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## SUPREME COURT THREATENS INDIAN DEMOCRACY

### Description



Bridging the 'West' and the 'East': Chief Justice of India TS Thakur and Prime Minister Narendra Modi at the session of Joint Conference of Chief Ministers and Chief Justices of High Courts

**COLLEGIUM IS THE VILLAIN OF THE PIECE: NEW COLONIALISM**

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## CHALLENGES INDIA

The moot question is whether we should have Democracy or we should have an anti-democratic colonial legacy-led judicial 'club' called COLLEGIUM the working of which is much shrouded in secrecy.

We simply cannot have both.

Being singly instrumental in denying justice to the common people in over 34 lakh cases pending since the last couple of decades, this highly enigmatic colonial outfit called Collegium, that literally controls the judicial system in India, has become a costly curse which continues to chain free India. Our law systems need to be changed for the benefit of common man and the nation.

Indian judicial system, including the law framework, primarily inherited from then colonial Britain, was never meant to be approachable by an ordinary Indian citizen. Instead it was customized to benefit imperialistic dictates emanating from the Royal Monarchy of the Great Britain of those times.

Little seems to have changed in India though since the British left but the imperialistic and dictatorial style of both judiciary and governments still continues and persists in the core of our judicial and governance system, the brunt of which is borne by a common man while beneficiaries being the ruling class, judiciary and elites of the society and their foreign collaborators to reap mutual benefits.

For example, it is also the very judicial system which allows a parole to a high profile convict to attend marriage functions, shoot for incomplete movies, attend conferences or provide office space to negotiate his/her business deals to pay penalties but let an ordinary under trial inmate die every day in the monotonous walls of the prison requesting to perform last rights of his/her near or dear ones.

Judiciary feels that Legislature and Executives are interfering in their work and abhor them. However, they cannot effectively function without the above support. Very recently, SC advocate Shanti Bhushan labeled Indian Judiciary second rank holder in corruption, the first rank holder being Police system. Both Judiciary and Police system support convenient Politicians. The biggest litigant is Government itself. Government Babus (bureaucrats) want to save their skin for all their inefficiency and mistakes and exploit inherent judicial inertia to their advantage to delay justice and thereby denying justice.

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Now the CJI sheds tears in front of the PM saying successive governments were inactive in appointing judges since 1987. Anybody with the rudimentary knowledge knows that the appointment of judges is done by the collegium system since 1993 and thereby clearly keeping the popular body (elected government) away from the process of judiciary. Why this crocodile tears then? Why the judiciary rose up in arms suddenly when Narendra Modi became the Prime Minister?

These are crocodile tears to mislead public. The judges in lower courts also deliberately create delays and adjournments for months and years to increase business.

## **TRUST IN THE JUDICIARY SYSTEM IS THE BIGGEST ISSUE**

The present Chief Justice of India has openly admitted the failure of Justice System in India. The matter of fact is that the “number” of judges is only just one issue. When the judges indulge in politics (the latest case being the judgements on Jharkhand) and put their best efforts dealing with political cases compared to those cases which would ensure safety of the majority of its citizens. How will increasing the number of judges solve the problem? Increasing the number has a potential of making the situation even worse. Checks and balances on judges is another serious issue. When judges are answerable to no one except other judges and are responsible for promoting each other, then how can these judges be trusted to be without bias?. Trust in the judiciary system is the biggest issue. And how can an ordinary citizen trust the system when the these judges are corrupt, they interfere in executive matters for political reasons, they are not answerable to nobody and they don't hesitate to insult the PRESIDENT of India who is the HEAD of the nation?

## **VICIOUS CIRCLE OF COLONIAL LEGACY**

It all seems that India is badly caught in the vicious circle of her own COLONIAL LEGACY. The post-independent Indian administrative structure is largely a legacy of the British rule. The various functional aspects such as judiciary, public services, education system, political set-up, media, recruitment, training, office procedures, districts administration, local administration, police system, revenue administration, budgeting, auditing, and so on, have their roots in the British rule. The continuing OMNIPOTENCE OF COLONIAL LEGACY is still prevalent in Indian psyche that is being pathetically getting manifested through her borrowed CONSTITUTION, DEMOCRACY, JUDICIARY and BUREAUCRACY from her former ruler, the colonial Britain.

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Our colonial legacies are highly dangerous viruses that are sickening and damaging all democratic achievement by the people in India. The greatest and the longest lasting colonization is the colonization of the mind. In the initial stages of colonization, the conquered people are enslaved and controlled with the force of arms. The weakness of this form of colonization is that the colonized people can rise up in revolution and send the colonizer packing permanently. This colonization is transient. However, the colonizer has other weapons in their arsenal and these are used to colonize the minds of the conquered people, even after the colonized people gain independence and freedom, since colonization of the mind is more permanent.

### **COLLEGIUM: A Cosy Colonial Club with its 'members' (Judges) as the Servants of Neo-Colonialist Forces, and It Is A Product Of A Neo-Colonialist System Coming Through Backdoor**

Now in seeking a way out of this degeneration of Indian judiciary, I think the whole rot starts from the bizarre colonial practice of selecting judges in India.

Just imagine the following (ongoing) scenario: A group of people, who make creeping acquisition of powers illegally and appoint, administer, promote and retire themselves, are a law unto themselves. They sense the weakness of our lawmakers, and dared to trespass the constitution, invented a club called 'collegium' to appoint, promote, administer, and retire themselves without ever being responsible to the people, their representatives or to the constitution. They invented PILs under the pretext of violation of fundamental principles to interfere into administration and legislation. A law unto themselves, they become the investigators, appointed monitoring committees to supervise the upkeep of – even railway platforms! They appoint and control prosecutors because everybody else, they claim, was corrupt and could not be trusted. They 'legislated' (appointed) 800 odd judges as 'representatives' of the people and the people themselves are considered inept. Money bill or no money bill, constitution or no constitution, they can become 'philanthropists' and order free food grains to the poor, cleaning of rivers, building of roads to Vaishno devi , for example.

The above is a typical replica of how the highly degenerated Indian Judiciary, which indeed is a colonial hangover, that today functions with its core called the system of 'collegium'. The manner of functioning of the collegium of the Supreme Court of India has drawn flak from all sections of society and it is a matter of utmost concern and even a matter of shame for the members of the judiciary that the collegium of the Supreme Court is blissfully remaining insensitive to public opinion/reaction, in that this colonial legacy leads to the ongoing vitiation of Indian democracy.

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Here it has now become very apparent as to why the collegium of the Supreme Court is being very enigmatic and secretive in its conduct and functioning in the matter of selection of judges of the High Court and the Supreme Court. Today such manner of functioning has also drawn flak and adverse criticism from all sections of society, including a major section of the legal community itself. The collegium refusing to divulge information has not been taken kindly by the members of the public and this conduct and attitude is looked down with suspicion and as a possible cover up resorted to on the part of the members of the collegiums.

The present practice of judges to select judges is highly illogical and also adds up to a democracy-axing practice of colonial legacy in India. In this way, the judicial power, and also, through judicial power, the politicking power, are centralized only in hands of judges themselves who would pick their own and there is no check. There needs to be check in place to ensure that no nepotism and favoritism is allowed in selection process. There is huge wheeling and dealing that is happening in Delhi and it needs to stop. Certain judges are only shedding crocodile tears. Collegium is no more a worthy Institution

Judiciary cannot appoint itself. That's highly unethical. Selection has to be by a different forum as in all forms of any service sector like jobs. Judiciary cannot be a retirement home for lawyers, paid from taxpayer's money. People demand transparency. If not, let there be a referendum, people will which will give a befitting reply to this corrupt judicial practice.

## **THE WILL OF THE PEOPLE STANDS SUPREME IN A DEMOCRACY**

It is the common citizen of the nation who has been, is and will suffer as a result of the judiciary's unwillingness to comprehend the fact that the parliament is supreme. It virtually amounts to overruling the voice of the electorate which is supposedly all supreme in a democracy

In a democratic State all the organs of the government needs to created and adhered through the will of the people. This will is represented through the parliament and elected representative whom people have called politicians. Our elected representative are Supreme and they represent the will of the people. But this supremacy should not be Independence of each organ of the Constitution namely the Legislature, the Judiciary and the Executive is based on the premise that their functioning should not be interfered upon by the other organs of democracy. This premise does not mean that an Organ of the democracy is above the Will of the People. The Collegium system of Judges Appointment and Transfer is flawed on this premise.

## **Abolish this ELITIST COLONIAL CLUB! We are a Democracy!**

99% of the nuisances you see in our Court System are due to this Colonial Legacy of 'White' Judges methods and their exclusive elitist clubs that help them to deliver travesty judgments. The constitution does not allow "collegium" judges, where judges elect judges.

When the proposal of setting up the NJAC to have a legislative influence on appointing the judges was mooted forward, these same "black coats" cried foul. But Finance Minister Arun Jetley during TV debate soon after NJAC was struck down in Supreme Court, mentioned about tyranny of Judiciary. Now it is the turn of CJI shows his helplessness in front of PM accusing Government of tyrannical and erratic ways. WE, the people of India are awestruck because of tyrannical and uncompromising attitudes of both the organs of

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Democracy since independence. Reports of Law Commission submitted more than 30 years ago are collecting dust. What did earlier PMs, Presidents and CJs do all these years? GOD also will not know.

## Public Interest Litigation Ploy

A great deal of inflated pros for Public Interest Litigation is a matter of serious concern, some of which have dubious and conspiratorial tenor and intentions. The judges themselves invented PILs under the pretext of violation of fundamental principles to interfere into administration and legislation. The collegium judges, who have 20/25 years of lakhs of cases pending, taking up a new particular case even on Sunday nights cannot be viewed as genuine, particularly by the public. Laymen on the street, or elite and enlightened in their palaces, have all been critical of the manner of functioning of the collegiums in general and the collegium of the Supreme Court in particular! The defence of collegiums, through the slender arguments of the matter being confidential and may not be conducive for the proper functioning and efficacy of the judicial system in the country, is not taken accepted or respected by the members of the public.

Public Interest Litigation has become a vehicle for Supreme Court and High Courts to severely indict the Government in power, particularly if they are of the BJP brand. We should find means of curbing avoidable litigations, PILs, reviews, mainly by foreign funded NGOs. Serious doubts are growing in the minds of the public whether Indian Judiciary is used — rather, misused — by the foreign funded NGOs and the colonial Collegium-selected judges for sectarian purposes and fast-tracking certain fresh cases in an effort to sabotage democratically elected government and the constitution. It can be visible on Uttarakhand issue, when these justices speak as if they are the kings. They had all the time to dispose of the these fresh cases but no time for several lakes civil and criminal litigation pending in courts since decades.

Judges should be allowed to own up and correct themselves for mistakes while others are to be punished, so says the Chief of our all powerful judiciary. And we have a billion plus people who can suffer without even a murmur the ignominy and slavery of this colonial hangover, called judiciary where things have gone from bad to worse.

Judiciary should change the British era era practice of holidays. Judges must reduce their vacation period and summer vacation (they are not school going kids, these people have enormous power and they even struck down the judiciary reform bill passed by people of India, even it seems like this country is ran by supreme court and not by democratic representatives, now why is he crying??

Government should increase the courts hours and keep vigilance on these judges , lot of them are corrupt and they Intentionally delays the cases .

Removal of independence of judiciary is one option. Make judiciary accountable. The elected executive wing of the government must have the main role in selecting and appointing the judges and not the present practice of judges themselves appointing judges. Further, effective alternative methods of faster fair judgment delivery system should be evolved so that the common man should not have the opportunity to say “justice delayed is justice denied”.

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Read more: <http://www.humanfirst.in/essays/judges-to-select-judges-collegium-is-neo-colonialism-through-backdoor/>

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