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LEGEND**

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# THE **Legal** Observer



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FEBRUARY 2023



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# EDITOR'S NOTE

## WHICH IS A SACRED COW CONSTITUTION OR COLLEGIUM?

**A**s the slugfest between government and judiciary intensifies, the fight for rights between the Collegium and the Constitution takes on new dimensions, with both justifying their claims over appointments to the higher judiciary.

India is the only country in the world where judges appoint judges. On the other hand, Indian politics has a deplorable history of cronyism in its appointments.

The most important aspect of a thriving democracy is maintaining a balance between the state's organs. The current Collegium system is heavily skewed in favour of the judiciary. The system also contradicts the vision expressed by our Constitution's founding fathers in Article 124. If legislative appointments can be challenged in court, why are judicial appointments immune from scrutiny?

Which system is superior is purely subjective. People who support the government stand or NJAC argue that it is not fair for judges to make their own selections because the chances of bias are extremely high. They also argue that when the entire premise of this Collegium has no validity everything built on top of it has no sanctity.

Those opposed to the NJAC would argue that the right should rest with the judges

themselves, as they are the ones who are most familiar with the trade. It is also claimed that self-seeking politicians are always biased and cannot make an objective decision.

In this debate, the most just approach is to follow the rule book, in this case the Indian Constitution. What does the Constitution state?

A simple reading of the Indian Constitution reveals that appointments must be made by the President of India, in consultation with the CJI and other senior judges. The Judiciary interprets "consultation" to mean "effective consultation," leaving no room for any other viewpoint than what the Judges have taken.

Where do we stand as citizens of this country? We are to express our will by casting our votes and appointing a group of people. Parliament expresses the will of the people. If they pass legislation, it could be ruled ultra vires, or against the "basic features" of the Constitution. Fundamental characteristics cannot be changed indefinitely.

It is customary to arm soldiers, despite the risk that they will point the barrels in the wrong direction. The question is not whether or not NJAC exists. The questions are more profound. It is possible to avoid them for a long time, but not forever.

(Manoj Rastogi)

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## PETITION AGAINST DHANKAR, RIJIJU DISMISSED

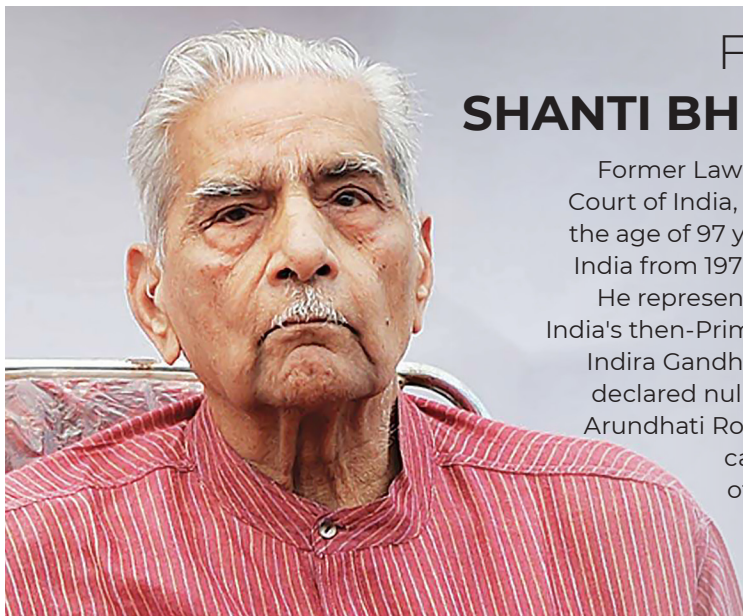
The Bombay High Court dismissed a public interest litigation (PIL) filed against Vice President Jagdeep Dhankhar and Union Law Minister Kiren Rijiju for allegedly making disparaging remarks about the Supreme Court. While dismissing the Bombay Lawyers Association's PIL, the Bombay High Court noted that the Supreme Court of India's credibility is extremely high. Individual statements cannot undermine or infringe on it. The Indian Constitution is supreme and inviolable. Every Indian citizen is bound by the Constitution and is expected to uphold its values. The court stated that Constitutional institutions must be respected by all, including Constitutional authorities and those holding Constitutional positions.

## SUPREME COURT NOTICE TO WHATSAPP

The Tamil Nadu government was fined one lakh rupees by the Supreme Court for appealing the High Court's decision to grant a pension to a sweeper. A bench of Justices Dinesh Maheshwari and Hrishikesh Roy stated unequivocally that the costs can be recovered from those responsible for dragging the case without justification. The State had petitioned the Supreme Court to overturn a Madras High Court division bench's 2020 order upholding the respondent's pensionary benefits. The ad hoc employee-sweeper in question began working in 1992, was regularised in 2002, and retired in 2012. He went to the High Court after his pension claim for the period covering half of his tenure prior to regularisation was denied.

## GOVT NOD FOR E-COURTS PHASE 3

Phase three of the eCourts Project, with an outlay of Rs 7,000 crore, will be launched for the efficient administration of justice. Finance Minister Nirmala Sitharaman made this announcement in her budget speech in Lok Sabha. Phase three of the eCourts Project envisions a judicial system that is more accessible, efficient, and equitable for every individual who seeks justice, or is part of the delivery of justice, in India.



## FORMER LAW MINISTER SHANTI BHUSHAN PASSES AWAY

Former Law Minister and Senior Advocate of the Supreme Court of India, Shanti Bhushan, left for his heavenly abode at the age of 97 years. Shanti Bhushan was the Law Minister of India from 1977 to 1979, serving in the Morarji Desai Ministry. He represented Raj Narain in a case against Indira Gandhi, India's then-Prime Minister. Justice Jagmohan Lal Sinha found Indira Gandhi guilty, and her election to the Lok Sabha was declared null and void. In 2002, he appeared as counsel for Arundhati Roy in the Supreme Court of India in a contempt case. In the late 1980s, Shanti Bhushan was one of the founders of the Center for Public Interest Litigation, a non-governmental organisation that litigates on public interest issues.





## SC DISMISSES RANA AYYUB'S PLEA IN PMLA CASE

A Supreme Court bench of Justices V Ramasubramanian and J B Pardiwala dismissed journalist Rana Ayyub's petition challenging proceedings in a Ghaziabad court under the Prevention of Money Laundering Act (PMLA) for allegedly laundering funds raised for charitable purposes through crowdfunding. Ayyub had questioned the Ghaziabad court's jurisdiction to hear the charges, claiming that only the Delhi unit of the Enforcement Directorate (ED) conducted the investigation and that the money was kept in an account in Navi Mumbai. The ED, on the other hand, claimed that many people contributed to Ayyub, including those from Uttar Pradesh, and that as a result, the Ghaziabad court would have jurisdiction.

## NO DECISION ON UNIFORM CIVIL CODE

There has been no decision made by the central government regarding the implementation of a uniform civil code in the country. In a written response, Union Law Minister Kiren Rijju informed the Rajya Sabha that the Centre had requested the 21st Law Commission of India to investigate various issues relating to the UCC and make recommendations, but the 21st Law Commission's term expired on August 31, 2018. The implementation of the Uniform Civil Code was one of the ruling BJP's election promises in the 2014 and 2019 Lok Sabha elections. The Centre previously petitioned the Supreme Court for the adoption of a uniform civil code, arguing that different religions cannot follow different rules and that the power to make laws belongs solely to the government.



## SC TO HEAR HABEAS CORPUS PLEA OF KERALA LESBIAN

The Supreme Court has agreed to hear a Habeas Corpus petition filed by a lesbian girl from Kerala, challenging a Kerala High Court order mandating her partner to attend counselling sessions. The Supreme Court has issued a notice to respondents in response to a petition filed by a same-sex relationship challenging a Kerala High Court order mandating counselling sessions. A bench headed by Chief Justice of India DY Chandrachud asked the petitioner's lawyer to keep the brief ready and said it will hear the matter at the end of the board. Adila Nazerin's habeas corpus petition alleged that her lover Fathima Noora was illegally detained by her parents.



## CALCUTTA HIGH COURT QUASHES FIR AGAINST PARESH RAWAL

The Calcutta High Court has quashed a First Information Report (FIR) filed against BJP leader and actor Paresh Rawal for allegedly making a slanderous remark about Bengalis. The speech was delivered in Gujarati, according to the single-judge bench of Justice Rajasekhar Mantha, and no English translation of the text was available at the time. Because the comments were in Gujarati, the people objecting to them might not have understood them, according to Justice Mantha. The actor was arrested by Kolkata Police after a CPI(M) State Secretary filed a complaint alleging that he offended Bengalis with his fish comment. Rawal reportedly said at an election rally in Gujarat's Valsad district last year that gas cylinders were expensive but would come down in price. He asked the locals whether they would cook fish for the Bengalis using their gas cylinders.

## ACCEPTING A RS 100 BRIBE RESULTED IN **A YEAR IN PRISON!**

In a 32-year-old case, a special CBI court sentenced a retired 82-year-old railway clerk to one year in prison. The court of special CBI judge Ajai Vikram Singh refused to be lenient to the convict, who was seeking a reduced sentence due to his age, observing that doing so would send the wrong message to society. Ram Narayan Verma, the convict, was also fined Rs 15,000 by the court. In 1991, Ram Kumar Tiwari, a retired Northern Railways loco driver, lodged a FIR with the CBI. Tiwari claimed in his FIR that his medical test was required to calculate his pension. Verma demanded Rs 100 as a bribe for the job. The CBI apprehended Verma while he was carrying the bribe amount.

## **NO BAIL FOR MIDDLEMAN** IN AGUSTAWESTLAND HELICOPTER SCAM

Christian Michel James, an alleged middleman in AgustaWestland chopper scam cases who is being investigated by both the CBI and the Enforcement Directorate, has been denied bail by the Supreme Court. The alleged Rs 3,600-crore scam involves the purchase of 12 VVIP helicopters from AgustaWestland. A bench consisting of Chief Justice DY Chandrachud, Justices PS Narasimha and JB Pardiwala ruled that James' argument that he should be released on bail because he had served half of the maximum sentence in the cases could not be accepted. It did, however, state that James may seek regular bail before the trial court in the cases.



## LAWYER MOVES SC TO GAG MEDIA FROM CARRYING **REPORTS ON ADANI FIRMS**

A petition has been filed in the Supreme Court seeking a gag order to prevent the media from publishing statements or allegations about Adani Group firms unless they are filed with and verified by market regulator SEBI. Lawyer ML Sharma filed the interim application for restraining the media as part of his PIL, which was filed on February 3. Sharma has filed a PIL seeking the prosecution of Nathan Anderson of the US-based firm Hindenburg Research, as well as his associates in India and the US, for allegedly exploiting innocent investors and causing the Adani Group's stock value to "artificially crash" in the market. "The Indian stock market has crashed by more than 50% due to media hype. Investors are panicking as a result of repeated allegations and statements in the media, causing them to sell their stocks and incur financial losses. Common investors are being slaughtered, which must be stopped for the sake of justice " the interim plea said.



VICTORIA GOWRI

## SALUTE TO KIREN RIJIJU!

So the story goes that Victoria Gowri is an advocate in the Chennai High Court. Sanatan believes that religion and culture are the best. She has been fighting cases involving conversion and love jihad for free. She sports a bindi on her forehead and also puts vermilion on, openly worships, and is a member of the band of heretics. The secular gang's eyes are still gritty.

When the Collegium sent Rijiju ji the list of five new Supreme Court judges, it was returned with Victoria Gowri's name added. The name of Gauri Madam was proposed as a judge in the Chennai High Court.

**Well received. But there was an uproar as soon as the name was revealed. How will a Sanatani Hindu become a judge in**

**the Chennai High Court? Immediately, 22 lawyers petitioned the Supreme Court, requesting that the appointment be cancelled tomorrow, February 6. The Chief Justice set the date for Tuesday, February 7, at 10.30 a.m.**

At 9 a.m. Kiren Rijiju informed the registrar of the Chennai High Court that he wanted to watch Victoria Gowri Madam's swearing-in ceremony live. She was sworn in at 10 a.m.

**At 10.30 a.m., the Supreme Court dismissed the petition, stating that when the oath had been administered, the petition had become infructuous.**

The Lutyens Gang is in mourning.

**The secular gang is stunned.**

*From the facebook wall of a friend*



GETTY IMAGES



KTS TULSI, SR. ADVOCATE, SUPREME COURT OF INDIA

# A HUMANE ATTORNEY, A SOUL AS PIOUS AS 'TULSI'

The renowned attorney KTS Tulsi, 75, has established numerous firsts over his more than five-decade career with his flawless interpretations of the issues he handled during the period. He continues to do so, but with a new duty as a Rajya Sabha Member. In the first of our series on Legal Legends, **Manoj Rastogi** attempts to elicit the virtuoso attorney's opinions regarding the ongoing discussion about collegium and government while **JP Gupta** profiles the attorney.

**H**e has a distinct personality and is a person of different calibre, where professionalism and humanism coexist, much to the comfort of the individuals he represents. He conducts himself in court in his own unflappable manner.

True, KTS Tulsi, a towering figure in Indian law, requires such a contradictory introduction. Given that he studied both political science and law, it is not surprising that he has created a dominating impression in both domains.

As a senior attorney in the Supreme Court of India and a Member of Parliament serving his second term, Mr. Tulsi has been advocating for issues affecting the ordinary man and his predicament.

His ten-year-long tireless and dedicated effort against the combined onslaught of a large business house and various government statutory agencies resulted in the victims

receiving previously unheard-of compensation.

The ruling also represents a significant development in the realm of public interest litigation as well as a significant advance in efforts to raise India's governance standards. The case demonstrated his unusual grit and competence as a professional while simultaneously demonstrating his humane nature to the world.

Mr. Tulsi, who was born in Hoshiarpur, Punjab, in 1947, completed his bachelor's degree in law in 1971 and then enrolled as a member of the Punjab and Haryana High Court Bar. He graduated with honours in political science from the Punjab University.

He decided to earn his living through his spoken word after being a keen debater in school and college and a topper in moot courts in law. The initial years of practise were complimented by an assignment as a part-time



The cherry on top of Mr. KTS Tulsi's illustrious career has been the successful prosecution of the case on behalf of the victims of the infamous Uphaar Tragedy.



lecturer in law between 1973 and 1976, during which time he also authored two books, *Tulsi's Digest of Accident Claims Cases* and *Goswami and Tulsi's Landlord & Tenant Cases*, both of which were published by the Eastern Law House, Calcutta.

In 1976, he was appointed a reporter for the *Indian Law Reports (Punjab Series)*. Even though Mr. Tulsi practised law in courts far and wide, from Guwahati and Calcutta to Bombay and Simla, he still became addicted to writing about law and has published hundreds of articles in law journals and newspapers.

With his employment as a Special Prosecutor against terrorists in Punjab, Delhi, and Assam starting in 1980, Mr. Tulsi increasingly veered into the area of criminal law. Mr. Tulsi took on the difficult task of prosecuting "A"-grade terrorists, including the cases of Operation Black Thunder, the attempt on Mr. JF Rebeiro's life, the Talwara Bank Dacoity case, etc. while terrorism was

raging in Punjab and no attorney was willing to step forward and prosecute the terrorists.

He was appointed Additional Solicitor General of India in 1990 after being designated as a Senior Advocate in 1987. In this capacity, he represented the government before more than ten Constitution Benches of the Supreme Court of India in a number of significant cases, including those involving the constitutionality of the Terrorists and Disruptive Activities (Prevention) Act, cases related to the assassination of former Prime Minister Sh. Rajiv Gandhi, the Bombay Blast case, and significant cases against various terrorist groups, such as the JKLF, LTTE, PWG, etc.

Mr. Tulsi was chosen as the Criminal Justice Society of India's president in 1994, and he still occupies that post now. He was elected vice president of the Asian Patent Lawyers Association and president of the Intellectual Property Attorneys Association in the same

year. The Criminal Justice Society of India has organised a number of significant national seminars under the direction of Mr. Tulsi on topics such as delays in criminal justice, search and seizure procedure, matrimonial offences, fighting corruption, etc.

He made headlines when he refused to argue cases for the Gujarat government after Chief Minister Narendra Modi justified the Sohrabuddin encounter, a case in which he was defending the state government before the Supreme Court.

Tulsi also took up the case of Devinder Pal Singh Bhullar, who was facing the death penalty for a terror attack in Delhi. The idea was not to reopen the case but to save Bhullar from the gallows. He sought commutation of his death sentence to life imprisonment on the ground of the inordinate delay of eight years by the President in deciding his mercy plea. Bhullar's death sentence was eventually commuted to life in prison.

He represented Sonia Gandhi's son-in-law, Robert Vadra, who is alleged to have amassed wealth and farm lands out of using his status as a Gandhi family person in the Vadra-DLF land case.

In his glorious legal career of 50 years, Mr. Tulsi has appeared as Special Counsel for the State of Tamil Nadu in a murder case against the Shankaracharya, Jayendra Saraswati of Kanchi Math (2004), and also in the Coimbatore Bomb Blast (2005). He has since then been representing a host of eminent individuals and organizations, including corporations, before various courts of law in India. Mr. Tulsi has been a revered panellist for discussions and has accepted speaking invitations all over the world.

Mr. Tulsi is a Parliamentarian in addition to being a Senior Advocate. Between 2014 and 2020, he was a Nominated Member of Parliament (Rajya Sabha). He is now in his second term as a Member of Parliament from Chhattisgarh (2020–2026). In his spare time, Mr. Tulsi is an avid reader, tennis player, and fitness enthusiast.

INTERVIEW

# "SUPREME CONSTITUT





# COURT CAN'T CHANGE CONSTITUTION'S WORDING"



*Says Senior lawyer and parliamentarian KTS Tuli in a candid conversation with*  
***Manoj Rastogi***

---

**You have had such a long career as a lawyer in the judiciary; where do you see our judicial system in 75 years?**

I think it's terrible that the Judiciary and Executive have been fighting this issue for 25 years and that we're still focusing on who gets the rights rather than strengthening the system and filling vacancies. According to B.R. Ambedkar, the Chief Justice will have ultimate authority, which would imply giving him a Veto, and we are unwilling to give him a Veto because it is an executive power that the president will exercise in accordance with parliamentary tradition. The constitution clearly states that the President will appoint judges after consulting with the Chief Justice and other justices. Despite the fact that both phrases are distinct expressions, the Supreme Court interpreted them as concurring. The authors of the constitution were aware of the distinction, and Mr. Ambedkar stated that we would not grant the Chief Justice veto power. I believe that the Judicial Accountability Bill has been unanimously rejected, and that the Supreme Court is opposed to the law; this is not healthy, and this upcoming confrontation, in my opinion, is not a good sign.

## INTERVIEW

### **What do you think is the reason for the present tug of war between the judiciary and the legislature?**

Both the judiciary and the executive want to retain power; it is now up to us to decide who gets more authority, and the judiciary must accept that it cannot change terms in the constitution.

### **Interestingly, you are a member of the Congress Party, a voracious reader and writer, and a think tank member. So it's very interesting that the entire opposition is questioning the government's intention and how the government intends to do it at this time.**

The interpretation of established principles must be constitutional, and the Constitution's wording must not be changed. The legislature is in charge of enacting laws, and the constitution defines judicial authority as "consultation," which they are attempting to change to "concurrence," which the Supreme Court cannot do.

### **Q Is Mr. Rijju's assertion correct?**

I believe there is more weight to that, and I am deeply sorry for this confrontation. I wish both parties would meet together or with the Prime Minister or President to resolve it, not in the exercise of judicial function, but in the administrative function of the judiciary, which requires consultation with the government.

### **Q What would be the alternative collegium system, such as including government representatives on the Supreme Court and**

### **High Court?**

It was decided that collegiums should have one eminent person as a member, so that no outsider could interfere. Why does the Supreme Court believe that other people are not equally qualified to serve the country? The executive can make decisions that result in a compromise between the two departments in a variety of scenarios. As a result, believing that no other famous person can exist, in my opinion, is not an appropriate attitude to have.

### **Q What is the judiciary's agenda? For example, CJI Chandrachud values individual liberty and independence.**

This issue, I believe, arises every 2-3 years. Previously, the issue was how poor people could obtain justice, but now it is about power. Poor people are unable to obtain justice these days due to a lack of funds required to seek justice.

### **Q You have spent so much time; you have seen both inside and outside, and you have also been a lawmaker during this time. According to you, what effective remedies are you looking for? Although inflation has impacted the justice system, making it out of reach for the average citizen, People still have faith, so what is the best way to deal with this situation?**

Whatever consultation is required; I believe it should be open to all stakeholders. These consultations should have a time limit. I believe that if these two do not collaborate, the country will suffer.

## OUT OF BOX

- ◀ **HOBBIES:** He likes hosting lavish parties, watching sports and collecting vintage cars
- ◀ **FEES:** Approximately Rs 5 lakh per appearance. But he provides free assistance to needy people.





**COMMAND ATTENTION ON THE ROAD**

TOYOTA  
**C-HR**



# FIGHT FOR RIGHT

The Union government and the Supreme Court are at odds over the former's resentment of the Collegium system of appointment and its desire to have a dominant say in judicial appointments and transfers.

---

**By TLO DESK**

---



**T**he conflict has become a major source of tension between the judiciary and the government, and has raised important questions about the separation of powers, the role of the judiciary, and the nature of democratic governance in India.

The Collegium system, which was established by the Supreme Court of India in 1993, gives the country's top judges the power to appoint and transfer judges to the Supreme Court and High Courts. The government has sought to reform the Collegium system, arguing that it lacks transparency and accountability, and that the judiciary has become too powerful. On the other hand, the judiciary has resisted these reforms, arguing that they would erode its independence and undermine the rule of law.

The government has also begun to air its grievances regarding the court's invalidation of the National Judicial Appointments

Commission (NJAC) in 2015. There are two triggers for the current round of fighting.

One example is the government's repeated public criticism of the Collegium system as "opaque." The other involves a ping-pong match between the Collegium and the government over the names recommended and re-recommended for appointment to Constitutional courts. The statements of the union law minister and vice president have been responded to by the judges from the bench and at various fora.

Last year on October 17, Law Minister Kiren Rijju fired a salvo at the Supreme Court Collegium, claiming that they were "preoccupied" with appointing judges when their primary job is to deliver justice. Mr. Rijju's remarks came near the end of the tenure of the then Chief Justice of India, N.V. Ramana, during which the Collegium recommended 363 names for High Court judgeships and 11 names for the Supreme Court.

Even while the fight is going on, the



government has approved at least six names for appointment to the Supreme Court as Judges in recent weeks. However, it has not yet resolved the issue, and the period of discord between the two is only a temporary pause.

As many new issues of appointments of judges in various High Courts and transfers of judges are set to come up in the coming days, and if the mood of the Supreme Court in recent days is any indication, the battleground between the two appears to be expanding.

Rijiju launched another attack on the mechanism for appointing Supreme Court and High Court judges at the Times Now Summit, saying the Collegium system is 'alien' to the Constitution. The Supreme Court, in its wisdom, established Collegium through a court ruling, he said, noting that prior to 1991, all judges were appointed by the government.

Mr Rijiju said the Constitution of India is a 'religious document' for everyone, especially the government, and 'anything which is alien to the Constitution merely because of the decision taken by the courts or some judges, how do you expect that the decision will be backed by the country'. "Can you tell me under what provision the Collegium system was prescribed?" he inquired.

In response to the Law Minister's concern, CJI Chandrachud stated last year at an event that no institution in a Constitutional democracy, including the Collegium, is perfect, and that the solution lies in working within the existing system.

He said we operate within the existing framework of the Constitution as it has been interpreted and provided to us. "When we talk about imperfections, our solution is to work our way within the existing system," all of the Collegium's judges, including myself.

In his speeches and writings, Justice

## GOVT. LAUNCHES A NEW ATTACK ON THE JUDICIARY

- ◀ The Centre has launched a new salvo against the Judiciary by excluding judges from consideration for positions on the Competition Commission of India (CCI).
- ◀ The Centre has invited applications from eligible officers in the Central government, state governments, and UTs, excluding judges.
- ◀ The notice was only sent to "ministries and departments of the government of India" and "chief secretaries of all state governments and UTs," leaving the Registrar General(s) of High Courts out of the loop. The deadline for applications is March 9, 2023.
- ◀ The Delhi High Court has ordered the central government in 2019 to fill all seven CCI vacancies. Within months of the Mahindra order, the Central government advertised for a member of the CCI with a legal or judicial background, and appointed Sangita Dhingra Sehgal, a retired judge of the Delhi High Court, as a member of the CCI, but she did not join.
- ◀ Following that, the Centre took no action to fill any vacancies, or to appoint a member with a legal or judicial background. The impasse persists, and the CCI now has only two members, falling short of the quorum requirement of three for conducting business.
- ◀ CCI has been dysfunctional for about four months due to a lack of quorum, putting various M&A deals on hold.



We are working to strengthen the judiciary. We have the highest regard for the judiciary. We want a judiciary that is dedicated to the country. We occasionally hear that nothing is going well between the judiciary and the government. There is a difference and no coordination. It is sometimes stated that we wish to exert influence over the judiciary. However, Prime Minister Modi stated unequivocally on day one that the country will be governed by the Constitution.

**KIREN RIJIJU**

Minister of Law and Justice of India



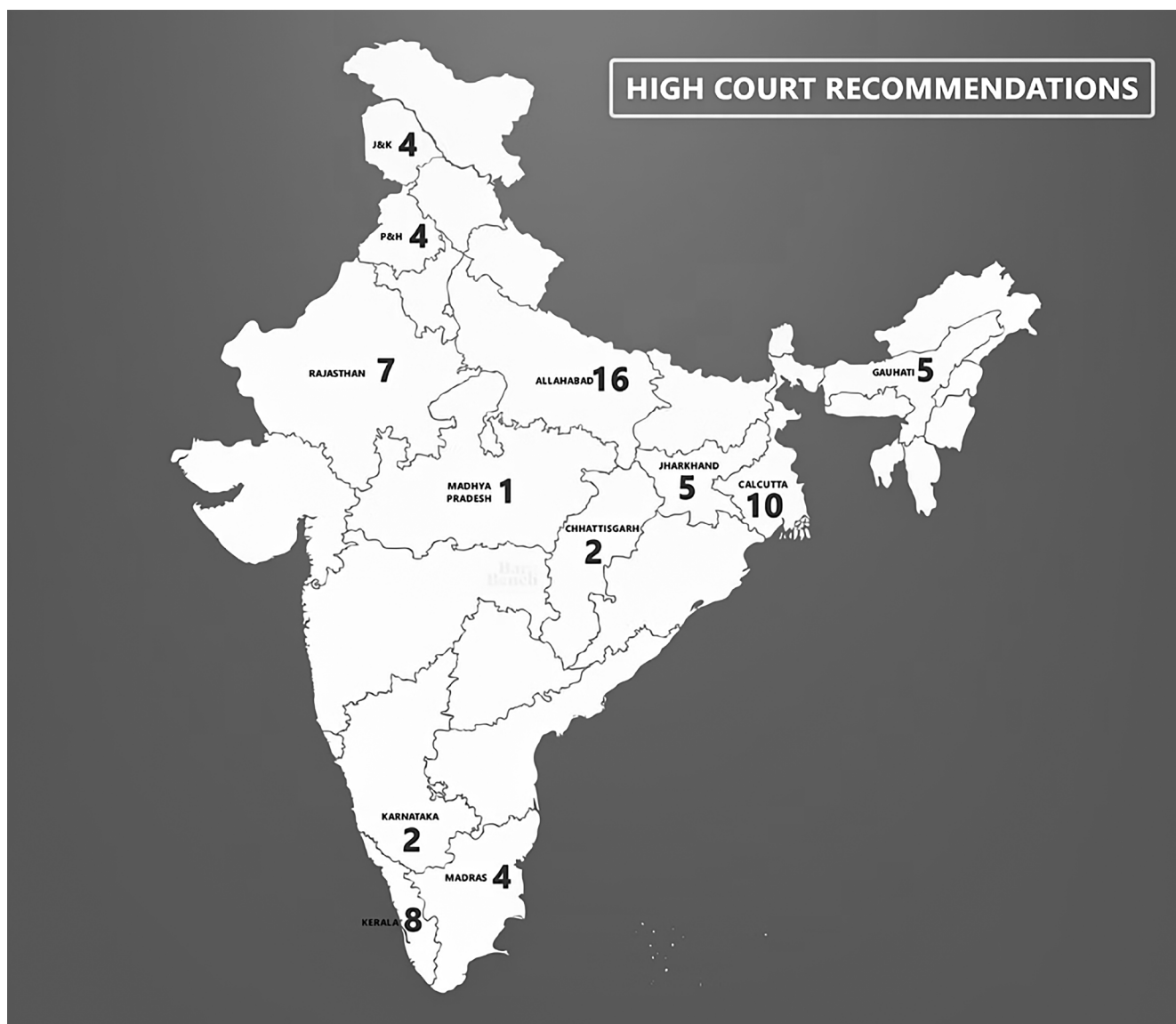
Chandrachud has called for reforms to the Collegium system, including increased transparency and accountability, and the establishment of clear criteria for the appointment and transfer of judges. He has also emphasized the importance of ensuring that the judiciary remains independent and impartial, and that the appointment process is free from political interference.

For far too long, the union government has trampled on the appointment process with little to no opposition from the Collegium or the rest of the judiciary. It "segregated" nominees for appointment, returned repeated nominees, or simply refused to make appointments until nominees resigned out of frustration. All of this was in violation of the Memorandum of Procedure established in response to the Third Judges' case. The Collegium's acquiescence was more

concerning than the union government's intransigence on the issue.

However, the Collegium system is far from the best or most efficient system for appointing judges in India. The Collegium system of judicial appointment, introduced by judicial sleight of hand in the Second Judges' case to address specific concerns about executive interference in the appointment process, has outlived its usefulness and may be impeding true judicial reform. There are three obvious flaws: it is opaque, inefficient, and stifles diversity in the judiciary. There are currently no clear criteria communicated to the public regarding how the college evaluates the suitability of candidates for judgeship. When questions about the integrity and ability of individual judges are raised, this absence becomes even more pronounced.





At the same time, the Collegium system has failed to effectively fill High Court vacancies. As of December 1, 2022, 330 seats, or 30% of the High Courts' sanctioned strength, remained vacant. This is an improvement over previous years, when the Collegium was rarely, if ever, able to ensure a High Court strength of more than 700 judges due to constant churn of judges and a lack of formalised processes. Given that the High Court is the judiciary's most overburdened level (due to the high number of pending cases per judge), this is an unsatisfactory state of affairs that affects

the administration of justice.

By emphasising seniority as an appointment criterion, the Collegium has become something of a clique, with largely male, upper-caste judges selecting male, upper-caste candidates for High Court and Supreme Court positions.

Despite the fact that reservations have increased the representation of women, Dalits, Adivasis, and other excluded communities in the district judiciary, this has not yet been reflected in the High Courts and the Supreme Court, which are still largely dominated by upper-caste men.

## ONLY 14.4 JUDGES PER MILLION POPULATION

- ◀ Between 2016 and 2020, the number of people incarcerated in the country's prisons while awaiting trial increased by 26% to 371,848 – accounting for 90% of the total prison capacity of 414,033. A quarter of these have been behind bars for at least a year.
- ◀ The year 2020 is the latest for which the number of undertrials is available.
- ◀ The number of undertrials is at an all-time high, and it comes at a time when vacancies in the judiciary – in lower courts, High Courts, and the Supreme Court – are at an all-time high, leaving the system with only 14.4 judges for every one million people as of April 1 this year, a small fraction of the 210 judges per million in Europe and 150 in the United States.
- ◀ The Committee on Reforms of the Criminal Justice System, led by Justice V. S. Malimath, recommended increasing India's judge strength to 50 per million people eighteen years ago.
- ◀ Law Minister Kiren Rijju spoke of the 50 million pending cases before India's law courts and suggested the target of settling 20 million in two years. The minister was addressing the 18th All India Legal Services Authorities Meet in Jaipur.
- ◀ Speaking at the same event, then Chief Justice of India N. V. Ramana attributed the pendency to the vast number of vacancies in the judiciary and insufficient infrastructure. Vacancy indeed runs high. There are 24,521 sanctioned posts in the lower courts, of which 5,180, or 21 percent, are vacant.
- ◀ In the High Courts and the Supreme Court, 34.4 percent of the sanctioned bench strength of 1,108 is vacant. To achieve the law minister's target of 20 million cases settled in two years, each of the 20,068 judges in the country, across the hierarchy of the courts, will have to settle 499 cases a year.
- ◀ Given the number of cases pending, that may appear to be a tall order. The lower courts are dealing with 42 million open cases, says the National Judicial Data Grid. There are another 5.9 million cases before the High Courts and 72,062 before the Supreme Court.

Judges appointed to the High Court from the district judiciary typically have shorter tenures than their bar counterparts. This means that they are rarely senior enough to serve on the High Court Collegium, which is in charge of selecting nominees to the court.

The citizen's presence in the process, which distinguishes the Collegium, is also missing from the current debate. If the NJAC amendment had one redeeming feature, it was the inclusion of a "eminent person" in the NJAC. This is a good starting point for

envisioning a new appointment system with more say for citizens.

However, In the midst of frequent confrontations between the government and the judiciary, Union Law Minister Kiren Rijju advocated for fraternal ties between the two pillars of democracy, saying that they are like brothers who should not fight each other.

The outcome of this conflict will have far-reaching implications for the country's democratic institutions and its commitment to the rule of law. ●



·  
TIME  
CHANGER  
·

INSPIRED BY SIMPLICITY

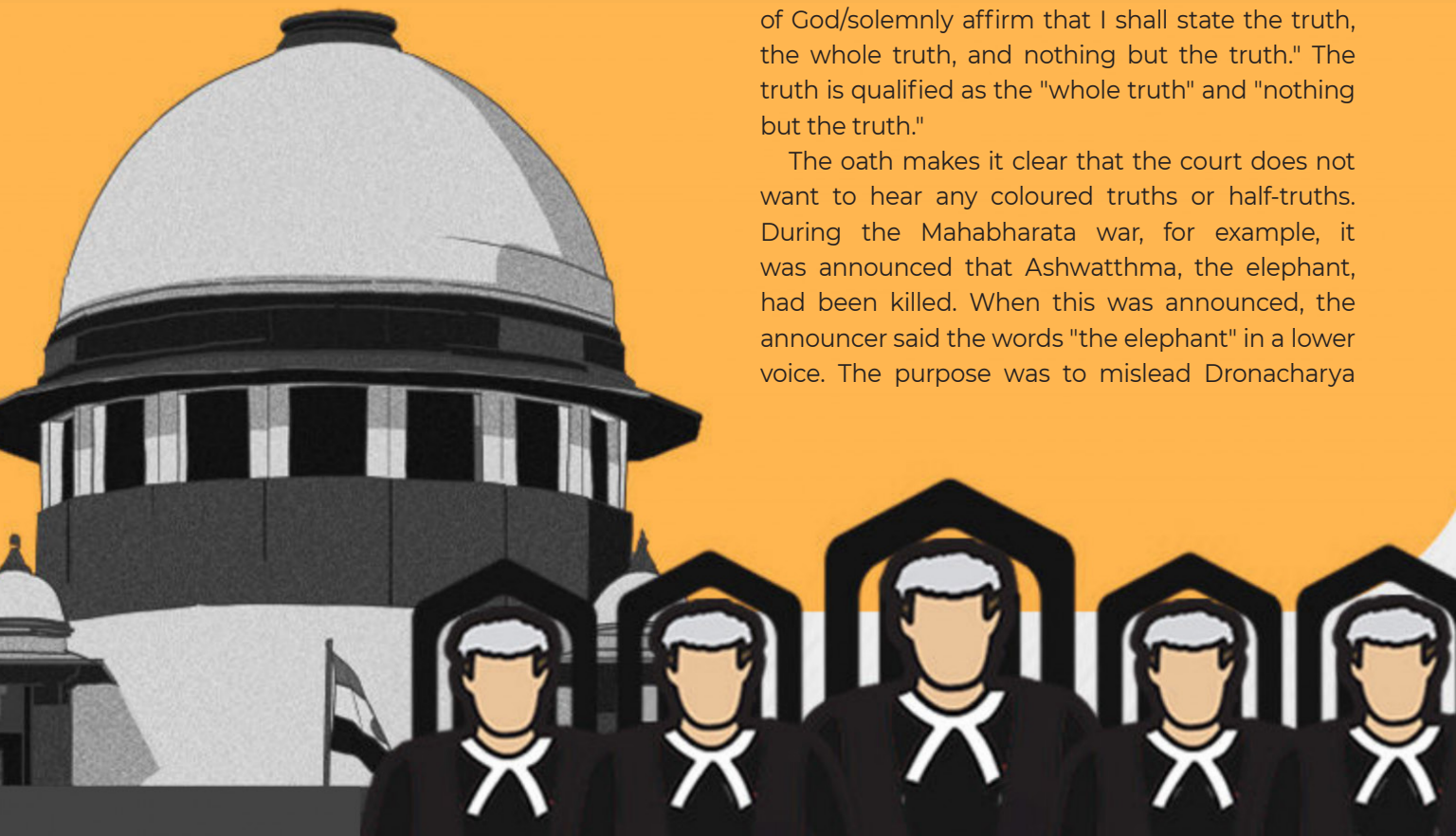
## CENTRE VS COLLEGIUM

# TRUTH BECOMES A CASUALTY

There is no clarity on the government's pick-and-choose policy when it comes to acting on Collegium advice. When it accuses the Collegium of being opaque, it forgets that it promotes opacity, not transparency, writes **A.J. Philip**

**A**witness has to take an oath before deposition in a court of law in the country. The oath is as follows, although the language varies from court to court: "I do swear in the name of God/solemnly affirm that I shall state the truth, the whole truth, and nothing but the truth." The truth is qualified as the "whole truth" and "nothing but the truth."

The oath makes it clear that the court does not want to hear any coloured truths or half-truths. During the Mahabharata war, for example, it was announced that Ashwatthma, the elephant, had been killed. When this was announced, the announcer said the words "the elephant" in a lower voice. The purpose was to mislead Dronacharya



into believing that his son Ashwatthma was killed in the war.

Dronacharya was so shocked by the news that he lost all interest in the war. He became an easy prey for the Pandavas.

The complete truth was that an elephant named Ashwatthma was killed, and Dronacharya was not bereaved. This shows how crucial the "whole truth" is to reaching a conclusion. The government and the Supreme Court have been indulging in half-truths on the issue of Collegium.

First and foremost, let us define the Collegium system. If you check the Constitution of India, which is the most voluminous Constitution in the world, you will not find the word "Collegium" there. If one goes by the dictionary, "Collegium" means "a group in which each member has approximately equal power and authority."

It came into vogue in the early nineties when the Centre was led by a string of leaders, who could only be described as weak as they did not enjoy any groundswell of support.

The Supreme Court made use of the situation to introduce what came to be known as the system of Collegium to select, appoint, and promote judges of the High Courts and the Supreme Court through its own verdicts. As I mentioned, the government was too weak to resist it.

Until the early nineties, it was the government of the day that decided who should be the High Court and supreme court judges. It is nobody's contention that the government selected only yes men and yes women as judges. Justices of the calibre of VR Krishna Iyer also came up through this system, however flawed it was.

The Collegium system that replaced the earlier system cannot be described as flawless by any standard. Anyway, under the Collegium system, the chief justice of a High Court and the two seniormost judges of the same court form the Collegium that

chooses judges in an almost informal manner.

There is an apex Collegium headed by the Chief Justice of India and four senior-most judges on the Supreme Court. This Collegium vets the names suggested by the various High Courts. It not only chooses judges for the Supreme Court but also promotes judges from High Courts to the post of chief justices of High Courts. It also decides all transfer cases.

The government does not have much of a role in this process. It has to do a background check on the candidates. The government can reject any candidate, but once the Collegium re-recommends the same person for appointment, it has to comply with the Collegium's recommendation.

**The government enacted legislation in 2014 to establish the National Judicial Appointment Commission (NJAC) to appoint judges. NJAC envisioned a new appointment system in which the Chief Justice of India could only remain silent as the government would serve as both judge and executioner.**

The Chief justices of the High Courts and the Supreme Court are by and large based on seniority, so much so that it can be predicted whether a judge would become a chief justice and, if so, on what date. This system had been running smoothly until Narendra Modi took over as Prime Minister.

For once, the government realised that it could not fill the posts

of judges with its nominees. It wanted to have a greater say in the selection process. In 2014, the government managed to enact a law to set up the National Judicial Appointment Commission (NJAC) to appoint judges. Incidentally, the Bill was passed almost unanimously.

The NJAC envisaged a new system of appointment in which the Chief Justice of India did not enjoy a pivotal role. All he or she could do was remain a mute witness, as the government would be both the judge and the executioner.

It is little wonder that the Supreme Court struck down the Act in exercise of its power to review any law cleared by Parliament. The government could have filed a review petition if it felt that what the court did was unacceptable. However, it preferred not to do anything, perhaps to prove the point that

## **Governor, Lieutenant Governor and other high-ranking positions are filled by party members or yes men who have no idea how to uphold the Constitution in all of their dealings. Is anyone aware of the reasoning behind the arbitrary selection of political appointees for these positions?**

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it was not interested in bridling the judiciary.

If someone thought that the government acquiesced in the court's decision, she could not be faulted for it. However, few realised that the government was waiting for an opportune moment to hit back at the Collegium. It is not possible to trace the showdown to any particular incident.

In the selection and appointment of judges, the government has used whatever power it still has. Kuttiyil Mathew Joseph was the longest-serving chief justice of Uttarakhand. He is believed to have gotten into the bad books of the government for a verdict that questioned the Centre's decision to impose the President's rule on the state.

The Collegium chose him for elevation to the Supreme Court. The government sat on the file for so long that it ensured that he would retire before becoming chief justice of India. At the Supreme Court, judges get their seniority not on the basis of their age but on the basis of the date on which they join the court as judges. The tenure the judge had at the High Court is not counted.

Justice Joseph, who was the son of Justice KK Mathew, was appointed only after the Collegium insisted on having him on the bench of the apex court. There have been innumerable cases of the government sitting tight on the proposals mooted by the Collegium.

There is little transparency in the functioning of the Collegium. Nobody knows for sure what criteria are followed by the Collegium in the selection of judges. It does not have a structure like the Union Public Service Commission to select judges. What is in vogue is an informal system.

Nobody can say with certainty that an informal

system is the best way to find people of integrity and competence among the country's 140 million people. There is no reservation for the post of judge. When KR Narayanan was president of the country, he wrote a letter to the Chief Justice of India, hinting at the desirability of having some sort of reservation while selecting judges.

The President was lampooned for making the suggestion. In fact, one fortnightly journal that tried to imitate Time magazine by using a plethora of adjectives and adverbs for every noun and verb it used, published an ugly picture of the President on its cover page.

However, the fact remains that the apex court judges are chosen from a small basket of judges. Is it any surprise that sons and daughters of former judges become judges? Of course, there will be some representation for minorities and Dalits. I do not have to elaborate on which section a vast majority of the judges come from.

There have been some specific cases where judges chosen under the system of Collegium have had to be transferred. In fact, one had to be jailed. This showed that due diligence was not observed in the selection process. As I mentioned, the Collegium does not have the infrastructure that a public service commission has.

While the apex court struck down the NJAC Act, it preferred not to take a bold stand on many issues. For instance, the citizenship law, which questions one of the basic structures of the Constitution, was not subjected to judicial scrutiny. Similarly, the abrogation of Article 370 of the Constitution escaped such scrutiny.

One of the chief justices who came up through the system of Collegium accepted the nomination to the Rajya Sabha soon after he retired from the apex court. Even if it was not an act of quid pro quo, the appointment was certainly questionable. From any angle, the Collegium system cannot be said to be perfect.

The other day, Union Minister for Law and Justice Kiren Rijju fired a salvo at the Collegium system. He wants a representative of the government to be a part of the Collegium when it deliberates on these issues.

He made the demand in a letter to Chief Justice

D.Y. Chandrachud. It is difficult to see the letter in isolation, as the Centre has been consistently putting the Collegium under pressure so that it wilts. In fact, Rijju has been working in tandem with the vice-chairman of the Rajya Sabha and the speaker of the Lok Sabha, who also have a bone to pick with the Collegium.

If the collective bid is seen as an attempt to bring about transparency in the functioning of the Collegium, it is totally erroneous. Had that been the case, there would have been greater transparency on the part of the government on why it has been sitting tight on some of the proposals made by the Collegium.

There is no clarity on the pick-and-choose policy the government exercises when it comes to acting on the advice of the Collegium. When it accuses the Collegium of lacking in transparency, it forgets that it promotes opaqueness, not transparency.

Innumerable are the Constitutional and other senior posts that are filled routinely by the government. Does anyone other than a few in the top echelons know the rationale for the selection, which is nothing but arbitrary? The gubernatorial posts are routinely filled with party men or yes men who do not have any knowledge of how to uphold the Constitution at all times in all their dealings.

They seem to believe that their job is to keep the chief ministers, if they happen to be posted in states ruled by non-BJP chief ministers, on tenterhooks. The only criterion used in the selection of people is their loyalty to the party or its leader.

A report that cast aspersions on the selection process followed by the Collegium would have made more sense if the government had, for instance, justified the grounds on which Muslims are not given representation in the council of ministers, even though they constitute at least 15 percent of the population. The condition of the Christians is not any better.

True, there is a need for the Collegium to pick up from a larger basket of lawyers and judges. The same can be said about the government, which is also very discriminatory in its selection process.

The argument advanced by the chairman of the Rajya Sabha, Jagdeep Dhankar, that the striking down of the law enacted by Parliament would have made some sense if Parliament had been more accommodating. The entire country is aware of how much public life has been disrupted in the country as a result of the government's determination to force agricultural laws down the farmers' throats.

The presiding officers often conduct themselves as henchmen of the ruling party rather than as the symbol of the autonomy the Houses enjoy. In

**The Collegium does not have a structure for selecting judges like the Union Public Service Commission. Nobody knows for certain what criteria the Collegium uses to select judges.**

other words, the government has no moral right to question the Collegium.

By now, the people know the intentions of the government. It has captured all the institutions of power. From the President to the Vice-Chancellors, all the nominees are members of the party or the prime minister.

In 2014, when the NJAC Bill was discussed, most parties supported the government. Today, there are few takers for Kiren Rijju's argument because they know that he does not say the "whole truth" and "nothing but the truth"! ●

*Courtesy: Indian Currents  
([www.indiancurrents.org](http://www.indiancurrents.org))*



## ABOUT THE WRITER

**A.J. Philip** is a senior journalist and columnist. He has held high editorial posts in The Tribune, the Indian Express and the Hindustan Times. He writes regularly for the Indian Currents, the Oman Tribune and the New Indian Express.

# SC COLLEGIUM APPROVES 20 NAMES FOR HIGH COURT JUDGES

The Supreme Court Collegium has recommended the appointment of **17 advocates and three judicial officers** to the Madras High Court, Allahabad High Court, and the Karnataka High Court.



**R. JOHN SATHYAN AS  
MADRAS HC JUDGE**

The Supreme Court Collegium has decided to reiterate its previous recommendation for the appointment of Mr R. John Sathyan, Advocate, to the Madras High Court.

He reportedly shared an article published in "The Quint" that was critical of Prime Minister Narendra Modi and another post about the suicide of medical aspirant Anitha, who ended her life in 2017 because she was unable to clear NEET, portraying it as a killing by "political betrayal" and a tag stating "shame on you." Mr Sathyan's suitability was deemed acceptable by all consultee-judges. According to the Intelligence Bureau, he has a good personal and professional image, and nothing negative has been discovered about his integrity. Mr Sathyan is a member of the Christian faith. The Collegium is of the considered opinion that Mr R. John Sathyan is fit and suitable for being appointed as a Judge of the Madras High Court. The Collegium recommends that he be given precedence in the matter of his appointment as judge over other names recommended for appointment as judges.







## GAY LAWYER SAURABH KIRPAL AS DELHI HC JUDGE

Rejecting the Union Government's objections, the Supreme Court Collegium stood firm on its decision to appoint senior advocate Saurabh Kirpal, who is openly gay, as a judge of the Delhi High Court. The colloquium said that the fact that Kirpal "has been open about his orientation is a matter that goes to his credit." The Collegium, comprising Chief Justice of India (CJI) D.Y. Chandrachud and Justices S.K. Kaul and K.M. Joseph, reiterated the proposal, revealing that the objections against Kirpal were that his partner is a Swiss national and that Kirpal "is in an intimate relationship and is open about his sexual orientation."

## FOR ALLAHABAD HIGH COURT



Prashant Kumar, Syed Qamar Hasan Rizvi, Manish Kumar Nigam, Manjive Shukla, Anish Kumar Gupta, Nand Prabha Shukla, Arun Kumar Singh Deshwal, Kshitij Shailendra, and Vinod Diwakar were also approved as Allahabad High Court judges by the Collegium.



## FOR KARNATAKA HIGH COURT

The Supreme Court Collegium approved the proposal for the elevation of the following advocates as judges in the Karnataka High Court: Vijaykumar Adagouda Patil, Rajesh Rai Kallangala, and Tajali Moulasab Nadaf.

## MADRAS HIGH COURT TO GET MAXIMUM JUDGES



Advocates Venkatachari Lakshminarayanan and Lekshmana Chandra Victoria Cowri, Pillaipakkam Bahukutumbi Balaji, Ramaswamy Neelakandan, and Kandhasami Kulandaivelu Ramakrishnan, and judicial officers Periyasamy Vadamalai, Ramachandran Kalaimathi, and K. Govindarajan Thilakavadi are named in the Collegium proposal for elevation as judges in the Madras High Court. ●

# “COLLEGIUM SYSTEM RIDDLED WITH FLAWS”

*Retired Delhi High Court Judge RS Sodhi has made significant contributions to the administration of justice, and he has delivered many landmark judgements throughout his career, reinforcing the common man's faith in the judiciary. In an interview with **Khurram Nizami**, Justice Sodhi says the Collegium system is riddled with flaws and merit plays little role in determining the top judiciary.*

**One of your recent statements, "The Judiciary has hijacked the Constitution," made national headlines. Kiren Rijju, the law minister, even tweeted your statement. Why are you criticising the system that has elevated you?**

Yes, the system has elevated me. There were no other options, so I qualified it. Your question now was whether my elevation was correct or incorrect. You must make the decision. I am not qualified to assess the process of my elevation.

**So, when did you realise the Collegium system was faulty?**

It is a gradual decline. This is not my first time saying it. There is a widespread belief that the Collegium is chosen on other criteria, with merit playing only a minor role. Now, public relations has triumphed over merit. Relatives, friends, and referrals are being considered. I would not say there is a decline, but I would

say that ignoring merit is lowering the quality of the Collegium's recommendations.

**The general public is curious about how the Collegium operates. According to popular belief, the three or four senior judges sit together and arbitrarily decide who can and cannot be elevated?**

Collegium serves in both the Supreme and High Courts. When it comes to High Courts, the Collegium, which consists of the Chief Justice and three other senior judges from the respective court, recommends the name to the Supreme Court for approval. The recommendation of the respective High Court is approved or disapproved by the Supreme Court. This is how the Collegium functions. However, in my opinion, the entire system is opaque and lacks any selection criteria. This is not a competitive exam like the UPSC.

**So, what should be done to improve the system's reliability?**

There should be some kind of system, like talent spotting. There should be a talent pool established so that only merit is considered for the appointment of judges. This talent spotting should not be limited to the Supreme Court or High Courts; trial courts should be included as well. Talent may also be there. Even some trial court judges are doing a good job.



## **Were you known to the Collegium when you were appointed as a judge?**

For many years, I practised in the Delhi High Court. So almost all of the judges knew who I was. But I never dabbled in public relations. As a result, my name was forwarded. I never found out why I was preferred, nor did I try to find out.

## **The same is true for others. So, why are you raising concerns?**

It is not something I disagree with. However, the Collegium should understand why the names were shortlisted. Are the names there because of merit or because of recommendations? But my main concern is the Collegium. The Collegium system is not mentioned in the Constitution. This occurred in 1993. It did not exist prior to 1993. So, when was the Constitutional amendment made in this regard?

## **You mentioned that there is a PR (Personal Relationship) component to the elevation. What exactly is this public relations component?**

I'm not saying it's necessary, but it's possible that some people are doing it. How to please a judge is also an art. Courtly etiquette? This is the realm of the arts. As a result, public relations is also an art form. Some are blessed, while others are not.

## **What exactly is the term "Uncle Syndrome" in the legal world? You even used this term in one of your judgements.**

When I was a judge in the Delhi High Court, I noticed that many judges' relatives worked in the same court. At that point, I delivered a judgement in which I stated that the Delhi High Court is suffering from Son-Stroke and Uncle-Syndrome. I was of the opinion that something that should not be happening in court was happening, so I voiced my opinion. This caused me a lot of discomfort, but it never stopped me.

## **Did you ever face any political pressure**

# Q&A

## **The Collegium system, in your opinion, is a failure and unConstitutional. NJAC is a viable option. What are your thoughts on the NJAC?**

NJAC was created solely to address flaws in the Collegium system. This solidified the belief that the Collegium system was flawed and needed to be replaced. Efforts are being made to rectify the situation. NJAC is a part of the effort. However, when NJAC was formed, it was discovered that the participation of judges in NJAC was low. Later, the Supreme Court overruled NJAC, believing that it would jeopardise the basic structure of the Constitution as well as the independence of the judiciary.

## **Are you in favour of NJAC, and is this flawless?**

NJAC may have been accepted if the judge's participation was corrected. The government may secure their participation, but the judges should have a majority share. I'd like to point out that sitting judges are extremely busy. They are unable to identify talent. This is why I believe there should be a permanent body comprised of judges to carry this out.





# Q&A

**The Law Minister has endorsed your viewpoint, just as you have endorsed the Law Minister's viewpoint. As a result, any reward or political appointment is waiting in line?**

They are most welcome, and I will be grateful. But now that I am 78 years old, nothing can be offered to me or accepted by me. None have offered me until now, so what can they offer me now? I said the same thing about the judiciary eight years ago, and nothing happened, so what can happen now?



***while serving as a judge?***

For a short time, I was appointed as a judge. I had no ambitions beyond that. So there was no mounting pressure on me. Because my family members had nothing to do with the advocacy, mounting pressure on me was futile. As a result, I only performed my duties with zeal and dedication.

***Mr Rijju said the same thing, so are you echoing his point of view?***

This is not an isolated opinion. Mr FS Nariman, an illustrious jurist, holds the same opinion. When Mr. Atal Bihari Vajpayee was Prime Minister, the government proposed a bill in which three judges and two government officials would perform the task, but the bill was never passed. The bill is still in place, and the present government can consider it as well. Both are mature bodies. They should sit down and brainstorm a solution. Instead of pointing fingers at each other, they should work together to find a solution.

***What is the solution to this conflict?***

There can never be a tussle between two Constitutional bodies. Both the bodies should sit together and should come with an amicable solution. Scope of improvement is always there. This is the reason why Collegium replaced one system. Later NJAC came, to improve the system further. We have to evolve the best system. Parliament has the right to form the law not the Supreme Court.

***The parliament formed the NJAC, but the Supreme Court quashed it.***

Yes, the Supreme Court overruled it. However, it also stated that this goes against the fundamental structure of the Constitution. This would not have happened if the judiciary had been consulted in the same way.

***What do you consider the judiciary's most significant accomplishment?***

The judicial system is still operational. This is the judiciary's most significant accomplishment. ●



# JUPITICE COURT: DEMOCRATISING JUSTICE THROUGH TECHNOLOGY

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The Mediation provision will improve the arbitration procedure. Furthermore, the commercial court statute says that situations involving more than 3 lakh rupees must first go through mediation, which is a beneficial step for society.

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The legal binding force of an arbitration decision is the same as the legal binding force of an arbitration decree.

The Jupitice also intends to work with the Ministries of Consumer Affairs, Micro, Small, and Medium Enterprises, Industry, and RERA tribunals. Even the Jupiter is open to all clients, not only those of higher standing. ●



*Raman Aggarwal is the founder and CEO of Jupitice Justice Technologies Private Limited. He has formulated the policy on medical tourism in the state of Punjab. He is also a member of a number of national and international organizations, including the International Fiscal Association, NASSCOM, the CII, the PhD Chamber of Commerce.*

# CJI PITCHES FOR VIRTUAL COURT TECHNOLOGY



Disappointed by the attitude of some Chief Justices of High Courts who are disbanding technological infrastructure created with public money, *Chief Justice of India D.Y. Chandrachud* says virtual court technology is here to stay, and Chief Justices of High Courts are duty bound to "fall in line and come on board".

**C**hief Justice of India D.Y. Chandrachud has been a strong supporter of technology in order to relieve pressure on courts across the country and provide people with timely justice. And his chairmanship of the Supreme Court's e-committee supplements his initiatives. But, post-pandemic, the slow peddling of virtual courts appears to have irritated him greatly. Recently, in response to some demands from lawyers alleging that virtual courts are not being held in some High Courts across the country, he warned the HC Chief Justices





The issue arises when you have some Chief Justices who are technologically savvy and others who are not... I am going to ensure that everybody is online. There is now no question of "I like technology or I don't" anymore than saying "I will use cell phones or I will not." Everybody uses cell phones. You better use it too. This infrastructure for virtual courts is provided using public funds. "I think all the Chief Justices of High Courts need to learn that they have to be on board and there are no exceptions".

**DHANANJAYA Y. CHANDRACHUD**

Chief Justice of India



strongly.

The Chief Justice said he was "really disturbed" by the attitude of certain High Court Chief Justices who are disbanding technological infrastructure created with public money. He said they cannot just switch off the cameras and microphones and insist on the physical presence of lawyers and litigants.

The CJI said "Some High Court judges are simply dismantling the virtual hearing infrastructure that we have funded... You may or may not be interested in technology as Chief Justice of a High Court; you may know nothing about it; but you are obligated to spend public funds made available by the Government of India to further the mission of access to justice".

Virtual court technology refers to the use of digital tools such as video conferencing, electronic filing of documents, and online

dispute resolution systems to conduct court proceedings remotely without the need for physical presence in a courtroom.

He mentioned how some judges believed that if they could physically appear in court, lawyers could as well. But the conditions under which judges come to work are very different from those under which the Bar must work.

He said the funds are not for us personally; we are going to use them to reach out to people and close the Internet divide at the grassroots level. The Chief Justices need to take this mission forward. This is not how you deal with public money.

Chief Justice Chandrachud mentioned how the Union Budget made 7,000 crores available for the e-courts project after a Parliamentary Committee visited the Supreme Court for the first time and issued a strong report in favour of more funds for the judiciary. ●

# AI TO CHANGE LEGAL LANDSCAPE

By JAY P GUPTA



**Supreme Court Justice Hima Kohli** says artificial intelligence (AI) should not be viewed as a threat, but as an opportunity to improve the quality of legal practise. The use of AI in the legal field has been a "game-changer" and has the potential to revolutionise the way lawyers work.

**W**hile Artificial intelligence (AI) can assist in many aspects of the legal process, it cannot yet replace human lawyers and judges. Although artificial intelligence (AI) can assist with research, document review, and other tasks, applying the law, interpreting legal precedents, and making decisions still require human judgement and expertise.

Supreme Court Justice Hima Kohli recently while speaking at an ICICI Bank event said artificial intelligence (AI) should not be viewed as a threat, but as an opportunity to improve the quality of legal practise, because technology has played a significant role in keeping the wheels of justice turning even during the peak of the COVID-19 pandemic and beyond.

However, Justice Kohli raised ethical concerns about "accountability, transparency, and the protection of parties' rights" that may arise with the use of AI in the legal field.

She said, "It will be critical to establish clear guidelines and protocols to ensure that justice is served equitably to all parties".

The emergence of artificial intelligence has sparked some concern among the legal community. Lawyers may be concerned that technology will render their knowledge and skills obsolete.

As Justice Kohli pointed out, AI has the potential to greatly improve the efficiency of legal practise by automating routine tasks, reducing the time required for legal research, and providing real-time access to information.

According to her, this could free up more time and space for lawyers to focus on complex and value-added tasks, ultimately leading to better outcomes for clients.

Besides, AI systems can analyse vast amounts of data and identify patterns and relationships that may not be immediately obvious to





"While AI has the potential to greatly improve judicial system efficiency, it will never be able to replace human judgement." There are "no limits to growth because there are no limits to human intelligence and imagination," and after all, AI is man's creation.

**JUSTICE HIMA KOHLI**

Supreme Court of India



humans. It leads to increased accuracy in decision-making and better outcomes for clients.

Moreover, AI can be used to provide clients with real-time information, personalised recommendations, and virtual legal assistance. According to Justice Kohli, it improves the overall experience of clients and aids in the development of long-term relationships.

The incorporation of AI in the legal profession has the potential to generate new business opportunities, such as the development of new legal-tech products and services.

"The role of AI in shaping the legal world and bringing about positive changes is bound to expand in the coming years," said Justice Kohli.

While emphasising the importance of using AI in the legal field, Justice Kohli stated that the technology would lack human empathy, compassion, and reasoning, which are required for the administration of justice, and that judges would be required for these.

A judge comes to the bench with a wide

range of legal and personal experience, and his or her role extends beyond a bookish application of the law." He is prepared to weigh the facts of a case, comprehend human behaviour, and apply the law to the facts in order to reach a fair and just decision.

AI, no matter how advanced it is, lacks the human empathy, compassion, and reasoning that are required for the administration of justice.

The role of judges in an AI-powered Indian judiciary is likely to change and evolve, but their fundamental role in ensuring fairness, impartiality, and the protection of civil liberties will remain constant and unchanged.

The bottom line is that AI will never be able to replace the human values that are deeply embedded in country Constitutions, in institutions of excellence in academia and government, and in civil society."

Let us embrace technology and AI with caution and a firm commitment to the rule of law. ●

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# IN-FLIGHT INCIDENTS: AVIATION LAW HAS LIMITS

*A passenger on an Air India flight was charged with sexual harassment and public indiscretion. Shankar Mishra, the passenger, was allegedly drunk when he urinated on one of his co-passengers, a 72-year-old woman. The incident occurred in the business class cabin of a flight from New York to Delhi in late November of last year. Air India has since delisted a pilot and four cabin crew members on dereliction of duty charges. However, this incident raised serious concerns about the legal aspects of the situation. Whether it should be investigated under any Aviation law or under provisions of the Indian Penal Code. What are the legal perspectives in such cases, and who has jurisdiction over them?*

**Khurram Nizami, our correspondent, attempts to find an answer in a conversation with Aviation law expert Mr. Anik.**

## **Excerpts:**

**What does Aviation law say about those who have been arrested or are facing a trial? Were they charged under the IPC or the Aviation Act?**

The Aviation law only addresses certain aspects of flight operations, such as ticketing and insurance. There is a rule that says, Aircraft Act 1934, and within this rule is a rule called Aircraft Rules, 1937. The rules only state

that if there is an incident, the authority will form a committee under the Civil Aviation and Regulatory Authority, and the authority will investigate and refer the matter to the police station to file a FIR. If you look into this case, you will find that there are no penal provisions under any Aviation law. The Aviation law only addresses operational issues, not penal provisions or crimes committed in the airspace. A preliminary investigation should take place to determine exactly what happened in the aircraft that needs to be investigated. The committee's report will be forwarded to the local police station or the security police station that each airport has, and the incident will be registered and the perpetrator will be identified and punished under IPC.

**KN: Why is it that Aviation law does not apply to these types of incidents in the air? But, if an aeroplane takes off from Paris and lands in Bombay or Delhi, and something happens in the airspace between, who should be contacted? Which country will then intervene?**

**ANIK:** You see, when it comes to jurisdiction, you have two options. So, let me tell you, when we're dealing with all of these current issues, we're referring to laws passed in the 1930s or 1940s, and I believe there weren't

many flights available at the time. As a result, I believe the legislature was unprepared for such allegations. So, there are no such penal provisions, but any such crime in the airspace will undoubtedly be dealt with by the local police. So, to answer your second question about jurisdiction, if a case occurs in Indian airspace or within Indian states, the jurisdiction definitely goes where the flight lands because destination is important here. However, when it comes to international airspace, the destination is always taken into account.

**KN: Sir, a few incidents have come to light in which a flight takes off and some passengers are left behind, despite the fact that they were on time. What will happen under Aviation law in that case?**

**ANIK:** If a person arrives late, he must face his own consequences; however, if the flight is delayed or rescheduled for more than 2 hours, the air carrier must fully refund their amount, according to Aviation law. There is even a law that states that the carrier must pay a penalty of up to 20,000 rupees.

**KN: Recently, GoFirst flight took off from Bengaluru, leaving approximately 50 passengers behind. What will happen in this case because it is an operational aspect?**

**ANIK-** So, what exactly happened in this incident? I'm not sure what happened exactly, but we've seen many articles and videos on social media and news channels about it. According to Aviation law, if a passenger is left behind and the flight departs before its scheduled time, they can file an application for compensation.

**KN: One thing I'd like to ask you, Mr. Anik, is that you said it's a very old Aviation law when these types of things weren't happening, but a lot of things have changed over time, so has anything changed or any amendments been made in the Aviation law so far?**

**ANIK:** See, I'm referring to the Aviation law,

# Q&A

## **What does Aviation law say about ordinary passengers? What happens if someone buys a ticket and something bad happens to him or her?**

So, first and foremost, once you purchase a ticket, it is the responsibility of the carrier to take care of your flights; they will provide you with the necessary information regarding flight timings, flight changes, and so on. As a result, it is the carrier's responsibility to contact you via phone, message, email, or other means to convey this information. The second duty is to ensure safety and security. This safety and security is repeatedly breached in India. Sometimes the allegations come from the passengers' side, and sometimes from the carriers' side, but there is always a bridge. So, if you look at modern countries, they have masters in their flights who can take care of everything. Such facilities are not available in India.






 A sign with the text 'Q&A' in white on an orange background, hanging from a string.
 

# Q&A

## Why is Aviation law not so popular in the legal fraternity, especially among students and upcoming lawyers? Why can't we find a good advocate dealing in Aviation law in many states?

So, basically, Aviation law practise is very limited because it is all codified. The airline companies try to follow all of the nodes and rules, or they won't be able to get a proper licence, and there are very few violations that we can see. Here, Aviation laws speak about aircraft management and other things like careers, so legal requirements and legal intervention may not be as popular, but we should definitely encourage our future generations to participate.



which has many rules and acts, and specifically they frame some kind of guidance and rules, as there is no amendment bought in the section as of today. You are aware that most airports are overcrowded; we receive notifications from airlines about delays; in this situation, passengers must wait for long periods of time, and there is no law to regulate it, so airlines make their own rules.

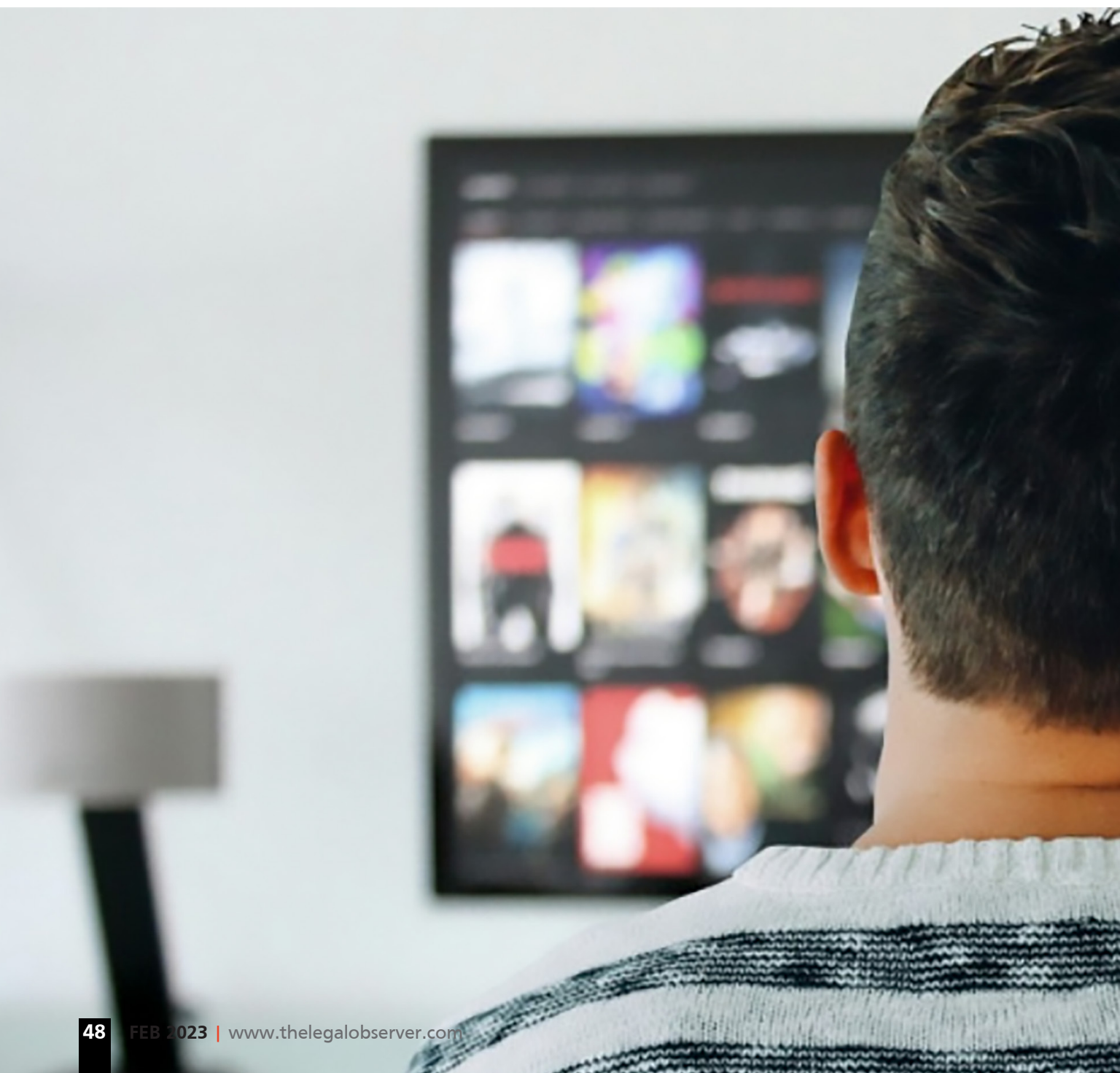
**KN:** *So, Sir, you've been practising Aviation law for a long time. When it comes to Aviation law in our country and other countries, what changes do you recommend to the current legal system?*

**ANIK:** Let me tell you one thing: this law needs to be updated. If we look at the United States, France, or any other European country, the safety security is never breached. Personally, I believe that law enforcement should intervene over there so that they can respond quickly and resolve the issues, particularly for passengers fighting over luggage, boarding counters, gates, and so on. So, basically, I will say that there should be law enforcement agencies that handle all of these matters internally, and for security purposes, there should be a marshal or some other security mechanism. Third, after landing, if any luggage issues arise or any passenger encounters any issues of law and order, they should be reported.

**KN:** *What about Western and other countries? Are European countries' Aviation laws similar to those in India, or are they unique to Europe?*

**ANIK:** The law is very small and not like India where we have different branches, rules, but if specifically speaking about how it operates, how it needs to get a licence, and what kind of fittings, or passenger sitting capacities, and some other small safety issues, and in other countries there is a checklist, you fill the checklist and get a licence, and for criminal issues they have marshalls to handle it. So, we have a lot of flaws, but no one has gone to court for these issues as of yet. ●

# COURT DRAMA ON OTT



Although many films are released in theatres, the public's preference is shifting to OTT platforms. Because they allow you to watch your preferred content away from the crowd, OTT platforms have found their place. Many web series for the OTT platform were created, and they were well received. OTT also provided access to a variety of content, such as films. The web series created about the content of the courtroom, on the other hand, has been extremely well received. *We'll tell you about such courtroom-based web series in this report:*



## CRIMINAL JUSTICE

hotstar  
specials

PRESENTS

# CRIMINAL JUSTICE



Madhav Mishra (Pankaj Tripathi), a lawyer who handles minor cases, has his life turned upside down. He has to fight such cases in court, which no one wants to do. Madhav Mishra's character has developed a distinct identity over the course of the three seasons. This web series depicts how a lawyer from a small town fights in court on the basis of his talent and intelligence in cases where lawyers with a larger identity do not want to fight due to the possibility of defeat. Tigmathshu Dhulia began this series with Vishal Furia in 2019. Its plot is based on the novel "Criminal Justice." The second and third seasons were released following the success of the first.

The first season of **CRIMINAL JUSTICE: ONCE UPON A NIGHT** stars Pankaj Tripathi, Vikrant Massey, Jackie Shroff, Anupriya Goenka, and Mita Vashisht in lead roles. Its story revolves around Vikrant Massey.

OTT PLATFORM - DISNEY PLUS HOTSTAR





## CRIMINAL JUSTICE: BEHIND THE CLOSED DOOR

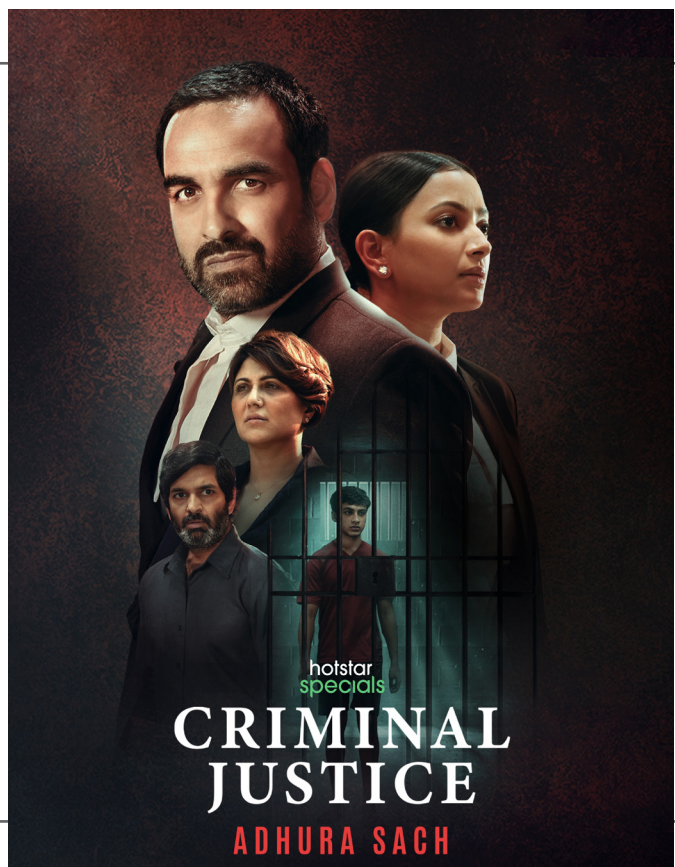
Pankaj Tripathi, Kirti Kulhari, Khushbu Atre, Anupriya Goenka, and Jishu Sengupta played the lead roles in this season. Its plot is based on the story of Anuradha Chandra, a disgruntled wife (Kirti Kulhari). Anuradha has been charged with murdering her husband. It is shown in this situation how she meets lawyer Madhav Mishra and how she comes out of it all.

OTT PLATFORM - DISNEY PLUS HOTSTAR

## CRIMINAL JUSTICE: ADHURA SACH

Madhav Mishra (Pankaj Tripathi) returned with a new case. These cases come to him automatically. Swastika Mukherjee, Shweta Basu Prasad, Purab Kohli, Gaurav Gera, and Upendra Limaye appeared with him in this series. Its entire story is based on a juvenile. How he is accused of murdering his own sister, and the case is brought against him.

OTT PLATFORM - DISNEY PLUS HOTSTAR



# GUILTY MINDS

AMAZON ORIGINAL SERIES

# GUILTY MINDS



**GUILTY MINDS** is a web series directed by Shefali Bhushan that features prominent actors such as Mrya Pilgaonkar, Varun Mitra, Kulbhushan Kharbanda, Sugandha Garg, Namrata Sheth, Satish Kaushik, Shakti Kapoor, Benjamin Gilani, and Girish Kulkarni. This series consists of ten episodes. This web series features two law firms: Khanna & Associates and For the People Associates.

Khanna Associates is a well-known law firm. LN Khanna (Kulbhushan Kharbanda) is its chief. He has four juniors, but he hires Deepak Rana (Varun Mitra) to work for him. Deepak is an outstanding attorney who has handled numerous high-profile cases. He wins because of his talent on the court. All of the issues surrounding casting couches, video game addiction, test tube baby fraud, and dating app cheating have been examined from a legal standpoint in this web series.

OTT PLATFORM: PRIME VIDEO





## ILLEGAL-JUSTICE OUT OF ORDER

Illegal-Justice Out of Order is a courtroom series. The series' lead actors are Neha Sharma, Akshay Oberoi, Kubbra Sait, Piyush Mishra, and Satyadeep Mishra. It tells the story of Niharika Singh (Neha Sharma), a lawyer who works for Janardan Jaitley (Piyush Mishra). What happens to Niharika as the plot unfolds? How she comes out of it all is how the series tells the thrilling story of a female lawyer practising law.

OTT PLATFORM: VOOT



## THE VERDICT: STATE VS. NANAVATI

The web series The Verdict: State vs. Nanavati, produced by Irada Entertainment and Ekta Kapoor, is based on the famous Indian court case KM Nanavati vs. State of Maharashtra in 1959. On November 24, 1961, the court handed down its decision in this case, in which an Indian Navy command officer, Kawas Nanavati, is accused of killing Prem Ahuja. This was also the inspiration for Bollywood actor Akshay Kumar's film "Rustom," in which he played the role of Rustom.

OTT PLATFORM: ZEE5



## YOUR HONOR



SonyLIV Originals

## YOUR HONOR

**YOUR HONOR** is an Indian remake of the Israeli television series "Quodo." Jimmy Shergill, Meeta Vashisht, Parul Gulati, and Varun Badola star in this series. The series follows a famous judge in Ludhiana who loses his sense of morality and justice after his son is involved in a hit-and-run accident. Two seasons of this series has already been released which the public enjoyed.

'Your Honor' is one of those series that gradually builds up the momentum and ends up being an intriguing watch with some spectacular performances to showcase. However, the show stretches too many sequences to the breaking point, detracting from the overall pace of this high-end crime drama. Despite this, there are enough plot twists and turns to keep viewers interested enough to binge-watch this thriller.

OTT PLATFORM - DISNEY PLUS HOTSTAR



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# FIVE NEW SUPREME COURT **JUDGES APPOINTED**



**President Droupadi Murmu** appointed five new Supreme Court justices after the Centre approved the Collegium's proposal.

## THE FIVE FRESHLY APPOINTED JUDGES ARE LISTED BY NAME AS FOLLOWS:



### **Chief Justice Pankaj Mithal, Rajasthan High Court**

Justice Mithal is a 1982 commerce graduate from Allahabad University and completed his LLB in 1985. He started practising in the Allahabad High Court in 1985 and served as the standing counsel for the Uttar Pradesh Avas Evam Vikas Parishad.



### **Chief Justice Sanjay Karol, Patna High Court**

Justice Karol is the second-most senior judge in the Supreme Court and was the Chief Justice of the Patna High Court at the time of his elevation. He is an alumnus of the prestigious St. Edward School of Shimla and obtained his degree in law from Himachal Pradesh University.



### **Chief Justice P. V. Sanjay Kumar, Manipur High Court**

Justice Kumar is the third in seniority in the list of five judges and was the Chief Justice of the Manipur High Court when his name was cleared for elevation to the Supreme Court. He did his graduation in commerce from Nizam College, Hyderabad, and secured his LLB degree from Delhi University in 1988.



### **Justice Ahsanuddin Amanullah, Patna High Court**

Justice Amanullah is the fourth judge appointed to the Supreme Court, having been a government advocate in the Patna High Court until his elevation in 2011.



### **Justice Manoj Misra, Allahabad High Court**

Justice Misra was born on June 2, 1965. He enrolled as an advocate on December 12, 1988, and was elevated as an additional judge of the Allahabad High Court on November 21, 2011. He took his oath as a permanent judge on August 6, 2013.

## NEW ACTING CHIEF JUSTICES FOR RAJASTHAN, PATNA, AND MANIPUR HCS

Besides, the government also notified the appointment of new Acting Chief Justices to the High Courts of Rajasthan, Patna, and Manipur.



Justice MV Muralidaran will serve as Acting Chief Justice of the Manipur High Court.



Justice MM SRIVASTAVA will serve as Acting Chief Justice of the Rajasthan High Court.



Patna High Court's next senior-most judge, Justice Chakradhari Sharan Singh, will take over as its Acting Chief Justice.

### ADVOCATES, JUDICIAL OFFICERS APPOINTED ADDITIONAL JUDGES TO MADRAS, KARNATAKA, ALLAHABAD HIGH COURTS

The Central Government has announced the appointment of five advocates and two judicial officers to the Karnataka and Madras High Courts. According to a notification issued by the Ministry of Law and Justice's Department of Justice, two advocates have been appointed as additional judges to the Karnataka High Court, while three advocates and two judicial officers have been notified as additional judges to the Madras High Court.

The two advocates notified as Additional

**With these new appointments, the Supreme Court's strength will increase to 32 judges. The Supreme Court currently has 27 judges, including the Chief Justice of India.**

Judges to the Karnataka High Court are Vijaykumar Adagouda Patil and Rajesh Rai Kallangala.

Those appointed as additional judges to the High Court of Madras are: Advocate Lekshmana Chandra Victoria Gowri, Pillaipakkam Bahukutumbi Balaji, Kandhasami Kulandaivelu Ramakrishnan, Judicial Officer Ramachandran Kalaimathi, K. Govindarajan Thilakavadi.

### SIX ADVOCATES APPOINTED AS ADDITIONAL JUDGES OF ALLAHABAD HIGH COURT

A statement was issued by the Department of Justice under the Ministry of Law and Justice, which said that President Droupadi Murmu has notified the appointment of six lawyers as judges of the Allahabad High Court. These are: Vinod Diwakar, Kshitij Shailendra, Syed Qamar Hasan Rizvi, Manish Kumar Nigam, Anish Kumar Gupta, and Nand Prabha Shukla. The Allahabad High Court has total sanctioned strength of 160 Judges, against which 100 Judges are now working. ●



**RADO**  
SWITZERLAND  
MASTER OF MATERIALS

"As we embrace technology, it is imperative that we are aware of the ethical concerns that come with the use of artificial intelligence in courts. Concerns have been raised about the use of AI in terms of accountability, transparency, and the protection of parties' rights. It will be critical to establish clear guidelines and protocols to ensure that justice is dispensed equitably to all parties."

## HIMA KOHLI

JUDGE, SUPREME COURT OF INDIA



## DY CHANDRACHUD

CHIEF JUSTICE OF INDIA

The arbitral space in India can do well to foster diversity in terms of source and experience, and a "gender diverse arbitral pool" would bring experiential learning to the entire process. "If the Indian legal system is to shed its image as an old boys' club, the arbitration space can lend weight to the mission of providing equal opportunity to men, women, and them."

AI could be used to assist arbitrators in drafting awards and detecting trends. The government was capable of developing a strong arbitration ecosystem and improving digital capabilities. The goal is to encourage arbitration for minor contractual disputes, especially when the parties are small or medium-scale business owners."

## KIREN RIJJU

MINISTER OF LAW AND JUSTICE OF INDIA



## SANJAY K KAUL

JUDGE, SUPREME COURT OF INDIA

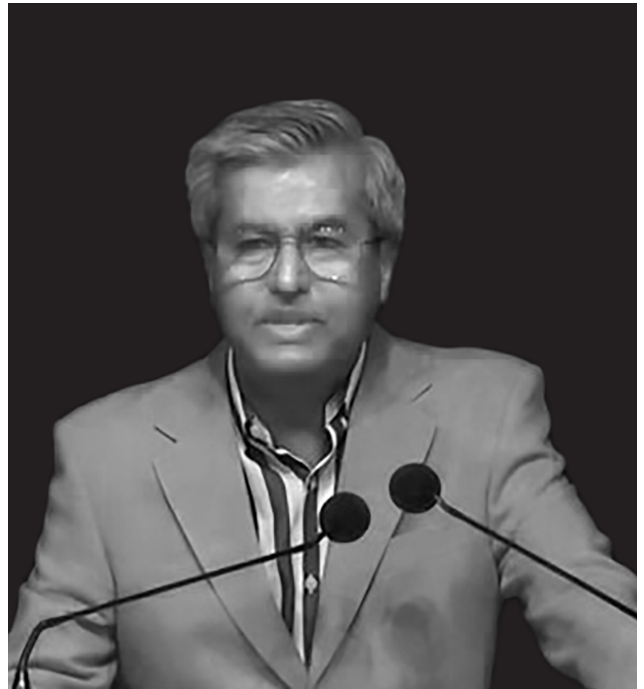
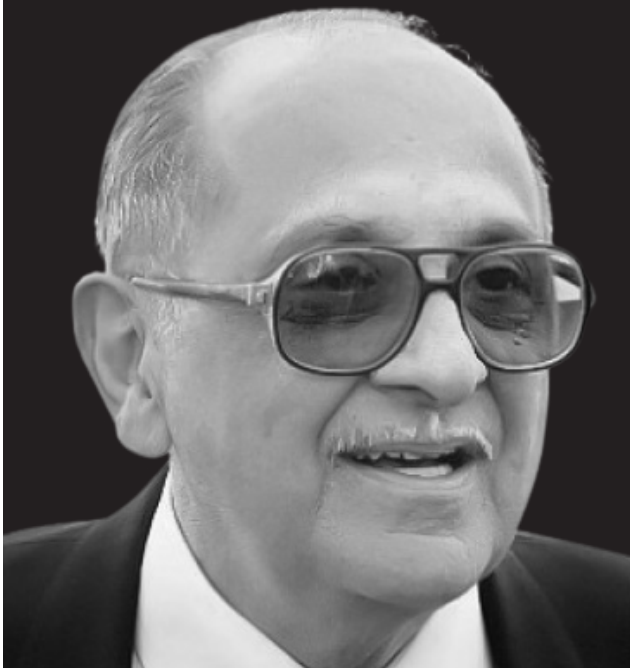
The Supreme Court has formed an AI committee to investigate the use of artificial intelligence. "In arbitration, AI can be used to select expert arbitrators. However, AI tools must be used with caution because they have the potential to violate due process rights and public policy."

# QUOTE UNQUOTE

Let me assure the Law Minister that you must understand two fundamental Constitutional principles. One key distinction is that, unlike in the United States, a minimum of five unelected judges are tasked with interpreting the Constitution. "And once those five or more have interpreted the fundamental document, it is your obligation as an authority under Article 144 to follow that interpretation."

## FALI NARIMAN

EMINENT JURIST



## DUSHYANT DAVE

SENIOR ADVOCATE, SC

"If the government meddles, the judiciary has every right to respond. The judiciary cannot claim that there is executive interference, so we are powerless to intervene. The judiciary must take a stand. This has to happen soon."



"There should be no benefits after retirement. With such advantages, we cannot have an independent judiciary. What justice can be expected if judges on the verge of retirement swarm the corridors of power in search of after-retirement crumbs?"

**DEEPAK GUPTA**

RETD. JUDGE, SUPREME COURT OF INDIA



**UU LALIT**

RETD. CHIEF JUSTICE OF INDIA

"We don't have a better system than the Collegium system, in my opinion. If we don't have anything qualitatively better than the Collegium system, we must work to ensure that it survives. Today, the model on which we work is nearly perfect."

# HOW DID "**SUPARI**" BECOME A CODE WORD IN THE UNDERWORLD?

Supari, or the areca nut, is also known as the betel nut because it is used to make paan with betel leaves. However, it has been used by the underworld over time to denote a contract given to a person to kill someone else in exchange for money. In recent years, it has not only been limited to giving a contract to kill someone, but also to harm another person's reputation.

**M**any moons ago, long before the British era, a little-known The king established his rule on the modern-day Mumbai island of Mahim. According to legend, he also taught the Mumbai underworld the code word for contract killing.

The king's name was Bhimdev. His origins are unknown; no portraits of him have survived, and the palace itself is no longer standing, but there is folklore worth hearing.

He has been the subject of conflicting theories, but according to Stephen Meredyth Edwardes' book, he is the son of Ramachandra of Devagiri. After being defeated by Alauddin Khalji, his father fled to the Konkan coast.

He began to take over coastal settlements in the late 13th century, eventually making his way to Mahikavati, now known as Mahim in Mumbai. He decided to build his capital on the remote island after being enchanted by its beauty.

According to Hussain Zaidi's book "Dongri to Dubai: Six Decades of the Mumbai Mafia," whenever

King Bhimdev had a difficult assignment, most often assassinating a rival leader, he would gather all of his troops into his fort for a lavish feast.

Following the feast was an unusual selection process for the best man for the job. Following the feast, a thaali with betel leaves and betel/areca nuts (Paan and Supari) were set up in the middle of the arena. The plot thickens at this point.

Those who accepted the challenge and went to the thaali to Collect the Suparis were chosen for the assignment. He was to be praised for his bravery, and the supari-holder would be blessed for his efforts.

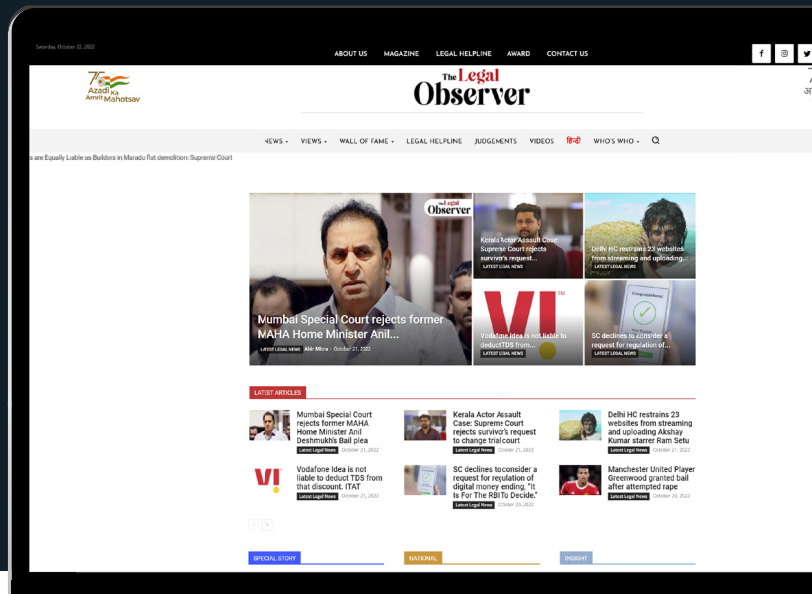
The King and his fort are long gone, but the concept of giving a supari lives on in urban Mumbai, particularly among the mafias and their henchmen. The kingdom had vanished, but the term had not.

This is the incredible origin story of the term "supari dena," which today essentially means offering a contract killing hit. ●



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# LUXURIOUSLY CRAFTED. CONSCIOUSLY ENGINEERED.

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## THE LEXUS LS 500h

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Ever since it launched the Lexus brand in 1989, the LS has been the flagship of impeccable luxury. The new fifth generation LS 500h extends relentless innovation to environmentally conscious engineering with a performance-centric Multi Stage Hybrid System. Crafted with luxury in mind and engineered with the environment at heart.

