



# **DAILY EDITORIAL ANALYSIS**

**TOPIC**

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**R&D BUDGET IMPLIE JUSTICE  
VARMA CASE: REVISITING NJAC**

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## JUSTICE VARMA CASE: REVISITING NJAC

### Context

- The Justice Yashwant Varma controversy has reignited debates about judicial accountability, the process of appointing judges in India and brought the **National Judicial Appointments Commission (NJAC)** back into the spotlight.

### About Justice Varma Controversy

- The controversy began with the discovery of semi-burnt sacks of cash at Justice Varma's residence following a fire incident.
- While the Supreme Court has initiated an **in-house inquiry**, the case has sparked widespread discussions about the transparency and accountability of the judiciary.

### Evolution of the Judiciary Appointments in India

- Pre-Collegium Era (1950–1973):** Initially, Article 124(2) and Article 217 of the Constitution of India granted the **President the power to appoint judges** to the Supreme Court and High Courts, respectively, in consultation with the Chief Justice of India (CJI) and other judges.
  - The **executive had the upper hand** in judicial appointments, with the **President (on the advice of the Council of Ministers)** making final decisions.
- First Judges Case (1981) – S.P. Gupta v. Union of India:** The Supreme Court ruled that 'consultation' with the CJI did not mean 'concurrence' meaning the **executive had more power** in judicial appointments.
  - It allowed greater government interference in appointments.
- Second Judges Case (1993) – Supreme Court Advocates-on-Record Association v. Union of India:** It overturned the First Judges Case, and **established the Collegium System**, giving primacy to the judiciary in appointments.
  - The ruling held that **CJI's recommendation**, in consultation with senior judges, would be **binding on the President**.
- Third Judges Case (1998) – Presidential Reference:** The composition of the Collegium was clarified:
  - SC Judges' appointments:** The CJI and four senior-most judges.
  - HC Judges' appointments:** The CJI and two senior-most judges.

### National Judicial Appointments Commission (NJAC)

- It was established through the **99th Constitutional Amendment in 2014 to replace the Collegium System** with a committee including the executive with judiciary.
- It aimed to make judicial appointments more transparent by involving the executive and eminent persons alongside the judiciary.
  - However, the **Supreme Court of India**, in 2015, **struck down NJAC**, ruling it **unconstitutional**, as it diluted judicial independence.

### Key Reasons For Revisiting the NJAC

- Concerns Over Collegium System:** Lack of transparency; No clear criteria for selection.
  - The Supreme Court's opaque decision-making process in appointments raises concerns about **favoritism**.
- Legislative Consensus & Judicial Overreach:** The NJAC was passed with **near-unanimous support** in Parliament and **ratified by 16 state legislatures**, reflecting a broad consensus on the need for reform.
  - It was argued that the reinstatement of the Collegium system (after NJAC) was an example of judicial overreach.
- Delays in Judicial Appointments:** The long, secretive collegium process leads to delays in filling vacancies,

affecting judicial efficiency.

- ♦ Executive-judiciary tension; Government delays in approving names.
- **Lack of Diversity:** The current system has been criticized for not ensuring adequate representation from various sections of society, particularly marginalized communities and women.
- **Addressing Case Backlogs:** With over 4.4 crore pending cases in Indian courts, judicial vacancies need urgent attention.
  - ♦ A well-functioning NJAC can help streamline appointments, ensuring a faster selection process and filling vacancies more efficiently.
- **Balancing Independence and Oversight:** A revised NJAC can ensure that executive involvement does not compromise judicial independence.
  - ♦ It could be achieved by maintaining a judiciary-dominated body while allowing limited and structured participation from the executive.

### Way Forward

- **Global Practices:** Many democracies involve a mix of judicial and executive inputs in judicial appointments.
  - ♦ The **United Kingdom has the Judicial Appointments Commission (JAC)**, an independent commission ensuring merit-based appointments.
  - ♦ Revisiting the NJAC could align India's system with global best practices while addressing domestic concerns.
- The **International Commission of Jurists (ICJ)** released a report advocating for a new law to establish a '**Judicial Council**', aiming for judicial appointments and transfers based on transparent, predetermined, and objective criteria.
- **Modifying the Composition of NJAC:** Instead of granting excessive influence to the executive, the revised NJAC can include members from the judiciary, executive, and civil society to ensure balanced participation.
- **Ensuring Judicial Primacy:** While the executive may be given a role, judicial independence should remain paramount by ensuring that judges hold a majority in the commission.
- **Transparency Mechanisms:** Clear guidelines on appointments, merit-based selection, and reasons for rejections should be made public to avoid favoritism.
- **Timely Appointments:** A defined timeline for recommendations and approvals should be mandated to prevent delays.
- **Inclusion and Diversity:** Special emphasis should be given to appointing judges from diverse backgrounds to make the judiciary more representative of society.

### Conclusion

- The Justice Varma case underscores the urgent need for judicial reform in India. Revisiting the NJAC could provide a framework for a more transparent and accountable judiciary while preserving its independence.
- As the debate continues, the Supreme Court has an opportunity to lead the way in restoring public trust and ensuring the integrity of India's judicial system.

Source: IE

### Mains Practice Question

- [Q] How can revisiting the National Judicial Appointments Commission (NJAC) balance judicial independence and transparency while addressing concerns about the opacity of the collegium system?

