

Judicial Appointments in India Vs South Africa

Mains: GS II - Polity and Governance

Why in News?

A recent debate on the appointment of judges, arising from the Supreme Court judgment in *Arvind Malhotra v. High Court of Himachal Pradesh*, has highlighted South African model alternative based on a more open and representative appointment process.

How judges are appointed in India?

- **Collegium System** - It is the judicial mechanism used to appoint and transfer judges to the Supreme Court and High Courts in India.
- The system is *not mentioned in the original Constitution*, it evolved through landmark Supreme Court rulings.
- **Structure** -
 - **Supreme Court Collegium** headed by the Chief Justice of India (CJI) and includes the 4 other senior-most judges of the Supreme Court.
 - **High Court Collegium** headed by the Chief Justice of the respective High Court and its two senior-most judges.
- The system seeks to protect **judicial independence** from executive and political interference.
- Supreme Court Collegium recommendations are **binding** on the central government if the Collegium reiterates (sends back) the same names after the government asks for reconsideration.
- However, concerns have been raised regarding -
 - Lack of transparency in selection criteria.
 - Limited public scrutiny.
 - Perceptions of favouritism or subjectivity.
 - Absence of a formal mechanism for public participation.
- To know more about collegium evolution, click [here](#).

Constitutional Perspective

- Judicial appointments must balance two competing principles - Judicial Independence ↔ Public Accountability
- **Article 124 & Article 217** - Deal with appointments of Supreme Court and High Court judges respectively.
- **Basic Structure Doctrine** - Judicial independence is an essential component of the Constitution's basic structure.
- **Separation of Powers** - Appointment reforms should not allow one organ of the State to dominate the judiciary.

What are the features of South African Model of Judicial Service Commission?

- **JSC - South Africa** follows a **Judicial Service Commission (JSC)**-based system for judges appointment.
- **Representative body** - JSC includes senior judges, lawyers, legal academics and limited political representation.
- **Public nominations** - Vacancies are publicly advertised and nominations are invited.
- **Shortlisting** - Candidates are shortlisted after the nomination process.
- **Public comments** - The public can submit views on shortlisted candidates.
- **Public interviews** - Candidates face open interviews to assess their competence, impartiality and independence.
- **Voting mechanism** - Where consensus is not reached, members vote.
- **Transparency** - Proceedings are broadcast publicly.
- **Judicial accountability** - Complaints against judges can lead to investigation and, where appropriate, public enquiries.

India vs South Africa (Key Differences)		
Aspect	India	South Africa
Appointment mechanism	Collegium	Judicial Service Commission
Representation	Predominantly judiciary	Judiciary + lawyers + academics + political representatives
Public participation	Limited	Public comments invited
Candidate scrutiny	Largely confidential	Public
Decision-making	Collegial recommendation	Consensus/voting
Interviews	Not generally public	Public interviews
Transparency	Limited	High

Why Transparency Matters?

- **Public confidence** - Judiciary performs a vital public function and requires societal legitimacy.
- **Accountability** - Openness enables scrutiny of candidates' competence, integrity and independence.
- **Institutional credibility** - Transparent procedures can reduce allegations of favouritism or political alignment.
- **Democratic legitimacy** - Judicial institutions must command public trust while remaining independent.

Why Complete Secrecy Can Be Problematic?

- Excessive confidentiality may -
 - Create perceptions of **arbitrariness and opacity**.
 - Make it difficult to assess the basis of appointments.
 - Reduce public confidence in judicial institutions.
 - Shield shortcomings in the selection process from meaningful scrutiny.

What are the Challenges in Making Judicial Appointments More Open?

- **Judicial Independence** - Excessive political participation could expose appointments to **executive or partisan influence**.
- **Privacy of Candidates** - Public scrutiny of personal and professional matters can become intrusive or defamatory.
- **Politicisation** - Greater political representation may convert judicial appointments into a political bargaining process.
- **Institutional Balance** - India must balance **transparency with confidentiality**, especially where sensitive assessments are involved.
- **Quality of Deliberation** - Public proceedings may encourage political or media pressure rather than purely legal assessment.

What could be done?

- Establish **clear and objective selection criteria**.
- Publish broad reasons for selection and rejection while protecting sensitive information.
- Strengthen institutional representation through **lawyers, legal academics and other stakeholders**.
- Consider limited **public consultation** for shortlisted candidates.
- Develop a transparent and independent **judicial complaints mechanism**.
- Maintain confidentiality regarding sensitive personal information and individual voting preferences.
- Encourage continuous debate among the **judiciary, Bar, Parliament, academia and civil society**.

What lies ahead?

- The South African experience demonstrates that transparency and judicial independence need not necessarily be contradictory.
- India need not replicate the South African model, but can adapt its principles of representative participation and accountability while preserving the judiciary's independence.

Reference

[The Indian Express| Judicial Appointments in India Vs South Africa](#)