Collegium Reform

Why in News?

Recently the Supreme court collegium has decided to conduct interviews of candidates who have been recommended for elevation as judges to the High Courts.

How are appointments to higher judiciary made?

- **Appointment of Supreme Court judges** – Article 124 of Constitution provides that judges to the Supreme Court are appointed by the President of India in consultation with the CJI and such other judges that he or she deems fit.
- **Appointment of High Court judges** - Article 217 provides that Judges to the High Courts are appointed by the President in consultation with the CJI, the Governor of the State and the Chief Justice of that court.
- **Transfer of HC Judges** - Article 222 provides that President may move a judge from one High Court to another, but only after consulting the CJI.
- **Lack of clarity** – These provisions failed to define the manner of consultation and transparency the process.
- **Judges cases** - Interpretation of the judges appointment provisions were brought before the Supreme Court.
- **First Judge Case, 1981**- The Supreme Court ruled that the word "consultation" could not be interpreted as "concurrence".
    - Accordingly the CJI's opinion was not binding on the executive.
- **Second Judges Case, 1993**- The court overruled its earlier decisions and held that "consultation" meant "concurrence".
- This means that the advice rendered by the CJI on matters of appointments is binding on the President.
- **Third Judges Case, 1998**- The court clarified that the collegium would comprise
    - CJI and 4 senior-most colleagues - Appointments to Supreme Court
    - CJI and 2 senior-most colleagues - Appointments to High Courts
- **NJAC**- The government, through 99th constitutional amendment, sought to replace the collegium with the National Judicial Appointments Commission (NJAC).

  NJAC included the Union Minister for Law and Justice and two eminent persons, besides the CJI and next two senior most SC judges.

- **Fourth Judges Case, 2015**- The court ruled that the primacy of the judiciary in judges' appointments was embedded in the basic structure of the Constitution.
- NJAC was declared as unconstitutional and void by the Supreme Court.

What is the current appointment process of judges?

- **Initiation** - Recommendation to appoint a new judge to a High Court or to the Supreme Court, to transfer a judge from one High Court to another would come from the collegium.
- **Consultation** - The collegium will make this recommendation after taking the views of "consultee" judges.
- **Government approval** - Union government can either choose to accept the collegium recommendation or return the proposal for reconsideration.
- Upon reconsideration, if the proposal is submitted anew, the government has no choice but to sanction the resolution.
- **Appointment** – After the notification by the law ministry , the judges were appointed by the President.
- **Recent reforms** - The collegium will now conduct interviews of candidates who have been recommended for elevation as judges to the High Courts.
- The panel will also, to the extent possible, exclude from selection those whose close relatives have served or continue to serve as judges of the High Courts or the Supreme Court.

EVLOUTION OF COLLEGIUM



CONSTITUITION

In the original constitution, there is no mention of a "collegium

Article 124 - "Every Judge of the SC shall be appointed by the President and in the case of appointment of a Judge other than the CJI, the CJI shall always be ***consulted****"*

FIRST JUDGES CASE, 1982

SC held that consultation does not mean concurrence and it only implies exchange of views





SECOND JUDGES CASE, 1993

Court reversed its earlier ruling and held that the advice tendered by the CJI is binding on the President in the matters of appointment of the judges of the SC. CJI was to formulate the opinion only through a 'collegium' of two of his seniormost colleagues.

THIRD JUDGES CASE, 1998

SC clarified that the collegium would comprise CJI & four senior-most colleagues, in appointments to the SC snd two senior-most colleagues in the case of appointments to the HC





99TH CONSTITUTIONAL AMENDMENT, 2015

Provided for National Judicial Appointments Commission consisting of members of the judiciary, executive, and the public.

FOURTH JUDGES CASE, 2015

SC struck NJAC down citing judicial primacy in making appointments and restored the collegium

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What are the issues with collegium system?

- **Lack of constitutional mention** - collegium is a product of judge-made law and has no formal constitutional , legal place in any article or statue.
- **Conflict with government** – Collegium recommendations have been delayed by the government but not acting on the recommendations.
- **Paradox** - Collegium has primacy over judicial appointments. But the government can forestall any recommendation.
- **Lack of clear procedure** – No written constitutional or legal provisions in dealing with the deadlock between judiciary and executive in this matter.
- **Non-transparency in appointments** - It is seen as a closed-door affair with no prescribed norms regarding eligibility criteria, or even the selection procedure.
- **Lack of diversity** - The absence of an institutional mechanism to ensure diversity on the Bench in the judiciary is a problem.
- **Difference of opinion** - The conflicting opinion within the collegium members is hampering the functioning of the collegium system.

What lies ahead?

- A clear set of binding rules is essential to the maintenance of the system's integrity.
- Those rules must balance separation of powers, autonomy of judiciary and ensure accountability with independence.

Reference

The Hindu | The Collegium and change

