

## APPOINTMENT OF HIGHER JUDICIARY- KEY TAKE AWAY POINTS

- Article 124 of the Indian Constitution deals with the appointment of the Supreme Court Judges. The article 124 explicitly states that “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.”
- Appointment process came into the limelight when A.L.Roy, a Supreme Court judge, was made as a Chief Justice Of India overcoming the rule of seniority. This random appointment triggered the issues in the appointment of Judges.
- So, the need for right interpretation of Article 124 was raised in the court of law in the **First Judge Case, 1981**.
- Supreme Court clarified the word “**consultation**” means mere exchange of ideas between President and Supreme Court Judges. It does not have a binding force on President. The primacy of appointment still lies in President.
- But in the **Second Judge Case, 1993** the Supreme Court interpreted the article 124 and delivered change in term “Concurrence” in place of consultation. Concurrence denotes binding force on President. So, President must act on the advice of Supreme court Judges.
- In the same judgement, the Supreme Court introduced the new term “Collegium System”. It denotes Chief Justice Of India and two other senior-most judges of the Supreme court(1+2) will put forward the list of Judges for the appointment process. The collegium system is followed till now.
- **In Third Judge Case, 1998** the Supreme Court expanded the strength of Collegium system with respect to the appointment of

Supreme court Judges alone. The court ruled denotes Chief Justice Of India and four other senior most judges of Supreme Court(1+4) will put forward the list of Judges for the appointment process. And for the appointment process of High court Judges, the collegium system followed is (1+2) model.

- Later, Parliament made a 99<sup>th</sup> constitutional Amendment for creation of National Judicial Appointment Commission (NJAC). NJAC deals with appointment of Judges with involvement of Judges, law minister and other two eminent persons in commission.
- But Supreme Court struck down the NJAC in 2015 calling, it as a threat to the **independence of Judiciary**, which is the Basic Structure Doctrine of the Indian Constitution. So, still the collegium system is followed in India and their transparency is questioned whenever any random appointments are made.