



“Effective Consultation” in Judicial Appointments

For Prelims: [Collegium System](#), [Chief Justice of India](#), [Supreme Court](#), [High Court](#).

For Mains: Evolution of the Collegium System and its Criticism, Appointment of Judges in SC

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Why in News?

Recently, the [Supreme Court \(SC\)](#) in its ruling emphasised the importance of **seniority and effective consultation** in the appointment of High Court judges.

- In a case involving the Himachal Pradesh High Court (HC) collegium, the Supreme Court ruled that a **'lack of effective consultation'** in judicial appointments falls within the scope of [judicial review](#).
- It directed a reconsideration of two judicial officers recommended for elevation, highlighting the importance of procedural adherence.

What is the Background of Case and Supreme Court Ruling?

- **Background:**
 - In December 2022, the **Himachal Pradesh HC collegium recommended** two District judges for elevation to HC Judges.
 - However, the **SC collegium requested reconsideration** on this prompting a further review.
 - Later, HC collegium recommended two other judicial officers. The **initially recommended judges challenged this decision in the SC**, arguing their seniority was overlooked.
- **Supreme Court' Ruling:**
 - **Maintainability:** The SC assessed whether it had jurisdiction to review appointment recommendations, referencing the [Second and Third Judges Cases](#).
 - It ruled that its review focused solely on **whether "effective consultation" occurred** after the SC collegium's resolution, **without evaluating the candidates' "merits" or "suitability."**
 - **Proper Procedure: The SC collegium had returned the recommendations to the HC Chief Justice and requested for reconsideration of names.**
 - The **SC examined** whether the HC Chief Justice had **"effective consultation"** with **other judges of the High Court**.
 - SC held that despite the resolution being addressed to the Chief Justice of HC, he **could not independently make recommendations**. Decisions **must involve "collective consultation"** among the Chief Justice and the two senior-most judges of HC.
 - This ruling reinforces the **need for adherence to established procedures in judicial appointments** and highlights the importance of seniority, ensuring a fair and transparent process in the elevation of judges.

What is the Procedure for the Appointment of High Court Judges?

- **Procedure:** The appointment of judges to the High Courts follows a procedure based on the **collegium system**, which was established through various landmark cases, such as [Second Judges Case \(1993\)](#) and further clarified in the [Third Judges Case \(1998\)](#).
 - The collegium system empowers the judiciary to **recommend appointments and transfers of judges** to the Supreme Court and High Courts, with the government having a limited role.
 - After the **Third Judges Case (1998)**, the central government and the SC formalised High Court judge appointments through a **Memorandum of Procedure (MoP)**.
- **Appointment of High Court Judges:**
 - For High Court appointments, the collegium comprises the [Chief Justice of India \(CJI\)](#) and the 2 senior most judges of the Supreme Court.
 - This collegium would **form an opinion on a person** to be recommended for appointment to the High Court, taking into account the **views of the Chief Justice of the concerned High Court**, senior Judges of the High Court, and Judges of the Supreme Court conversant with the affairs of that High Court.
- **Memorandum of Procedure (MoP) for Appointment of High Court Judge:**
 - **High Court Collegium Recommendation:** The **Chief Justice of the High Court**, in consultation with the **2 senior most judges of that court**, recommends names for appointment.
 - **State-Level Review:** The recommendations are sent to the **Chief Minister** and **Governor** for their views, though they do not have the power to reject the recommendation.
 - **Central Government Process:** The Governor forwards the recommendations to the **Union Minister of Law and Justice**, who conducts a background check.
 - **Supreme Court Collegium Review:** The recommendations are then **sent to the CJI**, who consults the Supreme Court collegium. If approved, the names are sent to the **President** for final approval.
 - The government's **role is limited to delaying appointments or raising concerns**, but it cannot overrule the collegium's recommendations.

What is a Collegium System of Judicial Appointments?

- **About:** It is the system of **appointment and transfer of judges** of the Supreme Court and High Courts that has evolved through judgments of the [Supreme Court \(SC\)](#), and **not by an Act of Parliament** or by a provision of the Constitution.
- **Evolution of the System:**
 - **First Judges Case (1981):** It is also known as *S.P. Gupta v. Union of India (1981)*.
 - It stated that the **CJI's** recommendations on judicial appointments and transfers **can be rejected for “cogent (strong and convincing) reasons.”**
 - The ruling **gave the Executive primacy over the Judiciary** in judicial appointments for the next 12 years.
 - **Second Judges Case (1993):** **SC in Supreme Court Advocates-on-Record Association vs Union of India (1993)** introduced the Collegium system, holding that **“consultation” really meant “concurrence”**.
 - The ruling made the SC collegium's recommendations **binding on the central government** and granted the **judiciary the authority to appoint and transfer higher judiciary judges**.

- It also 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 5-member body, comprising the CJI and 4 of his senior-most colleagues.**
 - It also outlined 2 limited grounds for challenging a recommendation.
 - **Lack of "effective consultation"** with relevant individuals or institutions.
 - The **candidate's ineligibility** based on the qualifications specified in **Articles 217** (High Court) and **Article 124** (Supreme Court) of the Constitution.
- **Head of Collegium System:**
 - The **SC collegium is headed by the CJI (Chief Justice of India)** and comprises 4 other senior most judges of the court.
 - A **HC collegium is led by its Chief Justice** and 4 other senior most judges of that HC.
 - 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.

Appointment	Consultation
Appointment of Judge of Supreme Court	4 Senior most Judges of the Supreme Court
Appointment of Judge of High Court	2 Senior most Judges of the Supreme Court
Transfer of Judge of High Court	4 Senior most judges of the Supreme Court along with the judges of the two High Courts.

What are the Demerits of the Collegium System?

- **Lack of Transparency:** The system is criticised for its opaqueness, with limited public insight into the appointment process.
- **Nepotism:** There is a **concern that personal connections and relationships (Uncle Judge syndrome)** within the judiciary can influence appointments, potentially leading to favoritism.
- **Inefficiency:** The absence of a permanent commission for judicial appointments can lead to delays and inefficiencies in filling vacancies.

Conclusion

The ongoing debate surrounding judicial appointments in India underscores the necessity for **reforming the collegium system to enhance transparency**, accountability, and efficiency. Implementing measures such as **revising the National Judicial Appointments Commission (NJAC)** or adopting comparable reforms could effectively address these concerns and **contribute to the overall improvement of the judiciary's operations.**

UPSC Civil Services Examination, Previous Year Question (PYQ)

Prelims

Q. With reference to the Indian judiciary, consider the following statements: (2021)

1. Any retired judge of the Supreme Court of India can be called back to sit and act as a Supreme Court judge by the Chief Justice of India with the prior permission of the President of India.
2. A High Court in India has the power to review its own judgement as the Supreme Court does.

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: (c)

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)**

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