



Collegium System for the Appointment of Judges

Why in News

Recently, the [Supreme Court \(SC\)](#) questioned the government about the delay in clearing **Collegium recommendations for judicial appointments** to various High Courts (HC).

Key Points

▪ Collegium System:

- 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 [Chief Justice of India \(CJI\)](#)s 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 President’s reference **expanded the Collegium to a five-member body**, comprising the CJI and four of his senior-most colleagues.
 - The **SC collegium is headed by the CJI and comprises four other senior most judges** of the court.
 - A **HC collegium is led by its Chief Justice and four other senior most judges of that court.**
 - Names recommended for appointment by a HC collegium reaches the government only after approval by the CJI and the SC collegium.
 - 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.**
 - The **government’s role is limited to getting an inquiry conducted by the Intelligence Bureau (IB)** if a lawyer is to be elevated as a judge in a High Court or

the Supreme Court.

- **Intelligence Bureau (IB):** It is a reputed and established intelligence agency. It is authoritatively controlled by the **Ministry of Home Affairs**.
- It **can also raise objections** and seek clarifications regarding the collegium's choices, **but if the collegium reiterates** the same names, the government is bound, under Constitution Bench judgments, to appoint them as judges.
- **Procedure for Various 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 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.
- **Criticism of the Collegium System:**
 - Opaqueness and a lack of transparency.
 - Scope for nepotism.
 - Embroilment in public controversies.
 - Overlooks several talented junior judges and advocates.
- **Attempts to reform the Appointment System:**
 - The attempt made to replace it by a '**National Judicial Appointments Commission**' was struck down by the court in 2015 on the ground that it posed a threat to the independence of the judiciary.

Related Constitutional Provisions

- **Article 124(2)** of the Indian Constitution provides that the Judges of the Supreme Court are appointed by the President after consultation with such a number of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose.
- **Article 217** of the Indian Constitution states that the Judge of a High Court shall be appointed by the President consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court.

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 institutionalize 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**.
- Instead of selecting the number of judges required against a certain number of vacancies, **the collegium must provide a panel of possible names to the President** to appoint in order of preference and other valid criteria.

[Source:IE](#)

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