



Mains Practice Question

Q. Explain the evolution of the Collegium system for the appointment and transfer of judges in India. (250 Words)

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Approach:

- Begin by explaining the collegium system and its function
- With the help of judgments in three judges cases, trace the evolution of the collegium system
- Conclude by mentioning the issues with the collegium system and the need for reforms in this

Introduction

Collegium 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. The Supreme Court collegium is headed by the Chief Justice of India and comprises four other senior most judges of the court. A High Court collegium is led by its Chief Justice and four other senior most judges of that court.

The collegium system came into being through interpretations of pertinent constitutional provisions (Article 124(2) and Article 217) by the Supreme Court in the so-called 'Judges Cases'.

Body

Evolution of the Collegium System:

FIRST JUDGES CASE: In *S.P. Gupta Vs Union of India*, 1981, the Supreme Court by a majority judgment held that the term "consultation" used in Articles 124 and 217 was not "concurrence" – meaning that although the President will consult judiciary, his decision was not bound to be in concurrence with them. The judgment tilted the balance of power in appointments of judges in favour of the executive. This situation prevailed for the next 12 years.

SECOND JUDGES CASE: In *The Supreme Court Advocates-on-Record Association Vs Union of India*, 1993, a nine-judge Constitution Bench overruled the decision in *S P Gupta* case, and devised a specific procedure called 'Collegium System' for the appointment and transfer of judges in the higher judiciary. Ushering in the collegium system, the court said that the recommendation should be made by the CJI in consultation with his two senior-most colleagues and that such recommendation should normally be given effect to by the executive.

THIRD JUDGES CASE: In 1998, President K.R. Narayanan issued a Presidential Reference to the Supreme Court over the meaning of the term "consultation" under Article 143 of the Constitution (advisory jurisdiction). In response, the Supreme Court laid down that the recommendation should be made by the CJI and his four senior-most colleagues, instead of two.

Conclusion

The collegium system is blamed for tussle between the judiciary and the executive, the slow pace of

judicial appointments and lack of transparency. The earlier attempt at replacing this by the National Judicial Appointments Commission was declared unconstitutional by the judiciary. Thus, there is a need to reform the system of appointment and transfer of judges while ensuring the independence of the judiciary.

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