



Mains Practice Question

Q. Discuss the issues related to judicial appointments in India. Can the proposed National Judicial Commission Bill uphold the crucial reform in judiciary? (250 words)

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Approach

- Start your answer with briefly explaining the appointment of Judges in India.
- Discuss various issue related to appointment of Judges in higher judiciary.
- Discuss the relevance of National Judicial Commission Bill (NJCB) in reforming judicial appointments system in India.
- Conclude accordingly.

Introduction

- The Judiciary is one of the three important pillars of democracy, so it becomes extremely pertinent to have the right system of appointing competent judges in order to maintain the dignity of the bench. In India, the **collegium system**, introduced in 1993 by former Chief Justice of India P.N. Bhagwati, is **followed in the appointment and transfer of judges**.

Body

- **Procedure for the Appointment of Higher Judiciary are as Follows:**
 - The **Supreme Court Collegium** is a **five-member body**, which is headed by the incumbent Chief Justice of India (CJI) and comprises the four other senior most judges of the court at that time.
 - A **High Court collegium** is led by the incumbent Chief Justice and two other senior most judges of that court.
 - The government can also raise objections and seek clarifications regarding the collegium's choices, but if the collegium reiterates the same names, the government is bound to appoint them as judges.
 - **Further, articles 124(2) and 217 of the Constitution** deal with the appointment of judges to the Supreme Court and High Courts.
 - The appointments are made by the President, who is required to hold consultations with "such of the judges of the Supreme Court and of the High Courts" as he may think is needed.
 - But the Constitution does not lay down any process for making these appointments, rather they are governed by the collegium system.
- To bring in reforms, the government in August 2014, Parliament passed the **Constitution (99th Amendment) Act, 2014** along with the NJAC Act, 2014, providing for the creation of an **independent commission to appoint judges to the Supreme Court and high courts to replace the collegium system**.
 - In 2015, the Supreme Court declared both the 99th Constitutional Amendment and the NJAC Act as unconstitutional and null and void.
- **Challenges Posed by Current Collegium system:**
 - **Chances of Favoritism and Nepotism:**

- The collegium system does not provide any specific criteria for testing the candidate for the post of Supreme court judge because of which it leads to wide scope for nepotism and favoritism.
- It gives rise to non-transparency of the judicial system, which is very harmful for the regulation of law and order in the country.
- **Against the Principle of Checks and Balances:**
 - The principle of check and balance is violated in this system. In India, three organs work partially independently but they keep check and balance and control on the excessive powers of any organ.
 - However, the collegium system gives Judiciary immense power, which leaves little room for checks and poses the risk of misuse.
- **Close-Door Mechanism:**
 - Critics have pointed out that this system does not involve any official secretariat. It is seen as a closed-door affair with no public knowledge of how and when a collegium meets, and how it takes its decisions.
 - Also, there are no official minutes of collegium proceedings.
- **Unequal Representation:**
 - The other area of concern is the composition of the higher judiciary, women are fairly underrepresented in the higher judiciary.
- **Relevance of National Judicial Commission Bill (NJCB) in reforming judicial appointments system:**
 - **Regulates the Procedure of Appointment:**
 - The bill aims to regulate the procedure to be followed by the National Judicial Commission for recommending people for appointment as the Chief Justice of India and other judges of the Supreme Court and Chief Justices and other judges of High Courts.
 - **Regulate the Transfers:**
 - It also aims to regulate their transfers and to lay down judicial standards and provide for accountability of judges and establish credible and expedient mechanism for investigating into individual complaints for misbehaviour or incapacity of a judge of the apex court or of a high court and to regulate the procedure for such investigation.
 - **Removal of a Judges:**
 - It also proposes for the presentation of an address by parliament to the president in relation to proceeding for removal of a judge and for matters connected therewith or incidental thereto.

Conclusion

- There is a need for striking proper balance between all three forms of government like judiciary, executive and legislative, further judiciary should lead by example by accepting and reforming its structure, the suggestions are as follows:
- **Balance Between Independence and Accountability:** The real issue is not who (judiciary or executive) appoints the judges, but the manner in which they are appointed.
 - For that, whatever may be the composition of the Judicial Appointment Commission (JAC), it is important to strike a balance between judicial independence and judicial accountability.
 - The Executive should have a say in appointments but the composition of the JAC should be such that it does not result in compromising judicial independence.
- **Justice Inside Judiciary:** Care must be taken to ensure that the institutional imperative of the Court for dispensing justice is maintained inside the judiciary with equality of opportunity and fixed criteria for selection of judges.
- **Reconsidering the Establishment of NJAC:** National Judicial Appointment Commission (NJAC's) Act may be amended to include safeguards that would make it constitutionally valid, as well as reorganised to ensure that majority control remains with the judiciary.

