

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

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JUDICIAL APPOINTMENTS AND THE COLLEGIUMS: EVALUATING THE BALANCE OF INDEPENDENCE AND TRANSPARENCY

AUTHORED BY - SHIKHA TIWARY

Abstract:

*The process of judicial appointments is a cornerstone of a functioning democracy, directly influencing the quality, independence, and integrity of the judiciary. In India, the collegium system where senior judges appoint judges to higher courts has been both praised for safeguarding judicial independence and criticized for its lack of transparency and accountability. This paper critically examines the balance between **judicial independence and transparency** within the collegium system, especially in the aftermath of the Supreme Court's 2015 judgment striking down the National Judicial Appointments Commission (NJAC). While the collegium system was designed to insulate the judiciary from political interference, its opaque functioning has raised serious concerns about institutional accountability, merit-based selections, and diversity. The analysis highlights the urgent need for internal reform, suggesting that judicial independence must coexist with transparent and credible appointment mechanisms. A reformed system that preserves autonomy while enhancing openness is essential to strengthen the public trust in the judiciary and uphold the principles of constitutional democracy.*

Keywords: *Judicial Appointments, Collegium, Independence, Transparency, NJAC*

1. INTRODUCTION

An independent and impartial judiciary is the cornerstone of a democratic society governed by the rule of law. In India, the constitutional vision of judicial independence has been upheld through various institutional mechanisms, the most significant of which is the process of judicial appointments. The evolution of this process from executive dominance to judicial primacy has culminated in what is known today as the Collegium system. Though designed to insulate the judiciary from political interference, the Collegium system has increasingly come

under scrutiny for its opaque functioning, lack of accountability, and selective transparency.¹ The central tension in the judicial appointments debate lies between **independence** essential for ensuring impartial adjudication and **transparency** a key principle of good governance in a democratic setup. While judicial independence safeguards the judiciary from executive or legislative overreach, excessive insulation without accountability raises concerns about elitism, favoritism, and lack of public trust in the system. Over the past years, the Supreme Court Collegium has been responsible for numerous appointments and transfers to the higher judiciary. Many of these decisions, however, have been controversial not due to their outcomes alone, but because of the lack of clarity surrounding the reasoning behind them. The public disclosure of Collegium resolutions since 2017 marked a small step towards transparency, yet much remains veiled under institutional discretion. This paper aims to **critically evaluate the Collegium system** by analyzing key decisions over the last years and assessing whether it has struck an appropriate balance between preserving judicial independence and ensuring transparency. It further seeks to explore reform alternatives that may enhance accountability without compromising the autonomy of the judiciary.²

Research question

1. What are the constitutional provisions related to appointment of judges?
2. Why **National Judicial Appointments Commission** (NJAC) was struck down?
3. How has the collegium system evolved through constitutional interpretation and judicial precedent in India?
4. What are the key arguments for and against the collegium system in terms of ensuring judicial independence?

Research Methodology

This research employs the doctrinal legal research approach, focusing on a systematic and critical examination of legal concepts, constitutional provisions, case law, and academic commentaries pertinent to judicial nominations in India. It also analyzes secondary sources like academic journals, books, expert opinions, Law Commission reports, and official publications from the judiciary and the Ministry of Law and Justice. The objective is to examine the

¹ M. P. Singh, Securing the Independence of the Judiciary- The Indian Experience, 10 :2 IND. INT'L & COMP. L. REV. 245, 245-291 (2000)

² Mr. Proteek Motilal & Ms. Swati Kaushal, Preserving Judicial Independence in India: A Constitutional Critique of the Appointment Process, 7 IJFMR 1,1-9 (2025)

evolution of the collegium system via judicial interpretation and its congruence with constitutional principles such as judicial independence and transparency. This doctrinal study aims to objectively assess the efficacy, problems, and possible improvements of the existing judicial appointment system in India through the analysis of legal texts and precedents.

2. EVOLUTION OF THE COLLEGIUM SYSTEM

The **Collegium system** of judicial appointments is a unique judicial innovation in India that has evolved entirely through Supreme Court judgments rather than constitutional amendments or legislative enactments. Originally designed to preserve judicial independence by limiting executive influence, the system has developed through a trilogy of landmark cases known as the **Three Judges Cases**. Each of these cases significantly altered the balance of power in the judicial appointment process and collectively shaped the current framework of judicial appointments and transfers. Its evolution is deeply rooted in the judiciary's efforts to preserve its independence from the executive, especially in the aftermath of politically turbulent periods such as the Emergency (1975–77), when judicial appointments were seen to be influenced by ideology and political alignment. Originally, the Constitution of India, under Articles 124 and 217 envisaged a consultative process between the executive and the judiciary for the appointment of judges to the Supreme Court and High Courts, respectively. The President of India, acting on the advice of the Council of Ministers, had the authority to appoint judges after “consultation” with the Chief Justice of India (CJI) and other senior judges. This model granted **primacy to the executive**, with the judiciary playing a merely advisory role in the appointment process.

The first major challenge to this framework came in **S.P. Gupta v. Union of India**³, widely known as the **First Judges Case**. The Supreme Court in this case upheld executive supremacy by interpreting “consultation” to mean non-binding advice. It ruled that the President was not bound by the opinion of the judiciary, thereby affirming the dominance of the executive in judicial appointments and transfers. This judgment was widely criticized for eroding judicial independence and allowing for political interference in appointments. This trend was dramatically reversed in the **Second Judges Case**⁴. In this landmark decision, the Court held that judicial primacy in appointments was essential to uphold the basic structure of the

³ S.P. Gupta v. Union of India, AIR 1982 SC 149

⁴ Supreme Court Advocates-on-Record Association v. Union of India, (1993) 4 SCC 441

Constitution specifically, the independence of the judiciary. The Court reinterpreted “consultation” to mean “concurrence,” establishing that the opinion of the Chief Justice of India, formed collectively with the two senior-most judges of the Supreme Court, would be binding on the President. The rationale was that only judges, being part of the institution and aware of the requirements and capabilities of prospective appointees, could fairly and independently assess the merit of candidates.⁵ Further clarification came with the **Third Judges Case i.e In re: Presidential Reference, 1998**⁶. Responding to a set of questions raised by the President under Article 143 of the Constitution, the Supreme Court expanded the Collegium and laid down its formal structure. For appointments to the Supreme Court, the Collegium would comprise the **Chief Justice of India and the four senior-most judges** of the Supreme Court. For High Court appointments, the Collegium would include the **Chief Justice of the respective High Court and the two senior-most judges** of that court. Importantly, the opinion of the CJI would not be considered valid unless it was formed through this collective consultative process. If two or more Collegium members disagreed with a recommendation, it could not be forwarded to the government. This effectively removed the executive’s primacy and consolidated judicial control over appointments, marking the **full institutionalization of the Collegium system**. However, the post-1998 period exposed serious flaws in the Collegium mechanism. While the system succeeded in protecting judicial independence from political interference, it created a **closed and opaque structure**, lacking transparency, consistency, and public accountability.

There were no defined criteria for evaluating candidates, no formal application process, and no requirement to disclose reasons for selection or rejection. Allegations of nepotism, favoritism, and lack of diversity became increasingly common. Moreover, the absence of an external oversight mechanism meant that the Collegium operated entirely on internal discretion.⁷

3. NATIONAL JUDICIAL APPOINTMENTS COMMISSION

The **National Judicial Appointments Commission (NJAC)**, introduced through the 99th Constitutional Amendment in 2014, was Parliament’s attempt to replace the Collegium with a more inclusive and transparent system. Established through the 99th Constitutional

⁵ Mr. Proteek Motilal & Ms. Swati Kaushal, Preserving Judicial Independence in India: A Constitutional Critique of the Appointment Process, 7 IJFMR 1,1-9 (2025)

⁶ **In re: Presidential Reference** Special Reference No. 1 of 1998

⁷ G Raja Kumari, The Impact of Integrity of the Judiciary on Judicial Independence and Accountability: A Legal Study, 6 IJRPR 12539, 12539-12545 (2025)

Amendment in 2014, the NJAC sought to replace the existing collegium system, which consisted primarily of senior judges making appointments and transfers. The commission was designed to include members from the judiciary, the executive, and eminent persons, thereby introducing a more transparent and accountable method for judicial appointments. Its composition was to include the Chief Justice of India as the chairperson, two senior Supreme Court judges, the Union Minister of Law and Justice, and two eminent persons selected by a committee consisting of the Prime Minister, the Chief Justice of India, and the Leader of the Opposition. The inclusion of the Law Minister and eminent persons aimed to bring diverse perspectives and ensure democratic accountability. The two eminent persons were required to be distinguished individuals with knowledge of public affairs, law, or governance, and could not be members of the judiciary or executive at the time of nomination. The NJAC was expected to function as a collegial body, making decisions by a majority vote, but with the proviso that the Chief Justice of India or any two judicial members could veto a recommendation, preserving some level of judicial control.⁸

3.1 Objectives and Advantages of NJAC

The NJAC was designed with several key objectives:

- **Transparency:** By institutionalizing a commission with members outside the judiciary, the NJAC sought to make judicial appointments more transparent and accountable.
- **Democratic Participation:** The presence of executive representatives and eminent persons would ensure that appointments reflected broader public interest rather than being the preserve of judicial elite.
- **Balanced Power:** By limiting the dominance of the judiciary in appointments and involving the executive, the NJAC aimed to create a balanced system of checks and balances.
- **Merit and Diversity:** The commission was expected to consider a wider set of criteria for judicial appointments, including merit, integrity, and diversity in representation.

Supporters of NJAC argued that the collegium system had failed to uphold the principles of accountability and transparency, and that involving non-judicial members would improve public confidence in the judiciary.⁹

⁸ ibid

⁹ Prabh Vohra, Title-Judicial Appointments in India: A Critical Analysis of the Collegium System and the Rejected Njac, 6 IJFMR 1, 1- 10 (2024)

3.2 The Controversy and Judicial Review

Despite its intentions, the NJAC faced strong opposition from many within the judiciary. Critics contended that the NJAC threatened judicial independence by giving the executive a significant role in judicial appointments. They argued that the inclusion of the Law Minister and eminent persons, who could be influenced by political considerations, would undermine the judiciary's autonomy, which is essential for a functioning democracy. The Supreme Court, which had initially created the collegium system to protect judicial independence, was reluctant to relinquish that control. Soon after the NJAC came into force in 2015, a batch of petitions challenging the constitutional validity of the amendment and the NJAC Act was heard by a Constitution Bench of the Supreme Court.

In a landmark judgment delivered on October 16, 2015, by a 4:1 majority, the Supreme Court declared the NJAC unconstitutional and struck down both the 99th Amendment and the NJAC Act. The Court held that the NJAC violated the basic structure of the Constitution, particularly the independence of the judiciary, which it described as a cornerstone of democracy. The judgment reaffirmed that the judiciary must have primacy in appointments to preserve its independence from the executive. The Court acknowledged the shortcomings of the collegium system but argued that reform must come from within the judiciary itself and not through a constitutional amendment that compromised judicial autonomy. The dissenting judge opined that the NJAC was a step toward democratizing appointments and that concerns about executive interference could be addressed through safeguards.

4. IMPACT AND CURRENT SCENARIO

The striking down of the National Judicial Appointments Commission (NJAC) by the Supreme Court in 2015 had a profound impact on the judicial appointment process and the broader discourse on judicial independence in India. The judgment reaffirmed the primacy of the judiciary in appointing judges to the higher judiciary but also brought to light significant challenges that continue to shape the current scenario. The Supreme Court's verdict effectively rendered the NJAC non-functional, reinstating the collegium system as the constitutional method for appointing judges to the Supreme Court and High Courts. This decision was a reaffirmation of the basic structure doctrine, which protects judicial independence as an inviolable feature of the Indian Constitution. The judiciary's insistence on maintaining control over appointments was seen as a protective measure against potential executive interference, safeguarding the separation of powers fundamental to democratic governance. However, the

judgment was met with mixed reactions.¹⁰ While many legal experts and judiciary members hailed it as a victory for judicial independence, the executive and several civil society organizations expressed disappointment. They argued that the verdict missed an opportunity to reform a system that had been widely criticized for its lack of transparency, accountability, and democratic legitimacy.

4.1 Continued Criticism of the Collegium System¹¹

The reinstatement of the collegium system did not end the debate over judicial appointments. The collegium process continues to be criticized on several fronts:

- **Opacity and Lack of Transparency:** Despite efforts to increase transparency, such as publishing resolutions of appointments, the collegium system remains largely secretive. Decisions on selecting judges are made behind closed doors without public scrutiny or detailed explanations, leading to perceptions of favoritism and cronyism.
- **Accountability Deficit:** The collegium, being a small group of senior judges, is not formally accountable to any external body or the public. Critics argue that this lack of accountability undermines trust in the judiciary and raises questions about the fairness of appointments.
- **Concerns over Nepotism and Bias:** Over the years, allegations of nepotism and favoritism within the collegium have surfaced, damaging the reputation of the appointment process. Critics argue that these issues could be mitigated by involving independent members or oversight mechanisms, as was proposed under the NJAC.
- **Lack of Diversity:** The collegium system has been criticized for not adequately addressing diversity in terms of gender, regional representation, and social backgrounds among judges. This has implications for the judiciary's ability to reflect the society it serves and uphold social justice.

4.2 Judicial Efforts to Improve the Collegium System¹²

In response to these criticisms, the judiciary has taken some steps to make the collegium system more transparent and accountable, though many consider these reforms insufficient. For

¹⁰ Fahad Nahvi & Yagnesh Sharma, *The Collegium Vs The Njac: Navigating Judicial Independence Amidst Judicial Appointments*, SPRF.IN 4,4-26 (2023)

¹¹ Collegium System in India: Evolution, Criticisms & Its Reforms, PMF IAS (April 26,2025, 3:00 PM), <https://www.pmfias.com/collegium-system-in-india/>

¹² Need of Reforms in Judicial Appointments, (April 26,2025, 3:00 PM), https://www.drishtiiias.com/daily-updates/daily-news-analysis/need-of-reforms-in-judicial-appointments?utm_source=chatgpt.com

example:

- The Supreme Court has begun publishing some of its appointment resolutions and criteria for selection.
- Attempts have been made to consult a wider pool of senior judges and legal experts in the selection process.
- Efforts to ensure minimum standards of merit and integrity in the selection have been emphasized.

Despite these measures, many legal scholars, activists, and members of the public feel that the collegium system remains an insular process in need of further reform.

5. CURRENT SCENARIO AND WAY FORWARD

Since the NJAC's nullification, the appointment process has reverted fully to the collegium system, but the demand for reform remains strong. Various stakeholders, including judicial bodies, the executive, legal experts, and civil society, continue to debate possible ways to improve the system.

Some proposed reforms include:

- **Establishing a transparent, formalized selection process** with clear criteria and public reporting.
- **Involving a broader range of stakeholders** such as senior lawyers, academicians, and civil society representatives to diversify input.
- **Institutionalizing checks and balances** that protect judicial independence while enhancing accountability.
- **Promoting diversity** in judicial appointments to reflect India's socio-cultural diversity better.
- **Strengthening the existing collegium** by codifying its procedures and guidelines.

Ultimately, any successful reform will need to address the fundamental challenge of preserving judicial independence while enhancing the transparency and legitimacy of judicial appointments. The judiciary itself has signaled openness to internal reforms, and a cooperative dialogue between the judiciary, executive, and civil society is essential.

CONCLUSION

In conclusion, the collegium system has evolved as a judicial safeguard against executive interference but has simultaneously become a self-regulating body with limited accountability. What began as a mechanism to protect independence now faces intense scrutiny for its lack of transparency and inclusivity. The debate surrounding **judicial appointments and the collegium system** is one of the most pressing constitutional and institutional challenges in contemporary India. At its core lies a fundamental question, how can we ensure that judges who are entrusted with upholding the Constitution, protecting fundamental rights, and acting as a check on the other branches of government are appointed through a process that is both **independent and transparent**? This question is not merely academic or procedural; it goes to the heart of democratic governance, public confidence in the judiciary, and the rule of law.

The **collegium system**, developed through judicial interpretation rather than legislative enactment, was born out of a need to protect the judiciary from executive overreach. It was a response to historical periods where judicial independence had been threatened, such as during the Emergency (1975–77). In that context, insulating the judiciary from political influence was essential. Over the years, however, this insulation has turned into near-complete control, where a few senior judges hold exclusive authority over who joins position, often without offering reasons or explanations to the public or other institutions of state.

This system has come under growing scrutiny. While **judicial independence** remains non-negotiable, **transparency and accountability** in the appointment process are equally crucial for a healthy democracy. The lack of publicly stated criteria, minimal documentation of deliberations, and absence of diversity in appointments has led to a credibility gap. Many observers feel that the collegium operates like a “closed-door club,” where decisions are made without sufficient checks, risking the erosion of public trust even if not judicial impartiality itself. At the same time, attempts to reform this system, most notably through the **National Judicial Appointments Commission (NJAC)**, were struck down on the grounds that they compromised judicial independence by giving the executive a greater role. This shows how delicate the balance is and how difficult it is to find a model that satisfies all constitutional ideals. Any move toward transparency must not become a path for political interference. Conversely, preserving independence must not serve as a shield for opacity or a lack of accountability.

The way forward lies not in **scrapping** the collegium system entirely, but in **reforming it from within**. Codifying its procedures, laying down objective selection criteria, ensuring greater representation of women, minorities, and underrepresented regions, and publishing more detailed reasons for selections and rejections would significantly enhance credibility. There is also a strong case for creating a **hybrid model** where the judiciary retains primacy, but with participation from non-political, non-judicial civil society members in an advisory or oversight capacity, ensuring broader perspectives without compromising independence.

Ultimately, a robust, impartial, and respected judiciary cannot thrive in secrecy. **Transparency strengthens institutions**, and independence is only meaningful when exercised responsibly and with public confidence. The collegium must evolve not as a concession to external pressure, but as a step toward self-reform that upholds the highest democratic values. An appointment process that is both **independent and transparent** is not just desirable it is essential for maintaining the integrity and authority of the Indian judiciary in the eyes of its citizens.

