

Transparency in Judicial Appointments

What is the issue?

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- The central government has been pushing for reforming the collegium system and ensuring a bigger role for itself in judicial appointments and transfers.

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- While the judiciary has been actively thwarting these efforts, it needs to realise that more transparency is needed in judicial transfers and appointments.

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How are appointments made to the higher judiciary?

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- The collegium system of judicial is in practice for appointments and transfers in the higher judiciary for more than 3 decades now.

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- Under this, the 5 senior most judges of the Supreme Court decide upon the appointment and transfer of judges in the higher judiciary.

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- The names decided are then forwarded to the government, which can either accept the suggestions or return them once but not the second time.

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- The closed door system has come under criticism as there is a lack of transparency and accountability in its functioning.

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- Lately, the central executive and the higher judiciary have openly disagreed over the manner in which senior judges should be appointed.

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What are the recent developments in this regard?

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- The government got the “National Judicial Appointments Commission” (NJAC) Act - 2014, passed as the 99th Constitutional Amendment Act.

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- NJAC sought to establish a body with representation from the higher judiciary, the government, and civil society to replace the current Collegium system.

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- 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.

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- Nonetheless, government has time and again intervened in appointments, by delaying/opposing collegium recommendations on various grounds.

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- 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.

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- Further, many names reflected a clear cases of nepotism, failure to meet even the minimum criteria and lack of judicial competence.

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- Moreover, collegium recommendations were also found to be skewed in favour of upper castes, with fewer SC, ST, OBCs and minority candidates.

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- 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.

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What is the way ahead?

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- Independence of the judiciary is one of the central pillars of any healthy democracy, which needs to be preserved.

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- 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.

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- The current mode for appointments and transfers has cast significant

doubt about the impartiality of the judiciary.

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- 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.

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Source: Business Standard

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