Judiciary and Its Collegium System

What is the issue?

There is a current tussle between the judiciary and the union government over the appointment of judges.

What is the background of the issue?

- For too long, the union government ran roughshod over the appointments process with little to no protest from the collegium or the rest of the judiciary.
- It segregated nominees for appointment, returned reiterated nominees, or simply refused to make appointments until nominees quit on their own out of frustration.
- All of this was quite contrary to the Memorandum of Procedure set out consequent to the Third Judges' case.
- The assertion of the sanctity of the collegium process and the Memorandum of Procedure is thus welcome.

What is the collegium system?

- In the original constitution, there is **no mention** of a collegium.
- Supreme Court – According to **Article 124**, Supreme Court judges are appointed by the President of India in consultation with Chief Justice of India (CJI) and other judges that he deems fit.
- The collegium consists of CJI and 4 senior most judges of the Supreme Court.
- These appointments could be in the form of elevation when High Court judges are appointed to the Supreme Court or direct appointments when experienced lawyers may be directly appointed.
- High Court - According to Article 217, 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.
- The High Court collegium has the chief justice of the High court with two other senior most judges.
- The high court collegium only sends the recommendation to the Supreme Court collegium on judicial appointments.
- The final decisions are taken by a collegium of the CJI and two senior most judges of the SC.
- This collegium of the three senior-most SC judges also decides transfers of HC judges in the country.

What is the Memorandum of Procedure for appointment of judges?

- Memorandum of Procedure (MoP) is an agreement between the judiciary and the government.
- It contains a set of guidelines for making appointments to the Supreme Court and High Court.
- MoP starts with the recommendation of the High Court Collegium to the center for the appointment of other judges. The Chief Justice of the High Court(HC) heads the collegium.
- Once the center receives recommendations, it asks for the opinion of state governments and the input from the Intelligence Bureau (IB).
- The government then forwards the files, along with the IB inputs to the Supreme Court collegium.
- If the Supreme Court collegium clears the names, the files return to the central government. It then either notifies the appointments or sends them back with objections or its views.
- At this stage, the Supreme Court collegium can seek additional inputs on the government's opinion. Accordingly, it can either reject or reiterate the proposal.
- If the collegium reiterates its decision, then, under the MoP, the government is bound to notify the appointments.
- However, the MoP does not specify a timeframe for the central government to act on a collegium decision.

What are the concerns with the collegium system?

- That said, the collegium system is by no means the best or the most effective system for the appointment of judges in India.
- The collegium system of the appointment of judges was introduced in the Second Judges' case.
- It has outlived its use and perhaps stands in the way of true judicial reform.
- Three failings are obvious—it is non-transparent, inefficient, and there is stifling diversity in the judiciary.
- There are presently no clear criteria communicated to the public as to how the suitability of candidates for judgeship is assessed by the collegium.
- This absence becomes more acute when questions are raised about the integrity and ability of individual judges.
- With greater scrutiny of the judiciary than ever before, the public's faith in the judicial system slips even further with every questionable appointment and their unacceptable conduct on the bench.
- At the same time, the collegium system has fallen short in the task of efficiently filling up the vacancies at the high court level.
- 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.
- 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 Justice Khanna in the Delhi High Court itself, two of them serving elsewhere as chief justices, is bound to

cause some misgivings.

- Hence, the credibility of the collegium system has once again been called into question.
- Also, the Collegium system is still not accountable to any other authority.

What is the way forward?

- The failings of the collegium system cannot be addressed by reverting to some prior, discredited system of appointment that gives the union government a predominant say in the process.
- Likewise, resurrecting the failed model of the **National Judicial Appointments Commission (NJAC)** will not work.
- What is needed at the moment is a greater focus on the how of judicial appointments rather than just the who.
- Specifically, what is needed is an appointment process that focuses on clear criteria for the appointment of judges, ensures transparency in the process, and is efficient in being able to ensure timely appointments.
- Missing also in the current discussion about the collegium is the presence of the citizen in the process.
- If there was one commendable aspect of the NJAC amendment, it was the inclusion of an “eminent person” in the NJAC.
- This is an idea that deserves to be built upon in envisioning a new appointments system, greater say for the citizens.

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