



drishti

Democracy of the Collegium System

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This article is based upon **“The Judicious Choice”** which was published in the Indian Express on 09/07/2021. It talks about the significance of an independent and transparent collegium system in a democratic country like India.

Amongst the constitutional institutions designed to protect democracy, the pride of place is enjoyed by the Indian judiciary. The nation, citizens and the judiciary must guard against the dilution of its independence.

To ensure democracy in the **judicial system**, a novel mechanism of the **Collegium System** was established in 1993.

The purpose of the collegium system is to ensure that the opinion of the **Chief Justice of India (CJI)** is not his individual opinion, but the one formed collectively by a body of judges of the highest integrity in the judiciary.

However, the efficiency of the collegium system has been challenged time to time in terms of its independence and transparency of judicial appointments and other decisions.

For maintaining the faith of citizens in the judiciary, the collegium must shield itself from further erosion of its independence by scrupulously following the law.

The Collegium System

- **Collegium System:** It is the system of appointment and transfer of judges that has evolved through judgments of the SC, and not by an Act of **Parliament** or by a provision of the Constitution.
 - The SC collegium is headed by the CJI and comprises four other senior most judges of the court.
 - A HC collegium is led by its Chief Justice and four other senior most judges of that court

- **Constitutional Provisions:** Article 124(2) of the Indian Constitution provides that the Judges of the **Supreme Court** are appointed by the President after consultation with such a number of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose.
As per Article 217, the Judge of a High Court shall be appointed by the President in consultation with the CJI and the State **Governor**, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court.
- **Role of Government:** The government's role is limited to getting an inquiry conducted by the Intelligence Bureau (IB) if a lawyer is to be elevated as a judge in a High Court or the Supreme Court.
It can also raise objections and seek clarifications regarding the collegium's choices, but if the collegium reiterates the same names, the government is bound, under Constitution Bench judgments, to appoint them as judges.

Issues Associated with Collegium System

- **Lack of Transparency:** The lack of a written manual for functioning, the **absence of selection criteria, the arbitrary reversal of decisions** already taken, the selective publication of records of meetings prove the **opaqueness of the collegium system**.
 - No one knows how judges are selected, and the appointments made raise the concerns of propriety, self-selection and nepotism.
 - The system often **overlooks several talented junior judges and advocates**.
- **NJAC, A Missed Opportunity:** The **National Judicial Appointments Commission (NJAC)** could guarantee the independence of the system from inappropriate politicization, strengthen the quality of appointments and rebuild public confidence in the system.
The decision was struck down by the SC in 2015 on the ground that it posed a threat to the independence of the judiciary.
- **Lack of Consensus among Members:** The collegium members often face the issue of mutual consent regarding appointment of judges.
 - The shadow of **mistrust between the members of the collegium** exposes the fault lines within the judiciary.
 - For instance, recently retired CJI Sharad A. Bobde was perhaps the first chief justice to have not made even a single recommendation for appointment as SC judge due to lack of consensus among the collegium members.
- **Unequal Representation:** The other area of concern is the composition of the higher judiciary. While data regarding caste is not available, **women are fairly underrepresented** in the higher judiciary.
- **Delay in Judicial Appointments:** The process of judicial appointment is delayed due to **delay in recommendations by the collegium** for the higher judiciary.

Way Forward

- **Preserving the Independence of Judiciary:** Filling up of vacancies is a continuous and collaborative process involving the executive and the judiciary.

However, it is time to think of a permanent, independent body to institutionalize the process with adequate safeguards to preserve the judiciary's independence guaranteeing judicial primacy but not judicial exclusivity.

It should ensure independence, reflect diversity, demonstrate professional competence and integrity.

- **Changing the Procedure of Recommendation:** Instead of selecting the number of judges required against a certain number of vacancies, the collegium must provide a panel of possible names to the President to appoint in order of preference and other valid criteria.
- **Reconsidering the Establishment of NJAC:** The Supreme Court may amend the NJAC Act to have safeguards that would make it constitutionally valid and reorganize the NJAC to ensure that the judiciary retains majority control in its decisions.
- **Ensuring Transparency:** The collegium members have to make a fresh start and engage with each other.
 - A transparent process adds accountability that is much needed to resolve the deadlock.
 - Individual disagreements over certain names will continue to take place, but care must be taken that the institutional imperative of dispensation of justice does not suffer.

Conclusion

It is of the utmost importance that the Judiciary, which is the main bulwark of civil liberties, should be completely independent and separated from direct and indirect influence of the Executive.

Identifying and selecting the judges of the highest integrity for appointment to the highest courts of the land is the least that can be done to ensure independence of the judicial system of India.

Drishti Mains Question

Discuss the significance of 'Democracy in the Collegium System and vice versa' and analyse how it is gradually eroding from India and what is the way ahead.
