

AS INTRODUCED IN THE RAJYA SABHA
ON 1ST APRIL, 2022

Bill No. XVI of 2022

THE CONSTITUTION (AMENDMENT) BILL, 2022

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BILL

further to amend the Constitution of India.

BE it enacted by Parliament in the Seventy-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 2022.

Short title and
commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In article 124 of the Constitution, in clause (2), for the words, "on the recommendation of the National Judicial Appointments Commission referred to in article 124A", the words "based on the recommendation made by the National Judicial Appointments Commission in accordance with provisions of Chapter IVA of Part V" shall be substituted.

Amendment of
article 124.

Omission of articles 124A, 124B and 124C.	3. Articles 124A, 124B and 124C of the Constitution shall be omitted.	
Amendment of article 217.	4. In article 217 of the Constitution, in clause (I), for the words "on the recommendation of the National Judicial Appointments Commission referred to in article 124A", the words "based on the recommendation made by the National Judicial Appointments Commission in accordance with provisions of Chapter IVA of Part V" shall be substituted.	5
Amendment of article 222.	5. In article 222 of the Constitution, in clause (I), for the words "on the recommendation of the National Judicial Appointments Commission referred to in article 124A", the words "based on the recommendation made by the National Judicial Appointments Commission in accordance with provisions of Chapter IVA of Part V" shall be substituted.	
Insertion of Chapter IVA.	6. In Part V of the Constitution, after Chapter IV, the following Chapter IVA shall be inserted, namely:—	10
	"CHAPTER IVA—NATIONAL JUDICIAL APPOINTMENTS COMMISSION	
National Judicial Appointments Commission.	147A. (I) There shall be a Commission to be known as the National Judicial Appointments Commission.	
	(2) The Commission shall consist of the following:	15
	(a) the Chief Justice of India, Chairperson, <i>ex officio</i> ;	
	(b) three other Judges of the Supreme Court next to the Chief Justice of India in seniority—Members, <i>ex officio</i> ;	
	(c) the Union Minister in charge of Law and Justice-Member, <i>ex officio</i> ;	
	(d) two eminent persons from civil society to be nominated by the committee consisting 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 the single largest Opposition Party in the House of the People—Members:	20
	Provided that at least one of the eminent persons shall be nominated from amongst the persons belonging to Scheduled Castes, the Scheduled Tribes, Other Backward Classes, minorities or women:	25
	Provided further that an eminent person shall be nominated for a period of three years and shall not be eligible for renomination:	
	Provided also that the Commission shall, by regulations, specify such criteria, procedures and conditions for nomination, disqualification and removal of eminent persons, as it may consider necessary.	30
Functions of the Commission.	147B. (I) It shall be the duty of the Commission to—	
	(a) make recommendations of persons for appointment as Chief Justice of India, Judges of the Supreme Court, Chief Justices of High Courts and other Judges of High Courts; and	35
	(b) make recommendations for the transfer of Chief Justice and other Judges of High Courts from one High Court to any other High Court:	
	Provided that the Commission shall ensure that the person recommended is of ability and integrity:	40
	Provided further that the Commission shall ensure fair representation of backward classes, minorities, women and different regions in making appointment of Judges.	

147C. (1) The Central Government shall, within a period of thirty days from the date of coming into force of this Act, intimate the vacancies for the posts of Judges in the Supreme Court and the High Courts to the Commission for making its recommendations to fill up such vacancies.

Reference to Commission for filling up of vacancies.

5 (2) The Central Government shall, six months prior to the date of occurrence of any vacancy on account of completion of the term of a Judge of the Supreme Court or a High Court, make a reference to the Commission for making its recommendation to fill up such vacancy.

10 (3) The Central Government shall, within a period of thirty days from the date of occurrence of any vacancy on account of death or resignation of a Judge of the Supreme Court or a High Court, make a reference to the Commission for making its recommendation to fill up such vacancy.

15 147D. (1) The Commission shall recommend the senior most Judge of the Supreme Court for appointment as the Chief Justice of India if he or she is considered fit to hold the office:

Procedure for selection of Judge of Supreme Court.

Provided that any member of the Commission whose name is being considered for recommendation shall not participate in that meeting of the Commission.

20 (2) The Commission shall recommend, on the basis of merit and any other criteria of suitability as may be specified by regulation, such person for appointment as a Judge of the Supreme Court who is eligible to be appointed as such under clause (3) of article 124 of the Constitution:

Provided that while making a recommendation of a Judge of a High Court for appointment as a Judge of the Supreme Court, apart from seniority, the merit of such Judge shall be considered.

25 (3) The Commission may, by regulations, specify such other procedures and conditions for selection and appointment of a Judge of the Supreme Court as it may consider necessary.

30 147E. (1) The Commission shall recommend a Judge of a High Court for appointment as the Chief Justice of a High Court on the basis of *inter se* seniority of High Court Judges, merit and any other criteria of suitability as may be specified by regulations.

Procedure for selection of Judge of High Court.

(2) The Commission shall seek nomination from the Chief Justice of the concerned High Court for the purpose of recommending a person for appointment as a Judge of that High Court.

35 (3) The Commission shall also nominate, on the basis of merit and any other criteria of suitability as may be specified by regulations, such persons for appointment as a Judge of a High Court who are eligible to be appointed as such under clause (2) of article 217 of the Constitution and forward their names to the Chief Justice of the concerned High Court for its views.

40 (4) Before making any nomination under clause (2) or giving its views under clause (3), the Chief Justice of the concerned High Court shall consult two senior-most Judges of that High Court and such other Judges and eminent advocates of that High Court as may be specified by regulations.

45 (5) After receiving views and nomination under clauses (2) and (3), the Commission may recommend that person for appointment who is found suitable on the basis of merit and any other criteria of suitability as may be specified by regulations.

(6) The Commission shall elicit in writing the views of the Governor and the Chief Minister of the State concerned before making such recommendation in such manner as may be specified by regulations.

(7) The Commission may, by regulations, specify such other procedures and conditions for selection and appointment of a Chief Justice of a High Court and a Judge of a High Court as it may consider necessary.

Procedure for transfer of Judges.

147F. The Commission shall recommend for transfer of Chief Justices and other Judges of High Courts from one High Court to any other High Court, and for this purpose, specify, by regulations, the procedures and conditions for such transfer. 5

Publication of relevant information.

147G.(1) The minutes of the proceedings of each meeting of the Commission shall be published within three weeks of the date of the meeting.

(2) While recommending the appointment of a person as Chief Justice of India, Judge of the Supreme court, Chief Justice of a High Court or other Judge of a High Court or the transfer of a Chief Justice of a High Court or other Judge of a High Courts from one High Court to any other High Court, the Commission shall publish detailed reasons for making such a recommendation for appointment or transfer, as the case may be: 10

Provided that in the event of a dissenting opinion by any member, the Commission shall record and publish the same in the form of a dissent note. 15

Power of President to require reconsideration.

147H. The President shall, based on the recommendation made by the Commission, appoint the Chief Justice of India, a Judge of the Supreme Court, the Chief Justice of a High Court or a Judge of a High Court, as the case may be:

Provided that the President may, if considers necessary, require the Commission to reconsider the recommendation made by it: 20

Provided further that if the Commission makes a recommendation after reconsideration, the President shall make the appointment in accordance thereof.

Procedure to be followed by Commission in discharge of its functions.

147I.(1) The Commission shall have the power to specify, by regulations, the procedure for the discharge of its functions. 25

(2) The Commission shall meet at such time and place as the Chairperson may direct and observe such rules of procedure in regard to the transaction of business at its meetings, including the quorum at its meetings, as it may specify by regulations.

Power to make regulations.

147J.(1) The Commission may, by notification in the Official Gazette, make regulations consistent with the provisions of this Chapter, to carry out the provisions of this Chapter. 30

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the criteria, procedures and conditions for nomination, disqualification and removal of eminent persons under article 147A; 35

(b) the criteria of suitability with respect to appointment of a Judge of the Supreme Court under clause (2) of article 147D;

(c) other procedure and conditions for selection and appointment of a Judge of the Supreme Court under clause (3) of article 147D;

(d) the criteria of suitability with respect to appointment of a Chief Justice of a High Court under clause (1) of article 147E; 40

(e) the criteria of suitability with respect to appointment of a Judge of a High Court under clauses (3) and (5) of article 147E;

(f) other Judges and eminent advocates who may be consulted by the Chief Justice under clause (4) of article 147E; 45

(g) the manner of eliciting views of the Governor and the Chief Minister under clause (6) of article 147E;

(h) other procedure and conditions for selection and appointment of a Judge of a High Court under clause (7) of article 147E;

5 (i) the procedure for transfer of Chief Justices and other Judges from one High Court to any other High Court under article 147F;

(j) the procedure to be followed by the Commission in the discharge of its functions under clause (1) of article 147I;

10 (k) the rules of procedure in regard to the transaction of business at the meetings of Commission, including the quorum at its meeting, under clause (2) of article 147I;

(l) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations."

STATEMENT OF OBJECTS AND REASONS

The procedure for judicial appointments in the Constitution has been subject to various judicial interpretations over the years. While in *S.P. Gupta v. Union of India* (1981), the opinion of the Chief Justice was held to be not binding on the President, in *Supreme Court Advocates-on-Record Association v. Union of India* (1993), this ruling was reversed and the President was made bound by the opinion of the Chief Justice. The primacy of the judiciary over the executive in making judicial appointments was clarified in *Re Special Reference No. 1* (1998) through the formation of a collegium (consisting of the Chief Justice and the next four senior judges of the Supreme Court) that would collectively provide a binding recommendation to the President.

2. However, in the nearly three decades of its functioning, the collegium system has attracted much disaffection over its manner of a functioning, absence of checks and balances by other organs and lack of participation by various stakeholders. To remedy this, the Constitution (Ninety-ninth Amendment) Act, 2014 was enacted, with the aim of establishing a broad-based National Judicial Appointments Commission (NJAC) for making judicial appointments that would enable participation by judiciary, executive and eminent persons alike and ensure greater transparency and objectivity in the process. However, the Act was struck down by the Supreme Court in its entirety in *Supreme Court Advocate-on-Record Association v. Union of India* (2015), thereby restoring the collegium system.

3. The primacy of the judiciary under the present collegium system is in stark contradiction with the vision of the constitution makers, evidenced by the remarks of Dr. B.R. Ambedkar during the Constituent Assembly debates (24th May 1949): "*I personally feel no doubt that the Chief Justice is a very eminent person. But after all, the chief Justice is a man with all the failings, all the sentiments and all the prejudices which we as common people have; and I think to allow the Chief Justice practically a veto upon the appointment of judges is really to transfer the authority to the Chief Justice which we are not prepared to vest in the President or the Government of the day. I therefore, think that that is also a dangerous proposition.*"

4. Given that it is ill-judged to allow any single organ to exercise unabated powers in making judicial appointments, this Bill seeks to chart a middle path by reconstituting the NJAC. However, in doing so, this Bill removes the defects in the then proposed NJAC that were pointed out by the Supreme Court. For instance, the Bill retains independence of the judiciary by granting majority representation to the judicial members and eliminating the provision of veto powers. It provides extensive powers to the NJAC to prescribe appropriate criteria for enabling objectivity in its recommendations and to regulate its own procedures for ensuring flexibility in its functioning. The Bill also facilitates transparency by mandating the publication of the minutes of its meetings and requiring it to publish detailed reasons that form the basis of its recommendations along with the corresponding dissent notes, if any.

The Bill seeks to achieve the above objectives.

V. VIJAYASAI REDDY

ANNEXURE

EXTRACTS FROM THE CONSTITUTION OF INDIA

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124. (1) * * * * * Establishment and constitution of Supreme Court.

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal on the recommendation of the National Judicial Appointments Commission referred to in article 124A and shall hold office until he attains the age of sixty-five years:

Provided that—

- (a) a Judge may, by writing under his hand addressed to the President, resign his office;
- (b) a Judge may be removed from his office in the manner provided in clause (4).

* * * * *

124A. (1) there shall be a Commission to be known as the National Judicial Appointments Commission consisting of the following, namely:— National Judicial Appointments Commission.

- (a) the Chief Justice of India, Chairperson, *ex officio*;
- (b) two other senior Judges of the Supreme Court next to the Chief Justice of India—Members, *ex-officio*;
- (c) the Union Minister in charge of Law and Justice—Member, *ex-officio*;
- (d) two eminent persons to be nominated by the committee consisting 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—Members:

Provided that one of the eminent person shall be nominated from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities or Women:

Provided further that an eminent person shall be nominated for a period of three years and shall not be eligible for renomination.

(2) No act or proceedings of the National Judicial Appointments Commission shall be questioned or be invalidated merely on the ground of the existence of any vacancy or defect in the constitution of the Commission.

124B. It shall be the duty of the National Judicial Appointments Commission to— Functions of Commission.

- (a) recommend persons for appointment as Chief Justice of India, Judges of the Supreme Court, Chief Justices of High Courts and other Judges of High Courts;
- (b) recommend transfer of Chief Justices and other Judges of High Courts from one High Court to any other High Court; and
- (c) ensure that the persons recommended is of ability and integrity.

124C. Parliament may by law, regulate the procedure for the appointment of Chief Justice of India and other Judges of the Supreme Court and Chief Justices and other Judges of High Courts and empower the Commission to lay down by regulations the procedure for the discharge of its functions, the manner of selection of persons for appointment and such other matters as may be considered necessary by it. Power of Parliament to make law.

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Appointment and conditions of the office of a Judge of a High Court.

217. (1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal on the recommendation of the National Judicial Appointments Commission referred to in article 124A, and the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, shall hold office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of sixty-two years:

Provided that—

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office by the President in the manner provided in clause (4) of article 124 for the removal of a Judge of the Supreme Court;

(c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.

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Transfer of a Judge from one High Court to another.

222. (1) The President may, on the recommendation of the National Judicial Appointments Commission referred to in article 124A, transfer a Judge from one High Court to any other High Court.

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further to amend the Constitution of India.

(Shri V. Vijayasai Reddy, M.P.)