

Independence of Judiciary and the National Judicial appointments Commission Act, 2014: An Analysis

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Abstract: The forefathers of our nation gifted us with a democracy which by its very definition assumes a Judiciary and an independent one too. Independent Judiciary is backbone of the democratic state because it protects and preserves the concept of rule of law which is an essential part of democracy. Democracy is not functional if there is not an impartial body to review the state's action as state cannot be the Judge in its own cause. The main objective of this Article is to clearly understand the Importance of Independence of Judiciary in a democratic setup. In this Article I analyze the various provisions of Constitution related to independence of judiciary. I have also critically analyzed the provisions of National Judicial Appointments Commission Act, 2014. In this Article it is strongly recommended that possible measures should be taken to protect the Judges against political influence for securing impartiality and independence of judiciary.

Keywords: Executives, Judiciary, Independence and Judicial Appointments Commission.

INTRODUCTION

“Justice can become ‘fearless and free only if institutional immunity and autonomy are guaranteed. [1]”

An independent Judiciary is necessary for a free society and a constituent democracy. The framers of the Indian Constitution were very much concerned about the independence of Judiciary from other organs of the government. This concern of the members of the Constituent Assembly was responded by Dr. B.R. Ambedkar [2] in the following words:

“There can be no difference of opinion in the House that our Judiciary must be both independent of the Executive and must also be competent in it.”

In a democratic setup Judiciary play a significant role of interpreting and applying the law and adjudicating upon controversies. It is the function of the courts to maintain rule of law in the country. So to maintain rule of law in a country the judiciary acts as watching tower above all the other limbs of the state. In a country with a written constitution, courts have to safeguard the supremacy of the Constitution by interpreting and applying its provisions. The independence of the judiciary is the basic requisite for ensuring a free and fair society under the rule of law. Rule of law can be secured through unbiased and

independent judiciary. Good governance of the country can only be achieved through independent judiciary.

The independence of the judiciary is based on the doctrine of separation of powers which holds its existence from several years. An independent judiciary supports the base of doctrine of separation of powers to a large extent. Under the doctrine of Separation of Powers Judiciary acts as a watchdog to check the functioning of executive and the legislature and judiciary also prescribed the constitutional limits of executive and the legislature. This task given to the judiciary to supervise the doctrine of separation of powers cannot be carried on in true spirit if the judiciary is not independent in itself.

MEANING OF INDEPENDENCE OF JUDICIARY:

The independence of judiciary is not a new concept. The concept of independence of judiciary is based upon the doctrine of separation of powers. The primary meaning of the independence of judiciary is the independence of judiciary from legislature and executive. But independence of judiciary does not mean just creation of an autonomous institution free from interference and control of the legislature and the executive. The base of independence of judiciary is that judges are not subject to pressure and influence, and are free to make impartial decisions based solely on fact and law [3]. Different jurists have different opinions

about the concept and meaning of independence of judiciary. According to Abrahamson, Shirley [4] "The term judicial independence embodies the concept that a judge decides cases fairly, impartially, and according to the facts and law, not according to whim, prejudice, or fear, the dictates of the legislature or executive, or the latest opinion poll....". According to joint statement of the courts of British Columbia about judicial independence "Judges are constrained to maintain judicial independence by the law, their legal training, their expectations, and the judicial culture. The judicial culture and judicial education treasure intellectual honesty, fair and principled decisions, and rising above partisanship and the political moment [5]."

Shetreet, [6] defined 'independence' and 'judiciary' separately, according to him the judiciary is an essential organ of the government and not forming a part of the executive or the legislature, which is not subject to personal, substantive or collective control and which perform the primary function of adjudication. While explaining the meaning of independence of judiciary he further differentiates independence of the individual judges and the collective independence of the judiciary. According to him independence of individual judges consists of substantive independence of a judge and personal independence of a judge. The former means while making the judicial decisions and exercising other official duties a judge is not subject to any authority other than law while the latter means adequate security of judicial terms of office and tenure. The independence of the individual judges also includes independence from their judicial superior and colleagues. Shetreet [7] also established that the independence of judiciary means and includes the independence of judiciary as a collective body or organ of the government from its two other organs as well as independence of each and every member of the judiciary-the judges- in the performance of their roles as judges.

Thus the concept of judicial independence is designed to protect the system of justice and the rule of law, and to keep and maintain trust and confidence of public in the courts. So we can say that judicial independence means freedom of judiciary from direct control or interference of executive and legislature while exercising its judicial power and exercising other official duties.

NEED FOR THE INDEPENDENCE OF THE JUDICIARY:

The independence of the judiciary is a necessary concomitant of the power of judicial review under a democratic Constitution. In the Indian Constitution, judicial review is expressly provided under Articles 13, 32, 136, 141, 142, 226 and 227 respectively. Judicial review has also been recognized as a basic feature and basic structure of the Constitution

in Keshavananda Bharti case [8]. Judiciary in India is a sole protector and guardian of fundamental rights of people of India enshrined under part third of the constitution of India. Through judicial review judiciary restricts and reviews the state action which violates the fundamental rights of people of India. So to keep alive the principle of judicial review against arbitrary state actions the independence of judiciary is very necessary. The rule of law which is the bedrock of democracy will be adversely affected if judiciary is not independent of executive and legislature. So there is a great need to keep judiciary independent of both executive as well as legislature. The basic need for the independence of the judiciary rests upon the following points:

1. To review and restrict the functioning of the organs of government : Judiciary acts as a watchdog by ensuring that executive as well as legislature perform their functions and exercise their powers within their respective areas or prescribed limits and according to the provisions of the constitution. Judiciary acts as a guardian of the constitution and also aids in securing the doctrine of separation of powers and rule of law.

2. To safeguard the impartial administration of public law: Independent judiciary plays an active role to safeguard the impartial administration of public law. Judiciary enforces public law in a state and directs public authorities to act according to the provisions of public law.

3. Interpreting the provisions of the constitution: It was well known to the framers of the constitution that in future the ambiguity will arise with the provisions of the constitution so they ensured that the judiciary must be independent and self-competent to interpret the provision of the constitution in such a way to clear the ambiguity but such an interpretation must be unbiased i.e. free from any pressure from any organs like executive. If the judiciary is not independent, the other organs may pressurize the judiciary to interpret the provision of the constitution according to them. Judiciary is given the job to interpret the constitution according to the constitutional philosophy and the constitutional norms.

4. Settlement of disputes by judiciary without bias: Judiciary is expected to deliver judicial justice and not biased or committed justice. Committed justice means that when a judge emphasizes on a particular aspect while giving justice and not considering all the aspects involved in a particular situation. Similarly judiciary must act in an unbiased manner.

COMPONENTS – THE INDEPENDENCE OF THE JUDICIARY:

The components of independence of judiciary are generally related to the independence of judges, the selection, status and the role of judges in relation to the

system of justice. Basic Principles and components of Independence of the Judiciary were adopted by the United Nations Congress held at Milan in 1985 [9] and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. Under this convention the basic principles relating to independence of judiciary were formulated to assist Member States to fulfill their task of securing and promoting the independence of the judiciary in their national legislations. The basic components of Independence of Judiciary provided under this convention are under the following:

1. The independence of the judiciary shall be guaranteed by the State and it should be enshrined in the Constitution or the law of the country. All governmental and other institutions are obliged to respect and observe the independence of the judiciary.

2. The judiciary shall not exercise bias while deciding a case. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

3. The judiciary shall exercise its jurisdiction over all matters of a judicial nature and shall have exclusive power and authority to decide whether an issue submitted for its decision is within its competence as defined by law.

4. There shall not be any unreasonable interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.

5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures.

6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

Freedom of expression and association

8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.

9. Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.

Qualifications, selection and training

10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

Conditions of service and tenure

11. The term of office of judges, their independence, security, adequate remuneration and conditions of service, pensions and the age of retirement shall be adequately secured by law.

12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.

14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration.

Professional secrecy and immunity

15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.

16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

Discipline, suspension and removal

17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

INDEPENDENCE OF THE JUDICIARY UNDER THE CONSTITUTION:

Indian Constitution has no express provisions with regard to independence of judiciary. But the independence of Judiciary is imbibed in the letters of various provisions of the Constitution. India has adopted a federal constitution. Indian constitution has distributed legislative, administrative and financial powers between centre and the states [10]. An independent judiciary is the base and essence of the federal character of the constitution. It is necessary that the judiciary should be impartial and independent of the legislative and executive organs of the government to ensure the functioning of the government in accordance with the constitution. The Supreme Court, being the guardian of the constitution, ensures that the fundamental rights of the citizens are not violated. In *Kesavananda Bharati* case [11], *S.P. Gupta v Union of India* [12] and *State of Bihar v. Bal Mukand Sah* [13] it was held that the Independence of judiciary and the rule of law are the basic features of the Constitution it cannot be abrogated even by constitutional amendments. So Independence of judiciary is regarded as basic feature of our constitution. Under Indian Constitution the provisions regarding composition, Appointment, Tenure, Transfer, Jurisdiction of Judiciary were maintained to secure the independence and high quality of judiciary in India. But after 99th Amendment Act, 2014 provisions regarding appointment of Judges of Supreme court as well as Judges of High Court have amended and National Judicial Appointments Commission (NJAC) Act, 2014 has enacted by replacing collegiums system for the appointment of judges. We will discuss these provisions under the following:

Appointment and Tenure of Judges of Supreme Court and High Courts:

According to Article 124(1) of the constitution there shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judge. Prior to 99th Amendment the power of appointment of Judges of the Supreme Court provided under Clause (2) of Article 124. According to this

clause every Judge of the Supreme Court shall be appointed by the President after consultation with such of the Judges of the Supreme Court and the High Courts in the States as the President may deem necessary for the purpose, provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted. According to the Court's interpretation of these provisions the process of appointment of a judge is initiated by the Chief Justice through a collegium consisting of him and four of the senior most judges of the court. The recommendation of the collegium is binding on the President [14]. The court held that the opinion of the Chief Justice regarding appointment of a Judge shall be binding on the President. The judges of the Supreme Court and High Courts have been given the security of the tenure [15]. Once appointed, they continue to remain in office till they reach the age of retirement which is 65 years in the case of judges of Supreme Court (Art. 124(2)) and 62 years in the case of judges of the High Courts (Art. 217(1)).

But after 99th Amendment the power of appointment of Judges of Supreme Court is vested in National Judicial Appointment Commission constituted under Article 124A [16] of the Constitution.

99th Amendment substituted new words "on the recommendation of the National Judicial Appointments Commission referred to in article 124A" in the place of words "after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose." Now every judge of a Supreme Court shall be appointed on the recommendation of the National Judicial Appointments Commission which is constituted under Article 124A after 99th Amendment and therefore at present judiciary is not independent while making appointments of judges to the higher courts.

According to Article 214 of Constitution there shall be a High Court for each State. Article 216 of Constitution states that every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint. Prior to 99th Amendment the power of appointment of Judges of High Courts was vested in the President, but such power is exercisable only "after consultation with the Chief Justice of India, the Governor of the State and the Chief Justice of the High Court [17]."

But after 99th Amendment the power of appointment of judges of High Courts is vested in National Judicial Appointment Commission constituted under Article 124A of the Constitution. According to Constitutional 99th Amendment Act "It shall be the duty of the National Judicial appointments Commission to-

(a) recommend persons for appointment as Chief Justice of India, Judges of the Supreme Court, Chief Justices of High Courts and other Judges of High Courts;

(b) recommend transfer of Chief Justices and other Judges of High Courts from one High Court to any other High Court; and

(c) ensure that the person recommended is of ability and integrity.”

99th Amendment Act also empowers Parliament to make law to regulate the procedure for the appointment of Chief Justice of India and other Judges of the Supreme Court and Chief Justices and other Judges of High Courts and empower the Commission to lay down by regulations the procedure for the discharge of its functions, the manner of selection of persons for appointment and such other matters as may be considered necessary by it [18]. Therefore the primacy of Chief Justice of India and his collegium to appoint judges of higher courts is replaced by 99th Amendment Act, 2014 and there is direct interference of executive in the affairs of judiciary.

Transfer of Judges:

Clause (1) of Article 222 of the constitution provides the judge of one High Court may be transferred to another High Court by the president after consultation with the chief justice of India. In *Union of India v. Sankalch and H. Sheth* [19], a Five Judge Bench of the Supreme Court took the issue of transfer of High Court Judges as of great importance and held that independence of judiciary is an essential and vital ingredient of our legal system. The court further held that the transfer of judges could be done only in the public interest and effective consultation between the Chief Justice of India and the President.

Judges Transfer Case 1

S P Gupta vs Union of India [20], in this case, Supreme Court, by majority of 4 to 3, uphold the validity of a circular letter of the union law minister issued to the chief ministers of the states asking them to obtain the consent of the additional judges in the High Courts of their states as well as of the persons proposed to be appointed to the High Courts, to be transferred or appointed, as the case may be, in any other High Court outside their state. The court said that it did not effect the independence of judiciary.

Judges Transfer Case 2

Again the matter relating to interpretation of the expression “consultation with the Chief Justice of India” under Article 222 was raised in the case of *S.C. Advocates-on-Record Association v. Union of India* [21]. The matter was examined by a Nine Judge Bench of the Apex Court. In this case, the Supreme Court overruled the decision of the *SP Gupta* case and held that in the matter of appointment and transfer of judges

of High Courts and Supreme Court, the Chief Justice should have the primacy and the appointment of the Chief justice should be based on seniority. It further held that the Chief Justice must consult his two senior most judges and the recommendation must be made only if there is a consensus among them.

Judges Transfer Case 3 [22]

A controversy arose again when the Chief Justice recommended the names for transfer of judges of High Court without consulting with other judges in 1999. The president sought advice from the Supreme Court (re Presidential Reference 1999) and Nine Judge Bench of the Apex Court held that an advice given by the Chief Justice without proper consultation with other judges is not binding on the government. It was further held that before recommending the transfer of a puisne Judge of one High Court to another High Court also as a puisne judge, the CJI must consult a plurality of judges. It is imperative that the CJI should obtain the views of the Chief Justice of the High Court from which the proposed transfer is to be affected as also the Chief Justice of the High Court to which the transfer is to be affected.

Due to the decision in *Judges Transfer Case 2*, the appointment of the judges in Supreme Court and High Courts are fairly free from executive control. This is an important factor that ensures the independence of the judiciary. But now according to 99th Amendment the judge of one High Court shall be transferred to another High Court on the recommendation of National Judicial Appointment Commission constituted under Article 124A of the Constitution. Therefore at present there is direct interference of executive in the affairs of judiciary and judiciary is not independent while performing its judicial and official functions.

Procedure of impeachment of Judges of Higher Courts [23]:

Clause (4) of Article 124 and Clause (1) of Article 217 of the Constitution provides that a Judge of the Supreme Court and a Judge of the High Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity. Parliament is empowered under Article 124(5) to make law to regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).

K. Veeraswami v. Union of India [24] A five Judges Bench of the Supreme Court held that a Judge of the Supreme Court and High Court can be prosecuted and convicted for criminal misconduct. The word

'proved' in this provision indicates that the address can be presented by Parliament only after the alleged charge of misbehaviour or incapacity against the Judge has been investigated, substantiated and established by an impartial tribunal. The constitution does not prescribe any provision to investigate the alleged charge of misbehaviour or incapacity against the Judge.

In accordance with the above provision, Parliament has enacted the Judges (Inquiry) Act, 1968 to regulate the procedure for investigation and proof of misbehaviour or incapacity of a Supreme Court judge for presenting an address by the Houses of Parliament to the President for his removal.

Separation of Judiciary from Executive:

The directive principle of State policy under Article 50 of the constitution states that the State shall take steps to separate the judiciary from the executive in the public services of the State. So it is mandatory for a State to maintain the independence of judiciary because it is one of the basic tenets and a fundamental requirement of our Constitution. [25]

Thus these provisions are very necessary for maintaining impartiality and independence of the Judges. Thus our constitution has done everything possible to protect the Judges against any influence, whether political or personal, so essential, for effectively securing impartiality and independence of judiciary [26].

FEATURES OF THE NATIONAL JUDICIAL APPOINTMENTS COMMISSION ACT, 2014

National Judicial Appointments Commission (NJAC) is responsible for the appointment and transfer of judges to the higher judiciary in India. The Commission is established by amending the Constitution of India through the ninety-ninth constitution amendment [27]. The new judicial appointments act is clearly a superior alternative to the collegium system and, in fact, raises the consultative process in the selection of judges to an almost philosophical level. The NJAC replaces the collegium system for the appointment of judges as invoked by the Supreme Court. The Constitution Amendment Act and the National Judicial Appointments Commission Act, 2014, was passed by the Parliament of India to regulate the functions of the National Judicial Appointments Commission [28]. National Judicial Appointments Commission Act restricts the powers of Chief Justice of India to appoint a Judge for the higher courts. National Judicial Appointments Commission, Act, 2014 poses a great threat to the Independence of judiciary in India. It creates a direct interference of Executive in the affairs of Judiciary. Keeping in view the unreasonable interference of Executive in the affairs of Judiciary in 2015, Chief Justice of India, HL Dattu refused to take part in the meeting of NJAC. Analysis of various

provisions of National Judicial appointments Commission Act, 2014 are as following:

Composition of the National Judicial Appointments Commission:

Article 124A, has been inserted into the Constitution after 99th Amendment which provides for the composition of the NJAC. According to amended provisions of the constitution, the Commission will consist of the following six persons:

- Chief Justice of India (Chairperson, ex officio)
- Two other senior judges of the Supreme Court next to the Chief Justice of India - ex officio
- The Union Minister of Law and Justice, ex-officio
- Two eminent persons

These (two) eminent persons will be nominated by a committee consisting of the Chief Justice of India, Prime Minister of India, and Leader of Opposition in the Lok Sabha or where there is no such Leader of Opposition, then, the Leader of single largest Opposition Party in Lok Sabha), provided that of the two eminent persons, one person would be from the Scheduled Castes or scheduled Tribes or OBC or minority communities or a woman. The eminent persons shall be nominated for a period of three years and shall not be eligible for re-nomination [29].

Functions of the Commission:

According to constitutional 99th Amendment the National Judicial Appointment commission is required to perform various functions [30]. The functions of the Commission are under the following:

1. The National Judicial Appointment commission shall recommend the persons for appointment as Chief Justice of India, Judges of the Supreme Court, Chief Justices of High Courts and other Judges of High Courts.
2. The National Judicial Appointment commission shall also recommend the transfer of Chief Justices and other Judges of High Courts from one High Court to any other High Court.
3. The National Judicial Appointment commission shall also ensure that the persons recommended are of ability, merit and other criteria mentioned in the regulations related to the act.

Procedures to be followed by the Commission:

The National Judicial Appointments Commission Act, 2014, has laid down the following procedures for the selection of the Judges of the Supreme Court as well as Judges of High Court

- (1) Procedure for Selection of Supreme Court judges
 - (a) Chief Justice of India [31]

The Commission shall recommend the senior-most judge of the Supreme Court for appointment as Chief Justice of India [32] It is provided that a member of the Commission whose name is being considered for

recommendation shall not participate in the meeting. It is also provided that he or she is considered fit to hold the office.

(b) Supreme Court Judges

The Commission shall recommend names of persons on the basis of their ability, merit and other criteria specified in the regulations for the appointment of Supreme Court Judge [33]. The Commission shall not recommend a person for appointment if any two of its members do not agree to such recommendation [34].

Procedure for Selection of Chief Justice of High Courts and other High Courts Judges

The Commission shall recommend a Judge of a High Court to be the Chief Justice of a High Court on the basis of seniority across High Court judges [35]. The ability, merit and other criteria of suitability as specified in the regulations would also be considered.

For appointments of High Court Judges the Commission shall seek nominations from Chief Justice of the concerned High Court and then forward such names to the Chief Justice of the concerned High Courts for his or her views [36]. In both cases, the Chief Justice of the High Court shall consult two senior most judges of that High Court and any other judges and advocates as specified in the regulations. The Commission shall elicit the views of the Governor and Chief Minister of the state before making recommendations. The Commission shall not recommend a person for appointment if any two members of the Commission do not agree to such recommendation [37]. The Commission shall also empower to lay down such other procedure and conditions for selection and appointment of a Chief Justice of a High Court and a Judge of a High Court as it may consider necessary [38]. The President shall, on the recommendations made by the Commission, appoint the Chief Justice of India or a Judge of the Supreme Court or, as the case may be, the Chief Justice of a High Court or the Judge of a High Court [39]. Provided that the President may, if considers necessary, require the Commission to reconsider, either generally or otherwise, the recommendation made by it [40].

Procedure for Transfer of Judges:

The Commission shall recommend for transfer of Chief Justices and other Judges of High Courts from one High Court to any other High Court, and for this purpose commission is empower to lay down the procedure for such transfer [41].

ANALYSIS OF THE NATIONAL JUDICIAL APPOINTMENTS COMMISSION ACT, 2014

The various provisions of National Judicial Appointments Commission Act, 2014 lays down the procedure for appointment and transfer of judges of higher judiciary. It empowers Parliament to enact a law

regarding composition, function and procedure of the NJAC. National Judicial Appointments Commission Act imposes various restrictions on the independence of judiciary which has been cornerstone in ensuring the peoples' faith in democracy. NJAC Act fails to make the judiciary more representative while making various appointments to the higher judiciary. Procedure for selection of Judges in higher courts is inadequate. NJAC has not laid down an objective procedure for appointments. There is lack of transparency in nominations, criterion for assessing the suitability of the candidates and objective guidelines for determining meritorious candidates. Adequate tenure period of Judges has not been laid down in the new mechanism. Ability, merit and other criteria of suitability for selection of Judges is not clearly explained. There is lack of transparency in the procedure for selection of Judges in the higher courts. Through NJAC there is direct interference of executive in the affairs of judiciary. The NJAC Act makes the judiciary subordinate to the executive and it poses a great challenge and threat to rule of law, separation of powers and democracy. NJAC Act also fails to make judiciary more accountable. So an analysis of the National Judicial Appointments Commission Act, 2014 makes it clear that the said Act will make the judiciary subservient to the executive and throws a fundamental challenge to the Constitution and Indian democracy. The long-pending demands for transparency and accountability of judges and for making the judiciary more representative have been forgotten under National Judicial Appointments Commission Act, 2014.

CHALLENGE TO THE CONSTITUTIONALITY:

The validity of the Constitutional Amendment Act and the NJAC Act were challenged by prominent lawyers, lawyer associations and groups before the Supreme Court of India through Writ Petitions on the ground that NAJC is violating the basic feature i.e. independence of judiciary of the Constitution. In August 2014, Supreme Court had dismissed few Writ Petitions challenging the validity of NJAC on the ground that the challenge was premature as the constitutional amendment and the NJAC Act had not been notified then. After enactment of NJAC in December 2014 a fresh challenge is referred to three judge bench of the Supreme Court in 2015. Now in October 2015 the NJAC Act held as an unconstitutional by honorable Supreme Court.

CONCLUSION AND SUGGESTIONS

The independence of the judiciary hold a prominent position as far as the institution of judiciary is concerned. A well-functioning, efficient and independent judiciary is an essential requirement for a fair, consistent and neutral administration of justice. Judicial independence is an indispensable element of the right to due process, the rule of law and democracy. In order to ensure independence of judiciary it is

pertinent that the Parliament should not enact any law relating to composition, function and procedure under NJAC by simple majority. The wider representation of Judges of Higher Courts in the selection process under NJAC will ensure that there is transparency and accountability in appointments and transfer of judges of higher judiciary. Adequate tenure period of Judges must also be ensured in the NJAC, 2014 Act. Necessary provisions should be enacted under NJAC for maintaining impartiality and independence of the Judges. Possible measures should be taken to protect the Judges against political influence for securing impartiality and independence of judiciary.

REFERENCES

1. Union of India v. Sakalchand Himatlal Sheth, 1 S.C.R. 423 (Bhagwati, J.), 1978.
2. Dr. B.R. Ambedkar speech in the Constituent Assembly on June 7, 1949.
3. Tek Narayanan Kunwar, global standards of judicial independence, NJA law journal vol-1, National judicial academy Nepal, at 73, 2007.
4. Abrahamson, Shirley S., Thorny Issues and Slippery Slopes: Perspectives on Judicial Independence, 64 Ohio St. L.J. 3, 2003.
5. Joint Statement of the Courts of British Columbia, Judicial Independence (And What Everyone Should Know About It), March 15, 2012 [http://courts.gov.bc.ca/about_the_courts/Judicial%20Independence%20Final%20Release.pdf]
6. S Shetreet, 'The Normative Cycle of Shaping Judicial Independence in Domestic and International Law: The Mutual Impact of National and International Jurisprudence and Contemporary Practical and Conceptual Challenges' (2009) 10 Chicago Journal of International Law 275-332
7. Shimon Shetreet, Fundamental Values of the Justice System, 23 THE EUROPEAN BUSINESS LAW REVIEW 61-76, (2012).
8. AIR 1973 SC 1461.
9. Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985.
10. Article 245 and 246 of Indian Constitution.
11. AIR 1973 SC 1461.
12. AIR 1982 SC 149.
13. AIR 2000 SC 1296.
14. Supreme Court Advocates on Record Assn. v. Union of India 4 SCC 441, 1993.
15. In Re: Presidential Reference, AIR 1999 SC 1.
16. According to Article 124A (1) There shall be a Commission to be known as the National Judicial Appointments Commission consisting of the following, namely:—
 - (a) 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.
17. Article 217, Clause (1).
18. Article 124(c) inserted by 99th Amendment.
19. AIR 1977 SC 2328.
20. AIR 1982 SC 149.
21. AIR 1994 SC 268.
22. In re : Presidential Reference, AIR 1999 SC 1.
23. Article 124(4) and Article Article 217(1)
24. 3 SCC 655, 1991.
25. M.M. Gupta v. State of J & K, 1982 SC 1579.
26. In Union of India v. Pratibha Banerjee, AIR 1996 SC 693.
27. The Constitution (Ninety-Ninth Amendment) Act, 2014 passed by the Lok Sabha on 13 August 2014 and by the Rajya Sabha on 14 August 2014.
28. The NJAC Bill and the Constitutional Amendment Bill, was ratified by 16 of the state legislatures in India, and subsequently assented by the President of India Pranab Mukherjee on 31 December 2014. The NJAC Act and the Constitutional Amendment Act came into force from 13 April 2015.
29. Article 124A inserted by 99th constitutional Amendment.
30. Article 124B inserted by 99th constitutional Amendment.
31. Section 5 (1) of National Judicial Appointments Commission Act, 2014.
32. Ibid.
33. Section 5(2) of National Judicial Appointments Commission Act, 2014.
34. Provision to Section 5 of National Judicial Appointments Commission Act, 2014.
35. Section 6 (1) of National Judicial Appointments Commission Act, 2014.
36. Section 6(2) of National Judicial Appointments Commission Act, 2014.
37. Section 6(6) of National Judicial Appointments Commission Act, 2014.
38. Section 6(8) of National Judicial Appointments Commission Act, 2014.
39. Section 7 of National Judicial Appointments Commission Act, 2014.
40. Ibid
41. Section 9 of National Judicial Appointments Commission Act, 2014.