Judicial Appointments System

What is the issue?

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The recent developments and concerns with regards to appointment of judges make it essential to understand the system of judicial appointments in India.

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How has the system evolved?

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- **Constitution** - The Constituent Assembly adopted a consultative process of appointing judges to ensure that judges remain insulated from political influence.
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- It avoided legislative interference and also the undemocratic provision of a veto to the Chief Justice.
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- Instead it vested in the President the power to both make appointments and transfer judges between high courts.
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- The President (to act on the advice of the council of ministers) was however required to consult certain authorities such as the CJI or chief justice of the high court appropriately.
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- **'Consultation'** - The Supreme Court earlier ruled that the word "consultation" could not be interpreted to mean "concurrence".
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- Accordingly the CJI's opinion was not binding on the executive.
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- Nevertheless, the executive could depart from the opinion only in exceptional circumstances and any such decision could be subject to judicial review.
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- The system was thus fairly balanced and in the First Judges Case, 1981 the court once again endorsed this interpretation.
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- **Second Judges Case** - In the famous Second Judges Case, 1993 the court

however overruled its earlier decisions.
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- It now held that “consultation” meant “concurrence”, and that the CJI’s view enjoys primacy.
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- This is with the rationale that CJI could be best equipped to know and assess the "worth" of candidates.
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- But, the CJI was to formulate the opinion only through a body of senior judges that the court described as the 'collegium'.
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- **Collegium** - In the Third Judges Case, 1998 the court clarified that the collegium would comprise CJI and four senior-most colleagues, in appointments to the Supreme Court.
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- And, the CJI and two senior-most colleagues in the case of appointments to the high courts.
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- Additionally, for HCs, the collegium would consult other senior judges in the SC who had previously served in the HC concerned.
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- On whether these views of the consultee-judges are binding on the collegium or not, the judgments are silent.
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- **NJAC** - The government, through 99th constitutional amendment, sought to replace the collegium with the National Judicial Appointments Commission.
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- The Supreme Court however struck NJAC down.
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- The court's rationale was that the NJAC law gave politicians an equal say in judicial appointments to constitutional courts.
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- **Change** - In what might now be called the Fourth Judges Case (2015), the court upheld the primacy of the collegium.
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- More importantly it declared collegium as part of the Constitution’s basic structure.
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- And so its power could not be removed even through a constitutional amendment.
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- But given the criticisms against the system, the judgment promised to consider appropriate measures to improve the collegium system.
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What are the recent developments?

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- The Supreme Court recently questioned the centre on the delay in finalising a Memorandum of Procedure (MoP) for judicial appointments as per its earlier order.
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- Importantly, the apex court recently declared that it would make public, on the court's website, its various decisions.
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- The information to be made public include:
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i. its verdicts on persons nominated for elevation as judges to the high courts.
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ii. its choices of candidates for elevation to the Supreme Court.
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iii. its decisions on transfer of judges between different high courts.
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iv. these will be accompanied by the reasons underpinning the collegium's choices.
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What are the shortfalls?

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- The move is essential in terms of bringing transparency into a system that has been long been criticised for its opacity.
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- However, the recently released first set of publications implies that the actual functioning is far from its proposed objective.
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- Notably, the details on the valid reasons behind the selection or rejection still lack clarity.
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- Also details on which of the judges reject the candidature is unrevealed.
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- In case of lack of consensus, at times the majority views are being over-

ridden even by decision one of the judges in the collegium.
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- These shortfalls seem to go against the objective of transparency and impartiality, and thus the system needs further assessment.
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- Meanwhile the centre should hasten its process of finalising the MoP on judicial appointments.
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Quick Fact

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Three Judges Cases

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- First Judges Case-1981, Second Judges Case-1993 and Third Judges Case-1998 are three of the own judgments of the Supreme Court, collectively known as the Three Judges Cases.
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- Over the course of these three cases, the court evolved the principle of judicial independence.
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- This meant that no other branch of the state i.e. the legislature and the executive would have any say in the appointment of judges.
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- It is with this principle in mind that the SC brought in the collegium system.
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Source: The Hindu

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