

Articles Related to Collegium System of Appointment

The **Collegium System** is the method by which judges are appointed to the higher judiciary (Supreme Court and High Courts) in India. It is not established by legislation or the Constitution but has evolved through judicial pronouncements, especially the **Three Judges Cases**.

Key Features of the Collegium System

1. Composition:

- **Supreme Court Appointments:** The Collegium consists of the Chief Justice of India (CJI) and four senior-most judges of the Supreme Court.
- **High Court Appointments:** The Collegium comprises the CJI and two senior-most judges of the Supreme Court; at the state level, the Chief Justice of the High Court and two senior-most judges of that High Court.

2. Functions:

- Recommends appointments and transfers of judges.
- Ensures internal consultation among senior judges.
- Has primacy over the executive in the matter of judicial appointments.

3. Legal Basis:

- Based on the interpretation of **Articles 124 and 217** of the Constitution.
- Judicially evolved through:
 - **First Judges Case (1981):** Gave primacy to the executive.
 - **Second Judges Case (1993):** Reversed the First, gave primacy to judiciary.
 - **Third Judges Case (1998):** Expanded the Collegium and formalized the consultative process.

4. Criticism:

- Lacks transparency and accountability.
- No formal criteria or selection process.
- Accusations of nepotism and elitism.

5. Attempts at Reform:

- **NJAC Act, 2014:** Aimed to replace Collegium with a National Judicial Appointments Commission.
- **Struck down in 2015** by the Supreme Court as unconstitutional, citing threat to judicial independence.

A Detailed Analysis

Introduction

The appointment of judges to the higher judiciary in India — the Supreme Court and High Courts — is a cornerstone of democratic governance and judicial independence. The **Collegium System**, an innovation through judicial interpretation, has played a central role in this process. Although the Constitution of India does not explicitly mention the Collegium System, several articles provide the framework within which it operates. These articles, especially Articles 124, 217, and 222, were interpreted by the judiciary in landmark decisions, leading to the establishment of the Collegium System as it functions today.

This essay explores the constitutional basis of the Collegium System, examines the relevant articles, and discusses their interpretation by the judiciary over time.

1. Article 124: Appointment of Judges to the Supreme Court

Article 124(2) of the Constitution provides that every judge of the Supreme Court shall be appointed by the President **after consultation with such judges of the Supreme Court and High Courts** as the President may deem necessary. The Chief Justice of India shall be appointed by the President after consultation with judges of the Supreme Court and High Courts.

Key Features:

- The phrase “after consultation” became the crux of interpretative debates and judicial pronouncements.
- The Constitution does not mention the term “Collegium,” but it was judicially evolved through interpretation of this clause.

Judicial Interpretation:

In the **Second Judges Case (1993)** — *Supreme Court Advocates-on-Record Association vs. Union of India* — the Supreme Court interpreted “consultation” to mean “concurrence,” effectively giving primacy to the Chief Justice of India in judicial appointments. This decision laid the foundation of the Collegium System. It held that the President must act on the advice of the CJI, who would, in turn, consult a plurality of judges. This established a collective decision-making body—the Collegium—comprising the CJI and the four senior-most judges of the Supreme Court for appointments to the Supreme Court and High Courts.

The **Third Judges Case (1998)**, a Presidential Reference, clarified the Collegium composition and procedure. It stated that the CJI must consult four senior-most judges for appointments to the Supreme Court, thereby reinforcing the primacy of the judiciary in appointments.

2. Article 217: Appointment and Conditions of the Office of a Judge of a High Court

Article 217(1) states that every judge of a High Court shall be appointed by the President after consultation with:

- The Chief Justice of India,
- The Governor of the concerned state, and
- In case of appointment of a judge other than the Chief Justice of the High Court, the Chief Justice of that High Court.

Relevance to Collegium System:

The phrase “after consultation” was again interpreted to mean effective concurrence of the judiciary. Thus, appointments to the High Court also came under the purview of the Collegium System.

Role of High Court Collegium:

For High Court appointments, the recommendation originates from a **High Court Collegium** comprising the Chief Justice of the High Court and two senior-most judges. This recommendation is then sent to the Supreme Court Collegium for approval. Once cleared, it is forwarded to the Union Law Ministry and finally to the President for appointment.

Proviso to Article 217(1)(a):

This clause addresses the reappointment of additional judges and serves as a constitutional check to ensure continuity and confirmation of judges within the judiciary. The Collegium considers performance, integrity, and judicial conduct before recommending permanent appointments.

3. Article 222: Transfer of Judges from One High Court to Another

This article empowers the President to transfer a judge from one High Court to another after consultation with the Chief Justice of India.

Judicial Interpretation:

The Supreme Court has ruled that the CJI must consult senior colleagues before recommending a transfer. Thus, the **Collegium System also governs transfers**, with the Supreme Court Collegium playing a decisive role.

Transfers are often contentious and sensitive, and judicial consensus is emphasized to prevent arbitrary executive interference. This system aims to protect judicial independence and prevent punitive transfers based on political pressure.

4. Article 50: Separation of Judiciary from the Executive

While not directly related to appointments, **Article 50**, a Directive Principle of State Policy, mandates the separation of the judiciary from the executive in the public services of the State.

Relevance to the Collegium:

The Collegium System is seen as a practical manifestation of Article 50. By minimizing executive interference in judicial appointments, the Collegium preserves judicial independence and reinforces the constitutional mandate of institutional autonomy.

5. Judicial Independence and the Spirit of the Constitution

The Collegium System is primarily justified on the grounds of maintaining **judicial independence**, a basic structure doctrine as enunciated in *Kesavananda Bharati v. State of Kerala* (1973). The judiciary has consistently maintained that independence is crucial for upholding the Constitution and the rule of law.

In this light, the **striking down of the 99th Constitutional Amendment and the NJAC Act, 2014** by the Supreme Court in 2015 is significant. The NJAC aimed to replace the Collegium with a commission involving the executive and lay members. However, the Court held that this would undermine judicial independence and violate the basic structure of the Constitution.

The judgment reasserted the **primacy of the judiciary** in the appointment process, interpreting Articles 124 and 217 in a manner consistent with judicial independence.

6. Criticism and Calls for Reform

Despite its constitutional backing through interpretation, the Collegium System has been criticized for its **lack of transparency, accountability, and criteria for selection**. Legal experts and civil society have questioned the absence of a formal procedure or public oversight.

However, defenders argue that any shift toward executive control would threaten the impartiality of the judiciary. Thus, the challenge is to reform the system without undermining its core strength— independence from external pressures.

Proposals include:

- Establishing a transparent and consultative framework within the judiciary.
- Creating written guidelines for selection.
- Publishing Collegium resolutions and reasons for selections.

Some of these steps have already been initiated in recent years, including the Supreme Court's practice of publishing Collegium decisions and resolutions online.

Advantages of the Collegium System

1. Judicial Independence

- **Justice J.S. Verma** (who authored the Second Judges Case judgment) emphasized that the system ensures **judicial independence from executive and legislative interference**, which is essential for a free and fair judiciary.
- It prevents political or partisan influences in appointments, preserving the constitutional principle of separation of powers.

2. Preservation of the Basic Structure

- As per the **Supreme Court's judgment in the NJAC Case (2015)**, the Collegium System upholds the **"basic structure doctrine"** of the Constitution by protecting the independence of the judiciary from executive overreach.

3. Continuity and Institutional Memory

- Appointments by senior judges ensure decisions are based on **institutional knowledge and collective wisdom**, preserving the judiciary's traditions and integrity.

4. Checks on Arbitrary Transfers

- Law experts note that the Collegium's role in transfer decisions (under Article 222) helps **curb executive misuse** of the power to transfer judges for political reasons.

5. Merit-Based Selections

- Legal scholars like **Fali Nariman** argue that the system, despite its flaws, promotes **merit-based appointments**, as decisions are made by experienced judges familiar with legal competence and temperament.

6. Resistance to Populism

- Because it operates independently of public or political sentiment, the Collegium shields judicial appointments from **short-term populist or majoritarian pressures**.

Disadvantages of the Collegium System

1. Lack of Transparency

- Legal critics like **Justice Ruma Pal** and **Justice Madan Lokur** have pointed out that the system operates with **no formal selection criteria, no public records, and no accountability**.
- The process is opaque, and reasons for appointments or rejections are often not disclosed.

2. No Formal Mechanism or Codified Guidelines

- Unlike other constitutional appointments, there is **no structured mechanism** for vetting candidates, leading to inconsistencies in selection.
- As **Senior Advocate Indira Jaising** noted, "closed-door decisions" often result in perceived arbitrariness.

3. Favoritism and Nepotism

- Critics including **Justice Katju** have alleged that the Collegium sometimes promotes **personal preferences, regional bias, or "uncle judge syndrome,"** affecting the credibility of selections.

4. Absence of Diversity

- Many scholars argue that the Collegium has failed to ensure adequate **representation of women, minorities, Dalits, and backward classes**, reinforcing elite dominance within the judiciary.

5. Delays in Appointments

- The system has been blamed for **significant delays** in appointments and transfers, creating **vacancies** and **case backlogs**.
- The Supreme Court itself has expressed concern about the delay in processing Collegium recommendations by the government.

6. No Role for External or Lay Oversight

- Critics argue the judiciary acts as the judge of its own cause, as there is **no independent body** or public input in the selection process.
- The **Law Commission (121st and 214th Reports)** recommended some form of **participatory process** to enhance accountability.

Expert	Viewpoint
Fali S. Nariman	Supports judicial primacy but calls for more transparency and internal reform within the Collegium.
Justice Ruma Pal	Criticized the system as opaque and lacking checks, famously stating the process is “possibly the best-kept secret in the country.”
Justice M.N. Venkatachaliah	Advocated for a more structured judicial appointments commission with judicial majority and safeguards.
Justice Deepak Gupta	Stated that judges must accept fair scrutiny, and a more open process would bolster public faith.
Indira Jaising	Stressed the need for criteria like gender and social diversity, and publication of reasons for decisions.
Justice Markandey Katju	Harshly critical, claiming the Collegium promotes sycophancy and lacks objective standards.

Conclusion

While the **Collegium System** is not explicitly enshrined in the Indian Constitution, it draws its legitimacy and operational basis from a cluster of constitutional provisions—primarily **Articles 124, 217, and 222**. Through judicial interpretation, particularly in the Second and Third Judges Cases, these articles were molded into a constitutional convention that prioritizes judicial autonomy over executive control.

This system, though not without its flaws, remains a bulwark for judicial independence in India. As the judiciary continues to evolve and face new challenges, there is a pressing need to make the Collegium more transparent and accountable while upholding the spirit of the Constitution.

Scope of Reform in the Collegium System and Its Potential Impact on the Present Judicial Scenario

The **Collegium System**, though designed to preserve judicial independence, has been widely criticized for its opacity, lack of accountability, and failure to ensure representation. Therefore, legal scholars, former judges, and constitutional experts have proposed multiple avenues for reform. Below is an elaboration of the **possible reforms** and **their expected impact** on India's judicial appointments:

I. Scope of Reform

1. Institution of a National Judicial Appointments Commission (NJAC)-like Body

- A restructured NJAC with **judicial majority** and transparent processes could be established.
- This body should include:
 - **Judicial members** (CJI and senior judges)
 - **Executive representatives**
 - **Eminent persons** with legal, social, or administrative backgrounds
- **Safeguard clauses** must be incorporated to prevent executive dominance.

2. Codification of Appointment Criteria

- A **clearly defined and codified set of criteria** for assessing candidates—such as integrity, competence, diversity, and experience—should be adopted.
- Evaluation matrices or scoring systems may help ensure objectivity.

3. Transparency in Decision-Making

- Collegium resolutions should include **detailed reasoning** for appointments, rejections, and transfers.
- All recommendations and their status (accepted/pending) should be published on the **Supreme Court website** in a time-bound manner.

4. Wider Consultation and Feedback

- Introduce formal consultations with **Bar Associations, senior advocates, and legal academics** before finalizing recommendations.
- A “**public scrutiny window**” or confidential feedback mechanism may help prevent unfit appointments.

5. Ensuring Diversity and Representation

- Reservations or quotas may not be constitutionally viable, but the Collegium can adopt **internal policies to promote inclusion**.
- Focus on improving representation of **women, SC/STs, minorities, and regional diversity** in higher judiciary.

6. Institutional Mechanism for Grievance Redressal

- A **review or appeals committee** within the Collegium or external oversight panel could be formed to address complaints or bias allegations.

7. Time-Bound Decision-Making

- Legal timelines can be set for appointment proposals, clearance by the government, and final notification to prevent **vacancy backlogs**.

II. Effects of Reform on the Present Scenario

1. Improved Public Trust and Credibility

- Transparent and accountable processes would restore **public confidence in the judiciary**.
- Detailed disclosures would eliminate suspicions of bias or favoritism.

2. Timely Appointments and Reduced Case Backlogs

- A streamlined system with deadlines would **fill vacant positions faster**, addressing one of the main causes of judicial delays.

3. Enhanced Judicial Diversity

- By consciously ensuring representation, reforms would make the judiciary more **inclusive, responsive to marginalized communities**, and more representative of Indian society.

4. Balanced Judicial Independence with Accountability

- A reformed system could strike a **balance between judicial primacy and democratic accountability**, avoiding excessive secrecy or executive overreach.

5. Prevention of Arbitrary Appointments

- Codified guidelines and documented reasons would reduce **subjective biases** and ensure **merit-based selections**.

6. Reduced Executive-Judiciary Friction

- With a collaborative yet safeguarded appointment process, the **recurring standoffs** between judiciary and government over appointments may be mitigated.

7. Model for Global Best Practices

- Adoption of a participatory, transparent system would bring Indian judicial appointments closer to **international standards**, as seen in the UK, Canada, and South Africa.

Conclusion

While the Collegium system was initially established to protect judicial independence, its evolution demands reform in light of democratic values, transparency, and efficiency. A **hybrid model**, combining

judicial leadership with participatory mechanisms, codified standards, and public accountability, is both desirable and constitutionally viable. If implemented, these reforms can **reinvigorate India's judiciary**, making it more robust, transparent, and credible in the eyes of both the legal fraternity and the public.