Judicial Appointments – Memorandum of Procedure

Why in news?

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The Parliamentary Standing Committee on law and justice noted on Thursday that the government may assume a “veto power” and reject any name recommended by the Collegium for appointment of judges if it succeeds in inserting clauses of “national security” and “larger public interests” in the proposed Memorandum of Procedure (MoP).

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What is Memorandum of Procedure?

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- In October 2015, SC struck down the National Judicial Appointments Commission (NJAC) Act and the 99th Constitutional Amendment which gave politicians and civil society a final say in the appointment of judges in HC and the SC.
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- Therefore the judicial appointments will be carried on by the recommendations of Collegium
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- In this judgment the court recommended “appropriate measures” to improve the working of the Collegium system - these included eligibility criteria, transparency in the appointment process, secretariat and complaints — for preparing the MoP.
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- The proposed MoP had following provisions –
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- **Seniority & Merit - W**hile promoting a High Court Chief Justice or a judge to the Supreme Court, the criteria of seniority, merit and integrity would be followed. Preference should be given to Chief Justices of the High Courts keeping in view their “inter-se seniority”.
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- **Reasons in writing - I**n case a senior Chief Justice being overlooked for elevation to the Supreme Court, the reasons for the same be recorded in

writing”.
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- **Three-judge quota -** The government proposed that up to three judges may be appointed from the Bar or from distinguished jurists with proven track records.
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- **Committee & Secretariat -** To set up an institutional mechanism in the form of a committee to assist the Collegium in evaluation of the suitability of prospective candidates.
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- The government has also proposed that there be a secretariat that maintains a database of judges, schedules Collegium meetings, maintains records and receives recommendations and complaints related to judges’ postings.
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- **National Security** - The government also insists on adding a criteria of “national security” and “larger public interests” for rejection of recommendation by the Collegium.
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What are the issues?

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- The government is of the view that the “reason in writing” is necessary for the sake of “transparency” and to ensure there is no “favouritism.
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- The Collegium’s counter-argument is that recordings of reasons for overlooking a Chief Justice or a senior judge will be counter-productive as the reasons specified may mar his/her prospects of being elevated to the Supreme Court at a “future point of time”.
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- Judiciary also said that the “upto three” judges from bar is equivalent to either restricting the intake from the bar or fixing a quota of the bar. And in neither case does it fall within the framework of the Constitutional provisions.
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- The Parliamentary Standing Committee on law and justice apprehends that the government may reject any name duly approved by the Supreme Court collegium under the veil of those national security and larger public interests. This would tantamount to giving veto power to the government, which is not the mandate of the Constitution.
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