

Supreme Court Collegium System and National Judicial Appointments Commission (NJAC)

The Collegium System is one of the very important topics in understanding the appointment of the Supreme Court judges and the judicial system. Aspirants preparing for [IAS Exam](#) must have a deep understanding of the judicial system and the bureaucracy. Students who are preparing for other [Government exams](#) can refer to this article as well. This topic comes under the subject of Indian Polity in General Studies paper 2 of the UPSC Syllabus.

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Appointment of Supreme Court Judges

The Constitution of India - **Article 124**: *Establishment and constitution of Supreme Court* says that:

- There shall be a [Supreme Court of India](#) consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.
- Every Judge of the Supreme Court shall be **appointed by the President** by warrant under his/her hand and seal after consultation with such of the Judges of the Supreme Court and of the High Court in the States as President may deem necessary for the purpose and shall hold office until he attains the age of 65 years.
- In judicial appointments, it is obligatory for the President to take into account the opinion of the Chief Justice of India.
- The opinion of the Chief Justice of India is binding on the Government. The opinion of the CJI must be formed after due consultation with a collegium of at least four senior-most judges of the Supreme Court.
- Even if two judges give an adverse opinion, then he should not send the recommendation to the Government.

Timeline for changes in the appointment procedures

After independence, India adopted the Constitution in 1950. According to the Constitution, up to 1973, the President appointed the Chief Justice of India and remaining judges of the Supreme Court in consultation with the CJI and other judges as he deemed necessary.

1. Appointment of CJI 1950-1973

- Until 1973, there existed a consensus between the Government of the day and the Chief Justice of India.
- A convention was formed where the senior-most judge of the Supreme Court was to be appointed as the Chief Justice of India.
- In 1973, A.N.Ray was appointed as the Chief Justice of India. This violated the convention formed earlier since Justice A.N.Ray superseded three other Supreme Court judges senior to him.
- Again in 1977, another chief justice was appointed who superseded his seniors.
- This resulted in a clash between the Executive and the Judiciary.

2. First judges case, 1982

- A petition was filed in 1982 in the Supreme Court of India.
- This case is known as the **S.P.Gupta Case or First Judges case**.
- The Supreme Court discussed 2 major points during the proceedings of this case
- When asked to the Supreme Court of India whether the word “consultation” in the constitutional article 124 mean “concurrence”; **the Supreme court overruled this and denied saying that Consultation does not mean concurrence**. The President was not bound to make a decision based on the consultation of the Supreme Court.
- Another important point in the discussion, in this case, was the part where the Supreme Court decided that a High Court Judge can be transferred to any other high court of a state even against his will.

3. Second judges case, 1993

- Another petition was filed in 1993 by the **Supreme Court Advocates-on Record Association (SCARA)**.
- In this case, the Supreme court overruled its earlier verdict and changed the meaning of consultation to concurrence. Thus binding the President of India with the consultations of the Chief justice of India.
- This resulted in the birth of the Collegium System.

4. Third Judges Case, 1998

- In the year 1998, the presidential reference to the Supreme court was issued questioning the meaning of the word consultation in the articles 124, 217 and 222 of the Constitution.
- The chief justice won't be the only one as a part of the consultation process. Consultation would include a collegium of **4 senior-most judges of the Supreme court**. Even if 2 of the judges are against the opinion, the CJI will not recommend it to the government.

The gist of the Third Judges case:

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.

- In the verdict, the Supreme Court laid down strict guidelines for the appointment of Judges of Supreme Court and high courts which is currently known as the Collegium System.

5. Collegium System

- In this system of appointment of Judges, the collegium will recommend the names of the candidates to the Central Government.
- Also, the central government will send the names of the proposed candidates for consultation.
- The appointment process takes a long time since there isn't a fixed time limit for it. If the Collegium resends the same name again then the government has to give its assent to the names.

*The Collegium System faced a lot of criticism not only from the government but also from civil society due to its **Lack of Transparency and Accountability**.*

This led to the 99th Constitutional Amendment Act, 2014 the National Judicial Commission Act (NJAC) to replace the collegium system for the appointment of judges.

6. National Judicial Appointment Commission Act, 2014

- The 1993 judgment was the basis on which a five-judge Constitution Bench declared the **National Judicial Appointments Commission Act (NJAC)** and the **Constitutional** (Ninety-Nine Amendment) Act, 2014 **unconstitutional** in October 2015.
- NJAC too would recommend names for the Appointment of Supreme Court Judge and Appointment and Transfer of High Court Judge
- Composition of NJAC
 - The Chief Justice of India
 - 2 senior-most judges of the Supreme Court
 - The Law Minister of India
 - 2 eminent members that are chosen by the Selection Committee



The aspirants should note that NJAC was established in order to **achieve greater transparency and accountability for the appointment of judges**. But it was struck down by the Supreme Court on the grounds that it was **against the “Independence of Judiciary” i.e Principles of Basic Structure** since it **involved the Political Executive in the appointment of Judges**.

The current system of appointment of SC judges

- In judicial appointments, it is obligatory for the President to take into account the opinion of the CJI.
- The opinion of the CJI is binding on the Government. The opinion of the CJI must be formed after due consultation with a collegium of at least four senior-most judges of the Supreme Court.
- Even if two judges give an adverse opinion, then he should not send the recommendation to the Government.

Read more on **Appointment and Removal of Judges of the Supreme Court of India** [here](#)

UPSC Questions related to Collegium System and NJAC

How many judges are in a collegium?

- Currently, there are five members in the collegium system of India.

Which case had the highest bench of the Supreme Court?

- The Kesavananda Bharati case of 1973 saw the highest bench in the history of the Supreme Court consisting of 13 judges.
- The judgement implied that the parliament can only amend the constitution and not rewrite it. The power to amend is not a power to destroy.

Read more about Landmark Cases relating to the Basic Structure of the Constitution [here](#).

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