

Collegium System and Appointments

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What is the Collegium System in the Indian judiciary?

The Collegium system is a system for the appointment and transfer of judges in the **Supreme Court** and **High Court**.

- It is not rooted in the Constitution. Instead, it has evolved through judgments of the Supreme Court.
- Under the system, the Chief Justice of India (CJI), along with four senior-most Supreme Court judges, recommends the appointment and transfer of judges.
- A High Court Collegium, meanwhile, is led by the incumbent Chief Justice and the two seniormost judges of that court.
- The government can also raise objections and seek clarifications regarding the Collegium's choices, but if the Collegium reiterates the same names, the government is bound to appoint them to the post.

Constitutional Provisions for Judicial Appointments

Articles	Constitutional Provisions
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Article 124	Supreme Court judges should be appointed by the President after consultation with such judges of the High Courts and the Supreme Court as the President may deem necessary. The CJI is to be consulted in all appointments except his or her own.
Article 217	High Court judges should be appointed by the President after consultation with the CJI and the Governor of the state. The Chief Justice of the High Court concerned too should be consulted.

What is the genesis of the collegium system in India?

The collegium system has its genesis in a series of Supreme Court Judgements:

- **S P Gupta Vs Union of India, 1981 (First Judge Case):** Supreme Court held that consultation in the process of appointing judges does not require concurrence, and instead only involves the exchange of views.
- **Supreme Court Advocates-on-Record Association Vs Union of India, 1993 (Second Judge Case):** The Supreme Court reversed its previous and altered the definition of **consultation to mean concurrence**.
 - It was decided that the advice tendered by the CJI in regard to the appointment of judges to the Supreme Court is binding on the President.
 - Further, the CJI is required to consult with two of his most senior colleagues before tendering such advice.
- **Third Judge Case, 1998:** Supreme court stated that the consultation process to be adopted by the CJI requires '**consultation of plurality judges**'.
 - The CJI should consult a collegium of four senior most judges of the Supreme Court. Even if two judges give an adverse opinion, they should not send the recommendation to the government.
- **National Judicial Appointments Commission (NJAC) Act, 2014:** It was brought to replace the existing collegium system for appointing judges.
 - However, a five-judge Constitution Bench declared it as unconstitutional and nullified it, stating that it posed a threat to the independence of the judiciary.

Why is the collegium system criticized?

Some of the criticism against the collegium system are

- **Lack of transparency:** The collegium system is often criticized for its lack of transparency, as the reasons for the collegium's decisions are not disclosed to the public.
- **Judicial vacancies:** It has struggled to keep up with the stagnant vacancies in the judiciary leading to the pendency of cases.
 - **As of August 2022, there are still 3 vacancies in the Supreme Court and 380 vacancies in the High courts.**
- **Charges of nepotism:** There have been allegations of nepotism and favouritism in the collegium system.
 - The Law Commission in 2009 also noted that nepotism and political privilege was rife in the workings of the collegium system.
- **Against the system of checks and balances:** The collegium system violates the principle of checks and balances as it ensures the complete exclusion of the executive from the judicial appointment process, which leads to a lack of accountability.

- **Lack of representation of women:** The collegium system does not ensure adequate representation of women in the judiciary.
 - **Example:** In the Supreme Court, there are currently four women justices out of the sitting 33. Whereas in High Courts, women judges constitute 11.5%.
- **Transfer of judges:** Currently, the Supreme Court and the government do not disclose the reason for a transfer of judges. There is a possible threat to judicial independence.

What steps have been taken to improve the process of judicial appointments?

- **99th Constitutional Amendment Act, 2014:** It provided for the National Judicial Commission (NJAC) to replace the collegium system for the appointment of judges.
 - However, it was struck down by the Constitutional bench for being violative of the independence of the judiciary.
- **Memorandum of Procedure (MoP):** The MoP is the list of rules and procedures for the appointment of judges to the Supreme Court and the high courts. It is a document framed by the government and the judiciary together.
 - The Union government framed an MoP on 30 June 1999.
 - The current MoP gives out the detailed procedure for the appointment of Supreme Court and high court judges.
 - It states that all appointments of judges to the Supreme Court must be recommended by the Collegium, composed of the Chief Justice of India and the four senior-most judges of the Supreme Court. This recommendation is then sent to the central government. The law minister will forward it to the **prime minister**, who is to advise the President on the appointment.
- **Revised MoP:** In 2015, the Supreme Court instructed the central government to develop a new MoP to ensure transparency in the collegium's proceedings. In 2017, although the MoP was finalized, the government did not adopt it, citing a need to reconsider the matter.

What can be the way forward to streamline judicial appointments in India?

- **Reforming the MoP:** The existing MoP should be reformed. This can include involving representatives from both executive and judiciary in decision-making for judges' appointments to ensure checks and balances.
- **Expanding eligibility criteria:** It should include, apart from the criteria envisaged in Constitution, other criteria for the determination of merit and suitability of candidates
 - There can be an open invitation for all eligible candidates to apply for the vacancy in the judiciary in the prescribed format.
- **Increasing diversity:** Women should be provided adequate representation in judicial appointments.
- **Increasing transparency:** A list of candidates, who had applied, nominated, or considered by the members of the collegium on their own, should be maintained.
 - All opinions of the collegium can be exchanged in writing.

- Proceedings of the collegium should be documented and recorded in the minutes.

- **Law Commission of India recommendations:**

- There should be an equal role for the judiciary and the executive in the selection and appointments of judges to High Courts and the Supreme Court.
- The retirement age of the Judges of the High Court should be increased to 65 years, and that of the Judges of the Supreme Court should be increased to 68 years.
- Article 124(3) contemplates the appointment of judges of the Supreme Court from three sources. However, in the last fifty years, not a single distinguished jurist has been appointed. From the Bar also, less than half a dozen judges have been appointed. It recommended that suitably meritorious persons from these sources are appointed.

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