Public Scrutiny in Judicial Appointments - Brett Kavanaugh Issue

What is the issue?

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- Brett Kavanaugh was sworn in as the 114th justice of the U.S. Supreme Court. Click here to know more on the appointment dispute.
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- The process followed for the Judge's appointment hold key lessons for the Indian judiciary.
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What is the dispute?

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- Kavanaugh is US President Trump’s nominee for the Associate Justice of Supreme Court of the United States (SCOTUS).
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- But an American professor of psychology Christine Blasey Ford had accused him of sexual assault.
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- Kavanaugh had denied all allegations of sexual misconduct against him.
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- The issue went before the U.S.'s Senate Judiciary Committee.
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- Ultimately, he was confirmed as a judge, with the narrowest Senate confirmation in nearly a century and a half.
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- Eventually, he was sworn in as the 114th justice of the U.S. Supreme Court.
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- Nevertheless, the process allowed Ms. Christine to publicly recount her trauma of sexual abuse.
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Why is this appointment process welcome?

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- The political orientation of the nominees is likely that of the nominating government.
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- So the process of confirmation in the US Senate checks publicly, the suitability for appointment as a judge.
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- The process of public scrutiny checks if the nominee is capable of an objective approach to legal and constitutional reasoning.
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- So in the US, the collegial approach spans the whole nation and virtually the world.
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- It gives a wider scope in participating in national decision-making.
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What is the case with India?

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- No such process, as given above, occurs in India prior to the appointment of a judge.
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- In India, the collegial impulses are confined to five learned men.
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- A “collegium” of the five senior-most judges of the Supreme Court decides on appointment of judges to the Supreme Court or any other court.
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- They consider names primarily from among chief justices of the high courts and occasionally from the bar.
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Why is public scrutiny essential?

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- The judges play a significant role of making crucial decisions for the country.
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- To mention some, they decide what people eat, what they can and cannot

say, who they can have sex with and whether or not one can visit a temple.
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- They decide matters of life and death, guilt and innocence, detention and freedom, bail or jail.
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- There is no aspect of people's life which is not governed by the law and certainly, judges are the ultimate interpreters of the law.
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- But an opaque process in appointments impacts the legitimacy of the decisions of the court.
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What does it call for?

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- A transparent process should replace the existing opaque process of appointment of judges.
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- Pre-appointment background checks must be made known through a process of public hearings.
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- This must include allegations of sexual harassment, wherein the contribution of the MeToo movement would help ensure accountability in the judiciary.
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- India, in all, needs a new process of appointment of judges and new criteria for evaluation to reflect public expectations.
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Source: Indian Express

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