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Collegium System for the Appointment of Judges

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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