

## COLLEGIUM CONTROVERSY

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

The controversial collegium system of judicial appointments is under public scrutiny once again. This time, the potential for embarrassment to the superior judiciary is much higher. Former Chief Justices of India, a sitting Supreme Court judge, and the Bar Council of India have taken exception to the collegium's unusual action of revisiting decisions made at an earlier meeting, and recommending the elevation to the apex court of Justice Dinesh Maheshwari and Justice Sanjiv Khanna, instead of two judges whose names had been considered earlier. The allegation is not merely one concerning the seniority or the lack of it of the two appointees; rather, it is the much graver charge of arbitrarily revoking a decision made on December 12 last year. The official reasons are in the public domain in the form of a resolution on January 10. It claims that even though some decisions were made on December 12, "the required consultations could not be undertaken and completed" in view of the winter vacation. When the collegium met again on January 5/6, its composition had changed following the retirement of Justice Madan B. Lokur. It was then decided that it would be "appropriate" to have a fresh look at the matter, as well as the "additional material". The only rationale for the names of Rajasthan High Court Chief Justice Pradeep Nandrajog and Delhi High Court Chief Justice Rajendra Menon being left out is the claim that new material had surfaced. However, it is not clear what the material is and how it affected their suitability.

Former Chief Justice of India R.M. Lodha is right in underscoring the institutional nature of decisions by the collegium. Can the retirement of one judge be a ground to withdraw a considered decision, even if some consultations were incomplete? There is little surprise in the disquiet in legal circles. Another curious element in the latest appointments is that Justice Maheshwari, who had been superseded as recently as last November, when a judge junior to him was appointed a Supreme Court judge, has been found to be "more suitable and deserving in all respects" than any of the other chief justices and judges. There is no objection to the elevation of Justice Khanna except his relative lack of seniority. There is little substance in this criticism, as it is now widely accepted that seniority cannot be the sole criterion for elevation to the Supreme Court. However, the fact that there are three other judges senior to him in the Delhi High Court itself — two of them serving elsewhere as chief justices — is bound to cause some misgivings. The credibility of the collegium system has once again been called into question. The recent practice of making public all resolutions of the collegium has brought in some transparency. Yet, the impression that it works in mysterious ways refuses to go away. This controversy ill-serves the judiciary as an institution.

The Meghalaya government must urgently ensure that all illegal mines are shut down

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