

## Milestones in the controversy

**1981 December 30** First Judges case (S.P. Gupta vs Union of India) decided by a seven-judge bench by a majority of 4:3 giving primacy to the executive in consultation with the Chief Justice of India (CJI) in appointing judges. The bench held that the executive's "consultation" with the CJI did not mean the latter's "concurrence"; therefore, the CJI's recommendation was not binding on the government.

**1990** Sixty-Seventh Constitution Amendment Bill proposing to amend Article 124(2) and Article 217(1) providing for appointment of judges of the higher judiciary on the recommendation of a National Judicial Commission (NJC) introduced in Parliament. The NJC was to consist of the CJI and the two most senior judges of the Supreme Court for the purpose of making appointments to the Supreme Court. For appointment to High Courts, the NJC was to comprise the CJI, the Chief Minister of the State concerned, a Supreme Court judge next to the CJI in seniority, the Chief Justice of the High Court, and a judge of the High Court next to the Chief Justice of that High Court in seniority.

**1991** 67th Constitution Amendment Bill lapsed with the dissolution of the ninth Lok Sabha.

**1993 October 6** Second Judges case (Supreme Court Advocates-on-Record Association vs Union of India) decided by a nine-judge bench by a majority of 7:2 overruling the judgment in the First Judges case, giving primacy to the judiciary in the consultation process with the executive. The bench held that the President's consultation with the CJI, as required by the Constitution for appointing judges, means concurrence of the CJI. Collegium of the CJI and the two most senior Supreme Court judges formed to make recommendations to the government on appointments.

**1998 October 28** Third Judges case (Advisory opinion to the President under Article 143 of the Constitution) decided by a nine-judge bench through a unanimous opinion to the President. Reiterated the judgment of the nine-judge bench in the Second Judges case, while expanding the size of the collegium to include two more senior Supreme Court judges.

**1999 June 30** Union of India forms a memorandum of procedure for the appointment of judges and Chief Justices of High Courts and the Supreme Court in consonance with judgments in the Second and Third Judges cases.

**2002** The National Commission to review the working of the Constitution, headed by the former CJI Justice M.N. Venkatachaliah and set up in 2000, submits its report to the government, recommending NJC for the appointment of judges. The NJC is to consist of the CJI, the two most senior judges of the Supreme Court, the Union Minister for Law and Justice and one eminent person to be nominated by the President after consulting the CJI.



**2003 May 9** Constitution 98th Amendment Bill was introduced in Parliament, establishing the NJC, as

recommended by the Venkatachaliah Commission. According to the Bill, one eminent person was to be nominated by the President, after consulting the Prime Minister, and to hold office for three years. Because of the dissolution of the 13th Lok Sabha in May 2004, the Bill lapsed.

**2013** United Progressive Alliance (UPA)-II government gets 120th Constitution Amendment Bill, establishing a Judicial Appointments Commission, passed in the Rajya Sabha. The Bill lapsed on account of the dissolution of the Lok Sabha prior to the 2014 general elections.

**2014 August 11** NJAC (National Judicial Appointments Commission) Bill No.96 of 2014 introduced in the Lok Sabha. The Constitution 121st Amendment Bill, to make changes in Articles 124(2) and 217(1), also introduced in the Lok Sabha.

**2014 August 13** The Constitution 121st Amendment Bill, 2014, and the NJAC Bill are passed by the Lok Sabha. Both the bills are introduced in the Rajya Sabha on the same day.

**2014 August 14** Both the Constitution 121st Amendment Bill and the NJAC Bill are passed by the Rajya Sabha with the requisite majority. The passage of the NJAC Bill, before the 99th Amendment Act, receives the President's assent. This creates an anomaly as the Constitution stands unamended when the NJAC Bill is passed by Parliament. The Bill provides for an NJAC comprising six members, namely, the CJI, two Supreme Court judges next in seniority to the CJI, the Law Minister, and two eminent persons to be chosen by a committee comprising the Prime Minister, the Leader of the Opposition and the CJI. Any two members of the committee can veto a recommendation made by the other members.

**2014 August 21** The Supreme Court of India Advocates-on-Record Association files a writ petition in the Supreme Court challenging the 121st Amendment Bill as unconstitutional and violative of the basic structure of the Constitution vis-a-vis the independence of the judiciary.

**2014 August 25** Supreme Court disposes the petition as premature with liberty to the petitioner to approach the Supreme Court at the appropriate stage.

**2014 December 31** 99th Amendment Act & NJAC Act receive President's assent after the Constitution 121st Amendment Bill, 2014, is passed by both Houses of Parliament and after ratification by legislatures of 16 States out of 29.

**2015 January 5** A plea is moved by senior advocate Bhim Singh and the Supreme Court Advocates-on-Record Association challenging constitutional validity of the NJAC.

**2015 January 6** The Supreme Court declines urgent hearing of the plea seeking quashing of the NJAC.

**2015 February 13** The NGO Centre for Public Interest Litigation files a plea in the Supreme Court challenging the constitutional validity of the NJAC.

**2015 March 10** Hearing on the validity of the NJAC commences in the Supreme Court with the Centre "vigorously" opposing the pleas to stay the notifications of the law.

**2015 March 11** The Supreme Court restrains all High Courts from entertaining any petition challenging the validity of the NJAC.

**2015 March 17** The Supreme Court's three-judge bench commences hearing to decide the maintainability of a batch of pleas challenging the validity of the NJAC.

**2015 March 18** The Centre terms the collegium system of judges appointing judges as "illegal" in the Supreme Court.

**2015 March 19** The Supreme Court Bar Association supports the NJAC Act meant to replace the collegium system before the Constitution Bench.

**2015 March 24** The Supreme Court reserves its verdict on the maintainability of the petitions challenging the validity of the NJAC.

**2015 April 7** The Supreme Court refers to a larger bench a batch of petitions challenging the constitutional validity of the NJAC.

**2015 April 13** The 99th Amendment Act & the NJAC Act are notified in the Gazette and brought into force.

**2015 April 15** Justice A.R. Dave recuses himself from hearing the petitions challenging the NJAC Act dealing with judges' appointment.



**2015 April 16** The Supreme Court constitutes a new Constitution Bench comprising five judges, headed by Justice J.S. Khehar, to examine the constitutional validity of the NJAC.



**2015 April 22** The Supreme Court clears the deck for commencing the hearing on the validity of the NJAC with a Constitution Bench rejecting demands for the recusal of judges.

**2015 April 23** The Centre tells the Supreme Court that the NJAC will not make fresh appointments of judges to the higher judiciary until the issue is settled.

**2015 April 27** CJI H.L. Dattu refuses to participate in a three-member panel for selecting two eminent persons in the six-member NJAC; the NJAC is unable to start functioning despite the Constitution Bench's refusal to grant a stay.



**2015 April 29** Ram Jethmalani, as counsel for a petitioner before the Constitution Bench, accuses the National Democratic Alliance (NDA) government of politicising and compromising judicial independence.



**2015 April 30** The Centre tells the Constitution bench that two eminent persons in the six-member NJAC need not have a legal background.

**2015 May 5** The Supreme Court questions the Centre over the demand for revisiting its 1993 judgment that brought in the collegium system.

**2015 May 6** The Centre tells the Constitution Bench that the collegium method has failed because it is an "opaque mechanism" that has "stifled democracy".

**2015 May 7** The Centre clashes with opponents of the NJAC over its demand for referring the challenge to a larger bench.

**2015 May 8** Opponents of the NJAC attack the Centre in the Supreme Court over its "late" demand for a larger bench to hear the challenge, saying "the whole court is held up for no purpose".

**2015 May 11** The Supreme Court makes it clear that it will first decide on the issue of referring the challenge to the NJAC to a larger bench of nine or 11 judges.

**2015 May 12** The Supreme Court refuses to accept the Centre's preliminary plea that petitions challenging the NJAC be referred to a larger bench of nine or 11 judges.

**2015 June 15** The Centre tells the Supreme Court that the collegium system cannot be revived even if it quashes the NJAC.

**2015 July 10** The NJAC should not be seen as "good or bad" and rather tested on the proposition that whether it conforms to the basic structure of the Constitution or not, the Constitution Bench observes.

**2015 July 15** The Supreme Court reserves its verdict on the constitutional validity of the NJAC.

**2015 October 16** The Supreme Court declares as unconstitutional the NJAC Act and the 99th Constitutional Amendment and rejects the Centre's plea to refer the petitions to a larger bench. It reiterates the judgments given in the Second and Third Judges cases. It schedules another hearing by the same Constitution Bench on November 3 to hear the parties on their proposals for reforming the collegium system.

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