



What is the Collegium System?

Context:

Recently, Union Minister for Law and Justice said the collegium system of appointments to the higher judiciary needs to be reconsidered in view of the concerns about the process.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Indian Judiciary)

Dimensions of the Article:

1. What is the Collegium System?
2. Working of the Collegium System and NJAC
3. Appointment procedure of HC Judges
4. Transfer procedure of HC Judges

What is the Collegium System?

- The Collegium System is a system under which **appointments/elevation of judges/lawyers to Supreme Court and transfers of judges of High Courts** and Apex Court are decided by a forum of the Chief Justice of India and the four senior-most judges of the Supreme Court.' There is no mention of the Collegium either in the original Constitution of India or in successive amendments.
- The recommendations of the Collegium are **binding on the Central Government**; if the Collegium sends the names of the judges/lawyers to the government for the second time.

Evolution of the Collegium system

- In the **First Judges case (1982)**, the Court held that consultation does not mean concurrence and it only implies an exchange of views.
- In the **Second Judges case (1993)**, the Court reversed its earlier ruling and changed the meaning of the word consultation to concurrence.



Third Judges Case, 1998:

- In the Third Judges case (1998), the Court opined that the consultation process to be adopted by the Chief Justice of India requires “consultation of a plurality of judges”.
- The sole opinion of the CJI does not constitute the consultation process. He should consult a collegium of four senior-most judges of the Supreme Court and even if two judges give an adverse opinion, he should not send the recommendation to the government.
- The court held that the recommendation made by the Chief Justice of India (CJI) without complying with the norms and requirements of the consultation process is not binding on the government.
- The Collegium system was born through the “Third Judges case” and it is in practice since 1998. It is used for appointments and transfers of judges in High courts and Supreme Courts.
- There is no mention of the Collegium either in the original Constitution of India or in successive amendments.

Working of the Collegium System and NJAC

- The collegium recommends the names of lawyers or judges to the Central Government. Similarly, the Central Government also sends some of its proposed names to the Collegium.
- Collegium considers the names or suggestions made by the Central Government and resends the file to the government for final approval.
- If the Collegium resends the same name again then the government has to give its assent to the names. But the time limit is not fixed to reply. This is the reason that appointment of judges takes a long time.
- Through the **99th Constitutional Amendment Act, 2014 the National Judicial Commission Act (NJAC)** was established to replace the collegium system for the appointment of judges.
- However, the Supreme Court upheld the collegium system and struck down the NJAC as unconstitutional on the grounds that the involvement of Political Executive in judicial appointment was against the “Principles of Basic Structure”. i.e., the “**Independence of Judiciary**”.

Issues involved in appointment

- **Cumbersome Process:** There are inordinate delays in the appointment of High Court judges and it leads to the pendency of cases.
- **Lack of Transparency:** There is no objective criteria for selection and people come to know about judges only after selection. It also promotes nepotism in the judiciary. The consultations of the Collegium are also not discussed in any public platform.
- **Instances of Politicisation:** In many cases, there is indication that due to the unfavorable judgments of certain judges the political executive hinders their



appointments, elevation, or transfer. This reflects poorly on the concept of independence of the judiciary.

- **Improper Representation:** Certain sections of societies have higher representation whereas many vulnerable sections have nil representation.

Appointment procedure of HC Judges

- **Article 217** of the Constitution: It states that the Judge of a High Court shall be **appointed by the President** in consultation with the Chief Justice of India (CJI), the Governor of the State.
- In the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court is consulted.
- Consultation Process: High Court judges are recommended by a Collegium comprising the CJI and two senior-most judges.
- The proposal, however, is initiated by the 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.

Transfer procedure of HC Judges

- **Article 222** of the Constitution makes provision for the transfer of a Judge (including Chief Justice) from one High Court to any other High Court. The initiation of the proposal for the transfer of a Judge should be made by the Chief Justice of India whose opinion in this regard is determinative.
- Consent of a Judge for his first or subsequent transfer would not be required.
- All transfers are to be made in public interest i.e., for promoting better administration of justice throughout the country.

-Source: The Hindu
