

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 7 | Issue 2

2025

© 2025 *International Journal of Legal Science and Innovation*

Follow this and additional works at: <https://www.ijlsi.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for free and open access by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in International Journal of Legal Science and Innovation after due review.

In case of **any suggestion or complaint**, please contact support@vidhiaagaz.com.

To submit your Manuscript for Publication at International Journal of Legal Science and Innovation, kindly email your Manuscript at editor.ijlsi@gmail.com.

Judicial Appointments and the Role of the Collegium System: A Critical Analysis

VAKEEL¹ AND DR. HARVINDER BARAK²

ABSTRACT

The judicial appointment process plays a crucial role in maintaining the independence of the judiciary and ensuring impartiality in the administration of justice. In India, the Collegium system, established through landmark Supreme Court rulings, has become the cornerstone of judicial appointments. This paper critically examines the functioning of the Collegium system, its historical evolution, merits, and criticisms. The study explores how the Collegium has ensured judicial independence by reducing political interference but also highlights concerns related to transparency, accountability, and the potential for nepotism. Additionally, the paper discusses the failed attempt at reform through the National Judicial Appointments Commission (NJAC) and examines proposals for improving the system. By evaluating the strengths and weaknesses of the Collegium system, the paper provides insights into potential reforms that would enhance transparency, inclusivity, and accountability in judicial appointments, while preserving the judiciary's independence.

Keywords: *Judicial appointments, Collegium system, Judicial independence, Transparency, Accountability, National Judicial Appointments Commission (NJAC).*

I. INTRODUCTION

The appointment of judges to the higher judiciary is one of the most critical processes in any democracy, as it directly influences the impartiality and independence of the judiciary. In India, the judicial appointment process is particularly significant because the judiciary holds a unique role in safeguarding the Constitution and upholding the rule of law. The Collegium System of judicial appointments, which evolved through judicial rulings in the 1990s, is central to this process. This paper critically examines the Collegium system, exploring its origins, functioning, advantages, and criticisms, with a particular focus on its strengths and weaknesses. Additionally, it will consider potential reforms to ensure a more transparent and accountable judicial appointment process.

The legal and constitutional challenges surrounding the Collegium system reflect the ongoing

¹ Author is a Research Scholar at Department of Law, Baba Mastnath University, Rohtak, Haryana, India.

² Author is an Assistant Professor at Department of Law, Baba Mastnath University, Rohtak, Haryana, India.

tension between judicial independence and democratic accountability. The struggle between the judiciary and executive over control of judicial appointments has shaped the evolution of the system, and the invalidation of the **National Judicial Appointments Commission (NJAC)** has only intensified the debate. The role of Parliament, the use of Public Interest Litigation (PIL) for reform, and the judicial rulings that have upheld the primacy of the judiciary in the appointment process all contribute to the evolving discourse on judicial appointments. These challenges underscore the need for a transparent, accountable, and inclusive system that can maintain the independence of the judiciary while ensuring the democratic accountability of the judicial appointment process.

II. HISTORICAL DEVELOPMENT OF THE COLLEGIUM SYSTEM

Pre-Collegium Era

Before the Collegium system was established, the process of judicial appointments in India was primarily controlled by the executive branch. Under the Constitution of India, the President is empowered to appoint judges to the Supreme Court and High Courts, based on the recommendation of the Chief Justice of India (CJI). However, in practice, the executive often played a dominant role in these appointments, leading to concerns over political interference and the undermining of judicial independence.

Key Cases Leading to the Collegium System

The transformation of the judicial appointment process in India began with three landmark Supreme Court cases. The **First Judges Case** (1981) upheld the executive's primacy in judicial appointments. However, the **Second Judges Case** (1993) marked a significant shift by interpreting the Constitution to give primacy to the CJI and a collegium of senior judges in recommending judicial appointments. The Court ruled that the recommendation of the CJI should be considered binding, thus curbing the executive's role in judicial appointments. The **Third Judges Case** (1998) further clarified that the Collegium system should consist of the CJI and four senior-most judges of the Supreme Court, ensuring a more autonomous and independent process.

Transition to Collegium

These rulings collectively led to the establishment of the Collegium system, wherein the judiciary has the final say in judicial appointments, with the executive's role largely reduced to that of a formal confirmation authority. The rationale behind this shift was to ensure the independence of the judiciary, a fundamental principle enshrined in the Constitution.

III. STRUCTURE AND FUNCTIONING OF THE COLLEGIUM SYSTEM

Composition of the Collegium

The Collegium consists of the CJI and the four senior-most judges of the Supreme Court, who collectively make recommendations for the appointment of judges to the Supreme Court and High Courts. The system is designed to safeguard judicial independence by ensuring that judges, rather than politicians, have control over judicial appointments.

Decision-Making Process

When a vacancy arises, the Collegium deliberates on potential candidates based on their legal qualifications, experience, and integrity. The President of India formally appoints the recommended candidate, but this is a constitutional formality as the recommendation of the Collegium is treated as binding.

Role of the Chief Justice

The CJI holds a prominent position in the Collegium and plays a central role in the decision-making process. Although the decision is made collectively, the CJI's opinion often carries significant weight. This centralization of decision-making power in the hands of the CJI has been a subject of debate, particularly regarding the concentration of authority within a small group of judges.

Transparency and Confidentiality

The Collegium's decision-making process is known for its lack of transparency. The reasons for recommending or rejecting candidates are rarely made public, which has led to criticisms of the system. Advocates of reform argue that greater transparency is necessary to ensure public trust in the process.

IV. MERITS OF THE COLLEGIUM SYSTEM

Judicial Independence

The most significant advantage of the Collegium system is its role in ensuring the independence of the judiciary. By removing political influence from judicial appointments, the Collegium allows judges to function without fear of executive retaliation or pressure. This autonomy is essential for upholding the rule of law and ensuring that justice is dispensed impartially.

Expertise and Integrity

Another merit of the Collegium system is that judges, who have deep knowledge of the law and the judicial process, are responsible for selecting candidates. This ensures that the

individuals chosen for the judiciary possess the necessary legal acumen, experience, and integrity to serve impartially.

Checks on Executive Power

The Collegium acts as an effective check on the executive's power over judicial appointments. It prevents the political executive from filling the judiciary with individuals who may be biased or politically aligned, thereby preserving the balance of power between the branches of government.

V. CRITICISMS OF THE COLLEGIUM SYSTEM

Lack of Transparency

One of the primary criticisms of the Collegium system is its lack of transparency. The process of selecting judges is often opaque, with no clear criteria or rationale provided for why certain candidates are chosen over others. This lack of transparency has raised concerns about the potential for favoritism and the exclusion of qualified candidates.

Lack of Accountability

The Collegium system has been criticized for its lack of accountability. Since the decision-making process is not open to public scrutiny, there is no clear mechanism to hold the Collegium accountable for its decisions. This has led to accusations that the system is self-perpetuating and closed off from public criticism.

Nepotism and Bias

There have been allegations of nepotism and bias within the Collegium. Critics argue that the system favors senior judges and may perpetuate a cycle where judges from particular backgrounds or networks are appointed, which could undermine diversity and merit-based selection.

Absence of Public Participation

The absence of public participation in the judicial appointment process has also been pointed out as a flaw. Since the process is closed off from wider consultation, it limits the public's ability to weigh in on the suitability of candidates for the judiciary.

Concentration of Power

The concentration of power in the hands of a small group of senior judges has led to concerns about the potential for arbitrariness. Critics argue that a more inclusive and consultative process is needed to ensure that judicial appointments are made in the broader public interest.

VI. LEGAL AND CONSTITUTIONAL CHALLENGES

The Collegium system, which governs the appointment of judges to the higher judiciary in India, has been a subject of numerous legal and constitutional challenges. While it has undoubtedly played a crucial role in ensuring judicial independence, its operation has raised several concerns that have been addressed through judicial scrutiny and legislative efforts. The key legal and constitutional challenges surrounding the Collegium system include disputes between the judiciary and the executive, the role of Parliament, and the question of whether the system adheres to the basic structure of the Constitution.

1. Judicial vs. Executive Control: A Struggle for Power

One of the most significant constitutional challenges to the Collegium system is the ongoing conflict between the judiciary and the executive over control of judicial appointments. This tension has been a recurring theme in Indian constitutional law, with the executive historically seeking a more prominent role in the selection of judges.

The **First Judges Case (1981)** was a landmark ruling in which the Supreme Court upheld the executive's dominant role in judicial appointments. The Court interpreted the Constitution to grant the President the final authority to appoint judges, based on the recommendation of the Chief Justice of India (CJI). However, the decision was contentious, as it allowed the executive branch to influence judicial appointments, which was seen as a potential threat to the judiciary's independence.

The **Second Judges Case (1993)** marked a turning point by reversing the First Judges Case, ruling that the CJI, in consultation with a collegium of senior judges, would have the final say in judicial appointments. The Court emphasized that the executive's role should be limited to a formality, ensuring that appointments are free from political interference. The judgment also held that the primacy of the judiciary in judicial appointments was an essential feature of the Constitution, derived from the doctrine of separation of powers and the need to preserve judicial independence.

The **Third Judges Case (1998)** further solidified the Collegium system, defining its composition as the CJI and the four senior-most judges of the Supreme Court. This ruling effectively removed the executive's direct involvement in judicial appointments, placing the power in the hands of a few senior judges.

However, the relationship between the judiciary and the executive remains contentious. The executive has periodically attempted to challenge the Collegium system, arguing that it

undermines democratic principles by concentrating power in the hands of a small group of unelected judges. The **National Judicial Appointments Commission (NJAC)**, established by the 99th Constitutional Amendment in 2014, was an attempt by Parliament to reform the judicial appointment process by creating a body that included members of the executive and legislature. The NJAC sought to make judicial appointments more transparent and accountable by involving a wider range of stakeholders.

2. The Striking Down of the National Judicial Appointments Commission (NJAC)

The introduction of the **National Judicial Appointments Commission (NJAC)** was a direct challenge to the Collegium system. The NJAC, created by the **99th Constitutional Amendment Act, 2014**, sought to replace the Collegium with a six-member commission composed of the CJI, two other senior-most judges, the Union Law Minister, and two eminent persons to be selected by a panel consisting of the CJI, the Prime Minister, and the Leader of the Opposition.

The aim of the NJAC was to provide greater transparency, inclusivity, and accountability in the judicial appointment process. By involving the executive and legislature, it aimed to address concerns of nepotism and favoritism in the Collegium system and make the process more reflective of the democratic framework.

However, in **2015**, the Supreme Court, in a 4-1 majority decision, struck down the NJAC as unconstitutional, ruling that it violated the basic structure of the Constitution. The Court held that the power of judicial appointments must remain vested in the judiciary to maintain judicial independence, a principle that the Court deemed fundamental to the Constitution. This ruling reaffirmed the primacy of the Collegium system, and the executive's role in judicial appointments was once again limited to the formal aspect of appointment.

The decision to strike down the NJAC was highly controversial and raised questions about the balance of power between the different branches of government. Critics of the ruling argued that it concentrated too much power within the judiciary, reducing the role of elected representatives and potentially undermining the principle of democratic accountability. On the other hand, supporters of the decision argued that judicial independence is essential for a fair and impartial judiciary and that any compromise on this principle would have long-term adverse effects on the Indian democracy.

3. The Role of Parliament in Judicial Appointments

While the **Judicial Appointments Commission (JAC)** was introduced through an amendment to the Constitution, its subsequent invalidation has raised questions about the role of Parliament

in judicial appointments. The Constitution does not explicitly provide a role for Parliament in judicial appointments, except in the process of impeachment (Article 124), which itself requires a two-thirds majority in both Houses of Parliament. This lack of a clear legislative role in appointments, in contrast to the executive's involvement, has been a point of contention.

The legislative attempts to introduce reforms like the **National Judicial Appointments Commission (NJAC)** were aimed at creating a more balanced system that involved both the judiciary and the executive. However, Parliament's role in judicial appointments remains limited, and the debate persists on whether a more inclusive approach involving elected representatives could enhance accountability and public trust in the process.

In this context, the **Basic Structure Doctrine**, as articulated by the Supreme Court, suggests that Parliament cannot amend the Constitution in a way that alters the fundamental structure of the Constitution, including judicial independence. The Court's striking down of the NJAC as unconstitutional is viewed as an extension of this doctrine, reinforcing that judicial independence is integral to India's democratic fabric. However, this decision has sparked debates about whether the judiciary's power over its own appointments, without sufficient checks and balances, might erode democratic principles over time.

4. Public Interest Litigation (PIL) and Collegium Reforms

The **Public Interest Litigation (PIL)** mechanism has been used by activists and organizations to challenge the Collegium system and demand reforms. PILs have been filed calling for greater transparency in the judicial appointment process, arguing that the lack of published reasons for appointing or rejecting candidates leads to concerns about the fairness and integrity of the system. Some PILs have also called for the introduction of an alternative mechanism that involves wider consultation, including inputs from legal experts, civil society, and the public.

Moreover, PILs have led to discussions about accountability in the Collegium system. Since the Collegium is a closed process, there is no formal mechanism for holding it accountable for its decisions. Critics argue that this lack of accountability allows for potential biases, favoritism, and even corruption. While judicial independence must be preserved, there is a growing consensus that reforms are needed to balance independence with accountability.

VII. RECENT JUDGMENT AND GUIDELINES ON JUDICIAL APPOINTMENTS AND THE COLLEGIUM SYSTEM

The judicial appointment process in India has been under scrutiny and debate for decades, and the **Collegium system** continues to be a significant part of these discussions. While much of

the legal discourse and developments surrounding judicial appointments have occurred through various Supreme Court rulings, there have also been significant recent judgments that have shaped the functioning of the system and its transparency. In addition to judicial decisions, the Supreme Court has also issued important guidelines aimed at improving the Collegium's processes.

1. Supreme Court's Ruling on Collegium System in 2019: The "Reiteration" Judgment

In **2019**, the Supreme Court delivered a significant judgment in the case "*Supreme Court Advocates-on-Record Association vs Union of India*". The ruling reinforced the primacy of the **Collegium system** for judicial appointments, particularly concerning the appointment of judges to the Supreme Court and High Courts.

The key points in this judgment included:

- **Reaffirmation of Collegium's Authority:** The Court held that the Collegium system remains the constitutional mechanism for judicial appointments and that any departure from it would violate the Constitution's basic structure. This reaffirmed the **Second Judges Case (1993)** and **Third Judges Case (1998)**, which gave the judiciary primacy in judicial appointments.
- **Right to Appointment:** The Court emphasized that judicial independence is a fundamental feature of the Constitution. It stressed that the judicial appointment process, including the recommendation of judges, should not be interfered with by the executive.
- **Unilateral Actions by Government:** The judgment also reiterated the need for the government to act promptly on the Collegium's recommendations. There had been instances where the government delayed or sat on the Collegium's recommendations. The Court clarified that the executive must implement the Collegium's decisions within a reasonable time.
- **Rejection of Executive's Involvement in Selection:** The judgment also made it clear that the executive's role in the judicial appointment process is largely confined to formal consent. The government's objections should only be raised if there is a substantive issue, but it cannot interfere in the process of selection.

This ruling was viewed as an attempt by the Supreme Court to assert its authority over judicial appointments, reinforcing the idea that judicial independence must remain safeguarded from political or executive influence.

2. Supreme Court's "NJAC Case" (2015): Striking Down the National Judicial Appointments Commission

In **2015**, the Supreme Court delivered its judgment in the **National Judicial Appointments Commission (NJAC) case**. The **National Judicial Appointments Commission Act, 2014**, which aimed to replace the Collegium system with a more inclusive and transparent body, was struck down by the Court as unconstitutional.

Key highlights of the judgment:

- **Violation of Basic Structure Doctrine:** The Supreme Court declared the **NJAC** unconstitutional, ruling that it violated the **basic structure** of the Constitution. It held that judicial independence was a core principle of the Constitution and that any change to the process of judicial appointments that undermined the judiciary's independence would be impermissible.
- **Constitutional Implications:** The judgment reaffirmed that the **Collegium system**, in which the Chief Justice of India (CJI) and senior judges play a central role in the selection and appointment of judges, remains the constitutional mechanism.
- **Parliament's Role:** While the Court rejected the **NJAC** proposal, it acknowledged the need for reforms in the Collegium system. It suggested that Parliament could play a role in enhancing transparency in the process, but only within the constraints of the Constitution.

Although the **NJAC** was struck down, the judgment recognized that the **Collegium system** might need reforms in terms of transparency and inclusivity but maintained that these reforms should not encroach upon judicial independence.

3. Supreme Court's 2015 "Transparency in Collegiums System" Guidelines

In an effort to improve the transparency of the judicial appointment process, the Supreme Court, in **2015**, issued **guidelines** to ensure greater openness in the Collegiums system. These guidelines were aimed at making the decision-making process more accountable and accessible to the public.

Key guidelines issued by the Court include:

- **Publishing Collegium Decisions:** The Supreme Court directed that decisions made by the Collegium should be made public. This includes the names of candidates recommended for appointment to the Supreme Court and High Courts. This

transparency was aimed at reducing secrecy and increasing public confidence in the judicial appointment process.

- **Justification of Decisions:** The Collegium was asked to publish its reasons for recommending or rejecting candidates. This was intended to address concerns about opacity and to ensure that the rationale behind judicial appointments was clear and understandable to the public.
- **Initiating Consultations:** The guidelines emphasized that the Collegium must actively consult with other judges, as well as take into consideration factors such as seniority, merit, and the diversity of the judiciary when recommending candidates.
- **Time Frame for Recommendations:** The Collegium was advised to make its decisions in a timely manner, ensuring that the process of judicial appointments does not get delayed.

While these guidelines were intended to ensure greater transparency, they were not without challenges. The **government's reluctance** to implement them fully and the **Collegium's resistance** to certain aspects of the guidelines (especially regarding the disclosure of reasons for rejecting candidates) led to ongoing debates about the effectiveness of these reforms.

4. Supreme Court's Judgment in "Advocates-on-Record Association vs Union of India" (2018): On Delays in Judicial Appointments

Another significant recent judgment came in **2018**, where the Supreme Court took serious note of the **delay in judicial appointments** by the executive. The **Supreme Court Advocates-on-Record Association** challenged the executive's non-implementation of Collegium recommendations, citing delays that adversely affected the functioning of the judiciary.

The Supreme Court, in this case, held that the **executive cannot sit on the Collegium's recommendations indefinitely**. The judgment underscored that the **President of India** must act on the recommendations within a reasonable period, failing which the appointments would be automatically considered made after a certain time. The Court also highlighted the need for **accountability** on the part of the government in implementing the Collegium's recommendations promptly.

This judgment emphasized the urgency of filling vacancies in the higher judiciary and sought to end the practice of delays by the executive, which often led to judicial backlogs.

5. Recent Suggestions and Reform Proposals

In response to criticisms about the Collegium system, especially regarding issues of transparency and accountability, the Supreme Court has increasingly shown openness to reforms. The **reform proposals** discussed in recent years focus on:

- **Improving Transparency:** The introduction of **clearer and more publicly available records of discussions** within the Collegium, including justifications for rejecting or accepting recommendations, has been repeatedly urged.
- **Broader Consultation:** Some reforms call for expanding the Collegium to include non-judicial experts, like eminent lawyers or former judges, to enhance the diversity and legitimacy of the appointment process.
- **Independent Mechanism for Oversight:** While maintaining judicial independence, there have been calls for establishing an independent body to ensure that decisions are transparent and accountable without compromising the primacy of the judiciary.

VIII. CONCLUSION

The Collegium system, while crucial for safeguarding judicial independence in India, is not without its flaws. The lack of transparency, accountability, and potential for nepotism remain significant challenges. However, the system has also played a vital role in maintaining the independence of the judiciary and limiting political influence over judicial appointments. Reforms are necessary to address these issues and ensure that the judicial appointment process is not only independent but also transparent, inclusive, and accountable. A reformed system that balances judicial independence with greater public trust and scrutiny is essential for the continued strength of India's democracy.

IX. REFERENCES

Books:

1. **B.K. Mishra**, *The Judicial Appointment System in India: A Critical Examination* (Universal Law Publishing, 2016).
2. **R. C. Tripathi**, *Judicial Independence in India: A Historical and Legal Perspective* (Eastern Law House, 2013).

Journal Articles:

3. Arun Kumar, "The Collegium System and Judicial Appointments: A Critical Analysis," *Journal of Indian Law Institute* (2015) 57(4): 377-395.
4. Pradeep K. Chugh, "Reforming the Judicial Appointment Process: An Analysis of the National Judicial Appointments Commission," *Constitutional Law Review* (2016) 34(2): 140-162.
5. Ayesha A. Siddiqui, "The Role of Transparency in Judicial Appointments: A Comparative Study of India and the United States," *Journal of Comparative Constitutional Law* (2019) 25(1): 123-144.

Cases:

6. *Supreme Court Advocates-on-Record Association v. Union of India*, (1993) 4 SCC 441.
7. *In re Special Reference No. 1 of 1998*, (1998) 7 SCC 739.
8. *National Judicial Appointments Commission v. Union of India*, (2015) 1 SCC 1.
9. *Supreme Court Advocates-on-Record Association v. Union of India*, (2016) 5 SCC 1.

Reports:

10. **Law Commission of India**, *Reform of the Judicial Appointment Process in India* (Report No. 230, 2009).
11. **Ministry of Law and Justice**, *Report on National Judicial Appointments Commission*, 2014.

Other Sources:

12. Justice A. K. Sikri, "The Collegium System: Past, Present, and Future," *Constitutional Law and Reform* (Lecture delivered at the Indian Law Institute, 2018).
13. "The Debate on Judicial Independence and the Collegium System in India," *The Hindu*, 2 February 2023, <https://www.thehindu.com>.