



## Collegium System

**For Prelims:** Collegium System, Chief Justice of India.

**For Mains:** Evolution of the Collegium System and its Criticism.

### Why in News?

Recently, the Union minister of Law and Justice criticized the [Supreme Court Collegium system](#), saying that judges only recommend the appointment or elevation of those they know and not always the fittest person for the job.

- **Articles 124(2) and 217** of the Indian Constitution deal with the appointment of judges to the Supreme Court and High Courts .

### What is a Collegium System and How Did It Evolve?

- **About:**
  - It is the system of appointment and transfer of judges that has **evolved through judgments of the SC, and not by an Act of Parliament** or by a provision of the Constitution.
- **Evolution of the System:**
  - **First Judges Case (1981):**
    - It declared that the “primacy” of the [CJI’s \(Chief Justice of India\)](#) recommendation on judicial appointments and transfers can be refused for “cogent reasons.”
    - The ruling gave the Executive primacy over the Judiciary in judicial appointments for the next 12 years.
  - **Second Judges Case (1993):**
    - SC introduced the Collegium system, holding that “consultation” really meant “concurrence”.
    - It added that it was not the CJI’s individual opinion, but an institutional opinion formed in consultation with the two senior-most judges in the SC.
  - **Third Judges Case (1998):**
    - SC on the President's reference (Article 143) expanded the Collegium to a five-member body, comprising the CJI and four of his senior-most colleagues.

### Who Heads the Collegium System?

- The SC collegium is headed by the **CJI (Chief Justice of India)** and comprises four other senior most judges of the court.
- A High Court collegium is led by the **incumbent Chief Justice** and two other senior most judges of that court.
- Judges of the higher judiciary are appointed only through the collegium system and the government has a role only after names have been decided by the collegium.

## What are the Procedures for Judicial Appointments?

- **For CJI:**
  - The President of India appoints the CJI and the other SC judges.
  - As far as the CJI is concerned, the outgoing CJI recommends his successor.
  - In practice, it has been strictly by seniority ever since the supersession controversy of the 1970s.
- **For SC Judges:**
  - For other judges of the SC, the proposal is initiated by the CJI.
  - The CJI consults the rest of the Collegium members, as well as the senior-most judge of the court hailing from the High Court to which the recommended person belongs.
  - The consultees must record their opinions in writing and it should form part of the file.
  - The Collegium sends the recommendation to the Law Minister, who forwards it to the Prime Minister to advise the President.
- **For Chief Justice of High Courts:**
  - The Chief Justice of the High Court is appointed as per the policy of having Chief Justices from outside the respective States.
  - The Collegium takes the call on the elevation.
  - High Court judges are recommended by a Collegium comprising the CJI and two senior-most judges.
  - The proposal, however, is initiated by the outgoing Chief Justice of the High Court concerned in consultation with two senior-most colleagues.
  - The recommendation is sent to the Chief Minister, who advises the Governor to send the proposal to the Union Law Minister.

## What are the Issues Related to the Collegium System?

- **Exclusion of Executive:**
  - The complete exclusion of the [executive](#) from the judicial appointment process created a system where a few judges appoint the rest in complete secrecy.
  - Also, they are **not accountable to any administrative body that may lead to the wrong choice of the candidate** while overlooking the right candidate.
- **Chances of Favouritism and Nepotism:**
  - The collegium system **does not provide any specific criteria for testing the candidate** for the post of CJI because of which it leads to wide scope for nepotism and favouritism.
  - It gives rise to **non-transparency of the judicial system**, which is very harmful for the regulation of law and order in the country.
- **Against the Principle of Checks and Balances:**
  - The principle of check and balance **is violated in this system**. In India, three organs work partially independently but they keep check and balance and control on the excessive powers of any organ.
  - However, the collegium system gives Judiciary immense power, which leaves little room for checks and poses the risk of misuse.
- **Close-Door Mechanism:**
  - Critics have pointed out that **this system does not involve any official secretariat**. It is seen as a closed-door affair with no public knowledge of how and when a collegium meets, and how it takes its decisions.
  - Also, there are no official minutes of collegium proceedings.
- **Unequal Representation:**
  - The other area of concern is the [composition of the higher judiciary](#), women are fairly underrepresented in the higher judiciary.

## What were Attempts to reform the Appointment System?

- The attempt made to replace it by a '[National Judicial Appointments Commission](#)' (through Ninety-ninth Amendment Act, 2014) was struck down by the court in 2015 on the ground that it posed a threat to the independence of the judiciary.

## Way Forward

- Filling up of vacancies is a **continuous and collaborative process involving the executive and the judiciary**, and there cannot be a time frame for it. However, it is time to think of a permanent, independent body to institutionalise the process with adequate safeguards to preserve the judiciary's independence guaranteeing judicial primacy but not judicial exclusivity.
- It should ensure independence, reflect diversity, demonstrate professional competence and integrity.

## UPSC Civil Services Examination Previous Year Question (PYQ)

### Prelims

#### Q. Consider the following statements: (2019)

1. The 44<sup>th</sup> Amendment to the Constitution of India introduced an Article placing the election of the Prime Minister beyond judicial review.
2. The Supreme Court of India struck down the 99<sup>th</sup> Amendment to the Constitution of India as being violative of the independence of judiciary.

#### Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

#### Ans: (b)

- It was the 39<sup>th</sup> amendment to the Constitution, in 1975, through which the Parliament introduced an Article removing the authority of the Supreme Court to adjudicate petitions regarding elections of the President, Vice-President, Prime Minister and Speaker of the Lok Sabha. Instead, a body constituted by Parliament would be vested with the power to resolve such election disputes. Hence, statement 1 is not correct.
- The **99<sup>th</sup> Constitutional Amendment Act** provided for the **National Judicial Appointments Commission**, which would replace the collegium system followed for the appointment of the Judges of the Supreme Court and High Court. **The Act was struck down by the Supreme Court** as it impinged upon the principles of 'independence of the judiciary' as well as 'separation of powers'. **Hence, statement 2 is correct.**
- **Therefore, option (b) is the correct answer.**

### Mains

Q. Critically examine the Supreme Court's judgement on 'National Judicial Appointments Commission Act, 2014' with reference to appointment of judges of higher judiciary in India. (2017)

[Source: IE](#)

