

Senate votes to confirm Barrett to Supreme Court

November 3, 2020

The appointment of a Supreme Court Justice is an event of major significance in American politics. Recent appointment to the nine-member Court is of significance given that the countdown for US presidential elections has begun. One should study the difference between Indian and US Supreme court judges appointments.

In news: Senate has voted to confirm Amy Barrett to the U.S. Supreme Court.

Placing it in syllabus: Foreign affairs

Static dimensions

1. Procedure of Election of US supreme court judges and comparison with India
2. Is US procedure a political process?

Current dimensions

1. In news

Content:

In news:

- The Senate voted 52-48 to confirm the **Judge Amy Coney Barrett who is Supreme Court nominee by Trump.**
- Ms. Barrett, who was nominated to replace liberal justice Ruth Bader Ginsburg, will be the first mother of school-aged children and the **fifth ever woman appointed to the Court.**
- With her appointment, six of the nine judges of the Supreme Court will be Catholic.
- With Ms. Barrett's appointment to the Court, Democrats

are expected to consider term limits for Supreme Court justices as well as increasing the number of justices in the court.

- Amy Coney Barrett has taken the first of two oaths she needs to officially join the Supreme Court.
- **Second oath**, known as the judicial oath, will be administered by Chief Justice John Roberts.

Procedure of Election of US supreme court judges and comparison with that of India:

- Unlike in **India, where the judiciary is integrated**, Federal and state courts in the US are separate, and the 9-member US Supreme Court is the apex forum of the federal system.
- The US Constitution provides that **federal judges – including Supreme Court “justices”– are to be nominated by the President and confirmed by the Senate (the upper chamber of the US Congress)**.
- Currently, the Republican Party controls both the Senate and the presidency.
- In India, judges appoint judges under the Collegium system, and not elected politicians.
- The CJI along with the ‘larger collegium’ of 4 other senior-most judges virtually unknown appoint other judges in the SC and the CJI along with the ‘smaller collegium’ of two other senior-most judges, virtually appoint the High Court judges.
- **In India, judges have a fixed retirement age** – 65 for the Supreme Court and 62 for High Courts.
- **In the US, federal judges can serve for life** – their terms only ending if they resign, pass away or if they are impeached and convicted by Congress.
- The **US Constitution lays down no requirements for Supreme Court justices**. The 9-member Bench can typically

consist of previous circuit court judges, distinguished lawyers, law professors and even politicians.

- **India strictly follows the 'seniority rule'** in the appointment of the CJI. E.g. present CJI SA Bobde was sworn in as the CJI, upon the retirement of the then CJI Justice Ranjan Gogoi, on 18th Nov 2019.
- The US-SC does not follow the system of appointment of the senior-most judge as its CJI. E.g. Justice John G. Roberts, was sworn directly as the CJ of the US-SC in Sept 2005, when he was not even an associate/sitting judge of the US-SC and hence was the junior-most appointee amongst all the 9 judges of the US-SC at the time of his appointment.
- In **Indian Supreme Court, judges sit in benches of two**, but **in the US-SC, all 9 judges sit and hear all cases together** as a part of one single bench.

Is US procedure a political process?

- The procedure for appointing a Justice in the US is provided for by the Constitution in the **"Appointments Clause" (Article II, Section 2, clause 2)** which states that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Judges of the supreme Court."
- Though the process of appointing Justices has undergone changes, its most basic feature, the sharing of power between the President and Senate has remained unchanged.
- Political considerations typically play an important role in Supreme Court appointments.
- It is often assumed that Presidents will be inclined to select a nominee whose political or ideological views appear compatible with their own.
- The political nature of the appointment process becomes especially apparent when a President submits a nominee with controversial views.
- Sometimes there will be sharp partisan or ideological

differences between the President and the Senate.

- On rare occasions, Presidents also have made Court appointments without the Senate's consent, when the Senate was in recess.
- Such "recess appointments," however, were temporary, with their terms expiring at the end of the Senate's next session.

Mould your thought:

1. Explain the Procedure of Election of US supreme court judges. How is it different from that followed in India?

Approach to the answer:

- Write why it is in the news?
- Write the procedure in US
- Compare it with that of India
- Conclusion