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NJAC/ COLLEGIUM

What is the National Judicial Appointment Commission?

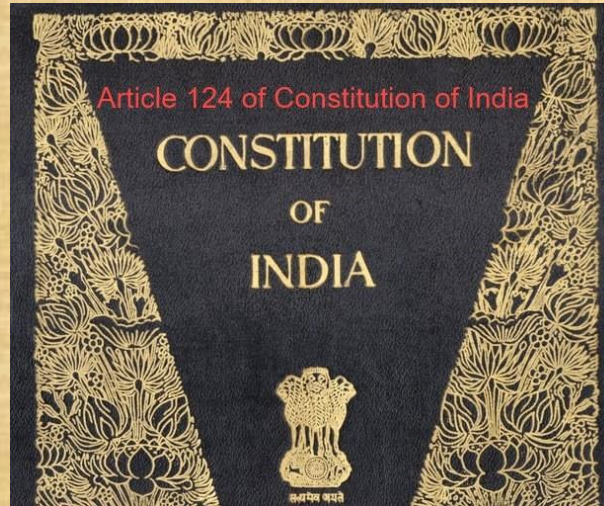
(NJAC) Act and the 99th Constitutional which sought to give politicians and civil society a final say in the appointment of judges to the highest courts.

The National Judicial Appointments Commission (NJAC) is a constitutional body proposed to replace the present Collegium system of appointing judges.

WHAT IS THE COLLEGIUM SYSTEM?

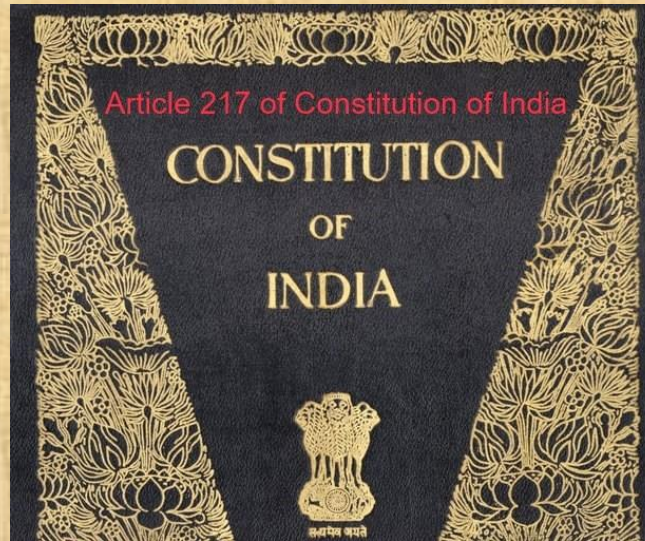
The Collegiums system is one where the chief Justice of India and a forum of four Senior- most Judges of the Supreme Court recommend appointments and transfer of judges. However, it has no place in the Indian Constitution. The system was evolved through Supreme Court judgments in the – Three judges cases (October 28, 1988)





ART 124 OF THE CONSTITUTION SAYS: “Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the judges of the Supreme Court and of the high court in the state as President may deem necessary for the purpose and shall hold office until he attains the age of 65 years.

Provided that in the case of appointment of a judge other than the chief justice, the Chief Justice of India shall always be consulted.



ARTICLE 217 OF THE CONSTITUTION SAYS: “Every judge of high court shall be appointed by the President by warrant under his hand and seal after consultation with the chief Justice of India, the Governor of the state, and, in the case of appointment of a judge other than the Chief Justice, the Chief Justice of the high court.....”

This is according to the Constitution, the executive is empowered to appoint judges in consultation with the judiciary.

FIRST JUDGE CASE:

S P Gupta V/S Union of India 1981

A case involving challenges to judicial transfer by Gandhi Regime in 1980, the court interpreted the consultation requirement in art 124, 217, and 222 of the Indian Constitution to mean that executive had primacy in judicial appointment and transfer following consultation with the judiciary and other functionaries.

However, in the ***SECOND JUDGE CASE 1993,***
Supreme Court Advocates-on Record Association V/S Union of India
Overruled S P Gupta judgment Procedure called ' Collegium System'

The court reversed and held that the “CONSULTATION” requirement in art 222 of the Indian Constitution meant that the executive needed the concurrence the judiciary in appointment decisions. In justifying its decisions the court suggested that judicial independence was a basic features and that allowing the executive to have primacy would threaten this independence and also held that judges were in the best position to determine the merits of appointments.

The Court established the “Collegium” system of appointment wherein the Chief Justice and senior justice would now have primacy

THIRD JUDGE CASE 1998,
Opinion delivered by the supreme court on Presidential reference

The court expanded the collegium to include four senior justice.

In holding that the Constitutionality of the NJAC under the basic structure doctrine needed to be evaluated independently of these decisions. The petitioners challenging the NJAC have effectively been consolidated around the lead petition of the Supreme Court Advocate of Record Association (SCAORA)

Petitioners have argued that the NJAC violates the basic structure of the Indian Constitution by attacking judicial Independence.

The Basic structure doctrine was first asserted by the Court in “**Keshvananda Bharti V/S State of Kerala**” 1973,

And later reaffirmed in **Minerva Mills V/S Union of India** 1980,

Under the basic structure doctrine the Court has the power to invalidate Constitutional Amendments that violates the basic structure or basic features of the Indian Constitution.

HOW THE (NJAC) ESTABLISHED?

In 2014, the NDA government, in a direct challenge to judicial power and primacy, enacted the National Judicial Appointments Act and Constitutional (99th) Amendment Act, establishing a judicial Appointment Commission (NJAC). Following ratification by State Legislatures, President Pranab Mukherjee gave assent to these acts, and in April, the government officially notified the 99th Constitutional (Amendment) Act, and the NJAC Act, bringing the new laws into force.

The NJAC Act and Amendment Bill amends Article 124 of the Indian Constitution by adding Article 124 A, which provides for the creation of the NJAC in place of the current collegium system. The new NJAC dramatically limits the primacy of the judiciary and increases the government's power in appointments.

The NJAC is to be comprised of the chief of India and two Senior – most Supreme Court judges, the Union Law minister and two “eminent people”, one of whom would be drawn from the scheduled castes, tribes, minorities and other backward classes or women.

Under the new system, the two eminent persons would be selected from a panel consisting of the Chief Justice, The Prime Minister and the leader of opposition in the Lok Sabha.

Significantly each of the six members of the NJAC would have a vote, and two members would be able to veto an appointment to the court, the NJAC would have the power to promulgate new regulations governing criteria for selection and procedures for appointment of Indian Supreme Court and high Court judges.

As of April 2015, there were 364 vacancies in high courts that are currently on hold as a result of the Constitutional impasse over the NJAC. The battle has now shifted to the judiciary, and following the filing of a series of petitions challenging the Constitutional bench which began hearing oral arguments in April. And 99th Constitutional declared Unconstitutional.

The collegium system worked for over twenty years. The experience has shown that the purpose for which it was evolved has utterly failed. Neither the vacancies were filled up without any delay nor were efficient and suitable judges appointed to handle civil, criminal and tax matters in the High Courts for over ten to fifteen years or even more.

It is an admitted fact that the collegium system lacks transparency and objectivity. Although, all decision taken by the collegium were “unanimous “in writing but actually were cryptic without reasons. The recommendations for appointments, transfers and complaints against judges are not subjected to RTI and judicial review for the reason that the litigated debates would result in erosion of credibility of the decision, and for ensuring free and frank and honest opinion of all.

In view of the faults and infirmities in the Collegium system, there was a strong opinion to evolve a more transparent and objective system. As a result, the constitutional amendments and NJAC Act came into being.

The NJAC would have replaced the collegium system for the appointment of judges as invoked by the Supreme Court via judicial fiat by a new system.

Supreme Court declares NJAC unconstitutional in a collective order, on 16 October 2015

TO BE CONTINUED.....

**THANKS FOR
WATCHING**

