

Sansad TV Perspective: Judiciary versus Legislature

In the series Sansad TV Perspective, we bring you an analysis of the discussion featured on the insightful programme 'Perspective' on Sansad TV, on various important topics affecting India and also the world. This analysis will help you immensely for the [IAS exam](#), especially the mains exam, where a well-rounded understanding of topics is a prerequisite for writing answers that fetch good marks.

In this article, we feature the discussion on the topic: **Judiciary versus Legislature**.

Anchor - Teena Jha.

Guests:

1. Harish Salve, Senior Advocate
2. P.K. Malhotra, Former Secretary, Ministry of Law and Justice, GoI
3. Justice Iqbal Ahmed Ansari, Former Chief Justice, Patna High Court.

Context - The Vice-President, Jagdeep Dhankhar posed the question, "Can the Judiciary overrule the will of the people that is represented in the Parliament?" This comes amidst the ongoing row over the process of appointment of judges.

Highlights -

1. NJAC Act.
2. Collegium System.
3. Advantages & disadvantages of the collegium system.
4. Reforms in the judiciary.

Presiding over the Rajya Sabha for the first time as Chairman on the opening day of the winter session of Parliament, Vice-President Jagdeep Dhankhar sent a strong message to the Supreme Court, referring to its 2015 judgement striking down the National Judicial Appointments Commission (NJAC) Act and calling it a glaring instance of severe compromise of parliamentary sovereignty and disregard of the mandate of the people.

NJAC Act -

- In 2014, the National Democratic Alliance government brought the NJAC Act in an attempt to change the system of appointment of judges.

- The NJAC was a proposed body, which would have been responsible for the appointment and transfer of judges to the higher judiciary.
- The Supreme Court in 2015 struck down the NJAC Act on the ground that it posed a threat to the independence of the judiciary. Also, it violates the principle of separation of powers between the executive and the judiciary, which is a basic feature of the Constitution.
- The verdict brought back the collegium system for the appointment of the judges.

The basic structure of the Indian Constitution cannot be abrogated even by a constitutional amendment. The Doctrine of Basic Structure was propounded by the Indian Judiciary in 1973 in the Kesavananda Bharati case to put a limitation on the amending powers of the parliament so that the “basic structure of the basic law of the land cannot be amended in the exercise of its constituent power” under the Constitution.

Collegium System -

- The collegium system is also referred to as ‘judges selecting judges’.
- Under this system, the Chief Justice of India (CJI) and four senior-most judges recommend appointments to higher judiciary and transfers of judges.
- This system has its origin in three judgments made by the Supreme Court, commonly known as the “Three Judges Cases”.
- The recommendations of the Collegium are binding on the Central Government if the Collegium sends the names of the judges/lawyers to the government for the second time.

Advantages of the Collegium System

- It separates the judiciary from the influence of the executive and legislative.
- The State is the main litigant in Indian courts. About 46% of the total cases pending in India pertains to the government. If the power to transfer the judges is given to the executive, then the fear of transfer would impede justice delivery.
- The executive organ is not a specialist or does not have the knowledge regarding the requirements of the Judge.

Criticism of the Collegium System

In recent years there has been a lot of criticism over the appointment of judges for the apex court and high courts through the collegium system.

- The centre has opposed the collegium system of appointment of judges for being “not transparent”. This system is also blamed for the higher number of vacancies in the higher judiciary.

- This system gives rise to favouritism and prevents Dalits, OBCs and the poor from entering the higher judiciary on the basis of merit.
- The collegium system has made India the only country where judges appoint judges.
- The selection of judges by collegium is undemocratic since judges are not accountable to the people or representative of peoples i.e. executive or legislative.
- Recently Kiren Rijiju (Union Law Minister) said that judges spend most of their time picking up judges rather than passing judgements. He called the system opaque and not accountable.

Reforms in the Judiciary

Both centre and judiciary should stop the blame game and focus collectively on reforming the judicial system.

- A bottom-up approach is needed to bring reforms in the [Indian judiciary](#). The principal problem is with the district courts where lakhs of litigants come into contact with the justice delivery system. Unless the problems of these courts are addressed, other temporary changes and ad hoc reforms at the Supreme Court and high courts level will have no bearing on the system, and the average litigant will continue to suffer.
- The system of appointments should be improved expeditiously to deliver justice.

