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The Constitution (Ninety-Ninth Amendment) Act, 2014: CLAT Explainer

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INTRODUCTION

The Constitution (Ninety-Ninth Amendment) Act, 2014 is one of the most important ones, and one that initiated a debate that continues today, i.e., the debate on judicial appointments in the Supreme Court and the High Courts.

In the discussion of this Amendment, it is also important to look into judicial decisions that decide on its validity in addition to a deliberation on the numerous amended as well as newly added Constitutional provisions.

AMENDMENTS AND ADDITIONS

- The Amendment amended the following Articles: 124, 127, 128, 217, 222, 224, 224A and 231; and inserted these new Articles: Article 124A, 124B and 124C.
- The most striking provisions were those relating to the 'National Judicial Appointments Commission' ['NJAC'/ 'the Commission']. Article 124A constituted the Commission, and provided that the following shall be a part of the Commission.

Chairperson:

1. Chief Justice of India

Members:

1. two other senior Judges of the Supreme Court
2. the Union-Minister in charge of Law and Justice

[The aforementioned Chairperson/Members were supposed to be *ex officio*.]

3. two eminent persons to be nominated by the 'Committee'.

[The Committee was to consist of "the Prime Minister, the Chief Justice of India and the Leader of Opposition in the House of the People *or* where there is no such Leader of Opposition, then, the Leader of single largest Opposition Party in the House of the People".]

Article 124B laid down the Commission's functions, which were recommending the judges' appointment (at the Supreme Court and the High Court) and their transfers. Article 124C vested in the Parliament the powers to regulate the procedure of judicial appointments and to empower the NJAC.

- The other altered provisions were amended to give space to incorporate the newly created NJAC, and the phrase "on the recommendation of NJAC" was substituted/added in most of them.

JUDICIAL RESPONSE: SCAORA v. Union of India

Bench: Jagdish Singh Khehar, CJI; J. Chelameswar, Madan B. Lokur, Kurian Joseph, Adarsh Kumar Goel, JJ.

- Challenges to NJAC in particular, and the Amendment in general were referred to a 5-judge Bench. Prominently, the apex Court struck down this Amendment in the landmark case of Supreme Court Advocates-on-Record -Association Union of India[i], by a 4-1 majority. The judgment for the majority was authored by JS Khehar, the then CJI.
- The main grounds of reading the law down were that it violated the important features of "independence of judiciary", among other grounds. The provisions creating the NJAC didn't ensure the primacy of judiciary and hence interfered with the directive of separation of powers between the executive and the judiciary.
- Some provisions, like Article 124C, had no existence separate from the NJAC and were also read down as a corollary.
- Chelameswar, J. dissented.

ADDITIONAL SUGGESTED READINGS:

The following cases also dealt with the issue of appointment of judges:

1. The First Judges Case: P. Gupta v. Union of India[ii]
2. The Second Judges Case: Supreme Court Advocates-on-Record Association Union of India[iii]

3. The Third Judges Case: Special Reference No. 1 of 1998[iv]

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[i] WRIT PETITION (CIVIL) NO. 13 OF 2015, decided on 16.10.2015 (Supreme Court)

[ii] 1981 Supp SCC 87

[iii] Supreme Court Advocates-on-Record Association v. Union of India, (1993) 4 SCC 441

[iv] Special Reference No. 1 of 1998, (1998) 7 SCC 739