Transparency in Judicial Appointments

What is the issue?

\n\n

\n
- The central government has been pushing for reforming the collegium system and ensuring a bigger role for itself in judicial appointments and transfers.
\n
- While the judiciary has been actively thwarting these efforts, it needs to realise that more transparency is needed in judicial transfers and appointments.
\n

\n\n

How are appointments made to the higher judiciary?

\n\n

\n
- The collegium system of judicial is in practice for appointments and transfers in the higher judiciary for more than 3 decades now.
\n
- Under this, the 5 senior most judges of the Supreme Court decide upon the appointment and transfer of judges in the higher judiciary.
\n
- The names decided are then forwarded to the government, which can either accept the suggestions or return them once but not the second time.
\n
- The closed door system has come under criticism as there is a lack of transparency and accountability in its functioning.
\n
- Lately, the central executive and the higher judiciary have openly disagreed over the manner in which senior judges should be appointed.
\n

\n\n

What are the recent developments in this regard?

\n\n

\n
- The government got the “National Judicial Appointments Commission” (NJAC) Act - 2014, passed as the 99th Constitutional Amendment Act.
\n
- NJAC sought to establish a body with representation from the higher judiciary, the government, and civil society to replace the current Collegium system.
\n
- While the NJAC Bill was even passed and approved by more than 16 states (it is a federal subject), the Supreme Court pronounced it null and void.
\n
- Nonetheless, government has time and again intervened in appointments, by delaying/opposing collegium recommendations on various grounds.
\n
- In this regard, a recent report states that, of the multiple names recommended for appointment to the high courts across the country, 50% were ineligible.
\n
- Further, many names reflected a clear cases of nepotism, failure to meet even the minimum criteria and lack of judicial competence.
\n
- Moreover, collegium recommendations were also found to be skewed in favour of upper castes, with fewer SC, ST, OBCs and minority candidates.
\n
- Further, only 27% of women were judges even in lower courts, which gets worse higher up with 11% in High Courts and 9% in Supreme Courts.
\n

\n\n

What is the way ahead?

\n\n

\n
- Independence of the judiciary is one of the central pillars of any healthy democracy, which needs to be preserved.
\n
- But the judiciary draws its power and influence from the fact that it is seen as an impartial arbiter, an image that it needs to protect.
\n
- The current module for appointments and transfers has cast significant

doubt about the impartiality of the judiciary.
\n
- While the issues are clear and interference by the executive is undesirable, it is now upon the apex court itself to come up with an innovative solution.
\n

\n\n

\n\n

Source: Business Standard

\n\n

\n\n

\n

