



National Judicial Commission Bill, 2022

For Prelims: Collegium System, 99th Constitution (Amendment) Act, Chief Justice of India (CJI), SP Gupta Vs Union of India 1981, Second Judges Case.

For Mains: Constitutional Provision for Appointment of Judges, Evolution of Collegium System, Issues Related to the Collegium System, Towards Representative Judiciary.

Why in News?

Recently, the **National Judicial Commission Bill, 2022** was introduced after the majority of voice votes were in its favour.

What are the Highlights of the Bill?

- **Regulates the Procedure of Appointment:**
 - The bill aims to **regulate the procedure to be followed by the National Judicial Commission for recommending people for appointment** as the Chief Justice of India and other judges of the Supreme Court and Chief Justices and other judges of High Courts.
- **Regulate the Transfers:**
 - It also aims to **regulate their transfers and to lay down judicial standards and provide for accountability of judges**, and establish credible and expedient mechanism for investigating into individual complaints for misbehaviour or incapacity of a judge of the apex court or of a high court and to regulate the procedure for such investigation.
- **Removal of a Judges:**
 - It also **proposes for the presentation of an address by parliament** to the president in relation to proceeding for removal of a judge and for matters connected therewith or incidental thereto.

What was the National Judicial Appointments Commission (NJAC)?

- **About:**
 - In August 2014, Parliament passed the **Constitution (99th Amendment) Act, 2014** along with the NJAC Act, 2014, providing for the creation of an independent commission to appoint judges to the Supreme Court and high courts to replace the collegium system.
 - In 2015, the Supreme Court declared both the 99th Constitutional Amendment, 2014 and the NJAC Act, 2014 as unconstitutional and null and void.
- **Composition of NJAC:**
 - The **Chief Justice of India** as the ex officio Chairperson
 - Two senior-most Supreme Court Judges as ex officio members
 - The Union Minister of Law and Justice as ex officio member
 - Two eminent persons from civil society (to be nominated by a committee consisting of the Chief Justice of India, Prime Minister of India and the Leader of Opposition in the Lok Sabha; one of the eminent persons to be nominated from SC/ST/OBC/minorities or women)
- **Difference between Collegium System and NJAC (Appointment):**

- **NJAC:**
 - The Chief Justice of India and Chief Justices of the high courts were to be recommended by the NJAC based on seniority while SC and HC judges were to be recommended on the basis of ability, merit, and “other criteria specified in the regulations”.
 - The Act empowered any two members of the NJAC to veto a recommendation if they did not agree with it.
- **Collegium System:**
 - In the [collegium system](#), a group of the senior-most judges makes appointments to the higher judiciary and this system has been operational for nearly three decades.

What is the Collegium System?

- The Supreme Court Collegium is a **five-member body**, which is headed by the incumbent Chief Justice of India (CJI) and comprises the four other senior most judges of the court at that time.
 - A High Court collegium is led by the incumbent Chief Justice and two other senior most judges of that court.
- The government can also raise objections and seek clarifications regarding the collegium’s choices, but if the collegium reiterates the same names, the government is bound to appoint them as judges.

What are Constitutional Provisions related to the Appointment of Judges?

- **Articles 124(2) and 217 of the [Constitution](#)** deal with the appointment of judges to the Supreme Court and High Courts.
 - The appointments are made by the President, who is required to hold consultations with “such of the judges of the Supreme Court and of the High Courts” as he may think is needed.
- But the Constitution does not lay down any process for making these appointments.

Why was the NJAC Challenged in Court?

- In early 2015, the **Supreme Court Advocates-on-Record Association (SCAORA) filed a plea challenging the provisions** of what were now laws.
- SCAORA contended that both the **Acts were “unconstitutional” and “invalid”**.
 - It argued that the 99th Amendment which provided for the creation of the NJAC **took away the “primacy of the collective opinion of the Chief Justice of India and the two senior-most Judges of the Supreme Court of India”** as their collective recommendation could be vetoed or “suspended by majority of three non-Judge members”.
 - It stated that the **Amendment “severely” damaged the [basic structure of the Constitution](#)**, of which the independence of the judiciary in appointing judges of the higher judiciary was an integral part.
- It also contended that the **NJAC Act was itself “void” and “ultra vires” the Constitution as it was passed in both Houses of the parliament** when Articles 124(2) and 217(1) as originally enacted were in force, and the 99th Amendment had not received Presidential assent.

Way Forward

- **Balance Between Independence and Accountability:** The real issue is not who (judiciary or executive) appoints the judges, but the manner in which they are appointed.
 - For that, whatever may be the composition of the Judicial Appointment Commission (JAC), it is important to strike a balance between judicial independence and judicial accountability.
 - The Executive should have a say in appointments but the composition of the JAC should be such that it does not result in compromising judicial independence.

- **Justice Inside Judiciary:** Care must be taken to ensure that the institutional imperative of the Court for dispensing justice is maintained inside the judiciary with equality of opportunity and fixed criteria for selection of judges.
- **Reconsidering the Establishment of NJAC:** NJAC's Act may be amended to include safeguards that would make it constitutionally valid, as well as reorganised to ensure that majority control remains with the judiciary.

UPSC Civil Services Examination Previous Year Question (PYQ)

Prelims

Q. Consider the following statements: (2019)

1. The 44th Amendment to the Constitution of India introduced an Article placing the election of the Prime Minister beyond judicial review.
2. The Supreme Court of India struck down the 99th Amendment to the Constitution of India as being violative of the independence of judiciary.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Ans: (b)

Mains

Q. Critically examine the Supreme Court's judgement on 'National Judicial Appointments Commission Act, 2014' with reference to appointment of judges of higher judiciary in India. (2017)

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