RTI and Right to Privacy - Judiciary Case - II

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What is the issue?

- A Constitution Bench of the Supreme Court has recently concluded hearing a crucial appeal under the Right to Information Act (RTI), 2005.
- In this context, the proceedings over making collegium transparent to RTI provisions need a closer look.

What is a collegium?

- A collegium collectively constitutes the selection panel for judicial appointments to the Supreme Court.
- The Collegium includes the five senior-most judges of the Supreme Court.
- When it comes to the High Courts, it constitutes the three senior-most judges.
- The Collegium itself is not mentioned in the text of the Constitution as it arose out of a judgment of the Supreme Court.

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Why is collegium significant?

- India is one of the few countries where judges have the last word on judicial appointments, through the mechanism of the Collegium.
- It came as a response to increased executive interference in judicial appointments, particularly during Indira Gandhi's regime.
- The Collegium, therefore, was a tool to secure and guarantee the independence of the judiciary.
- In 2015 too, the Court struck down a constitutional amendment to replace Collegium with a National Judicial Appointments Commission (NJAC).
- It was firmly held that judicial primacy in appointments was the only constitutionally-authorised way of securing judicial independence.

What is the point of contention though?

- The Collegium had come under increasing criticism for its opacity as it has immunised itself from any form of public scrutiny.

- The nomination process, the deliberations and the reasons for elevation or non-elevation of judges, all are secret.
- This leaves way for the possibility of executive interference in judicial appointments.
- Also, it was increasingly being perceived that judicial appointments were too often made in an ad hoc and arbitrary manner.
- [E.g. former SC Justice Markandey Katju admitted that, as the CJ of the Allahabad HC, he had refused to recommend a lawyer for judgeship as the lawyer was in a live-in relationship without being married.]
- The Supreme Court's own NJAC judgment acknowledged all these concerns.
- It vowed to evolve a system where concerns of transparency were addressed.
- A small step towards this was made during Dipak Misra's tenure as CJI, when the resolutions of the Collegium began to be published online.

What is the current dispute?

- The question of whether the correspondence of the Collegium was subject to the RTI was looked into by the Supreme Court.
- The Attorney-General of India, representing the Supreme Court, argued that disclosing the Collegium's correspondence would "destroy" judicial independence.
- The CJI seemed to agree, noting that disclosing the reasons for rejection of a judge would "destroy" his or her life or career.
- However, this view is disputed, given the very purpose of the Collegium system being to guarantee judicial independence.

Why is transparency crucial to collegium's functioning?

- The Supreme Court has instituted a process of appointment that makes itself the final arbiter of judicial appointments.
- But then, it must at least ensure that the same process meets the standards of accountability in a democratic republic.
- E.g. in the U.S., candidates for judicial appointments in the federal judiciary are subjected to public confirmation hearings by the Senate
- In Kenya and South Africa, the interviews of candidates taken by judicial appointments commissions are broadcast live.
- The public, thus, is in a position to judge for itself the selection process.
- This is crucial to maintaining public faith in the impartiality of judiciary as an institution.
- A way out of this dilemma is to open up the court, as the cleansing value of transparency by public scrutiny on judicial appointments is worth it.

Source: The Hindu

