

3. SC to 'Consider' Plea to revive NJAC – CJI – Polity

The Chief Justice of India (CJI) recently stated that the Supreme Court would consider a plea seeking to revive the National Judicial Appointments Commission (NJAC) and put an end to the existing Collegium System.

NJAC

1. Constitutional Basis – NJAC was proposed as a constitutional body to reform the process of appointing judges to the Supreme Court and High Courts. Established through – 99th Constitutional Amendment Act, 2014. **NJAC Act, 2014** – Inserted new Articles –

Article 124A – Composition

Article 124B – Functions

Article 124C – Empowering Parliament to regulate the Commission

2. Composition of NJAC

Chief Justice of India (Chairperson)

Two senior-most SC Judges

Union Minister of Law & Justice

Two “eminent persons”

Selected by a committee consisting of –

1. Prime Minister
2. Chief Justice of India
3. Leader of Opposition in Lok Sabha (or leader of the largest opposition party).

One nominee must be from among *women, minorities, or SC/ST/OBC communities* (as per convention though not mandatory in the Act).

3. Purpose of NJAC

To create a balanced and transparent mechanism for judicial appointments. Intended to replace the Collegium System, which the government argued lacked transparency and accountability.

Why NJAC Was Struck Down (2015)? – Supreme Court's Rationale

NJAC VS COLLEGIUM SYSTEM

WHAT'S COLLEGIUM SYSTEM	WHAT'S NJAC
- Collegium system based on Three Judges Cases - Under it, appointment of judges are made by Chief Justice of India and four most senior Supreme Court judges. - Has no constitutional backing. - Constitution of India's Article 124 says appointments to be made by President in consultation with judges as President may deem necessary. - Critics say it is a closed-door system which lacks transparency	- NJAC was a body created to end the two-decade-old Supreme Court Collegium system of judges appointing judges. - Was passed by Lok Sabha on August 13, 2014. Was passed by Rajya Sabha a day later. - Will consist of six people – CJI, two senior-most Supreme Court judges, Law Minister and two 'eminent' persons. - Critics say judges in NJAC will need support of others to push a name through. They fear judicial independence being compromised.

1. Judicial Independence as Basic Structure – The SC held that judicial primacy in appointments is essential to preserve judicial independence. Executive or political participation was seen as compromising neutrality of the judiciary.

Veto Power Problem – Any two members of NJAC could block a recommendation. This allowed the executive, or even eminent persons, to veto judicial choices → seen as excessive interference.

Eminent Persons Issue – Eminent persons could potentially include individuals with indirect political ties.

Lack of clarity on –

1. Qualification criteria
2. Tenure
3. Removal procedure

Raised concerns of politicisation.

NJAC declared unconstitutional – In the Fourth Judges Case (2015), a 5-judge bench struck down – 99th Amendment. NJAC Act, Majority – 4 –1, Justice J. Chelameswar's dissent supported NJAC, calling the collegium opaque.

Debate – Collegium vs NJAC

Fewer judges, rising cases

Year after year, as vacancies of judges go unfilled, the pendency of cases continues to mount



Courtesy: Department of Justice & National Judicial Data Grid

1. Judicial Independence

Against NJAC (Pro-Collegium) – Executive involvement threatens independence. Judicial primacy is essential to avoid political capture.

For NJAC (Against Collegium) – “Judges appointing judges” lacks democratic legitimacy. No external checks → risk of nepotism and favoritism.

2. Political Influence

Against NJAC – Law Minister & PM-nominated members could politicise appointments. Government is the largest litigant → conflict of interest.

For NJAC – Many democracies (US, UK) involve the executive/legislature. Complete exclusion of executive is unrealistic and undesirable.

3. Transparency & Accountability

Collegium Issues – No formal criteria, Decisions not recorded, No official secretariat, Perceived “opaque” functioning

NJAC Benefits – Diverse membership, Formal structure, Publicly accountable process, Inclusion of civil society perspective

4. Veto Power

Against NJAC – Two-member veto may let executive block appointments arbitrarily.

Against Collegium – No checks exist to filter out unsuitable appointments. Reiterations can override government objections without justification.

5. Separation of Powers

Pro-Collegium – Judiciary must control its own composition. Prevents executive dominance.

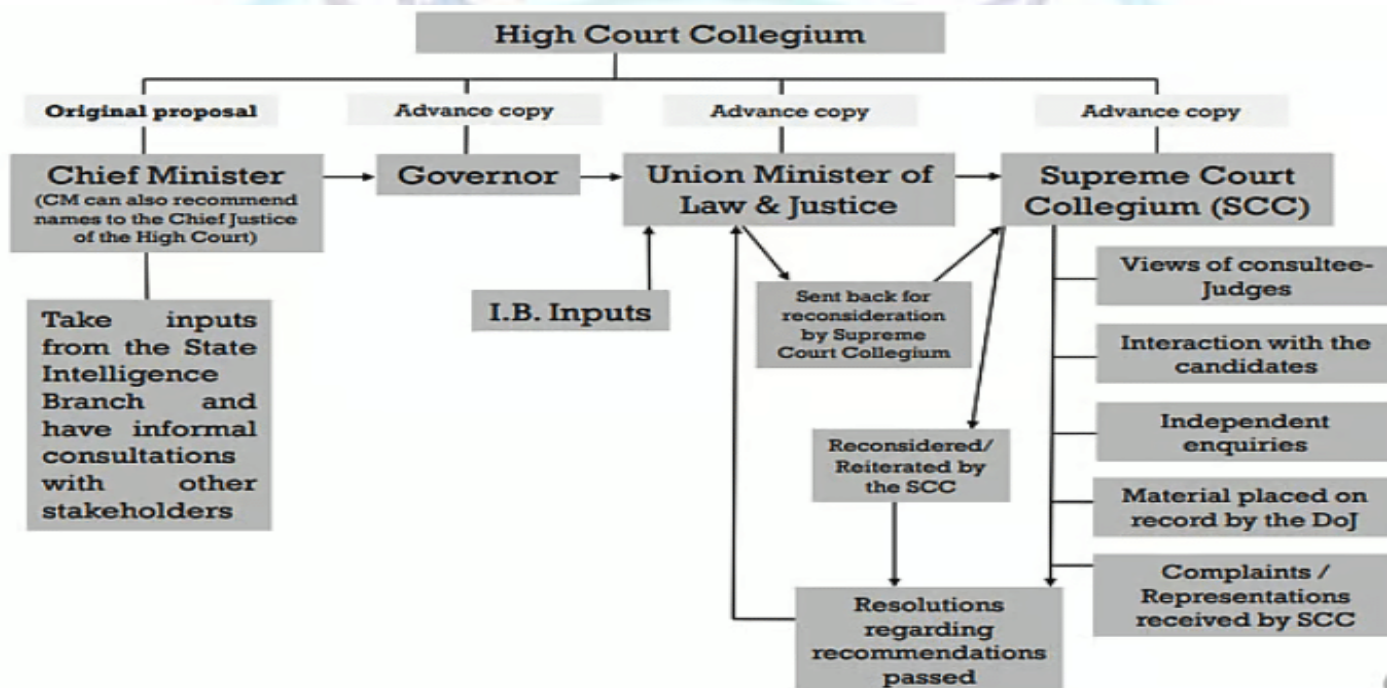
Pro-NJAC – Separation does not mean isolation. Checks and balances require multi-branch involvement.

6. Speed and Efficiency

Collegium – Delay mainly due to government sitting on recommendations. Once reiterated, names must be cleared.

NJAC Supporters – Collegium's informal consultations slow down the pipeline. An institutionalised, rule-bound system would ensure timelines.

Present System – The Collegium System – Expanded Explanation



1. Basis of the Collegium System – Not created by Constitution or legislation. Evolved through judicial interpretation of –

Article 124 (SC appointments)

Article 217 (HC appointments)

2. Evolution Through Judges Cases

First Judges Case (1981) – Executive Primacy – “Consultation” = President’s view final. CJI’s opinion not binding.

Second Judges Case (1993) – Judicial Primacy – Overturned earlier ruling. Created Collegium – CJI + 2 judges.

Third Judges Case (1998) – Expanded Collegium – Collegium enlarged to – CJI + 4 senior-most SC judges. Reiteration doctrine – • If Collegium reiterates a name, the government *must* appoint.

3. Supreme Court Judge Appointment Process – SC Collegium recommends based on –

1. Merit
2. Seniority
3. Integrity
4. Representation of states and communities

Sent to Law Ministry → PM → President. President appoints formally.

4. High Court Judge Appointment Process

Initiated by HC Collegium (Chief Justice + 2 senior-most judges).

1. Sent to SC Collegium.
2. Government can return once; Collegium may reiterate.
3. Governor gives input but cannot block appointment.
4. President appoints.

Why Debate on NJAC Revival Has Re-emerged

Increasing pressure on Collegium to -

1. Improve transparency
2. Provide reasons for selections
3. Ensure diversity (women, minorities, SC/ST/OBC representation)
4. Reduce nepotism allegations

Government argues judiciary should not be "self-selecting". Society demands a system with public accountability + judicial independence.

Conclusion

The NJAC vs Collegium debate reflects a tension between judicial independence and democratic accountability. While NJAC was struck down on constitutional grounds, the issues it sought to address—opacity, lack of accountability, absence of objective criteria—continue to persist. For lasting reform, India may require a balanced, hybrid model where -

1. Judicial primacy is preserved,
2. Executive input is structured and limited, and
3. Transparency mechanisms (secretariat, published criteria, timelines) are institutionalised.

This remains one of India's most critical constitutional debates on the separation of powers, basic structure doctrine, and judicial legitimacy.

Source - <https://www.newindianexpress.com/nation/2025/Nov/27/cji-says-will-consider-petition-to-revive-njac-end-collegium-system>