



The Collegium Conundrum

This editorial is based on “[The Collegium and changes — it may still be early days](#)” which was published in The Hindu on 07/12/2024. The article brings into focus the complexities of India's Collegium system, highlighting its efforts to ensure judicial independence while grappling with opacity, government delays, and the challenge of balancing autonomy with accountability.

For Prelims: [India's Collegium system](#), [Supreme Court](#), [Chief Justice of India](#), [President](#), [National Judicial Appointments Commission](#), [99th Constitutional Amendment Act, 2014](#), [Constitution's basic structure](#), [Puttaswamy Case](#), [Rule of Law Index](#).

For Mains: Key Benefits of the Collegium System in India, Key Issues Related to the Collegium System in India.

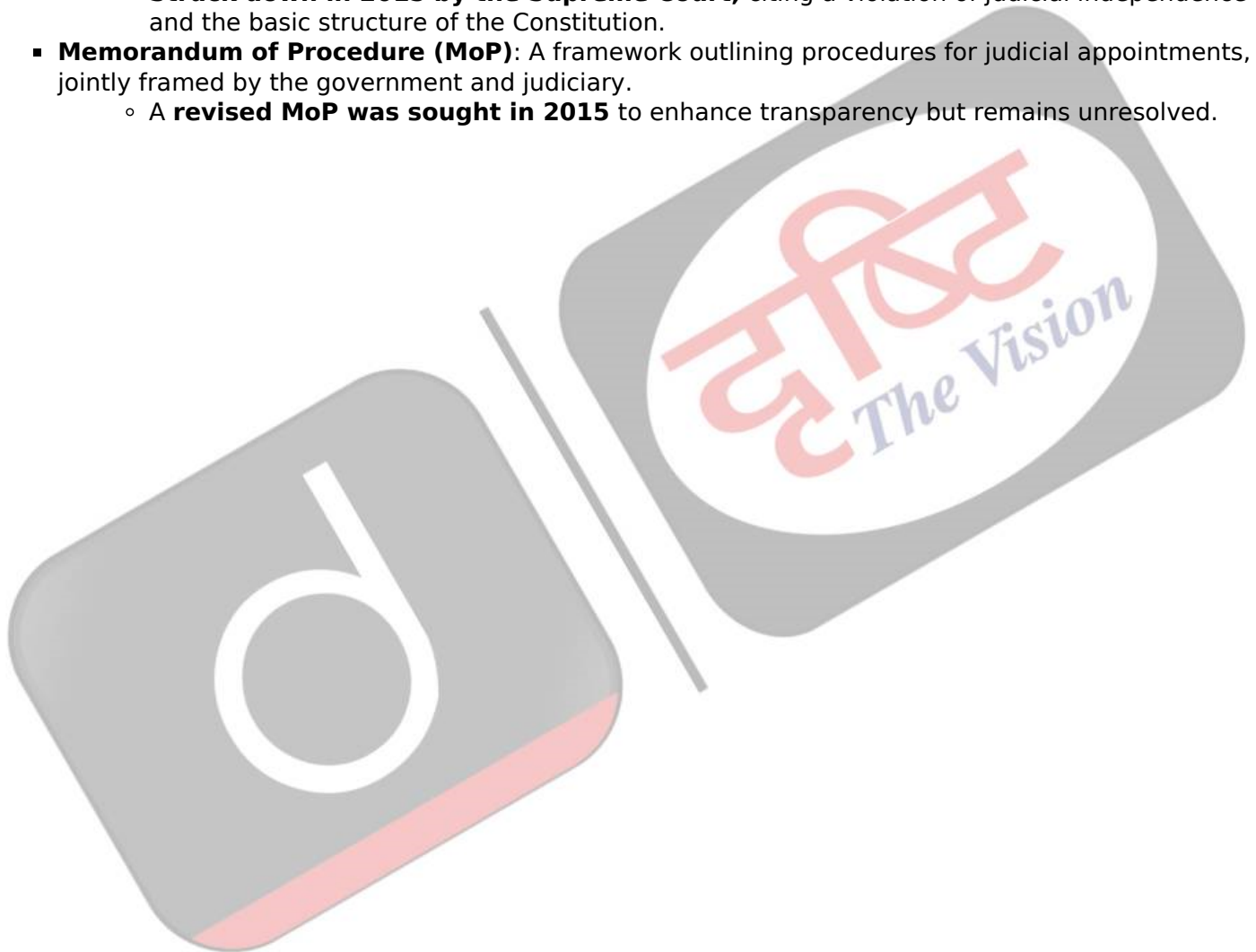
[India's Collegium system](#), born from judicial interpretation, stands as the mechanism for appointing judges to the higher judiciary. While recent reforms like **conducting interviews and limiting nepotism show promise**, the system continues to face challenges due to **governmental delays and lack of formal binding rules**. Though designed to ensure judicial independence, the **opaque nature of its functioning and the government's ability to stall appointments** have created a paradoxical situation where theoretical primacy meets practical constraints. This delicate balance between **judicial autonomy and accountability remains a critical constitutional challenge**, even as the system attempts to evolve through incremental reforms.

What is the Collegium System?

- **About:** The Collegium system refers to the mechanism for the **appointment and transfer of judges** in the Supreme Court and High Courts of India.
 - It is **not explicitly mentioned in the Constitution** but has evolved through various [Supreme Court](#) judgments.
- **Composition:**
 - **Supreme Court Collegium:** Includes the [Chief Justice of India \(CJI\)](#) and the **four senior-most Supreme Court judges**.
 - **High Court Collegium:** Led by the Chief Justice of the High Court and its **two senior-most judges**.
- **Constitutional Provisions for Judicial Appointments**
 - **Article 124:** Supreme Court judges are appointed by the [President](#), in consultation with the CJI and other judges as necessary.
 - **Article 217:** High Court judges are appointed by the **President**, in consultation with the CJI, the Governor of the state, and the Chief Justice of the High Court.
- **Government's Role:** The government can raise objections or seek clarifications.
 - However, if the Collegium reiterates its recommendations, the government is bound to comply.

▪ Evolution of the Collegium System

- **First Judges Case (1981):** Held that "consultation" with the CJI does not mean "concurrence."
 - Gave primacy to the executive in judicial appointments.
- **Second Judges Case (1993):** Overturned the First Judges Case. Redefined "consultation" to mean "concurrence," giving the CJI a primary role.
 - Introduced the **concept of a Collegium**, requiring the CJI to consult two senior-most judges.
- **Third Judges Case (1998):** Expanded the Collegium to include the **CJI and four senior-most judges**.
 - Stated that dissent by even two Collegium members can halt a recommendation.
- **National Judicial Appointments Commission (NJAC):** Proposed via the **99th Constitutional Amendment Act, 2014**, to replace the Collegium system.
 - **Composition included:** CJI (Chairperson), two senior SC judges, Law Minister, and two eminent persons.
 - **Struck down in 2015 by the Supreme Court**, citing a violation of judicial independence and the basic structure of the Constitution.
- **Memorandum of Procedure (MoP):** A framework outlining procedures for judicial appointments, jointly framed by the government and judiciary.
 - A **revised MoP was sought in 2015** to enhance transparency but remains unresolved.





Collegium System



- System of appointment and transfer of judges
- Evolved through judgments of the Supreme Court, and not by an Act of Parliament

Constitutional Provisions Related to Appointment of Judges

- Articles **124 (2)** and **217**- Appointment of judges to the Supreme Court and High Courts
 - President makes appointments after consulting with "such judges of the Supreme Court and of the High Courts" as s/he may deem necessary.
- But the Constitution **does not lay down any process** for making these appointments.

Evolution of the System

First Judges Case (1981)

- SC held that in the appointment of a judge of the SC or the HC, the word "consultation" in Article **124 (2)** and in Article **217** of the Constitution does not mean "concurrence"
- Gave the **executive primacy** over the judiciary in judicial appointments

Second Judges Case (1993)

- SC overruled the First Judges Case
- Gave **birth to the Collegium System (Primacy to the Judiciary)**
- Collegium included the Chief Justice of India and the **2** most senior judges of the SC

Third Judges Case (1998)

- SC expanded the Collegium to include the CJI and the **4** most-senior judges of the court after the CJI

Current Structure



Supreme Court Collegium: CJI and the **4** senior-most judges of the SC



High Court Collegium: CJI and **2** senior most judges of the SC

Criticism

- Opaqueness
- Scope for Nepotism
- Exclusion of Executive
- No Predetermined Procedure of Appointment

National Judicial Appointments Commission (NJAC)

- It was an attempt to replace the Collegium System. It prescribed the procedure to be followed by the Commission to appoint judges
- NJAC was established by the **99th Constitutional Amendment Act, 2014**
- But the NJAC Act was termed unconstitutional and was struck down, citing it as having affected the independence of the judiciary



What are the Key Benefits of the Collegium System in India?

- **Judicial Independence:** The collegium system ensures judicial independence by **keeping the process of judicial appointments free from executive (separation of judiciary from executive under Article 50) or legislative interference.**
 - This autonomy **safeguards the judiciary's ability to act as a countermajoritarian institution**, protecting constitutional values and fundamental rights.
 - Moreover, Government is litigant in majority of the cases giving **government a say in justice delivery might compromise the justice**
 - Recent rulings, such as the **SC's verdict on the Electoral Bonds**, underscore the importance of a judiciary that is insulated from political pressures.
 - As per the **Fourth Judges Case (2015)**, the collegium's primacy is integral to maintaining the judiciary's autonomy, a key feature of the **Constitution's basic structure.**
- **Expertise-Driven Selection:** The collegium system ensures that **judges, rather than politicians or bureaucrats**, select appointees, promoting meritocracy and judicial competence.
 - This **peer-driven selection process leverages the experience of senior judges** to identify candidates with judicial acumen and integrity.
 - For instance, the inclusion of specialists in constitutional or commercial law strengthens the judiciary's ability to address complex legal challenges.
 - Additionally, **Supreme Court judgments on cryptocurrency regulation** required nuanced legal expertise, **highlighting the benefit of this system.**
- **Insulation from Populism:** The collegium system acts as a **bulwark against populism by ensuring judicial appointments are not swayed** by transient public pressures.
 - For instance, the **SC's proactive stance on environmental protection** (e.g., **banning firecrackers in Delhi**) or upholding individual freedoms (e.g., **Puttaswamy Case on privacy**) demonstrates this impartiality.
 - These cases reaffirm the judiciary's critical role in protecting constitutional democracy.
- **Flexibility and Responsiveness:** The collegium system, with its informal structure, **allows flexibility to adapt to emerging judicial needs and challenges.**
 - Recent decisions to interview High Court candidates and avoid nepotism demonstrate a **willingness to address criticisms and enhance the process's credibility.**
 - This dynamic approach has resulted in the appointment of judges with significant trial court experience, addressing long-standing gaps in judicial diversity.
 - This adaptability ensures that the judiciary evolves to meet societal expectations.

What are the Key Issues Related to the Collegium System in India?

- **Lack of Transparency:** The collegium system is criticized for its **opaque functioning**, with **decisions on judicial appointments often shrouded in secrecy** and lacking accountability.
 - The absence of publicly accessible criteria for selection undermines public confidence and raises questions about favoritism.
 - Justice Kurian Joseph admitted that **"the present collegium system lacks transparency, accountability and objectivity"**.
 - For example, the **controversial transfer of Justice Sanjaya Kumar Mishra** raised concerns about the rationale behind such decisions.
 - Globally, **India's judiciary ranks 79th on the Rule of Law Index (2023)**, reflecting its relative independence. Despite efforts like publishing resolutions online, **inconsistency in disclosures persists.**
- **Nepotism and Favoritism (Uncle Judge Syndrome):** Critics argue that the collegium system perpetuates **nepotism**, with **many judges being related to existing or former judges**, leading to a judiciary that appears elitist and non-representative.
 - Recent moves to exclude candidates with judicial kinship have been welcomed but **remain inconsistently applied.**
 - A 2015 report stated that around **50% of the judges of high courts and 33% judges in the Supreme Court** were family members of those in "higher echelons of

judiciary”, **creating barriers for first-generation lawyers.**

- **Executive Delays in Appointments:** Despite the collegium's primacy, the **executive often delays approving its recommendations**, stalling the process and creating judicial vacancies.
 - While over **60 lakh cases remain pending at High Courts** across the country, **30% of the seats remain vacant**, due to prolonged government inaction.
 - For example, a **six-month delay by the government** in approving the Collegium's recommendation for **Justice Bidyut Ranjan Sarangi** as the Chief Justice of Jharkhand resulted in the judge **receiving a tenure of only 15 days.**
- **Lack of Diversity:** Despite recent improvements, the collegium system has been slow to address issues of **representation for women, marginalized communities, and regional identities.**
 - As of January 2024, **only 13.4% of judges in the High Court and 9.3% judges in the Supreme Court are women.**
 - Similarly, less than **25% of HC Judges belong to SC, ST, OBCs & Minorities.**
- **Judicial Backlog and Inefficiency:** The lack of a timely and consistent appointment process exacerbates the pendency of cases, undermining public trust in the judiciary.
 - A backlog of **around 80,000 cases at India's Supreme Court** is impeding access to justice’
 - **Judicial inefficiency costs India 1.5% of GDP annually**, delaying crucial economic and social reforms.
 - While the collegium seeks merit-based appointments, the inefficiencies in its operations counteract its intended goals.

What Measures can be Adopted to Reform Judicial Appointments in India?

- **Codification of Collegium Procedures:** Codifying the collegium functioning into a **formal institutional framework is essential to bring transparency, consistency, and accountability.**
 - A detailed **Judicial Appointments Procedure can include clear guidelines on candidate selection**, timelines for decision-making, and criteria for eligibility.
 - This would ensure that recent practices, such as interviews and steps to discourage nepotism, are institutionalized.
 - Justice J.S Khehar proposed that an **advisory committee of "eminent persons," including experienced lawyers, jurists, and retired judges**, be consulted during the judicial appointment process.
 - The collegium would consider their opinions without being bound by them.
 - To enhance the process, a **Statutory Search Committee, involving representatives from the judiciary, government, Bar, and academics, should assist the collegium** in selecting candidates.
 - Separate committees for the Supreme Court and High Courts, ideally led by a respected retired Chief Justice, should be established
- **Reforming Appointment of Judges:** The appointment system of judges needs to be more **transparent and accountable under the Right to Information (RTI) Act**, allowing citizens to access information on the selection process.
 - Judges of questionable integrity, appointed by the collegium, **should be removed through methods like voluntary retirement.**
 - The **"uncle judges" issue can be addressed by not posting judges in High Courts where their relatives practice.**
 - Ad hoc or additional judges should be appointed to address pending cases.
 - A uniform retirement age for **Supreme Court and High Court judges should be implemented to prevent bias**, and **minimum tenures should be set for Chief Justices.** Court management practices should be reformed for efficiency.
 - The Supreme court has also asked the government to establish a secretariat for each High Court and the Supreme Court, outlining its functions, duties, and responsibilities.
- **Enforceable Time Limits for Appointments:** Introducing **strict, enforceable timelines for the executive to process collegium recommendations** would address the chronic delays in judicial appointments.
 - A statutory deadline for the government to approve or return recommendations can reduce vacancies.

- **Enhancing Diversity in Appointments:** An affirmative action framework within judicial appointments can ensure better **representation of women, Scheduled Castes, Scheduled Tribes**, and other marginalized communities.
 - For instance, the Supreme Court could mandate that at least 25% of judges in higher courts be women, reflecting societal demographics.
 - This **approach could help create a judiciary more attuned to the needs of diverse populations**, enhancing public trust in justice delivery.
- **Greater Transparency in Collegium Decisions:** Publishing comprehensive records of collegium discussions and decisions, including reasons for selecting or rejecting candidates, can improve transparency.
 - Such disclosures would counter allegations of favoritism and nepotism while building public trust.
 - Countries like the **UK publish judicial reports**, which serve as benchmarks for transparency.
 - Similar practices in India would make the collegium system more accountable.
- **Performance-Based Assessments:** Adopting performance-based evaluations for candidates can ensure **merit-driven appointments, prioritizing competence, integrity, and judicial temperament**.
 - These assessments could consider criteria such as the number of judgments delivered, innovative legal interpretations, and public confidence in their rulings.
 - For instance, **trial court judges with a strong track record** could be given preference for High Court elevations.
- **Leveraging Technology for Efficiency:** Using technology, such as **Artificial Intelligence (AI)**, to manage data on eligible candidates, performance metrics, and judicial vacancies can enhance decision-making efficiency.
 - AI tools can ensure **objective evaluations**, identifying the best candidates based on a combination of merit and diversity metrics.
 - For instance, pilot projects like the [SC's SUPACE AI tool](#) show the judiciary's willingness to integrate technology.
 - Expanding such initiatives to judicial appointments can reduce human bias and delays.

Conclusion:

The Collegium system has played a crucial role in safeguarding judicial independence. However, its **lack of transparency, executive delays, and limited diversity continue to present significant challenges**. Reforms like **codifying procedures, introducing enforceable timelines, and enhancing diversity could address these issues**. A balance between **judicial autonomy and accountability remains essential for the system's evolution**. Ultimately, **a more transparent, efficient, and inclusive approach** can strengthen the judiciary and restore public trust.

Drishti Mains Question:

Discuss the functioning of India's Collegium system in the appointment of judges to the higher judiciary. Highlight the challenges it faces in balancing judicial independence with accountability.

UPSC Civil Services Examination, Previous Year Question (PYQ)

Prelims

Q. Consider the following statements: (2019)

1. The 44th Amendment to the Constitution of India introduced an Article placing the election of the Prime Minister beyond judicial review.
2. The Supreme Court of India struck down the 99th Amendment to the Constitution of India as being violative of the independence of judiciary.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Ans: (b)

Mains

Q. Critically examine the Supreme Court's judgement on the 'National Judicial Appointments Commission Act, 2014' with reference to the appointment of judges of higher judiciary in India. **(2017)**

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