



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

NATIONAL JUDICIAL APPOINTMENT COMMISSION: FAIRNESS IN APPOINTMENT OF JUDGES TO THE APEX COURT

What is National Judicial Appointment Commission?

The Constitution (99th Amendment) Act, 2014 and the NJAC Act of 2014, passed by Parliament in August 2014, provided for establishing an independent body that will be responsible for naming judges to the Supreme Court and High Court in place of the Collegium System.¹ The necessity of introduction of this system arose when the legal professionals criticized the current Collegium system of appointment of judges. They expressed their criticism with regards to the transparency of the system, stating that this is the only system where the judges can decide to appoint themselves and also had the authority to transfer.

What is the Collegium System?

The collegium system in India was introduced in 1993. The collegium system consists of the Chief Justice of India (CJI) along with four other seniormost judges of the Supreme Court, forming a five-member Supreme Court Collegium. In case of High Courts, it includes, the Chief Justice of the High along with two other senior most judges of the High Court, forming a three-member collegium system.¹

The collegium system came into picture after the three judges' case namely, the first judges case (S.P. Gupta Case) which asked whether the expression consultation under Article 124

¹ Pragati Rastogi & Utkarsh Singh Kachhawaha, An Overview of the National Judicial Commission Bill 2022 and Appointment of Judges in India, 3 JUS CORPUS L.J. 1123 (2022), <https://heinonline.org/HOL/Page?handle=hein.journals/gnlujldp13&id=63&type=text&collection=journals>.

means concurrence², the second judges case where the petition was filed by the Supreme Court Advocates on Record Association in 1993 which overruled its earlier decision² and the third judges case in 1998 which was about the role of the Supreme Court, the mandate of the Supreme Court, the jurisdiction of the Supreme Court.²

The most criticized aspect of the Collegium system was that if the collegium keeps recommending the same candidate, the government has the obligation to nominate those people to the bench though the Government is said to be free to disagree and ask for clarification regarding the collegium's selection.

Further criticisms with regards to the official procedure or secretariat is engaged, this system cannot be considered to be transparent. The eligibility and the process for making the selection is not well-defined as such and it is not satisfactory to consider such system of appointment. Also, the events taking place in the collegium system are not well documented in either formal or written format.¹ It is also blamed for the slow-pace of appointments of judges to the bench.

What is the composition of the NJAC?

NJAC will comprise of 6 members:

1. The Chief Justice of India, who will be the ex-officio Chairperson of the NJAC.
2. Two senior most judges following the Chief Justice of India.
3. The Law Minister of India.
4. Two eminent persons who shall be selected by the Selection committee consisting of the Prime Minister of India, Chief Justice of India and the Leader of Lok Sabha or in case there is no leader of opposition in Lok Sabha then leader of the single opposition party in the Lok Sabha. ²

The two eminent persons shall include either a woman or a member of Chief Justice of India Schedule Caste, Schedule Tribes other backward classes or minorities.²

² Ayushi Saxena & Sheetal Kattyan, Judicial Independency via National Judicial Appointment Commission, 2 INDIAN J.L. & PUB. POL'y 68 (2015), <https://heinonline.org/HOL/Page?handle=hein.journals/gnlujldp13&id=63&type=text&collection=journals>.

What are the functions of NJAC?

The main functions of the NJAC include knowing how the vacancies are going to be filled, notifying the government of such vacancies in the High Court as well as the Supreme Court, how the judges of the Supreme Court are going to be appointed and how they are transferred, who is going to be appointed as the next judge of Supreme Court, testing the ability or merit of a judge, what is the procedure for appointment at the level of High Court, and transfer of judges of High Court from one court to the other.²

All of the above functions are regulated and looked after by the appropriate authorities in the NJAC.

Criticisms of NJAC

Though the collegium system was criticized of being incompatible with the Constitution as the President was mandated to consult the judiciary and not the other way around, NJAC is also not transparent in comparison to it. The NJAC under its amended provisions (NJAC Amendment Bill, 2022) gives the executive full power over judicial appointments, which hampers the judicial independence.³

The parliament condemned the procedure laid down in the NJAC stating that in no way should the judiciary be subject to selection by the federal government as judiciary is the only independent institution that is left and subjecting it to the political scrutiny will have detrimental impact.²

Involving legislature in the selection of judges may result in the development of feelings of reciprocation which would imply that the judges would feel the must repay the political executive to be appointed to the position of judge.

Conclusion

³ D. Ananda, Judges Appointments: Collegium System versus National Judicial Appointments Commission, 13 GNLU J.L. DEV. & POL. 53 (2023), <https://heinonline.org/HOL/Page?handle=hein.journals/gnlujldp13&id=63&type=text&collection=journals>.

Resolving the current issue is both critical and difficult as judicial branch must have independence as well as transparency to conduct its duties without any interference from any other branches of the Government but it does not mean to completely sidelining the Legislature and Executive in the process. The possible solution at the moment would be to reduce the power of legislature and executive. A set of guidelines need to be developed and adherence to these guidelines must be necessary to ensure transparency and systematic appointment of judges to the higher judiciary.

The NJAC Amendment Bill, 2022 must be redrafted to preserve the judicial system's independence and prevent the entire system to be arbitrarily subject to the whims and fancies of political power.