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THE COLLEGIUM AND CHANGES — IT MAY STILL BE EARLY DAYS

Reforms in the Supreme Court Collegium System

The Supreme Court Collegium has recently introduced reforms to enhance transparency and diversity in judicial appointments. These include conducting candidate interviews for elevation to High Courts and avoiding the selection of candidates with close relatives serving as judges. While these measures aim to reduce nepotism and improve judicial diversity, they may inadvertently exclude deserving candidates.

Concerns About Collegium Functioning

Despite these reforms, the collegium system faces criticism for its lack of formal rules, transparency, and accountability. The process relies heavily on ad hoc mechanisms, leaving it vulnerable to external pressures, particularly from the government, which can delay or stall recommendations.

Constitutional Provisions on Judicial Appointments

Judicial appointments in India are governed by constitutional provisions that emphasize consultation:

- **For Supreme Court Judges:** The President consults the Chief Justice of India (CJI) and other judges deemed fit.
- **For High Court Judges:** The President consults the CJI, the Governor of the state, and the Chief Justice of the respective High Court.

These provisions, however, lack clarity regarding the manner and transparency of the consultation process, leading to varied interpretations and implementation challenges.

Evolution of the Collegium System

The collegium system was introduced through landmark judgments:

- **Second Judges Case (1993):** Redefined “consultation” as “concurrence,” empowering the collegium to recommend judicial appointments and transfers.
- **Fourth Judges Case (2015):** Upheld the judiciary’s primacy in appointments, asserting that changes to this system would violate the Constitution's basic structure.



The collegium comprises the CJI and senior judges, with the government having limited scope to return recommendations for reconsideration. If resubmitted, the government is constitutionally bound to accept them.

Challenges in Implementation

The judiciary's primacy in appointments is undermined by delays in government approvals, which can stall recommendations indefinitely. This creates a paradox where the collegium's authority is legally established but practically constrained by executive inaction.

Need for Binding Rules and Reforms

The absence of formal, binding rules governing the collegium system weakens its effectiveness. Recent changes, such as candidate interviews, remain informal and lack codification. Additionally, the "memorandum of procedure," a document intended to guide judicial appointments, lacks clear enforcement mechanisms, underscoring the need for systemic reforms.

Balancing Accountability and Independence

Judicial independence is a cornerstone of the rule of law. However, the current collegium system does not have robust accountability mechanisms. Reforms must strike a balance, ensuring judicial independence while introducing accountability and transparency.

Way Forward

To strengthen the collegium system:

1. **Government Compliance:** The government must respect the judiciary's primacy as established in the Judges' cases.
2. **Collaborative Efforts:** The judiciary and executive must work together to fulfill procedural requirements.
3. **Codification of Rules:** Transparent and binding rules for the collegium system must be developed and enforced.
4. **Assertive Judiciary:** The judiciary must assert its authority to ensure compliance with its recommendations.

Conclusion

Strengthening the collegium system is essential to uphold judicial independence and sustain the rule of law. Reforms must focus on transparency, binding procedures, and collaboration between the judiciary and executive to build public confidence in the judicial appointment process.

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