

AS INTRODUCED IN THE RAJYA SABHA
ON 9TH DECEMBER, 2022

Bill No. LXXII of 2022

THE CONSTITUTION (AMENDMENT) BILL, 2022

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BILL

further to amend the Constitution of India.

BE it enacted by the 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 of India, in clause (2), for the words "on the recommendation of the National Judicial Appointments Commission", the words, "on the recommendation of the National Judicial Commission" shall be substituted.

Amendment of article 124.

Substitution
of articles
124A, 124B
and 124C.

3. For articles 124A, 124B and 124C of the Constitution, the following articles shall be substituted, namely:—

National
Judicial
Commission

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

(a) the Chief Justice of India, Chairperson, *ex officio*; 5

(b) two other senior Judges of the Supreme Court next in seniority to the Chief Justice of India—Member, *ex officio*;

(c) Attorney General of India—Member, *ex officio*;

(d) two eminent persons nominated by the full court of the Supreme Court from a panel to be submitted by a 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 and a nominee of the Bar Council of India—Member: 10

Provided that one of the eminent persons shall be jurist and the other shall be a person with specialized expert knowledge in any of the branches of social science, political science, economics etc. nominated from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes or Minorities: 15

Provided further that one of the eminent persons shall be a woman: 20

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

(2) A Member nominated under clause (d) of sub-section (1),—

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

(b) shall not be removed from office except on the unanimous recommendation of the Chairperson and all the other Members of the Commission; 25

(c) shall not hold any public office or engage in any legal practiced whatsoever after the completion of his term; and

(d) shall entitled to such privileges, salaries and allowances equivalent to a Judge of the Supreme Court of India. 30

(3) No act or proceedings of the National Judicial 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.

(4) The office of the National Judicial Commission shall be at New Delhi.

Functions of
the National
Judicial
Commission.

"124B. It shall be the duty of the National Judicial Commission to— 35

(a) recommend persons for appointment as Chief Justice of India, Judges of the Supreme Court, Chief Justice of High Courts and other Judges of High Courts:

Provided that the Commission, before making recommendations for appointment of a Chief Justice of High Court or a Judge of the High Court, shall elicit in writing the views of the Governor and the Advocate General or the Chief Minister of the State concerned in such manner as may be prescribed by the Commission; 40

(b) recommend transfer of Chief Justices and other Judges of High Courts from one High Court to any other High Court; 45

(c) ensure that the person recommended is of ability and integrity; and

(d) to inquire for misbehaviour or incapacity of Chief Justice of India, Judges of the Supreme Court of India, Chief Justices of a High Courts and other Judges of High Courts and to regulate the procedure for such inquiry, under clause (4) of article 124.

124C. (1) Parliament may, by law, regulate the procedure for the appointment of Chief Justice of India and other Judges of the Supreme Court and Chief Justice and other Judges of High Courts and transfer of the Chief Justices and other Judges of the High Courts from one High Court to any other High Court.

Power of Parliament to make law.

(2) The National Judicial Commission to specify by regulations, the procedure for the discharge of its functions and duties, exercise of its powers and its other procedure, conditions and criteria of suitability for selection and appointment of Judges of the Supreme Court, Chief Justices of High Courts and other Judges of a High Courts and transfer of the Chief Justices and other Judges of the High Courts from one High Court to any other High Court as it may consider necessary.

124.D (1) The National Judicial Commission shall have a permanent secretariat and such investigation committees, secretaries, officers and employees as may be deemed necessary by the Commission and specified by regulation and Commission shall constitute such investigation committees and appoint such number of officers and employees for the discharge of functions of the Commission.

Secretariat of the National Judicial Commission.

(2) The terms and other conditions of service of officers and employees of the National Judicial Commission appointed under sub-section (1) shall be such as may be specified by regulations.

124E. The administrative expenses of National Judicial Commission including all salaries, allowances and pensions payable to or in respect of officers and employees of the Commission shall be charged upon the Consolidated Fund of India."

Administrative expenses of the National Judicial Commission.

4. in Article 127 of the Constitution, in clause (1), for the words "the National Judicial Appointments Commission", the words "the National Judicial Commission", shall be substituted.

Amendment of article 127.

5. In article 128 of the Constitution, for the words "the National Judicial Appointments Commission", the words "the National Judicial Commission" shall be substituted.

Amendment of article 128.

6. In article 217 of the Constitution, in clause (1), for the words, "on the recommendation of the National Judicial Appointments Commission", the words, "on the recommendation of the National Judicial Commission" shall be substituted.

Amendment of article 217.

7. In article 222 of the Constitution, in clause (1), for the words, "on the recommendation of the National Judicial Appointments Commission", the words, "on the recommendation of the National Judicial Commission" shall be substituted.

Amendment of article 222.

8. In article 224 of the Constitution,—

Amendment of article 224.

(a) in clause (1), for the words, "in consultation with the National Judicial Appointments Commission", the words "in consultation with the National Judicial Commission", shall be substituted; and

(b) in clause (2), for the words "in consultation with the National Judicial Appointments Commission", the words "in consultation with the National Judicial Commission", shall be substituted.

9. In article 224A of the Constitution, for the words "the National Judicial Appointments Commission", the words "the National Judicial Commission" shall be substituted.

Amendment of article 224A.

STATEMENT OF OBJECTS AND REASONS

The Judges of the Supreme Court are appointed under clause (2) of article 124 and the Judges of the High Courts are appointed under clause (1) of article 217 of the Constitution, by the President. The Ad-hoc Judges and retired Judges for the Supreme Court are appointed under clause (1) of article 127 and article 128 of the Constitution respectively. The appointment of Additional Judges and Acting Judges for the High Court is made under article 224 and the appointment of retired Judges for sittings of the High Courts is made under article 224A of the Constitution. The transfer of Judges from one Court is made under article 224A of the Constitution. The transfer of Judges from one High Court to another High Court is made by the President after consultation with the Chief Justice of India under clause (1) of article 222 of the Constitution.

2. The Supreme Court in the matter of the Supreme Court Advocates-on-Record Association Vs. Union of India in the year 1993, and in its Advisory Opinion in the year 1998 in the Third Judges case, had interpreted clause (2) of article 124 and clause (1) of article 217 of the Constitution with respect to the meaning of "consultation" as "concurrence". Consequently, a Memorandum of Procedure for appointment of Judges to the Supreme Court and High Courts was formulated, and is being followed for appointment.

3. Independence of judiciary is a basic feature and part of basic structure of the Constitution of India, as declared by the Hon'ble Supreme Court. Transparency and accountability in the matter of appointment of the Judges of the High Courts and Supreme Court is very much linked to this concept. It is widely accepted that the prevailing collegium system needs to be revisited in this regard. The Constitution (Ninety-ninth Amendment) Act, 2014 which proposed to establish a National Judicial Appointment Commission was held to be unconstitutional by the Hon'ble Supreme Court of India in the judgement in Supreme Court Advocates-on-Record Vs. Union of India (2016) 5 SCC 1.

4- After review of the relevant constitutional provisions, the pronouncements of the Supreme Court and consultations with eminent Jurists, it is felt that a new broad based National Judicial Commission should be established for making recommendations for appointment of Judges of the Supreme Court and High Courts. The said Commission would provide a meaningful role for the judiciary and all the important stakeholders to present their view points and make the participants accountable, while also introducing transparency in the selection process. The role of the executive in the whole process would be drastically curbed and curtailed. The Commission shall have independence and autonomy under the Constitution and shall have comprehensive powers for selection of Judges to the High Courts and Supreme Court and transfer of Judges of the High Courts.

5. The Bill proposes to amend the relevant provisions of the Constitution to set up a National Judicial Commission with comprehensive powers in the light of judgement in Supreme Court Advocates-on-Record Vs. Union of India. It seeks to substitute the articles 124A, 124B and 124C of the Constitution inserted by the Constitution (Ninety-ninth Amendment) Act, 2014 by new articles. It also seeks to bring about consequential amendment in articles 127, 128, 217, 22, 224A and 231 of Constitution. The said Bill also provides for the composition and the functions of the proposed National Judicial Commission with its own independent secretariat for its autonomous function. Further, it provides that Parliament may, by law, regulate the procedure for appointment of Judges and empower the National Judicial Commission to lay down procedure by regulation for the discharge of its functions, manner of selection of persons for appointment and such other matters as may be considered necessary.

6. The proposed Bill seeks to broaden the method of appointment of Judges in the Supreme Court and High Courts, transfer of the judges of the high Courts and for independent

inquiry for misbehaviour, misconduct and such misdemeanor of Judges. It brings about an independent autonomous constitutional institution having sufficient representation from the judiciary and important stakeholders for effective participation with greater transparency, accountability and objectivity in the appointment of the Judges in the Supreme Court and High Courts, transfer of Judges in the High Courts, and thereby strengthening independence and accountability of judiciary.

The Bill seeks to achieve the above objectives.

BIKASH RANJAN BHATTACHARYYA

FINANCIAL MEMORANDUM

Clause 3 of the Bill *inter-alia* provides for nomination of two eminent persons to the National Judicial Commission who would be entitled to such privileges, salaries and allowances equivalent to a Judge of the Supreme Court. Further, clause 3 of Bill also provides for a permanent secretariat and such investigation Committees, Secretaries, officers, staffs and employees as may be deemed necessary by the National Judicial Commission and that the administrative expenses of National Judicial Commission including all salaries, allowances and pensions payable to or in respect of officers, staffs and employees of the Commission shall be charged upon the Consolidated fund of India.

This Bill, if enacted, would involve expenditure from the Consolidated Fund of India. However, it is not possible to access the actual financial expenditure likely to be incurred at this stage.

ANNEXURE

EXTRACTS FROM THE CONSTITUTION OF INDIA

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<p>124.</p> <p>(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:</p> <p>Provided that—</p> <p>(a) a Judge may, by writing under his hand addressed to the president, resign his office;</p> <p>(b) a Judge may be removed from his office in the manner provided in clause (4).</p>	<p>Establishment and constitution of Supreme Court.</p>			
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<p>124A. (1) There shall be a Commission to be known as the National Judicial Appointments Commission consisting of the following, namely:—</p> <p>(a) the Chief Justice of India, Chairperson, <i>ex officio</i>;</p> <p>(b) two other senior Judges of the Supreme Court next to the Chief Justice of India—Members, <i>ex officio</i>;</p> <p>(c) The Union Minister in charge of Law and Justice—Member, <i>ex officio</i>;</p> <p>(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:</p> <p>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:</p> <p>Provided further that an eminent person shall be nominated for a period of three years and shall not be eligible for renomination.</p> <p>(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.</p>	<p>National Judicial Appointments Commission.</p>			
<p>124B. It shall be the duty of the National Judicial Appointments Commission to—</p> <p>(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;</p> <p>(b) recommend transfer of Chief Justice and other Judges of High Courts from one High Court to any other High Court; and</p> <p>(c) ensure that the person recommended is of ability and integrity.</p>	<p>Functions of Commission.</p>			
<p>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</p>	<p>Power of parliament to make law.</p>			

the discharge of its functions, the manner of selection of persons for appointment and such other matters as may be considered necessary by it.

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Appointment
of ad hoc
Judges.

127. (1) If any time there should not be a quorum of the Judges of the Supreme Court available to hold or continue any session of the Court, the National Judicial Appointments Commission on a reference made to it by the Chief Justice of India, may with the previous consent of the President and after consultation with the Chief Justice of the High Court concerned, request in writing the attendance at the sittings of the Court, as an ad hoc Judge, for such period as may be necessary, of a Judge of High Court duly qualified for appointment as a Judge of the Supreme Court to be designated by the Chief Justice of India.

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Attendance of
retired Judges
at sittings of
the Supreme
Court.

128. Notwithstanding anything in this Chapter, the National Judicial Appointments Commission] may at any time, with the previous consent of the President, request any person who has held the office of a Judge of the Supreme Court or of the Federal Court or who has held the office of a Judge of High Court and is duly qualified for appointment as a Judge of the Supreme Court to sit and act as a Judge of the Supreme Court, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that Court:

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that Court unless he consents so to do.

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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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Appointment
of additional
and acting
Judges.

224. (1) If by reason of any temporary increase in the business of a High Court or by reason of arrears of work therein, it appears to the President that the number of the Judges of that Court should be for the time being increased, the president may, in consultation with the National Judicial Appointments Commission, appoint duly qualified persons to be additional Judges of the Court for such period not exceeding two years as he may specify.

(2) When any Judge of a High Court other than the Chief Justice is by reason of absence or for any other reason unable to perform the duties of his office or is appointed to act temporarily as Chief Justice, I [the President may, in consultation with the National Judicial Appointments Commission, appoint] a duly qualified person to act as a Judge of that Court until the permanent Judge has resumed his duties.

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224A. Notwithstanding anything in his Chapter, the National Judicial Appointments Commission on a reference made to it by the Chief Justice of a High Court for any State, may with the previous consent of the President, request any person who has held the office of a Judge of the High Court for that State, and every such persons so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that High Court:

Appointment of retired Judges at sittings of High Courts.

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that High Court unless he consents so to do.

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further to amend the Constitution of India.

(Shri Bikash Ranjan Bhattacharyya, M.P.)