

Contents

Title Page

Declaration

Certificate

Acknowledgements

Table of Cases

PAGE NO.

Chapter I

Introduction

1-15

1.1 Significance of the Study

1.2 Statement of the Problem

1.3 Objectives of the Study

1.4 Hypothesis

1.5 Methodology

1.6 Sources of Information

1.7 Plan of Study

Chapter II

Evolution of Judicial System in India

16-73

2.1 Introduction

2.2 Origin of Judicial System in Ancient India

2.3 The administration of justice in ancient India

2.3.1. Appointment of Judges and Judicial Standards

2.3.2. The King's Judges

2.3.3. Delegation of Judicial power by the King

2.4 Indian Judicial system in medieval period

2.5 Judicial System under British rule

2.5.1. During the Period of 1600-1726

2.5.2. Charters of 1726

2.6 Indian Judicial System in Modern Period

2.6.1. Pre-Independence

2.6.2. Post-Independence:

2.7 Doctrine of Separation of Powers

2.6.1 Meaning of Separation of Power

2.6.2 Montesquieu Theory

2.6.2. Separation of Powers in other Countries

2.6. 3.1. United States of America

2.6.3.1(A) Legislative Power

2.6.3.1(B) Executive Power

2.6.3.1(C) Judicial Power

2.6.3.2. England

2.8. Doctrine of Separation of Powers in India .

2.8.1. British India

2.8.2. After Independence

2.9. Doctrine of Separation of Powers and Independence of Judiciary

2.9.1. Meaning of Independence of Judiciary

2.9.2. Need for the Independence of the Judiciary

2.9.3. Independence of Judiciary in India

2.9.3.1. Before Independence

2.9.3.2. After Independence

2.9.3.3. Constitutional Basis of Judicial Independence in India

2.9.4. View of National Commission to review the working of the Constitution – Procedure of appointment of Judges of the Supreme Court and the High Court

2.9.5. Constitution of National Judicial Commission

2.9.6. The Concept of National Judicial Commission

2.9.6.1. Position in United Kingdom

2.9.6.2. Position in Australia

2.9.6.3. Position in Canada

2.10. Conclusions

Chapter III

Appointment of Judges–Constitutional Perspectives

74-148

3.1 Introduction

3.2 Meaning of Judiciary

3.3 Constitutional Provisions relating to the Judiciary

3.3.1(1) Method of Appointment of Supreme Court Judges

3.3.1(2) Supreme Court

3.3.1(3) Composition of the Court

3.3.1(4) Qualifications of Judges

3.3.1(5) Appointments of Judges

3.3.1(6) Supremacy of Executive: Judges Transfer Case I

3.3.1(7) Judicial Supremacy: S.C. Advocate on Record Association vs. Union of India

3.3.1(8) Appointment of the Chief Justice of India

3.3.1(9) Sole opinion of Chief Justice of India without following consultation Process:

Appointment and Transfer of Judges Case III

3.3.2. Method of Appointment of High Court Judges

3.3.2(1). Constitution of High Courts

3.3.2(2). Appointment of High Court Judges

3.3.2(3). Transfer of a Judge from one High Court to another

3.3.2(4). Appointments of Additional and Acting Judges

3.3.3. Appointment to the Subordinate Judiciary

3.3.3(1) Control over Ministerial Officers of Subordinate Courts

3.3.3(2) High Courts for Union Territories

3.4. Role of the Executive in Judicial appointments

3.4.1. Appointment of Judges and composition of Supreme Court

3.4.2. Judicial Independence and transfer of Judges

3.4.3. Seniority to be followed in appointment of Chief Justice of India

3.4.4. Removal

3.4.5. Other provisions

3.5. Appointment of Judges-power and procedure

3.6. Controversy regarding appointment of Judges

3.7. Independence of Judiciary

3.7. Role of the Executive in Judicial appointments

3.8. Strength of the Court – Role of the Legislature

3.9. Conclusions

Chapter – IV

Independence of Judiciary-Method of Appointment of Judges in other Countries

149-205

4.1. Introduction

4.2. United States of America

4.2.1. Federal Court System and Jurisdictions

4.2.1(1) Supreme Court

4.2.1(2) Circuit Courts of Appeals

4.2.1(3) District Courts

4.2.2. Methods of appointment

4.2.3. Qualifications of Federal Judges

4.2.4. The Process of appointment of Judges

4.2.4(1) Vacancy

4.2.4(2) Selections and nomination of candidates

4.2.4(3) Department of Justice

4.2.4(4) The American Bar Association

4.2.4(5) The White House

4.2.4(6) President

4.2.4(7) Confirmation by the Senate

4.2.4(8) The Committee on the Judiciary

4.2.4(9) Investigation

4.2.4(10) Confirmation Hearing

4.2.4(11) Voting

4.2.4(12) Full Senate

4.2.4(13) Appointment by the President

4.2.4(14) Recess Appointment

4.2.5. The Role of the Legislature in the process of appointment of Judges

4.2.5(1) Selection of Candidates

4.2.5(2) District Courts

4.2.5(3) Supreme Court and Circuit Courts

4.2.5(4) Blue Slips

4.2.5(5) Confirmations of nominations

4.2.6. Selection Standards

4.2.6(1) Judicial Selection Standards

4.2.7. Arguments against and for the current system

4.2.7(1) Argument against the current system

4.2.7(2) Arguments for the current system

4.2.8 Arguments Against and for the current system

4.2.8(1) Argument against the current system

4.2.8(2) Arguments for the current system

4.3. United Kingdom

4.3.1 Arguments against and for the current system

4.3.2 Arguments for the current system

4.4. France

4.4.1. Terms and Nature of Judicial appointments

4.5. Australia

4.6. Canada

4.6.1. The role of the Legislature in the process of Appointment of Judges

4.6.2. Arguments against and for the current system

- 4.6.2(1) Argument against the current system
- 4.6.2(2) Arguments for the current system

4.7. Germany

- 4.7.1 The elements of Judicial Independence in Germany
- 4.7.2. Substantive Independence
- 4.7.3 Independence from the Legislature
- 4.7.4 Independence from the Executive
- 4.7.5. The appointment of Judges in Germany
- 4.7.6. Conclusions

4.8. U.S.S.R

4.9. Conclusion

Chapter V

Recommendations of Law Commission on Judicial Appointments 206-269

5.1. Introduction

5.2. Past Proposals for reforms in the Process of appointment of Judges in India -1925

- 5.2.1. Introduction
- 5.2.2. Recommendations of Sapru Committee
- 5.2.3. Recommendations of the High Powered Committee appointed by the Constituent Assembly
- 5.2.4. Suggestion of Shri B.N. Rao
- 5.2.5. Recommendations of Federal Court
- 5.2.6. Basis adopted in Arts.124 and 217
- 5.2.7. Reports of the Law Commission of India
- 5.2.8. Administrative Reforms Commission

4.4.9. Recommendations of High Court Arrears Committee

5.2.10. Recommendations of Bar Council of India for collegium

5.2.11. Proposals for constitution of a National Judicial Commission contained in the lapsed Constitution (67th Amendment) Bill, 1990

5.3. Pre-Independence Law Commissions of India

5.4. Role of Law Commission in Legal Reform in India

5.5. Post Independence Developments

5.6. First Law Commission Recommendations in its 14th Report

5.7. Eighth Law Commission Recommendations in its 79th And 80th Reports

5.7.1. 79th Report in 1979

5.7.2. 80th Report in 1979

5.8. Eleventh Law Commission Recommendations in its 121st Report

5.9. Eighteenth Law Commission Recommendations in its 214th Report

5.9.1. Recommendations

5.10. Eighteenth Law Commission Recommendations in its 230th Report

5.11. Conclusion

Chapter – VI

Supreme Court Interpretation on Judicial Appointments 270-336

6.1. Introduction

6.1.1. Appointment of Chief Justice of India

6.2. Observations of Supreme Court in Samsher Singh's Case

6.3. Observations of Supreme Court in Sankal Chand Seth Case

6.4. Observations in First Judges Case

6.4.1 No Inquiry Necessary

6.5. Observations in Second Judges Transfer Case

6.5.1. In the Event of Conflicting opinions among the Collegiums

6.5.2. Purpose of 67th Amendment Bill served by the Judgment in Supreme Court Advocate on Record Association Case

6.6. Observations in Third Judges Case

6.6.1. The Significance of “Consultation” Provided by Arts 124 And 217

6.7. Different views of Supreme Court Judges on Judicial Appointments

6.7.1. Justice Bagwati’s views

6.7.2. V.R. Krishna Iyer views

6.7.3. K.G Balakrishnan views on Collegium System

6.7.4. Justice Kuldeep Singh’s views

6.7.5. Justice Verma views

6.7.6. Justice Lakshmanan views

6.8. Critical appraisal on the views of the Supreme Court

6.8.1. Two Alternatives

6.9. Conclusions

Chapter – VII

Conclusions and Suggestions

337-351

Bibliography

352 -359