



# Collegium System for the Appointment of Judges

**For Prelims:** Collegium System, Chief Justice of India.

**For Mains:** Evolution of the Collegium System and its Criticism.

## Why in News?

Recently, the [Supreme Court Collegium](#) has recommended appointing Justice Munishwar Nath Bhandari as **Chief Justice** of Madras High Court.

## What is a Collegium System and How Did It Evolve?

- It is the **system of appointment and transfer of judges** 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 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 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.

## 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 is Critical about the Collegium System?**

- Opaqueness and a lack of transparency.
- Scope for nepotism.
- Embroilment in public controversies.
- Overlooks several talented junior judges and advocates.

### **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.

**[Source: IE](#)**