
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**CUSTODIANS OF JUSTICE: A SCHOLARLY EXAMINATION OF
INDIA'S COLLEGIUM SYSTEM AND THE NATIONAL JUDICIAL
APPOINTMENT COMMISSION**

- Manav Agrawal¹

ABSTRACT

The Indian Constitution, as the supreme law of the land, enshrines the separation of powers among the executive, legislature, and judiciary. It ensures the judiciary's independence from the other two branches, a principle reflected in appointing judges to the higher judiciary. This appointment process is crucial, sensitive, and a subject of ongoing debate.

For decades, the collegium system has been established for judicial appointments in India, which is considered a tradition within the judiciary. In 2014, Parliament introduced the National Judicial Appointments Commission (NJAC) as an alternative, sparking significant controversy regarding its constitutionality and impact on the basic structure of the Constitution. Critics of the collegium system point to its lack of transparency and autocratic nature, while opponents of the NJAC argue that it compromises judicial independence by involving the executive in judicial appointments.

Ultimately, the Supreme Court struck down the NJAC Act, declaring it unconstitutional, thereby reinstating the collegium system as the sole method for appointing judges to the higher judiciary.

This research provides an overview of the collegium system, its features, and its merits and demerits in the judicial appointment process. It also examines the NJAC and its constitutional validity, including scrutiny of landmark Supreme Court judgments on the NJAC and the broader issue of judicial appointments.

Keywords: Constitution, Judiciary, Collegium, Autocratic, Appointment.

¹ Student at Christ University Bangalore

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

I. INTRODUCTION

In India, appointing judges to the higher judiciary has been a subject of considerable debate and scrutiny. Historically, the collegium system has been the predominant method, evolving since the country's independence. Under this system, the Chief Justice of India (CJI) and a group of senior judges from the Supreme Court are responsible for recommending candidates for judicial appointments to the President. However, despite its long-standing use, the collegium system has faced criticism.

One primary criticism against the collegium system is its lack of transparency. The decision-making process within the collegium, comprising only a select group of judges, occurs behind closed doors, leading to concerns about accountability and fairness. Additionally, the concentration of power within the judiciary, particularly in the hands of the CJI, has raised questions about the system's democratic legitimacy and potential for nepotism or favouritism in appointments.

In response to these criticisms, the Indian Parliament sought to introduce reforms to the judicial appointment process. In 2014, it passed a constitutional amendment to establish the National Judicial Appointments Commission (NJAC). The NJAC aimed to broaden the scope of decision-making by including representatives from the executive branch, such as the Prime Minister and the Leader of the Opposition, alongside judicial members. Proponents of the NJAC argued that it would enhance transparency and accountability in the appointment process by incorporating multiple stakeholders.

However, the introduction of the NJAC was met with significant opposition from within the legal community. Critics contended that including executive members in the appointment process undermined judicial independence, a cornerstone of India's constitutional framework. They argued that judicial independence was essential for upholding the rule of law and ensuring impartial justice delivery.

The constitutional validity of the NJAC was ultimately challenged in the Supreme Court, leading to a series of landmark judgments commonly referred to as the "Judges Cases." In its ruling, the Supreme Court held that the NJAC violated the basic structure of the Constitution, particularly the principle of judicial independence. The court reaffirmed the supremacy of the collegium system, emphasising the judiciary's role in safeguarding its independence from external influences.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

Despite the court's ruling, the debate over judicial appointments continues to evolve. Calls for reforming the collegium system persist, with suggestions ranging from enhancing transparency through public scrutiny of appointments to establishing an independent oversight body to monitor judicial appointments. Meanwhile, the NJAC remains a topic of discussion, with proponents advocating for its revival with modifications to address the concerns raised by the Supreme Court.

In conclusion, the issue of judicial appointments in India is complex and multifaceted, reflecting broader tensions between judicial independence, democratic accountability, and transparency. As the country grapples with these challenges, finding a balance that ensures the integrity of the judiciary and public trust in the appointment process remains a pressing concern.

II. COLLEGIUM SYSTEM

The Collegium system, a hallmark of India's judiciary, operates without specific constitutional or legislative backing. Emerging as a tradition post-independence, its origins can be traced back to legal precedents rather than statutory provisions. The term "Collegium" gained prominence through the landmark *SP Gupta v. Union of India* case. However, its formal establishment for judicial appointments occurred later in the *Supreme Court Advocates on Record Association v. Union of India* case.

The Collegium system is a judge-centric mechanism for appointing judges to the higher judiciary, comprising the Supreme Court and High Courts. This process involves consultation between the President and the Chief Justice of India (CJI), who in turn seeks the opinion of the four most senior judges of the Supreme Court. This informal consultation forms the bedrock of the Collegium system, which has evolved through judicial pronouncements rather than legislative enactments.

Beyond appointments, the Collegium system also oversees the transfer of judges between different High Courts, adding another layer of responsibility to its mandate.

While the Indian Constitution outlines the procedure for appointing judges to the Supreme Court (Article 124, Clause 2) and High Courts (Article 217, Clause 3), as well as provisions for judicial transfers (Article 222), it does not explicitly delineate the workings of the Collegium system. Instead, the system operates within the framework provided by these constitutional provisions, supplemented by judicial interpretations and conventions.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

The Collegium system embodies a unique blend of judicial prerogative and constitutional mandate, shaped by decades of legal evolution and judicial wisdom. Its significance in shaping the Indian judiciary underscores the dynamic interplay between tradition, precedent, and constitutional principles.

The composition and procedures of the collegium, responsible for judicial appointments and transfers in India's higher judiciary, underwent significant evolution following the landmark In Re Special Reference 1 of 1998, commonly known as the third judges' case. Originally composed of the Chief Justice of India (CJI) and the three most senior judges of the Supreme Court, the collegium's membership was expanded to five following the third judge's case. This ruling increased the number of members and outlined comprehensive procedures for judicial appointments and transfers within the higher judiciary.

Presently, the collegium consists of the CJI and the four most senior judges of the Supreme Court, a composition set by the third judges' case and adhered to since then. The same case prescribed the procedures for appointments and transfers, ensuring a structured and transparent approach to these critical functions. In appointing Supreme Court judges, the CJI initiates the process by consulting the four other senior judges of the Supreme Court. Additionally, the CJI seeks the opinion of the senior-most judge from the same high court as the candidate and the Chief Justice of that respective high court. Appointment occurs upon achieving a majority consensus within the collegium.

Similarly, for the appointment of High Court judges, the CJI, in consultation with two other senior-most Supreme Court judges, solicits input from the Chief Justice of the concerned high court and other senior judges of that court. This collaborative approach ensures thorough consideration and representation of various perspectives in the appointment process. Regarding the transfer of judges between high courts, the CJI, after consulting the four other senior-most Supreme Court judges, engages with the Chief Justices of both the originating and receiving high courts. This consultative process facilitates smooth transitions and upholds judicial integrity across jurisdictions.

Upon completion of the consultation process, the CJI forwards the recommended names to the Government of India, and subsequently, the President appoints the judges, thereby formalising the appointments. The procedures established by the third judge's case underscore the collegium's commitment to transparency, accountability, and judicial independence, crucial principles in safeguarding the integrity of India's judiciary.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

➤ **Merits of the Collegium System:**

Safeguarding Judicial Independence: By excluding the executive and political influences, the collegium system upholds the independence of the judiciary, a fundamental principle enshrined in the constitution. This ensures a clear separation of powers and prevents undue interference in judicial appointments. Knowledge.

Confidentiality for Enhanced Efficiency: The collegium's practice of maintaining confidentiality in the appointment process enhances the correctness and efficiency of appointments. This confidentiality allows for candid discussions among members, leading to well-informed decisions based on merit and suitability.

Expertise and Insight of the Chief Justice: As the head of the collegium system, the Chief Justice of India, with their knowledge and experience in the legal domain, possesses a nuanced understanding of the judiciary's needs. This enables them to identify and appoint candidates best suited for judicial roles, often better performed within the judiciary than by the executive.

➤ **Demerits of the Collegium System:**

Potential for Nepotism: With the appointment process primarily vested within the judiciary, concerns arise regarding the potential for nepotism or favouritism in judicial appointments. The lack of external oversight or checks may create opportunities for biases to influence appointments.

Lack of Transparency: While confidentiality may promote efficiency, it also lacks transparency in the appointment process. This opacity raises questions about accountability and public trust, as stakeholders are uninformed about the criteria and considerations guiding appointments.

Limited Accountability: The collegium system operates without direct accountability to the legislative or executive branches of government. This lack of oversight can lead to inefficiencies in appointments, as there are few mechanisms in place to ensure checks and balances among the three branches of government, undermining the principle of institutional accountability.

III. NATIONAL JUDICIAL APPOINTMENTS COMMISSION

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

The National Judicial Appointment Commission (NJAC), introduced through the Constitutional 99th Amendment Act of 2014, marked a significant departure from the prevailing collegium system for appointing judges to the higher judiciary. Passed by both houses of Parliament with considerable support, the NJAC Act received presidential permission in December 2014 and came into effect in April 2015. The primary objective behind its introduction was to address perceived shortcomings in the collegium system, namely, its lack of transparency and susceptibility to nepotism.

The NJAC Act introduced several amendments to the Indian Constitution, including Articles 124A, 124B, and 124C, which delineate the composition, functions, and legislative authority of the NJAC, respectively. Notably, changes were also made to Articles 217 and 222 pertaining to appointing and transferring judges in High Courts.

Composition-wise, the NJAC comprises six members, with the Chief Justice of India serving as the Chairperson *ex officio*, alongside two other senior-most judges of the Supreme Court. Additionally, the Union Law Minister, the Prime Minister, and the Leader of the Opposition in the Lok Sabha serve as *ex officio* members, collectively shaping the commission's decision-making dynamics.

Functionally, the NJAC, as outlined in Article 124B, is entrusted with recommending candidates for the positions of Chief Justice of India, other Supreme Court judges, and High Court judges, as well as facilitating transfers between High Courts. This mandate underscores the commission's pivotal role in shaping the composition of the judiciary and ensuring its efficient functioning.

Furthermore, the introduction of Article 124C empowers Parliament to enact laws about the NJAC, including those governing appointment procedures, thereby providing a mechanism for ongoing legislative oversight and adaptation to evolving judicial needs.

In essence, the NJAC represents a concerted effort by the legislature to introduce greater transparency and accountability into the judicial appointment process while also institutionalising a framework for collaborative decision-making involving multiple stakeholders. However, its implementation and effectiveness remain subject to scrutiny and evaluation in India's evolving legal landscape.

➤ **Merits of NJAC:**

Enhanced Transparency: The involvement of the executive in judicial appointments through NJAC introduces a level of transparency previously absent in the appointment process. This inclusion ensures broader representation and scrutiny, fostering transparency and accountability in judicial appointments.

Checks and Balances: By incorporating members from the executive branch, NJAC introduces a mechanism for judicial appointments that is accountable to multiple government organs. This ensures a system of checks and balances, reinforcing democratic principles and preventing the concentration of power within any branch.

Expedited Appointments: NJAC's composition, which includes judicial professionals, the Law Minister, and other public figures, facilitates a more efficient appointment process. This multi-stakeholder approach minimises delays, ensuring timely appointments to address judicial vacancies and uphold the efficacy of the judiciary.

➤ **Demerits of NJAC:**

Threat to Judicial Independence: The involvement of the executive in judicial appointments, while promoting transparency, raises concerns about the independence of the judiciary—a foundational principle of India's constitutional framework. This intrusion into judicial appointments by the executive jeopardises the judiciary's autonomy, potentially compromising its ability to act impartially and uphold the rule of law.

Conflict of Interest: NJAC's decision-making process, which involves recommendations from diverse members, including those lacking expertise in judicial matters, may lead to conflicts between judicial and executive members regarding the suitability of appointees. This divergence of perspectives could undermine the integrity and efficacy of the appointment process.

Lack of Defined Criteria: Despite its aim to enhance transparency, the NJAC Act fails to provide clear criteria or procedures for judicial appointments. This ambiguity leaves room for subjective interpretations and arbitrary decision-making, undermining the intended transparency and accountability of the NJAC.

Violation of Separation of Powers: Article 124C of the Indian Constitution, granting Parliament the authority to legislate on NJAC and judicial appointments, raises concerns about the encroachment of legislative powers into judicial matters. This intrusion violates the doctrine of separation of powers, potentially undermining the independence and integrity of the judiciary as a distinct branch of government.

#Assessing the validity of both the Collegium System and the National Judicial Appointment Commission (NJAC) under the Constitution requires an examination of key judicial rulings, often referred to as the "four judges' cases."

The first significant judgment, S.P. Gupta v. Union of India (1982), established the collegium system for judicial appointments. The Supreme Court ruled that while the President retains considerable powers in appointments, the term "consultation" does not necessitate concurrence, thus allowing executive influence in judicial appointments.

Subsequently, **the Second Judges Case (Supreme Court Advocates on Record Association v. Union of India, 1993)** overturned the previous ruling. The Supreme Court held that consultation implies concurrence, emphasising the Chief Justice of India's pivotal role and the necessity of consulting the two senior judges of the Supreme Court. This decision aimed to safeguard judicial independence, a fundamental aspect of the Constitution's basic structure.

In **the Third Judges Case (In re Special Reference 1 of 1998),** the Supreme Court clarified appointment procedures and expanded the collegium to include five members. Additionally, it mandated the President's agreement with the collegium's recommendations, further solidifying the judiciary's autonomy in appointments.

The **Fourth Judges Case (Supreme Court Advocates on Record Association v. Union of India, 2016)** arose when Parliament introduced the NJAC as an alternative to the collegium. However, the Supreme Court deemed the NJAC unconstitutional, asserting that it infringed upon judicial independence by involving the executive in appointments, a core tenet of the Constitution's basic structure.

In light of these judgments, the collegium system continues to be upheld as the constitutional method for judicial appointments, following the Supreme Court's ruling on the NJAC's unconstitutionality. The judiciary's independence remains paramount, ensuring the integrity and autonomy of the appointment process.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

IV. COMPARISON

The Collegium System and the National Judicial Appointment Commission (NJAC) represent two distinct approaches to appointing judges to India's higher judiciary, each with its own characteristics, advantages, and challenges.

The Collegium System, entrenched through judicial interpretations of constitutional provisions over decades, consists of the Chief Justice of India (CJI) and the four most senior judges of the Supreme Court. This system evolved organically within the judiciary, without specific legislative backing, and is primarily responsible for appointing Supreme Court and High Court judges. While the Collegium System emphasises judicial independence by keeping appointments within the judiciary's purview, it has faced criticism for its lack of transparency and accountability. Decisions are made internally, often without public disclosure of reasons, leading to concerns about favouritism, nepotism, and the exclusion of diverse perspectives.

In contrast, the NJAC was introduced as an alternative to the Collegium System, aiming to reform the appointment process by incorporating judiciary and executive representatives. Comprising the Chief Justice of India, two senior-most judges of the Supreme Court, the Union Law Minister, and two eminent persons nominated by a committee, including political representatives, the NJAC sought to increase transparency and accountability in judicial appointments. By involving members from different branches of government, the NJAC intended to create a system of checks and balances, preventing the concentration of power within any single organ. However, its implementation raised concerns about judicial independence, as executive involvement in judicial appointments could compromise the judiciary's autonomy.

One of the key differences between the two systems lies in their decision-making processes. While the Collegium System relies on internal consultations and consensus among judges, the NJAC involves collaborative decision-making, incorporating input from both judicial and executive members. This difference impacts the level of transparency and accountability in the appointment process. The Collegium System, despite its criticisms, emphasises judicial independence by keeping appointments within the judiciary's domain. At the same time, the NJAC seeks to balance the interests of different branches of government, potentially enhancing transparency and raising questions about judicial autonomy.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

Furthermore, the constitutional validity of both systems has been a subject of debate. The Collegium System evolved through judicial interpretations of constitutional provisions without specific legislative backing, while the NJAC was introduced through a constitutional amendment and legislative enactment. This difference in origin reflects broader questions about the separation of powers and the role of different branches of government in shaping the judiciary.

V. RECOMMENDATIONS

In India, the Collegium System governs judicial appointments, emphasising judicial independence. However, unlike other countries, where executive or legislative bodies play a significant role, India's system is an exception. For instance, the UK has a Judicial Appointment Commission, while the US relies on the Senate Judicial Committee. Most nations like Italy, Germany, and France follow similar models involving executive and legislative branches in appointments. In contrast, Russia employs a collegium system akin to India's, where recommendations are made, and the president has discretion in appointments. Despite its uniqueness, India's system upholds the idea of separation of powers and safeguards the constitution's basic structure.

While the Collegium System has served its purpose, some areas require attention. Transparency is a notable concern, with appointments lacking disclosure of selection criteria. Moreover, the system's susceptibility to nepotism risks appointing less qualified judges. Although the NJAC was deemed invalid and unconstitutional, a balanced approach could revitalise it. A compromise between judicial independence and accountability could be achieved by reinstating the NJAC with provisions for executive involvement while maintaining judicial oversight. This would also address appointment delays, a pressing issue in the current system.

- **Introduction of a Transparent Selection Process:** Implement a structured and transparent selection process within the Collegium System. This could involve establishing clear criteria for judicial appointments, including qualifications, experience, and integrity. Additionally, the system could incorporate mechanisms for public scrutiny and feedback on potential nominees, promoting accountability and trust in the appointment process.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

- **Utilisation of Technology for Assessment:** Introduce innovative technologies, such as artificial intelligence (AI) and data analytics, to assist in assessing potential candidates. AI algorithms could help analyse judicial decisions, legal writings, and professional achievements to identify candidates with exceptional legal acumen and ethical standards, streamlining the candidate selection process and ensuring merit-based appointments.
- **Diverse Representation in the Collegium:** Promote diversity by including members from diverse backgrounds, legal scholars, eminent jurists, and representatives from marginalised communities. This diversity of perspectives can enrich the decision-making process, ensuring that judicial appointments reflect the pluralistic nature of Indian society and uphold the principles of equality and inclusivity.
- **Establishment of a Performance Evaluation System:** Develop a comprehensive performance evaluation system for judges appointed through the Collegium System. This system could include regular assessments of judicial performance based on efficiency, impartiality, and adherence to judicial ethics. Judges who demonstrate excellence and integrity could be recognised and promoted, while those who fail to meet established standards could undergo remedial measures or disciplinary action.
- **Promotion of Judicial Education and Training:** Invest in ongoing education and training programs for judges appointed through the Collegium System. These programs could focus on areas such as judicial ethics, case management, legal research, and emerging areas of law. By enhancing the knowledge and skills of judges, the Collegium System can ensure a judiciary that is well-equipped to address complex legal challenges and effectively uphold the rule of law.
- **Enhanced Collaboration with Legal Academia and Civil Society:** Foster greater collaboration between the Collegium System, legal academia, and civil society organisations. This could involve organising workshops, seminars, and public forums to facilitate dialogue on judicial appointments, legal reforms, and the judiciary's role in promoting social justice. By engaging with diverse stakeholders, the Collegium

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

System can benefit from broader perspectives and insights, fostering greater legitimacy and public trust.

- **Promotion of Transparency and Accountability Mechanisms:** Strengthen the Collegium System's mechanisms for transparency and accountability. This could include regular publication of selection criteria, deliberations, and appointment reasons. Additionally, establishing independent oversight bodies or ombudspersons to review the Collegium's decisions and address grievances can enhance public confidence in the integrity and fairness of the appointment process.

VI. CONCLUSION

The examination of India's judicial appointment systems, namely the Collegium System and the National Judicial Appointment Commission (NJAC), underscores the intricate balance between judicial independence, democratic accountability, and transparency.

The Collegium System, rooted in judicial interpretations rather than legislative enactments, has historically governed judicial appointments, emphasising the judiciary's autonomy. However, criticisms regarding transparency and the potential for nepotism persist, highlighting the need for reforms.

Conversely, the NJAC aimed to introduce executive involvement in appointments, enhancing transparency and accountability. Despite its intentions, the Supreme Court declared the NJAC unconstitutional, reaffirming the Collegium System's supremacy. Recommendations include enhancing transparency within the Collegium System, leveraging technology for assessment, promoting diverse representation, establishing performance evaluation mechanisms, investing in judicial education, fostering collaboration with academia and civil society, and strengthening transparency and accountability mechanisms.

Ultimately, the quest for a robust judicial appointment process in India necessitates striking a delicate balance between preserving judicial independence and ensuring accountability to democratic principles. As the nation evolves, reforms must adapt to meet the changing needs of a dynamic legal landscape, ensuring the judiciary remains a steadfast pillar of justice.