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# Article 124A: The National Judicial Appointments Commission (NJAC)

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# Article 124A: The National Judicial Appointments Commission (NJAC)

Who should choose the judges of India? For decades, judges had the lead. In 2014, Parliament tried a different way. It created a commission with a Law Minister and two outside members. The Supreme Court struck it down in 2015.

This lesson reads Article 124A first. Then it follows the three earlier Judges Cases and the Fourth Judges Case.

**Collegium:** the group of senior-most judges who recommend names for the higher courts. Think of a school panel of senior teachers choosing a new head of department. In the Supreme Court it is the Chief Justice and the four senior-most judges. The NJAC was meant to replace it.

**Basic structure:** the core features that Parliament cannot change, even by amendment. A house can be repainted, but its load-bearing walls must stay. Judicial independence is one such wall. Challengers argued the NJAC weakened that wall.

**Ex officio member:** a person who sits on a body because of the post they hold. A district collector chairing a local committee is the usual example. Nobody chooses them for the seat. Under Article 124A the Chief Justice and two senior judges were members this way.

**Veto:** the power to stop a decision alone or in a small group. A single neighbour who can block a society resolution holds a veto. It matters here because any two NJAC members could block a name.

# What did Article 124A create?

## Who sat on the NJAC?

Article 124A created the National Judicial Appointments Commission, the NJAC. It had six members.

- The **Chief Justice of India** was Chairperson, ex officio.
- **Two other senior Supreme Court judges**, next to the Chief Justice, were members ex officio.
- The **Union Law Minister** was a member, ex officio.
- **Two eminent persons** were nominated by a committee.

That committee had the Prime Minister, the Chief Justice and the Leader of the Opposition in the Lok Sabha. If there was no such Leader, the leader of the single largest Opposition party took the seat. Judges were only three of the six members.

Sources: indiankanoon.org

> **Quick check 1.** The NJAC had a majority of judges among its six members. *(True or False?)* See answer ↓

## When did the NJAC come into force?

The 99th Amendment received the President's assent on **31 December 2014**. It followed the Article 368(2) procedure, including the proviso. It was brought into force from **13 April 2015**, after a Gazette notification.

The NJAC Act, 2014 was passed alongside it. It also got assent on 31 December 2014. It also came into force on 13 April 2015. On that day Justice Anil R. Dave became an ex officio member, as the second senior-most judge after the Chief Justice.

Sources: indiankanoon.org

# What did the three Judges Cases decide?

## How did the collegium system grow?

The Constitution says the President appoints judges after consultation. The word “consultation” was never defined. Three cases filled that gap.

| Case | Bench and year | What it held |
|---|---|---|
| First Judges Case (S.P. Gupta) | Seven judges, 30 December 1981, by 4:3 | The majority treated consultation as not binding on the executive. |
| Second Judges Case | Nine judges, 6 October 1993, by 7:2 | It overruled the First Case. The Chief Justice’s opinion got primacy. |
| Third Judges Case | Nine judges, reference under Article 143, 1998 | It explained the Second Case. The Chief Justice consults the four senior-most judges. |

For High Court appointments, the Chief Justice consults the two senior-most judges. The Union then framed a Memorandum of Procedure on 30 June 1999 in line with these two rulings. This is the system the NJAC was meant to replace.

Sources: indiankanoon.org

> **Quick check 2.** The Second Judges Case was decided by a seven-judge bench. *(True or False?)* See answer ↓

## What did the Supreme Court decide in the Fourth Judges Case?

### What was the order?

On **16 October 2015**, a five-judge bench struck down the 99th Amendment and the NJAC Act, 2014. The vote was **four to one**. Justice Chelameswar disagreed on the amendment.

- Both laws were declared **unconstitutional and void**.
- The system that existed before the amendment was **revived**.
- The bench also asked to hear complaints about how the old system works.

The case is Supreme Court Advocates-on-Record Association v. Union of India. It is called the Fourth Judges Case. The earlier request to refer the Second and Third Cases to a larger bench was also rejected.

Sources: indiankanoon.org

**Think it through:** why did the Court also strike down the NJAC Act?

The Act was made to run the commission. The commission came from Article 124A. Once the amendment was void, the Act had nothing to stand on. The Court declared both void.

**Quick check 3.** After 16 October 2015, the NJAC continued to appoint judges. *(True or False?)* See answer ↓

## Why did the Court say the NJAC was not acceptable?

### What was wrong with the two-member veto?

Section 6(6) of the NJAC Act said the NJAC shall not recommend a person if any two members do not agree. The amendment itself did not say this.

- The three judges might all back a name.
- The Law Minister and one eminent person could then stop it.
- One judge said the veto dealt judicial primacy a devastating blow.

The bench also objected to the Prime Minister and the Leader of the Opposition choosing the eminent persons. It called that a retrograde step. The majority felt the change eroded the primacy of the judiciary.

Sources: indiankanoon.org

**3 judges**back a name
**Law Minister + 1 eminent person**disagree
**Section 6(6)**name is blocked

**Quick check 4.** Under Section 6(6), three judges backing a name could always override the other members. *(True or False?)* See answer ↓

# What happens to appointments today?

## Who appoints judges now?

The collegium system returned after the 2015 ruling. The Chief Justice and senior judges recommend names for the Supreme Court. The Chief Justice and two senior-most judges are consulted for High Court appointments.

The order said the Court would hear complaints about how this system works in practice. Those complaints were about working, not about the system's existence. The debate between judicial primacy and a wider commission continues.

Sources: indiankanoon.org

**Quick check 5.** The Court refused to hear any complaint about the working of the collegium. *(True or False?)* See answer ↓

# What do examiners ask about Article 124A?

## What has been asked, and what to remember?

One real question is on this site, from UPSC CSP 2019:

- **The 44th and 99th Amendments.** The question gave two statements. The 44th Amendment did not place the Prime Minister's election beyond review; the 39th did. The Supreme Court did strike

down the 99th for harming judicial independence. The answer is (b), 2 only. See the paper.

Watch for three traps.

- “The NJAC is in force.” Wrong. The Court struck it down in 2015.
- “The Court upheld the 99th Amendment.” Wrong. It was held void by 4:1.
- “The 1981 case gave judges the last word.” Wrong. It left the executive with it.

Quick recall:

- Six members: three judges, the Law Minister, two eminent persons.
- In force: 13 April 2015. Struck down: 16 October 2015.
- Vote: 4:1. The old collegium came back.

## Practice MCQs

**1. Which body did Article 124A create?**

**A.** Judicial Council

**B.** Law Commission

**C.** Finance Commission

**D.** National Judicial Appointments Commission

See answer ↓

**2. How many members did the NJAC have under Article 124A(1)?**

**A.** Six

**B.** Three

**C.** Five

**D.** Four

See answer ↓

**3. Under Section 6(6) of the NJAC Act, when could the NJAC NOT recommend a person for appointment?**

**A.** If the Law Minister alone disagreed

**B.** If any two members did not agree

**C.** If most judges on the NJAC disagreed

**D.** If the Chief Justice alone disagreed

See answer ↓

**4. Which case, decided in 1993 by a nine-judge bench, overruled the First Judges Case?**

**A.** Fourth Judges Case

**B.** Third Judges Case

**C.** S.P. Gupta case

**D.** Second Judges Case

See answer ↓

**5. On what date and by what vote did the Supreme Court strike down the 99th Amendment?**

**A.** 16 October 2015, by 4:1

**B.** 13 April 2015, unanimously

**C.** 31 December 2014, by 3:2

**D.** 6 October 1993, by 7:2

See answer ↓

**6. What happened to the appointment system after the NJAC was struck down?**

**A.** Parliament chose judges by vote

**B.** The President alone chose judges

**C.** A new Act replaced it at once

**D.** The pre-existing scheme was revived

See answer ↓

# Answer Key

1. **D.**
   Article 124A was inserted by the 99th Amendment. It created the National Judicial Appointments Commission, or NJAC.
   Sources: 99th Amendment Act, text · Fourth Judges Case judgment.
   ↑ Q1
2. **A.**
   The NJAC had six members: the Chief Justice of India, two senior Supreme Court judges, the Law Minister and two eminent persons.
   Sources: 99th Amendment Act, text · Fourth Judges Case judgment.
   ↑ Q2
3. **B.**
   Section 6(6) said the NJAC shall not recommend a person if any two members do not agree. Two non-judges could therefore block a name that all three judges backed.
   Sources: Fourth Judges Case judgment · 99th Amendment Act, text.
   ↑ Q3
4. **D.**
   The Second Judges Case was decided on 6 October 1993 by a nine-judge bench, by 7:2. It overruled the First Judges Case and gave the Chief Justice's opinion primacy.
   Sources: Fourth Judges Case judgment · 99th Amendment Act, text.
   ↑ Q4
5. **A.**
   On 16 October 2015 a five-judge bench held the 99th Amendment unconstitutional and void by a majority of four to one. Justice Chelameswar disagreed.
   Sources: Fourth Judges Case judgment · 99th Amendment Act, text.
   ↑ Q5
6. **D.**
   The Court declared that the system existing before the 99th Amendment stands revived. The collegium continued to appoint judges.
   Sources: Fourth Judges Case judgment · 99th Amendment Act, text.
   ↑ Q6

## Quick-check answers

1. **False.** Three of the six were judges. The other three were the Law Minister and two eminent persons. ↑ 1
2. **False.** It was a nine-judge bench. The seven-judge bench decided the First Judges Case in 1981. ↑ 2
3. **False.** The Court declared the amendment and the Act void. The earlier system was revived. ↑ 3
4. **False.** If any two members disagreed, the NJAC could not recommend the person. ↑ 4
5. **False.** It said it would list the matter to consider grievances about how the system works. ↑ 5

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