



# SC Concerned About Delayed Judicial Appointments

For Prelims: [Supreme Court of India](#), [Collegium System](#), [Judicial Appointments](#)

For Mains: Collegium System and its Criticism

[Source: TH](#)

## Why in News?

Recently, the [Supreme Court \(SC\) of India](#) said the judiciary is losing fresh talent like never before as prospective candidates shortlisted for judgeships in [High Courts](#) give up their applications due to the government's prolonged inaction in processing High Court [Collegium](#) recommendations.

- The [Attorney General of India](#) was directed to provide updates on pending judicial appointments and transfers until 9th October, 2023.

## What are the SC's Concerns Regarding Judicial Appointments?

- **Prolonged Delays and Talent Drain:**
  - The Supreme Court has raised concerns about the significant backlog of **70 High Court Collegium recommendations pending with the government for over 10 months.**
  - This extended delay in processing recommendations has led to a talent drain within the Judiciary, as prospective candidates **withdraw their candidature due to government inaction.**
    - Bright legal minds, eager to join the Bench, are withdrawing due to the uncertainty created by these delays.
- **Controversial Segregation of Names:**
  - The **government's practice of segregating names** from Collegium-recommended lists is a matter of grave concern.
  - Despite explicit forbidding by the Collegium, the government continued to segregate names, causing embarrassment and opposition to the Collegium's directions.
    - This controversial practice has resulted in candidates withdrawing their candidature.
- **Backlog of Appointments and Vacant Positions:**
  - The extensive backlog of High Court Collegium recommendations has **left numerous judicial positions vacant across the country.**
  - The Memorandum of Procedure mandates prompt appointment of names reiterated by the Collegium, but this process is not being followed, causing further delays.

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# Fewer judges, rising cases

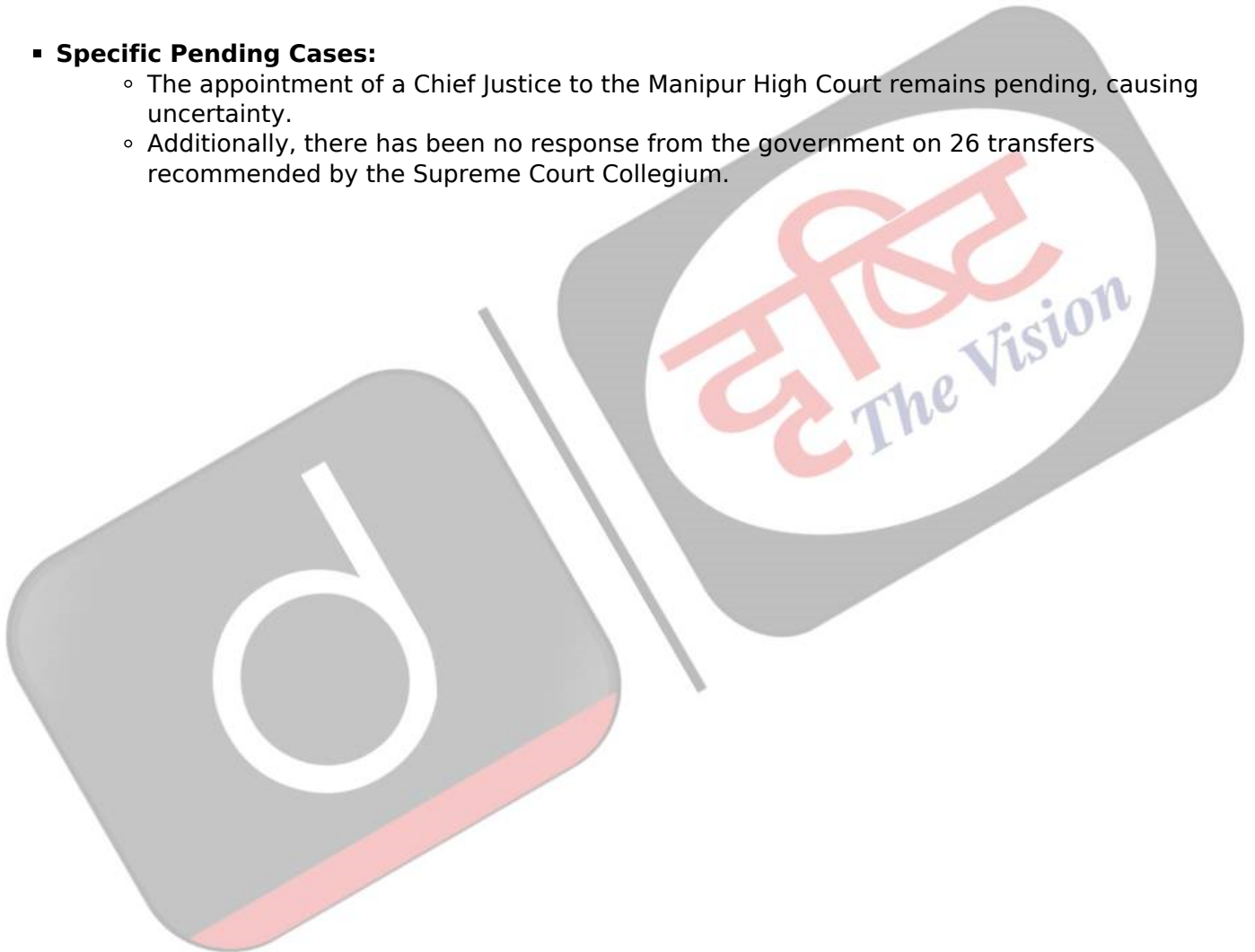
Year after year, as vacancies of judges go unfilled, the pendency of cases continues to mount



Courtesy: Department of Justice & National Judicial Data Grid

## ▪ Specific Pending Cases:

- The appointment of a Chief Justice to the Manipur High Court remains pending, causing uncertainty.
- Additionally, there has been no response from the government on 26 transfers recommended by the Supreme Court Collegium.





# 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



## How are Judges Appointments Carried Out in India?

- **Chief Justice of India (CJI):**
  - The [President of India](#) appoints the CJI and the other SC judges.
    - As far as the CJI is concerned, the outgoing CJI recommends his successor.
    - In practice, it has been strictly by seniority ever since the supersession controversy of the 1970s.
- **Supreme Court Judges:**
  - SC Judges are appointed by the President after consultation with the CJI and such other judges of the Supreme Court and the High courts as he deems necessary.
    - The CJI and a panel of four senior-most judges of the Supreme Court, known as the **Collegium**, recommend the names of the candidates to be appointed as SC judges to the President.
- **Chief Justice of High Courts (HC) and Judges of HC:**
  - The Chief Justice of the HC is **appointed by the President** after consultation with the CJI and the **governor of the state concerned**.
  - The judges of a HC are **appointed by the President**. High Court judges are recommended by a **Collegium comprising the CJI and two senior-most judges**. For appointment of judges, the chief justice of the concerned high court is also consulted.
    - The Chief Justice of the High Court is also required to consult his two senior-most puisne Judges before recommending a name for appointment to the High Court.

## Way Forward

- The government **must expedite the processing of pending High Court Collegium recommendations** to eliminate the backlog of appointments and fill vacant judicial positions promptly.
- The government should **cease the practice of segregating names** from the Collegium's recommendations and adhere to the Collegium's directions in appointing judges.
- Establish a **transparent system to track** and report on the progress of judicial appointments and transfers. Hold accountable those responsible for undue delays or non-compliance.

## Legal Insights

### [The Centre and the Collegium System](#)

## UPSC Civil Services Examination, Previous Year Question (PYQ)

### **Mains**

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