



The danger of reciprocity

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It is vital the Supreme Court collegium remains firmly independent

- Independence, impartiality and fearlessness of judges are not private rights of judges but citizen's rights.
- Ultimately judicial legitimacy/ power rests on people's confidence in courts.
- We have yet another controversy surrounding the Supreme Court, with the collegium revisiting decisions made at an earlier meeting and recommending the elevation of two junior judges to the Supreme Court.
- No one has any doubts about the competence or integrity of Justice Sanjiv Khanna and Justice Dinesh Maheshwari, but the manner in which it was carried out puts the spotlight once again on the controversial collegium system of judicial appointments.
- This seriously undermines the independence of judges and raises unnecessary doubts about the credibility of the highest court as the government is not only the biggest litigator but also the greatest threat to the abuse of power.
- Judicial review as a concept is supposed to control the government and keep it in check.

Learnings from the past

- Take the case of Justice A.N. Ray, who was appointed Chief Justice of India (CJI) in 1973 superseding three senior judges, or Justice M.H. Beg, who was appointed CJI superseding Justice H.R. Khanna in 1977.
- In the bank nationalisation case (1970), while as many as 10 judges went against the government, Justice Ray approved the government's action.
- Similarly, Justice Beg, in the Indira Gandhi election case, held that while democracy is the basic structure, free and fair election is not.
- The National Judicial Appointments Commission (NJAC) was struck down by the Supreme Court because it would have compromised the independence of the CJI and given a role to the government in the appointment of judges.

- Unlike in the U.S. where judges are appointed by the President and are known to be leaning towards the Democrats or Republicans, Indian judges are not supposed to have any political affiliation.
- The judiciary asserts its position only when the government is weak.
- This collegium system was asserted when we had weak Central governments in the 1990s.

Power and influence

- 'Power' and 'influence' are fundamental concepts in society.
- 'Influence' is sometimes considered to be an aspect of 'power'.
- Justice Khehar preferred exclusion of the political executive from the appointment of judges as a feeling of gratitude towards the government impacts the independence of the judiciary.
- It was for this very reason that even B.R. Ambedkar wanted to insulate the judiciary from political pressures.
- The Hindu right's opposition to the Constitution is an open secret.
- The prospect of a 15-judge bench overturning *Kesavananda Bharati . v. State of Kerala* (1973), which outlined the basic structure doctrine of the Constitution, does not look too remote in the near future if the government continues to exert pressure on the collegium and if the collegium, due to reciprocity, does not effectively assert its power and independence.
- Most governments prefer pliable judges but many of our judges remain wedded to their oath and decide cases without fear or favour.
- True reciprocity affects humans but since our judges are addressed as 'Lords', let them not have any feeling of gratitude towards anyone.

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