

FAQs

Collegium System.

Q. What is Collegium System?

A.

- The Collegium of judges is the Indian Supreme Court's invention.
- It does not figure in the Constitution, which says judges of the Supreme Court and High Courts are appointed by the President and speaks of a process of consultation.
- In effect, it is a system under which judges are appointed by an institution comprising judges.
- After some judges were superseded in the appointment of the CJI in the 1970s, and attempts made subsequently to effect a mass transfer of High Court judges across the country.
- Hence there was a perception that the independence of the judiciary was under threat. This resulted in a series of cases over the years.

Q. How does it evolved ?

A. The Judges Cases

- **First Judges Case (1981)** ruled that the “consultation” with the CJI in the matter of appointments must be full and effective.
- However, it rejected the idea that the CJI's opinion, albeit carrying great weight, should have primacy.
- **Second Judges Case (1993)** introduced the Collegium system, holding that “consultation” really meant “concurrence”.
- It added that it was not the CJI's individual opinion, but an institutional opinion formed in consultation with the two senior-most judges in the Supreme Court.
- **Third Judges Case (1998):** On a Presidential Reference for its opinion, the Supreme Court, in the Third Judges Case (1998) expanded the Collegium to a five-member body, comprising the CJI and four of his senior-most colleagues.

The procedure followed by the Collegium

Appointment of CJI

- The President of India appoints the CJI and the other SC judges.
- As far as the CJI is concerned, the outgoing CJI recommends his successor.
- In practice, it has been strictly by seniority ever since the supersession controversy of the 1970s.
- The Union Law Minister forwards the recommendation to the PM who, in turn, advises the President.

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Other SC Judges

- For other judges of the top court, the proposal is initiated by the CJI.
- The CJI consults the rest of the Collegium members, as well as the senior-most judge of the court hailing from the High Court to which the recommended person belongs.
- The consultees must record their opinions in writing and it should form part of the file.
- The Collegium sends the recommendation to the Law Minister, who forwards it to the Prime Minister to advise the President.

For High Courts

- The CJs of High Courts are appointed as per the policy of having Chief Justices from outside the respective States. The Collegium takes the call on the elevation.
- High Court judges are recommended by a Collegium comprising the CJI and two senior-most judges.
- The proposal, however, is initiated by the Chief Justice of the High Court concerned in consultation with two senior-most colleagues.
- The recommendation is sent to the Chief Minister, who advises the Governor to send the proposal to the Union Law Minister.

Q. Does the Collegium recommend transfers too?

A.

- Yes, the Collegium also recommends the transfer of Chief Justices and other judges.
- Article 222 of the Constitution provides for the transfer of a judge from one High Court to another.
- When a CJ is transferred, a replacement must also be simultaneously found for the High Court concerned. There can be an acting CJ in a High Court for not more than a month.
- In matters of transfers, the opinion of the CJI “is determinative”, and the consent of the judge concerned is not required.
- However, the CJI should take into account the views of the CJ of the High Court concerned and the views of one or more SC judges who are in a position to do so.
- All transfers must be made in the public interest, that is, “for the betterment of the administration of justice”.

FAQs

Q. What are the Loopholes in the Collegium system?

A.

- **Lack of Transparency:** Opaqueness and a lack of transparency, and the scope for nepotism are cited often.
- **Judges appointing Judge:** The attempt made to replace it with a 'National Judicial Appointments Commission' was struck down by the court in 2015 on the ground that it posed a threat to the independence of the judiciary.
- **Criteria:** Some do not believe in full disclosure of reasons for transfers, as it may make lawyers in the destination court chary of the transferred judge.

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