



The Notion of Judges Appointing Judges is a Myth”. In this light, Critically Analyse the Current Delays in Judicial Appointments (250 words / 15 M) (GS-2 Judiciary)

Approach:

1. Introduction
2. Very briefly mention the process of judges' appointments.
3. Mention the cases of delays with facts.
4. Way forward & Conclusion.

A tussle between the SC collegium & the government has become the key feature of judicial appointments in India. SC had expressed concern that several names cleared by the collegium are still awaiting the government's nod. This can **compromise** with the basic tenet of **judicial independence**.

The **Collegium system** was created through the **Three Judges Cases**. The collegium comprises the **Chief Justice along with other senior-most judges** both at the **SC and HCs level**. The **procedure of appointments** is largely governed by the **Memorandum of Procedure (MoP) – a collaborative framework between government and judiciary** – prepared in **1998**, pursuant to the Three Judges Cases.

Many steps provided in the MoP are expected to be completed in a **certain timeframe** to ensure **expeditious appointments**. In **2021**, **SC** provided **additional timeframes** for certain steps. The **final appointments** should be made **within 8-12 weeks**.

Ground realities: In **2020**, the **average time** taken by **government** was **127 days (18 weeks)** while the **average time** taken by the **collegium** was **119 days (17 weeks)**. Further the collegium recommendations of new judges between **January 2021 to January 2022** took **more than 7 weeks**. Amongst the various names suggested, **77% were appointed**, while **23% are still awaiting response** in April 2022. The **highest percentage of names pending** before the Centre are in – **Bombay (65%), Calcutta (47%) and Rajasthan (33%)**.

A bigger problem is that **recommendations reiterated by the SC collegium have not been cleared** yet by the government. **29 recommendations** reiterated as of April 2022, are **still awaiting** government's nod. A classic case is of **Nagendra Ramachandra Naik (former CBI counsel)**, whose name was **reiterated thrice** by the SC collegium **since 2019**, but **still the appointment is pending**.

Such delays in appointments **impacts not only the vacancies and pendency of cases**, rather, it **demoralises potential candidates**, discouraging senior lawyers for joining the **judgeship**.

Devising **realistic timeframes based on data** can improve compliance. **More transparency** can be brought in by making public some collegium resolutions and its intermediary steps. This



will also ensure **public accountability** to some extent. It is a ***settled fact that names reiterated by the collegium must be approved by the government, delaying this will only complicate the process & build tensions with the judiciary.*** The government may not have the first say in the judges' selection process, but surely it is acquiring the final say – this ***must be prevented if judicial independence is to be preserved.***

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