

The gown and the Bench

The Supreme Court has laid down [guidelines for designating lawyers in the Supreme Court and High Courts](#) as senior advocates. Until now, the judges of the Supreme Court and High Courts had the sole discretion of according this status to advocates. Now, applications will be vetted by a permanent committee known as the Committee for Designation of Senior Advocates that will publish the names of candidates on the respective courts' websites to ensure transparency.

Political interference in the selection of judges in the third and fourth decades of independent India resulted in the collegium system where judges select judges. However, the opaque system and unsatisfactory selection, transfer, and elevation of judges to the Supreme Court caused disquiet and led to the passing of the Constitution (99th Amendment) Act, 2014 and the National Judicial Appointments Commission (NJAC) Act, 2014, which sought to give politicians and civil society a final say in the appointment of judges to the highest courts. In 2015, a Constitution Bench of the Supreme Court declared these unconstitutional on the ground that the composition of the NJAC did not provide adequate representation to those from the judiciary in the selection and appointment of judges to the higher judiciary and also in the transfer of Chief Justices and judges from one High Court to another. Inclusion of the Law and Justice Minister in the NJAC was faulted on the ground that participation of the executive would erode the independence of the judiciary. The inclusion of two "eminent persons" was held to be unsustainable, more so if laypersons could be nominated or vested with veto power.

NJAC vs collegium: the debate decoded

It is in this context that one has to welcome the permanent committee. It will consist of the Chief Justice of India, two senior-most judges of the Supreme Court/ High Courts, the Attorney General of India/ the Advocate General of State, and a member of the Bar to be nominated by the above four members. The committee will have a permanent secretariat. All applications for designation of senior advocate will be submitted to the secretariat which will compile all the relevant information with regard to the reputation, conduct, integrity, participation in pro-bono work, reported judgments in which the advocate has appeared, etc. of the candidates. The committee will examine each candidate's case, interview the candidate, and make its assessment based on a point-based format.

This system is transparent and objective, and provides equal opportunity to all candidates. There may be some reservation on the aspect of publishing names on the official website of the court and inviting suggestions as in the recent past, there have been reports of motivated complaints and objections. The secretariat should not be dragged into the quagmire of investigating frivolous complaints or objections.

While this institutional mechanism and selection criteria seem suited to substitute the existing collegium system, the executive and the legislature could also seriously consider introducing a new version of the NJAC which incorporates the salient features of this institutional mechanism. The sooner the judiciary adopts such a mechanism for judges too, the better it is for the institution.

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