CONCLUSION AND SUGGESTIONS

CONCLUSION

8.1 From the on top of discussions it may be terminated that within the 3 judges cases, I, II and III- S.P.Gupta vs. U.O.I. reported in AIR 1982 Supreme Court page-49, Supreme Court Advocates on Record Association vs. U.O.P. reported in one993 (4) SCC page-441 and Special Reference 1 of 1998 reported in 1998 (7) SCC page-739, the Supreme Court has nearly re-written Articles 124 (2) and Articles 217 that pertain to appointment of Supreme Court Judges and High Courts Judges severally. The word “collegium” isn't any wherever gift within the Constitution. it had been 1st employed by Bhgwati J. within the majority judgment of S.P.Gupta vs. U.O.I. once more within the Presidential reference the expression “collegium” and “collegium of judges” has been freely used. it's submitted that any addition of words within the Constitution wouldn't be permissible beneath the informative jurisdiction of the Supreme Court. The Supreme Court needs to interpret the Constitution because it is.

8.2 The informative opinion within the pretense of elucidative doubts raised relating to the norms ordered down within the Judges II case has nearly reviewed its earlier call. it's with all respect submitted that the opinion expressed in AN informative opinion is contrary to the plain language
of Article 124 (2). What the Article says is that the President shall consult the judge of Republic of India and such of the judges of the Supreme Court or the High Courts as he deems necessary. The Article doesn't place any ceiling or limitation on the quantity of judges aside from the judge of Republic of India to be consulted. The President must always act on the help and recommendation of the Council of Ministers (Article 74). However, contrary to what was aforementioned within the Constitution, each the Judges II and Judges III cases have ordered down that consultation with the judge of {India|Republic of India} suggests that a collegium consisting of the judge of India and 2 or 4 judges because the case could also be. Further, in each the cases it had been declared that it's the judge of Republic of India World Health Organization ought to check with collegium of judges, whereas Constitution says that the President ought to consult the judge of Republic of India and such judges as he deems necessary.

8.3 The 3 judges cases, i.e. the 2 judgments of the Supreme Court and one opinion on a Special Reference have all handled the scope of "consultation" and it had been within the Second Judges case that the Supreme Court evolved the conception of 'primacy' for the opinion of the judge of Republic of India, that itself was to be supported a consultive method amongst the senior colleagues of the judge of Republic of India. At
the hearing of the Special Reference for the opinion of the Court about the extent of the 'consultative' process, it had been conceded on behalf of the chief (And recorded within the Court's opinion) that the govt wasn't seeking a review or reconsideration of the judgment within the Second Judges case which it might settle for as binding (although an opinion and not a decision) the answers of the Court to the queries incorporated within the Special Reference.

8.4 The Supreme Court's opinion within the Special Reference not solely powerfully strengthened the conception of “primacy” of the judge of Republic of India's opinion however conjointly increased the quantity of judges the judge of India should consult before providing his opinion and ordered down an in depth set of tips on the procedure to be followed in inward at the judge of India's opinion to that “primacy” was connected. The procedure in result transferred the “primacy” from the judge of Republic of India to the cluster of judges to be consulted.

8.5 The collegium is currently to carries with it the judge of Republic of India and 4 (instead of two) senior-most chooses of the Court within the appointment of a supreme court judge, the Supreme Court choose accustomed to that exact supreme court ought to even be consulted raising the quantity to 6. The increased size of the cluster that needs to be a region of the consultation method with many interests being concerned has
created the consultation method cumbersome and delays in filling of vacancies is sure to arise. The Presidential Reference conjointly provides that each communication with the consultee needs to be in writing and also the views ought to be communicated to the govt. there's no indication on what happens if there's no accord among the consultees or if the bulk disagrees with the judge of Republic of India. S.P. Gupta has ordered down that the whole correspondence and communication between varied authorities square measure hospitable public scrutiny (since the whole record was summoned, perused and created public therein case).

8.6 the current controversy on the method of appointment of judges in India is that the outcome of wrong interpretation made in Judges Case-I, II and III. The interpretation on Article 124 and 217 went on the far side what the Constitution has really provided, it infect amounted to rewriting of these provisions. The pretext for such AN interpretation given by the judiciary is that any interpretation ensures or supplement to the basic feature of judicial independence is even. however in my opinion Independence of judiciary should be ensured inside the four corners of the Constitution and can't transcend the Constitution. Further, the concept of ‘independence of judiciary’ must not be applicable to the matter of the appointment of judges, it's applicable only judges square measure travail there judicial perform, i.e. when their appointments. it's pertinent to say herein that the conception of
‘independence of judiciary’ is borrowed from the U.S.A. Constitution, however throughout the method of appointment of judges in U.S.A. it's seen that judiciary is totally excluded from the method of appointment and also the conception of independence of judiciary has ne'er been related to the method of appointment of judges. The Second and Third judges’ cases square measure a unadorned usurpation of the legislative perform beneath the skinny pretense of interpretation. Such AN interpretation endangers public confidence within the political nonpartisanship of judiciary that is important to the continuance of the rule of law. the fragile balance of ‘judicial independence’ and ‘judicial accountability’ as developed by the constituent manufacturers beneath Article 124 and 217 of the Indian Constitution has been disturbed by the judicial interpretation and subject to review. it's extremely unfortunate that, the Supreme Court rather than transfer additional transparency and clarity within the method of appointment of judges by being inside the constitutional framework has surpassed the written language of the Constitution. The Constituent assembly clearly rejected the term ‘concurrence’ and instead used ‘consultation’ thereby giving grandness neither to the chief nor the judiciary and meant for accordant call amongst the chief and also the judiciary for the appointment of judges.
SUGGESTIONS.

8.7 Increase the quantity of judges- Not only should the quantity of judicial officers be increased, existing vacancies should be filled additional promptly to stop the case backlog from additional increasing. The Supreme Court recommends that the present magnitude relation of judges ought to be raised from twelve per million folks to fifty in an exceedingly phased manner over 5 years.35The Court has conjointly directed central and state offices to file all vacancies in High Courts and also the subordinate courts.36

8.8 Judicial answerableness- whereas there’s a rhetorical commitment to up accountability within the judiciary, there is no effective mechanism for making certain it .Following a 2003 constitutional amendment, a Judges Inquiry Bill was planned in 2006 that may offer for a National Judicial Commission authorized to impose minor penalties upon errant judges.37

8.9 Code of Conduct- the upper judiciary initiated the adoption of a code of conduct for choose, referred to as the statement of Values of Judicial life, at the judge Conference of Republic of India in 1999.38The Document includes conflict of interest tips on cases involving relations, and conduct with relevance gifts, welcome, contributions and also the raising of funds. The urban center Principles of Judicial Conduct were adopted in 2002, however the system has however to supply legal support to them.
8.10 monetary and body authority-The Judiciary is critically wanting funds for basic infrastructure. Court buildings, judicial lockups, prosecution chambers, areas for witnesses, the mechanisation of records, provide of documents, etc., all suffer from inadequate funding. tho' the judiciary is a vital entity, its finances square measure controlled by the general assembly (most of them square measure corrupt) and enforced by the chief (most of them square measure corrupt too) choose expenditure, the judiciary has no autonomy, 'The high courts have the facility of direction over the judiciary', wrote the judge, “but they are doing not have any monetary or body power to make even one post of a subordinate choose or of the subordinate employees, nor will they acquire or purchase any land or building for courts, or decide and implement any set up for modernization of court operating.39

8.11 The selection/recruitment of Judges ought to be clear, effective and supported benefit. It ought to be clear and equally applicable to all or any. A system of basis practitioner training, robust political commitment is needed specially for edge corruption in Judiciary. Co-operation from all, together with nongovernmental organization and also the media, is conjointly necessary.