



SC Declines Plea Against Collegium System

For Prelims: [Supreme Court](#), [Collegium system](#), [National Judicial Appointments Commission \(NJAC\)](#), [Parliament](#), [Chief Justice of India\(CJI\)](#), [Executive](#), [First Judges Case \(1981\)](#), [Second Judges Case \(1993\)](#), [Third Judges Case \(1998\)](#)

For Mains: Evolution of the Collegium System and its Criticism

Source: [TOI](#)

Why in News?

Recently, two senior-most district judges moved to the Supreme Court alleging that the Himachal Pradesh **HC collegium overlooked their merit and seniority** in the selection process of judges, and have taken their grievances to the Supreme Court.

- The issue highlights concerns about the adherence to the Supreme Court-devised process for selecting High Court judges.
- Previously in April, the [Supreme Court](#) registry **refused to accept a petition to end the Collegium system** of judicial appointments and revive the [National Judicial Appointments Commission \(NJAC\)](#).

What is a Collegium System and How Did It Evolve?

- **About:**
 - It is the **system of appointment and transfer of judges** that has evolved through judgments of the SC, and not by an Act of [Parliament](#) or by a provision of the Constitution.
 - [Articles 124\(2\)](#) and [Article 217](#) of the Indian Constitution deal with the **appointment of judges** to the Supreme Court and High Courts.
 - The Supreme Court has **already upheld the collegium system, and struck down NJAC** -which gave an equal role to the government in judicial appointments — by a Constitution Bench in 2015. A review plea against the judgement was also subsequently dismissed in 2018.

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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



Collegium System According to Third Judges Case (1998):

| 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. |

What are the Issues Related to the Collegium System?

▪ Exclusion of Executive:

- The complete exclusion of the **executive** from the judicial appointment process created a system where a few judges appoint the rest in **complete secrecy**.
- Also, they are **not accountable to any administrative body** that may lead to the wrong choice of the candidate while overlooking the right candidate.

▪ Chances of Favouritism and Nepotism:

- The collegium system **does not provide any specific criteria** for testing the candidate for the post of **CJI** because of which it leads to wide scope for **nepotism and favouritism**.
 - For instance, as per the two senior-most district judges, the Himachal Pradesh HC collegium had ignored the SC collegium's advice in the selection process of judicial officers much junior to them, **bypassing their merit, seniority, and "unblemished judicial track record."**
- Allegedly, the collegium system gives rise to non-transparency of the judicial appointments, which is very harmful for the regulation of law and order in the country.

▪ Against the Principle of Checks and Balances:

- The principle of check and balance is violated in this system. In India, **three organs work partially independently** but they **keep check and balance** and control the excessive powers of any organ.
- However, the collegium system gives **the Judiciary immense power**, which leaves little room for checks and poses the risk of misuse.

▪ Close-Door Mechanism:

- Critics have pointed out that this system does not involve any official secretariat. It is seen as a **closed-door affair** with no public knowledge of how and when a collegium meets, and how it takes its decisions.
- Also, there are **no official minutes of collegium proceedings**.

▪ Unequal Representation:

- The other area of concern is the **composition of the higher judiciary**, women are fairly underrepresented in the higher judiciary.

Way Forward

▪ Ensuring Transparency and Objectivity:

- **Clear and objective criteria for selection**, including factors like merit, seniority, and diversity should be developed.
- A mechanism for **recording and publishing collegium decisions**, while protecting legitimate privacy concerns should be implemented.

▪ Balancing Independence and Accountability:

- There is a need to find a **way to involve the government** in the appointment process without compromising **judicial independence**. This could involve a consultative mechanism or a time-bound confirmation process.
- For example: The **National Commission to Review the Working of the Constitution (NCRWC)** recommended:
 - Establishment of a **National Judicial Commission** under the Constitution.
 - Examination of complaints of deviant behaviour of SC and HC judges by a committee of the **National Judicial Commission**.

- Setting up of a **National Judicial Council and Judicial Council in states** for the **preparation of plans and annual budget proposals.**
- **Promoting Diversity:**
 - There is a need to implement affirmative action measures to **increase the representation of women, minorities,** and disadvantaged social groups in the judiciary.
 - For instance, the issue of nepotism or '**Uncle Judges' syndrome**' in judicial appointments was addressed by the **Law Commission of India (230th Report).**
 - It recommended that judges not be appointed to High Courts where their family members have legal practices.

Conclusion

The solution lies in balancing competing interests. The executive must demonstrate a genuine commitment to judicial independence, while the judiciary should be sensitive in maintaining transparency in judicial appointments. This inherent tension is essential for a healthy check and balance system that safeguards individual rights and the Constitution.

Drishti Mains Question:

Q. Discuss the evolution of collegium system status with reference to the appointment of judges of higher judiciary in India and its criticism.

Q. Highlighting the features of National Judicial Appointments Commission (NJAC), evaluate the drawbacks 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)

