Judicial appointments and the NJAC debate

Mains: *GS II | Judiciary*

Why in News?

Recently, a Supreme Court bench issued notices to both the Union government and the Supreme Court on Memorandum of Procedure (MoP) follow-up to the National Judicial Appointments Commission (NJAC) verdict and greater transparency over Collegium deliberations.

What is the Memorandum of Procedure (MoP)?

- **Origins -** It was first drawn up following the **Second Judges Case (1993)** and **Third Judges Case (1998)**, which established the Collegium system and gave senior judges primacy in judicial appointments.
- According to government statements in Parliament, the 1999 MoP continues to govern appointments in practice.
- For Supreme Court judges, proposals are initiated by the Chief Justice of India (CJI) in consultation with senior Collegium colleagues; for High Court judges, proposals are initiated by the High Court Chief Justice in consultation with senior colleagues and routed through state and Union channels.
- After striking down the NJAC in October 2015, a five-judge Constitution Bench in December 2015 invited suggestions to improve the Collegium's functioning and noted that the government may supplement/finalise the MoP in consultation with the CJI—without setting a deadline.

How the collegium system and the NJAC debate evolved?

Phase	Key Development	Core Constitutional Takeaway
Early Post-Independence Practice	President appointed judges in consultation with the CJI (Articles 124 and 217).	Executive held primary appointment power after consulting the CJI.
Second Judges Case (1993) & Third Judges Case (1998)	Redefined "consultation" as "concurrence" of the CJI acting with a multi-judge Collegium.	Established judicial primacy and the Collegium system to protect judicial independence.
99th Amendment & NJAC Act (2014–2015)	Sought to replace the Collegium with a six-member commission including the CJI, two senior SC judges, the Law Minister, and two eminent persons.	Struck down in October 2015 by a five-judge bench as violating **judicial independence** under the **Basic Structure** doctrine.
Post-2015 MoP Talks & Renewed Scrutiny	Draft exchanges occurred (such as in 2016–2017), but key disagreements lingered; fresh SC notices in November 2026 reopened the debate.	Highlights the gap between executive oversight demands and judicial autonomy/transparency expectations.

What are the key sticking points in finalizing the revised MoP?

- **National Security Grounds for Rejection -** Disagreements over whether and how the government can decline a recommended name on grounds of "national security" without undermining the Collegium's primacy.
- **Institutional Secretariat & Process Clarity -** Debates around setting up a dedicated secretariat to assist the Collegium, recording clearer criteria/minutes, and ensuring predictable timelines.
- **Transparency and Public Accountability -** Ongoing petitions and public debate over making Collegium criteria, deliberations, and records more transparent including questions around Right to Information (RTI) applicability while protecting individual privacy and candid assessment.

What are the key challenges in Judicial appointments?

- **Prolonged Pending Revisions -** Leaving the MoP revision open-ended for years keeps key procedural rules in limbo even while appointments continue under earlier conventions.
- **Executive–Judiciary Friction -** Differences over vetoes, timelines, and role boundaries can slow down filling vacancies in High Courts and the Supreme Court.
- **Balancing Candor with Transparency -** Publishing sensitive background material or candid opinions about candidates can harm reputations or chill frank evaluation if not carefully calibrated.

What is the way forward?

- Both the executive and the judiciary should work toward a mutually agreed, transparent MoP with clear timelines for processing recommendations and re-recommendations.
- Build a dedicated administrative/research secretariat for the Collegium and publish clear, objective parameters used in shortlisting candidates.
- Ensure national-security or suitability concerns follow transparent, verifiable processes rather than arbitrary delays, keeping the citizen's right to an independent and credible judiciary at the center.

Reference

Indian Express | Centre and CJI over appointments of judges

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