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Supreme Court must revisit NJAC

Article 124 and the Appointment of Supreme Court Judges

- **Article 124:** Establishes the Supreme Court of India and outlines the process for appointing judges.
- **Appointment Process:** States that the President, with advice from the Council of Ministers, appoints judges after consulting the Chief Justice of India (CJI).
- **Consultation vs. Concurrence:** During the drafting of the Constitution, a proposal to replace "consultation" with "concurrence" was rejected by Dr. B.R. Ambedkar, who argued that giving the CJI veto power would undermine the President's authority and shift the balance of power to the judiciary.

Judicial Appointments and the First Judges Case (1981)

- **Early Period:** The judicial appointment process functioned smoothly for the first two decades post-independence, leading to the selection of competent and honest judges.
- **The First Judges Case (1981):** Concerns about judicial independence led to the First Judges Case (S.P. Gupta case), where it was argued that "consultation" in Article 124 should be interpreted as "concurrence," meaning the CJI's approval would be necessary for judicial appointments.
- **Court's Verdict:** The Supreme Court rejected this argument, reinforcing the executive's role in judicial appointments and affirming the existing system.

The Evolution of the Collegium System

- **Revisited Interpretation of Article 124:** Despite the First Judges Case, the interpretation of Article 124 was revisited in the 1990s.
- **Shift in Stance:** The Supreme Court reversed its previous stance, redefining "consultation" as "concurrence," which led to the establishment of the collegium system.
- **Collegium System:** This system, never originally envisioned in the Constitution, shifted the power of judicial appointments from the executive to the judiciary.
- **Composition of Collegium:** The collegium consists of the Chief Justice of India and the four senior-most judges, sidelining the role of the government in judicial appointments.

The NJAC and Its Striking Down



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- **Creation of the NJAC:** The Constitution (Ninety-Ninth Amendment) Act of 2014 created the National Judicial Appointments Commission (NJAC) to reform the judicial appointment process.
- **NJAC Composition:** The NJAC consisted of six members:
 - The Chief Justice of India
 - Two senior-most judges
 - The Union Minister of Law and Justice
 - Two eminent persons from outside the judiciary
- **2015 Striking Down:** In 2015, the Supreme Court struck down the NJAC as unconstitutional, citing the Basic Structure Doctrine, which holds that the basic features of the Constitution cannot be altered.
- **Court's Decision:** The Court ruled that the involvement of the Law Minister and two eminent persons compromised judicial independence.
- **Controversy:** The decision was controversial, as the NJAC had been passed with near-unanimous support in Parliament and ratified by 16 state legislatures.

Criticism of the Collegium System

- **Flaws in the Collegium:** The collegium system has been criticized for lack of transparency and for internal lobbying in judicial appointments.
- **Justice Chelameswar's Dissent:** Justice Jasti Chelameswar, in his dissenting opinion in the NJAC case, highlighted flaws in the collegium, noting that the process was often shrouded in secrecy and marked by internal political maneuvering.
- **Justice Ruma Pal's Criticism:** Former Supreme Court judge Justice Ruma Pal referred to the collegium system as "one of the best-kept secrets in the country" and criticized its lack of transparency.
- **Justice Kurian Joseph's Regret:** Initially a supporter of striking down the NJAC, Justice Kurian Joseph later expressed regret, admitting that the collegium system had proven ineffective over time.

The Missed Opportunity for Judicial Reform

- **The NJAC Amendment:** The NJAC amendment aimed to restore some level of government participation in judicial appointments while maintaining judicial independence.
- **Balanced Approach:** Unlike the original executive-controlled system, the NJAC proposed a more balanced approach, incorporating a collective decision-making process for judicial appointments.



- **Supreme Court's Rejection:** The Supreme Court's rejection of the NJAC prevented the implementation of a significant judicial reform, despite its widespread support.
- **A Lost Opportunity:** The NJAC case represented a missed opportunity to bring much-needed reforms to India's judicial appointment system, which has faced increasing scrutiny over time.

Conclusion: Revisiting the NJAC Judgment

- **Need for Re-evaluation:** Given the flaws in the collegium system and the evolving perspectives of those who once supported it, there is a strong case for revisiting the NJAC judgment.
- **Second Judges Case Precedent:** Just as the S.P. Gupta ruling was reconsidered in the Second Judges Case, a larger bench of the Supreme Court should re-examine the NJAC decision.
- **Balancing Judicial Independence and Transparency:** Judicial independence is crucial, but there must also be a focus on transparency, accountability, and efficiency in the judicial appointment process.
- **Path Forward:** A re-evaluation of the NJAC could lead to a more balanced and effective system of judicial appointments in India, addressing concerns raised by various judges and the public.

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