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## An Overview of the National Judicial Commission Bill 2022 and Appointment of Judges in India

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*Parliament's private member's Bill introduced the National Judicial Commission (NJC) Bill 2022. The Bill regulates how the National Judicial System recommends the Chief Justice of India and Supreme Court judges. It also sets judicial standards, holds judges accountable, and creates a reliable and reasonable system for investigating judge misconduct or incompetence accusations. The National Judicial Appointment Commission (NJAC) appoints Supreme Court and High Court judges. Without a secretariat or established protocol, the collegium system is not transparent. Critics say political control over the judiciary is harmful because it is the only independent institution left. The Constitution (99th Amendment) Act of 2014 and NJAC Act of 2014 established an independent commission to name judges of the Supreme Court and high courts instead of the collegium system. The 2006 Judges (Inquiry) Bill established the National Judicial Council to investigate allegations of incapacity or misconduct.*

**Keywords:** *njac, collegium system, nepotism, transparency.*

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### INTRODUCTION

In Parliament, a private member's bill, the National Judicial Commission (NJC) Bill 2022, was presented. After receiving a favourable verdict from the vast majority of voice votes cast in the

Upper House, the bill was finally introduced. The purpose of this Bill is to lay down judicial standards, provide for the accountability of judges, establish a credible and reasonable mechanism for investigating individual complaints for misbehaviour or misconduct, and regulate the procedure that must be followed by the National Judicial Commission when recommending persons for appointment as the Chief Justice of India, Judges of the Supreme Court, Chief Justices and Judges of High Courts and their transfers.<sup>1</sup> In addition, the bill seeks to regulate the procedure that the National Judicial System must follow.

### **HIGHLIGHTS OF THE BILL**

This Bill will regulate the process that the National Judicial Commission must go through to make recommendations for individuals to be appointed as the Chief Justice of India (CJI), judges of the Supreme Court of India<sup>2</sup>, as well as Chief Justices and judges of High Courts in India<sup>3</sup>. In addition to this recommendation, it is suggested that the Parliament provide a speech to the President on the subject of the procedure for the removal of a judge<sup>4</sup>, as well as any issues that are related to or accessory to the procedure. Additionally, it seeks to establish judicial standards<sup>5</sup> and provide for the accountability of judges. Additionally, it seeks to establish a mechanism that is credible and reasonable for investigating individual complaints for misbehaviour or incapacity of a judge of the apex court or a high court, and it seeks to regulate the procedure for such investigations. In addition to that, it is supposed to hold all of the judicial transfers<sup>6</sup>.

### **WHAT WAS THE NEED FOR THE BILL?**

Before getting into the need for NJC Bill, let us understand what all systems were there earlier and how those affected the judiciary.

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<sup>1</sup> National Judicial Commission Bill 2022

<sup>2</sup> National Judicial Commission Bill 2022, cl 4

<sup>3</sup> National Judicial Commission Bill 2022, cl 5

<sup>4</sup> National Judicial Commission Bill 2022, cl 39

<sup>5</sup> National Judicial Commission Bill 2022, cl 9

<sup>6</sup> National Judicial Commission Bill 2022, cl 7

## **COLLEGIUM SYSTEM**

In 1993, the collegium system was introduced in India. The Chief Justice of India (CJI) presided over the five-member Supreme Court Collegium, which also included the four other justices who held the most senior positions on the court at the time. The current Chief Justice and the two other senior-most justices of the High Court make up a collegium that leads that court. On the other hand, if the collegium keeps recommending the same candidates, the government is obligated to nominate those people to the bench. The government is free to disagree and ask for clarifications regarding the collegium's selections. The President appoints the judges of the Supreme Court and High Courts following Articles 124(2) & 127 of the Constitution of India; however, he is required to confer with such of the judges of the Supreme Court and the High Court as he may believe necessary before doing so. However, there is no procedure for making these appointments outlined in the Constitution.

## **CONCERNS RELATED TO THE COLLEGIUM SYSTEM**

As no official procedure or secretariat is engaged, the collegium system in question cannot be considered transparent. As per the requirements for eligibility and the process for making selections, there is no hard and fast rule, which isn't very satisfactory. The events that took place at the collegium are not documented in any formal or written form. This results in a disagreement between the executive and the judiciary. Moreover, it has been blamed for the glacial pace at which judicial appointments have been made.

## **THE NATIONAL JUDICIAL APPOINTMENTS COMMISSION ACT, 2014**

The Constitution (99th Amendment) Act of 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 courts in place of the collegium system. Many legal professionals criticised the current collegium system, claiming that India was the only nation where judges appointed themselves and had the authority to decide on their transfers. This led to the necessity for the National Judicial Appointment Commission.

## **CONCERNS RELATED TO NJAC**

While valuing judicial independence each time, the Supreme Court consistently rejected the NJAC's organisational structure. It is cited by critics that the judiciary is the only independent institution left in the country, and allowing political control over it is detrimental. Additionally, it is claimed that the collegium system runs smoothly. Although there is room for improvement, political intervention is not permitted. In no way should the judiciary be subject to selection by the federal government. Involving the legislature in the selection of judges may result in the development of a "reciprocal" culture, implying that judges would feel they must repay the political executive to be appointed to the position of judge.

## **THE JUDGES (INQUIRY) BILL, 2006**

The Bill created a National Judicial Council that is responsible for investigating allegations of incapacity or improper behaviour by judges serving on the High Courts and the Supreme Court. It is the responsibility of the National Judicial Council to investigate complaints that have been submitted by any individual or when it has received a reference from Parliament based on a motion that has been moved by at least 50 members of the Rajya Sabha or 100 members of the Lok Sabha. In addition to this, it will likely take into consideration accusations from any other available source. If the allegations are shown to be true, the NJC will either take some minor disciplinary action against the judge or suggest that they be removed from their position. The only way that a judge can be removed from office is if they are found guilty of impeachable offences by the legislative body. A judge has the right to appeal to the Supreme Court if he is removed from office or if he is subjected to any other minor disciplinary actions.

## **CONCERNS RELATED TO THE JUDGES (INQUIRY) BILL**

Following the suggestions made by the Law Commission, the NJC is made up entirely of active judges from the Supreme Court and the High Court. The Standing Committee has expressed its agreement with the idea that there should be more people involved in the process. After being impeached, a judge can argue their removal before the Supreme Court thanks to this bill. According to the observations made by the Standing Committee, doing so would make the

Presidential Order less definitive, which should not be questioned. The Standing Committee advised against having an open system where anybody could file a complaint. Instead, they proposed the creation of an impartial Empowered Committee that would screen all complaints before referring them to the NJC for investigation. The Law Commission had previously stated that the contents of the bill, including the more minor amendments, would survive constitutional examination. Even while the Standing Committee agreed, it suggested that the constitutionality of the measure be reviewed again. The investigation by the NJC will take place behind closed doors, not in an open courtroom. In an earlier instance, the Supreme Court had decided that a judge who was the subject of an investigation had the right to ask for a trial that was open to the public.

### NEPOTISM IN JUDICIARY

"Unfortunately, that evil in the political field has nurtured nepotism in every institution of India. Nepotism is engulfing many of our institutions. Because of this, the talent of my country suffers. The strength of my country suffers. Those who have the possibility of opportunity lose it because of nepotism. This also becomes the reason for corruption, so that he does not have any relatives to support them to get a job, they prefer to buy their space in the sector."<sup>7</sup> Although the judiciary hasn't been involved in his speech, it is one of the institutions more deeply entangled in nepotism than any other sector of society. A perfect instance of it is the Honourable Supreme Court of India, where twelve of the thirty-two judges either have a relative who is a former judge or who is a political leader.<sup>8</sup> This makes 38% of the court's current judges with extensive familial ties to the government and judiciary. It is significant that PM Modi clearly stated that nepotism had infiltrated every institution in India.

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<sup>7</sup> 'As PM talked about nepotism in institutions beyond political parties, here is why Judiciary is one institution awaiting independence from this malaise' (*OP India*, 15 August 2022) <<https://www.opindia.com/2022/08/pm-modi-nepotism-indian-institutions-judiciary-deeply-affected/>> accessed 20 January 2023

<sup>8</sup> *Ibid*

## SIGNIFICANT JUDGMENTS RELATED TO THE APPOINTMENT OF JUDGES

**1st Judges' Case<sup>9</sup>:** It was declared that the "primacy" of the suggestion made by the Chief Justice of India on judicial appointments, as well as transfers, might be challenged if "cogent arguments" are provided. As the outcome of the verdict, the Executive would have priority over the Judiciary in selecting judges for the next 12 years in India.

**2<sup>nd</sup> Judges' Case<sup>10</sup>:** The SC decided to implement the Collegium system after concluding that "consultation" should be interpreted as "concurrence." It emphasised that it was not the CJI's individual opinion but an institutional opinion formulated in collaboration with the two senior-most judges in the SC.

**3<sup>rd</sup> Judges' Case<sup>11</sup>:** The collegium was expanded to include five members by the Supreme Court in response to a reference made by the President. These members have the CJI and four of his senior-most colleagues.

**4<sup>th</sup> Judges' Case<sup>12</sup>:** The Supreme Court decided not to uphold the National Judicial Appointments Commission (NJAC) Act or the 99th Constitutional Amendment in this particular instance. The Supreme Court invalidated the 2014 NJAC Act in a unanimous decision in 2015, 4:3. The NJAC Act was declared unconstitutional because it harmed the judiciary's independence. Consequently, the earlier collegium system became active again.

## WHY IS NJC BILL 2022 OPPOSED IN PARLIAMENT?

One of the private members of the Parliament voiced their opposition to the Bill. The interference of the political class and the fact that the appointment of judges would put the independence of the judiciary at risk are the primary grounds for the opposition. It has also been observed that the government is interested in seizing control of one democratic institution preventing it from

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<sup>9</sup> *SP Gupta v President of India & Ors* AIR (1982) SC 149

<sup>10</sup> *Advocate-on-record Association v Union of India* AIR (1994) SC 268

<sup>11</sup> *Special Reference No. 1* (1998) 7 SCC 739

<sup>12</sup> *Supreme Court Advocates-on-record Association & Anr v Union of India* (2016) 5 SCC 1

acting dictatorially. It was said that the collegium system was functioning adequately, with some room for a minor modification.

### **WHAT ARE THE MECHANISMS IN OTHER COUNTRIES?**

In the USA, a simple majority vote in the Senate is needed to confirm whomever the President chooses to put up as a nominee to fill a seat on the Supreme Court that has become vacant. Because of this structure, the executive and legislative branches of the federal government have the opportunity to have their voices heard about the composition of the Supreme Court. In the UK, every position is filled through competitive application and interview processes. The Lord Chancellor has minimal veto power, but the Commission is responsible for recommending candidates to him. A special statutory obligation rests on the Commission's shoulders to promote diversity in the range of candidates available for consideration for appointments.

In Singapore, the Chief Justice, Justices of the Appeal Court, Judges of the Appellate Division, Judges of the High Court, Senior Judges, International Judges, and Judicial Commissioners make up the Supreme Court Bench. The President, with the recommendation of the Prime Minister, is the one who makes appointments to the positions of Judge and Judicial Commissioner. The Supreme Court will sometimes designate people to serve as Judicial Commissioners to help speed up the process of closing cases. In addition to being appointed by the President for a predetermined amount of time, they are vested with the authority to exercise judicial duties. In UAE, a presidential decree is used to designate the President and judges of the Federal Supreme Court. This decree must first receive the Cabinet's approval and then be ratified by the Federal Supreme Council. The appointment of other federal judges is handled by presidential decree, with the Minister of Justice putting forward candidates.

### **CONCLUSION**

The issue is critical and difficult to resolve since, on the one hand, the judicial branch ought to carry out its duties without interference from other branches of government. Still, on the other hand, the legislative and executive branches cannot be entirely sidelined. The only solution that makes any sense is to rewrite the NJAC Act to reduce the powers of the legislature and the

executive branch. Still, at the same time, a set of guidelines needs to be developed, and judicial appointments should be made following those guidelines. This will ensure transparency and provide a more systematic approach to selecting judges. As NJC Bill 2022 tries to introduce transparency and objectivity into the nomination process, many people have expressed their support. Nevertheless, many are worried that the Commission would have excessive power over the court system, which may result in intervention from the executive branch in judicial affairs. Because of this, the Bill must be drafted to preserve the judicial system's independence and prevent the whole environment from being overly politicised.