



# Judicial Appointments to High Courts

## Why in News

Recently, the **Union Minister of Law and Justice** informed the [Rajya Sabha](#) regarding the appointment of judges in various high courts.

- The minister pointed out that filling up vacancies in the higher judiciary is a **continuous, integrated and collaborative process** between the **Executive** and the **Judiciary**.
- It requires **consultation and approval** from **Constitutional authorities** at the **State** as well as **Central level**.

## Key Points

### ▪ Appointment of HC Judges:

- **Article 217 of the Constitution:** It states that the **Judge of a High Court** shall be **appointed by the President** in consultation with the [Chief Justice of India](#) (CJI), the [Governor of the State](#).
  - In the case of appointment of a Judge other than the Chief Justice, the **Chief Justice of the High Court is consulted**.
- **Consultation Process:** High Court judges are recommended by a [Collegium](#) comprising the **CJI and two senior-most judges**.
  - The proposal, however, is **initiated by the 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.
  - 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.
- **Ad-hoc Judges:** The appointment of retired judges was provided for in the Constitution under **Article 224A**.
  - Under the Article, the **Chief Justice of a High Court** for any State may at any time, with the **previous consent of the President**, request any person who has held the office of judge of that court or of any other High Court to sit and act as a judge of the High Court for that State.
  - Recently, the Supreme Court pushed for the [appointment of retired judges](#) to battle the pendency of cases in High Courts.
    - It orally outlined prospective guidelines for the appointment and functioning of an ad-hoc judge.

### ▪ 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) 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 (for example for the transfer of HC judges).

- **Issues Involved:**

- **Cumbersome Process:** There are inordinate delays in the appointment of High Court judges and depleting numbers in the higher judiciary threaten to affect the justice delivery mechanism.

- **Lack of transparency:** The absence of formal criteria has multiple worrying implications.

- Presently, there is no structured process to investigate if a judge who is recommended by the collegium has any conflict of interests.

- **Improper Representation:** The collegium system structurally tends to favour particular sections of society and is far from being representative of the population for whom it seeks to deliver justice.

- **Vacancy in High Courts:** The total sanctioned strength of judges across the 25 high courts is 1,098 but the working strength is only 645, a shortfall of 453 judges.

- **High Pendency of Cases:** The total pendency of cases in the several courts of India at different levels, sums up to a total of about 3.7 crores thus increasing the demand of a better and improved judicial system.

- **Attempts of Reform:**

- The attempt was made to replace the Collegium by a ‘**National Judicial Appointments Commission (NJAC)**’ in 2014 through the **99<sup>th</sup> Constitutional Amendment Act, 2014**.

- The NJAC proposed to make the appointment of High Court and Supreme Court judges and chief justices more **transparent**.

- They will be selected by the commission, whose members will be drawn from the judiciary, legislature and civil society.

- The **Constitutional Bench** of the Supreme Court declared **NJAC unconstitutional in 2015**, citing that it violates the **Basic Structure** of the **Constitution of India** on the ground that it posed a threat to the independence of the judiciary.

## Way Forward

- 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: TH](#)

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