



# Collegium System of Judicial Appointments in India

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## Why in News?

The [Supreme Court of India](#) returned to its full sanctioned strength of 34 judges, with the appointment of two new judges recommended by the [Collegium system](#).

## What is the Collegium System?

- **About:** It is India's judicial mechanism for appointing and transferring judges to the Supreme Court and High Courts.
  - It is not a direct constitutional provision but evolved from landmark Supreme Court judgments, most notably the "Three Judges Cases".

## Evolution of the Collegium 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".
  - It gave the executive primacy over the judiciary in judicial appointments.
- **Second Judges Case (1993):** The SC overruled the First Judges Case and held that "consultation" in judicial appointments actually meant concurrence.
  - The SC ruled that the CJI's advice on appointing judges is binding on the President. Before giving this advice, the CJI must consult their two senior-most colleagues.
  - This judgment led to the creation of the Collegium System, giving primacy to the judiciary in the appointment of judges.
- **Third Judges Case (1998):** The SC expanded the Collegium to include the CJI and the 4 most senior judges of the court after the CJI.
- **Collegium Composition:**
  - **SC Collegium:** CJI and four senior-most SC judges.
  - **HC Collegium:** Chief Justice of the HC and two senior-most HC judges.
  - **Government Role:** Can raise objections, but if Collegium reiterates, appointments are binding.

## Constitutional Basis for Appointment of Judges

- **Article 124:** SC judges appointed by the President in consultation with the Chief Justice of India (CJI) and other judges.
- **Article 217:** HC judges appointed by the President in consultation with CJI, Governor, and HC Chief Justice.
- **Ad hoc Judges (Article 127):** If quorum of SC judges is not available, CJI (with President's consent) can request a HC judge to sit in SC.
- **Acting CJI (Article 126):** In case of vacancy/absence, senior most available SC judge appointed by the President.
- **Retired Judges (Article 128):** With President's consent, CJI may request a retired SC judge to sit

and act as SC judge for a specified period.

▪ **Appointment Procedures:**

- **CJI:** Outgoing CJI recommends a successor, usually by seniority.
- **SC Judges:** CJI initiates the recommendation, consulting **Collegium members** and the senior-most judge from the candidate's High Court. Their opinions are recorded in writing.
  - The Collegium's recommendation is sent to the Law Minister, then the Prime Minister, who advises the **President for the appointment**.
- **HC Chief Justices/Judges:** The Chief Justice of a High Court is appointed by the President in consultation with the CJI and the Governor of the State.
  - The procedure for appointing puisne Judges is the same except that the **Chief Justice of the High Court concerned** is also consulted.





# 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 **99<sup>th</sup> 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



Drishti IAS



# What are the Arguments for and Against the Collegium System of Appointment?

## Arguments for

- **Separation of Powers:** Keeps the judiciary independent from the executive and legislature. Judges can perform their duties without fear, influence, or interference, upholding the principle of [separation of powers \(Article 50\)](#).
- **Preservation of Judicial Integrity** Senior judges are best placed to assess the legal acumen, integrity, and suitability of potential judges.
  - Judges choosing judges preserves the dignity and **autonomy of the judiciary as an institution**.
  - The Collegium System reduces risks of corruption in appointments.

## Arguments Against

- **Lack of Transparency:** The system operates largely in secrecy and lacks transparency, with no published procedure or objective criteria. It can encourage nepotism and favouritism (often called the “uncle judge syndrome”).
- **Misuse of Power:** The collegium concentrates power within a few judges, raising concerns of unchecked authority in judicial appointments.
- **Inequitable Representation of Communities:** Data reveals significant skew in judicial appointments, with 79% of High Court judges (2018–2022) from upper-caste backgrounds, while marginalized communities remain underrepresented.
  - Women make up only 4% of Supreme Court judges. Additionally, 331 judicial vacancies existed in High Courts in 2024, highlighting delays in appointments under the collegium system.
- **National Judicial Appointments Commission (NJAC):** It was a proposed constitutional body in India established by the [99th Constitutional Amendment Act, 2014](#), intended to replace the collegium system to create a more transparent process based on merit.
  - However, the Supreme Court, in ***Supreme Court Advocates-on-Record Association vs Union of India (commonly known as the Fourth Judges Case, 2015)***, struck down the 99th Constitutional Amendment and the NJAC, deeming them **unconstitutional and a threat to judicial independence** as they allowed greater executive involvement in judicial appointments.

## Conclusion

The Collegium system, though criticized, remains a **cornerstone of India’s judicial independence**. It can be further strengthened by introducing checks and balances, greater transparency, and **merit-based oversight**, while remaining free from executive influence.

### Drishti Mains Question:

**Q.** Judicial Appointments in India remain a contested arena between judicial independence and democratic accountability. Examine the evolution and challenges of the Collegium system.

## 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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