



## Mains Practice Question

Q. The Supreme Court, by declaring the NJAC unconstitutional, missed an opportunity to introduce important reformatory changes in the functioning of the judiciary. Examine. (250 words).

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### Approach:

- Explain briefly about NJAC and explain why it was turned down as unconstitutional by the Supreme Court.
- List the problems with collegium.
- State the possible benefits of NJAC.
- Suggest ways in which NJAC and Collegium system can be balanced to benefit the judiciary.

### Introduction

- The NJAC proposes to make the appointment of High Court and Supreme Court judges and chief justices more transparent. They will be selected by the commission, whose members will be drawn from the judiciary, legislature, and civil society.
- The Constitution Bench of the Supreme Court declared National Judicial Commission (NJAC) Unconstitutional citing that it violates Basic Structure of Constitution of India.

### Body

- Until the NJAC came along, Articles 124 and 217 of the Constitution dealt with the appointment of judges of the higher judiciary. These articles specifically said that judges would be appointed by the President of India after “consultation” with the Chief Justice of India (CJI) and other judges. This created the collegium system, wherein the three senior most Supreme Court judges decided on who would be a high court or Supreme Court judge. NJAC aimed at replacing the collegium.

### Issues with collegium

- It is opaque and lacks transparency, with its members working as if in a cabal. Its recent decision to appoint Justice Dinesh Maheshwari and Justice Sanjiv Khanna, by retracting and superseding earlier selections of fine judges in their own right, is especially concerning.
- The Collegium is not accountable to any other authority. The lack of a written manual for functioning, the absence of selection criteria, the arbitrary reversal of decisions already taken, the selective publication of records of meetings are some of the evidence.
- The decision to create a Collegium in the first place was fraught with concerns. Justice Krishna Iyer described this judgment as “an egregious fraud on the Constitution”.
- No one knows how judges are selected, and the appointments made raise the concerns of propriety, self-selection and nepotism.

### Missed opportunity

- National Judicial Appointments Commission (NJAC) could guarantee the independence of the system from inappropriate politicization, strengthen the quality of appointments, enhance the

fairness of the selection process, promote diversity in the composition of the judiciary, and rebuild public confidence in the system.

## **Way Forward**

- Supreme Court could have amended the NJAC Act to have safeguards that would have made it constitutionally valid and reorganized the NJAC to ensure that the judiciary retained majority control in its decisions.
- Until a better mechanism is evolved, the Supreme court can take steps to make collegium more transparent and accountable to make its functioning democratic.

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