

## NSA Ajit Doval Holds Briefing on National Security for SC Judges; Activists Cry Foul

By [Ajoy Ashirwad Mahaprashasta](#) on [15/04/2016](#)

*Human rights activists and organisations are seeing the meeting as an unilateral imposition of the BJP-led government's views on the judges.*



Supreme Court of India. Credit: Shome Basu

**New Delhi:** In an unprecedented development, which may impinge on the independence of the higher judiciary, National Security Advisor (NSA) Ajit Doval is briefing the Supreme Court judges on national security issues and the threat of terrorism at a three-day retreat at the National Judicial Academy (NJA). All 25 judges of the Supreme Court are attending the retreat, which ends on April 17, at the NJA, located at the outskirts of Bhopal. At the retreat, the judges will interact with experts from various fields, such as economy and education.

The content of the meeting has not been disclosed by the NJA nor the union government. The closed-door meeting is being seen by prominent human rights activists and organisations as an unilateral imposition of the BJP-led government's views on the judges. When news of the meeting first broke a few days ago, prominent lawyer Prashant Bhushan had expressed his dissent in a letter to Chief Justice of India (CJI) T.S. Thakur. In the letter dated April 11, he urges the CJI to invite representatives of human rights organisations and independent lawyers like Colin Gonsalves, Kamini Jaiswal, Nitya Ramakrishnan and Vrinda Grover to provide a more holistic understanding of national security issues.

“...traditionally there has been a conflict between the perspectives offered by the security agencies and those that are offered by human rights organisations, around the legitimacy of many

actions of many security agencies, some of which constitute a violation of human rights. Many of such cases reach the courts for adjudication, where both sides are heard. With this in the backdrop, we (in CJAR) think it may be inappropriate for the Judges to be briefed only from the point of view of how the actions of security agencies impact human rights,” [wrote Bhushan](#), in his capacity as the convener of the Campaign for Judicial Accountability and Judicial Reforms (CJAR), a collective of judges, lawyers, activists, and intellectuals.

In a political context, where security agencies have recently found themselves in the dock for human rights abuses in states like Chhattisgarh and Jammu and Kashmir, Doval’s meeting with the judges is being read by many in the civil society as a measure to influence the judiciary. “Such retreats have happened before. But, to my knowledge, the judges have never been briefed by the NSA himself,” said Bhushan.

The NJA is a government-sponsored institution that is controlled by the Supreme Court. An official at the NJA told *The Wire*, “We did not make the schedule of the event. It came directly from the Supreme Court. We were just expected to facilitate the session with Doval.” “Reserve Bank of India Governor Raghuram Rajan was also supposed to come today to brief the judges on economic issues but he did not turn up,” added the NJA official on the condition of anonymity.

The Supreme Court and the government have been on the tenterhooks for the past few months ever since the National Judicial Appointment Commission (NJAC) and the 99th Constitution Amendment Act, 2014 were [struck down by a five-judge Constitution bench](#) in October 2015. The government had introduced the NJAC to replace the collegium system for the appointment and transfer of the higher judiciary. The NJAC was a proposed body that would have constituted the CJI, two senior Supreme Court judges, the law minister, and two eminent persons nominated by the prime minister, the leader of the opposition and the CJI. The Constitution bench, in striking down the NJAC, felt that the inclusion of the law minister and the noticeable role of the executive could compromise the independence of the judiciary. Since then, the government has been trying to influence the judiciary through various direct and indirect means.

While striking down the NJAC and restoring the collegium system, the Constitutional bench had acknowledged some ambiguities in the collegium system and had asked the government to reframe the Memorandum of Procedures (MoP) to appoint the judges after having consulted the CJI. However, the new MoP has been a constant point of confrontation between the government and the apex court. For instance, the government unilaterally inserted a clause in the MoP that gives it power to reject the recommendation of the collegium if it feels the appointment could ‘jeopardise national security.’ The new MoP also says that the government is not bound to reconsider even if the collegium objects to the government’s decision. In the old rules, the government was bound to accept the decision of the collegium, comprising four of the most senior judges.

Similarly, the new MoP has prioritised ‘merit and integrity’ and ‘performance appraisal’ for the appointment and promotion of judges, making room for favouritism. According to the old MoP, the seniority of the judges was the only criterion for appointments and promotions. The new rules, framed by a group of ministers headed by the Minister of External Affairs Sushma Swaraj, also talks about setting up a secretariat to appoint judges. Many legal experts feel the government is trying to bypass the Supreme Court ruling doing away with the NJAC by introducing such clauses, which undermine the authority of the judiciary. Most of these controversial clauses in the new MoP relate to issues of national security. Precisely for these reasons, Doval’s meeting with the judges assumes great significance.

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