



19 - January 2023

APPOINTMENT OF JUDGES

This article covers "Daily current events" and the topic is about 'Appointment of judges, which is in news, it covers the "Indian polity" In GS-2, the following content has relevance for UPSC.

For Prelims: Relationship between executive and judiciary

For Mains: GS-2, issues regarding collegiums system

Why in news:

In a recent letter to the Chief Justice of India, Union Law Minister has made certain recommendations on the **appointment of judges**.

Regarding the college system:

- According to the guidelines outlined in Articles 124 and 217 of the Indian Constitution, judges of the High Courts and the Supreme Court are chosen.
- The Chief Justice of India and other judges must be consulted before the President names judges to the Supreme Court and high courts, according to Articles 124 and 217.
- The Chief Justice of India and the four senior-most judges of the Supreme Court make up the Supreme Court Collegium.
- The High Court Collegium is made up of the Chief Justice and the two most senior justices of that particular court.

Recommendations:

The government may raise concerns and request that the Collegium reconsider, but if the Collegium chooses to reaffirm its recommendations, they become binding. This is important.

SIGNIFICANCE OF THE APPOINTMENT OF JUDGES

By preserving the independence of the court, the collegium system was established to uphold the fundamental principles of the Constitution.

Additionally, it was done to ensure that the Chief Justice of India would not impose his or her own personal opinion regarding the appointment of judges, but rather the consensus of the entire body.

Concerns regarding the current system:

- The collegium system widens the scope of favoritism because it does not stipulate any rules or standards for the selection of Supreme Court justices.
- There are no requirements in the collegium system for screening candidates or performing background checks to determine their credibility.
- Because there is no administrative body, the collegium system's members cannot be held accountable for choosing any of the judges, which is another cause for concern.

Evolution of the system:

- **First Judges Case (1981):** It ruled that the Chief Justice of India's (CJI) decision on judicial appointments and transfers can be rejected for "cogent considerations" despite its "primacy."
- For the following 12 years, the court's decision granted the executive branch precedence over the judiciary in appointing judges.
- **In the Second Judges Case (1993),** the Supreme Court established the Collegium system and ruled that "consultation" actually meant "concurrence."
- Additionally, it was noted that this was not the CJI's personal judgement, but rather an institutional one developed after discussion with the SC's two most senior judges.
- **The Third Judges Case (1998):** The SC extended the Collegium to a five-member body, consisting of the Chief Justice of India and four of his senior-most colleagues, on the President's referral (Article 143)

Head of Collegium System:

- The SC collegium is led by the CJI (Chief Justice of India) and is made up of the court's four seniormost judges.
- The current Chief Justice and the two other senior most justices of the High Court make up a collegium that leads that court.
- Only the collegium system is used to pick judges of the higher judiciary, and only after the collegium has selected names does the government become involved.

Steps in the judicial appointment process:

For CJI:

- The CJI and the other Supreme Court judges are chosen by the Indian President.
- The departing CJI proposes his successor in terms of the CJI.
- Since the supersession issue of the 1970s, it has always been done purely by seniority in practice.

For SC Judges:

- The suggestion is started by the CJI for the SC's other judges.
- The CJI contacts the other members of the Collegium as well as the senior-most judge of the court who is a member of the High Court where the suggested individual is a member.
- The consultees must submit their written comments, which should be included in the file.
- The recommendation is forwarded by the Collegium to the Law Minister, who then transmits it to the Prime Minister for the President's guidance.

For Chief Justices of High Courts:

- According to the policy of having Chief Justices from outside the individual States, the Chief Justice of the High Court is appointed.
- The Collegium makes the decision on the promotion.
- A Collegium made up of the CJI and the two senior-most judges nominates candidates for the High Court.
- But the initiative for the idea comes from the departing Chief Justice of the relevant High Court, after consulting with her two most senior colleagues.
- The proposal is forwarded to the Governor, who is advised to forward it to the Union Law Minister by the Chief Minister.

In the context of news:

Collegiums with government representatives: According to Union Minister Riju's letter, the Supreme Court and High Court Collegiums should have government representatives.

This would represent a significant change from the current arrangement when the Collegiums were composed only of senior judges.

The significance of the Union Minister's most recent proposal is that it differs noticeably from previous ones in that, rather than advocating the creation of a brand-new forum (like NJAC), he suggests modifying the current system of judicial appointments to include people from the center.

Criticisms on the Appointment of Judges:

- **Justice system independence being compromised:** Critics assert that this will severely damage the concept of judicial independence and upset the delicate balance that the constitution is supposed to establish.
- **Non-inclusive:** Although the proposed NJAC included a larger and more diverse representation of India's political leaders, adding only a representation of the ruling party is viewed by many as an egregious attack on both the independence of the judiciary and the competitive balance between the ruling party and the opposition.

Piyush Singh



Yojna IAS

योजना है तो सफलता है