



# G.S. HUB CIVIL SERVICES CLASSES

**B.P.S.C (C.S.E)**

By **RITESH ANAND**

MENTORSHIP PROGRAM



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ANJALI JOSHI (4<sup>th</sup> Rank Holder 68<sup>th</sup> BPSC)

## **JUDICIAL APPOINTMENTS**

### **Judicial Appointments in India – A Comprehensive Overview**

The appointment of judges to the higher judiciary is a critical process aimed at ensuring an independent, impartial, and efficient judiciary. The mechanism for judicial appointments in India has undergone significant changes over time, evolving from an executive-led process to a judiciary-dominated **Collegium System**. However, this system has been the subject of intense debate due to issues of **opacity, lack of accountability, and allegations of nepotism**. The **Memorandum of Procedure (MoP)**, proposed in 2016, remains a contentious issue between the executive and the judiciary. Reforms have been suggested to **enhance transparency, introduce checks and balances, and ensure merit-based selection** while safeguarding judicial independence.

*"The method of appointment of judges is of the highest importance, not only for the judiciary but for the nation as a whole."*

— Nani Palkhivala

*"An independent judiciary is the bedrock of democracy. If appointments are influenced by extraneous factors, justice is compromised."*

— Justice V.R. Krishna Iyer

*"Judges should not appoint judges. The system needs transparency and accountability."*

— Constituent Assembly Debates (1949)

*"Judicial appointments must be free from political or executive interference to ensure impartiality."*

— Justice M.N. Venkatachaliah

### **Constitutional Provisions Related to Judicial Appointments**

The Indian Constitution provides detailed provisions regarding the **appointment, tenure, and removal** of judges of the Supreme Court and High Courts. These provisions are primarily found in **Articles 124 and 217**.

#### **Appointment of Supreme Court Judges – Article 124(2)**

- **Chief Justice of India (CJI):**
  - Appointed by the **President of India** after consulting such judges of the **Supreme Court and High Courts** as deemed necessary.
- **Other Supreme Court Judges:**
  - Appointed by the **President** after consulting the **Chief Justice of India and such Supreme Court and High Court judges** as deemed necessary.

#### **Appointment of High Court Judges – Article 217**

- **Chief Justice of a High Court:**
  - Appointed by the **President** after consultation with the **Chief Justice of India and the Governor** of the concerned state.





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## • **Other High Court Judges:**

- Appointed by the **President** after consultation with the **CJI, the Governor of the concerned state, and the Chief Justice of the concerned High Court.**

These provisions indicate that the process involves a **consultation mechanism** between the **executive and the judiciary**. However, the meaning of “consultation” has been debated and judicially interpreted over time, leading to the **evolution of the Collegium System**.

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## Collegium System and Evolution Through the Three Judges Cases

The Collegium System is a **judge-led appointment mechanism** that emerged through judicial pronouncements rather than constitutional provisions or legislative action. It is a **self-perpetuating system** where the judiciary itself recommends names for judicial appointments and transfers, **effectively limiting executive interference**.

### Composition of the Collegium

- **Supreme Court Collegium** → Consists of the **Chief Justice of India and the four senior-most Supreme Court judges.**
- **High Court Collegium** → Consists of the **Chief Justice of the respective High Court and two senior-most judges of that High Court.**
- **Final Approval** → The recommendations of the **High Court Collegium must be approved by the Supreme Court Collegium** before being sent to the government.

### Judicial Evolution of the Collegium System

#### **First Judges Case (S.P. Gupta Case, 1981)**

- Held that “**consultation**” with the **CJI does not mean concurrence.**
- The **executive had primacy** in judicial appointments and could **reject judicial recommendations.**
- Strengthened the role of the government in appointing judges.

#### **Second Judges Case (1993)**

- Overruled the **First Judges Case** and established that **consultation with the CJI means concurrence.**
- The **CJI’s opinion became binding** on the President.
- However, the **CJI must consult two senior-most SC judges** before making a recommendation.

#### **Third Judges Case (1998)**

- Clarified that the **CJI must consult four senior-most SC judges** before forming an opinion on appointments.
- If the **Collegium reiterates its recommendation, the executive must accept it.**

This ruling **solidified the Collegium System**, giving the judiciary the **final say** in judicial appointments and transfers.





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## Lacunae and Criticism of the Collegium System

Despite its role in protecting judicial independence, the Collegium System has been criticized for various flaws:

### 1. Lack of Constitutional Backing

- The Constitution does not mention the Collegium System.
- It was created through judicial interpretation, leading to judicial supremacy over appointments.
- Critics argue that the judiciary has assumed powers beyond its constitutional mandate.

### 2. Opaqueness and Lack of Transparency

- Collegium does not publicly disclose reasons for selecting or rejecting a candidate.
- No formal eligibility criteria → Selection is arbitrary and subjective.
- No public or parliamentary oversight, raising concerns about favoritism and nepotism.

### 3. No Checks and Balances

- After the Second Judges Case, the executive's role was minimized, violating the principle of separation of powers.
- The President is bound by the Collegium's decision, effectively removing executive oversight.

### 4. Failure to Fill Judicial Vacancies

- The Collegium has been unable to fill vacancies in a timely manner.
- Over 400 High Court positions remain vacant, causing judicial delays.

### 5. Administrative Burden on Judges

- Judges, instead of focusing on judicial work, are involved in administrative decision-making.
- No dedicated secretariat to assist in appointments → Burden increases on sitting judges.

### 6. Allegations of Nepotism and Favoritism

- Law Commission's 230th Report highlighted the issue of "Uncle Judges" Syndrome, where judges promote their relatives.
- Allegations of bias in appointments, with personal preferences overriding merit-based selection.

## Memorandum of Procedure (MoP) – 2016

To address these issues, the MoP was drafted in 2016 with new guidelines for appointments.

### Key Provisions of MoP





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- **Seniority & Merit** → Preference to **High Court Chief Justices** for elevation to SC.
  - **Written Justifications** → If a senior judge is overlooked, reasons must be recorded.
  - **Quota for Jurists** → **Up to three SC judges** may be appointed from the **Bar** or distinguished jurists.
  - **Committee & Secretariat** → Institutional support for evaluating candidates.
  - **Rejection Criteria** → Govt proposed adding **national security & public interest** as grounds for rejecting Collegium recommendations.

## Judiciary's Objections

- Recording reasons may **harm a judge's career prospects**.
- Limiting intake from the **Bar to three judges** is against constitutional principles.

## Government's Position

- Wants the power to **reject names based on national security/public interest**.
- Judiciary argues that this could lead to **government interference**.

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## Way Forward

1. **Finalization of MoP** → Establish a transparent **selection process**.
2. **Creation of a Search-cum-Evaluation Committee (SEC)** → Ensures **merit-based selection**.
3. **Public Disclosure of Collegium Decisions** → Reduce **secrecy and opacity**.
4. **Objective Selection Criteria** → Merit, integrity, and judicial performance should be the key factors.
5. **Balanced Role for Executive** → Ensure judicial primacy but allow **some executive input**.
6. **Legislative Reforms** → Parliament should pass a law ensuring **transparency, accountability, and independence** in appointments.

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## Conclusion

While the **Collegium System** safeguards **judicial independence**, it has become **opaque, unaccountable, and inefficient**. There is a need to **reform the process** to ensure **transparency, objectivity, and accountability**. A **balanced approach**, preserving **judicial primacy while allowing limited executive involvement**, is essential for upholding **constitutional values** and ensuring an **efficient judiciary**.

