

## JUDICIAL APPOINTMENT- DEADLOCK IN COLLEGIUM SYSTEM

**TAGS:** GS-2: Polity and Constitution

**CONTEXT:**

With just over a month left in his **14-month tenure** as **Chief Justice of India**, the Justice S A Bobde-led collegium is **yet to make its first recommendation** of a **judge to be appointed to the Supreme Court** since November 2019.

<b>MAGISTERIAL CONCERNS</b>		
<p><b>WHAT ARTICLE 124(2) SAYS</b> Every SC judge to be appointed by President after consulting judges of SC &amp; HCs as the President deems necessary. In appointing a judge other than the chief justice, CJI must always be consulted</p>	<p><b>ARTICLE 217</b> ▶ Every HC judge will be appointed by the President after consulting CJI, state's governor and for a judge other than the CJ, the state's CJ</p>	<div style="text-align: center;">  </div> <p>reference, a 9-judge bench reaffirmed the 1993 judgment, enlarged SC panel from 2 judges to 4. This became the collegium system ▶ Collegium system drew charges of nepotism</p> <p><b>Late Justice J S Verma, one of the authors of the 1993 judgment, later said he erred</b> “ My 1993 judgment has been... misunderstood and misused. ... Some rethink is required... my judgment says the appointment process of SC and HC judges is... a joint... exercise between the executive and the judiciary both taking part</p>
<p>▶ This system continued till 1981 where CJI initiated appointment of a judge, then considered by the President</p> <p>1982   SC reduced role of consultation with judiciary, giving executive a free hand in appointment of judges. A seven-judge bench held “consultation” did not mean</p>	<p>“concurrency” and the Constitution did not provide for the CJI's primacy</p> <p>1993   In Advocates-on-Record Association case, a 9-judge bench by majority of 7 ruled CJI would appoint judges. The primacy shifted. It amounted to rewriting the Constitution but didn't seem</p>	<p>a case of judicial take-over because of memories of efforts under Indira Gandhi to usher in a “committed” judiciary</p> <p>▶ This judgment laid down process for CJI to recommend names with consultation of two senior-most SC judges</p> <p>1998   On presidential</p>
		<p>2002   Venkatchaliah Commission recommended a five-member NJAC to replace the collegium system</p> <p style="background-color: red; color: white; padding: 2px;">Congress-led UPA initiated the present NJAC to replace the collegium system and it was enthusiastically taken up by the NDA after it came to power</p>

**NEWS IN DETAILS:**

- **Last Precedent:** The last time a CJI retired without a single appointment to the SC was in 2015 during the tenure of CJI H L Dattu.
  - There was an **unprecedented stand-off between the judiciary and the government** over the National Judicial Appointments Commission (NJAC).

**ISSUES:**

- The **stalemate in the collegium comes** even as the process of appointment of at least six SC judges is due.
- **Short of judges Strength:** The apex court is short of four judges while two retirements — of CJI Bobde and Justice Indu Malhotra — are due in the next two months. Additionally, Justices Ashok Bhushan, Rohinton Nariman and Navin Sinha will retire this year.
- **Point of contention in appointment:** Justice Kureshi's appointment as CJ of Tripura was also a point of contention for the then SC collegium headed by CJI Ranjan Gogoi.
- **Reversal in recommendation:** In September 2019, the SC court collegium had reversed its May 2019 recommendation appointing Justice Kureshi as CJ of Madhya Pradesh High Court after the

government sent the file back for reconsideration and instead recommended him for the position of Chief Justice of Tripura.

- **“Communication and material”**: Without citing reasons, the collegium said that its reconsideration was based on the “communication and material” placed by the Department of Justice.

#### **REASON FOR DELAY IN APPOINTMENT:**

- **Lack of consensus in the collegium**: One reason is the **lack of consensus in the collegium** – comprising CJI Bobde and Justices NV Ramana, Rohinton Nariman, U U Lalit and AM Khanwilkar – **on recommending Justice Akil Kureshi, Chief Justice of Tripura High Court, to the apex court.**
- **Gujarat HC judge appointment issue**:
  - Even in November 2018, when the post of CJ of the Gujarat High Court fell vacant, Justice Kureshi, who was then the seniormost judge of the High Court, was to take charge as acting Chief Justice of Gujarat HC as per convention.
  - However, the government named Justice AS Dave, who was then the second most senior judge in the Gujarat High Court after Kureshi, as acting Chief Justice and, instead, transferred Justice Kureshi to Bombay High Court as its fifth most-senior judge.
  - This unusual situation would have led to Justice Kureshi being a judge in Gujarat HC until he took office in Bombay HC while his junior would be acting CJ. However, this, too, was reversed when the Gujarat HC Bar launched a protest and moved the SC.

#### **APPOINTMENT DURING CJI TENURE:**

- **CJI Bobde**: He **inherited just one vacancy**, that of former CJI Ranjan Gogoi, against the total strength of 34 judges when he took over. However, three judges have retired since leaving the SC with 30 judges.
- **CJI Ranjan Gogoi**: Former CJI Ranjan Gogoi **inherited seven vacancies** when he took office but **14 judges were appointed** and 146 high court appointments were made during his tenure.
- **CJI Dipak Misra**: Who preceded Gogoi, saw **four SC appointments** and **81 appointments to high courts**.

**SOURCE: Indian Express**