Appointing judges is a tricky task
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The Indian judiciary has commanded great respect. Any change that is made to the system must add to its institutional reputation.

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THE previous year unequivocally showed the importance of judiciary and the function that it plays in a democracy. As the interpreter and custodian of the Constitution, the judiciary ensures accountability of all the wings of the government. With its own inbuilt mechanism of appeals, it constantly regulates itself and holds its own to scrutiny and accountability. How judges are appointed, thus, becomes a matter of unrivalled importance and one that must be given due consideration.

In India, judges are primarily appointed in two ways. The first is the appointment of judges in lower courts. Each state has a competitive examination, from which junior magistrates and judges are selected.
Some of these are promoted to the high courts and, sometimes, the Supreme Court. Appointments in the high court and the Supreme Court are made by a system called the collegium system. The collegium consists of the Chief Justice of the court and four seniormost judges. They decide on elevation of judges, either from the Bar or from other junior judges. This system derives itself from custom, rather than the Constitution. A few years ago, the appointment of judges was reviewed by Parliament. The purported 99th Amendment to the Constitution was to replace the collegium with the National Judicial Appointments Commission. The commission was to consist of three judges (including the Chief Justice and two seniormost judges), the Minister of Law and two eminent persons from the civil society. The nomination of the eminent persons was to be done by the Prime Minister, the leader of the Opposition and the Chief Justice. This amendment was, however, struck down by the Supreme Court, with only one out of the five judges supporting the NJAC. Since the judgment, there have been changes to the collegium itself. For instance, the Supreme Court has proposed to make its reasons public on the Supreme Court's website. Recently, in the winter session, the Law Minister again touched the topic of the appointment of judges. Talking of the higher judiciary first, the concern with a body like the NJAC is the overly political interference in the appointment. Separation of powers demands complete and absolute demarcation of functions. The political involvement might breach this. As for the lower judiciary, the challenge of a unified national exam is huge. The logistics aside, a major question is how posts (or cadres) are to various judges based on the results. This can possibly lead to a situation where the standard of judges in various states can vary hugely. It might, perhaps, be useful to look at how judges are appointed in other countries. The United States has a political system of appointment. The United Kingdom used to have the collegium system. It has, however, replaced it with the Judicial Appointments Commission. The commission is an autonomous body that consists of 15 members. The membership comprises five judicial members, five lay members from the public, two professional members from the Bar, one tribunal judge and one non-legally qualified judicial member and a chairman who must always be a
lay member. There is, thus, no political interference, or indeed political presence in the commission. Additionally, the UK also has a strong presence of lay justices of peace at the lower level, where lay persons with the help of legal advisers decide most cases involving less serious offences. There is also trial by jury which again brings in the involvement of community justice into the picture.

The Indian judiciary has commanded great respect — both in the country and worldwide. Any change to the system that is to be made must be clearly deliberated. An impartial, robust and independent judiciary is indisputably non-negotiable for everyone.