Judicial Appointments Commission

Why in News?

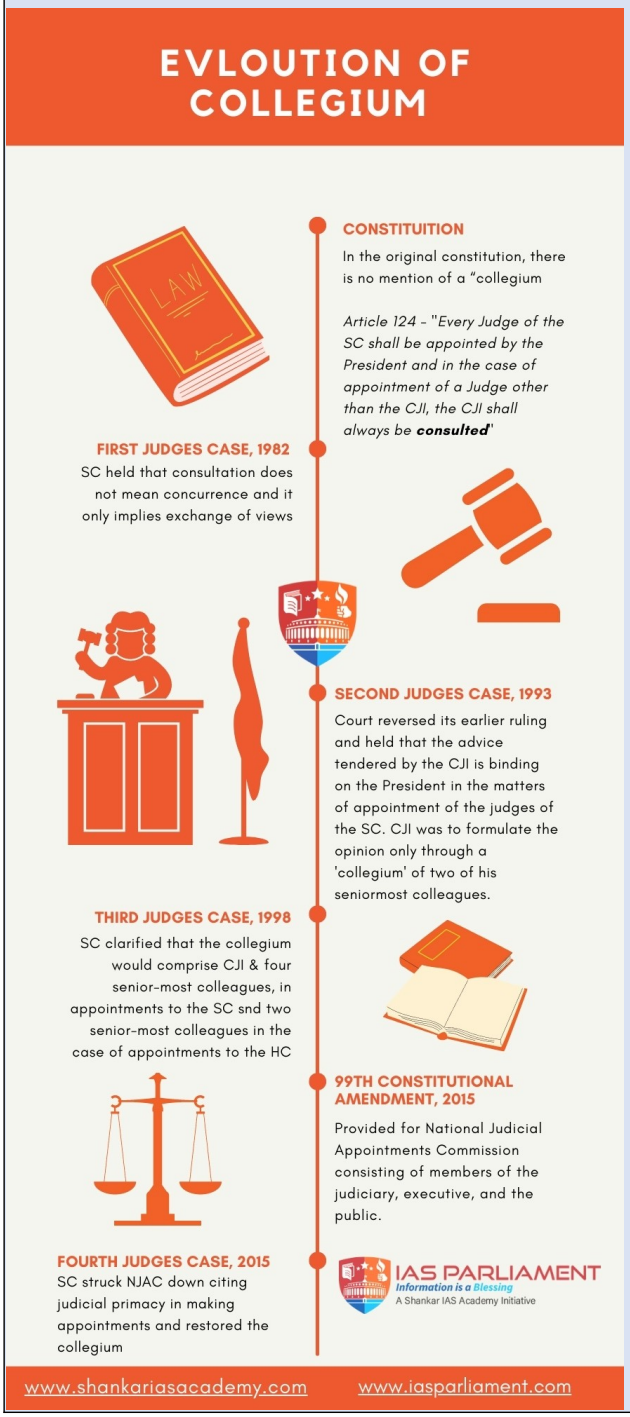
Recently Supreme Court asked the Attorney General for India why the names reiterated by the Supreme Court Collegium for appointment as judges were not yet cleared.

How are Supreme court and High court Judges appointed?

- **Constitutional Provision** – Article 124 and 217 provides for the appointment of Judges to Supreme court and High court.
- **Memorandum of Procedure (MoP)** – It is an agreement between the judiciary and the government containing a set of guidelines for making appointments to the Supreme Court and High Court.
- **Recommendation** – A high court collegium recommends the list of people to the central government.

Collegium System

• The collegium consists of CJI and 4 seniors most judges of the Supreme Court.
• The collegium system is not mentioned in the constitution and was created through judicial proceedings.
• **Evolution of Collegium**
• **First Judges Case, 1981 (SP Gupta case)** - 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.
• But, the CJI was to formulate the opinion only through a body of senior judges that the court described as the 'collegium'.
• **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
• Additionally, for HCs, the collegium would consult other senior judges in the SC who had previously served in the HC concerned.
• **NJAC** - The government, through 99th constitutional amendment, sought to replace the collegium with the National Judicial Appointments Commission (NJAC).
• The 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.
• It also held that the NJAC law gave politicians an equal say in judicial appointments to constitutional courts and declared NJAC to be unconstitutional.



- **Curation** – The Central government asks for the opinion of state governments and the input from the Intelligence Bureau (IB).
- The government then forwards the files, along with the IB inputs to the Supreme Court collegium.
- **Selection of Judges** – Persons to be appointed or promoted as judges of Supreme Court or High Court is selected by a Collegium of 4 Senior Most judges headed by Chief Justice of India(CJI).
- Then the selection is forward to the union law ministry which then forward it to the President.
- **Difference of Opinion** – In case of difference of opinion about the recommendations the law ministry can ask the collegium to reconsider its recommendations.
- **Reiteration** - If the collegium reiterates its recommendation, the government has to make the appointment.
- **Appointment** - President appoints the list of persons forwarded to it as Judges of Supreme court and High court.
- While appointing High Courts judges the President consults with CJI, Governor of the State and Chief Justice of that court.

What are the needs for a Judicial appointments commission?

- **Safeguard Democratic System** – Judicial independence could become dangerous and undemocratic unless there is a constitutional discipline with rules of good conduct and accountability.
- **Ensure Accountability** - Judges as persons, or courts as institutions, are entitled to no greater immunity from criticism than other persons or institutions.
- **Warrant Conduct** - Clear statement of the principles of selection is required to ensure the character and conduct of judges in a democracy.
- **Lacks Constitutional Guarantee** – The Collegium system is not mentioned in the constitution and was created through judicial pronouncements in Second Judges Case, 1993.
- **Absence of Public Voice** - There is no structure to in the collegium system hear the public in the process of selection.
- **Dearth of Principle** - Selection of judges of the highest court is done in an unprincipled manner, without investigation or study of the class character by the members of the collegium.
- **Non-transparency** - Lack of public knowledge of how and when a collegium meets, and how it takes its decisions with no official minutes of collegium proceedings.

What shall be the characters of a judicial appointments commission?

- A commission to select judges for the Supreme Court has to be of high standing and of the highest order having status equal to that of the Prime Minister or a Supreme Court judge.
- **Independent** - The commission has to be totally independent and its ideology should be broadly in accord with the values of the Constitution.
- **Ensure sovereignty** - It should uphold the sovereignty of the Constitution beyond

pressures from political parties and powerful corporations without fear or favour.

- **Immunity** - The commission can be immune to legal proceedings, civil and criminal.
- **Chairperson** - The commission's chairperson should be the Chief Justice of India to ensure separation of powers and judicial independence.
- **Selection of Member** - An investigation into the character, class bias, communal leanings may have to be investigated by an independent secret investigation agency functioning under the commission's control.
- **Removal** - It should be removed only by a high tribunal consisting of the Chief Justice of India and the Chief Justice of all the High Courts sitting together and deciding on any charges publicly made.

Reference

[The Hindu | Judicial Appointments]

