NATIONAL JUDICIAL APPOINTMENT COMMISSION AND COLLEGIUM SYSTEM IN INDIA: COMPARATIVE ANALYSIS

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ABSTRACT

The appointment at higher judiciary was prerogative of Judges Collegium system till now in India. But Parliament thought of making the appointment system more transparent but that system has to be independent and compliant with the basic structure of the Constitution. The change in appointment scenarios with regard to higher judiciary is need of the hour. The Commission is established by amending the Constitution of India through the ninety-ninth constitution amendment vide the Constitution (Ninety-Ninth Amendment) Act, 2014 .The NJAC replaces the collegium system for the appointment of judges, the National Judicial Appointments Commission Act, 2014, was also passed by the Parliament of India to regulate the functions of the National Judicial Appointments Commission. The NJAC Act and the Constitutional Amendment Act came into force from 13 April 2015.The central issue is over the supremacy of Judiciary or Executive in appointment of Judges in the Higher Judiciary. This paper discusses the relevance and righteousness of NJAC in the light of issues related to converting judicial power to executive power by upsetting the separation of powers that flows from the Constitution. By doing this, Parliament grants to itself the power to change through ordinary law-making what earlier could be changed only through constituent lawmaking. Hence this Act is challenged before the Apex Court. The debate revolves around the issue of supremacy of Judiciary or Executive in appointment of Judges in the Higher Judiciary. This paper also throws light on appointment of judges scenarios across the Globe. In the United States, the President has the say in appointment , in United Kingdom, the system by far is very merit oriented because in order to

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become the judge there is an open competition that avoids kith and kin syndrome which is largely prevalent in India The article inter alia throws light on the constitutional provision with respect to appointment of judges, the global perspective of appointment of judges, evolution of collegiums system and its notable flaws, evolution of NJAC, the Act, salient feature in the Act

WORDS: Constitution, Appointment, Amendment, Transparency, Judiciary, Collegium, Articles 124A AND Article 124C.

INTRODUCTION:

An honest, efficient and independent judiciary is indispensable for the survival and functioning of our democratic system, for the protection of the fundamental rights and liberties of the people and for the unity and integrity of the country with moderate protection of the rights of the minorities. The system of appointment of judges has gone through various changes in order to attain such efficient judicial system.[3] The Supreme Court has played an important role in making such changes.

National Judicial Accountability Commission (NJAC) and the National Judicial Accountability Commission Act (hereinafter referred to as "*The Act*") is at present the most debated political judicial topic. InIndia. why there is a debate about appointment of judges in today's scenario it is relevant to understand. Articles 124 and 217 of the Constitution of India deals with the appointment of Supreme Court and High Court Judges respectively. The process by which judges are appointed is of significant constitutional importance. Till today appointments of judges are done at the higher judiciary level on the basis of collegium system.What is this collegium system? Interestingly, the word "collegium" is nowhere mentioned in the Constitution of India. The evolution of Collegium system has its genesis in its three judgments which is also referred to as the "Three Judges Case." In the First Judges Case[4], the Hon'ble Supreme Court held that "the primacy of the CJI recommendation to the President can be refused for cogent reasons." Thus, the first judge's case gave the supremacy of executive over the judiciary in the appointment and transfer of the judges. Article 124 (2) was interpreted by the Hon'ble Supreme

[3] Available athttp://blog.ipleaders.in/what-every-indian-should-understand-how-judges-are-appointed-in-india/
[4] (1981) Supp (1) SCC 87

Court by its 9 judge bench in the case of Supreme Court Advocates-on Record Association v. Union of India, [5] also commonly referred to as Second Judges case to mean that the opinion and satisfaction of Hon'ble Chief Justice of India will have primacy in the matter of all judicial appointments. Additionally, the Hon'ble Court held that the Hon'ble Chief Justice views was not the sole view but the same had to be on the basis of views formed with at least two of the senior most judges of the Supreme Court. Therefore, in principle, the evolution of Collegium system of appointment started with the decision of Supreme Court in Second Judge case.

The ambiguity with regard to judicial appointment was not settled clearly and the judgment as pronounced in the second judges case saw dissent in itself. Hon'ble Justice Verma wrote the majority judgment on behalf of four other Judges.

Justice A.M. Ahmadi took the dissenting view[6]. The ambiguity resulted the then president K.R. Naryanan to refer the matter for Presidential reference. Subsequently, in 1998, in Re Presidential Reference[7] which is also referred to as the third judges case in response to third opinion opined that The Chief Justice of India must make a recommendation to appoint a Judge of the Supreme Court and to transfer a Chief Justice or Judge of a High Court in consultation with the four senior-most Judges of the Supreme Court. Insofar as an appointment to the High Court is concerned, the recommendation must be made in consultation with the two senior-most Judges of the Supreme Court.

Therefore, a march was made from two judges' consultation and opinion as said by the Apex Court in second judge's case to the consultation with four senior most judges of the Supreme Court. Thus, the evolution of collegium system of appointment dates back to second judges cases and has been further streamlined in third judges cases i.e. in Re Presidential reference case. Interestingly, the Apex Court has clearly ousted the supremacy of executive in making any appointments in Higher Judiciary and has kept the ball in its own court.

The collegium system of judicial appointment is not a full proof system as this system has been criticized due to lack of transparency, being biased, closed door appointment, controversial and

[5] Available at(1993)4 SCC441
[6] Available athttp://archive.indianexpresscom/news/the-collegium-controversy/836029/2
[7] (1998)7 SCC 739(1998)7 SCC 739

at times resulting in quid pro quo. Hence to make the appointment system more transparent government took the initiative to establish Judicial Appointment Commission.

WHAT IS NATIONAL JUDICIALACCOUNTABILITY COMMISSION

As mentioned in the preceding paragraphs NJAC is established though act of Parliament. The National Judicial Accountability Commission Act (hereinafter referred to as the "Act") was passed by the Lok Sabha on 13th August, 2014 and the Rajya Sabha on 14th August, 2014. Since the Act involved constitutional Amendment, hence ratification was needed by the States. Pursuant to the ratification by the majority of the States, the president gave the assent to the Act on 31st December, 2014 and the Act has been notified to come into force from 13th April, 2015. The Constitution's 99th Amendment Act provides for the composition and the functions of the NJAC.[8] The preamble of the Act reads as An Act to regulate the procedure to be followed by the National Judicial Appointments Commission for recommending persons for appointment as the Chief Justice of India and other Judges of the Supreme Court and Chief Justices and other Judges of High Courts and for their transfers and for matters connected therewith or incidental thereto.[9]Article 124 (A)has been inserted and it deals with the composition of NJAC. [10]Article 124(B) gives Commission the Constitutional Status.

Now, the Section 5 of the Act deals with the procedure for selection of judge of the Supreme Court and it states that the senior most judge of the Supreme Court[11] will be appointed as the Chief Justice of India. As per Section 5 (2) the commission shall recommend the name for the appointment of Judges of the Supreme Court amongst persons who are eligible for appointment on the basis of the merit, ability and other criteria[12] of suitability as per Article 124 (3) of the

[8]Available at http://archive.indianexpresscom/news/the-collegium-controversy/836029/2
[9] Available atonelawstreet.com/.../national-judicial-appointments-commission-act-201...
[10] Article 124A details the composition of NJAC i.e. the Chief Justice of India, Chairperson, ex officio; (b) two other senior Judges of the Supreme Court next to the Chief Justice of India —Members, ex officio; (c) the Union Minister in charge of Law and Justice—Member, ex officio; (d) two eminent persons to be nominated by the committee consisting of the Prime Minister, the Chief Justice of India and the Leader of Opposition in the House of the People or where there is no such Leader of Opposition, then, the Leader of single largest Opposition Party in the House of the People — Members: Provided that one of the eminent person shall be nominated from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities or Women: Provided further that an eminent person shall be nominated for a period of three years and shall not be eligible for re-nomination.
[11]Available at http://archive.indianexpresscom/news/the-collegium-controversy/836029/2 (Last visited on 09/05/2015)
[12] Available athttps://en.wikipedia.org/.../National_Judicial_Appointments_Commission

Constitution of India. Interestingly, the provisions also specify about the power of veto in case of disagreement between two members.

METHOD OF APPOINTMENT BEFORE NJAC

It is interesting to check out the process of appointment prior to coming into existence of NJAC. As after its analysis only we will be able to understand that why a need was felt to have a transparent system. As under the earlier system of appointment i.e. Collegium system, judges were appointing judges. The said method is against the basic principles of law. Further transparency was not part of appointment as the same was closed door method of appointment. Under this system till 1991, Judges were appointed to the High Court on the basis of a panel of advocates whose names were recommended by the Chief Justice of that High Court thereafter these names were forwarded to the Chief Minister of the particular State and to the Central Home Ministry.

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The constitution was amended in the year 1976 by 42nd amendment. The power of Judicial Review was put to an end and 2/3rd majority was mandated for striking down any legislation. Again in 1981 the political executives again attempted to regain the power of the transfer of the High Court judges leading to the famous 1st Judge's Case.[15]

In S.P. Gupta v. Union of India[16] the apex court laid down that the recommendation for appointments made by the Chief Justice of India is not pre-eminent and his recommendations can

[13]Available at blog.ipleaders.in/what-every-indian-should-understand-how-judges-are-...
[14] Available athttp://blog.ipleaders.in/what-every-indian-should-understand-how-judges-are-appointed-inindia/#ixzz3o492TJi7
[15] ibid
[16] AIR 1982 SC 149,

be turned down by the ruling politicians at the Center .Later in the year 1993 in Advocate on Record Association v. Union of India the Supreme Court rescinded the ruling laid down in S.P. Gupta Case and created the Collegium system under which appointments and transfers of the judges are decided by a forum of Chief Justice of India and two senior most judges of the Supreme Court.

But in many cases, Chief Justice of India took unilateral decision without consulting the other two judges and the President became only an approver.

To deal with this inadequacy, in 1998, President K.R. Narayan [17]issued a reference to the Supreme Court[18] as to what the term "consultation" means under Article 124, 217 and 222 of the Constitution in relation to appointment and transfer of Supreme Court and High Court judges. In answer to this Supreme Court laid down various guidelines for the transfer and appointment of judges and strongly reinforced the concept "primacy" of highest judiciary over the executive.

The collegium system evolved after three landmark judgments of the Supreme Court, known as the 'three judges cases'. The first judges case was the S.P. Gupta case.[19] It decided in the case that the President could, with sensible reasons, refuse judges' names recommended by the CJI.This gave the executive more power than the judiciary in the appointments process.In the second judges case, a nine-judge bench of the SC went the other way and created the collegium by reversing the first judges case: the majority verdict written by Justice J.S. Verma in the Supreme Court Advocates on Record Association vs the Union of India[20] casesaid that the CJI must be given the primary role in judicial appointments. It was laid down by Justice Verma that "...this being a topic within the judicial family, the executive cannot have an equal say in the matter" of appointments. "Should the executive have an equal role and be in divergence of many a proposal, germs of indiscipline would grow in the judiciary," .The last judgment in the series, the 1998 third judges case [21], cleared things up after the President asked the Supreme Court to do so. In this case, the Supreme Court came up with nine guidelines on how the collegium system

[17]Available at https://en.wikipedia.org/wiki/K._R._Narayanan
[18] Available at https://www.linkedin.com/.../how-appointment-judges-india-whether-sup...
[19] Available athttps://en.wikipedia.org/wiki/Three_Judges_Cases
[20]Available at [1993(4) SCC 441
[21] Available at www.livemint.com › Politics › Policy

should function.This third case cemented the supremacy of the judiciary in the appointment and transfer of judges.[22]

APPOINTMENT AT HIGHER JUDICIAL LEVEL IN OTHER COUNTRIES

Judges in United Kingdom are appointed on the basis of the recommendation made by the independent Judicial Appointments Commission (JAC). Quite interestingly all appointments are made on the basis of open competition. It is an independent commission that selects candidates for judicial office in courts and tribunals in England and Wales, and for some tribunals whose jurisdiction extends to Scotland or Northern Ireland. Its an executive non –departmental public body, sponsored by Ministry Of Justice.[23] JAC derives its source from Constitutional Reforms Act and it consists of 15 members. The judicial appointment and other details are contained in Schedule 14 to the CRA as amended by the Crimes and Courts Act, 2013.UK leads by example in this regard where the Supreme Court selection commission is to consist of at least one non-legally qualified member while the UK's Judicial Appointments Commission comprises five such lay members.

In Canada, the Supreme Court consists of the Chief Justice and 8 other associate judges. The Constitution of Canada empowers the Governor General to appoint the Supreme Court judges. In common practice, it is the advice of the Prime Minister upon which the judges are appointed. Furthermore, the Minister of Justice shortlist candidates with input from provincial law societies.[24] Moreover, Canada does take into account regional representation while making appointment of Judges. In order to be appointed as judge the candidates must have been a member of provincial or territorial law societies for at least 10 years.

In United States under section II Article II of the United States Constitution reads as[25] :-The President..., nominate, and by and with the advice and consent of the Senate, shall, ...judges of the Supreme Court, and all other officers of the United States shall appoint judges of the

[22] Available at http://www.livemint.com/Politics/rcsu24yGQ0frdanyQ9fVVL/All-you-need-to-know-about-NJAC.html
[23] Available at. https://jac.judiciary.gov.uk/about-us
[24] Available at www.parl.gc.ca/parlinfo/compilations/SupremeCourt.aspx?Menu...
[25] Available at https://www.usconstitution.net/const.pdf

Supreme Court, and all other officers of the United States,

Interestingly in USA there is no statutory qualification with regard to person being judge in the Supreme Court.[26] Generally, nominees need to have been admitted to the practice of law for at least 10 years. Pertinently, there is no rule where only a practising advocate can become judge. There are examples where a Academician (professor of law), have also been appointed as judge. At present out of present strength of judge in U.S Supreme Court, there is one professor of law who is currently serving as judge in the U.S Supreme Court.[27] Therefore, as far as appointment of judges in the United States is concerned, the authority vests with the U.S President and the Senate and there is no collegium system prevalent for appointing the judges.

THE PROS AND CONS RELATED TO NJAC

The statute specifies that no person shall be recommended for appointment to the Supreme Court if any two members disagree with the appointment.[28] The argument against this requirement is that both sides — the judges and the non-judges — have a veto power over appointments. Arguably, the Law Minister together with one or more of the eminent persons could exercise their veto against independent-minded candidates.

This would, in other words, mean that assuming that all six members of the NJAC participate and vote, a successful appointment would require the concurrence of at least two of the three judges on the Commission.Standard operating procedures for appointments: Once again, neither the constitutional amendment nor the statute specifies the procedures that the NJAC is expected to follow while making decisions on appointments.[29] Instead, important issues such as the level of publicity to be given to reports of the Commission, the quorum for Commission meetings, and whether the rejection of candidates requires reasoned explanation, has been left to the domain of rules and regulations.

[26] Available atwww.manupatrafast.com/.../Vol%20VIII%20Issue%20V.pdf
[27] Available at http://www.supremecourt.gov/about/biographies.aspx
[28] Available atwww.thehindu.com › Opinion › Lead
[29] Available athttp://www.thehindu.com/opinion/lead/interpretive-remedies-in-njac-case/article7482864.ece

It is relevant to note here that the "basic structure of the constitution", whose primacy has been upheld by several SC judgments as it safeguards the separation of powers and the independence of the judiciary from the executive, remains intact under the NJAC, as the NJAC's chairperson is the CJI, who has an important role to play.Furthermore, the NJAC is a transparent system of appointment hence good for democracy ,which is also a basic feature of the Constitution and ensures that no organ of the state, including the judiciary, enjoys complete freedom.[30] It can further be argued that This by itself does not affect the separation of powers. Historically, Parliament has always had power over the judiciary without compromising the legislature's independence.[31] Further Parliament has been given "legislative supremacy" under the Constitution, which is why it could pass the 99th Amendment that created the NJAC in the first place.

Furthermore Article 124 A sets out the composition of the National Judicial Appointments Commission and envisages the presence of two "eminent persons" on the NJAC, who would be nominated by a committee of the Prime Minister, the CJI and the leader of the opposition or the single-largest opposition party in the Lok Sabha. One of the eminent persons must be a woman or someone belonging to a scheduled caste, scheduled tribe, other backward classes or another defined minority.Eminent persons would represent the people and civil society, which would increase the confidence of the people in the judiciary.The presence of eminent persons will bring diversity in the NJAC and by extension in the judicial appointments. Eminent persons facilitate a participatory appointments process and bring in plurality of viewpoints.[32]Eminent persons will act as a check against arbitrary exercise of power by any of the other members on the NJAC.[33] They would be truly independent individuals who approach the appointments process from a detached standpoint.Attorney general Mukul Rohatgi pleaded[34] that to retain "public confidence", judicial appointments "must be seen both in the context of independence of the judiciary as also the need for checks and balances on it".

[30] Available at iasbaba.com/.../q-2-present-your-views-on-the-need-and-suitability-of-th...
[31] Available at www.heritage.org/.../what-separation-of-powers-means-for-constitutional...
[32] Available at www.legallyindia.com/.../debating-the-njac-who-are-the-eminent-person...
[33] Available at https://indconlawphil.wordpress.com/.../debating-the-njac-who-are-the-e...
[34]Available at www.civilsdaily.com/story/judicial-appointments-conundrum/

This is a flaw i.e. the vagueness of certain terms used in these enactments. 'Eminent person' is nowhere defined. The New Oxford English Dictionary defines the word 'eminent' as "a person famous and respected within a particular sphere or profession". Eminence is achieved in a particular field of activity. This term needs to be defined in specific terms in order to enable the selection committee to select eminent persons who have the capacity to evaluate the merit of judges.

On the other hand there are various counter-arguments, firstly it can be argues that the Parliament made an unconstitutional amendment by introducing Article 124 A. In the second judges case a nine-judge bench laid down the primacy of the CJI as part of the basic structure of the Constitution and the 99th Amendment Act[35] cannot simply violate this now.

The NJAC Act suffers from excessive delegation, which is a serious legislative vice. The suitability of a person to be appointed as a judge of the apex court or of a High Court needs to be clearly laid down in the Act. This act leaves "other criteria other than ability and merit" to be laid down by the commission through regulations. Similarly, the Act leaves "other procedure and condition for selection and appointment of Supreme Court judges" to be laid down by the commission.

Such delegation of legislative power is clearly not permissible, because it is the duty of the Legislature to clearly lay down criteria and conditions for selection etc of such high constitutional functionaries as judges of the Supreme Court. Yet another example of vagueness is to be found in the provision relating to the appointment of the Chief Justice. The words, "if he is considered fit to hold the office" are capable of creating tremendous confusion, as the Act nowhere lays down any criterion for the selection of a Chief Justice. The Supreme Court is bound to take note of these defects.[36]

[35]Available at https://indconlawphil.wordpress.com/tag/separation-of-powers/
[36]Available at http://www.dailypioneer.com/columnists/oped/flawed-from-the-very-beginning.html

Further article 124 C empowers the legislature to freely change the powers governing the NJAC through the ordinary law-making process. This obviously violates the theory of the separation of powers. It basically gives the legislative pillar massive powers.Another bone of contention is that the second judge's case decided that the CJI has the final word[37], i.e. "primacy", in judicial appointments but the amendment has changed the scenario completely. Hence the big question is whether this principle of the CJI's "primacy" had become a constitutional convention, i.e., a fundamental part of the Constitution that could not simply be changed by Parliament whenever it deems fit. In the second judges case the court was very specific in stating that "once it is established to the satisfaction of the Court that a particular convention exists and is operating, then the convention becomes a part of the 'constitutional law' of the land and can be enforced in the like manner".

Another very relevant issue is the criterion to judge the eminence. As who exactly is an eminent person under Article 124 A is very vague because no criteria of selection at all have been given. The committee's views on who is eminent could be radically different from the view of the general public, or there could be disagreement even within the committee of who is eminent, in the absence of a general criteria. Further Eminent persons could pose a risk to the independence of judiciary specially if they have vested interests in the executive, because they have the effective power to shoot down the nomination of any candidate[38].In any case so called eminent persons would not be able to determine the capability of a judge having no experience in the field.

The two options are the so-called "doctrine of revival" and the "doctrine of eclipse". On the one hand, if the NJAC were struck down, the doctrine of revival would re-instate the collegium system and make the whole NJAC and the 99th constitutional amendment invalid.On the other hand, the doctrine of eclipse would call for the Supreme Court to tinker with the process of NJAC[39] carefully so that the current portions of the law that are unconstitutional are removed and the NJAC can then function properly.

[37] Available athttps://indconlawphil.wordpress.com/.../debating-the-njac-the-second-jud...
[38] Available at https://indialawyers.wordpress.com/tag/judiciary/
[39] Available at https://archive.org/stream/.../indianalawreview36303unse_djvu.txt

Any real solution to NJAC issue requires effective cooperation between the judiciary and the central and state governments.[40]

The Supreme Court has said in the past that striking out a law is a "grave step" and a "measure of last resort" and its most common response is not to strike down the unconstitutional law, but to interpret it in a way that it is consistent with the Constitution.

A five-judge constitution bench, comprising justices JS Khehar, Jasti Chelameswar, Madan B Lokur,Kurian Joseph and Adarsh Kumar Goel,is hearing a batch of petitions challenging the legal validity of the new government's twin laws that establish the NJAC and replace the existing in-house collegium system of appointing judges to the superior courts.[41]

In the month of July 2015 the Supreme Court of India reserved the judgment on the constitutional validity of the 99th Amendment to the Constitution which introduces the National Judicial Appointments Commission (NJAC), and replaces the existing collegium system. One of the issues for consideration before the court is whether or not giving primacy to the recommendation of the Chief Justice in the matter of appointments to the judiciary should be regarded as a constitutional convention.During the Course of the Constituent Assembly Debates, Dr. BR Ambedkar stated– "I think, to allow the Chief Justice practically a veto upon the appointment of judges is really to transfer the authority to the Chief Justice which we are not prepared to vest in the President or the Government of the day. I therefore, think that that is also a dangerous proposition." Even Justice Ahmadi in his dissenting opinion in the Second Judges case(supra, at paragraph 395, 403) argued that the original intent of the framers did not support an interpretation of the constitution that conferred primacy on the Chief Justice and that such a change would require a constitutional amendment.[42]

With respect to the NJAC there are two reasons why the convention of giving primacy to the Chief Justice is no longer tenable. First, an executive role in only the appointment process does

[40] Available at http://blog.mylaw.net/tag/judicial-reforms/
[41] Available athttp://articles.economictimes.indiatimes.com/2015-05-02/news/61747089_1_chief-justice-judicial-appointments-commission-njac-judiciary
[42] Available athttp://www.legallyindia.com/Blogs/guest-post-the-njac-and-an-unconventional-constitutional-convention

not imply a disregard for the independence of the Judiciary as a whole. Other facets of an independent judiciary, for example, include a fixed tenure and salary, difficult impeachment procedure etc. Moreover, the NJAC does not even envisage a final say of the executive, which was the Court's worry with respect to Article 124. In fact, the supremacy of the judiciary in the matter of appointments is not a predominant constitutional feature in other parts of the world, for example, The Judicial Appointments Commission in the United Kingdom consists of 15 members: two from the legal profession, five judges, one tribunal member, one lay justice (magistrate), and six lay people including the Chairman.

Constitutional expert Dhavan also took serious exception to the eminent persons' clause in the law and the reservation provided to women and other minority groups in filling up the two seats meant for them on the NJAC. At least one of the members has to be from that category. "Are they trying to introduce some sort of reservation? This provision is a farce, a total farce," he said, adding this seemed to be an attempt to pander to vote banks.The power to appoint superior court judges was a trusteeship that could not be gambled a way to laypersons appointed by a majority of politicians, he said.

In view of above mentioned argument related to convention it is stated that conventions should not be considered binding by Courts and that the courts must refrain from both formulating and enforcing them, and the convention of judicial 'primacy' was linked to the basic structure in the Second Judges case. However, separated from its nexus with the basic structure, such a convention giving primacy to the judiciary in the matter of appointment, even if accepted as binding, becomes part of ordinary constitutional law, meaning that it is amenable to the amendment process under Article 368 of the Constitution and no longer acts as a deterrent to the validity of the 99th Amendment

Undoubtedly the court's decision will have profound implications for the future of the judiciary. While the NJAC could enhance the accountability and transparency of the appointment process, a decision upholding the NJAC would weaken judicial independence. Moreover upholding the NJAC could temper the recent assertiveness of the Court, by allowing the government to appoint and transfer judges on the basis of their policy ideology, potentially diminishing the salutary role of the Court as a check on corruption and bad governance in Indian politics. Based on the Court's earlier precedents, oral arguments and the bench's own statements, it is likely that the court will

invalidate the NJAC in its current form. While invalidating the NJAC under the basic structure doctrine would be extraordinary from a comparative perspective, such a ruling would be consistent with the Court's record of assertiveness in the defense of judicial integrity and independence.[43]

CONCLUSION:

The concluding remarks with regard to NJAC are that constitution has maintained a wonderful balance between all the pillars of democracy. If we talk about independence of judiciary specifically than the provision related to expenditure which is a charge on the consolidated fund is not required to be voted by the Lok Sabha. Similarly, no discussion can take place in Parliament on the conduct of judges except when an impeachment motion is under discussion. The Constitution of India thus insulates the judiciary against any pressures from the executive and the legislature.

Admittedly, there is no rigid separation of powers under the Indian Constitution. We have a flexible scheme, which is accommodative of a little tinkering around the edges. If Parliamentary control is structurally consistent with the constitutional scheme, then clearly, the manner in which the 99th Amendment redistributes power cannot be held to violate the separation of powers. It merely redistributes power within permissible contours.[44]

[43] Manoj Mate, A Challenge to Judicial Independence in India: The National Judicial Appointments Council (NJAC) , JURIST - Academic Commentary, July 23, 2015

[44] Available at https://indconlawphil.wordpress.com/2015/07/28/debating-the-njac-round-up-and-tentative-conclusions/