

# High Court Judges' Repatriation & NJAC Verdict | Judicial Transfers Explained

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## Judicial transfers Latest News

- The Union government has notified the repatriation of Justice Yashwant Varma to the Allahabad High Court, following the Supreme Court Collegium's recommendation.
- His transfer comes amid allegations of charred currency notes being recovered from his residence after a fire, prompting Delhi High Court Chief Justice D.K. Upadhyaya to seek an in-house inquiry.

# Transfer of High Court Judges: Constitutional Framework and Judicial Interpretation

- **Article 222(1) of the Constitution** empowers the President, in consultation with the Chief Justice of India (CJI), to transfer a judge from one High Court to another.

## Judicial Evolution of Transfer Process

- **First Judges Case (1981):** The Supreme Court held that the President's consultation with the CJI did not require concurrence, affirming the executive's primacy in judicial transfers.
- **Second Judges Case (1993):** Overturned the earlier ruling, institutionalizing the collegium system and granting the CJI primacy in transfer decisions. The Court emphasized that transfers must serve the public interest and enhance judicial administration.
- **Third Judges Case (1998):** Further refined the collegium system, mandating consultation with the four seniormost judges and seeking inputs from Supreme Court judges familiar with the concerned High Court.

## Process of Transfer

- The collegium recommends the transfer.
- The Law Minister reviews and advises the Prime Minister.
- The Prime Minister forwards the recommendation to the President.
- Upon presidential approval, the transfer is formalized through a gazette notification.

## Key Considerations

- The CJI must consult relevant judges and legal experts to prevent arbitrariness.
- A judge's consent is not required for transfer.
- Judicial review of transfer decisions is limited to prevent external interference.

## Criticisms of Judicial Transfers in India

- **Concerns Over Judicial Independence**
  - The International Commission of Jurists (ICJ) has raised concerns about increasing executive interference in judicial appointments and transfers, undermining judicial independence.
- **Lack of Transparency and Accountability**
  - Judicial transfers, often carried out without the affected judge's consent, are justified on vague grounds like "public interest" and "better administration of justice."
  - This ambiguity makes it difficult to differentiate between legitimate and punitive transfers.
- **Recommendations for Reform**
  - The ICJ has suggested the establishment of a Judicial Council to oversee appointments and transfers based on transparent, objective, and predetermined criteria.
  - It recommends that the council be composed mainly of judges, aligning with international standards of judicial independence.

## Striking Down of the NJAC: Reasons and Judicial Verdict

- In 2014, the then government introduced the **99th Constitutional Amendment** and the **NJAC Act** to replace the opaque collegium system for judicial appointments.
- The NJAC was designed as an independent body to appoint Supreme Court and High Court judges.

### Composition of the NJAC

- The NJAC was to be chaired by the **CJI** and included:
  - Two senior-most Supreme Court judges
  - Union Law Minister
  - Two eminent civil society members (one from SC/ST/OBC or a woman)
  - These members were nominated by a panel consisting of the **CJI, Prime Minister, and Leader of the Opposition**.

### Political and Legal Challenges

- The amendment passed almost unanimously in Parliament and was ratified by 16 State legislatures.
- However, it was challenged in the Supreme Court, with critics arguing that the **veto power** granted to any two NJAC members—potentially including the Law Minister—could undermine judicial independence.

### Supreme Court Verdict (2015)

- In October 2015, a five-judge Bench ruled (4:1) that the NJAC was **unconstitutional**, stating that it violated the **basic structure of the Constitution**, particularly judicial independence.
- The majority held that the **Law Minister and non-judicial members could interfere** with judicial appointments, compromising autonomy.
- **Dissenting opinion by Justice Jasti Chelameswar:** He criticized the collegium's lack of transparency, arguing that NJAC could have prevented “unwholesome trade-offs” and “incestuous accommodations” between the judiciary and executive.
- The verdict restored the **collegium system**, reinforcing the judiciary's primacy in appointments but leaving concerns over transparency unresolved.

## Judicial Transfers FAQs

**Q1.** What is the process for transferring High Court judges?

**Ans.** The collegium recommends transfers, reviewed by the Law Minister, PM, and President before final approval.

**Q2.** Why was the NJAC struck down?

**Ans.** The Supreme Court ruled that NJAC violated judicial independence by allowing executive interference in appointments.

**Q3.** What are the criticisms of judicial transfers?

**Ans.** Lack of transparency, arbitrary decisions, and potential executive interference undermine judicial independence.

**Q4.** What role does the collegium system play?

**Ans.** The collegium, led by the Chief Justice of India, selects and transfers judges without government intervention.

**Q5.** What reforms have been proposed for judicial transfers?

**Ans.** Experts suggest a Judicial Council to ensure transparent, merit-based appointments and transfers.

**Source:** TH | Col

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