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SUPREME COURT ADVOCATES-ON- RECORD ASSOCIATION & ANR. v. UNION OF INDIA

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The case of Supreme Court Advocates-on- Record Association & Anr. v. Union of India, was a 2014 judgement of the Supreme Court of India, which dealt with the 99th amendment to the Indian Constitution. In its 1042 page judgement, the court declared the Constitution (Ninety-ninth Amendment) Act, 2014 (hereinafter referred to as, the Constitution (99th Amendment) Act), and the National Judicial Appointments Commission Act, 2014 (hereinafter referred to as, the NJAC Act) as unconstitutional. This paper seeks to rebut the three main issues bought forth in the judgement.

Article 368 of the Indian Constitution lays down the power of the parliament to amend the Constitution and the procedure therefor to do the same. The Indian Constitution provides a very easy and simple procedure to amend the Constitution under Article 368, reflecting the Constitution's partly rigid-partly flexible character. The provision has been put to use over 100 times.[1]

The amending mechanism was lauded even at the time of introduction of the Constitution by Dr. Ambedkar in the following words[2] 'We can therefore safely say that the Indian federation will not suffer from the faults of rigidity or legalism. Its distinguished feature is that it is a flexible federation.'

According to Granville Austin[3], the three mechanisms of the system derived by the Assembly, contrary to the predictions, have made the constitution flexible while at the same time it has succeeded in rendering protection to the rights of the states. They have worked better than the amending process in any other country where Federalism and the British Parliamentary system jointly formed the basis of the constitution.[4]

[1] M P Jain , Indian Constitutional Law (6th, LexisNexis, Haryana 2012) 1798
[2] CAD VII : 36
[3] G. Austin, *The Indian constitution: Cornerstone of a nation* (1st, Clarendon P, 1966) 321
[4] G. Austin, *The Indian constitution: Cornerstone of a nation* (1st, Clarendon P, 1966) 321

H M Seervai, noted jurist and constitutional expert, in his treatise on *Constitutional Law of India*[5] classified the judicial development with respect to Art368 i.e. the law of amendments, into four comprehensive time periods. The analysis undertaken by the author clearly showcases the exposition of legal principles over the years in relation to Art368 in light of case laws and judicial opinions and the far reaching implications and effects they have had on the judicial polity. Starting with the *Shankari Prasad's* Case[6] in 1951 to the *Golaknath*[7] verdict which was overturned by the 13-judge bench in *Keshavananda Bharati*[8] to the highly controversial *Election* Case[9] which added a new dimension to the debate on Art 368 and finally to the *Minerva Mills*[10] and *Sanjeev Coke*[11] judgments, Art 368 has been interpreted and expanded upon on an unparalleled scale and the chronological breakdown clearly demonstrates the growth, evolution and insight of the judicial mind.

Eminent lawyer Fali S Nariman in his book *The State of the Nation*[12], ventured a query as to whether the courts were empowered to adjudicate on the validity of constitutional judgments passed with the requisite special majority and following the procedure prescribed in Art368. He proceeded to state that the Constitution of India is silent on the issue. Indeed, the answer lies in the interpretation within.

The amending power enshrined under Art368 is a constituent power and not a legislative power.[13] Constituent power is not the same as ordinary law-making power.[14] Constituent power means the power to make or change the constitution by which the various organs of the state, including the legislature are created. Legislative power implies the power of the law-making organ of the state to make ordinary laws or statutes to regulate the conduct of the citizens towards each other and towards the state.[15]

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[5] H.M. Seervai, *Constitutional Law of India* (4th, Universal Law Publishing Co. Pvt. Ltd., 2004) 3109
[6] *Sri Sankari Prasad Singh Deo v Union Of India* AIR 1951 SC 458
[7] I.C. Golaknath v. State of Punjab AIR 1967 SC 1643
[8] Kesavananda Bharati Sripadagalvaru and Ors. v State of Kerala AIR 1973 SC 1461
[9] Smt. Indira Nehru Gandhi v Shri Raj Narain AIR 1975 SC 2299
[10] Minerva Mills Ltd. and Ors. v Union Of India and Ors. AIR 1980 SC 1789
[11] Sanjeev Coke Manufacturing v Bharat Coking Coal 1983 AIR 239
[12] F. S. Nariman, The State of the Nation (1st, Hay House Publishers (India) Pvt. Ltd., Haryana 2013)
[13] Kesavananda Bharati Sripadagalvaru and Ors. v State of Kerala AIR 1973 SC 1461 paras 1876, 1878
[14] Smt. Indira Nehru Gandhi v Shri Raj Narain AIR 1975 SC 2299, *Sri Sankari Prasad Singh Deo v Union Of India* AIR 1951 SC 458
[15] D.D Basu, Constitutional Law of India (8th, LexisNexis Butterworths Wadhwa, Nagpur 2009)

The Constituent body may amend any part of the constitution, without attracting the doctrine of *ultra-vires* if it complies with the prescribed procedure for amendment provided that the exercise of power is not barred by express limitations. The Doctrine of *ultra-vires* stipulates that if a law made by Parliament or the state legislatures violates any provision of the Constitution, the Supreme Court has the power to declare such a law invalid or *ultra- vires.*[16]

Since the legislature which makes such laws is a creature of the Constitution, it cannot amend the constitution itself in exercise of its power to make ordinary laws, because of the general doctrine of *ultra-vires*.

In India, the legislative power of the Union is vested in the Parliament and that of the State is vested in a State Legislature and the distribution of this power between the Parliament and the State Legislatures is effected by Articles 245-250[17] of the Constitution. The Union parliament can make laws in exercise of the aforesaid legislative power if it complies with the 'legislative procedure' laid down in Arts 107-117,[18] but it cannot amend any provision of the Constitution in accordance with that procedure.

Where the amending power, though vested in the Legislature itself, is subject to a special majority, the Constitution is a rigid one and where there is a distinction between the legislative power and constituent power, the latter being exercised by the Legislature subject to a special procedure prescribed by the Constitution for its amendment then such constitution cannot be amended by the Legislature otherwise than by following the prescribed procedure.[19] In most written constitutions, the Constituent power i.e. the power to amend the constitution itself, is either vested in a body other than the ordinary legislature or it is vested in the ordinary legislature subject to a special procedure or subject to additional safeguards.

In the present instance, the Constitution (Ninety Ninth) Act, 2014 and the National Judicial Appointments Commission Act, 2014 were duly passed, which is to imply that the act of passage of the Amendment complied with all the procedural requirements envisaged under Article 368. Clause (2) to Article 368 stipulates that a call for amendment can only be introduced in either house of the parliament in the form of a bill and it is to be passed in each house by special majority. Additionally, the proviso states that a bill amending the provisions

[16] Venkatesh Nayak 'The Basic Structure of the Indian Constitution' (Human Rights Initiative) < http://www.humanrightsinitiative.org/publications/const/the_basic_structure_of_the_indian_constitution.pdf> accessed 22nd January 2014
[17] Constitution of India 1949, arts 245-250
[18] Constitution of India 1949, art 107
[19] Attorney General for New South Wales v Trethowan [1932] AC 526, PC

mentioned within, even though passed under clause (2) will not be effective to amend the constitution unless it is thereafter ratified by more than half of the state legislatures. Such a procedure i.e. ratification by States is necessary in regard to certain provisions of the Constitution characterised as 'entrenched provisions'.[20] Procedurally, entrenching rights would prevent tyranny. Since the electoral system in India is structured in such a way that it tends to produce governments that do not *per se* enjoy majority support or popular support but have a firm and steady backing on the floor of the house, much like the United Kingdom, then for the protection of democratically important values, such safeguards are a logical requirement. John Laws argues that it is a fundamental principle that there must be basic rights in a democratic society and such rights must be protected from the onslaught of political power by limiting those powers. This is achieved through the conception of 'higher-order' laws which cannot be abrogated like ordinary laws. If these rights are abolished as such, then they cannot be called rights but merely privileges.

Thus the 'Entrenched provisions', which are given additional safeguards under Art 368 are:

a) The manner of election of the President under Articles 54 and 55;
b) Extent of executive power of the Union and States under Article 73 and 162;
c) The Supreme Court and the High Court under Articles 124-127 and 217 to 231
d) The Scheme of distribution of Legislative, taxing and administrative powers between the Union and the States under Articles 245-255;
e) Representation of States in Parliament
f) Article 368 itself

Thus, consent of the State legislatures is a prerequisite in the procedure to amend any of the entrenched provisions, upon which only the amendment act can be forwarded for Presidential assent. Such ratification is to be by resolution passed by the State Legislatures however, no specific time limit for the ratification of an amending Bill by the State Legislatures is laid down[21]. Generally, the resolutions ratifying the proposed amendment should, however, be passed before the amending Bill is presented to the President for his assent[22]. This act has clearly followed all the procedural formalities associated with the passage of a constitutional amendment act and has in compliance with all procedural requirements, received presidential

[20]Durga Das Basu, *Commentaries on the Constitution of India* (8edn, LexisNexis Butterworth Wadia, Nagpur 2009) 11273
[21] Dilllon vs. Gloss 65, Law Ed. 9945
[22] Lok Sabha Secretariat ,Constitution Amendment: Nature and Scope of the Amending Process Retrieved 1 December 2013

assent and entered into force after notification in the official gazette. With the Constitution (24th Amendment Act), 1971, the President is now duty bound to give assent and cannot to refuse to give assent.

Additionally, the Constitution (24th Amendment Act), 1971 inserted clause (1) in Art368[23] and thereby made it clear that the power of amending the constitution is an exercise of constituent power and that any provision of this constitution could be amended in the exercise of this power, provided, the procedure laid down in Art368 is complied with. As such in the amended Art368, there are no express limitations.This was upheld in *Keshavananda Bharathi* v. *State of Kerala*[24].

The power to amend the Constitution is vested in the Parliament and while exercising the powers under Art 368, the Parliament would not be subject to the limitations which curb its Legislative powers to make laws under Arts. 245-246 because the amending power conferred by Art 368 is constituent power as held by the Apex Court in the case of *Sasank v Union of India* [25].

It is urged that Art 368 not only provides procedure for amendment but also contains in it the power to amend the Constitution. It is further submitted that the word "amendment" in law does not merely mean making such changes in the Constitution as would improve it but includes the power to make any addition to the Constitution, any alteration of any of the existing provisions and its substitution by another provision, and any deletion of any particular provision of the Constitution. In effect, it is contended that even if the word "amendment" used in Art 368 does not take in the power to abrogate the entire Constitution and replace it by another new Constitution, it certainly means that any of the provisions of the Constitution may be changed and this change can be in the form of addition to, alteration of or deletion of any provision of the Constitution. As long as the Constitution is not entirely abrogated and replaced by a new Constitution at one stroke, the power of amendment would enable Parliament to make all changes in the existing Constitution by addition, alteration or deletion. Subject only to

[23] Constitution of India, 1949 art 368(1) 'Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article'
[24] Kesavananda Bharti (n 13)
[25] Sasanka Sekhar Maity v Union Of India 1981 AIR 522

complete repeal being not possible, the power of amendment contained in Article 368 is unfettered.[26]

A statute carries with it a presumption of constitutionality .Doctrine of Legislative Supremacy or the presumption of constitutionality of a statute is essentially a legal rule that stipulates that the Court is under a duty to apply the legislation made by the parliament and may not hold an act of parliament to be invalid or unconstitutional. All that a court can do with an Act of Parliament is to apply it. A further presumption may also be drawn that the statutory authority would not exercise the power arbitrarily.[27] The presumption is always in favor of the constitutionality of the enactment and the burden is upon the one who attacks it, to show that there has been a clear transgression of constitutional principles.[28]

It is often said that it would be unconstitutional for the Parliament to do certain things, meaning that the moral, political and other reasons against doing them are so strong that most people would regard it as highly improper if the parliament did these things. But that does not mean that it is beyond the power of the Parliament to do such things. If Parliament chose to do any of them, the Court could not hold that the Act of Parliament is invalid.[29]

A possibility of abuse of a law does not impart any element of unconstitutionality to it,[30] also a mere hardship, cannot be a ground for striking down a valid legislation unless it is held to be suffering from the vice of discrimination or unreasonableness.[31] The validity of a statute would ordinarily be tested keeping in view the social conditions which existed at the time of its coming into force. It is one thing to say that a law causes hardships and another to say that it is unconstitutional. It may be that with the passage of time an act may become unconstitutional, in which case there should be sufficient materials which can be brought on record or of which the court can take judicial notice.[32]

In the case of *Charan Lal*[33], Mukherjee CJ held that "In judging the constitutional validity of the act, the subsequent events, namely, how the act has worked out, must be looked into."

[26] D.D Basu, Constitutional Law of India (8th, LexisNexis Butterworths Wadhwa, Nagpur 2009)
[27] People's union for civil liberties v Union of India (2004) 2 SCC 476
[28] Chiranjit Lal Chowdhury v Union of India 1950 SCR 869
[29] Madzimbamuto v Lardner Burke (1969) AC 645
[30] Collector of Custom's Madras v Sampathu Chetty AIR 1962 SC 316
[31] Prafulla Kumar Das v State of Orissa (2003) 11 SCC 614
[32] Udai Singh Dagar v Union of India (2007) 10 SCC 306
[33] Charan Lal Sahu v Union Of India 1990 AIR 1480

In the present case, the effects of the Amendment had not be properly evaluated as the amendment act was struck down prematurely, without giving due time for the effects to manifest.

For this reason a law should not be declared as unconstitutional unless the case is so clear as to be free from doubt; to doubt the constitutionality of a law is to resolve it in the favor of its constitutionality. Where the validity is questioned and there are two interpretations wherein one would make it valid, and the other would make it void, the former must be preferred and the validity of the law must be upheld. In pronouncing the constitutional validity, the court is not concerned with the wisdom or unwisdom, justice or injustice of a law. If that which is passed into law is within the scope of power conferred on a legislature and violates no restrictions on that power, the law must be upheld no matter what the court may think of it.[34]

The collegium system of appointment of Judges in the Supreme Court and High Courts was introduced by a Judicial 'Legislation' by a majority Judgment in the 'Second Judges Case'. Eminent jurist, H M Seervai described the judgment as "null and void" since it went against constitutional provisions.[35] The collegium — which the critics call as judges appointing themselves — comprises four senior most judges in the supreme court and the Chief Justice of India and three more senior most judges in a particular high court including its chief justice.[36] Nowhere in the document of the Constitution can one find the basis for the existence of the collegium system, in fact the word 'collegium' itself cannot be found.

[34] Karnataka Bank Ltd v State of A.P (2008) 2 SCC 254; State of Bombay v F.N. Balsara, AIR 1951 SC 318 ; State of W.B v EITA India Ltd AIR 2003 SC 4126

[35] Live Law News Network , 'Meet Justice UL Bhatt: the first martyr of the collegium system' (firstpost.com 2013) <http://www.firstpost.com/india/meet-justice-ul-bhat-the-first-martyr-of-the-collegium-system-999491.html?utm_source=ref_article> accessed 22 January 14

[36] Ashish Tripathi, 'Has collegium system of judges' appointment outlived its utility?' (deccanherald.com 2014) <http://www.deccanherald.com/content/155018/has-collegium-system-judges-appointment.html> accessed 22 January 14

Justice Ruma Pal has rightly remarked that the process of appointments of judges to the superior courts is the best kept secret in the country.[37] This system was introduced with the objective of insulating the Judiciary from political interference but it has drawn flak from various legal luminaries for not providing any concrete criteria for the prospective appointees.

In selecting judges for the constitutional courts, the collegium system has exposed itself. In the words of Justice Krishna Iyer: "There is no structure to hear the public in the process of selection. No principle is laid down, no investigation is made, and a sort of anarchy prevails."

Dr. B.R. Ambedkar warned against the system of judges selecting judges by saying that "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".

In recent times, there have been several allegations of corruption in the judiciary. In May 2013, over 1,000 lawyers of the Punjab and Haryana High Court protesting the recommendation of seven names by the High Court Collegium for appointment as judges wrote[38]: "The independence and integrity of the judiciary has been put at stake by the Collegium while recommending the names of advocates for elevation as judges ... the decisions of the Collegium seem to have been based on considerations other than merit and integrity of the candidate"[39]. They added, "it has now become a matter of practice and convenience to recommend advocates who are the sons, daughters, relatives and juniors of former judges and Chief Justices. Nepotism and favoritism is writ large. We all need to rise to the occasion and oppose such recommendation".[40]

Furthermore, the appointment of judges through the system of collegium leads to inordinate delays in appointment of judges. This leads to delay in dispersion of justice, and one is

[37] Rudrika Sharma, 'The Collegium System Versus the Judicial Appointments Commission Bill' (legalindia.in 2013) <http://www.legalindia.in/the-collegium-system-versus-the-judicial-appointments-commission-bill> accessed 22 January 14
[38] N. G. R. Prasad, 'The costly tyranny of secrecy' (thehindu.com 2013) <http://www.thehindu.com/opinion/lead/the-costly-tyranny-of-secrecy/article4881975.ece> accessed 22 January 14
[39] Soli J Sorabjee, 'It's time judges stopped appointing themselves and shed nepotism' (newindianexpress.com 2013) <http://www.newindianexpress.com/opinion/soli_j_sorabjee/Its-time-judges-stopped-appointing-themselves-and-shed-nepotism/2013/05/26/article1605918.ece> accessed 22 January 14
[40] Jyoti Kamal, 'Are appointments to the Punjab and Haryana HC all about nepotism?' (ibnlive.in.com 2013) <http://ibnlive.in.com/news/are-appointments-to-the-punjab-and-haryana-hc-all-about-nepotism/420152-3-241.html> accessed 22 January 14

reminded of the well-known adage, justice delayed is justice denied. In Allahabad High Court alone, as of October 1, 2006, for the sanctioned strength of 95 judges, 13 were vacant.[41] Total number of cases pending was 792,150. As on October 1, 2007, the HC had a sanctioned strength of 160 judges, of which 87 were vacant. From statistics and figures attained from the Department of Justice in the Ministry of Law and Justice, as on January 1st 2014, 160 judges were sanctioned of which 79 are vacant at present.

This scenario is prevalent in almost all high courts across the country. Out of a total sanctioned strength of 906 judges, there are a total number of 267 vacancies.[42] This leads to extensive backlog of cases, wherein even the simplest of cases take decades to solve. Again it is to be reiterated that there is no criteria for the selection of candidates in judicial appointments. There is no evaluation of records, no comparative assessment of the records of the people sought to be elevated, no process of public consultations and no feedback from outside sources[43].

In November 2011, a former Supreme Court Justice Ruma Pal slammed the higher judiciary for what she called the seven sins. She listed the sins as[44]:

1. Turning a blind eye to the injudicious conduct of a colleague
2. Hypocrisy – the complete distortion of the norm of judicial independence
3. Secrecy – the fact that no aspect of judicial conduct including the appointment of judges to the High and Supreme Court is transparent
4. Plagiarism and prolixity – meaning that very often SC judges lift whole passages from earlier decisions by their predecessors and do not acknowledge this – and use long-winded, verbose language
5. Self Arrogance – wherein the higher judiciary has claimed crass superiority and independence to mask their own indiscipline and transgression of norms and procedures

[41] Dhananjay Mahapatra, 'Fill vacancies to solve judicial delay' (timesofindia.com 2007) <http://articles.timesofindia.indiatimes.com/2007-11-26/india/27983175_1_vacant-posts-subordinate-courts-hc-judges> accessed 22 January 14
[42] Department of Justice, 'Vacancy Positions' (doj.gov.in 2014) <http://doj.gov.in/?q=node/90> accessed 22 January 14
[43] Pramod Kumar, 'Should collegium system for judges' appointments stay or go?' Business Standard (New Delhi 28 July 2013) 12
[44] C. Uday Bhaskar, 'Former Indian Supreme Court Justice Examines Corruption in the Judiciary' Fair Observer (New Delhi 18 November 2011) 4

6. Professional arrogance – whereby judges do not do their homework and arrive at decisions of grave importance ignoring precedent or judicial principle
7. Nepotism – wherein favors are sought and dispensed by some judges for gratification of varying manner

In conclusion, we can see that while the collegiums started out as a mechanism to ensure independence of judiciary, and to maintain the quality and integrity of judges who composed the Supreme Court, practically speaking the Collegium system has proved to be a major failure and has exercised its functions to the detriment of the judicial system as a whole. There is more to judicial appointments than mere legal acumen. And there is more to it than mere seniority. Social philosophies, gender sensitivities and balances, and inclusiveness are not matters which 'self-perpetuating oligarchies' can be completely relied upon to take into account[45]. Nor is the concept of manpower planning, as can be seen with the many instances of short term chief justices. Hence in retrospect, it can be seen that it is time to acknowledge the constitutional overreach which the judiciary has done in asserting primacy, and it is time to return to a state of shared space in the constitution between the various organs.

The Constitution (Ninety Ninth Amendment) Bill Act, 2014, provided for setting up of Judicial Appointments Commission to address all such issues. The structure and functions of the proposed Commission were provided in the National Judicial Appointments Commission Act, 2014.

The act sought replace the present system of collegium of the senior most judges of the Supreme Court including the Chief Justice. The Judicial Appointments Committee would broad base the appointment process with equal participation of the judiciary and the executive and make it participatory so as to ensure greater transparency and objectivity in the appointments to higher judiciary. This commission would have had the presence of eminent persons from the civil society and legal luminaries, thereby facilitating inclusion of non-constitutional functionaries in the appointment process of judges to the higher judiciary.

[45] R.Ramachandran, *Supreme but not Infallible* (1st, Oxford University Press, New Delhi 2000)

Justice J.S. Verma, who was one of the authors of Second Judges Case on a later reflection has observed that:

> "…my 1993 judgment has been both misunderstood and misused. Therefore some kind of rethink is required ….my judgment says that the appointment process of High Court and Supreme Court judges is basically a joint or participatory exercise between the executive and the judiciary both taking part in it."

The law commission in its 214th report (2008) provides a system of checks and balances under Articles 124(2) and 217(1) for the appointment of Judges of the Supreme Court and High Courts where both the Executive and Judiciary have been given an equal and balanced role. This balance has been upset by the Second Judges Case and the original balance of power needs to be restored.

The proposed division of powers would have had dual benefits, namely assessment of legal acumen would be done by the members of the Commission from judiciary, while members of the Commission from executive can assess antecedent/character of the candidate for appointment to the Bench of higher judiciary. It is expected that the broad base of appointment process will ensure greater transparency and objectivity in the appointments of Higher Judiciary.[46]

Furthermore, the system of judges selecting other judges, is now a thing of the past. The Judicial Appointments Panel has found acceptance widely in practically all foreign jurisdictions.

The judicial appointments commission of UK is a good example of the progress that a modern constitutional democracy has made in judicial management in general and appointments of judges in particular. India cannot afford to ignore the quality of the British judiciary in the ongoing efforts to bring radical changes, especially because we have adopted the Anglo-Saxon system.

The judges in the higher judiciary in the U.K. are appointed on the basis of recommendations made by the independent Judicial Appointments Commission (JAC). Regional representation in appointments is ensured. The Judicial Commission has a representative and participative

[46] Parliament of India, 64th Report (Rajya Sabha, December 2013)

character. The procedures are transparent. There is no predominance either of the judiciary or of the executive. There is no 'collegium syndrome', much less any 'kin syndrome', nor is there any political high-handedness.

The JAC is an independent body which is given the task of selecting candidates for judicial offices in courts and tribunals in England, Wales and also tribunals which have jurisdiction over Scotland and Northern Ireland. There is fair and open competition which ensures assessment *of interse* merit. The process is lengthy and complex. However, it is more effective and accountable.

The Constitutional Reform Act (CRA) 2005 was recently amended by the Judicial Appointments Regulations, 2013. There are 15 members in the JAC including the Chairman. All of them, except the three judicial members are selected through open competition. Apart from the members from judiciary and legal profession, there are also judicial officers who are not legally qualified and also eminent persons from the public.

There is a well-designed and systematic selection process for induction of Judges at all tribunals and courts including the High Court. It involves the request for vacancy position, advertisement, receipt of applications, shortlisting, references, candidate selection, panel decision, statutory consultation, checks, decisions on selection, submission of report to the Lord Chancellor and finally the procedure for quality assurance which includes review of the progression of the candidates and observation of the interviews and test results.

The statutory consultation is a mandatory requirement as per the CRA. It is an integral part of the selection process. After the finalization of selection, the JAC recommends the name of the candidate to the appropriate authority. JAC thus selects the Lord Chief Justice, Heads of Division and the Lord Justice of Appeal.

In a similar manner, many countries around the world have a committee or a council, which is responsible for selection of judges to the Supreme Court. Germany has a career judiciary; judges join the judiciary early in their working life and spend their career working in it.

However, keeping in mind the various systems of elections of judges to the higher judiciary prevalent amongst the world, it can be seen that formation of a council or a committee is the

most popular one followed in the world. Apart from the UK, this system has also found support in Belgium, Bulgaria, Spain, France, Greece, Italy, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia etc. The name and composition of the body varies from country to country.

In conclusion, it can be seen that even though the NJAC judgment remains, till date, the longest judgment ever written; it does not address several important issue which were raised during the debate. It also muddies the waters in respect of separation of powers, while it cannot be refuted, that the major premise of the judgment, was to ensure the independence of judiciary from executive action; it remains to be seen that by striking down a perfectly valid law, the court may have exceeded their ambit. The precedential value of this judgment is another source of concern, as it remains to be seen if this is merely a way for the judiciary to protect their own, or will mark the start of an age of aggressive judicial review.