

Government Nominees in Court Collegiums

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Why in news?

- Union Law Minister has written to Chief Justice of India (CJI) to suggest a nominee of the Union government in the Supreme Court Collegium and a State representative in each of the High Court collegiums.
- The letter offered the suggestion since the Memorandum of Procedure (MoP) is pending finalisation.

What is the collegium system?

- The collegium of the CJI and four senior-most judges of the Supreme Court make recommendations for appointments to the apex court and High Courts.
- The **collegium can veto the government** if the names are sent back by the latter for reconsideration.
- The basic tenet behind the collegium system is that the judiciary should have primacy over the government in matters of appointments and transfers in order to remain independent.

Evolution of collegium System

- **Constitutional Position**
 - Article 124(2) of Indian Constitution deals with the appointment of Judges of Supreme Court.
 - As per this article:
 - President will **consult** such judges of the SC and of the HCs in the States as the President may deem necessary.
 - CJI shall always be **consulted** in case of the appointment of judge other than the Chief Justice of SC.

Controversy over the Word Consultation

- This word consultation in Article 124 was interpreted by the SC in a different way ultimately leading to the evolution of Collegium system.

Evolution of Collegium System

- **First Judges Case (1982)** - SC held that **consultation does not mean concurrence**; Gave Primacy to Executive
- **Second Judges Case (1993)** - Court reversed its earlier ruling by changing the meaning of consultation to concurrence.
 - Advice tendered by CJI is binding.
 - CJI would take into account the views of two of his senior most colleagues.
- **Third Judges Case (1998)** - Court gave primacy to the opinion of CJI in the matter of appointment of Judges. However, Chief Justice must consult four seniormost judges of SC.
 - Opinion of all members of the collegium should be in writing.

What is Memorandum of Procedure (MoP)?

- The MoP is the official playbook agreed upon by the government and the judiciary on the appointment of judges.
- It is a crucial document that governs the collegium system of appointing judges.
- Since the collegium system evolved through a series of ruling by the Supreme Court, and is not based on legislation, the MoP is the bedrock of the process of appointments.
- MoP fixes the protocol under which the collegium system works.

What is the current status of MoP?

- In October 2015, SC struck down the constitutional amendment that had brought in the **National Judicial Appointments Commission (NJAC)**.
 - NJAC act had provided for a six-member panel, including the Law Minister and two independent persons, to appoint judges to the SC and the High Courts.
 - It sought to change the system of appointment of judges to the higher judiciary by giving the government a say in the appointment process.
- After this, the apex court had directed the government to finalise the existing MoP by supplementing it in consultation with the Supreme Court collegium.
 - The new MoP is to take into consideration eligibility criteria, transparency, establishment of a new secretariat and a mechanism to deal with complaints against proposed candidates.
- So far, the Supreme Court and the Government have failed to reach at a consensus on revision of the MoP.
- A key point of contention was the inclusion of a national security clause that could thwart an appointment.
 - Officially, the government's stand is that the MoP is "pending finalisation".

News Summary: Government Nominees in Court Collegiums

- Union Law Minister Kiren Rijiju has written to CJI suggesting the inclusion of a government nominee in the decision-making process for shortlisting of judges.
- This letter is only part of an ongoing dialogue between the Government and the court regarding appointments and it is yet to be discussed by the Collegium.

What are the key suggestions given by Law Ministry in the letter written to CJI?

- The search and evaluation committee for High Court judges should include a nominee of the Central and respective state governments.
- For shortlisting of judges for the Supreme Court and Chief Justices of High Courts, this committee should include a nominee of the Centre.

- At present, the names are vetted by the Collegium, either of the High Courts or the Supreme Court, which comprises senior judges.
 - The committee will, in turn, make its recommendations to the High Court or Supreme Court Collegium as the case may be.
 - The final decision will still vest with the Collegium.
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Q1) What are the eligibility criteria for a person to be appointed as a judge of Supreme Court of India?

For a person to become a judge of Supreme Court he must be a citizen of India, and

- Must have 5 years of experience as a judge in the High Court; or
- must have 10 years of experience as an advocate in High Court; or
- is in the opinion of the president, a distinguished Jurist.

Q2) What is 99th Constitutional Amendment Act?

The Ninety-ninth Amendment of the Constitution of India, officially known as The Constitution (Ninety-ninth Amendment) Act, 2014, formed a National Judicial Appointments Commission (NJAC) – an independent commission to appoint judges to the Supreme Court and high courts to replace the collegium system.

Source: [Law Minister Kiren Rijju seeks government nominees in court collegiums, writes to CJI](#) | [Indian Express](#) | [Constitution of India](#)

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