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 appointemnt.
- **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

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