



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 44th 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 99th 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 39th 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 **99th 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](#)

