined by the Supreme Court in *Anna Mathews*. The review should also encompass “*suitability*” of a judge-candidate, taking into account, their conduct in both personal and professional spheres, and assessing whether the same aligns with the judicial standards of integrity, moral vigour and ethical firmness.

II. EFFECTIVE CONSULTATIONS V. CONTENT OF CONSULTATIONS

Another restriction imposed by the Supreme Court on the scope of judicial review for judicial appointments is the exclusion of issues related to “*content of the consultation*” as a ground for challenging the said appointment, essentially recognising only two grounds for justiciability, which are “*eligibility*” and “*effective consultation*”.¹⁹ While the earlier part of this article

¹⁷ Sub-Committee on Judicial Accountability v. Union of India, (1991) 4 SCC 699.

¹⁸ *Id.*

¹⁹ Anna Mathews v. Supreme Court of India, (2023) 5 SCC 661.

focused on the concept of “*eligibility*”, this section will focus on the merits of excluding the “*content of consultations*” from the scope of justiciability, primarily on administrative grounds.

The Supreme Court characterises an “*effective consultation*” as a consultation that is procedurally sound, as envisaged under Article 124(1) of the Constitution. The current appointment scheme is characterised by a process of dialogue between the Collegium, consisting of the Chief Justice of India along with the four senior-most judges of the Supreme Court, and the executive.²⁰ This process involves gathering inputs from intelligence agencies, particularly the Intelligence Bureau, for a background check of the judge-candidate, as well as considering comments from the government. The Collegium reviews these inputs and also seeks written opinions and comments of judges familiar with the concerned High Court.²¹ After due consideration, the Collegium makes its final recommendations to the government.

In light of the questions raised against the above-mentioned process and whether the same ensures neutralisation of any possible arbitrariness in the appointment procedure in *Anna Mathews*, the Supreme Court provides, drawing from its earlier judgement in *Supreme Court Advocates-on-Record v. Union of India*,²² that involvement of multiple judges in the formation of the final recommendation serves as a safeguard against the possibility of arbitrary decisions, even subconsciously. With the judicial element playing a significant role in appointments and transfers, the necessity for additional judicial review, as seen in other executive actions, is eliminated. The extent of discretion is minimised through effective written consultation and adherence to prevailing norms. This must be kept in mind as we proceed to delve into the issue of expanding the scope of judicial review based on issues relating to “*content of the consultation*,” which is ultimately the foundation of the merit of any judicial appointment.

²⁰ DEPT’ OF JUSTICE, GOV’T OF IND., MEMORANDUM OF PROCEDURE OF APPOINTMENT OF SUPREME COURT JUDGES, (2021), <https://doj.gov.in/memorandum-of-procedure-of-appointment-of-supreme-court-judges/>.

²¹Explained Desk, *Debate over the collegium system: How are SC and HC judge appointed?*, THE INDIAN EXPRESS (Oct. 08, 2022), <https://indianexpress.com/article/explained/debate-over-the-collegium-system-how-are-sc-and-hc-judges-appointed-8158195/>; *Id.*

²² Supreme Court Advocates-on-Record Association v. Union of India, (1993) 4 SCC 441.

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First, it is important to remember that the challenge against the appointment of Justice Gowri in *Anna Mathews* was made on the ground that the Collegium was not aware of certain issues relating to her publicly expressed socio-political opinions, which could have potentially influenced her conduct thus raising questions regarding the merit of her appointment. While the absence of awareness regarding the given issues during the appointment process was acknowledged by the Chief Justice in open court before the listing of the matter,²³ the same was disregarded by the bench of the court constituted to hear the matter, on their own accord, and without issuing any notice of clarification to the Collegium.²⁴

While this article does not delve into the complications of finding why the events occurred as they did, it does shed light on the possibility that the functionaries of the appointment process may not be aware of every relevant fact pertaining to a judge-candidate during their appointment procedure. This provides a basis for expanding the scope of justiciability with respect to the “*content of the consultation*” on administrative law grounds.

The application of administrative law in the given matter must be allowed, as the Collegium system is considered to be performing an administrative function while making judicial appointments.²⁵ It involves a structured process, consultations, and decision-making procedures, akin to administrative procedures found in other areas of governance. The functions of the Collegium, involving the evaluation of judge-candidates and consultation with executive agencies, resemble administrative processes such as screening, evaluation, and decision-making exercised by administrative bodies in various contexts. Furthermore, the Collegium system also involves interactions and consultations with the government

²³ Krishnadas Rajagopal, *Victoria Gowri appointment | Two views emerge from Supreme Court on what Collegium considered*, THE HINDU, (Feb. 07, 2023), <https://www.thehindu.com/news/national/victoria-gowri-appointment-two-views-emerge-from-supreme-court-on-what-collegium-considered/article66481159.ece>.

²⁴ Anna Mathews v. Supreme Court of India, 2023 5 SCC 661..

²⁵ Gautam Bhatia, *The L. Victoria Gowri Elevation Controversy: Structural Issues with Judicial Appointments*, I. CON. L. & PHIL., (Feb. 07, 2023), <https://indconlawphil.wordpress.com/2023/02/07/the-l-victoria-gowri-elevation-controversy-structural-issues-with-judicial-appointments/>.

and intelligence agencies, where relevant inputs and considerations are sought. This interaction with the executive branch reflects the administrative nature of the Collegium system. It is important to note that this administrative function is distinct from the judicial function of the judiciary. The Collegium system serves as an administrative mechanism to ensure that qualified and suitable individuals are appointed as judges, while the judiciary itself exercises its judicial powers independently and impartially.

Therefore, the process of judicial appointments is subject to the checks of administrative law, which further scrutinises the “*content of the consultation*” taking place during the process of judicial appointment, as under the doctrine of legitimate expectations, if a public authority creates a legitimate expectation in an individual through its words, conduct, or established practices, they are generally required to fulfil that expectation. This means that the authority cannot act in a manner that is unfair, arbitrary, or in violation of the individual's legitimate expectations without providing a valid and justifiable reason. The doctrine of legitimate expectations acts as a safeguard against arbitrary or unfair administrative actions, thereby promoting fairness, transparency, and good governance.²⁶

The doctrine of legitimate expectations finds relevance in relation to judicial appointments, as individuals, particularly aspiring judges and the general public, have a legitimate expectation that the appointment procedure will be fair, transparent, and reasonable. The judiciary plays a crucial role in upholding the rule of law, ensuring justice, and safeguarding fundamental rights. Therefore, the process of appointing judges is of significant public interest, and there is a legitimate expectation that it will be conducted in a manner that maintains the integrity and independence of the judiciary. The doctrine of legitimate expectations requires that the appointment procedure for judges be carried out without arbitrariness, bias, or undue influence. It includes expectations for the establishment of clear criteria, merit-based selection, transparency in the evaluation process, and adherence to established natural justice norms and principles. If there are departures from these legitimate expectations, the decision may attract

²⁶ I.P. MASSEY, ADMINISTRATIVE LAW 285-292 (Eastern Book Company, 5th ed., 2001).

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a challenge to the appointments on the grounds of legitimate expectations.²⁷

Furthermore, if certain facts about a judge-candidate's political background or potential political bias or any other relevant aspect of their conduct, are not considered during the appointment process, a cause for judicial review can arise on the grounds of irrationality under the *Wednesbury* test.²⁸

According to the *Wednesbury* test, a decision can be deemed unreasonable if it is so irrational that no reasonable person would have made it. One of the factors that can contribute to demonstrating unreasonableness is the failure to consider all relevant information before making a decision. This includes failing to consider factors that may indicate potential bias or conflicts of interest, such as a judge-candidate's political background. In the context of judicial appointments, decision-making bodies such as the Collegium or any other relevant authority have a duty to consider all relevant information about a candidate.²⁹ This includes not only an assessment of their qualifications, experience, and legal expertise but also taking into account any potential political bias that may impact their impartiality in the adjudication of a case. If it is later discovered that the decision-making body did not adequately consider all relevant information about a judge-candidate's political background or potential political bias, it can be argued that the decision was irrational. By failing to consider all relevant information, the decision may be deemed unreasonable and thus open to challenge through judicial review.³⁰

Therefore, it is advanced that the “*content of the consultation*”, particularly its completeness and comprehensiveness, or lack thereof, may attract a challenge under the contours of administrative law and create the scope of judicial review for the appointment of a judge.

²⁷ *Id.*

²⁸ *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation*, [1948] 1 KB 223.

²⁹ Bhatia, *supra* note 25.

³⁰ *Id.*; MASSEY, *supra* note 26.

Lastly, the rationale of the Supreme Court in limiting the scope of justiciability, whether on the grounds of “*suitability*” or “*content of the consultation*” may have been justified, but precedent holds that these are very relevant considerations made by the functionaries of the appointment process while evaluating a judge-candidate, which is evident from the nature of the evaluation that took place during the episode involving advocates R. John Sathyan, Saurabh Kirpal, and Somasekhar Sundaresan and their possible appointment as judges in various High Courts back in January, 2023. While the Collegium advanced their recommendation, the executive rejected it on several grounds which were absolutely unfair and arbitrary in nature, ranging from the given candidates publicly criticising the government of the day in the past to having a foreign national as a partner and the openness of their sexual orientation.³¹

The nature of such qualitative factors which find their way into the evaluation of a judge-candidate during the appointment process reveals that the “*suitability*” of a candidate and the “*content of the consultation*” involves aspects ranging from the intimate aspects of their lives to the conduct they have exhibited in the past, personally and publicly. Furthermore, it would be irresponsible to assume that the structural plurality of the appointment process provides a well-enough check against any possible arbitrariness in the consultations regarding a judge-candidate as, which arises from a birds-eye view of the events which took place leading to *Anna Mathews*, particularly the admission of the Chief Justice of India in open court regarding the unawareness of her previous political statements which would have been essential to her evaluation. This can be best explained by the observations made by Rushil Batra, in his article analysing the judgement and the events leading up to it, wherein he puts forth “*a rather pertinent question does emerge, which is that if the Intelligence Bureau can otherwise give the Collegium adverse reports about other candidates because they shared an article that was critical of the Prime Minister, it is very hard to believe that the premier intelligence gathering body was simply unaware of the alleged hate speech at issue. Was this then, a deliberate withdrawal of information from the Collegium? Unfortunately, we shall never*

³¹ The Wire Staff, *SC Reiterates Saurabh Kirpal's Appointment as Judge, Rejects Govt Objections About Sexuality*, THE WIRE, (Jan. 19, 2023), <https://thewire.in/law/saurabh-kirpal-appointment-supreme-court-collegium-reiterate>.

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*know.*³² Therefore, this not only makes evident the fact that there exists scope for arbitrariness with respect to the aspect of consultations in the present scheme of judicial appointments, but it also creates a ground for expanding the scope of judicial review of the same.

CONCLUSION

In democracies, we often find that the seeds of arbitrariness flourish in the soil of opacity. To secure the principles of a healthy democracy, it is crucial that such arbitrariness be dealt with at its root. The root of such arbitrariness in judicial appointments in India lies in the opaque nature of the process. In its effort to establish a procedure which prevents executive bias in the appointment of judges and ensures judicial independence, the judiciary has unfortunately developed a procedure which is characterised by its lack of transparency. This lack of transparency not only affects appointments, but also the transfer of judges, which is reflected in the dubious transfers of judges who have not toed the line of the establishment. Examples of the same may be found in the transfer of Justice Muralidhar, who was transferred a day after his direction to the Delhi Police to investigate allegations against persons linked to the government of the day and their involvement in instigating the Delhi riots in 2020,³³ or the transfer of Justice Banerjee, who initiated a strict policy of zero tolerance for corruption in the Madras High Court.³⁴

³² Rushil Batra, *Guest Post: From Translucence to Opacity: Judicial Appointments after the Victoria Gowri Case*, I. CON. L. & PHIL., (Feb. 14, 2023), <https://indconlawphil.wordpress.com/2023/02/14/from-translucence-to-opacity-judicial-appointments-after-the-victoria-gowri-case/>.

³³ The Wire Staff, *HC Judge Who Pulled Up Delhi Police Over Riots Shunted Out by Modi Govt*, THE WIRE, (Feb. 27, 2023), <https://thewire.in/law/modi-government-wastes-no-time-moving-justice-muralidhar-out-of-delhi-high-court>.

³⁴ Special Correspondent, *Law Ministry notifies transfer of Madras HC Chief Justice Sanjib Banerjee to Meghalaya High Court*, THE HINDU, (Nov. 16, 2022), <https://www.thehindu.com/news/national/law-ministry-notifies-transfer-of-madras-hc-chief-justice-sanjib-banerjee-to-meghalaya-high-court/article37512350.ece>.

The sore of opacity has been further festered by the judgement of the Supreme Court in *Anjali Bhardwaj v. CPIO, Supreme Court of India*,³⁵ wherein it was decided that the proceedings of the Collegium for the appointments of judges are not subject to public availability under the provisions of the Right to Information Act, 2005. The reasoning provided for the same was that the final resolution of the Collegium reflects the considerations made while taking the decision of appointment, along with possible obstacles in the free expression of the involved functionaries while putting forward their reservations regarding a judge-candidate in the deliberations leading up to the appointment.

The entirety of the legal conflict which occurred in *Anna Mathews* could have been avoided if the recommendations, deliberations, and other information related to the appointment of a judge-candidate via the Collegium system had been made public. This would have enabled the appointment functionaries to be aware of any and every piece of relevant information related to the judge-candidate in the course of their appointment.

The fields of constitutional law, administrative law and their comparative aspects demand academic rigour from both the authors and the editors. Together, we are in a position to deliver something meaningful to the academic discourse. It gives us immense pleasure to introduce Issue I of Volume VIII of our journal to the readers.

IN THIS ISSUE

Tania Groppi in *Constitutional Jurisdictions in the ICT Revolution: Looking for legitimacy through communication* explores the escalating significance of constitutional and supreme courts communication with public opinion, highlighting the transformative role of new technologies. The author examines generators, objects, tools, and recipients of communication across 27 constitutional jurisdictions globally and deploys three key methods: website and social media analysis, a dedicated questionnaire for scholars, and a review of limited publications on the subject. The author reveals a notable shift in communication strategies by analysing courts over the last fifteen years. The conclusion

³⁵ *Anjali Bhardwaj v. CPIO, Supreme Court of India*, (2023) 4 SCC 784.

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delves into reasons for this transformation, associated risks, particularly amid democratic backsliding, and addressing a crucial gap in constitutional democracy that merits scholarly attention.

In *Scope of 'Minority' Under Articles 29 & 30 of the Constitution of India with reference to the Sikh, & Jain Minority Case*, Shubham S. Dayma delves into the contentious issue of granting minority status to Sikhs in Punjab by the state government, a matter present before the Five-Judge Bench of the Supreme Court of India. The Hon'ble High Court of Punjab & Haryana, in the case of *Sabil Mittal*, struck down the state notification allowing Sikh minority status, leading to the present challenge. The dispute hinges on the reconsideration of the *Bal Patil* case, exploring the definition of 'minority' under Articles 29 & 30 of the Constitution. The author aims to illuminate the challenges in determining minority status, emphasising the crucial factors relevant to the pending questions before the Supreme Court.

Shivank Verma & Nitish Dubey, in *Constitutionality of Caste Based Reservations: Uncovering Loopholes and Inconsistencies*, Shivank Verma & Nitish Dubey scrutinise the loopholes in India's current reservation policies. The authors explore the applicability of Article 14 to Article 341 and its notifications, revealing a theoretical aspect in the absence of specific parameters for Scheduled Caste designation. Subsequently, it draws distinctions between Scheduled Castes and Other Backward Classes, emphasising considerable overlapping criteria. Further, the authors also question the executive's potential of caste designation as a colorable exercise of power, contradicting Article 341(2). Lastly, the authors contend that Article 16(4) reservation's test is not class backwardness but inadequate representation, often overlooked. The authors propose remedies to address these concerns and rectify existing reservation system lacunae.

In *Judicial Appointments in India and Pakistan: The Need for Responsive Judicial Review and Institutional Dialogue*, Rushil Batra addresses the persistently debated issue of Judicial Appointments. The author critiques the 2015 judgement of Supreme Court of India which held

the NJAC to be unconstitutional on the touchstone of *Nadeem Ahmed*, a Pakistani Supreme Court Judgement which faced a similar question like NJAC and opted for institutional dialogue instead of nullification. Drawing from Pakistani jurisprudence, the author suggests alternative approaches the Supreme Court of India could have taken. The author then compares and contrasts the SCI's stance with the SCP's, advocating for institutional dialogue on “non-democratic minimum core” matters like judicial appointments.

And finally, Afreen Afshar Alam reviews Achyut Chetan's *Founding Mothers of the Indian Republic: Gender Politics of the Framing of the Constitution*, recommending it to understand the contribution of Indian Women in the drafting of the Indian Constitution. The author praises the book for shedding light on the distinctive moral vision of the women towards drafting the Indian Constitution and dispelling the preconceptions associated with the term “founding fathers” which have significantly influenced constitutional interpretation.

CCAL ACTIVITIES

Over the last five months, CCAL has undertaken several activities aimed to foster interest and development in the field of constitutional law and administrative law.

In 2022, CCAL started hosting the *Writ[e] & Talk* podcast. With the help of this podcast, the Centre aims to bring clarity and build discussion when it comes to writing on Constitutional Law and Administrative Law. We aim to interview authors of academic papers on varied subject matters that the journal deals with. We seek to go in-depth with the theme of their piece, the arguments they raise in their article, their journey of discovering the topic, the methods and techniques used by them to derive their arguments and so on. This initiative is an attempt to increase dialogue, discussion and engagement with legal writing.

Our podcast is available on Spotify, Google Podcasts and YouTube. Transcripts of the episodes and links to relevant reading material can be found on our blog, *Pith & Substance: The CCAL Blog*.

EDITORIAL: WHAT MAKES A JUDGE? UNDERSTANDING
SUPREME COURT'S DECISION IN ANNA MATHEWS V.
SUPREME COURT OF INDIA

This semester, we had the pleasure of hosting Dr. Seema Kazi, an Assistant Professor and Fellow at Centre for Women's Development Studies. This episode discusses her paper titled "*Women, Gender Politics, and Resistance in Kashmir.*" The paper dissects the impact of Article 370's revocation on Kashmiri women, probing beyond political ramifications. Unveiling the disparity between state claims and women's rights, it unravels the misogynist gendered narratives in hyper nationalist rhetoric post-revocation and unveils the collective resistance of Kashmiri women through local reporting.

We are also delighted to announce the successful completion of the National Seminar on Constitutionalism in Contemporary Times, orchestrated by the Centre for Comparative Constitutional and Administrative Law and the Constitutional Law Society at National Law University, Jodhpur, was a resounding success on September 23rd and 24th, 2023. The event, marked by an inspiring inaugural address by Hon'ble Justice J.B. Pardiwala and further enriched by the contributions of Prof. Dr. Harpreet Kaur, Prof. (Dr.) IP Massey, and Asst. Prof. Sayantani Bagchi, set a remarkable tone. Panels exploring socio-economic rights, gender equality, transformative constitutionalism, judicial activism, and democratic governance fostered enriching discussions and featured paper presentations by esteemed panellists such as Dr. Sanjit Kumar Chakraborty, Professor Dipika Jain, Professor Yogesh Pratap Singh, Dr. Rangin Pallav Tripathy, Dr. Shameek Sen, and more, offering multifaceted insights into India's constitutional framework. The valedictory session, led by Dr. S.Y. Quraishi and Prof. (Dr.) IP Massey, added scholarly depth, while Asst. Prof. Sayantani Bagchi concluded the event, thanking the participants and contributors for their invaluable perspectives and comprehensive discussions on contemporary constitutional challenges in India.

The endeavour of the Centre to encourage discourse on the subject matter of constitutional and administrative law is furthered by the bi-annual publication of CALJ, guest lecture events, *Writ[e] & Talk* podcast and the regular publication of articles on topics of contemporary relevance on our blog "*Pith and Substance: The CCAL Blog*".

ACKNOWLEDGMENT

The editorial board of CALJ (“**Board**”) worked on the issue over the last five months with utmost dedication and determination. The process was a learning experience for us and provided us with the opportunity to bond with the entire team.

The publication of this issue would not be possible without the guidance of our Patron, Hon’ble Vice-Chancellor of National Law University Jodhpur, Prof. (Dr.) Harpreet Kaur and our Director Prof. (Dr.) IP Massey. At this juncture, we would also take the opportunity to thank our faculty advisors—Asst. Prof. Sayantani Bagchi & Asst. Prof. Vini Singh for their constant support, mentorship and engagement with every initiative we undertake. The Registrar of National Law University Jodhpur has also ensured smooth functioning at every stage, and we are thankful for it.

We would also like to thank every member of the Board for working on the issue and ensuring that the standards of our journal improve constantly. Members of the Board — Himanshi Yadav, Rachana R. Rammohan, Atharva Chandra, Akshay Tiwari, Sourabh Manhar, Mihir Nigam, Prithvi Raj Chauhan, Akshat, Anjali Sunil, Bharati Meena, Krishangee Parikh, Sinchan Chatterjee, Sonsie Khatri, Sri Janani S., Tasneem Fatma, Aarushi Gupta, Dhruv Singhal, Kovida Bhardwaj, Mohak Dua, Paavni Dua, Palash Singhal, Rishi Dev, Srishti Pandey & Vaibhav Singh —have been assets to our team.

We would like to express our gratitude to Mr. Gyan Bissa and the University’s IT department for maintaining our website and providing us with sufficient resources. The Board also recognises the vital part performed in processing each application and ensuring the efficiency of the process by the University’s Students Section.

On behalf of the Board, we must also thank our authors for taking the time to contribute to this issue. The topics covered in this issue are of contemporary relevance to Indian Constitutional Law as well as comparative constitutional law. We are grateful to the writers for their persistence and cooperation throughout the editing process, which made the timely and smooth release of this issue possible.

EDITORIAL: WHAT MAKES A JUDGE? UNDERSTANDING
SUPREME COURT'S DECISION IN ANNA MATHEWS V.
SUPREME COURT OF INDIA

The Board hopes that readers will find this issue to be a useful resource and that it will encourage informed discussion on the topics of administrative law and constitutional law. Should our readers have any queries, suggestions or feedback for us, write to us at: **editorcalq[at]gmail[dot]com.**

Falguni Sharma

Editor-in-Chief