Judicious Choice

The impact of a malfunctioning judicial system on critical aspects of the economy is of major concern. A market-based capitalist system can operate efficiently only if judicial processes ensure a fair, effective and speedy disposal of disputes and provide a robust basis for enforcing regulatory compliance and consumer protection.

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With a **pendency of 59,000 cases** in the Supreme Court (SC), over four million in high courts (HC) and a mind-boggling 25 million in subordinate courts, the judicial system is virtually dysfunctional: In this state, it simply cannot serve the needs of modern India trying to integrate with the global economy.

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What are the three crucial aspects to be considered?

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- One, reduce pendency by rapidly filling vacancies in the high courts.
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- Two, make all judicial appointments, starting with HC judges, as **transparent, objective and merit-based** as possible.
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- Three, improve the relationship with the executive because it is imperative that various branches work in tandem rather than at loggerheads if India has to progress.
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- The reason for unfulfilled seems to be that the GoI and the SC have been unable to reconcile their differences over the modalities of appointing new judges.
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- This is a troublesome issue that has seen the GoI having to back off in the face of trenchant opposition from the SC to any GoI attempt to dilute the autonomy of the SC collegium in making these appointments.
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Is the present system working adequately?

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- It is unarguable that these appointments should be made in the most transparent manner and after an extensive search that seeks to identify the most meritorious candidates, ensuring that those finally selected have been cleared on all counts of integrity, national security and competence.
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- The fact that the present system is not working adequately is borne out by the experience of the Madhya Pradesh High Court, which considered 71 “so-called” eligible advocates for appointment as judges. After scrutiny, only eight were recommended by the HC collegium.
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- Of these eight, the SC collegium recommended only three; after required Intelligence Bureau (IB) inputs, only two names were recommended. Finally, only one was appointed. This **massive waste of time and resources should be avoided.**
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What did Government suggest?

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- The GoI’s suggests for appointing a **Search Cum Evaluation Committee (SEC)**.
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- A SEC would assist HC and SC collegiums in expanding the zone of consideration, undertaking due diligence and acquiring necessary clearances.
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- The SEC will only recommend candidates in the **ratio of 5:1 for the HC and SC collegiums** to then select and forward to the GoI for required consultations.
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- After due diligence, the rejection rate should come down dramatically. Being a subordinate body, the SEC will not in any sense restrict the supreme authority and autonomy of the SC collegium in the selection of judges.
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- It will only institutionalise the search and selection process, making it objective, transparent and expeditious.
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- With its **composition of former judges, academics and other experts**, the SEC would effectively widen the zone of consideration, which, at present, is highly circumscribed.
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- The SEC can have three-year tenure, its membership to be decided by the CJI in consultation with the GoI.
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- It will bring judicial appointments in line with the practice in vogue in the GoI now, where senior-most appointments in the bureaucracy and regulatory bodies go through search and selection committees before being recommended to the Appointments Committee of the Cabinet for final approval.
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