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ANALYSIS**

**TOPIC**

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Collegium System of India

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## COLLEGIUM SYSTEM OF INDIA

### Context

- Recently, there were issues highlighted in the Collegium System that appoints the Judges in higher judiciary of India.

### About Collegium System:

- It is a novel mechanism devised to ensure a democratic system of appointment and transfer of judges. It came into existence through Second and Third Judges Case judgments.
- There is no such law or Constitutional Provision that mentions or defines the collegium system.
- **Head:** It is headed by the **CJI** and comprises 4 other senior-most judges of the court.
- **High Court (HC) Collegium:** An HC collegium is led by its Chief Justice (CJ) and four other senior-most judges of that court.

### Constitutional Provision For Judicial Appointment:

- **Article 124:** Supreme Court judges should be appointed by the president after consultation with such Judges of the High Court and the supreme
  - ♦ The CJL is to be consulted in all appointments except his or her own.
- **Article 217:** High Court judges should be appointed by the president after consultation with the CJL and the Governor of the state.
  - ♦ The Chief Justice of the High Court concerned too should be consulted.

### Evolution of Collegium System

- **Article 124(2) of the Constitution of India:** Every judge of the Supreme court is appointed by the President of India in consultation with such of the judges of the Supreme court and High courts as the President may deem necessary.
  - ♦ However the actual process has gone through various changes due to the Apex court verdict.
- **First Judges Case, 1981 (S P Gupta Vs Union of India):** A seven judge Constitution Bench held that the **President of India is the final authority** to appoint and he need not follow the advice of the judges whom he consults.
  - ♦ It meant 'consultation is not concurrence'.
- **Second Judges Case, 1993 (Supreme Court Advocates-on-Record Association Vs Union of India):** A nine-judge Constitution Bench **overruled the decision given in SP Gupta Case** and devised a specific procedure called 'Collegium System' for the appointment and transfer of judges in the higher judiciary.
  - ♦ It accorded **Primacy to the CJI** in matters of appointment and transfers while also ruling that the **term 'consultation' would not diminish the primary role of the CJI** in judicial appointments.
  - ♦ The **role of the CJI is primal in nature** because this being a topic within the judicial family, the executive cannot have an equal say in the matter. (**Article 50 of Constitution of India:** Separation of powers between Judiciary and Executive)
- **Third Judges Case (1998):** The 1993 decision was reaffirmed with minor modifications in 1998, on a reference made by the President under Article 143 of the Constitution.
  - ♦ It was held that the recommendation of appointment etc should be made by the chief justice of India and his four senior most colleagues instead of earlier two and is referred to as the Collegium.
  - ♦ Both 1993 decision and 1998 opinion lay down that the senior most judge of the SC should be made as CJI.
- **Fourth Judges Case (2015):** The constitutional validity of both the **Ninety-Ninth Constitutional Amendment and the NJAC Act, 2014**, was challenged in the Supreme Court in 2015.
  - ♦ A constitutional bench of five judges with a majority of 4:1 struck down the NJAC, declaring them **unconstitutional and void**, stating that it posed a **threat to the independence of the judiciary**.

### Arguments Favouring the Collegium System

- **Secrecy in Judicial Appointments:** It is kept secret within the four walls of the body for proper and effective functioning of the institution.
  - ♦ However, it does **not involve an official secretariat**, and is **regarded as a private affair**, with **no public knowledge** of how and when a collegium meets or how it makes decisions.
- **Independence of Judiciary:** The State shall take steps to separate the judiciary from the executive in the public services of the State (Article 50 of Constitution). It ensures the regulation of the **doctrine of separation of power**.
  - ♦ It ensures the independence and allows the judge to perform their duty without any fear or without any interference and influence.

### Arguments Against the Collegium System

- **Charges of nepotism and favouritism:** The Collegium **does not provide any guidelines** in selecting the candidates for the judge position of the Supreme Court because of which it leads to **wide scope for nepotism and favouritism**.
  - ♦ It may lead to the wrong choice of the candidate while overlooking the right candidate.
- **Misuse of power:** In India, three organs work partially independently but they keep check and balance and control on the excessive powers of any organ. Collegium gives the immense power to Judiciary to appoint Judges, and misuse of powers could happen.
- **Lack of transparency:** Collegium system leads to non-transparency of the judicial system, which is very harmful for the regulation of law and order in the country.
- **Inequitable representation of backward and minority communities:** As per the data available with the **Union Law Ministry**, out of 537 appointments to High courts between 2018 and 2022, 424 (79%) were from the general category (upper caste), 57 (11%) were from Other Backward Castes (OBCs), 15 (2.8%) were from Scheduled Castes (SCs) and 7 (1.3%) were from Scheduled Tribes (STs).
  - ♦ There is **no provision for reservation in judicial appointments from marginalised communities** to ensure social diversity, as the government appoints only those persons as judges of Supreme Court and high courts who are recommended by the SC collegium.
- **Issue of Social Diversity:** In the last three decades, the collegium system has failed to address the issue of social diversity in higher judiciary, as originally devised by the Supreme Court.
- **Judicial Vacancies:** Presently, India has 25 High courts with a total sanctioned strength of 1,114 judges, and only 782 judges are working while the remaining 332 judges' posts are vacant.
- **Lack of representation of women:**
  - ♦ Only 107 judges, or 13% of all HC judges, are female.
  - ♦ There are currently four women justices out of the sitting 33 in the Supreme Court.

### Way Forward

- There is a need to **reform the Memorandum of procedure (MoP)** for the appointment of the Chief Justice of India, Judges of the Supreme Court and High Courts.
- There should be **focus on the inclusivity** of marginalised sections of society including women while appointing in the higher judiciary.
- We can follow the **best practices** like:
  - ♦ **In the USA:** The appointments are made by the President. Judges of the Supreme Court are nominated by the President and confirmed by the United States Senate.
  - ♦ **In Canada:** The Federal Minister of Justice appointed special advisers to gather the information about the potential and the deserving judges and then the list is transferred to the Canadian Bar Association National Committee who check the background of the candidates before pronouncing the candidates qualified or not qualified for judicial office.

- ♦ The final selection is laid before the Cabinet for approval and forwarding to the Governor General, in whose name the appointment is made.
- ♦ **In Germany:** The appointment of the Judges is made through the process of the election. Half the members of the Federal Constitutional Court are elected by the executive and half by the legislative.
- ♦ **In the UK:** The SC Judges are appointed by a five peoples selection commission. That committee consists of the SC President, his deputy and one member each appointed by the JACs which consist of lay persons, members of judiciary and the bar; of England, Scotland and Northern Ireland.

Source: *IE*

### DAILY MAINS QUESTION

Critically examine the efficacy and transparency of the Collegium system that appoints the judges of higher judiciary in India.

