



Collegium controversy

This article is related to General Studies- Paper II (Governance).

The Hindu

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An unusual change of decision brings the judicial appointments system under scrutiny.

The controversial collegium system of judicial appointments is under public scrutiny once again. This time, the potential for embarrassment to the superior judiciary is much higher. Former Chief Justices of India, a sitting Supreme Court judge, and the Bar Council of India have taken exception to the collegium's unusual action of revisiting decisions made at an earlier meeting, and recommending the elevation to the apex court of Justice Dinesh Maheshwari and Justice Sanjiv Khanna, instead of two judges whose names had been considered earlier. The allegation is not merely one concerning the seniority or the lack of it of the two appointees; rather, it is the much graver charge of arbitrarily revoking a decision made on December 12 last year. The official reasons are in the public domain in the form of a resolution on January 10. It claims that even though some decisions were made on December 12, "the required consultations could not be undertaken and completed" in view of the winter vacation. When the collegium met again on January 5/6, its composition had changed following the retirement of Justice Madan B. Lokur. It was then decided that it would be "appropriate" to have a fresh look at the matter, as well as the "additional material". The only rationale for the names of Rajasthan High Court Chief Justice Pradeep Nandrajog and Delhi High Court Chief Justice Rajendra Menon being left out is the claim that new material had surfaced. However, it is not clear what the material is and how it affected their suitability.

Former Chief Justice of India R.M. Lodha is right in underscoring the institutional nature of decisions by the collegium. Can the retirement of one judge be a ground to withdraw a considered decision, even if some consultations were incomplete? There is little surprise in the disquiet in legal circles. Another curious element in the latest appointments is that Justice Maheshwari, who had been superseded as recently as last November, when a judge junior to him was appointed a Supreme Court judge, has been found to be "more suitable and deserving in all respects" than any of the other chief justices and judges. There is no objection to the elevation of Justice Khanna except his relative lack of seniority. There is little substance in this criticism, as it is now widely accepted that seniority cannot be the sole criterion for elevation to the Supreme Court. However, the fact that there are three other judges senior to him in the Delhi High Court itself — two of them serving elsewhere as chief justices — is bound to cause some misgivings. The credibility of the collegium system has once again been called into question. The recent practice of making public all resolutions of the collegium has brought in some transparency. Yet, the impression that it works in mysterious ways refuses to go away. This controversy ill-serves the judiciary as an institution.

GS World Team...

Collegium System

Why in the discussion?

- Recently, a controversy arose when the Supreme Court Collegium recommended two High Court Chief Justices to be the judge of the Supreme Court.
- The Collegium had decided to recommend the decision of making judges of the High Court of Rajasthan and Delhi High Court, CJ Pradeep Nandrajog and Rajendra Menon respectively as the Supreme Court Judges. But later on 5-6 January, the Collegium, instead of the two, recommended the name of Dinesh Maheshwari and Sanjeev Khanna.
- Khanna is the Justice of Delhi High Court, whereas Maheshwari is from the Karnataka High Court.

What is it?

- The system of appointment of judges in the courts of the country is called the collegium system.

- This arrangement was made after two Supreme Court judgments in 1990. Under the Collegium system, the committee of senior judges, headed by the Chief Justice of the Supreme Court, decides the names and the appointment of the judges.
- The Collegium also decides the appointment and transfers of judges in the Supreme Court and in the High Court.
- Which judge of the High Court will be promoted to the Supreme Court is also decided by Collegium.
- The Collegium system is neither mentioned in the Original Constitution nor in its Amendment Provision.

Background

- This system came into effect on October 28, 1998, through the decisions of the Supreme Court which came in the case of 3 judges.
- In the Collegial system, a forum of the Supreme Court Chief Justice and 4 senior judges of the Supreme Court



recommends the appointment and transfer of the judges.

- The recommendation of the Collegium is binding to the government.
- The UPA government had formed the NJAC (National Judicial Appointment Commission) instead of the Collegium system on August 15, 2014, but the Supreme Court on October 16, 2015, declared the National Judicial Appointment Commission (NJAC) law as unconstitutional.
- In this way, the appointment of judges and transfer of decisions is at present done by the Collegium system of the Supreme Court.
- NJAC was to be formed with 6 members, which was to be headed by Chief Justice of the Supreme Court, it was to include two senior judges, Law Minister and two famous persons associated with different areas as members.
- The 2 persons to be included in the NJAC, was to be selected by the chief justice of the Supreme Court, the Prime Minister and leader of the Opposition in the Lok Sabha or the leader of the biggest party in the Lok Sabha. On this, the Supreme Court had the highest objection.
- What is the difference between Collegium System and NJAC?
- NJAC (National Judicial Appointment Commission) is a constitutional body proposed by the government, which was created to replace the collegium system for the appointment of judges. At the same time, the judges are being appointed for the last 22 years through the Collegium system.
- There was a proposal of 6 members in NJAC. The Chief Justice of the country was to be the head of

this commission. It was to include two senior judges of Supreme Court, Law Minister and two famous persons associated with different areas as members.

- In the Collegial system, a forum of four senior judges and the Chief Justice of the Supreme Court recommends the appointment and transfer of the judges.
- There is no mention of the collegium system in the Constitution. This system came into effect on October 28, 1998, through the decisions of the Supreme Court which came in the case of 3 judges.
- The two persons, who were told to be included in the NJAC, were to be elected by a committee of the Chief Justice, Prime Minister and Leader of the Opposition or Leader of the biggest party of the Lok Sabha.
- On this, the Supreme Court had the highest objection. The people challenging the NJAC had argued that the judges' selection and the new law of appointment are unconstitutional.
- This will affect the independence of the judiciary. The Centre, while defending it, had said that there were many flaws in the Collegium system of more than 20 years old.
- Arguments of experts
- The present collegium system persists to make 'the son of judge a judge' inline of 'a son of strong man being a strongman'.
- Regardless of more qualified judges are present in the courts than these judges. This practice is not healthy for a democratic country like India.
- There is no constitutional status of the collegium system, so the government should bring a law to reverse it so that the monopoly of some of the houses occupied in the judicial system of India be ended.

Expected Questions (Prelims Exams)

1. Consider the following statements regarding
1. The collegium system, a forum of Chief Justice and four senior judges recommends for the appointment of judges.
 2. There is a mention of collegium system in the Original Constitution which came into effect through decision in the case of three judges in 1998.
- Which of the above statements is/are correct?
- (a) Only 1 (b) Only 2
(c) 1 and 2 Both (d) Neither 1 nor 2

Expected Questions (Mains Exams)

- Q. Critically analyse the collegium system in judicial appointment system related to the controversy over the recent appointment of judges in the supreme court. (250 Words)

Note: Answer of Prelims Expected Question given on 17 Jan. is 1(c), 2(d), 3(d).

