

# INDIAN SUPREME COURT JUDGES

## A Portrait<sup>1</sup>

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THIRTY-SIX MEN SERVED ON THE Supreme Court of India from its inception in 1950 through 1967. Examination of their background attributes reveals that the prototypic judge was the product of a socially prestigious and economically advantaged family, was a Hindu (most often a Brahmin), was educated at one of the better Indian universities or in England, spent twenty years in private law practice before the High Court in his home state, refrained from participation in the nationalist movement before 1947 and in postindependence politics thereafter, was appointed to the High Court before which he practiced when he was forty-seven, spent ten years as a High Court judge by which time he was the Chief Justice or seniormost puisne judge of that Court, and then was promoted to the Supreme Court when he was fifty-seven years of age. There are, of course, exceptions to this prototype, but striking is the homogeneous character and similar socialization experiences shared by these men.

Technically, appointments to the Supreme Court are made by the President of India "after consultation with such judges of the Supreme Court and of the High Courts in the States as the President may deem necessary . . . , provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice shall always be con-

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1. In a paper written earlier, *Selection, Background Characteristics, and Voting Behavior of Indian Supreme Court Judges, 1950-1959*, in *COMPARATIVE JUDICIAL BEHAVIOR* (G. Schubert and D. J. Danelski eds. in press), I have dealt briefly with some of the background attributes of the twenty-three judges who served from 1950-59.

sulted.”<sup>2</sup> Evidence adduced elsewhere<sup>3</sup> suggests that the Chief Justice does in fact play a central role in the selection process. The President’s role is chiefly that of announcing the appointments; as head of state in a parliamentary system, and not chief of government, he acts in accordance with instructions from the Prime Minister and the Cabinet. Such appointments require no parliamentary approval.

In an attempt to assure that only the most “suitable” individuals be even considered for a Supreme Court judgeship, the constitution-makers established some minimum qualifications. One must be a citizen of India and (a) have served for at least five years as a High Court judge, or (b) have been for at least ten years a High Court advocate, or (c) be, “in the opinion of the President, a distinguished jurist.”<sup>4</sup> No definition of “distinguished jurist” is offered, but the framers evidently intended such persons as eminent law professors who failed to meet one of the first two criteria.

From 1950 to 1956, the size of the Court was fixed at seven puisne or associate judges, in addition to the Chief Justice. In 1956, as the number of cases in arrears continued to increase, the Chief Justice asked that an additional three judges be authorized. Parliament provided the requested increase, and authorized another three in 1960. Currently, therefore, the maximum strength of the Court is fourteen judges, including the Chief. The fact that as many as thirty-six have served is explained easily—older men are appointed and mandatory retirement comes at age sixty-five.

#### SOURCES

The background data reported herein were collected chiefly from a variety of published materials. This is not to suggest that biographical data on Indian judges are easy to locate. A tradition of judicial biography has not yet developed in India. Only two books which might loosely be called biographies have appeared,<sup>5</sup> and only one ex-judge has pre-

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2. CONSTITUTION OF INDIA art. 124 (2) (1950, as modified up to May 1, 1965).

3. Gadbois, *supra* note 1.

4. CONSTITUTION OF INDIA, *supra* note 2, at art. 124 (3).

5. V. D. MAHAJAN, CHIEF JUSTICE GAJENDRAGADKAR (1966); CHIEF JUSTICE K. SUBBA RAO, DEFENDER OF LIBERTIES (1966).

pared an autobiography.<sup>6</sup> The major source utilized was *The Times of India Directory and Year Book Including Who's Who*.<sup>7</sup> This represents the closest approximation to a national *Who's Who* published in India, but some of the judges are not even listed, and only the most superficial biographical data are presented. Occasionally one of the many law journals will print a brief note on the career of a recently appointed or deceased judge, and sometimes the official *Supreme Court Reports*<sup>8</sup> will append a biographical eulogy or encomium delivered by the Chief Justice honoring a deceased or retiring colleague.

Much of the data is presented in summary form in Table 1. The column denoting caste was inserted with considerable trepidation, for no biographical source provides such information. These caste identifications were arrived at after consultation with Indian associates. No column lists place of birth because only very rarely is such information found in available source materials. However, in almost all cases the state in which the judge earlier practiced law and served on the High Court is also the state of his birth. One additional comment concerning the table is necessary. Though the Supreme Court came into existence on January 26, 1950, the first six judges are listed as having been appointed prior to that date. The dates of their appointment are actually the dates on which they joined the Federal Court, which functioned from 1937 to 1950 when it was replaced by the Supreme Court. All judges of the Federal Court simply became Supreme Court judges when the former ceased to exist, *i.e.*, when the 1950 Constitution became operative.

*Table 1 is presented on the following four pages.*

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6. M. C. MAHAJAN, *LOOKING BACK* (1963).

7. *TIMES OF INDIA, THE TIMES OF INDIA DIRECTORY AND YEAR BOOK INCLUDING WHO'S WHO* (1945-1967).

8. *INDIA SUPREME COURT REPORTS* (1950-67).

TABLE 1  
MEMBERS OF THE SUPREME COURT OF INDIA, 1950-1967

Name	Date of Birth	Religion	Caste	Education		Pre-High Court Career	High Court Experience	Appointed to Supreme Court		Date of Retirement	Post-Retirement Positions	Miscellaneous
				Baccalaureate	Legal			Date	Age			
KANIA, Harilal Jaikisondas	11/ 3/1890	Hindu	Brahmin	Gujerat or Bombay	Bombay Law College	Advocate, Bombay High Court, 1915-33	Bombay High Court, 1933-46 Acting Chief Justice, 1944-45	6/20/46	55	11/ 6/51 <sup>a</sup>		
FAEL ALI, Saiyed	9/19/1886	Muslim	————	Allahabad University	Middle Temple	Advocate, Chapra and Patna High Court, c. 1912-28	Patna High Court, 1928-47 Chief Justice, 1943-47	6/ 9/47	60	9/18/51 <sup>b</sup>	Governor of Orissa, 1952-54 Chairman, States Reorganization Commission, 1954-56 Governor of Assam, 1956-59	Chairman, Royal Indian Navy Enquiry Commission, 1946 Member, Calcutta Disturbances Enquiry Commission, 1946 Indian Delegate to Second Session of U.N. General Assembly, 1946
SASTRI, M. Patanjali	1/ 4/1889	Hindu	Brahmin	Pachaiyappa's College, Madras	Madras Law College	Advocate, Madras High Court, c. 1914-39	Madras High Court, 1939-47	12/ 6/47	58	1/ 3/54	Member, Board of Directors, Press Trust of India Pro-Chancellor, Delhi University, 1953-56 Chairman, Sanskrit Commission	Member of the Madras Legislative Council (before 1947)
MAHAJAN, Mehr Chand	12/23/1889	Hindu	Non-Brahmin (Banias)	Government College, Lahore	Punjab Law College	Advocate, Lahore High Court, 1918-43	Lahore High Court, 1943-47 East Punjab High Court, 1947-48	10/ 4/48	58	12/22/54	Sole Member, Maharashtra-Mysore Boundary Commission	Member, Royal Indian Navy Enquiry Commission, 1946 Member, Punjab Boundary Commission, 1947 Acting Prime Minister of Jammu and Kashmir, 1947-48
MUKHERJEA, Bijan Kumar	8/15/1891	Hindu	Brahmin	Hooghly College, Bengal	Calcutta Law College	Advocate, Calcutta High Court, 1914-34 Junior Government Pleader, 1934-36 Senior Government Pleader, 1936	Calcutta High Court, 1936-48	10/14/48	57	2/ 1/56 <sup>c</sup>	Died three weeks after resignation	Member, Bengal Boundary Commission, 1947 Author, <i>Problems of Aerial Law</i> President, Bengal Sanskrit Association
DAS, Sudhi Ranjan	10/ 1/1894	Hindu	Non-Brahmin	Bangabasi College, Calcutta University	Gray's Inn	Advocate, Calcutta High Court, 1919-42	Calcutta High Court, 1942-49 Chief Justice of East Punjab High Court, 1949-50	1/20/50	55	9/30/59	Vice Chancellor, Visva Bharati University, Santiniketan, 1959-65 Member, University Grants Commission, 1962-65	Edited <i>Mulla's Transfer of Property Act</i>
AIYAR, Nagapudi Chandrasekhara	1/25/1888	Hindu	Brahmin	Christian College, Madras	Madras Law College	Advocate, Madras High Court, 1910-41 City Civil Judge (Madras), 1927 District and Sessions Judge (Madras), 1927	Madras High Court, 1941-48	9/23/50	62	1/24/53 <sup>d</sup>	Chairman, Delimitation Commission, 1953-55	Member, Indo-Pakistan Boundary Disputes Tribunal Member, All-India Industrial Tribunal (Bank Disputes) Editor of <i>Mayne's Hindu Law</i> , and author of Sanskrit works
BOSE, Vivian	6/ 9/1891	Christian	————	Pembroke College, Cambridge	Middle Temple	Advocate, Nagpur High Court, c. 1917-24 Principal, Nagpur University Law College, 1924-30 Government Advocate and Standing Counsel, Central Provinces and Berar, 1930-36	Nagpur High Court, 1936-51 Chief Justice, 1949-51	3/ 5/51	59	6/ 9/56 <sup>e</sup>	Vice-President and President, International Commission of Jurists, 1959-66 Chairman, Life Insurance ("Mundhra Deal") Corporation Enquiry Commission	Married to daughter of Nobel Prize winner Dr. John R. Mott

<sup>a</sup> Date of death.

<sup>b</sup> Reappointed for the period of 10/15/51 to 5/30/52.

<sup>c</sup> Date of resignation because of ill health.

<sup>d</sup> Reappointed for the periods of 9/5/55-10/31/55, and 12/1/55-5/11/56.

<sup>e</sup> Reappointed for the period of 9/9/57-9/30/58.

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				Baccalaureate	Legal			Date	Age			
<b>BHAGWATI, Natvarlal Harilal</b>	8/ 7/1894	Hindu	Brahmin	Baroda College, Gujarat	Government Law College, Bombay	Advocate, Bombay High Court, 1921-44	Bombay High Court, 1944-52	9/ 8/52	58	8/ 6/59	Vice-Chancellor, Banaras Hindu University, 1900-65	Vice-Chancellor, University of Bombay, 1949-51 Translated V. L. Mehta's <i>Co-operative Movement</i> into Gujarati Edited <i>Mulla's Law of Insolvency in India</i>
<b>HASAN, Chulam</b>	7/ 3/1891	Muslim	—————	Uttar Pradesh	Allahabad Law College	Advocate, Oudh Chief Court, c. 1919-40	Oudh Chief Court, 1940-48 Chief Judge, 1946-48 Allahabad High Court, 1948-51	9/ 8/52	61	11/ 5/54 <sup>†</sup>	—————	Member, Labor Appellate Tribunal, 1951-52 Member, Uttar Pradesh Legislative Assembly (apparently in 1930s)
<b>JAGANNADEHADAS, Bachu</b>	7/28/1893	Hindu	Brahmin	Madras Presidency College	Madras Law College	Advocate, Madras High Court, 1918-48	Orissa High Court, 1948-53 Chief Justice, 1951-53	3/ 9/53	59	7/27/58	Chairman, Pay Commission	Joined Indian National Congress in 1920s; was imprisoned for participation in Quit India Movement (early 1940s)
<b>ATYAR, T. L. Venkatarama</b>	11/25/1893	Hindu	Brahmin	Madras Christian College	Madras Law College	Advocate, Madras High Court, 1917-51	Madras High Court, 1951-53	1/ 4/54	60	11/24/58 <sup>†</sup>	Chairman, Law Commission	
<b>SINHA, Bhuvaneshwar</b>	2/ 1/1889	Hindu	Non-Brahmin (Kayasth)	Patna College	Patna Law College	Advocate, Patna High Court, 1922-35 Government Pleader, 1935-39 Assistant Government Advocate, 1940-42	Patna High Court, 1943-51 Chief Justice, Nagpur High Court, 1951-54	12/ 3/54	55	2/ 1/64	Indian Law Institute	
<b>IMAM, Syed Jafer</b>	4/18/1900	Muslim	—————	Trinity College, Cambridge	Middle Temple	Advocate, Patna High Court, 1922-32 Assistant Government Advocate (Bihar), 1932-39 Advocate-General (Bihar), 1942-43	Patna High Court, 1943-55 Chief Justice, 1953-55	1/10/55	54	2/ 1/64 <sup>‡</sup>		
<b>DAS, Sudhansu Kumar</b>	9/ 3/1898	Hindu	Non-Brahmin	Presidency College, Calcutta, and London School of Oriental Studies	Indian Civil Service	Member of ICS since 1921; held many lower judicial positions in Bihar from 1921 to 1944	Patna High Court, 1945-56 Chief Justice, 1955-56	4/30/56	57	9/ 2/63		
<b>MENON, P. Govinda</b>	1896	Hindu	Non-Brahmin (Nair)	Zamorin's College, Calicut, and Presidency College, Madras	Madras Law College	Advocate, Madras High Court, 1920-40 Crown Prosecutor, 1940	Madras High Court, 1947-56	9/ 1/56	59	10/16/57 <sup>†</sup>	—————	Indian Representative to the International Military Tribunal of the Far East, 1946
<b>KAPUR, Jeevan Lal</b>	12/13/1897	Hindu	Non-Brahmin	Government College, Lahore, and Magdalene College, Cambridge	Inner Temple	Advocate, Lahore High Court, 1922-47 Member, Federal Public Services Commission, 1947-49	Punjab High Court, 1949-57	1/14/57	59	12/12/62	Chairman, Law Commission Chairman, Delimitation Commission Chairman, Commission on Exodus of Minorities from East Pakistan	Vice-President, All-India Postmen's Union, 1926-47 Author of <i>Law of Adoption in India and Burma</i>
<b>GAJENDRACAKKAR, Pralhad Balacharya</b>	3/16/1901	Hindu	Brahmin	Deccan College	Poona Law College	Advocate, Bombay High Court, 1926-45 Dean, Faculty of Law, Bombay University	Bombay High Court, 1945-57	1/15/57	55	3/15/66	Vice-Chancellor, Bombay University	Editor, <i>Hindu Law Quarterly</i> Chairman, Bank Award Commission, 1955 President, Maharashtra Social Conference, 1953-54 Author of <i>Law, Liberty and Social Justice</i> (1965)

<sup>†</sup> Date of death.

<sup>‡</sup> Reappointed for the period of 3/1/61-4/30/61.

<sup>‡</sup> Date of resignation because of ill health.

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TABLE 1 (Continued)  
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				Baccalaureate	Legal			Date	Age	Date of Retirement		
SARKAR, Amal Kumar	6/29/1901	Hindu	Non-Brahmin (Kayasth)	Scottish Churches, and Bangabasi Colleges, Bengal	England	Advocate, Calcutta High Court, 1930-49	Calcutta High Court, 1949-57	3/ 4/57	55	6/28/66		
SUBBA RAO, Koka	7/15/1902	Hindu	Non-Brahmin (Naidu)	Government Arts College, Rajahmundry	Madras Law College	Advocate, Madras High Court, 1926-48	Madras High Court, 1948-54 Andhra High Court, 1954-56 Chief Justice, Andhra Pradesh High Court, 1956-58	1/31/58	55	4/16/67 <sup>j</sup>	Contested unsuccessfully the election for the Presidency of India	Chancellor, Sri Venkateswara University, 1954-55
WANCHOO, Kailas Nath	2/25/1903	Hindu	Brahmin	Muir Central College, Allahabad, and Wadham College, Oxford	Indian Civil Service	Member of ICS since 1924; held many lower judicial positions in Uttar Pradesh from 1924-47	Allahabad High Court, 1947-51 Chief Justice, Rajasthan High Court, 1951-58	8/11/58	55	2/24/68		Chairman, U.P. Judicial Reforms Commission, 1950-51 Sole Member, Indore Firing Commission, 1954 Chairman, Dholpur Succession Case Commission, 1955 Member, Law Commission, 1955
HIDAYATULLAH, Mohammed	12/17/1905	Muslim	—————	Morris College, Nagpur, and Trinity College, Cambridge	Lincoln's Inn	Advocate, Nagpur High Court, 1930-42 Government Pleader, 1942 Advocate General, Central Provinces and Berar, 1943-46	Nagpur High Court, 1946-56 Chief Justice, 1954-56 Chief Justice, Madhya Pradesh High Court, 1956-58	12/ 1/58	52			Dean, Faculty of Law, Nagpur University, 1946-52 Member, Faculties of Law of Saugor, Vikram and Aligarh Universities Author, <i>Democracy in India and the Judicial Process</i> (1966)
DAS GUPTA, Kaluda Charan	1/ 3/1900	Hindu	Non-Brahmin (Kayasth)	Calcutta University, and Magdalene College, Cambridge	Indian Civil Service (a barrister also)	Member of ICS since approx. 1924; held many lower judicial positions in Bengal until 1948	Calcutta High Court, 1948-59 Chief Justice, 1958-59	8/24/59	59	1/ 2/65		
SHAH, Jayantilal Chhotaldas	1/22/1906	Hindu	Non-Brahmin (Banias)	Gujerat College, and Elphinstone College, Bombay	Bombay Law College (?)	Advocate, Ahmedabad District Court, and Bombay High Court, c. 1931-49	Bombay High Court, 1949-59	10/12/59	53			Chairman, Food Poisoning Enquiry Commission
DAYAL, Raghubar	10/26/1900	Hindu	Non-Brahmin (Kayasth)	Uttar Pradesh (?)	Indian Civil Service	Held lower judicial positions, apparently in U.P.	Allahabad High Court, 1946-60	7/27/60	59	10/25/65		
AYYANGAR, N. Rajagopala	12/15/1899	Hindu	Brahmin	Madras (?)	Madras Law College (?)	Advocate, Madras High Court, c. 1924-53	Madras High Court, 1953-59	7/27/60	60	12/14/64		
MUDHOLKAR, Janardan Ranganath	5/ 9/1902	Hindu	Brahmin	Sidney Sussex College, Cambridge	Lincoln's Inn	Advocate, Nagpur High Court, 1925-41 District and Sessions Judge, 1941-48	Nagpur High Court, 1948-56 Bombay High Court, 1956-60	10/ 3/60	58	7/ 3/66 <sup>k</sup>	Chairman, Press Council of India, 1966-	
SIKRI, Sarf Mittra	4/26/1908	Hindu	Non-Brahmin	Cambridge	Lincoln's Inn	Advocate, Lahore High Court, 1930-49 Assistant Advocate-General, Punjab, 1949-51 Advocate General, Punjab, 1951-64	None	2/ 3/64	55			Member, Law Commission, 1955-58 Served as Indian delegate to several international conferences, 1947-63

<sup>j</sup> Date of resignation for political reasons.

<sup>k</sup> Resigned to become Chairman, Press Council of India.

Name	Date of Birth	Religion	Caste	Education		Pre-High Court Career	High Court Experience	Appointed to Supreme Court		Date of Retirement	Post-Retirement Positions	Miscellaneous
				Baccalaureate	Legal			Date	Age			
BACHAWAT, Ranadhir Singh	7/18/1907	Hindu	Non-Brahmin	St. Xavier's College, Calcutta	London University Inner Temple	Advocate, Calcutta High Court, 1931-50	Calcutta High Court, 1950-64	9/ 7/64	57			
RAMASWAMI, Vaidyanathier	10/30/1904	Hindu	Brahmin	Madras and Allahabad Universities	Indian Civil Service Inner Temple	Member of ICS since 1929; held lower judicial positions, apparently in Bihar	Patna High Court, 1947-54 Chief Justice, 1956-64	1/ 4/65	60			
RAJU, Pemnesta Satiyanarayana	8/17/1908	Hindu	Non-Brahmin	Tanuku and Vijianagram	Madras Law College	Advocate, Madras High Court, 1930-50 Government Pleader and State Counsel, Madras, 1950-53 Government Pleader, Andhra, 1953-54	Andhra and Andhra Pradesh High Courts, 1954-65 Chief Justice, 1964-65	10/20/65	57	4/20/66 <sup>1</sup>		
SHELAT, J. M.	7/16/1908	Hindu	?	Elphinstone College, and University of London	Inner Temple	Advocate, Bombay High Court, 1933-48 City Civil Court Judge, and Sessions Judge, Greater Bombay, 1948-54 Principal Judge and Sessions Judge, 1954-57	Bombay High Court, 1957-60 Gujarat High Court, 1960-66 Chief Justice, 1966	3/24/66	57		Author of <i>Akbar</i> , and a contributor to <i>Munshi: His Life and Work</i>	
BHARGAVA, Vashishtha	2/ 5/1906	Hindu	Brahmin	Ewing Christian College, and Allahabad University	Indian Civil Service	Member of ICS since 1930; held many lower judicial positions in U.P., 1930-49	Allahabad High Court, 1949-66 Chief Justice, 1966	8/ 8/66	60			
MITTER, Gopendra Krishna	9/24/1906	Hindu	Non-Brahmin (Kayasth)	Patna College, and University College, London	Lincoln's Inn	Advocate, Calcutta High Court, 1934-52	Calcutta High Court, 1952-66	8/29/66	59			
VAIDIALINGAM, C. A.	6/30/1907	Hindu	Brahmin	Presidency College, Madras	Madras Law College	Advocate, Madras High Court, 1931-53 Government Pleader, Madras, 1953-57	Kerala High Court, 1957-66	10/10/66	59			
HEGDE, Kawdoor Sadananda	6/11/1909	Hindu	Non-Brahmin (Bhunt)	St. Aloysius College, Mangalore	Madras Law College	Advocate, Mysore, 1936-47 Public Prosecutor and Government Pleader, Mysore, 1947-51 Member of Parliament (Congress, Rajya Sabha, elected from Madras, 1952-57)	Mysore High Court, 1957-66 Chief Justice, Delhi High Court, 1966-67	c. Sept. 1967	58		Alternate Delegate to the United Nations, 1954	

<sup>1</sup> Date of death.

SOCIAL AND ECONOMIC BACKGROUNDS

It is most unlikely that any judge reached the nation's highest tribunal from essentially humble social or economic origins. Available data relevant to a determination of social status, especially paternal occupation, suggest that the typical judge was a product of a high status family. The fathers of at least three (Sastri, Mukherjea, Gajendragadkar) had reputations as Sanskrit scholars. The fathers of at least two (Kapur, Mahajan) were lawyers, although Mahajan's father was a mukhtar, suggesting lower status, because a mukhtar is a type of attorney without formal legal training and entitled to practice only before lower courts. The grandfather of Bose was knighted, indicating that some measure of status was associated with that family two generations before Bose reached the Supreme Court. For five of the judges something is known of their marriage partner's status, and in each case the wife came from a prominent family. This probably means that the families of these judges enjoyed similar status, for it is uncommon for either partner to marry much below his or her parent's social class. Bose is evidently the only judge with a non-Indian wife—he married an Englishwoman whose father (Dr. John R. Mott) later won a Nobel Prize.

Specific information on family economic circumstances is not readily found, but there is no reason to believe that any were poor. The indication below that half of the judges traveled to England where they received portions of their education strongly suggests that their families must have enjoyed comfortable economic circumstances.

RELIGION

Thirty-one (86%) are Hindu, four (11%) are Muslim, and one (3%)—Vivian Bose—is a Christian. The religious affiliation of these men correlates almost perfectly with that of the population at large (84% Hindu, 11% Muslim, 2.5% Christian). While these figures alone would not permit one to conclude that religious considerations are manifest in the selection process, evidence is available pointing to the existence of a "Muslim seat" on the Court. When Fazl Ali, the first of the Muslim judges, left the Court in 1952, the next judge appointed was Ghulam Hasan, another Muslim. When he died suddenly in late 1954, the vacant Muslim seat was filled by Syed Jafer Imam. After the size of the Court was increased from eight to eleven judges, Mohammed Hidayatullah joined Imam on the Bench. Imam was not replaced by another



Muslim after he left the Court in 1964, but Hidayatullah is still there, and is presently serving as the eleventh Chief Justice of India.

### CASTE

Nearly half (fourteen) of the thirty-one Hindu judges are identified as Brahmins. This preponderance of Brahmins is not unexpected, even though they constitute only one-fifteenth of the Hindu population. The Brahmins took quickly to modern education during the British period, were predominant among Indians in the Indian Civil Service, and evidently took to the field of law in large numbers. Moreover, Brahmin ascendancy on the Supreme Court is paralleled in other types of high public office—in 1956, thirteen of the twenty-three Hindus in Nehru's Cabinet were Brahmins.<sup>9</sup> Though anti-Brahmin attitudes have been politically significant in Madras and Maharashtra, eight of the ten judges who came to the Supreme Court directly from the Madras or Bombay High Court were Brahmins. Thus, the judge from North India is usually non-Brahmin or Muslim; the South or Western Indian judge is, more often than not, a Brahmin.

Whereas it is relatively easy to distinguish Brahmins from non-Brahmins, further delineation of the latter is difficult. Five are tentatively identified as Kayasths (a caste whose traditional occupation was that of clerks and scribes). No Harijan (ex-untouchable) has reached the Supreme Court, although free India's first Law Minister, Dr. B. R. Ambedkar (Ph.D., Columbia University) was an ex-untouchable.

### EDUCATION

Half of these men received some part of their higher education in England, and the others were educated entirely in India. Several in the former category received a baccalaureate degree first in India, and then a second one in England. Those who earned Indian degrees generally attended colleges and universities of high standing. At least ten of them earned master's degrees, seven from Indian universities, three in England.

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9. R. C. North, *The Indian Council of Ministers: A Study of Origins*, in *LEADERSHIP AND POLITICAL INSTITUTIONS IN INDIA* 110 (R. L. Park & I. Tinker eds. 1959).

Fourteen, a figure which includes two of the ICS judges (a category to be discussed below) received their formal legal education in England and were called to the bar from one of the four Inns of Court in London. Eighteen received their law degree from an Indian university. Noteworthy is the fact that all nine of the judges from South India (Madras, Kerala, Andhra Pradesh, Mysore) were educated at the University of Madras Law College. In contrast, of the six Calcutta High Court judges who were promoted to Supreme Court, five were London-trained barristers, as were three of the four Muslim judges. In general, it is the non-Brahmin and non-Hindu who was educated abroad; among the Brahmins only four (Mudholkar, Wanchoo, Ramaswami, Bhargava) ventured to England, and three of these did so in order to undergo the ICS training program. Four of the group were neither barristers nor holders of an Indian law college degree; these were ICS judges, to be discussed separately below.

The sources consulted did not uniformly indicate academic standing, but it is apparent that more than just a few stood at or near the top of their classes. In summary, these men received very substantial formal educations.

### CAREER PATTERNS

Before being inducted into the Supreme Court, these men had very similar professional socialization experiences. All but the six ICS judges enrolled as High Court advocates after completing their formal education, and spent an average of twenty years in private law practice. The next step on the ladder to the Supreme Court was appointment to the bench of the High Court before which they had practiced. The average age at the time of their High Court induction was forty-seven years. After an average of ten and one-half years of High Court service, by which time they were seniormost (Chief Justice) or very senior judges, promotion came to the Supreme Court of India.

Only one of the thirty-six (Sikri) failed to undergo a period of High Court grooming. Sikri's principal pre-Supreme Court occupation was that of Advocate-General of Punjab, a position he held from 1951 to 1964.

Ten of these men spent generally brief (four to five years) periods serving in state government legal officer capacities (*e.g.*, government pleader, government advocate) before receiving their High Court appointments. Three of these served as their state's chief law officer

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(Advocate-General). In addition to Sikri these were Imam (Bihar, 1942–1943) and Hidayatullah (Central Provinces and Berar, 1943–1946). Of the non-ICS judges, only three (N. C. Aiyar, Mudholkar, Shelat) held a judicial office prior to appointment to a High Court.

Thirty-five of the thirty-six having served on a High Court, and thirty having spent a generally lengthy period in private law practice before a High Court, these common professional experiences are the most important common denominators among these men.

## ICS JUDGES

From 1861 to 1935, at least one-third of the judges of each High Court had to be members of the elite Indian Civil Service. Though this rule has been abandoned, and though when independence came recruitment into the ICS ceased and the ICS was succeeded by the Indian Administrative Service, ICS judges are still found on many of the High Courts, and six of the Supreme Court judges have been “service” judges. Carefully recruited by competitive examination between the ages of twenty-one and twenty-four, these six, after the ICS training period, embarked upon careers in the “judicial side” of the civil service, and then for more than twenty years served in lower judicial positions. Then came promotion to a High Court and, a decade later, elevation to the Supreme Court. Typical would be Bhargava who entered the ICS in 1930, and then served in Uttar Pradesh as Joint Magistrate, Assistant Collector, Civil and Sessions Judge, Additional Commissioner of Food and Civil Supplies and, finally, Legal Remembrancer and Judicial Secretary before being appointed to the Allahabad High Court.

Because recruitment into the ICS ended more than two decades ago, there will of course come the time when the last ICS officer retires. Whether any members of the Indian Administrative Service, the less prestigious successor to the ICS, will be appointed to the Supreme Court remains to be seen.

## HIGH COURT SENIORITY

Thirteen were serving as Chief Justice of a High Court when promotion to the Supreme Court came, and three others (Fazl Ali, Ramaswami, Bhargava) were retired High Court Chief Justices. (High Court members faced mandatory retirement at age sixty until 1963, when it

was raised to sixty-two.) Of the remaining twenty, four were retired puisne judges, and almost all the others were the seniormost puisne judge of their High Court. Obviously a premium is placed on High Court seniority, which means lengthy High Court experience.

The general practice seems to be to offer the Supreme Court slot to the seniormost (*i.e.*, the Chief Justice) member of a particular High Court. However, of the fifteen Supreme Court judges who, immediately before their ascent, were serving on the Bombay, Calcutta or Madras High Courts, only one (Das Gupta of Calcutta) had been a High Court Chief Justice. These three are the oldest and are generally regarded as the most venerable of the sixteen High Courts. Perhaps the Chief Justices of these three find more satisfaction and prestige associated with their High Court leadership positions, and are thus reluctant to be "promoted" to the position of most junior Supreme Court judge.

#### AGE AND TENURE

Advanced age *per se* is not considered to be an attribute sought in a prospective Supreme Court judge, but because a premium is placed upon High Court seniority and experience, and because the High Court appointments generally do not come until one is in his late forties, Supreme Court judges are men of advanced age. The youngest ever appointed was Hidayatullah, who was a few days short of fifty-three. The oldest was N. C. Aiyar at age sixty-two. Both the average and median age of a Supreme Court judge on the eve of his appointment is fifty-seven and one-half years.

Because of the facts that older men are appointed and retirement is mandatory at age sixty-five, the typical judge enjoys a short tenure and the rate of turnover is rapid. Four resigned before reaching retirement age (Mukherjea and Imam for health reasons, Subba Rao because of political aspirations, and Mudholkar in order to become Chairman of the Press Council of India), and four died while serving (Kania, Hasan, Menon, Raju). Assuming that those presently sitting on the bench serve out their full terms, the average tenure of the thirty-six is 6.6 years.

#### REGIONAL IDENTIFICATION

So far two factors (religion and High Court seniority) have been noted which have some bearing upon the decision as to who is appointed to the Supreme Court. Another significant factor, and perhaps

the one which accounts for more particular appointments than any other, is the regional or state affiliation of the judge. Every time a vacancy on the Supreme Court occurs, there are, of course, sixteen High Court Chief Justices from which to choose. Hence some criterion in addition to holding a topmost High Court position would have to be utilized (unless some method of random selection was employed, which is not the case).

The major regions of India have been well-represented on the Supreme Court. Of the seventeen states in the Indian federation, the judges represent, in terms of their High Court backgrounds, thirteen. Unrepresented have been Assam and Nagaland (two small states which share one small High Court), Jammu and Kashmir, and Haryana (created only in 1966, Haryana shares the Punjab High Court). Six of the judges served on High Courts in two different states and, counting them twice (but counting Hegde just once, because the Delhi High Court, on which he served in 1966-1967, is not a state High Court) the state representation is as follows: ten from Maharashtra (includes four from what is, since 1956, the Nagpur Bench of the Bombay High Court; until that date there was a distinct Nagpur High Court), six from Madras, six from West Bengal, five from Bihar, four from Uttar Pradesh, three from Punjab, two from Andhra Pradesh, and one from Rajasthan, Orissa, Madhya Pradesh, Kerala, Gujerat, and Mysore.

Though indicative of the fact that the major regions are represented on the Supreme Court, these figures in themselves do not permit one to say that geographic criteria are actually employed in the selection process. But this can be done in many instances by looking at precisely who is elevated after the retirement, resignation or death of a sitting Supreme Court judge. More often than not, vacancies are filled by men from either the same High Court, or from the same region, as the man whose slot is being filled. For example, two vacancies were created in 1965 by the retirement of Das Gupta, formerly of the Calcutta High Court, and Dayal, formerly of the Allahabad High Court. The next two judges appointed were Mitter and Bhargava, of the Calcutta and Allahabad High Courts respectively.

Thus, it is evident that a conscious effort is made to maintain a type of regional representation on the Supreme Court, particularly from the oldest and most venerable High Courts of Bombay, Calcutta, and Madras. Even when the size of the Supreme Court was held to eight members (1950-1956), there was always representation from each of these three High Courts.

## APOLITICAL BACKGROUNDS

Not one of these men was a state or national political figure prior to appointment to the Supreme Court. Indeed, except for a few, there is no evidence that they were ever active partisans in any type of political activity. The typical judge is an apolitical man who has eschewed political activities throughout his career. Thus it seems that party affiliation, or at least overt party affiliation, is not among the most important criteria which determine who will be raised to the Supreme Bench.

The exceptions to these comments are few. Jagannadhadas is the only judge about whom evidence is available to show that he was an active participant in the freedom struggle. He joined the Indian National Congress in the early 1920's, and was among the many thousands of Indians imprisoned by the British two decades later for participating in the "Quit India" agitation. But he was in no sense a leader of the nationalist movement. Kapur, according to a biographical note in the *All India Reporter Journal*, "took leading part in Congress and Trade Union movements,"<sup>10</sup> and prior to his appointment to the Punjab High Court served as vice president of the All-India Postmen's Union. Sastri briefly served as an appointed member of the Madras Legislative Council, apparently in the late twenties or early thirties, and Hasan was at about the same time a member of the United Provinces Legislative Assembly. Mahajan's political background is the most interesting. Appointed to the Lahore High Court in 1943, Mahajan, after the creation of Pakistan (Lahore becoming part of Pakistan), was appointed Acting Prime Minister of Jammu and Kashmir by the Maharaja. Though he held this post for only a few months, his tenure included the eventful postpartition period, and he was in office when Jammu and Kashmir acceded to India.

In late 1967, for the first time, an ex-member of Parliament was appointed to the Supreme Court. This is Hegde, who was elected (by the members of the Madras Legislative Assembly) a member of the national Rajya Sabha (upper House of Parliament) in 1952. A representative of the Congress Party, he served a five year term, and was then appointed a judge of the Mysore High Court in 1957. Ten years of High Court service separates Hegde's departure from Parliament and appointment to the Supreme Court.

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10. *The Honorable Mr. Justice Kapur*, 36 ALL INDIA RPTR. J. 61 (1949).

As disclosed by available published materials, this is the extent of the involvement in either nationalist or postindependence politics of the men who have served on the Supreme Court. Undoubtedly, more probing research in India, particularly in their home states, would uncover some additional activities or associations which could be labeled political. Especially relevant would be data concerning the affiliation of these men with, *e.g.*, social and religious movements, almost all of which imply certain political values or ideologies. Such information is not generally found in biographical sources, but when it is, it is sometimes useful in assisting one to understand better the voting behavior of these men on the Supreme Court. For example, Mahajan's support of the Arya Samaj, a movement associated with opposition to Islam, may have been reflected in his voting behavior as a member of the Supreme Court.<sup>11</sup>

THE CHIEF JUSTICES

Special attention must be called to those who have served as Chief Justice of India, principally because there have been so many (eleven) of them. Table 2 indicates who these were and how long they served.

TABLE 2  
CHIEF JUSTICES OF INDIA, 1950-1968

Name	Period as Chief
Kania .....	1/26/1950-11/ 6/1951 <sup>a</sup>
Sastri .....	11/ 7/1951- 1/ 3/1954
Mahajan .....	1/ 4/1954-12/22/1954
Mukherjea .....	12/23/1954- 2/ 1/1956 <sup>b</sup>
Das, S. R. ....	2/ 2/1956- 9/30/1959
Sinha .....	10/ 1/1959- 1/31/1964
Gajendragadkar .....	2/ 1/1964- 3/15/1966
Sarkar .....	3/16/1966- 6/28/1966
Subba Rao .....	6/29/1966- 4/11/1967 <sup>c</sup>
Wanchoo .....	4/12/1967- 2/24/1968
Hidayatullah .....	2/25/1968-

<sup>a</sup> Date of death.

<sup>b</sup> Date of resignation because of failing health.

<sup>c</sup> Date of resignation for political reasons.

11. Gadbois, *supra* note 1.

Who occupies the Chief Justiceship of India is determined by one simple criterion—seniority on the Supreme Court. Chief Justices, like associate judges, must retire at age sixty-five, and it has become the established practice to promote the most senior (in terms of time spent on the Supreme Court) associate judge to the highest judicial office in the land. Because of the fact that young men are not appointed as associate judges, and because several years must elapse before one achieves seniority, every Chief Justice has been in his sixties when he assumed that position. Hence the rapid turnover. In 1954, and again in 1966, no less than three different Chief Justices served. The Chief with the shortest tenure was Sarkar (105 days); the longest tenure was enjoyed by Sinha (4½ years).

This practice of promoting the most senior associate judge to the pinnacle of judicial rank leads to the interesting situation whereby a High Court judge (or anyone else proffered a Supreme Court post) can, by simple mathematics, calculate whether he will some day become Chief Justice of India. Looking ahead, unless the practice of promoting whoever is next in line is abandoned, the next four Chief Justices after Hidayatullah retires in 1970 will be Shah (12/17/1970-1/21/1971), Sikri (1/22/1971-4/25/1973), Shelat (4/26/1973-7/15/1973), and Hegde (7/16/1973-6/10/1974). Of course, if a Chief Justice dies or resigns, this might have the result of moving up to that position associate judges who otherwise would not have become Chief Justice. Had Chief Justice Kania not died in 1951, he would have served another four years and neither Sastri nor Mahajan would have become Chief Justice.

#### AFTER RETIREMENT

Only a few of the judges upon reaching mandatory retirement age go into real retirement. They are entitled to a pension, but its amount depends upon the combined length of their service on the Supreme Court and High Courts. Typically, the pension amounts to less than half the salary they received as Supreme Court judges (the salaries are Rs4,000 per month for puisne judges and Rs5,000 for the Chief). Hence, unless the judge has independent sources of income, he is virtually forced to seek some remunerative employment after retirement. The Constitution, however, contains a provision which denies a retired judge the right to "plead or act in any court or before any authority



within the territory of India.”<sup>12</sup> Evidently this proviso was put into the Constitution in order to eliminate the possibility of a retired judge resuming private law practice before his old colleagues.<sup>13</sup>

The most typical position taken up by a retired judge is that of chairman or member of an official commission, investigatory tribunal, or supervisory body. The practice of appointing active or retired judges as members of ad hoc tribunals or commissions began long before independence, and today, when something needs investigating, the public expects that judges will perform this role, for impartiality and resoluteness are believed to be more characteristic of judges than of anyone else.

Where information on the postretirement positions held by ex-judges was available (usually a retired judge disappears from the *Times of India* . . . *Who's Who*), it is included in table 1. Ten are listed as having been appointed to various commissions after their retirement. These appointments are clearly political in that they are made by the governing political party. Moreover, some of them involve the ex-judge in politically volatile matters, such as the redrawing of state boundaries, and investigation of alleged corruption in the Life Insurance Corporation (a public corporation).

Three other retired judges (S. R. Das, Bhagwati, Gajendragadkar) were appointed as vice chancellors (*i.e.*, president) of major universities. Because of the manner in which university vice chancellors are selected, these would have to be considered political appointments as well. One ex-judge, Fazl Ali, was appointed by the central government to the post of Governor of Orissa and, later, to the post of Governor of Assam. This practice of appointing retired judges to political positions is often criticized by those concerned with maintaining the independence of the judiciary. The Law Commission, *e.g.*, concluded that any utilization of retired judges in official positions was inimical to judicial independence because the judge might, while on the Bench, bring less than complete detachment to bear upon cases in which the Government is a party, in the hope that a sufficient number of pro-Government decisions might result in a lucrative postretirement Government position.<sup>14</sup>

Undoubtedly the most criticized (by the newspapers, bar associations and law journals) activity undertaken by an ex-Supreme Court

12. CONSTITUTION OF INDIA, *supra* note 2, at art. 124 (7).

13. 8 GOVERNMENT OF INDIA, CONSTITUENT ASSEMBLY DEBATES 239-44 (1949).

14. 1 GOVERNMENT OF INDIA, FOURTEENTH REPORT OF THE LAW COMMISSION OF INDIA: REFORM OF JUDICIAL ADMINISTRATION 46 (1958).

judge was Subba Rao's unsuccessful effort to capture the Presidency of India. Three months before he would have had to relinquish the Chief Justiceship of India, he resigned (April 1967) in order to become the United Opposition's candidate for the Presidency, vacant because of the retirement of the distinguished scholar-statesman, Sarvepalli Radhakrishnan. Subba Rao was defeated by the Congress Party nominee (Dr. Zakir Husain), but he received 44% of the electoral college vote, whereas in earlier elections the Congress candidate had never received less than 97% support. Subba Rao's overt political activity was clearly aberrant for an ex-judge. Some lose some of their judicial anonymity when they accept postretirement official positions, but none have sought the public exposure Subba Rao did.

### CONCLUSIONS

With very few exceptions, judges appointed during the past few years have background attributes quite similar to those judges appointed nearly two decades earlier. Extensive High Court experience remains a virtual prerequisite for appointment to the Supreme Court. Men of advanced age continue to be appointed; in fact, the trend is in the direction of appointees being older than the median age of fifty-seven and one-half years (eight of the most recent twelve appointees have been older than the median age). In terms of educational backgrounds, the trend seems to be in the direction of London-trained barristers over Indian-trained advocates, for six of the last ten appointees have been barristers. Evident also is a trend toward the appointment of ICS officers; none of the first fourteen was such, but six of the last twenty-two judges appointed were ICS officers. However, because seniority on particular High Courts seems to be the decisive factor in most appointments, the fact that more barristers and ICS officers have been appointed in recent years than earlier may be simply coincidental to their High Court seniority.

There is some evidence, though not very substantial at the moment, that men with more readily identifiable political backgrounds may be appointed soon. This potential change in the type of men appointed to the Supreme Court may be traced to the High Courts, and to the considerations that apply to High Court appointments. The formal mechanics of a High Court appointment parallel closely those of a Supreme Court appointment. After consultation with the Chief Justice of India, the Governor of the State, and the Chief Justice of the High

Court, the President of India announces the appointment. Before one can be considered for appointment, he must meet one of two constitutionally established criteria: (a) have held for at least ten years a "judicial office," or (b) have been a High Court advocate for a minimum of ten years. A decade ago, however, the Law Commission reported that there was "indubitable evidence" that "unsatisfactory judicial personnel" were being appointed to the High Courts. The Commission reported hearing "bitter and revealing criticisms" about recent High Court appointees, and said that those most qualified for judgeships are often by-passed because of "considerations of political expediency or regional or communal sentiments." An unnamed Chief Justice of India was quoted as saying that whereas in the past the High Court Chief Justice played the central role in the selection process, now the Chief Ministers of the states have usurped this prerogative, and the latter have sacrificed considerations of merit for "extraneous considerations of community, caste, [and] political considerations."<sup>15</sup>

There is no reason to disbelieve these charges of the Law Commission. No doubt there is some variation among the states in the degree to which patronage, communal and caste factors are applied, but that these have become increasingly important selection criteria seems undeniable. What has happened is that the state Chief Ministers, new figures on the political scene since independence, though not formally mentioned at all as being involved in the process of selecting High Court judges, have sought to protect their party and personal interests by insisting upon a central role in the selection process. State governors (appointed by the central government) and High Court Chief Justices have found it increasingly difficult, if not impossible in some states, to prevent this erosion of their old power. Moreover, with political parties in opposition to the long dominant Congress Party gaining in strength at the state level (after the 1967 general elections, the Congress Party controlled less than half of the state legislatures), there is every likelihood that political considerations will become more salient in the High Court selection process. That the Chief Ministers have asserted a role for themselves is hardly surprising, for the High Courts exercise the power of judicial review over state legislation, and their decisions are sometimes of great political significance within the state.

Unless the central government departs from the practice of promoting to the Supreme Court the most senior or very senior judges from

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15. *Id.* at 69-72.

the High Courts (five of the last seven appointees have been High Court Chief Justices, and more often than not the seniormost High Court associate judge moves up to the Chief Justiceship when a vacancy occurs), it is likely that we will soon find on the Supreme Court men whose initial High Court appointments can be attributed more readily to particular caste, communal and political considerations than those appointed earlier. One result of this would probably be an increase in the voting divisions on the Supreme Court. During the first decade, 93% of Supreme Court decisions were handed down by unanimous benches.<sup>16</sup> The easiest way to account, tentatively at least, for this consensus is to point to the homogeneous character of the judges. Having shared remarkably similar socialization experiences, they would be expected to manifest this common background in similar attitudes and approaches to decision-making. It is unlikely that future members of the Court, if they do in fact represent dominant ideologies and interests in particular states, will manifest the same high degree of unanimity in their voting behavior.

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16. Gadbois, *supra* note 1.