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Judicial Appointments and Collegium Transparency: Balancing Judicial Independence, Merit, Accountability and Public Confidence in India

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Recent Developments:

The debate over **transparency in judicial appointments** has resurfaced as concerns continue over how the **Collegium system** balances judicial independence with accountability and public confidence.

The Supreme Court has increasingly moved towards greater institutional disclosure, including placing information relating to the judicial appointment process in the public domain.

On **5 May 2025**, the Supreme Court published details of the appointment process for the Supreme Court and High Courts, including the roles of the High Court Collegia, State Governments, Government of India and Supreme Court Collegium.

The Court also uploaded details of High Court appointments approved between **9 November 2022 and 5 May 2025**, including the source of candidates, recommendation and appointment dates, special-category information and whether a candidate was related to a sitting or retired judge.

The Supreme Court has also moved towards greater financial transparency by deciding that **judges' asset declarations** should be placed on its website.

The current Supreme Court Collegium continues to publish appointment and transfer resolutions, demonstrating that transparency within the Collegium remains an evolving institutional practice rather than a settled framework.

What is the Collegium System of Judicial Appointments?

Nature and Constitutional Basis:

The **Collegium system** is a judicially evolved mechanism for recommending appointments and transfers of judges of the Supreme Court and High Courts.

The term "**Collegium**" is **not mentioned in the Constitution**, as the Constitution originally provided for judicial appointments through executive appointment after consultation with specified constitutional authorities.

Article 124(2) provides for appointment of Supreme Court judges by the President after consultation with such judges of the Supreme Court and High Courts as the President considers necessary, with consultation with the Chief Justice of India constitutionally significant.

Article 217(1) provides for appointment of High Court judges by the President after consultation with the Chief Justice of India, the Governor of the State and the Chief Justice of the concerned High Court.

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The Collegium system therefore represents a **judicial interpretation of the constitutional expression “consultation”**, rather than an express constitutional provision.

Evolution through the Three Judges Cases:

First Judges Case, S.P. Gupta v. Union of India, 1981: The Supreme Court held that “consultation” did not mean “concurrence”, thereby giving greater primacy to the executive in judicial appointments.

Second Judges Case, Supreme Court Advocates-on-Record Association v. Union of India, 1993: The Supreme Court reversed the earlier interpretation and held that the opinion of the Chief Justice of India should have primacy, subject to consultation with senior judges, thereby establishing the Collegium system.

Third Judges Case, Special Reference No. 1 of 1998: The Supreme Court expanded the Supreme Court Collegium to the **Chief Justice of India and four senior-most judges**.

oThe **Supreme Court Collegium** consists of the Chief Justice of India and four senior-most judges of the Supreme Court.

oThe **High Court Collegium** consists of the Chief Justice of the concerned High Court and two senior-most judges of that High Court.

NJAC Judgment, 2015: The Supreme Court struck down the **99th Constitutional Amendment Act, 2014** and the **National Judicial Appointments Commission Act, 2014**, holding that judicial independence is part of the Constitution’s **Basic Structure**.

Why is Collegium Transparency a Major Constitutional Issue?

Opacity and Limited Public Scrutiny:

The principal criticism is that the Collegium has historically functioned through **closed-door deliberations**, limiting public understanding of how candidates are assessed.

The absence of a comprehensive statutory framework specifying every stage of selection creates uncertainty regarding the relative weight given to **merit, integrity, experience, seniority, representation and institutional requirements**.

Limited disclosure can create perceptions that judicial appointments depend on personal networks rather than clearly identifiable institutional criteria.

Absence of a Uniform Evaluation Framework:

There is no single publicly codified evaluation matrix that comprehensively explains how candidates are compared on **legal competence, quality of judgments, professional integrity, judicial temperament, experience and social representation**.

The absence of transparent criteria makes it difficult for unsuccessful candidates and the wider public to understand why one candidate was preferred over another.

The Supreme Court’s 2025 publication of appointment-related data represents an important move towards **institutionalised disclosure**, although it does not by itself create a complete objective evaluation framework.

Concerns Regarding Nepotism and “Uncle Judges”:

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Limited transparency has contributed to recurring allegations of **familial preference and professional networks** influencing judicial appointments.

Such perceptions are particularly significant because judicial legitimacy depends not only on actual independence but also on the public perception that appointments are based on **merit and constitutional values**.

The Supreme Court's publication of information concerning whether recommended candidates have familial links with sitting or retired judges is therefore relevant to transparency and public accountability.

Limited Diversity and Representation:

Judicial diversity is relevant to institutional legitimacy because courts adjudicate disputes involving different social, economic and regional groups.

The appointment process requires greater systematic attention to the representation of **women, Scheduled Castes, Scheduled Tribes, Other Backward Classes, minorities and different professional backgrounds**.

The Supreme Court's 2025 disclosure of special-category information for High Court appointees provides a useful basis for analysing representation trends.

Arguments in Favour of Greater Transparency:

Strengthening Public Confidence:

Courts derive institutional legitimacy from the **rule of law, impartiality and public confidence**.

Greater disclosure of procedures and broad reasons can reduce speculation and demonstrate that judicial appointments are based on constitutional considerations rather than personal preference.

Transparency can therefore strengthen the legitimacy of judicial independence rather than weaken it.

Promoting Merit-Based Appointments:

Clearly stated criteria can encourage selection based on **professional competence, integrity, judicial temperament and constitutional commitment**.

Objective criteria can also make it easier to identify inconsistencies and correct systemic biases.

Improving Institutional Accountability:

Transparency creates an institutional record that allows Parliament, legal professionals, civil society and citizens to understand how the appointment mechanism operates.

Accountability does not necessarily require disclosure of every confidential deliberation; it can be achieved through **procedural transparency, reasoned decisions and appropriate disclosure**.

Arguments for Confidentiality:

Protecting Candidates:

Full disclosure of adverse information concerning unsuccessful candidates may permanently damage their professional reputation even when the information is incomplete, disputed or confidential.

Confidentiality can therefore protect candidates from unnecessary reputational harm.

Encouraging Candid Deliberations:

Collegium members may need to discuss sensitive information relating to **integrity, professional conduct, judicial temperament and suitability**.

Completely public deliberations could discourage frank assessments and make judges reluctant to communicate concerns about candidates.

Protecting Judicial Independence:

Excessive external scrutiny could create opportunities for political, media or interest-group pressure.

Confidentiality can help protect the judiciary from **executive influence and political bargaining**.

However, confidentiality should protect genuinely sensitive information rather than become a blanket justification for institutional opacity.

Judicial Independence and Transparency: The Constitutional Balance:

Basic Structure and Separation of Powers:

Judicial independence is an essential component of the Constitution's Basic Structure and protects adjudication from political interference.

Article 50 directs the State to take steps to separate the judiciary from the executive in the public services of the State.

Judicial independence does not mean institutional immunity from accountability because constitutional institutions must remain answerable to constitutional principles.

The appropriate objective is therefore **independence with institutional accountability**, rather than independence without scrutiny.

Transparency versus Confidentiality:

Transparency should focus on **procedures, criteria, institutional safeguards, broad reasoning and statistical information**.

Confidentiality should remain available for sensitive intelligence, personal information, adverse material and information whose disclosure could unfairly harm an individual.

A **sanitised disclosure model** can therefore provide accountability without compromising legitimate confidentiality.

Important Judicial Decisions Relevant to Transparency:

Secretary, State of Karnataka v. Umadevi, 2006:

The Supreme Court emphasised that public employment must follow **constitutional requirements of equality and non-arbitrariness**.

Although the judgment concerned public employment rather than the Collegium itself, its broader principles are relevant to debates over fairness and objectivity in public appointments.

Subhash Chandra Agarwal Judgment, 2019:

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The Supreme Court held that the office of the Chief Justice of India falls within the **Right to Information Act, 2005**, subject to legitimate limitations.

The judgment demonstrated that judicial independence and transparency under the Right to Information framework can coexist when disclosure is balanced against competing constitutional interests.

MediaOne Judgment, 2023:

The Supreme Court expressed strong reservations about excessive reliance on **sealed-cover procedures** and emphasised the importance of transparency and open justice.

The broader principle is relevant to judicial administration because unexplained institutional decisions can weaken public confidence.

NJAC Judgment, 2015:

The Supreme Court invalidated the National Judicial Appointments Commission framework because it considered the proposed arrangement inconsistent with the constitutionally protected **independence of the judiciary**.

The judgment established that reform of judicial appointments must preserve judicial independence as part of the Basic Structure.

Global Practices in Judicial Appointments:

Country

Appointment Mechanism

Transparency and Accountability Features

United Kingdom

Judicial Appointments Commission

Independent statutory body, public vacancy advertisements, structured assessment and participation of non-judicial members.

South Africa

Judicial Service Commission

Multi-stakeholder constitutional body, public nominations and public interviews of shortlisted candidates.

United States

Presidential nomination and Senate confirmation

Executive nomination followed by public scrutiny and confirmation hearings before the Senate Judiciary Committee.

India

Collegium system

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Judicial primacy in recommendations, institutional consultation and increasing publication of appointment-related information.

Global comparisons demonstrate that **judicial independence can coexist with structured transparency**, although institutional models must reflect each country's constitutional structure.

India need not replicate foreign models because judicial appointments must remain consistent with the constitutional principle of judicial independence.

Structural Reforms Needed in the Collegium System:

Pre-Notifying Vacancies:

Anticipated vacancies should be identified sufficiently early to improve planning and reduce delays in appointments.

A predictable timeline can also improve transparency and institutional coordination between the judiciary and executive.

Objective Evaluation Matrix:

A publicly known framework should identify broad parameters such as **legal competence, quality of judgments, integrity, professional experience, judicial temperament, efficiency and diversity**.

Quantitative indicators should not mechanically determine appointments because judicial quality cannot always be reduced to numerical performance.

Permanent Institutional Research Secretariat:

A professional research and screening mechanism can assist the Collegium through **background verification, data compilation, professional assessment and conflict-of-interest checks**.

Such a mechanism can reduce dependence on informal networks and improve consistency in decision-making.

Reasoned and Sanitised Decisions:

The Collegium should provide **broad reasons** for recommendations and reconsideration decisions wherever disclosure does not compromise confidential information.

Sensitive personal information and intelligence inputs should remain protected.

This approach can create a balance between **reasoned decision-making and legitimate confidentiality**.

Strengthening the Memorandum of Procedure:

The **Memorandum of Procedure** should establish clearer timelines, responsibilities and consultation requirements for the judiciary and executive.

A predictable procedure can reduce delays and improve accountability without disturbing the constitutional role of the judiciary.

Improving Diversity:

The appointment process should systematically monitor **gender, social, regional and professional diversity**.

Diversity should not replace merit but should be considered as an important component of a representative and legitimate judiciary.

Way Forward:

India should pursue a **middle path between complete opacity and excessive disclosure**.

The Collegium should disclose its broad selection criteria, procedural stages, relevant statistical information and adequately reasoned decisions.

Confidential information relating to national security, personal privacy and sensitive professional assessments should remain protected.

The judiciary and executive should establish **time-bound coordination mechanisms** to reduce vacancies and delays.

A professional research and verification mechanism can improve the quality and consistency of recommendations.

Regular publication of appointment data can facilitate evidence-based assessment of **merit, diversity, familial links and institutional representation**.

Any future statutory or constitutional reform must preserve the **independence of the judiciary as part of the Basic Structure**.

The ultimate objective should be to ensure that judicial appointments are perceived as **merit-based, impartial, transparent and constitutionally protected**.

Conclusion:

Judicial independence and transparency are **complementary constitutional values rather than inherently contradictory principles**. Judicial independence protects courts from political pressure, while transparency strengthens public confidence that this independence is being exercised responsibly.

The Collegium system emerged primarily to protect judicial independence after the Three Judges Cases, but its legitimacy increasingly depends upon whether it can demonstrate **fairness, objectivity and accountability**. The Supreme Court's recent disclosure initiatives, including publication of appointment-process information and judges' asset declarations, indicate movement towards greater institutional openness.

The way forward is therefore not to expose every confidential deliberation but to create a **transparent architecture around a confidential core**. Clear criteria, predictable procedures, institutional screening, diversity monitoring, reasoned and sanitised decisions, and time-bound appointments can strengthen both judicial independence and public trust.