BLOGS

Collegium System in India- Conflict regarding Appointment of Judges

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Introduction

The Appointment of Judges of the Supreme Court and the High Court and the transfer of judges from one High Court to another is made in accordance with Articles 124, 217 and 222 of the Constitution of India.

Earlier, the appointment of judges was made by the President in consultation with the Chief Justice and other judges. The collegium system is a significant facet of the Indian judiciary that has undergone gradual development to guarantee transparency and maintain the autonomy of the judiciary.

The judiciary has established this system, which provides a structured method for the appointment and relocation of judges in superior courts. The collegium system seeks to preserve the independence of the judiciary from the executive branch by endowing judges with substantial influence in the appointment process.

This article will delve into the history of Collegium System in India and then talk about the current situation, conflicts and criticisms about the system of appointment of judges in India.

History of the Collegium System in India

The origin of the collegium system can be traced back to the verdict of the Supreme Court in the case of **S.P. Gupta v. Union of India** (popularly known as the **First Judges' Case**) in the year

1981.

The court's decision in this instance determined that the preeminence of the executive branch in the selection of judges undermined the autonomy of the judicial system. The ruling underscored the necessity of an autonomous entity to oversee the selection of judges, which subsequently resulted in the implementation of the collegium framework.

The controversy surrounding the nomination of judges by the Central government resulted in a ruling by the Supreme Court that affirmed the government's prerogative to decline the recommendations of the Chief Justice of India. However, the aforementioned precedent was subsequently invalidated in the **SCAORA v. Union of India (1993) case**.

In this instance, a nine-judge bench decreed that the government is obligated to adhere to the guidance of the CJI, subsequent to consultation with the two most senior judges of the Supreme Court, in the selection of judges. The aforementioned ruling instituted the present-day collegium mechanism for nomination.

In 1998, the Supreme Court augmented the collegium system in response to a request from President K.R. Narayanan. The expansion involved an increase in the number of judges from three to five and the elucidation of various facets of the appointment procedure.

Notwithstanding subsequent obstacles, the Supreme Court has consistently affirmed the collegium system, thereby solidifying its status as the established mechanism for judicial appointments in India. The ongoing debates pertaining to the development of the appointment procedure indicate the existence of inherent deficiencies that require attention to guarantee the equitable and unbiased selection of judges, with a focus on upholding the integrity and autonomy of the judiciary.

Evolution and Working of the Collegium System in India

The collegium system has undergone a process of evolution over time as a result of successive judicial decisions (the first, second and the third judges case) and has been moulded by the combined knowledge and experience of the judiciary.

The system is comprised of a cohort of esteemed judges, typically including the Chief Justice of India and a select few justices from the Supreme Court. Their primary duty is to propose potential candidates for judicial appointments and relocations.

The operational mechanism of the collegium system encompasses multiple phases. In the event of a vacancy in a higher court, the Chief Justice of India engages in consultation with the other members of the collegium to discern appropriate candidates. The collegium takes into account multiple criteria, including but not limited to academic excellence, ethical standards, length of service, and geographical diversity, when formulating its recommendations.

Subsequently, the aforementioned suggestions are transmitted to the President of India, who assumes the role of the appointing entity. In the event of disagreement among the collegium's members, a majority vote determines the position that will prevail.

The process of appointing judges in India is contingent upon the specific role sought. The appointment of the Chief Justice of India (CJI) is the responsibility of the President of India. Nevertheless, it is customary for the retiring Chief Justice of India to suggest a potential candidate for the position of the next Chief Justice of India.

Typically, in actuality, the selection of judges is predicated upon their length of service, a practice that has been customary since the dispute surrounding the bypassing of judges during the 1970s.

For other supreme court judges, the Chief Justice of India puts forth a proposal to start the process of adding more judges to the Supreme Court. The Chief Justice of India engages in consultation with other members of the Collegium, comprising the most experienced judges of the Supreme Court and the judge from the relevant High Court to which the recommended individual is affiliated.

It is imperative that these consultations be documented in written form and included as a component of the file. Subsequently, the recommendation is transmitted to the Law Minister, who subsequently refers it to the Prime Minister for counsel to the President.

With respect to High Court judges, the Collegium makes the decision on elevation in regards to the appointment of Chief Justices of High Courts. The process of making recommendations is instigated by the departing Chief Justice of the High Court, who engages in consultation with his two most senior colleagues. Subsequently, the recommendation is transmitted to the Chief Minister, who counsels the Governor to submit the proposal to the Union Law Minister.

To summarize, the appointment of the Chief Justice of India and Supreme Court judges is within the purview of the President, with the Collegium playing a pivotal role in providing recommendations for potential candidates.

The process of appointing Chief Justices of High Courts entails consultations among the Collegium, Chief Minister, Governor, and Union Law Minister. The aforementioned procedures are designed to guarantee an equitable and lucid process for appointing judges to the judiciary.

Transparency and Accountability in the Collegium System

The collegium system is designed to promote transparency and accountability in the appointment process, which is a crucial goal. The system's mechanism enables the selection of judges based on their qualifications and merit rather than political considerations. The system endeavours to reduce the potential for bias and cronyism in judicial appointments by incorporating a panel of judges into the decision-making process.

In order to augment transparency, the collegium system has undergone a series of reforms. The year 2017 witnessed the implementation of a new protocol by the Supreme Court, wherein its official website was utilized as a platform for publishing its resolutions and recommendations. This measure facilitates the dissemination of information pertaining to the selection and relocation of judges, thereby fostering transparency and upholding the confidence of the populace in the judicial system.

Ongoing Conflict between the Executive and Judiciary regarding the Collegium System

The debate surrounding the collegium system in India has been a prominent issue in India's constitutional discourse, with the government and judiciary engaged in a contentious struggle.

The persistent conflict pertains to matters of transparency, accountability, and the allocation of authority between the executive and judiciary branches.

The collegium system has been a subject of concern for the government due to its perceived lack of accountability and transparency. There is an argument that the appointment of judges, which is a critical element of governance, should not be exclusively entrusted to the judiciary.

The government has endeavoured to establish its authority in the procedure, underscoring the necessity for a more inclusive methodology that encompasses the executive and legislative arms. The proposal for the creation of a National Judicial Appointments Commission (NJAC) has been put forth as a means to promote a fair and diverse decision making process.

The judiciary has offered a defence of the collegium system, emphasising its significance in preserving judicial autonomy and averting political intervention. According to the judiciary, the collegium system, despite its imperfections, guarantees that judicial appointments are made on the basis of merit and the combined expertise of seasoned judges..

The conflict between the executive and judiciary branches of government reached a pivotal moment with the enactment of the National Judicial Appointments Commission (NJAC) Act in 2014. The objective of the Act was to substitute the collegium system with the NJAC, a body comprising members from the judiciary, the executive, and distinguished individuals from civil society.

It also aimed to mitigate issues pertaining to transparency and accountability through the engagement of diverse stakeholders in the appointment procedure. In 2015, the Supreme Court rendered a majority opinion that invalidated the NJAC Act, thereby reasserting the preeminence of the collegium system.

The Supreme Court's ruling to invalidate the NJAC Act was grounded in the construal of the basic structure doctrine of the Constitution. The judiciary determined that the NJAC Act infringed upon the fundamental framework by undermining the autonomy of the judiciary and disrupting the intricate equilibrium of authority between the executive and judiciary. This decision has reinforced the judiciary's control over the selection of judges, exacerbating the schism between the executive and judicial branches regarding this matter.

Subsequent to that, proposals have been put forth to enhance transparency through the revelation of the rationales underlying the acceptance or rejection of applicants. Furthermore, there have been demands for a systematic and impartial selection procedure that involves extensive consultations while upholding the judiciary's ultimate decision making power.

The conflict between the executive and the judiciary regarding the collegium system underscores the fundamental tensions that emerge within a democratic framework that incorporates mechanisms for oversight and accountability. The issue at hand involves the presence of valid arguments and concerns on both sides, with the challenge being to achieve an appropriate equilibrium between judicial independence and accountability.

Criticism of the Collegium System in India

Although the Collegium System was established with honourable objectives, it has encountered censure on specific grounds. There are those who contend that the institutional checks and balances within the system are insufficient, given that the judiciary holds ultimate authority over appointments with minimal supervision from the executive or legislative branches. The consolidation of authority within the judiciary has elicited apprehensions regarding the issue of answerability and the possibility of discretionary judgement.

An additional critique posits that the implementation of the collegium system could potentially result in a dearth of heterogeneity within the judiciary. The potential for bias exists within the system due to its reliance on the viewpoints of a limited number of senior judges, which may result in preferential treatment for candidates with comparable backgrounds or from a specific geographic location. Such acts may compromise the fundamental tenets of inclusiveness and representation within the judicial system.

An illustrative case that highlights the deficiencies of the collegium system pertains to the nomination of **Justice Soumitra Sen** to the Calcutta High Court in 2006. Notwithstanding the accusations of financial impropriety during his tenure as a court-appointed representative in a disagreement between two state-owned enterprises, the collegium proceeded to sanction his nomination.

In addition, it can be argued that the collegium intentionally refrained from disclosing relevant details regarding Justice Sen, thereby demonstrating a significant deficiency in transparency and responsibility within the appointment procedure. The appointment of Justice Sen and the ensuing events have been thoroughly documented, serving as a warning that highlights the inadequacies of the collegium system.

An instance that highlights the inadequacies of the collegium system in India is the case concerning **Justice Akil Kureshi**, which occurred relatively recently. Justice Kureshi, despite holding the highest judicial position in the state, was not selected for advancement to the role of Chief Justice of the Gujarat High Court.

This raised apprehensions regarding partial treatment and preferential treatment, as opposed to evaluating worth as the foundation for progression.

Conclusion

The collegium system has recently been the subject of intense criticism by Vice President Jagdeep Dhankhar and Union Law Minister Kiren Rijiju, resulting in renewed tensions between the executive and the judiciary.

It is imperative to acknowledge that the collegium system possesses inherent deficiencies and obstacles that necessitate consideration. It would be impractical to regard this system as infallible and invulnerable to enhancement.

The Constitution grants the Supreme Court's decisions finality. Although it is crucial to maintain the supremacy of the highest court, that does not necessarily mean that its construals of the legal system are immune to examination or constructive evaluation.

It is permissible and consistent with judicial decorum to partake in discourse pertaining to the law and the Court's rulings, such as the collegium system, with the objective of pursuing prospective improvements. It is imperative to adopt a legal and objective perspective while engaging in these discussions, as opposed to permitting political or ideological prejudices to obscure the dialogue.

The collegium system, despite its imperfections, serves a pivotal function in upholding the autonomy and ethical standards of the judiciary. The process guarantees that judges are appointed and transferred solely on the basis of their merit and qualifications, thereby reducing the impact of political factors.

Nevertheless, there is a necessity for ongoing reforms aimed at tackling issues related to accountability, diversity, and transparency. An equitable strategy that integrates input from all parties involved can enhance the collegium system and maintain the principles of fairness, neutrality, and constitutional administration.