**What is the collegium system?**

* It is the system of appointment and transfer of judges that has evolved through judgments of the Supreme Court, and not by an Act of Parliament or by a provision of the Constitution.
* The Supreme Court collegium is headed by the Chief Justice of India and comprises four other senior-most judges of the court.
* A High Court collegium is led by its Chief Justice and four other senior-most judges of that court.
* Names recommended for appointment by a High Court collegium reaches the government only after approval by the CJI and the Supreme Court collegium.
* Judges of the higher judiciary are appointed only through the collegium system—and the government has a role only after names have been decided by the collegium.
* The government’s role is limited to getting an inquiry conducted by the Intelligence Bureau (IB) if a lawyer is to be elevated as a judge in a High Court or the Supreme Court.
* It can also raise objections and seek clarifications regarding the collegium’s choices, but if the collegium reiterates the same names, the government is bound, under Constitution Bench judgments, to appoint them as judges.

**What’s in Constitution for appointments of judges?**

* Judges of the Supreme Court and High Courts are appointed by the President under Articles 124(2) and 217 of the Constitution.
* The President is required to hold consultations with such of the judges of the Supreme Court and of the High Courts as he may deem necessary.

**Article 124(2)** says: “Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of 65 years. Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted.”  
  
**Article 217** says : “Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court.”  
**How did the collegium system evolve?**  
  
The collegium system has its genesis in a series of judgments called **Judges Cases**. The collegium came into being through interpretations of pertinent constitutional provisions by the Supreme Court in the **Judges Cases.**  
**First Judges Case:** In S.P. Gupta Vs Union of India, 1981, the Supreme Court by a majority judgment held that the concept of primacy of the Chief Justice of India was not really to be found in the Constitution.

* It held that the proposal for appointment to a High Court can emanate from any of the constitutional functionaries mentioned in Article 217 and not necessarily from the Chief Justice of the High Court.
* The Constitution Bench also held that the term consultation used in Articles 124 and 217 was not concurrence—meaning that although the President will consult these functionaries, his decision was not bound to be in concurrence with all of them.
* The judgment tilted the balance of power in appointments of judges of High Courts in favour of the executive. This situation prevailed for the next 12 years.

**Second Judges Case:** In The Supreme Court Advocates-on-Record Association Vs Union of India, 1993, a 9-judge Constitution Bench overruled the decision in S.P. Gupta and devised a specific procedure called **Collegium System** for the appointment and transfer of judges in the higher judiciary.   
  
Underlining that the top court must act in ‘protecting the integrity and guarding the independence of the judiciary’, the majority verdict accorded primacy to the CJI in matters of appointment and transfers while also ruling that the the term **consultation** would not diminish the primary role of the CJI in judicial appointments.  
  
Ushering in the collegium system, the court said that the recommendation should be made by the CJI in consultation with his two senior-most colleagues, and that such recommendation should normally be given effect to by the executive.   
  
It added that although it was open to the executive to ask the collegium to reconsider the matter if it had an objection to the name recommended, if, on reconsideration, the collegium reiterated the recommendation, the executive was bound to make the appointment.  
  
**Third Judges Case:** In 1998, President K.R. Narayanan issued a Presidential Reference to the Supreme Court over the meaning of the term consultation under Article 143 of the Constitution (advisory jurisdiction). The question was whether ‘consultation’ required consultation with a number of judges in forming the CJI’s opinion, or whether the sole opinion of CJI could by itself constitute a ‘consultation’.

* In response, the Supreme Court laid down 9 guidelines for the functioning of the coram for appointments and transfers—this has come to be the present form of the collegium, and has been prevalent ever since.
* This opinion laid down that the recommendation should be made by the CJI and his four seniormost colleagues, instead of two.
* It also held that Supreme Court judges who hailed from the High Court for which the proposed name came, should also be consulted. It was also held that even if two judges gave an adverse opinion, the CJI should not send the recommendation to the government.
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**Critisism of collegium system**  
  
Critics argue that the system is non-transparent, since it does not involve any official mechanism or secretariat. It is seen as a closed-door affair with no prescribed norms regarding eligibility criteria or even the selection procedure. There is no public knowledge of how and when a collegium meets, and how it takes its decisions. Lawyers too are usually in the dark on whether their names have been considered for elevation as a judge.  
  
**Efforts made by the Government**

* The NDA government has tried twice, unsuccessfully both times, to replace the collegium system with a National Judicial Appointments Commission (NJAC).
* The BJP-led government of 1998-2003 had appointed the Justice M.N. Venkatachaliah Commission to opine whether there was need to change the collegium system.
* The Commission favoured change, and prescribed an NJAC consisting of the CJI and two senior-most judges, the Law Minister, and an eminent person from the public, to be chosen by the President in consultation with the CJI.
* Last year, a 5-judge Constitution Bench declared as unconstitutional the constitutional amendment that sought to create the NJAC, which had envisioned a significant role for the executive in appointing judges in the higher judiciary.
* The Bench sealed the fate of the proposed system with a 4:1 majority verdict that held that judges’ appointments shall continue to be made by the collegium system in which the CJI will have the last word.
* Justice J Chelameswar wrote a dissenting verdict, criticising the collegium system by holding that “proceedings of the collegium were absolutely opaque and inaccessible both to public and history, barring occasional leaks”.

**Appointments being made now**  
  
The collegium has been making recommendations for appointments and transfer of judges. However, the 2015 ruling, in the end, had also paved the way for a new Memorandum of Procedure (MoP) to guide future appointments so that concerns regarding lack of eligibility criteria and transparency could be redressed. The Bench had asked the government to draft a new MoP after consultation with the CJI. But more than a year later, the MoP is still to be finalised owing to lack of consensus on several fronts between the judiciary and the government. Since the new MoP is not in place, the government has been slow in clearing the appointments, which has also become a matter of judicial decision after a clutch of petitions were filed in the Supreme Court against the delay in making appointments