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## Posses & considerations of collegium system (criticisms of collegium system) NJAC Act

### Issues & Considerations of NJAC Act

- 1) It allows excessive executive interference by providing representation to non-judicial incumbents.
- 2) The expression eminent persons has not been defined by the law. Supreme Court raised an apprehension that how a non-judicial incumbent without the clarification of judicial competence is allowed to participate in the judicial process.
- 3) The <sup>present</sup> incumbency of Minister of Law can create a conflict of interest in judicial appointment, since 70% of the cases which are under consideration before the courts are those in which govt. is one of the party.
- 4) Justice Laike raised a hypothetical condition which can arise when

3 judges of the Commission are unable to perform their function. In this case only 2 eminent persons & minister can pursue with the process of appointment. Apart from this the provision that any 2 persons can reject the claim of any candidate also undermines the independence of Judiciary.

5) Justice Kehar also raised the apprehension that if CJI refused to attend the meeting of the commission then also proceedings of the commission could be followed or not. It is because the position of CJI was not clarified by the commission.

6) Appointment of judges in S.C. on the basis of seniority would adversely get effected after the establishment of NJAC.

Court raised the issue that appointments on the basis of other considerations like merit, judicial competence, ability etc. could circumvent the notion of subjectivity in judicial appointment.

### Removal of Judges

Article 124 → S.C.

Article 217 → H. court

grounds  
↓  
proved misbehaviour  
or Incapacity

Ref. Laxmi Kant

### Power, Authority & Jurisdiction of S.C. & High Court

Article 129 — court of Record

131 → Orig original & Exclusive Jurisdiction

Appellate jurisdiction  
132 → Constitution  
133 → civil  
134 → criminal

136 → Special leave

141 → Plenary jurisdiction

143 → Advisory "

137 → Revisionary adjudication

(Ref. Laxmitant for explanation)

Art 141 → Plenary jurisdiction

Doctrines:

Stare Decisis

Obiter Dicta

Ratio Decidendi

→ Art 141 provides that a law declared by S.C. remains binding over all the high courts in the country & the law not only binding over the parties to litigation but also to other persons in the territory of India. Although S.C. itself is not bound by its own judgement.

This plenary power of S.C. gives rise to several doctrines like Stare Decisis, Obiter Dicta, Ratio Decidendi.

According to the doctrine of

Stare Decisis for the administration of justice it is required that judgement given by S.C. should be binding over all the persons throughout the territory of India. Similarly, Obiter Dicta was a part of judgement which was not necessarily for disposal of case before the court.

Apart from this Ratio Decidendi is that part of the judgement which is necessary for the disposal of case. It is binding & expected to be followed by every party.

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### Article 143 → Advisory Jurisdiction

(Ref. Daxmikant for explanation)