

Collegium System

[UPSC Notes]

What is the Collegium System?

The Collegium System in India is the system responsible for the appointment of new judges and the transfer of existing judges. The collegium has 'judges selecting judges'.

- The system finds its foundation in the judgements of the Supreme Court known as the 'Three-Judges Cases'. In India, an organisation or a system is either established because of an act passed in the Parliament or by provisions being available for it in the Constitution of the country. The Collegium System, however, is one of its kind. It owes its genesis to the aforementioned judgements. It has evolved out of them.
- The Supreme Court Collegium is headed by the Chief Justice of India along with the four most senior judges of the SC.
- The High Court Collegium is manned by its Chief Justice and the four most senior judges of the HC. The names are first recommended by the High Court Collegium to the Supreme Court Collegium for approval.
- Only after having received the seal of approval from the CJI and SC's Collegium, do the names reach the Government of India.
- The names can be sent back for reconsideration by the Gol; however, if the names are reiterated by the Collegium, then the Gol must concede to the request and approve the appointment of the people.

The system was put in place to improve and strengthen the process of appointment at the courts and keep the Judiciary as independent as possible. An independent judiciary is one of the most important pillars of democracy.

Recent Updates about the Collegium System

Recently, the Supreme Court Collegium has forwarded names for the appointment of five new Chief Justices of High Courts. The Collegium System has been under some speculation for a while now. The Chief Justice of India NV Ramana has defended the system followed by the Collegium for the appointment of judges by stating that the process could not be more transparent than how it is.

What is the National Judicial Appointment Commission?

There has been a lot of criticism about the Collegium System, owing to which, there were some provisions provided to fix these errors. This is where the National Judicial Appointment Commission (NJAC) comes into the picture.

The NJAC was drafted with the vision of correcting the errs of the Collegium System. The NJAC is a body that is responsible for the appointment and transfer of judges to the higher levels of

judiciary in the country. The NJAC was introduced by the NJAC Bill and was meant to be the replacement for the Collegium. The system will have the judges for the SC and HCs appointed through a judicial appointments commission with the Executive having a say in the process as well.

The provisions for the setting up of the NJAC were provided under article 124A in the constitution. The NJAC provided for a skeletal to explain the committee's functioning;

- The bill provided for the CJI's appointment along with those of the judges for the Supreme Court and HC's Chief Justice and judges.
- The commission shall comprise the following members;
 - The Chief Justice of India (ex-officio, Chairperson of the NJAC)
 - Two senior Supreme Court judges (ex-officio)
 - The Union Minister of Law and Justice (ex-officio)
 - Two eminent persons who are to be nominated by a committee comprising of the CJI, the Prime Minister of India and the Leader of opposition in the Lok Sabha or where there is no such Leader of Opposition, then, the Leader of single largest Opposition Party in Lok Sabha). There were some conditions for the selection of these eminent people;
 - One person to be from the Scheduled Castes/Scheduled Tribes/OBC/Minority/Woman.
 - No re-nomination after having served a term of 3 years.

Evolution of the Collegium System

The constitution of India was adopted on 26th January 1950 and according to the provisions provided by it, the President of the country appointed the Chief Justice of India and the judges of the Supreme Court were appointed after having consulted the CJI. The process for the genesis of the Collegium has the following stages;

1. CJI's Appointment (1950-73)
 - There was a mutual consensus that existed between the government of the country and the CJI.
 - For the appointment of the senior-most judge of the Supreme Court, a convention was formed.
 - The appointment of AN Ray as the CJI in 1973 violated this convention as Justice AN Ray had superseded three more senior judges of the Supreme Court.
 - This violation was observed again in 1977 when another CJI was appointed after having superseded his seniors.
 - These violations caused a clash between the Judiciary and Executive bodies of the country.

2. First Judge's Case (1982)
 - The year 1982 saw the filing of a petition in the Supreme Court which came to be known as the S.P.Gupta Case or First Judges case.
 - Two major points were discussed in the case's proceedings;
 - The meaning and implication of the word 'consultation' in article 124 which defines the process of appointment. The Supreme Court overruled the notion which inferred the meaning to be 'concurrence'. The president

wasn't bound to make his choice according to the consult provided by the SC.

- The SC decided that the transfer of the High Court judges can happen from any state's court to any state's court, even against will.

3. Second Judge's Case (1993)

- The year 1993 saw another filing of a petition in the Supreme Court by the Supreme Court Advocates on Record Association (SCARA).
- The previous verdict was overruled by the SC and interpreted the meaning of the word 'consultation' to 'concurrence', thus, making it legally binding for the President to consult the CJI before the appointment of the judges.
- The overturning of the earlier decision birthed the Collegium System.

4. Third Judge's Case (1998)

- The Presidential reference to the SC in articles 124, 217 and 22 of the Indian Constitution issued questioning once again on the word 'consultation' in the year 1998.
- The consultation process won't be limited to the Chief Justice of India but there would be a collegium that shall have 4 of the senior-most judges of the Supreme Court. If there is a disagreement from even 2 judges, the CJI cannot make recommendations to the government.
- The following provisions for the appointment of judges were made and this came to be known as the Collegium System of India.

Appointment of Supreme Court Judge	Appointment of High Court Judge	Transfer of High Court Judge
4 senior-most judges of the Supreme court	2 senior-most judges of the Supreme court	4 senior-most judges of the Supreme court along with the judges of the two High Courts in concern.

5. Collegium System

- The recommendations for the appointment of the judges would be made by the Collegium to the Central Government.
- The central government can send the names for recommendation as well to the Collegium
- The process of appointment takes a good amount of time as there are no provisions that define the time limit for it.
- If the central government send the recommendation made by the Collegium back for reassessment but if the latter doesn't make any changes to it, the Central Government will have to ascent to the Collegium.

The Collegium System has been, time and again, criticised for the lack of transparency and accountability along with problems of nepotism that erode it. It has faced criticism from the government as well as civil society. This criticism led to the formation of the National Judicial Commission Act (NJAC) by the 99th Constitutional Amendment Act in 2014.

NJAC vs Collegium

The National Judicial Appointment Commission (NJAC) is a proposed body that would have replaced the Collegium System. The differences between them have been discussed below;

National Judicial Appointment Commission (NJAC)	Collegium System
The NJAC is a body that was proposed by the NJAC bill and would have had its provisions under Article 124A of the constitution.	The Collegium System has been operational since its genesis and evolution from the 'Three-Judges Cases'. It is not mentioned in the Constitution.
The NJAC would have had the involvement of the Executive in the process of the appointment of the judges.	The Collegium has no such interference. It intended to keep the Executive away from the Judiciary to keep the latter as independent as possible.
The members would have been; <ol style="list-style-type: none"> 1. The Chief Justice of India (ex-officio, Chairperson of the NJAC) 2. Two senior Supreme Court judges (ex-officio) 3. The Union Minister of Law and Justice (ex-officio) 4. Two eminent people to be chosen by a specific committee 	The members of the SC Collegium are; <ol style="list-style-type: none"> 1. The Chief Justice of India 2. Four Senior Supreme Court judges The members of the HC Collegium are; <ol style="list-style-type: none"> 1. The Chief Justice of the HC 2. Four Senior High Court judges
The appointment of the judge would involve the say of the people outside of the judiciary.	The decisions made by the senior-most and top-most members of the Indian Judiciary were to be adhered to. The Gol cannot intervene.

Procedures for Judicial Appointments

The procedures for judicial appointments differ from post to post. They have been discussed below;

- The Chief Justice of India
 - The CJI and other SC judges are appointed by the President of India.
 - The outgoing CJI may recommend his/her successor.
 - The supersession controversy of the 1970s has ensured that the appointment is based on seniority.

- The Supreme Court Judges
 - The proposal for other judges of the SC is made by the CJI.
 - There is a consult among the Collegium along with the senior-most judges from the High Court of the said-recommended person belongs to.
 - The consultees' opinions are to be recorded in writing. The process is to be maintained in a file.
 - The Law Minister receives the recommendation from the Collegium, who in turn forwards it to the Prime Minister to advise the President.
- The Chief Justices of High Courts
 - The Chief Justice of the High Court is appointed from outside of the particular state, as per the policy.
 - The elevation is made by the Collegium.
 - A Collegium comprising the CJI and two senior-most judges of a particular state's High Court makes the recommendation.
 - The outgoing Chief Justice of the High Court initiates the proposal with the consultation of his/her two senior-most colleagues.
 - The Chief Minister receives these names. He/She further advises the Governor to forward the proposal to the Union Law Minister.

Criticism of the Collegium System

As mentioned before, the Collegium had its shortcomings which is why the National Judicial Appointment Commission was recommended to replace it. These criticisms and shortcomings have been discussed below;

- **Unconstitutional and Autocratic:** The Collegium as a system/committee or a term has no existence in the constitution of India. It is a system that has evolved out of the verdicts and proceedings of the Judiciary (Three-Judges Cases) which retains the power with the judges only.
- **Undemocratic:** The selection of judges by the collegium doesn't follow a democratic trajectory as the appointment isn't made by fair and open elections. There is little to no accountability to the people of the country.
- **Opaque Procedure:** The procedure lacks transparency. There is no set official procedure for selection. Since it is not a constitutional body, there are no written manuals or rules of its functioning. There are no set eligibility criteria for the judges.
- **Nepotism:** There is a long-standing trend of nepotism that has been observed in the Judiciary. The popular choice for senior judicial roles has been the sons and nephews of previous judges or senior lawyers. Thus, the collegium has a hand in encouraging mediocrity and hereditary over merit in the judiciary.
- **Inefficiency:** The collegium has been incapable in the prevention of the ever-increasing cases of vacancies of judges and cases.
- **Ignorance of SC's own Guidelines:** The recent supersession in appointment is not consistent with the Supreme Court's verdict in the Second Judge's case (1993) where it laid that:
 - Seniority amongst Judges in their High Courts and on an all-India basis is important and should be considered while making these recommendations to the Supreme Court.

- The order of seniority must be maintained if there is not a strong reason for its departure.

No reforms in the NJAC Bill: After the NJAC bill was struck down, the court did nothing to make any amends in it that shall safeguard their concerns and make it constitutional. Instead, the court reverted to the old Collegium-based appointments mechanism.

