Judicial Selection

Why in news?

The Supreme Court of India's collegium has made proposals to alter the existing composition of various High Courts.

What is the proposal about?

- New Chief Justices will be appointed to as many as eight different high courts.
- Five existing Chief Justices will swap positions.
- These recommendations are seen as reflective of a new and proactive collegium.
- But the collegium's opacity and a lack of independent scrutiny of its decisions remain a concern.

What is the procedure for appointment of judges?

- Supreme Court judges are appointed by the President of India in consultation with CJI and other judges that he deems fit.
- High Courts judges are appointed by the President in consultation with CJI, Governor of the State and Chief Justice of that court.
- In case of transfers, President may move a judge from one High Court to another, after consulting the CJI.

What is a collegiums and how it evolved?

- **Constitution** - In the original constitution, there is no mention of a "collegium".
- The Constituent Assembly adopted a consultative process of appointing judges to ensure that judges remain insulated from political influence.
- It avoided legislative interference and also the undemocratic provision of a veto to the Chief Justice.
- Instead, it vested in the President the power to both make appointments and transfer judges between high courts.
- The President (to act on the advice of the council of ministers) was however required to consult certain authorities such as the CJI or chief justice of the high court appropriately.
- **'Consultation'** - The Supreme Court earlier ruled that the word "consultation" could not be interpreted to mean "concurrence".
- Accordingly the CJI's opinion was not binding on the executive.

- Nevertheless, the executive could depart from the opinion only in exceptional circumstances and any such decision could be subject to judicial review.
- The system was thus fairly balanced and in the First Judges Case, 1981 the court once again endorsed this interpretation.
- **Second Judges Case** - In the famous Second Judges Case, 1993 the court however overruled its earlier decisions.
- It now held that “consultation” meant “concurrence”, and that the CJI’s view enjoys primacy.
- This is with the rationale that CJI could be best equipped to know and assess the "worth" of candidates.
- But, the CJI was to formulate the opinion only through a body of senior judges that the court described as the 'collegium'.
- **Collegium** - In the Third Judges Case, 1998 the court clarified that the collegium would comprise CJI and four senior-most colleagues, in appointments to the Supreme Court.
- And, the CJI and two senior-most colleagues in the case of appointments to the high courts.
- Additionally, for HCs, the collegium would consult other senior judges in the SC who had previously served in the HC concerned.
- On whether these views of the consultee-judges are binding on the collegium or not, the judgments are silent.
- **NJAC** - The government, through 99th constitutional amendment, sought to replace the collegium with the National Judicial Appointments Commission.
- The Supreme Court however struck NJAC down.
- The court's rationale was that the NJAC law gave politicians an equal say in judicial appointments to constitutional courts.
- **Change** - In what might now be called the Fourth Judges Case (2015), the court upheld the primacy of the collegium.
- More importantly it declared collegium as part of the Constitution’s basic structure.
- And so its power could not be removed even through a constitutional amendment.
- But given the criticisms against the system, the judgment promised to consider appropriate measures to improve the collegium system.

How can the prestige of High Courts be restored?

- The constitution envisages no power of administrative superintendence in the Supreme Court over the High Courts.
- But the present system and the mysteries underlining the decision-making can dilute the High Courts’ prominence.
- The Chief Justices must be provided with ample tenure through reforms to enable them to bring lasting changes.
- Restoring the prestige of High Courts require more than just a c in the process of appointments.

Source: The Hindu



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