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End the Culture of Secrecy in Judicial Appointments

 **THE HINDU**

26 August 2026 ·

POLITY**GS2**

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End the Culture of Secrecy in Judicial Appointments

The Hindu

26 August 2026

GS2



INTERVIEW ANGLE

"Judicial independence is usually defended by insulating appointments from the executive. Does insulating them from the public serve the same purpose, or a different one?"

✓ Every fact web-verified against primary sources

THE LIFT LINE

Independence means the executive cannot choose the judges. It has never meant the public cannot know how they were chosen.

WHY THIS EDITORIAL MATTERS FOR YOUR EXAM

Judicial appointments are among the most reliably examined GS2 topics, and answers usually recount the Judges Cases without engaging the live question of collegium procedure. This editorial supplies that engagement.

GS Paper 2: Structure, organisation and functioning of the judiciary; separation of powers; transparency and accountability; appointment to constitutional posts.

CONCEPT	MEANING	WHY IT IS TESTABLE
Collegium	A body of senior Supreme Court judges with primacy in recommending judicial appointments	A judicially evolved convention, not a constitutional provision
Memorandum of Procedure (MoP)	The document operationalising the appointment process, to be settled between executive and judiciary	Unfinalised since 2015, which is the institutional gap
Basic structure	Features of the Constitution that Parliament cannot amend away	The ground on which the NJAC was struck down

BACKGROUND AND CONTEXT

The Constitutional Text and Its Interpretation

Article 124 governs appointment of Supreme Court judges and **Article 217** appointment of High Court judges. Both use the language of **consultation** with the Chief Justice of India. The entire collegium edifice rests on how that single word was read.

CASE	YEAR	HOLDING
First Judges Case (S. P. Gupta)	1981	“Consultation” does not mean concurrence; executive primacy
Second Judges Case	1993	Reversed; CJI’s opinion has primacy, exercised through a collegium
Third Judges Case	1998	Elaborated collegium composition and procedure
Fourth Judges Case (NJAC)	2015	99th Amendment and NJAC Act struck down; collegium restored

The Court in 2015 also acknowledged that collegium procedure required improvement, and directed that the **Memorandum of Procedure** be revised. **It has remained in impasse since then:** the Supreme Court has taken the position that the Memorandum stands finalised, while the Government maintains that finalisation is still pending.

What Changed

The editorial’s specific factual claim is that **since 2024, specifically from 28 November of that year, collegium resolutions have stopped naming the judges who participated and stopped recording reasons**, the earlier practice having run under Chief Justice Chandrachud and been discontinued thereafter. This is a change in practice, not in law, which is precisely why it can be reversed without any constitutional amendment.

THE ANALYSIS

- 1. The editorial’s central move is to separate two kinds of insulation.** Judicial independence requires insulation from **executive control**. Non-disclosure provides insulation from **public scrutiny**. These are different things, and conflating them allows **opacity** to be defended in the language of independence.
- 2. The asymmetry argument is the strongest point.** The executive participates in the appointment process and therefore already knows what the resolutions no longer disclose. Withholding it from the public alone does not protect the collegium from the executive; it protects it only from citizens, which is the reverse of the intended direction of protection.

3. Opacity converts disagreement into imputation. When a recommendation is reversed, a name is superseded, or a file sits unmoved, the absence of reasons means observers supply their own. The institution loses the ability to distinguish a decision that was defensible from one that was not, because it has declined to offer the material on which that distinction rests.

4. The confidentiality objection is real but narrow. Candid assessment of a candidate's integrity or temperament genuinely requires confidence, and publishing adverse comparative assessments would deter good candidates from consenting to consideration. But this argument does not reach **published vacancies, objective eligibility criteria, or reasons supporting a successful recommendation**, which is exactly the scope the editorial proposes.

5. The proposal is procedural, not structural. Nothing here requires revisiting the 2015 judgment or reopening the NJAC question. That restraint is what makes it plausible: it asks the collegium to publish more, not to surrender primacy.

DATA AND INSTITUTIONS VAULT

PRELIMS-GRADE FACTS:

Article 124: Supreme Court appointments. Article 217: High Court appointments. Both use "consultation" with the CJI.

Judges Cases: 1981 (First, executive primacy), 1993 (Second, judicial primacy via collegium), 1998 (Third, procedure elaborated), 2015 (Fourth, NJAC struck down).

The 99th Constitutional Amendment Act and the NJAC Act were struck down in 2015 as violating the basic structure.

The Memorandum of Procedure has been in impasse since 2015: the Supreme Court treats it as finalised, the Government treats it as pending.

The Supreme Court collegium for appointments to the Supreme Court comprises the CJI and the four senior-most judges; for High Court appointments it is the CJI and the two senior-most judges.

Per the editorial, collegium resolutions have not named participating judges or given reasons since 2024, the change dating from 28 November of that year.

*The collegium is **not mentioned in the Constitution**. Do not write that it was "established under Article 124". It is a judicially evolved convention derived from interpreting the word "consultation". Also distinguish the **collegium** (recommends) from the **President** (appoints, under Article 124(2)).*

THE DEBATE

FOR (publish more): Independence protects against executive control, not public knowledge. The executive already possesses what the public is denied. Unexplained decisions cannot be distinguished from arbitrary ones. Publishing vacancies, criteria and reasons costs nothing that confidentiality legitimately protects.

AGAINST (confidentiality enables candour): Honest assessment of competence and temperament is possible only in confidence. Published reasons would become either **anodyne** or reputationally damaging to those not recommended, deterring candidates from consenting to consideration. The remedy for poor appointments lies in internal discipline, not public argument.

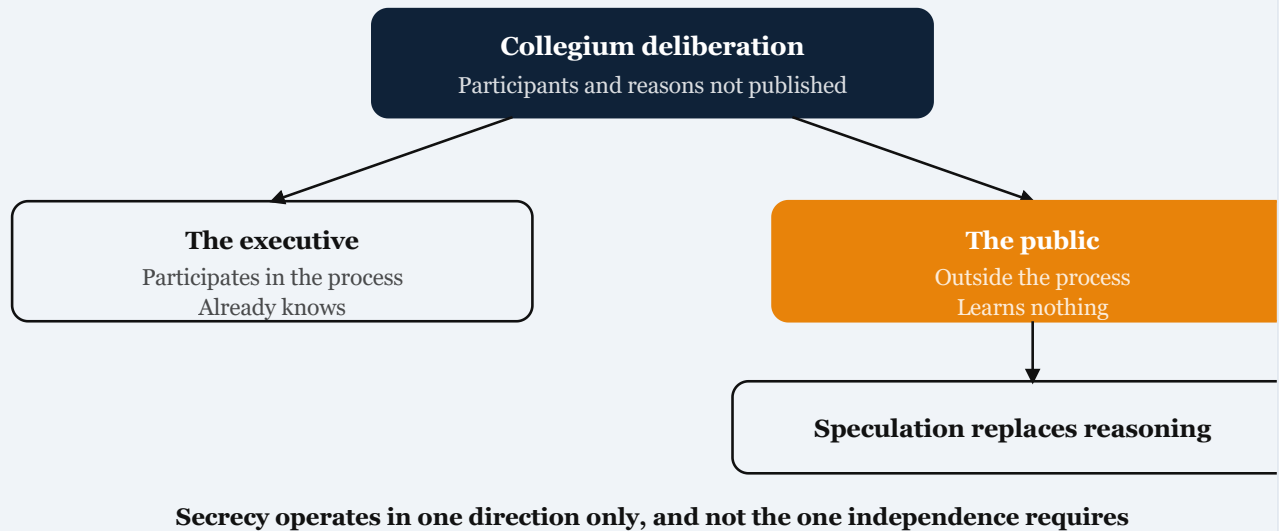
Balanced verdict: The two positions are reconcilable because they concern different categories of information. **Integrity-related material** genuinely requires confidence and should stay in a confidential annexure. **Vacancies, eligibility criteria and the reasoning behind successful recommendations** engage none of the confidentiality rationale and should be published. A two-tier disclosure rule delivers both, and finalising the Memorandum of Procedure would give it durability rather than leaving it to the practice of each successive collegium.

HOW TO THINK ABOUT THIS

When an institution defends secrecy in the name of independence, ask a precise question: **independent of whom?** Then check whether the withheld information is actually unavailable to the party the institution claims to be resisting.

Here, the executive is a participant and therefore already informed. Non-disclosure consequently does no work against the executive, and all of its work against the public. Wherever that pattern appears, in regulatory bodies, in selection committees, in disciplinary processes, the secrecy is protecting the institution from accountability rather than from capture. Making that distinction is what turns a description of the collegium into an argument about it.

DIAGRAM-IN-WORDS



The information withheld is withheld from only one of the two audiences, and it is not the audience judicial independence was designed to resist.

TAKEAWAY BOX

Independence means the executive cannot choose the judges. It has never meant the public cannot know how they were chosen.

Articles 124 and 217 and the word “consultation”; Judges Cases of 1981, 1993, 1998 and 2015; 99th Amendment and NJAC Act struck down in 2015 on basic-structure grounds; Memorandum of Procedure in impasse since 2015, treated as finalised by the Court and as pending by the Government; SC collegium is the CJI plus four senior-most judges, HC collegium the CJI plus two.

Can an appointment process be simultaneously independent of the executive and accountable to the public, or does one necessarily erode the other?

Connects to past UPSC Mains questions on judicial appointments, the NJAC judgment, separation of powers and judicial accountability.

“Opacity in judicial appointments protects the judiciary from scrutiny rather than from capture.” Critically examine.

Source: End the Culture of Secrecy in Judicial Appointments — Ujiyari.com | Free UPSC & State PCS Editorial Analysis

• KEY ARGUMENTS AT A GLANCE

Writing in *The Hindu*, the argument is that transparency and judicial independence are complements rather than opposites, and that the collegium's retreat from disclosure, with resolutions ceasing to name participating judges or give reasons since 28 November 2024, erodes public confidence in merit-based selection and should be replaced by published vacancies, objective eligibility criteria and reasoned recommendations, while integrity-related material stays confidential.



SUPPORTING

- Independence is a shield against executive influence, not against public knowledge, so withholding the identity of participating judges and the reasons for a recommendation protects the collegium from scrutiny without protecting it from the executive, which already knows both.
- Unexplained supersessions and unexplained delays are indistinguishable from arbitrary ones to an outside observer, so opacity converts every contested appointment into a matter of speculation and imputed motive rather than of assessable reasoning.
- The proposal is calibrated rather than absolute: publishing vacancies, criteria and reasons is compatible with keeping integrity-related material, which typically involves unverified allegations about named individuals, entirely confidential.



COUNTER

The counter-view is that candid assessment of a candidate's competence or temperament is only possible in confidence, and that published reasons would either become anodyne and uninformative or would damage the reputations of judges not recommended, deterring good candidates from consenting to consideration at all. On this reading, opacity is the price of candour, and the remedy for a bad appointment is the collegium's internal discipline rather than public debate.



WAY FORWARD

The reconciliation is a two-tier disclosure rule: publish vacancies in advance, publish objective eligibility criteria, and publish reasoned recommendations addressing seniority, subject expertise and regional and social representation, while placing integrity-related material and

comparative assessment of unsuccessful candidates in a confidential annexure. Finalising the long-pending Memorandum of Procedure would give this a stable institutional basis.


MAINS ANSWER FRAMEWORK
QUESTION

The collegium system was designed to secure judicial independence in appointments. Examine whether its current practice of non-disclosure serves that objective, and suggest reforms consistent with independence. (250 words)

INTRODUCTION

The collegium system for higher judicial appointments is not a constitutional provision but a judicial construction, evolved from the interpretation of Articles 124 and 217 in the Judges Cases. Writing in The Hindu, the argument is that this system has in recent years reduced rather than expanded what it discloses, and that the resulting opacity weakens the very legitimacy the system exists to protect.

BODY

The collegium emerged from the Second Judges Case (1993) and was elaborated in the Third Judges Case (1998), which read the requirement of “consultation” with the Chief Justice of India in Articles 124 and 217 as conferring primacy on a collegium of senior judges. Parliament attempted to replace it through the Ninety-ninth Constitutional Amendment Act and the National Judicial Appointments Commission Act, both struck down by the Supreme Court in 2015 in the Fourth Judges Case on the ground that they compromised the independence of the judiciary, which is part of the basic structure.

The collegium was thereby restored, but with a mandate to improve its own procedure, and the Memorandum of Procedure that was to govern the process has remained in impasse ever since, the Supreme Court treating it as finalised while the Government maintains that finalisation is pending. Against that background, the editorial identifies a specific regression: since 28 November 2024, collegium resolutions have ceased to name the judges who participated or to record reasons for a recommendation. The argument is that this confuses two distinct forms of insulation. Independence requires that the executive not control who is appointed; it does not require that the public be unable to see how a decision was reasoned.

The executive is in any event party to the process and therefore already possesses the information withheld from citizens, so non-disclosure operates asymmetrically against the public alone. The counter-argument, that candour requires confidentiality, has real force where assessment concerns a named individual’s integrity or temperament, but it does not extend to the publication of vacancies, of eligibility criteria, or of the general reasoning supporting a successful recommendation.

CONCLUSION

A balanced answer should hold that the case for disclosure is strongest precisely where the case for confidentiality is weakest, namely vacancies, criteria and reasons for successful recommendations, and that a two-tier rule protecting integrity-related material in a confidential annexure would secure both values. Finalising the Memorandum of Procedure is the institutional step that would make such a rule durable.

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