

EDITORIAL ANALYSIS → 11 FEBRUARY 2023 → THE INDIAN EXPRESS:

WHAT A TANGLED WEB:

- **Context:**

- Pratap Bhanu Mehta claims that the Supreme Court's nomination of Justice Victoria Gowri was yet another brilliant own goal.

- **About:**

- The term "collegium system" describes the system for electing and dismissing judges that was established by Supreme Court rulings rather than by Acts of Parliament or Constitutional provisions.
- The Collegium, which is headed by the Chief Justice of India, is composed of the four seniormost Supreme Court justices.
- The leaders of the collegium are the incumbent Chief Justice and the two other High Court justices with the maximum seniority.

- **Issues:**

- The selection and advancement of Supreme Court and high court justices is one of the system's grey areas.
- The full exclusion of the executive from the judicial selection process led to a system where a small number of judges covertly appoint the remaining judges.
- Because there are no specific procedures for screening candidates for the position of Chief Justice of India, there are several potential for nepotism and favouritism.
- The door is shut since there are no official minutes of collegium deliberations.
- The growing number of court cases and judge vacancies has defied the Collegium's efforts to curb them.

- The issues in this scenario shouldn't be interpreted in terms of a particular person. Let's put the question of Justice Gowri's appointmentability on hold for the time being. Instead, focus on the institutional forces at play.
- In the first, there is an unusual institutional situation where the Court makes its own decisions. The petition challenging the Justice's appointment was heard by judges who weren't members of the Collegium, it is true. But as Gautam Bhatia so beautifully highlighted, in this instance the court is sitting in judgement of its own choice, with the Chief Justice presiding over the bench. This is a complete legal oddity, to put it simply.
- The second issue is the material provided to the Collegium regarding a potential appointment and how it is presented. If it has the power to suggest appointments, it must have all the resources and processes required to ensure that every applicant has undergone a rigorous screening process.
- The Court admits that the nomination has been disputed, but it then puts the judges who are currently sitting in an unfavourable position. It's not entirely apparent what exactly a judicial review of a candidate's eligibility may involve, to start.

- **Conclusion:**

- The fundamental question of whether the Collegium system is required to safeguard the core principles of the Constitution cannot be resolved by the Supreme Court by itself through a judicial decision. It calls for a wider discussion.
- It should go without saying that the Supreme Court's reputation as the defender of our fundamental liberties and the keeper of constitutional values would be greatly enhanced if it aggressively engaged with other state branches on the aforementioned topics.
- After all, in addition to judicial review, the Supreme Court has noted that the separation of powers and checks and balances are important components of the Constitution's basic structure.