

01.03.21

Issues & Considerations of Collegium system

- 1> This system of collegium is considered as an opaque & unaccountable system since it does not provide information about norms, criterias & standards by which a suitable candidate is shortlisted. Similarly, there is always a conflict of interest between the members of the collegium & the individuals that have been selected to become a judge.
- 2> Collegium generally ~~pr~~ prefers practicing lawyers rather than appointing & promoting judges from subordinate judiciary. Allegations were made that favoured lawyers under the patronage of respective govt. are selected to become a judge of High Court. It is a self-perpetuating cycle by which the High Court has

become an "Old boys Club of Lawyers".

2) Transfer of Judge is also a matter of consideration since there is no accepted norm or criteria by which a judge is transferred from one high court to another. Recently, Jayant Patel, a senior judge of Karnataka H.C. was transferred to Allahabad H.C. in spite of the fact that he was the senior most judge of the country eligible to be a Chief Justice. Similarly, in 2019, C.J. of Madras H.C. Vijaya Kamlesh resigned after the collegium decides to transfer her to Meghalaya H.C.

Accountability in the matters of transfer & promotion is an essential pre-required norms of judicial independence.

4) After the adjudication of S.C. in 2015 where S.C. proposed to adopt a memorandum of procedure to regulate the appointment of judges has not been accepted by both Judiciary & Executive.

It means the notion of subjectivity pre-dominates the Objective criteria in the matter of appointment.

Former S.C. judge & a member of Collegium Justice Arjan Kumar has given its view that most of the times the collegium go by impression to appoint judges.

5) This system of Judges appointing judges would lead to cloning of judges where judges set norms & they think what they are doing is correct. This pattern is completely against the principle of check & Balance & Doctrine of equal distribution of power.

Measures to ensure Judicial Accountability

Accountability is a sine-qua-non of democracy & transparency facilitates the accountability mechanism. However, judicial accountability in India is not ~~an~~ on the same plane as compared to legislative & Executive accountability. Subsequently, several structural & Behavioural measures are required to ensure probity & accountability in the system.

Accountability in Judicial Appointments:

- An accountable, permissible procedure is required to define the subject matter of judicial independence. At present judicial independence is perceived as an absolute idea which was never sought by the makers of the Constitution

An institutional framework that provides ~~any~~ representation to every stakeholders should be created with the purpose to regulate the judicial appointment.

Former Attorney General Mukul Rohitagi supports this view saying that when the supreme law of land was not drafted solely by lawyers & jurists so the matters of judicial appointment can also be regulated by other stakeholders. This type of former would not topple the pillars of constitution.

Similarly Justice Chelameshwar has given his view that a body like NTAE is much more consistent with constitutional mandate (Art. 124(2)). At the same time Parliament has omnipotent power to amend constitution.

Accountability in the process of removal of judges —

The process of removal in India has not gone to logical conclusion after independence, It is a cumbersome process where several considerations like political, legislative are taken into account to remove a judge.

Again an institutional mechanism by the legislation of Parliament to remove a judge from the office. (Judicial Accountability Bill, 2010 is introduced in the concerned matter)

Code of conduct for the judges →

There is no prevailing code of conduct or manual that can regulate the functioning of judiciary & behaviour of judges in our system. According to Justice Kapadia for a judge too "Ethics not only a constitutional morality but also an ethical morality". Similarly,

Justice Verma also specifies that judges have the task to ~~im~~ enforce the rule of law, but does not exempt or even exonerate them from following it. Subsequently, a proper code of conduct is required to maintain the sanctity of judiciary.

In matters of Judicial Delay

Delay in the speedy disposal of cases occurs mainly due to large no. of vacancies that remained unfilled partly due to fiscal reasons, administrative considerations & tension between govt. & collegium. Although, the substantial problem of vacancy is identified at the lower court level due to fiscal & administrative reasons.

Establishment of a subordinate court is a subject of concurrent list but the whole responsibility borne

Subordinate judiciary lies in state Govt.
Subsequently, establishments of subordinate court should be done by Govt. at each level & an optimum amount of fund should also be devoluted from the central pool in favour of subordinate judiciary.

Conclusion ÷

There is a need of time to secure equilibrium between judicial accountability & judicial independence. ~~The~~ The doctrine of "Fiat Justitia Ruat Caelum" i.e. "Let justice be done though the heavens fall" should be followed as a motto by whole judiciary & judges. Recently, in Andhra Pradesh v/s laxmibai case S.C. also held that striking down a law is a grave substantial matter & judiciary has to opt this option when no options are available.