

DELAY AS TACTIC : ON THE CENTRE AND COLLEGIUM RELATIONSHIP

The Hindu

Paper - II (Indian Polity)

The Centre's assurance to the Supreme Court that it would soon notify the appointment of Justice Siddharth Mridul of the Delhi High Court as Chief Justice (CJ) of the Manipur High Court is a welcome development. In another sign that it would be more accommodative of the Collegium's recommendations, it has forwarded as many as 70 names approved by constitutional authorities in various States for appointment as judges of High Courts. The delay in notifying the appointment of Justice Mridul was apparently due to the State government taking time to give its views on the proposal. His name was recommended by the Collegium on July 5, and the delay was quite strange. The Collegium has also mooted the transfer of Justice M.V. Muralidaran, now Acting CJ in Manipur to the Calcutta High Court. A few days ago, it rejected his request that he be either retained in Manipur or allowed to go to his parent court, the Madras High Court. It is to be seen how long the Centre takes to notify his transfer. It was an order passed by Justice Muralidaran, directing the Manipur government to consider the inclusion of the Meitei community in the Scheduled Tribes category, that is seen by some as one of the triggers for the ethnic violence that rocked the State from early May. However, the order was not stayed by the Supreme Court as there was a request by the Centre that a stay order might exacerbate tensions.

The Court has been vocal about the Centre's selective treatment of its recommendations. There are instances of the government returning names that had been reiterated more than once. In recent times, it has shown that it can have its way by merely ignoring some of the Collegium's decisions. For instance, it ignored the proposal to appoint Justice S. Muralidhar, now retired, as CJ of the Madras High Court for so long that the Collegium ultimately rescinded its recommendation. In the case of Justice T. Raja, who was Acting CJ in Madras for an unusually long period, the recommendation to transfer him to the Rajasthan High Court

Constitutional Provisions regarding Judicial Appointments and the Evolution of the Collegium System



- **Article 124(2):** The Judges of the Supreme Court are appointed by the President. She should consult such a number of the Judges of the Supreme Court and of the High Courts in the States as she may deem necessary for the purpose.
- **Article 217:** The Judge of a High Court shall be appointed by the President in consultation with the Chief Justice of India and the Governor of the State. The Chief Justice of the High Court should also be consulted except in case of his/her own appointment.
- **First Judges Case (1981):** The SC said that consultation under Article 124 doesn't mean concurrence. The President is not bound by CJI's advice.
- **Second Judges Case (1993):** The SC overruled its previous decision and said CJI's advice is binding. The CJI is required to formulate its advice based on a collegium of judges consisting of CJI and two senior-most SC judges.
- **Third Judges Case (1998):** The SC expanded the collegium to a five-member body to include the CJI and the four senior-most judges of the court after the CJI.

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was ignored by the government until his retirement. The conflict between the government and the Collegium over the appointment process is quite pronounced and often reaches a flashpoint. It is time the process was streamlined to give effect to the Supreme Court's April 2021 order that set timelines for the government to process names recommended by the Collegium and express its reservations, if any. Once the Collegium reiterates any recommendation, it should be implemented within three to four weeks. Whatever the inadequacies and failures of the Collegium process, it does not augur well for the institution if the legal position that a reiterated decision is binding on the government is undermined.

What is the current mechanism of Judicial Appointments?

- ❖ At present, the Judicial Appointments and transfers (Higher Judiciary, Supreme Court and the High Courts) are undertaken through the 'Collegium System'.
- ❖ The Collegium of the Supreme Court is a body of 5-Judge body, headed by the Chief Justice of India. It includes 4 senior-most Judges of the Supreme Court. The Collegium recommends the name of Judges to be appointed to the Court.
- ❖ The Government also undertakes background checks of the candidates through its agencies like Intelligence Bureau (IB). The Government may raise objections to the choice and ask for clarification. The Government can return the recommendations of the Collegium for reconsideration. However, if the recommendations are reiterated, the Government must accept them (SC Judgment).
- ❖ The Collegium System has not been mentioned in the Constitution. It has evolved through series of Judgments of the Supreme Court. These Judgments are Gupta & Others v. Union of India, 1981 (First Judges Case), Supreme Court Advocates on Record Association Vs. Union of India, 1993 (Second Judges Case) and the In re Special Reference 1 of 1998 (Third Judges Case).

Expected Question

Que. Consider the following statements in the context of 'Collegium System'-

1. Judicial appointments are made through the 'Collegium System'.
2. Judicial transfers are not done through the 'Collegium System'.

Which of the statements given above is/are correct?

- (a) Only 1
- (b) Only 2
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Answer : a

Mains Expected Question & Format

Que.: "Whatever the inadequacies and failures of the Collegium process, it does not augur well for the institution if the legal position that a reiterated decision is binding on the government is undermined.

Answer Format :

- ❖ In the first part of the answer, discuss the strong and weak aspects of the collegium process.
- ❖ In the second part, discuss the relationship between the collegium and the government and describe its impact.
- ❖ Finally give a conclusion showing the way forward.

Note: - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC mains examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.

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