Concerns with Collegium system

Why in news?

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Recently, the Supreme Court collegium scrapped its own decision it took previously to appoint two judges and has made fresh appointments.

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What is the background?

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- The apex court is presently functioning with 26 judges as against the sanctioned strength of 31, leaving five clear vacancies.
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- Last month, the Supreme Court had recommended the elevation of Justice Pradeep Nandrajog, the Chief Justice of Rajasthan High Court and Justice Rajendra Menon, the Chief Justice of Delhi High Court.
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- However, a new collegium on January 10, which was formed after Justice Madan Lokur retired, decided to elevate Justice Maheshwari and Justice Khanna as SC judges.
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- Thus, the collegium revisited its decision made at an earlier meeting.
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- The elevation was made questionable, since it was criticised that the elevation has been done ignoring 32 more senior judges.
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- The allegation is not merely one concerning the seniority of the two appointees.
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- Rather, it is the much graver charge of arbitrarily revoking a decisionthat was made last month.
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What are the reasons?

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- The official reasons are in the public domain in the form of a resolution.
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- It claims that even though some decisions were made last month, the required consultations could not be undertaken and completed in view of the winter vacation.

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- When the collegium met again this month, its composition had changed following the retirement of Justice Madan B. Lokur.
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- Hence, it was decided that it would be appropriate to have a fresh look at the matter, as well as the additional material.
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- Also, the collegium made a claim that new material had surfaced on the process which has made the names of the two persons to be left out from the current list.
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- However, it is not clear what the material is and how it affected their suitability.
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- This lack of clarity shines a spotlight on the opaque collegium system of appointments in the higher judiciary.
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What are the concerns?

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- It is not clear whether the retirement of one judge shall be a ground to withdraw a considered decision, even if some consultations were incomplete.
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- It is now widely accepted that seniority cannot be the sole criterion for elevation to the Supreme Court.
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- However, the fact that there are three other judges senior to Justice Khanna in the Delhi High Court itself, two of them serving elsewhere as chief justices, is bound to cause some misgivings.
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- Hence, the credibility of the collegium system has once again been called into question.
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- Also, the Collegium system is stillnot accountable to any other authority.
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What should be done?

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- The process for the appointment of judges lies at the heart of an independent judiciary.
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- The Second Judges' case of 1993 led to the formation of a collegium of high-ranking judges which has since then identifying persons for appointment to the SC and high courts.
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- While the collegium began with a desire for judicial independence, the recent collegium appointments show that it is not transparent.
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- The lack of a written manual for functioning, the absence of selection criteria, the arbitrary reversal of decisions already taken and the selective publication of records of meetings shows that the Collegium is getting opaque.
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- Also, the higher judiciary has exempted itself from the Right to Information Act.
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- Thus, India needs to restore the credibility of the higher judiciary by making the process of the appointing judges transparent and the collegium must also open its proceedings to the public.
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Source: The Hindu

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