



Collegium System for the Appointment of Judges

Why in News

Recently, the [Supreme Court](#) (SC) [Collegium](#), led by [Chief Justice of India \(CJI\)](#) has recommended to the government nine names for appointment as SC judges.

- The Collegium has for the **first time, in one single resolution, recommended three women judges.**
- It has thus sent a **strong signal in favour of representation of women** in the highest judiciary.

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 CJIs 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 (Article 143) 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 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.

▪ **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'** (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.

Related Constitutional Provisions

- **Article 124(2)** of the Indian Constitution provides that the **Judges of the SC are appointed by the President after consultation** with such a number of the Judges of the SC 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 in consultation with the CJI, 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: TH](#)

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