



drishti

Mains Practice Questions

 drishtias.com/mains-practice-question/question-989/pnt



Q. The efficiency of the collegium system has been challenged time to time in terms of its independence and transparency of judicial appointments. Critically examine. (250 Words)

31 Aug, 2021 GS Paper 2 Polity & Governance

Approach

- Start with writing about the collegium system and its need in the judicial system.
- Discuss the issues with the functioning of the collegium system.
- Suggest a way forward to deal with the prevalent issues.

Introduction

The Collegium system is the system of appointment and transfer of judges that has evolved through judgments of the Supreme Court, and not by an Act of Parliament or by a provision of the Constitution.

It was established in order to ensure independence in appointment of the judges in the judiciary.

Body

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.
- **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.
- **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.
- **Other Criticism:** Scope for nepotism, embroilment in public controversies, overlooks several talented junior judges and advocates.

Way Forward

- **Independent Body For Appointment:** 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.
- **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 Act on Lines 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.

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.