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A Critical Study on Appointment of Judges in Supreme Court

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ABSTRACT

The judicial system in India is organised into three levels: the Supreme Court, the High Court, and the Subordinate Courts. The Judiciary is an essential part of the government, and under a Constitution that guarantees separation of powers between the centre and the state as well as an independent Judicial System, the job of the Judiciary becomes even more vital. Article 124 of the Indian Constitution, Establishment, and Supreme Court Constitution. The method for appointing and dismissing judges has evolved as a result of Supreme Court rulings rather than an Act of Parliament or a constitutional provision. This article explains about the Appointment of Judges of Supreme Court - Collegium System which is important for UPSC Indian Polity Preparation.

Keywords: Collegium System , Supreme Court.

I. INTRODUCTION

The judicial system in India is organised into three levels: the Supreme Court, the High Court, and the Subordinate Courts. The Judiciary is an essential part of the government, and under a Constitution that guarantees separation of powers between the centre and the state as well as an independent Judicial System, the job of the Judiciary becomes even more vital. Article 124 of the Indian Constitution, Establishment, and Supreme Court Constitution. The method for appointing and dismissing judges has evolved as a result of Supreme Court rulings rather than an Act of Parliament or a constitutional provision. This article explains about the **Appointment of Judges of Supreme Court - Collegium System** which is important for UPSC Indian Polity Preparation.

II. SUPREME COURT OF INDIA

- The **Supreme Court** of India is one of the world's most powerful courts. It is the last arbiter in any disagreement between the centre and the states or the states themselves.
- This single system of courts, adopted from the **Government of India Act of 1950**.
- **Article 124 to 147 in Part 4** of the Constitution deals with the organisation,

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independence, jurisdiction, powers, procedures and so on of the SC.

- It is also the highest and ultimate interpreter of the country's general law. It is the highest court of appeals in both civil and criminal cases.
- The Supreme Court has such wide power and functions, justices who sit on the Supreme Court bear enormous obligations; thus, they must be nominated through a reasonable and fair procedure free of prejudice so that the Supreme Court can function efficiently

(A) Appointment of Judges of the Supreme Court

- The **Supreme Court judges** are appointed by the President.
- The president appoints the chief justice after consulting with Supreme Court and high court justices as he considers appropriate, **Article 124 (2)**.
- The president appoints the other judges after consulting with the chief justice and as many additional **Supreme Court** and high court judges as he considers appropriate.
- The Supreme Court ruled that the President's consultation with the **Chief Justice** is not legally binding. However, the Court ruled that consultation must be effective.
- The CJI is the only authority to commence the process of appointing Supreme Court judges.
- In the event of a disagreement between the CJI and the President, the CJI's viewpoint shall take precedence.

(B) Chief Justice of India

- The appointment of the Chief Justice of India shall be made by the senior most **Supreme Court Judge** deemed qualified to assume the post.
- At the appropriate time, the Union Minister of Law, Justice, and Corporate Affairs will seek the advice of the outgoing Chief Justice of India for the appointment of the next Chief Justice of India.
- If there is any question regarding the eligibility of the senior most Judge to occupy the position of Chief Justice of India, the appointment of the next Chief Justice of India will be decided after consultation with other Judges, as provided for in **Article 124 (2)** of the Constitution.
- Following receipt of the Chief Justice of India's proposal, the **Union Minister of Law, Justice, and Corporate Affairs** will forward the suggestion to the Prime Minister, who will advise the President on the appointment.

- Until 1973, however, the senior-most **Supreme Court judge** was designated as the 'Chief Justice of India.'
- This practice had become a 'convention,' and the president adhered to it without fail.
- However, the government abruptly abandoned this practice when **Justice A.N. Roy** was appointed Chief Justice of India, succeeding three senior Supreme Court judges.

Evolution

(C) Qualifications of Judges

- A person seeking appointment as a Supreme Court judge should possess the following qualifications:
 - He/she must be an Indian citizen.
 - He/she must have served as a judge of a High Court (or High Courts in succession) for at least five years, or he/she must have served as an advocate of a High Court (or High Courts in succession) for at least ten years, or he/she must be a distinguished jurist in the president's judgment.
- Thus, the Constitution does not specify a minimum age for nomination as a Supreme Court judge.

(D) Oath or Affirmation

- Before taking office as a Supreme Court judge, a person must take and sign an oath or affirmation in front of the President, or another person nominated by him/her for that purpose.
- A Supreme Court judge swears the following in his/her oath:
 - to bear true faith and allegiance to the Constitution of India;
 - to uphold the sovereignty and integrity of India;
 - to duly and faithfully and to the best of his ability, knowledge, and judgment to perform the duties of the Office without fear or favor, affection or ill-will; and
 - to uphold the Constitution and the laws.

(E) Tenure of Judges

- The tenure of a Supreme Court judge is not specified in the Constitution. In this regard.
- However, it makes the following three provisions:
 - He/she is in office until he reaches the age of 65. Any query about his age will be decided

by Parliament's authority and in the way it specifies.

- By writing to the President, he can resign his position.
- At the suggestion of the Parliament, the President has the power to remove him from office.
- The salaries of the Supreme Court's judges and administrative expenditures are charged to the Consolidated Fund of India and are not subject to parliamentary approval.
- After retirement, Supreme Court judges are not permitted to plead or act in any court or before any authority within the territory of India.

(F) Removal of Judges

- **By Presidential order**, a Supreme Court judge can be dismissed from his position. Only after an address from Parliament has been given to him/her in the same session may the President issue the removal order.
- **A special majority of each House of Parliament must approve the address** (ie, a majority of the total membership of that House and a majority of not less than two-thirds of the members of that House present and voting). There are two reasons for removal: **proven misbehavior or incapacity**.
- The **Judges Enquiry Act (1968)** governs the process of impeachment used to remove a Supreme Court judge:
- As of now, no Supreme Court justice has been impeached. In the Parliament, impeachment motions against Justice V Ramaswami (1991–1993) and Justice Dipak Misra (2017–2018) were lost.

(G) Acting Chief Justice

- The President can appoint a judge of the Supreme court as an acting chief justice of india when:
- The office of Chief justice of India is vacant;
- The chief justice of India is temporarily absent
- The chief justice of India is unable to perform the duties of his office.

(H) Ad Hoc Judge

- **Article 127** of Indian constitution deals with the appointment of ad hoc judges
- When a quorum of permanent judges is required to hold or continue a Supreme Court

session, the Chief Justice of India may appoint a judge of a High Court as an ad hoc judge of the **Supreme Court** for a limited time.

- He can only do so after consulting with the chief justice of the relevant High Court and receiving the president's prior approval.
- The judge thus selected must be eligible to serve on the Supreme Court. It is the obligation of the judge thus appointed, in addition to his other duties, to attend Supreme Court sittings.
- While doing so, he has all the jurisdiction, powers, and privileges (and fulfils the duties) of a Supreme Court judge.

(I) Retired Judge

- **Article 128** of Indian constitution deals with the attendance of retired judges at sitting of the supreme court.
- The chief justice of India may, at any time, propose that a retired Supreme Court judge or a retired judge of a high court (who is lawfully qualified for appointment as a judge of the Supreme Court) sit as a judge of the Supreme Court for a brief term.
- He can only do so with the prior approval of both the president and the person to be nominated.
- Such a judge is entitled to any allowances the president deems appropriate.
- He will also have all of the jurisdiction, powers, and perks of a Supreme Court judge. He will not, however, be considered a Supreme Court justice.

III. APPOINTMENT OF JUDGES AND EVOLUTION OF COLLEGIUM SYSTEM

- The Supreme Court has offered diverse meanings of the phrase "consultation."
- In the **First Judges Case, 1981**, the Supreme Court determined that the word "Consultation" could not be understood to signify "concurrence," which means that the CJI's view is not binding on the administration.
- Only in extraordinary circumstances might the Executive deviate from the CJI's judgement, and any such action could be subject to court review.
- The Supreme Court reversed its prior decision in the **Second Judges case (1993)**, changing the meaning of the word consultation to concurrence.
- It limited the Government's power in the Second Judges Case (1993), ruling that the

Chief Justice of India shall be selected solely by the Supreme Court's senior-most judge.

- The court supported its judgement by arguing that the CJI was the greatest alternative for knowing and assessing the merit of candidates.
- However, the CJI must issue the opinion solely through a group of senior judges known as the "collegium," as defined by the court.
- The Court stated in the **Third Judges case (1998)** that the Chief Justice of India's consultation process requires "**consultation with plurality judges.**"
- The consultation process is not defined by the CJI's single opinion. He/she should consult a collegium of four Supreme Court senior judges, and even if two of them disagree, he/she should not convey the suggestion to the administration.
- The court ruled that the top justice of India's recommendation, which was made without following the consultation process's standards and requirements, was not binding on the government.
- Thus, the Collegium system was created as a result of the "three judges case" and has been in use **since 1998** and is used in the High Courts and Supreme Courts to appoint and transfer judges.
- The Collegium is not mentioned in either the original **Indian Constitution** or subsequent revisions.

(A) Collegium System

- In India, the **Collegium system**, often known as "Judges-selecting-Judges," is a system in which judges are selected and transferred solely by the judges.
- The system has evolved as a result of **Supreme Court** decisions, rather than an Act of Parliament or a Constitutional provision.
- The Supreme Court Collegium is led by the Chief Justice of India and consists of four of the Supreme Court's most senior justices.
- The technology was implemented in order to enhance and improve the appointment process.
- To guarantee that the CJI's opinion is produced collectively by a body of persons at the highest level of the court, rather than as an individual opinion.

(B) The Collegium System in Action

- The **collegium makes recommendations** to the Central Government for lawyers or

judges. Similarly, the Collegium receives part of the Central Government's recommended names.

- It analyses the Central Government's names or ideas and resubmits the dossier to the government for final approval.
- If the Collegium sends the same name to the Government twice, the Government must approve the names. However, there is no time limit set for responding, making the process of appointing judges so lengthy.

(C) National Judicial Appointments Commission (NJAC)

- The **National Judicial Commission Act (NJAC) was established in 2014** by the **99th Constitutional Amendment Act** to replace the collegium system for appointing judges.
- In October 2015, a five-judge Constitution Bench ruled that the **National Judicial Appointments Commission Act (NJAC) and the Constitutional (Ninety-Nine Amendment) Act, 2014** were unconstitutional.
- The Supreme Court, on the other hand, supported the collegium system and declared the NJAC illegal, claiming that the involvement of the political executive in judicial appointments **violated the Principles of Basic Structure, the independence of the Judiciary.**

(D) Fourth Judges Case, 2015

- The **Supreme Court** affirmed the authority of the collegium in the Fourth Judges Case, 2015, by knocking down the **NJAC statute.**
- The court reasoned that the **NJAC statute** gave politicians equal influence in judge selections to constitutional courts, which violated the concept of "separation of powers" under the Basic Structure of the constitution.
- As a result, the **Supreme Court** ruled that because the collegium is part of the core structure of the Constitution, its power cannot be withdrawn even by a constitutional amendment.
- However, in response to significant criticism of the collegium, the decision committed to examine all necessary changes to reform the **collegium system.**
- The **Supreme Court** ordered the administration to submit the Memorandum of Procedure (MoP) for this purpose.

(E) Issues Associated with Collegium System

- **Lack of Transparency:** The collegium system is opaque due to the lack of a written operating manual, the absence of selection criteria, the arbitrary reversal of previously made decisions, and the selective release of meeting records.
- Nobody knows how judges are chosen, and the results raise questions about propriety, self-selection, and nepotism.
- Several excellent junior judges and advocates are frequently overlooked by the system.
- **Lack of Consensus:** The collegium members frequently face the question of mutual consent when it comes to appointing judges.
- The shadow of distrust between collegium members reveals the flaws in the judicial system.
- For example, Sharad A. Bobde, the recently retired Chief Justice of India, is believed to be the first chief justice to have failed to make even a single recommendation for appointment as a Supreme Court judge due to a lack of unanimity among the collegium members.
- **Unequal Representation:** The composition of the higher courts is another source of concern. Women are significantly underrepresented in the higher judiciary, notwithstanding the lack of data on caste.
- **Judicial Appointments Being Delayed:** The process of judicial appointment is being held up due to a delay in the collegium's recommendations for the higher judiciary.
- **Against established conventions:** The convention of seniority' has long been held as the method for appointments, but supersession' disregards and abdicates this convention, allowing subjectivity and individual bias in appointments.
- **Despite the fourth judge's case, no modifications were implemented:** after throwing down the NJAC Act, the court did nothing to alter it or introduce protections that would have made it constitutionally viable. Instead, the court reinstated the previous Collegium-based appointment system.

IV. WAY FORWARD

- The collegium system's subjectivity and inconsistencies emphasise the need to rethink the process of appointing judges.
- The **NJAC** should be reformed to ensure the judiciary's independence in its rulings and reintroduced in some form or another.

- The Supreme Court should provide a written manual that should be followed during nominations, and all meeting recordings should be made public to promote openness and a rule-based procedure.
- As a result, India must restore the higher judiciary's legitimacy by making the process of choosing justices open and democratic.
- Apart from revamping the collegium structure, the establishment of All India Judicial Services (AIJS) can help to improve the quality of judges.

V. CONCLUSION

The Indian constitution established an integrated judicial structure, with the supreme court at the apex and the high courts below it. Since the adoption of our Constitution, the Judiciary has played a critical role in interpreting and safeguarding the Constitution whenever a disagreement has occurred. It is vital that the court, which is a crucial pillar of civil liberties, be completely autonomous and unfettered by the Executive's direct and indirect influence. The absolute least that can be done to safeguard the independence of India's judicial system is to identify and choose judges of the highest integrity for appointment to the country's highest courts.

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