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Date – 15 February 2023

JUDGES APPOINTMENT

With the appointment of Justices Victoria Gowri as the judge of Madras High Court, the system of appointing judges is again in the news.

Concepts to be remembered for UPSC

- **Art 124** of the Indian Constitution for appointment of the Supreme Court Judge
- **Art 217** for the appointment of the High Court Judge.
- Collegium system
- First Judge Case
- Second Judge Casew
- Third Judge Case
- Fourth Judge Case



Judges Appointment

DETAILS ON APPOINTMENT OF JUDGES

ART 124 OF THE INDIAN CONSTITUTION

There shall be a Supreme Court of India constituting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges

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 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 sixty-five 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,

- A Judge may, by writing under his hand addressed to the President, resign his office;
- A Judge may be removed from his office in the manner provided in clause (4)

ART 217 OF THE INDIAN CONSTITUTION

a) As per Article 217 of the Indian Constitution, the President should consult with the Chief Justice of India, and the Governor of the State, and, if a judge other than the Chief Justice, the Chief Justice of the High Court should also be consulted.

COLLEGIUM SYSTEM

- Collegium System is not mentioned in the Constitution, rather it is a judicial innovation that evolved over several judicial pronouncements i.e. First Judge Case, Second Judge Case, and Third Judge Case.
- Evolution of the Collegium System:

a. First Judge Case

b. Second Judge Case

c. Third Judge Case

d. Fourth Judge Case

First Judges Case (1981)

- Also known as **SP Gupta v/s UOI case**
- This judgment was given in a 4:3 majority
- It stated that “cogent” grounds may be given for rejecting the “primacy” of the CJI’s recommendation on judicial appointments and transfers.

- In its ruling, it was determined that “consultation” did not involve “concurrence,” that the President had the authority to designate judges in accordance with Article 124, and that the President might disregard the opinions of the consultees.

Second Judges Case (1993)

- **Collegium System** was introduced in the second Judge Case
- By a majority of 7:2, a nine-judge bench of the Supreme Court overruled the judgment in the First Judges Case.
- It was opined that it was not only the CJI’s opinion that was required for the appointment of judges, rather it would be the recommendation of the CJI+2 senior-most judge.
- So collegium became the body of CJI + senior-most judges.

Third Judge Case(1998)

- The Collegium system now came to be known as CJI+4 senior studies, i.e. the body of 5 judges in total

Fourth Judge Case(2014)

- In this case, the Supreme Court struck down the NJAC i.e. National Judicial Appointment Commission, which passed through 9th constitutional amendment.

Appointment of the CHIEF JUSTICE OF INDIA

- The entire mechanism of the appointment of the judges is dealt with under **Art 124(2) of the Indian constitution.**
- The senior most Supreme Court judge deemed qualified to serve in the position should be appointed as India’s Chief Justice.
- When the time is right, the Union Minister of Law, Justice, and Corporate Affairs will request the retiring Chief Justice of India’s recommendation for the selection of the new Chief Justice of India.
- If there is any doubt about the fitness of the senior most Judge to hold the office of the Chief Justice of India, consultation with other Judges as envisaged in Article 124 (2) of the Constitution would be made for the appointment of the next Chief Justice of India.
- After receiving the Chief Justice of India’s recommendation, the Union Minister of Law, Justice, and Corporate Affairs will forward it to the Prime Minister, who will advise the President on the appointment.

APPOINTMENT OF THE JUDGES OF THE SUPREME COURT

- The current strength of the Supreme Court Judge is 34.
- The Union Minister of Law, Justice, and Corporate Affairs would receive the Chief Justice of India’s request and recommendation to fill the vacancy whenever a vacancy arises in the position of a Supreme Court judge.

- The four seniormost puisne judges of the Supreme Court should form a collegium with the Chief Justice of India to discuss the Chief Justice's recommendation for the appointment of a Supreme Court judge.
- If the successor Chief Justice of India is not one of the four seniormost puisne Judges, he would be made part of the collegium as he should have a hand in the selection of Judges who will function during his term as Chief Justice of India.
- The Chief Justice of India will seek the opinions of the seniormost Supreme Court judge from the High Court where the recommended candidate is from, but if that judge is unaware of the recommended candidate's merits and shortcomings, the next seniormost Supreme Court judge from that High Court should be consulted.

APPOINTMENT OF THE JUDGES OF THE HIGH COURT

- Article 217 of the Constitution: It states that the Judge of a High Court shall be appointed by the President in consultation with the Chief Justice of India (CJI), the Governor of the State.
- If there is a case of appointment of a Judge other than the Chief Justice, the Chief Justice of that particular high court shall also be consulted.
- Involved consultation process: High Court judges are recommended by a Collegium of the CJI + 2 senior-most judges.
- The recommendation is sent to the Chief Minister, who advises the Governor to send the proposal to the Union Law Minister.

CRITICISM OF THE COLLEGIUM SYSTEM

- It is considered to be a total judge judiciary-centric appointment procedure where the judiciary is seemingly appointing judiciary with no involvement of the executive
- Giving rise to "uncle judge syndrome": The infamous Uncle Judge Syndrome refers to corrupt practices where relatives of a judge have favored judgment and by virtue of this means, they get name, fame, and popularity.

Shibaji biswas