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Q13

Discuss the evolution of collegium system in India. Critically examine the advantages and disadvantages of the system of appointment of the Judges of the Supreme Court of India and that of the USA.

UPSC Civil Services Mains 2025 · GS II · 15 marks · Executive and Judiciary

Structure, organization and functioning of the Executive and the Judiciary - Ministries and Departments of the Government; pressure groups and formal/informal associations and their role in the Polity.

Core demand of the question

- Narrate the evolution of the Indian collegium
- State how US Supreme Court Justices are appointed
- Compare advantages and disadvantages of both, not as a travel brochure but as design trade-offs

Revision summary

First Judges Case gave the executive primacy; Second and Third Judges Cases created the collegium of the CJI and senior colleagues.

NJAC (99th Amendment) was struck down in 2015; the collegium returned, still criticised for opacity and delay.

The US President nominates Supreme Court Justices; the Senate confirms; tenure is effectively for life.

India's gain is insulation from a sudden majority; its cost is unexplained selection.

America's gain is public democratic input; its cost is partisan life tenure.

Introduction

Who picks the constitutional court is who shapes the Constitution in practice. India moved from an **executive-led** system to a **judicial collegium** by interpretation. The United States still uses a **President who nominates and a Senate that confirms**. Each design solves one fear and creates another.

Body

Evolution in India

Article 124 says the President appoints Supreme Court judges after **consultation** with the Chief Justice and such other judges as needed. **First Judges Case** (S.P. Gupta, 1981) read consultation as not concurrence; the executive had primacy. **Second Judges Case (1993) reversed that: concurrence of the CJI**, formed through a collegium, became the working rule. **Third Judges Case (1998)**, an advisory opinion, expanded the collegium to the **CJI plus four** senior-most colleagues for the Supreme Court (and a smaller collegium for High Courts). **Memoranda of Procedure** tried to write the convention down.

The **99th Amendment and NJAC Act, 2014**, put a commission of judges, the Law Minister and eminent persons in the room. **Supreme Court Advocates-on-Record Association (2015)** struck it down as injuring independence. We are back to the collegium, with periodic political frost over names, transfers, and the Law Ministry's returned files. **In-house** opacity, delays, and the absence of a published reason remain the system's daily face.

The United States

- **Article II:** the President **nominates**, the Senate **advises and consents**. Hearings are public, partisan and often brutal. Tenure is **during good behaviour** - effectively life. Vacancies are political events (Bork, Thomas, Garland blocked, Barrett). Ideology is named, not whispered. Impeachment of a Justice is possible and almost unused.

Trade-offs

Indian collegium - advantages: distance from a momentary parliamentary majority; continuity of legal craft; harder for a Prime Minister to pack the Court in one season. **Disadvantages:** unwritten criteria, alleged uncle-judge networks, poor diversity of social origin, no public hearing, running conflict with the elected executive, delays that leave High Courts empty.

US system - advantages: democratic pedigree, public record, a President accountable at the next election for a choice. **Disadvantages:** polarisation, a Court that tracks the last two election cycles, life tenure that outlasts the coalition that chose the judge, and confirmation as television.

Neither system is "more constitutional" in the abstract. India feared **Mrs Gandhi's court**. America fears **an unaccountable priestly bench** and chose party combat instead. A reform that kept judicial majority in selection, added a public shortlist, a written criterion, and a timeline would take the better half of both - which is what NJAC claimed and failed to design to the Court's satisfaction.

For the Supreme Court of India the live comparison is not glamour; it is **whether a name can be explained to the Bar without a leak**.

Flow diagram

Art 124 consultation -> First Judges executive
First Judges executive -> Second Third collegium
Second Third collegium -> NJAC struck 2015
US President -> Senate confirmation

Conclusion

The collegium is judge-made primacy after three Judges cases and the fall of NJAC. The US system is presidential nomination plus Senate. One hides politics inside the profession; the other stages politics in a hearing. Both need limits: reasons and diversity here, less tribal confirmation there.

Facts & figures

Second Judges Case, 1993

Held that the CJI's concurrence, through a collegium, is essential to appointment - the birth of the working collegium.

Third Judges Case, 1998

Specified a five-judge collegium for Supreme Court appointments in an advisory opinion.

US Article II

Appointments clause: nomination by the President, advice and consent of the Senate.

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