

Appointment of the Top Judge of the SC

Context:

THE CENTRE on October 24 appointed Justice Sanjiv Khanna as the next Chief Justice of India (CJI), formally approving the recommendation made by CJI D Y Chandrachud a week ago

What is the process for appointing the CJI?

- By convention, the senior most judge of the SC (based on years of experience as a judge in the apex court) becomes the CJI.
- This process has now been put down in the 'Memorandum of Procedure for the appointment of Supreme Court Judges' (hence forth referred to as the MoP).

THE NEXT IN LINE TO BE CHIEF JUSTICE OF INDIA

Since all Supreme Court judges have to retire at the age of 65, the length of a CJI's tenure depends on how old they are at the time of their predecessor's retirement.

Judge	Date of Assuming Office	Retirement Date	Length of Tenure
Justice Sanjiv Khanna	Nov 11, 2024	May 13, 2025	184 days
Justice B R Gavai	May 14, 2025	Nov 23, 2025	194 days
Justice Surya Kant	Nov 24, 2025	Feb 09, 2027	443 days
Justice Vikram Nath	Feb 10, 2027	Sept 23, 2027	226 days
Justice B V Nagarathna	Sept 24, 2027	Oct 29, 2027	36 days
Justice P S Narasimha	Oct 30, 2027	May 02, 2028	186 days
Justice J B Pardiwala	May 03, 2028	Aug 11, 2030	831 days
Justice K V Viswanathan	Aug 12, 2030	May 25, 2031	287 days

Note: The dates in the table work on the assumption that each of these judges will be the seniormost judge when they assume the office of CJI. The above information may change based on any changes in convention, early resignation, or loss of life.

Basis of appointment:

- The MoP says that the "appointment to the office of the Chief Justice of India should be of the senior most Judge of the Supreme Court considered fit to hold the office".
- Even before the **MoP was agreed upon in 1999**, the senior most judge of the Supreme Court after the CJI was by convention elevated to the top post.

How the process begins:

- According to the MOP, the appointment process begins when "The Union Minister of Law, Justice and Company Affairs would, at the appropriate time, seek the recommendation of the outgoing Chief Justice of India for the appointment of the next Chief Justice of India".

Admission Help Line: +91 9823256625 & 9579247470 (WhatsApp)

Email: info@iqraias.com, support@iqraias.com

- By convention, the “**appropriate time**” for the process to begin is a month before the date of retirement of the incumbent Chief Justice.

Central Government approval:

- As per the process laid down in the MoP, “after receipt of the recommendation of the Chief Justice of India, the Union Minister of Law, Justice...will put up the recommendation to the Prime Minister who will advise the President in the matter of appointment”.
- Though the final word on appointing the next CJI technically lies with the Centre, by convention the Centre tends to appoint whoever the presiding CJI recommends as her successor.

Departure from the convention of appointing the senior most SC judge as CJI:

Appointment of Justice AN Ray as CJI in 1973:

- ✓ This convention was famously discarded by former Prime Minister Indira Gandhi, whose government recommended the **appointment of Justice AN Ray as CJI in 1973**, superseding three more senior judges, Justices JM Shelat, KS Hegde, and AN Grover.
- ✓ Justice Ray was considered to be more favourably disposed towards the Indira government than his more senior colleagues.
- ✓ His appointment was announced the day after the Supreme Court pronounced a landmark order in **the Kesavananda Bharati case**, which laid down the “basic structure” doctrine. Justice Ray was part of the minority in the 7-6 verdict of the 13-judge Bench.

Appointment of Justice MH Beg as the CJI

- ✓ Indira’s government, in January 1977, once again ignored the convention by superseding **Justice HR Khanna to appoint Justice MH Beg as the CJI**.
- ✓ Justice Khanna had been the lone dissenter in the **ADM Jabalpur vs ShivKant Shukla** order, in which the majority comprising Justices AN Ray, P N Bhagwati, YV Chandrachud, and MH Beg agreed with the government that fundamental rights including the right to life and liberty stood abrogated during a period of national Emergency.

How did the MoP come in to existence?

- Following the apex court’s decisions in the First Judges Case (1981), Second Judges Case (1993), and the Third Judges Case (1998), a peers election process for the appointment of High Court and SC judges was put in place by establishing what we now know as the Supreme Court Collegium.
- This Collegium comprises the senior most judges of the SC, and the Centre is technically

bound to accept its recommendations.

- **The MoP—first drawn up in 1999—** provides the procedure for appointment and obligations of the Centre, the SC, and the High Courts when it comes to the appointment process.
- This document is crucial as the Collegium system of appointing judges is a judicial innovation that is not mandated through legislation, or text of the Constitution.
- Following this decision, the MoP was renegotiated in 2016, although the government maintained until last year that it was still being finalised.

Related facts:

The collegium system in the Indian judiciary:

The Collegium system is a system for the appointment and transfer of judges in the **Supreme Court** and **High Court**. It is not rooted in the Constitution. Instead, it has evolved through judgments of the Supreme Court.

❖ A Supreme Court Collegium

- It is **headed by the CJI** and comprises 4 other senior-most judges of the court, recommends the appointment and transfer of judges.

❖ A High Court Collegium

- It is led by the Chief Justice and the two senior most judges of that court.

- The government can also raise objections and seek clarifications regarding the Collegium's choices, but if the Collegium reiterates the same names, the government is bound to appoint them to the post

Constitutional Provisions for Judicial Appointments

Articles	Constitutional Provisions
Article 124	Supreme Court judges should be appointed by the President after consultation with such judges of the High Courts and the Supreme Court as the President may deem necessary. The CJI is to be consulted in all appointments except his or her own.
Article 217	High Court judges should be appointed by the President after consultation with the CJI and the Governor of the state. The Chief Justice of the High Court concerned too should be consulted.