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Judicial Appointments and Constitutionalism: Collegium System vs. NJAC

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Abstract

This paper critically examines the enduring debate between the collegium system and the National Judicial Appointments Commission (NJAC) mechanism for judicial appointments in India. While the collegium system emerged as a judicial innovation to uphold the independence of the judiciary, it has faced severe criticism for its opacity and allegations of nepotism. The NJAC, enacted through the Ninety-Ninth Constitutional Amendment, offered a participatory model involving the executive and eminent persons. However, the Supreme Court struck down the NJAC, citing its potential to undermine the Constitution's basic structure—particularly judicial independence. Through a comprehensive analysis of constitutional provisions, judicial precedents, committee recommendations, and statutory frameworks, this paper argues that any meaningful reform must enhance transparency without compromising the foundational tenet of judicial independence. The findings suggest that although the collegium system is flawed, the NJAC's structure entrusts undue power to the executive, violating the doctrine of separation of powers and the basic structure of the Constitution.

Key Words: *Judicial Appointments, Collegium System, National Judicial Appointments Commission (NJAC), Judicial Independence, Basic Structure Doctrine, Constitution of India, Supreme Court, Constitutional Amendments, Executive Influence, Separation of Powers*

Introduction

The debate over judicial appointments in India has revolved around the persistent tension between the ideals of judicial independence and the principles of accountability and transparency. The introduction of the National Judicial Appointments Commission (NJAC) under the Ninety-Ninth Constitutional Amendment, 2014, sought to replace the much-criticised collegium system. However, this attempt raised the fundamental constitutional question: Does NJAC compromise the basic structure of the Constitution by undermining judicial independence¹.

The Collegium System

The collegium system evolved through judicial interpretation rather than explicit constitutional text. Articles 124 and 217 of the Constitution originally vested the power of appointment with the President, acting in consultation with the Chief Justice of India (CJI) and other judges.

- In the First Judges Case (1981), the Supreme Court interpreted “consultation” to empower the executive with greater discretion in appointments.
- The Second Judges Case (1993) overturned this, holding that the CJI’s opinion has primacy, thus securing judicial control over appointments. The collegium system was formally established.
- A further clarification in the Third Judges Case (1998) reinforced the collegium as a body headed by the CJI and four senior-most judges of the Supreme Court.

Though it was expected to insulate the judiciary from political interference, the collegium was later criticised for a lack of transparency, nepotism, and inefficiency in addressing judicial vacancies.

The NJAC Framework

Responding to dissatisfaction with the collegium, Parliament introduced the National Judicial Appointments Commission (NJAC) through the Ninety-Ninth Constitutional Amendment and the NJAC Act, 2014.

The NJAC comprised:

- The Chief Justice of India (Chairperson)
- Two senior-most Supreme Court judges
- The Union Minister of Law and Justice
- Two eminent persons nominated jointly by the CJI, the Prime Minister, and the Leader of Opposition.²

This framework attempted to balance executive and judicial roles in appointments. Advocates claimed it would remedy collegium opacity by introducing accountability. However, opponents stressed that by

¹ Supreme Court Advocates-on-Record Association v. Union of India, (1993) 4 SCC 441.

² Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299.

granting veto powers to non-judicial members, it directly encroached upon judicial independence, a basic feature of the Constitution³.

The Venkatachaliah Committee

The idea of a judicial appointments commission was not novel at the time of the Ninety-Ninth Constitutional Amendment. The **Constitution Review Commission (2002)**, chaired by former Chief Justice of India **M.N. Venkatachaliah**, had already examined the shortcomings of the collegium and recommended the establishment of a broad-based **National Judicial Commission (NJC)**. The Commission proposed that the body should consist of the Chief Justice of India, two senior-most judges of the Supreme Court, the Union Minister of Law and Justice, and one eminent person nominated by the President in consultation with the Chief Justice of India.⁴ This recommendation was premised on the belief that judicial independence could be preserved while enhancing accountability by involving both judicial and executive representatives in a transparent manner.

Significantly, the Venkatachaliah Commission emphasised that such a mechanism must be safeguarded against partisan or political influence.⁵ It recognised that judicial independence is not merely an institutional privilege but a constitutional necessity flowing from the doctrine of separation of powers and the guarantee of rule of law.⁶ The Commission envisaged a system that balanced judicial primacy with executive accountability, but without creating avenues for the executive to dominate or veto judicial appointments.

The Commission's report directly influenced subsequent reform attempts. The **Ninety-Eighth Constitutional Amendment Bill, 2003**, for instance, sought to establish a National Judicial Commission broadly along the lines of the Venkatachaliah Committee's recommendations.⁷ However, the bill lapsed and was never enacted. When Parliament enacted the **NJAC through the Ninety-Ninth Amendment (2014)**, the final framework deviated from the Commission's cautious balance. Unlike the Commission's design, the NJAC allowed two "eminent persons" appointed through a process involving political actors such as the Prime Minister and the Leader of Opposition to exercise a veto over judicial appointments.⁸ This departure effectively undermined the safeguards proposed by the Venkatachaliah

³ In Re: Special Courts Bill, (1979) 1 SCC 380.

⁴ National Commission to Review the Working of the Constitution, *Report of the Commission* (2002) vol I, ch 7, 133.

⁵ *ibid* 135.

⁶ *ibid* 138.

⁷ The Constitution (Ninety-Eighth Amendment) Bill, 2003, Bill No. 64 of 2003.

⁸ Constitution (Ninety-Ninth Amendment) Act 2014, s 4; National Judicial Appointments Commission Act 2014, s 5.

Committee and heightened concerns of political interference, which ultimately contributed to the NJAC being struck down in *Supreme Court Advocates-on-Record Association v Union of India*.⁹

NJAC vs. Basic Structure Doctrine

Central to the judicial challenge against NJAC is the doctrine of basic structure, crystallised in *Kesavananda Bharati (1973)*. Judicial independence has consistently been identified as a core component of this doctrine.

- The Second Judges Case (1993) explicitly linked judicial primacy in appointments to independence of the judiciary. It held that the primacy of judges, especially the CJI, is essential in breaking deadlocks during appointments¹⁰.
- Thus, judicial primacy was construed as not merely a textual interpretation of “consultation,” but as a necessary implication of the basic structure.
- By removing judicial primacy and subjecting appointments to executive veto, NJAC arguably violated this principle.

The Supreme Court in *Supreme Court Advocates-on-Record Association v. Union of India (2015)* ultimately struck down the NJAC, reaffirming judicial independence as part of the Constitution’s inviolable basic structure¹¹.

Flaws in the NJAC Act

Apart from the theoretical challenge, the NJAC Act was found to suffer from practical infirmities:

- Eminent Persons: The Act provided for appointment of “eminent persons” to the NJAC without requiring expertise in law, making the provision arbitrary¹².
- Eligibility Criteria: By introducing new criteria for judicial eligibility through executive regulations, the Act exceeded constitutional prescriptions under Article 124(3)¹³.
- Governor and Chief Minister’s Role: For High Court appointments, seeking views of state executives without clarity on objections risked political manipulation¹⁴.

These ambiguities further undermined NJAC’s constitutional sustainability.

Judicial Precedents Reinforcing Judicial Independence

The jurisprudence surrounding judicial independence consistently affirms its link to judicial

⁹ *Supreme Court Advocates-on-Record Association v Union of India (2016) 5 SCC 1.*

¹⁰ ***K. Veeraswami v. Union of India, (1991) 3 SCC 655.***

¹¹ *All India Judges’ Association v. Union of India, (1993) 4 SCC 288.*

¹² *Madras Bar Association v. Union of India, W.P. (C) No. 150 of 2006 (2014).*

¹³ *Subhash Sharma v. Union of India, 1990 SCR Supl. (2) 433.*

¹⁴ *Sub-Committee on Judicial Accountability v. Union of India, (1991) 4 SCC 699.*

appointments:

- Sub-Committee on Judicial Accountability vs. Union of India (1991) recognized consultation provisions in Articles 124 and 217 as ensuring independence.
- All India Judges Association (1993) reiterated that separation of judiciary from executive required judicial primacy even in lower court appointments.
- Special Courts Bill Case (1979) held that insecure judicial tenure or politically influenced appointments violated independence.
- Subhash Sharma vs. Union of India (1990) emphasized that the judiciary must maintain a non-political complexion in appointments.

This unbroken line of precedent demonstrates the constitutional necessity of insulating judicial appointments from executive dominance.

Conclusion

The quest to reform the collegium system must not compromise the constitutional ideal of judicial independence. While the collegium is imperfect and criticized for opacity, the NJAC's framework unreasonably compromised judicial primacy, thereby violating the basic structure. Reforms must focus on transparency and accountability within the collegium rather than displacing it with executive-heavy participation.¹⁵

Judicial appointments are not merely administrative decisions; they go to the heart of preserving the Constitution's promise of rule of law. Any attempt to dilute judicial primacy strikes at the foundation of the basic structure itself¹⁶.

¹⁵ Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

¹⁶ Supreme Court Advocates-on-Record Association v. Union of India, (2015) 6 SCC 408 (NJAC Judgment).

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