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## Supreme Court Advocates on Record Association & Anr vs Union of India

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**Case Citation:** WRIT PETITION (CIVIL) NO 13 OF 2015

**Date of the Judgement:** October 16, 2015

**The Bench:** Jagdish Singh Khehar, J. Chelameswar, Madan B. Lokur, Kurian Joseph, Adarsh Kumar Goel

### INTRODUCTION

For many years, the central government and the judiciary in India have disagreed over the appointment of judges to the higher courts, such as the Supreme Court and High Courts. The Indian Constitution guarantees an independent judiciary, and the selection of judges to the higher courts is handled by a collegium system led by the Chief Justice of India and comprised of four senior Supreme Court justices. This system has been in existence since the 1990s and has received criticism from a variety of sources.

The central government has frequently expressed its dissatisfaction with the collegium system's operation and has sought to implement a new method of selecting judges through the National Judicial Appointments Commission (NJAC), which was suggested in 2014. The NJAC's goal was to make judicial selection more public and responsible, and it involved the participation of the executive in the process. Nevertheless, the NJAC was declared unconstitutional and breached the concept of separation of powers by the Supreme Court in this judgment in 2015. This judgment is famously known as the 'Fourth Judges Case'.

Since then, the issue of the appointment of judges has remained a contentious one, with the central government and the judiciary at loggerheads. The conflict between the central government and the judiciary has heated up in recent years, with the central government delaying the appointment of judges recommended by the collegium and the judiciary accusing the government of interfering with the operation of the court. The problem is still unsolved, and many who push for an independent judiciary in India are concerned.

## **HISTORICAL BACKGROUND**

The Fourth Judges' Case in India refers to a series of legal conflicts between the executive and judiciary in India about the appointment of judges to the higher courts. The dispute stems from the interpretation of clauses in the Indian Constitution governing the appointment of judges to the Supreme Court and High Courts. The question of judicial appointment first surfaced in the 1980s, when the Supreme Court ruled that the right to select judges resided with the judiciary, not the administration. This was referred to as the First Judges' Case<sup>1</sup>. After that, in the Second Judges' Case<sup>2</sup> (1993), the Supreme Court ruled that the power to select judges rested with a collegium of senior Supreme Court justices. This was founded on the notion of judicial priority in appointments, which was deemed important to guarantee the judiciary's independence.

The Supreme Court modified the collegium system in the Third Judges' Case<sup>3</sup> (1998), stating that the Chief Justice of India had a specific role in the appointment process and that the collegium

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<sup>1</sup> *SP Gupta v Union of India* AIR (1982) SC 149

<sup>2</sup> *Supreme Court Advocates-on-Record Association & Anr v Union of India* (1993) Supp 2 SCR 659

<sup>3</sup> *In re Special Reference 1 of 1998* AIR (1999) SC 1

would offer recommendations to the President of India, who would subsequently issue the appointment order. The Third Judges' Case also established seniority as an important consideration in the selection of judges.

### **BRIEF FACTS OF THE CASE**

On August 11, 2014, the government introduced "The National Judicial Appointments Commission Bill" in the Lok Sabha. Its goal was to create a new body for judicial selections, bypassing the collegium system. It didn't take long for politicians to decide on the fate of the bill. The law was passed by the Lok Sabha and Rajya Sabha on the 13th and 14th of August, respectively. The measure was changed into an Act with the President's assent on December 31, 2014. The Supreme Court Advocates challenged this body, and the government was urged to defend itself.

### **STRUCTURE OF THE COMMISSION**

The NJAC was intended to be a six-member body, consisting of the Chief Justice of India, two senior-most judges of the Supreme Court, the Union Law Minister, and two eminent persons nominated by a committee comprising the Prime Minister, the Chief Justice of India, and the Leader of the Opposition in the Lok Sabha (the lower house of the Indian Parliament).

### **ISSUES RAISED**

The NJAC Act was challenged in the Supreme Court by a group of petitioners, including the Supreme Court Advocates-on-Record Association and former Union Law Minister Shanti Bhushan because it violated the independence of the judiciary and the basic structure of the Constitution. It was questioned before the court whether the 'National Judicial Appointments Commission Act, 2014' along with the 99<sup>th</sup> amendment stands constitutionally valid or not.

### **JUDGEMENT**

The bench with a majority of 4:1 held that the 99<sup>th</sup> amendment which also included the Act is 'totally unconstitutional'. Justices also included the collegium system under the 'Basic Structure'

of the Constitution. There were sufficient reasons given by the bench to justify its decision. Some of them have been mentioned below –

- As there were only three posts for the officials of the Judiciary, the bench felt that the judiciary is not getting adequate representation and the judicial appointments could be hampered.
- The full bench also raised a question on the “doctrine of separation of powers”. It was believed that the inclusion of the Union Minister might affect the independence of the judiciary.
- The weightage of Chief Justices of High Courts was almost reduced to null in the Act.
- There might happen a tussle between executives and judicial officers which would later affect the appointment process.

## COLLEGIUM SYSTEM

The collegium system for the appointment of Supreme Court judges and High Court judges is mentioned under articles 124<sup>4</sup> and 217<sup>5</sup> respectively. The Supreme Court collegium currently consists of 5 members in which the “Chief Justice of India” is accompanied by four senior-most judges of the Supreme Court. Similarly, a High Court collegium consists of the Chief Justice of that state’s High Court and four other senior-most judges. Under the Collegium system, the appointment of judges to the higher judiciary is made based on their seniority, merit, integrity, and suitability for the post. The Collegium also takes into account the representation of different regions and communities in the appointment process, to ensure diversity and pluralism in the higher judiciary. The collegium recommends the names of judicial officers that it finds competent enough to take the charge of the Union Minister of Law & Justice. The minister passes the recommendations further to the Prime Minister, who progresses it to the President. The President finally appoints the recommended person.

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<sup>4</sup> Constitution of India 1950, art 124

<sup>5</sup> Constitution of India 1950, art 217

## CRITICAL ANALYSIS

As Judiciary is the third pillar of Indian democracy, it is paramount to preserve its identity of being independent. So, if an action taken by the government can hamper that status, it needs to be taken care of. The Supreme Court was on point with its decision. There lacked a sense of clarity in the bill. As mentioned in Article 124A<sup>6</sup>, two eminent persons make the commission and bill ambiguous. The process to appoint these two persons hasn't been mentioned anywhere so, it is an arbitrary power that could be used by the selection committee that comprises the CJI, PM, and the Leader of Opposition in the House of the people.

NJAC surely got rejected by the Supreme Court on certain grounds but is the current collegium process perfect? No, it has many flaws. People of a country trust the judicial system of that system because of its independence and transparency. What is the status of transparency in the collegium system? Zero percent would be the perfect figure to state. There are numerous questions that arise related to this system like on what basis the judges are promoted? Unfortunately, we don't have an answer to that. Like Lord Hewart had stated that 'Justice must not only be done but must also be seen to be done, the transparency feature must also be seen'. So, what could be changed to make the process of appointing judicial officers better? The collegium system can't be removed as of now because the Supreme Court put it into the purview of the Basic Structure. But it can be changed and improved.

## CONCLUSION

The Collegium system in India has been a subject of debate and criticism, but it is also seen as an irreplaceable mechanism for ensuring the independence and integrity of the judiciary. It is not the perfect system to appoint judges as it lacks transparency and biases are also involved to a great extent. However, there are sufficient reasons to support why the collegium system should be there to appoint judges – one of the major reasons is it ensures judicial independence. It also keeps a check on the executives' actions. NJAC also had flaws such as the appointment of two eminent persons. The process and the eligibility criteria for that purpose weren't

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<sup>6</sup> Constitution of India 1950, art 124A

mentioned anywhere in the bill. It would have given complete discretion power to the central government to involve anyone irrespective of the profile of that person. In conclusion, the Collegium system is seen as irreplaceable because it is an essential mechanism for ensuring the independence, integrity, and diversity of the higher judiciary in India. While there are concerns about its transparency and accountability, these issues can be addressed through reforms and improvements to the system, rather than by replacing it altogether.