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Friday



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## This judicial selection needs more than a tweak

In recent weeks, the Supreme Court of India's collegium has been busy. New judges have been appointed to the Court on its advice and long overdue vacancies have been filled up.

### A need for transparency

1. What ought to concern us, though, is that long-standing apprehensions about the collegium's operation remain unaddressed: specifically, its opacity and a lack of independent scrutiny of its decisions. These misgivings are usually seen in the context of a battle between the executive and the judiciary.
2. Less evident is the effect that the failings have on the status of the High Courts. Today, even without express constitutional sanction, the collegium effectively exercises a power of supervision over each of the High Courts.
3. This is not to suggest that these decisions are unfounded. It is possible that each of the choices made is predicated on administrative needs. But whatever the rationale, surely the public has a right to know.

### Collegium System:

1. Since 1993, when the Supreme Court rendered a ruling in the *Second Judges Case*, the word consultation has been interpreted to mean "concurrence".
2. What is more, that concurrence, the Court held there, ought to be secured not from the CJI alone, but from a body of judges that the judgment described as a "collegium".
3. Thus, the Court wound up creating a whole new process for making appointments and transfers and carved out a system where notional primacy came to rest in the top echelons of the judiciary.
4. This procedure has since been clarified. The collegium for appointments to the Supreme Court and for transfers between High Courts now comprises

## This judicial selection needs more than a tweak

The collegium system and the disparities underlying its decision-making dilute the importance of the High Courts



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It is more than a decade since the collegium system was introduced. In the interim, the collegium has been busy. New judges have been appointed to the Court on its advice and long overdue vacancies have been filled up.

The collegium system is a product of the Second Judges Case. It is a system where the Supreme Court of India selects and transfers judges to the High Courts. The collegium is composed of the Chief Justice of India and four other judges of the Supreme Court.

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the CJI and his four senior-most colleagues, and for appointments to the High Courts comprises the CJI and his two senior-most colleagues.

5. When appointing judges to the High Courts, the collegium must also consult other senior judges on the Supreme Court who had previously served as judges of the High Court under consideration.
6. All of this is contained in a "Memorandum of Procedure" (MoP). But there is, in fact, no actual guidance on how judges are to be selected.

### The NJAC and after

1. When the Court struck down the NJAC, it also promised to reform the existing system. Six years down the line those promises have been all but forgotten.

2. A new MoP, for instance, is nowhere in sight. The considerations that must go into the procedure for selecting judges is left unexplained. The words "merit" and "diversity" are thrown around without any

corresponding debates on what they, in fact, mean.

3. Somehow, amidst all of this, we have arrived at a consensus that enveloping a veil over the process of selection is essential to judicial autonomy and that there is no legitimate reason why the public ought to know how judges are chosen and transferred.

4. In the case of the latest set of recommendations, five Chief Justices of High Courts have been reshuffled. Our constitutional scheme envisages no power of administrative superintendence in the Supreme Court over the High Courts.

5. But when transfers are made routine, when the process of appointing Chief Justices to High Courts is shrouded in secrecy, a de facto system of oversight is put in place.

A JURY OF JUDGES		
<b>WHAT IS THE COLLEGIUM SYSTEM?</b>		<b>CRITICISMS</b>
<ul style="list-style-type: none"> <li>• A forum which decides on appointments, transfers (A/Ts) of judges.</li> <li>• Comprised of Chief Justice of India, 4 Supreme Court Judges</li> <li>• President merely approves CJI's choice</li> </ul>	<ul style="list-style-type: none"> <li>• Born from 'Three Judges Cases' which gave primacy to CJI's call on A/Ts</li> <li>• Judiciary gets greater say than Executive on A/Ts</li> </ul>	<ul style="list-style-type: none"> <li>• Administrative burden of checking professional background data</li> <li>• Closed-door affair, lacks transparency</li> <li>• Exclusivity sidelines talented junior judges, advocates</li> </ul>
<b>SOME OF THE CHANGES SOUGHT:</b>		
<ul style="list-style-type: none"> <li>• CJI cannot make unilateral choice</li> <li>• Consulted judges' views need to be in writing</li> <li>• Non-compliance must make CJI choice non-binding</li> <li>• Transfer of judges reviewable only in case of non-compliance</li> </ul>		



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## Getting back the shine

1. It is clear that we have come a long way from a time when Chief Justices of High Courts declined invitations to the Supreme Court because they valued the work that they were already entrusted with.
2. Restoring High Courts to that position of prestige must be seen as essential to the process of building trust in our Constitution.
3. Achieving this will no doubt require more than just a tweak in the process of appointments. But what is clear is that the present system and the mysteries underlining the decision-making only further dilute the High Courts' prominence.

When Chief Justices have moved around with alacrity, and when they are accorded tenures lasting a matter of months, at best, it is impossible for them to make any lasting changes. At some point, we must take seriously the task of reforming the existing scheme because the status quo is ultimately corrosive of the very institutions that it seeks to protect.

## Sea level rise is certain

The recently published Intergovernmental Panel on Climate Change (IPCC) Assessment Report from Working Group I — 'Climate Change 2021: The Physical Science Basis' — is a clarion call for climate action. It provides one of the most expansive scientific reviews on the science and impacts of climate change.

### Sea level rise is certain

This has implications for the future even under the low emissions scenarios

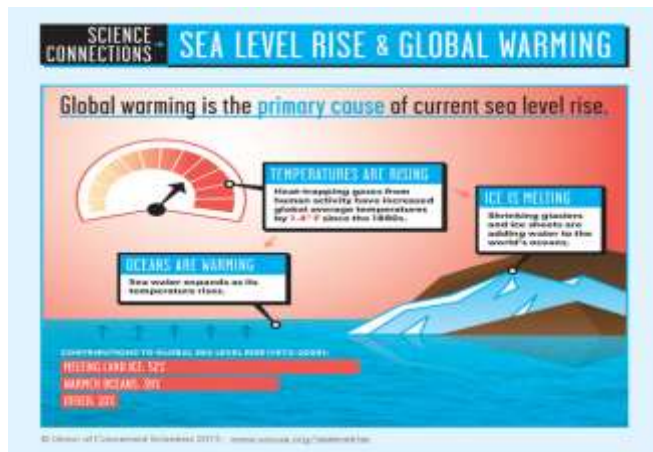


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The report discusses five different global temperature scenarios for the future with varying levels of greenhouse gas (GHG) emissions. The scenarios discussed are the following: very low and low GHG emissions, which maintain or reduce greenhouse gas emissions; intermediate GHG emissions, high and very high emissions, which increase greenhouse gas emissions; and high emissions, which increase greenhouse gas emissions significantly.

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## **Come hell or high water**

1. Close to 700 million people worldwide live along the coast and there continue to be planning to expand coastal cities. Therefore, understanding the risks involved from climate change and sea-level rise in the 21st and 22nd centuries is crucial.
2. Sea level rise will continue after emissions no longer increase because oceans respond slowly to warming. The centennial-scale irreversibility of sea-level rise has implications for the future even under the low emissions scenarios.
3. Sea level rise occurs mainly due to the expansion of warm ocean waters, the melting of glaciers on land, and the melting of ice sheets in Greenland and Antarctica.

According to the UN Environment Programme Emissions Gap Report, the world is heading for a temperature rise above 3°C this century, which is double the Paris Agreement aspiration. And there is deep uncertainty in sea-level projections for warming above 3°C.

## **Vulnerability in India**

1. Communities along the coast in India are vulnerable to sea-level rise and storms, which will become more intense and frequent. They will be accompanied by storm surges, heavy rain and flooding.
2. Adaptation to sea-level rise must include a range of measures, along with coastal regulation, which should be stricter, not laxer, as it has become with each update of the Coastal Regulation Zone.
3. The government should not insure or bail out speculators, coastal communities should be alerted in advance and protected during severe weather events, natural and other barriers should be considered in a limited manner to protect certain vulnerable areas, and retreat should be part of the adaptation strategies for some very low-lying areas.

## **Improving the economic game**

The Quad (Australia, Japan, India and the U.S.) meets in a landmark physical summit this week. The agenda for the Quad has widened — till now, it was largely focused on strengthening strategic and defence pillars. This should now bring the industry into the dialogue process to advance the desired outcomes.






### QUAD: Economic Moment


1. The four nations are vibrant democracies and open economies. Three are developed countries and one is an emerging market.
2. On the economic side, challenges were identified as the economic and health impacts of COVID-19, cyberspace, critical technologies, and quality infrastructure investment. Working groups were set up on vaccines, critical and emerging technologies, and climate action.
3. For India, each of the other three countries is a strategic partner, and bilateral and multilateral initiatives have been taken across multiple areas in different fora with each. The Quad syncs with India's other regional programmes such as the Indo-Pacific Oceans' Initiative and the Supply Chain Resilience Initiative.

## Safeguarding Supply

**Australia, Japan & India**  
part of Supply Chain Resilience Initiative




**Initiative aims to**  
reduce dependence on China

 **Asean's presence could**  
mean Chinese influence

**Routing of Chinese goods**  
through Asean an issue

 **Similar issues were**  
raised during RCEP talks



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## QUAD trade Data

1. India's total trade with the three Quad partners was over \$108 billion in 2020-21, accounting for almost 16% of its total merchandise exports and imports.
2. On the investment side, the U.S. is India's second-largest source of foreign direct investments, while Japan has a notable footprint in India's major infrastructure projects.
3. Inflows from Australia amount to less than a billion dollars, but the country has outlined a long-term strategy for economic engagement with India.

**INDIA, JAPAN AND AUSTRALIA  
TO LAUNCH "SUPPLY CHAIN  
RESILIENCE INITIATIVE" TO  
COUNTER CHINA**

THE SUPPLY CHAIN RESILIENCE INITIATIVE FIRST PROPOSED BY JAPAN. THE INITIATIVE AIMS TO REDUCE THE DEPENDENCY IN CHINA. JAPAN IS TO BE JOINED BY INDIA AND AUSTRALIA. IT IS A DIRECT RESPONSE TO COMPANIES THAT ARE CONCERNED ABOUT CHINESE POLITICAL BEHAVIOUR AND DISRUPTION TO SUPPLY CHAIN.



## Business partnerships pillars

1. To advance their goals for a free, open and inclusive Indo-Pacific, the four participants of Quad must activate business partnerships meaningfully with definitive measures to align economic and strategic objectives.
2. The first piece of the economic pillar is trade and investment. Joint efforts by all Quad countries can help to establish alternative manufacturing hubs and make regional supply chains more diversified.
3. The SCRI with India, Australia and Japan aims to address vulnerabilities in existing supply chains that were exposed during the COVID-19 pandemic.



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4. Similarly, the Quad could consider adding a trade ministers' interaction to its agenda which may engage in lowering trade barriers and boosting trade linkages among the partner countries as well as in the Indo-Pacific region.
5. With India as a natural option for a China-Plus strategy, domestic policies to promote manufacturing and ease of doing business would help in the long-term success of trade cooperation.
6. Quality infrastructure investment is another challenge highlighted in the statement. Innovative financing and public-private partnership models can enlarge the space for private industry and support public funds in the endeavour.
7. Green infrastructure creation must be built into the template. A working group on this area could look into specific projects for the region that would best feed into trade objectives
8. The third priority area for the Quad is climate change for which a working group has been set up. Cooperation on multiple dimensions of the climate challenge is proposed, including finance, emissions reduction, technology and capacity-building. With mitigation and adaptation as key aims, the involvement of industry to support governmental efforts would be critical.

As a grouping of like-minded nations working on shared objectives in the Indo-Pacific region, the Quad is a formidable economic force that can deliver many gains on the identified pillars for the participating nations as well as the region. By adding businesses into its strategy mix, its initiatives would be further fortified and expanded. We hope that the governments would consider a forum for such private sector engagement.