

# SC Collegium Recommends Rajasthan HC Judges

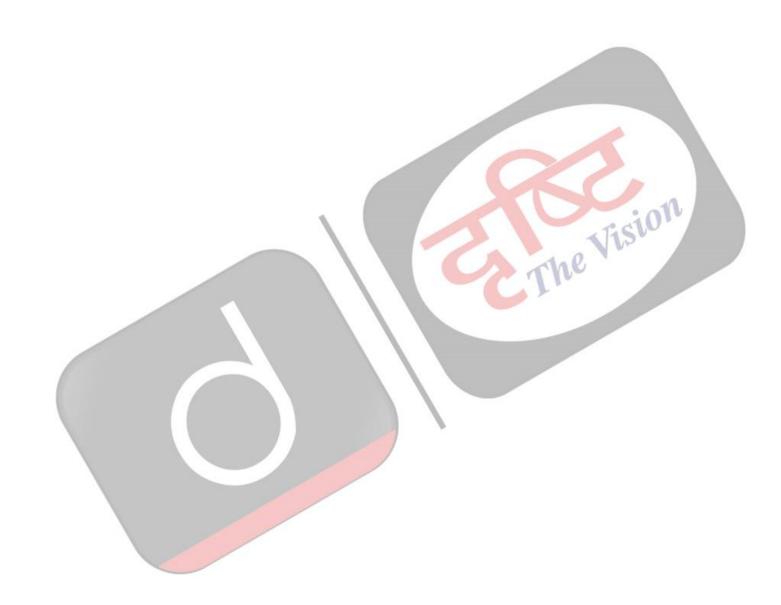
## Why in News?

The <u>Supreme Court Collegium</u> has recommended the <u>appointment of judges to the Rajasthan High Court.</u>

### **Key Points**

- 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 the <u>Second Judges Case</u> (1993) and further clarified in the <u>Third Judges Case</u> (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 <u>Chief Justice of India</u>
      (CII) 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.
- Collegium System:
  - It is the system of appointment and transfer of judges (SC and HC) that has evolved through judgments of the SC, and not by an Act of Parliament or by a provision of the Constitution.

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.







- System of appointment and transfer of judges
- **9** Evolved through judgments of the Supreme Court, and not by an Act of Parliament

#### Constitutional Provisions Related to Appointment of Judges

- Articles 124 (2) and 217- Appointment of judges to the Supreme Court and High Courts
  - President makes appointments after consulting with "such judges of the Supreme Court and of the High Courts" as s/he may deem necessary.
- But the Constitution does not lay down any process for making these appointments.

#### **Evolution of the System**

#### First Judges Case (1981)

- SC held that in the appointment of a judge of the SC or the HC, the word "consultation" in Article 124 (2) and in Article 217 of the Constitution
- does not mean "concurrence" Gave the executive primacy over the
- judiciary in judicial appointments

#### Second Judges Case (1993)

- SC overruled the First Judges Case
- Gave birth to the Collegium System (Primacy to the Judiciary)
- Collegium included the Chief Justice of India and the 2 most senior judges

### Third Judges Case (1998)

SC expanded the Collegium to include the CJI and the 4 most-senior judges of the court

#### **Current Structure**



Supreme Court Collegium: CJI and the 4 senior-most judges of the SC



High Court Collegium: CJI and 2 senior most judges of the SC

#### Criticism

- Opaqueness
- Scope for Nepotism
- Exclusion of Executive
- No Predetermined Procedure of Appointment

#### National Judicial Appointments Commission (NJAC)

- It was an attempt to replace the Collegium System. It prescribed the procedure to be followed by the Commission to appoint judges
- NJAC was established by the 99th Constitutional Amendment Act, 2014
- But the NJAC Act was termed unconstitutional and was struck down, citing it as having affected the independence of the judiciary







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