



Appointment of Judges in Supreme Court

For Prelims: [Collegium System](#), [Chief Justice of India](#).

For Mains: Evolution of the Collegium System and its Criticism, Appointment of Judges in SC

Why in News?

The [Supreme Court of India](#) recently witnessed the administration of oath to two new judges, **Justice Prashant Kumar Mishra**, and **Justice K.V. Viswanathan**, by [Chief Justice of India DY Chandrachud](#).

- With their induction, the court has reached its [sanctioned strength](#) of **34 judges**.

How are Supreme Court Judges Appointed?

- **Composition and Strength of the Supreme Court:**
 - Originally, the **Supreme Court had eight judges** (one chief justice and seven others).
 - The Parliament has **increased** the number of judges over time.
 - The current strength of the **Supreme Court is 34 judges (one chief justice and 33 others)**.
- **Qualifications for Appointment as a Judge:**
 - According to **Article 124(3) of the Constitution**, a person can be appointed as a judge of the Supreme Court if he or she:
 - A person must be a **citizen of India**.
 - Must have served as a **judge of a High Court for at least five years or two such courts in succession**.
 - Alternatively, must have been an **advocate of a High Court for at least ten years** or two or more such courts in succession.
 - Must be a **distinguished jurist in the opinion of the president**.
- **Appointment:**
 - The Judges of the Supreme Court are appointed by the **President under clause (2) of Article 124 of the Constitution**.
 - The President consults with judges of the Supreme Court and High Courts to make informed appointments.
- **Oath of Office:**
 - Every appointed judge must make and subscribe to an oath before the President or an appointed person.
 - The oath includes commitments to uphold the Constitution, [sovereignty](#) and **integrity of India**, and **perform duties without fear or favor**.
- **Tenure and Resignation:**
 - There is no prescribed minimum age limit for a judge's appointment.
 - A judge of the Supreme Court serves until they reach the **age of 65 years**.
 - However, a judge may resign before reaching the age of 65 years by tendering their resignation to the President.

- **Salaries and Allowances:**
 - Salaries, allowances, privileges, leave, and pension of Supreme Court judges are determined by **Parliament**.
 - The Salaries, Pension, and Allowances of the Supreme Court Judges are charged upon the **Consolidated Fund of India**.
- **Post-retirement Restrictions:**
 - After retirement, a judge of the Supreme Court is **prohibited from practicing law in any court in India** or pleading before any government authority.
 - As per **Article 128 of Indian Constitution**, any **retired judge** of the Supreme Court of India **can be called back to sit and act as a Supreme Court judge** by the Chief Justice of India with the prior permission of the President of India.
- **Removal:**
 - A judge of the Supreme Court can only be removed from office by an order of the **President**.
 - The removal process requires an address by each House of Parliament, supported by a special majority i.e., a majority of the total membership of that House and a majority of not less than **two-thirds of the members present and voting**.
 - The grounds for removal are proven misbehaviour or incapacity.
 - Parliament has the authority to regulate the procedure for presenting the address and investigating and proving the misbehaviour or incapacity of a judge.
 - Once appointed, judges can serve until the age of 65 and cannot be removed during their tenure except for proved misbehaviour or incapacity.
- **Collegium System for Judicial Appointments:**
 - Judges of the higher judiciary are appointed through the **collegium system**.
 - The collegium, consisting of the **Chief Justice of India** and the **four senior-most judges** of the **Supreme Court**, decides on appointments, elevations, and transfers of Judges.
 - The term "collegium" is not mentioned in the Indian Constitution but has been established through judicial pronouncements.

How Did Collegium Evolve?

- **First Judges Case (1981):**
 - It declared that the "primacy" of the **CJI's (Chief Justice of India)** recommendation on judicial appointments and transfers can be refused for "cogent reasons."
 - The ruling gave the Executive primacy over the Judiciary in judicial appointments for the next 12 years.
- **Second Judges Case (1993):**
 - SC introduced the Collegium system, holding that "consultation" really meant "concurrence".
 - It added that it was not the CJI's individual opinion, but an institutional opinion formed in consultation with the two senior-most judges in the SC.
- **Third Judges Case (1998):**
 - SC on the President's reference (Article 143) expanded the Collegium to a five-member body, comprising the CJI and four of his senior-most colleagues.
- **Fourth Judges Case (2015):**
 - The **99th Constitutional Amendment Act of 2014** and the National Judicial Appointments Commission Act of 2014 has replaced the collegium system of appointing judges to the Supreme Court and High Courts with a new body called the **National Judicial Appointments Commission (NJAC)**.
 - However, in 2015, the Supreme Court declared both the 99th Constitutional Amendment as well as the NJAC Act as **unconstitutional and void in the fourth judge case**. Consequently, the earlier collegium system became operative again.

Prelims

Q. With reference to the Indian judiciary, consider the following statements: (2021)

1. Any retired judge of the Supreme Court of India can be called back to sit and act as a Supreme Court judge by the Chief Justice of India with the prior permission of the President of India.
2. A High Court in India has the power to review its own judgement as the Supreme Court does.

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: (c)

Mains

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

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