

REPORT NO.

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सत्यमेव जयते

PARLIAMENT OF INDIA

RAJYA SABHA

DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE
ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE

SIXTY-FOURTH REPORT

The Judicial Appointments Commission Bill, 2013

(Presented to the Rajya Sabha on 9th December, 2013)

(Laid on the Table of Lok Sabha on 9th December, 2013)



Rajya Sabha Secretariat, New Delhi
December, 2013/ Agrahayana 1935 (Saka)



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ACRONYM

AIJA	ALL INDIA JUDICIAL SERVICE
AIR	ALL INDIA RECORD
ARC	SECOND ADMINISTRATIVE REFORMS COMMISSION
JAC	JUDICIAL APPOINTMENTS COMMISSION

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COMPOSITION OF THE COMMITTEE
(Constituted on 31st August, 2013)

1. Shri Shantaram Naik — *Chairman*

RAJYA SABHA

2. Ms. Anu Aga
3. Shri Ram Jethmalani
4. Shri Sanjiv Kumar
5. Shri Parimal Nathwani
6. Shri Ram Vilas Paswan
7. Shri Sukhendu Sekhar Roy
8. Shri Ramchandra Prasad Singh
9. Dr. Abhishek Manu Singhvi
10. Shri Bhupender Yadav

LOK SABHA

11. Maulana Badruddin Ajmal
12. Shri T. R. Baalu
13. Shri E.T. Mohammed Basheer
14. Shri N.S.V. Chitthan
15. Shri P.C. Gaddigoudar
16. Shri D.B. Chandre Gowda
17. Shri Shailendra Kumar
18. Shri Jitender Singh Malik
19. Shri Arjun Meghwal
20. Shri Pinaki Misra
21. Shri Abhijit Mukherjee
22. Shri S.S. Ramasubbu
23. Shri S. Semmalai
24. Shri S.D. "Shariq"
25. Smt. Meena Singh
26. Shri Vijay Bahadur Singh
27. Dr. Prabha Kishore Taviad
28. Shri Suresh Kashinath Taware
29. Shri Madhusudan Yadav
30. Vacant
31. Vacant

SECRETARIAT

Shri Alok Kumar Chaterjee, Joint Secretary
Shri K.P. Singh, Director
Shri Ashok K. Sahoo, Joint Director
Smt. Niangkhanem Guite, Assistant Director
Smt. Catherine John L., Assistant Director

(i)

INTRODUCTION

I, the Chairman of the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, having been authorised by the Committee on its behalf, do hereby present the Sixty-fourth Report of the Committee on the Judicial Appointments Commission Bill, 2013 (Annexure-I). The Bill seeks for establishment of the Judicial Appointments Commission for appointments of Judges and transfer of Judges in the higher Judiciary.

2. In pursuance of the Rules relating to the Department-related Parliamentary Standing Committees, Hon'ble Chairman, Rajya Sabha referred the Bill, as introduced in the Rajya Sabha on the 29th August, 2013 and pending therein, to this Committee on the 9th September, 2013 for examination and report within three months.

3. Keeping in view the importance of the Bill, the Committee issued a Press communiqué to solicit views/suggestions from desirous individuals/organisations on various provisions of the Bill. In response thereto the Committee received numerous submissions out of which 32 memoranda containing suggestions from various organizations/ individuals / experts relevant to the issues dealt in the Judicial Appointments Commission Bill, 2013 were forwarded to the Department of Justice for their comments and placed before the Committee for its consideration (**Annexure-III**).

4. The Committee heard the presentation of the Secretary, Department of Justice, Ministry of Law and Justice on the provisions of the Bill in its meeting held on the 20th September, 2013. During its Study Visit to Chennai, Mumbai and Jaipur from the 3rd to the 10th October, 2013 the Committee interacted with the representatives of State Governments, High Courts Bar Associations, Retired Judges, NGOs and other stakeholders on the Bill. The Committee also heard the views of Attorney General of India and Secretary, Department of Legal Affairs, Ministry of Law and Justice on the 22nd October, 2013.

4.1 In its sittings held on the 13th and the 20th November, 2013, the Committee recorded oral evidence of legal luminaries such as Shri Fali S. Nariman, Ex. M.P., Rajya Sabha and Senior Advocate (Supreme Court), Shri Ashok H. Desai, Former Attorney-General of India, Shri P.P.Rao, Senior Advocate (Supreme Court), the Bar Council of India, various experts in the legal fraternity and other stakeholders on the subject matter of the Bill. List of individuals/organizations who deposed before the Committee are appended as **Annexure-IV**.

5. While considering the Bill, the Committee took note of the following documents/information placed before it :-

- (i) Background note on the Bill submitted by the Department of Justice, Ministry of Law and Justice;
- (ii) Supreme Court judgment in first judges, Second judges & Third Judges cases
- (iii) Views/suggestions contained in the memoranda received from various organisations/institutions/individuals/experts on the provisions of the Bill and the comments of the Department of Justice, Ministry of Law and Justice thereon;
- (iv) Views expressed during the oral evidence tendered before the Committee by the stakeholders such as Legal luminaries and Bar Councils/Associations;
- (v) Replies of Stakeholders to the questionnaire of the Committee on the Bill;
- (vi) Replies of the Department of Justice as well as stakeholders to the questionnaire of the Committee on the Bill; and
- (vii) Other research material/ documents related to the Bill.

6. The Committee adopted the Report in its meeting held on the 27th November, 2013.

7. For the facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

**New Delhi;
27th November,2013**

SHANTARAM NAIK
Chairman, Department-related
Parliamentary Standing Committee on Personnel,
Public Grievances, Law and Justice

(iii)

REPORT

The Judicial Appointments Commission Bill, 2013 seeks to set up a six member body under the Chairmanship of Chief Justice of India for the purpose of recommending names of individuals having outstanding legal acumen and impeccable integrity and credibility to the post of Judges of Supreme Court and the High Courts, to the President of India. It also recommends transfer of judges of one High Court to another to the President of India.

2. The appointment of judges to the Supreme Court and the High Courts, as per the provisions of the Constitution as it existed when Constitution was adopted, was made by the President of India in accordance with the provisions of Articles 124(2) and 217(1) of Constitution of India, respectively. Transfer of Judges from one High Court to another is done by the President of India in accordance with provision of Article 222(1) of the Constitution of India.

A. Overview

3. The appointment of Judges of the Supreme Court and the High Courts and transfer of judges from one High Court to another is primarily an act of the Executive as the President acts in accordance with the advice tendered by the Council of Ministers under Article 74(1) of Constitution of India. But constitutional obligation is cast upon the President of India under Articles 124(2), 217(1) and 222(1) to consult the Chief Justice of India/Chief Justice of High Court concerned for appointment and transfer of judges of higher judiciary. It is evident from the constitutional provisions that the appointment/transfer of judges of higher judiciary is a joint venture of the Executive and the Judiciary in participative and

consultative way to protect independence of judiciary which is a "Basic Structure" of the Constitution. Independence and impartiality of judiciary could only be subserved by appointing individuals of outstanding legal calibre and impeccable integrity and credibility with correct consideration to the Bench of higher judiciary.

4. Provisions of Articles 124(2), 217(1) and 222(1) have been interpreted by judiciary from time to time under Article 141 of Constitution. In the *S.P. Gupta and Ors Vs Union of India 1982, 2 SCR 365 (AIR 1982 SC, 149)*, the majority comprising Hon'ble Justices P.N. Bhagwati, Fazal Ali, J Desai, Venkataramiah took the following views:-

- a) that opinion of Chief Justice of India does not have primacy in the matter of appointments of judges of Supreme Court and High Courts;
- b) the primacy is with the Union Government of India, which is to take decision after consulting all constitutional functionaries and the Union Government is not bound to act in accordance with the opinion of all constitutional functionaries; and
- c) the Executive should have primacy since it is accountable to people while the Judiciary has no such accountability.

5. The Judiciary had a consultative role in the appointment of judges of higher judiciary till a nine-judge Bench of the Supreme Court overruled the majority view of the *S.P. Gupta case (First Judges Case)* in the *Advocate on Records Vs Union Of India case (Second Judges Case)* in 1993. The majority comprising Hon'ble Justices J.S. Verma, Yojeshwary Dayal, G.N. Roy, A.S. Anand and S.P. Bharucha held as under:-

- a) Articles 124(2) and 217(1) of Constitution of India impose a mandate in the highest functionaries drawn from the Executive and the Judiciary to perform the constitutional obligation of making appointment of judges to the Supreme Court and the High Courts collectively in consultation with each other;
- b) in the event of disagreement in the process of consultation, view point of judiciary being primal has to be preferred;
- c) the Executive can appoint judges only if that is in conformity with the opinion of the Chief Justice of India;
- d) the opinion of the Chief Justice of India is determinative for transfer of judges of High Courts.

6. Since 1993 the recommendations of the Chief Justice of India for appointment and transfer of judges to higher judiciary became binding upon the Executive which amounted to concurrence with the opinion of the judiciary, the aid and advice tendered by the Council of Ministers to the President of India under Article 74(1) of Constitution got circumscribed by judicial interpretation of Articles 124 (2), 217(1) and 222(1) on the Second Judges Case. It made the judiciary the *de facto* appointing authority of themselves which was not the intention of Constitution framers as gathered from the Constituent Assembly Debates.

7. The framers of Constitution of India had given absolute discretion neither to the Executive nor to the Judiciary in the participatory and consultative process for appointment of judges to Supreme Court and High Courts. The Constituent Assembly after due deliberations, preferred the word 'consultation' to 'concurrence' in the process of appointment of judges knowing fully that appointment of Judges was the sole discretion of the Executive (The Crown) under Government of India Act, 1935.

8. The term 'collegium' has not been used in the Constitution of India by framers of Constitution. However, the Judiciary through its power of interpretation of Constitution under Article 141 has expanded the term 'the Chief Justice of India' occurring in Articles 124 (2), 217 (1) and 222(1) to mean a collegium of select Judges which was three in Second Judges Case(1993) and further extended to five in the Third Judge Cases(1998). In effect, the opinion of the Chief Justice of India really means the views of Chief Justice taken in consultation with his four senior-most colleagues.

9. The Executive made a Presidential reference under Article 143 (1) of Constitution in 1998 where the nine –Judge Bench again confirmed that the opinion of the collegium of Judges have primacy in appointment and transfer of Judges of higher judiciary. In the light of the opinion preferred by the Supreme Court, a detailed Memorandum of Procedure for the purpose of appointment and transfer of Judges of higher Judiciary was prepared by the Department of Justice, Ministry of Law and Justice.

10. While giving advisory opinion to the President of India in 1998, the Judiciary kept a condition before the then Government that the apex Court would tender the opinion if law laid down in Second Judges Case is considered binding upon the Government and the opinion to be tendered by them would also be binding upon the Government of India. The then Attorney General had accepted the condition of the Judiciary on behalf of Government of India and as a result of which the primacy of opinion of collegium of Judges in the appointment and transfer of Judges to the higher Judiciary has the validity of law of land till now.

B. Need for Judicial Appointments Commission

11. The Constitution (One Hundred and Twentieth Amendment) Bill, 2013, provides for setting up of Judicial Appointments Commission by inserting Article 124(A) to Constitution of India and also amending Articles 124(2), 217(1) and 222(1). The structure and functions of the proposed Commission are provided in the Judicial Appointments Commission Bill, 2013 which is under examination of this Committee. The proposed legislation is an ordinary legislation and amendable by simple majority.

12. The Commission proposed under both the Bills has to take the place of current collegium of senior-most judges of Supreme Court including Chief Justice of India. As mentioned in the Statement of Objects and Reasons to the Bill, the Judicial Appointments Commission Bill would broad-base the appointment process with equal participation of the judiciary and the executive and make it participatory so as to ensure greater transparency and objectivity in the appointments to higher judiciary. The proposed Commission has the presence of persons of eminence from civil society which is an improvement including non-constitutional functionaries in the appointment process of judges to higher judiciary.

13. The present process adopted by the collegium of judges is beset with its own problem of opacity and non-accountability besides excluding Executive entirely in the collaborative and consultative exercise for appointment of judges to Bench of higher judiciary. Because of its inherent deficiencies in the collegium, as many as approximately 275 posts of judges in various High Courts are lying vacant, which has direct bearing upon justice delivery system and thereby affecting the

institutional credibility of judiciary. Arrears in courts are attributed to the large number of vacancies in the Benches of High Courts amongst other reasons. Even Late Justice J.S. Verma, who was one of the authors of Second Judges Case on a later reflection has observed that:

“...my 1993 judgment has been both misunderstood and misused. Therefore some kind of rethink is requiredmy judgment says that the appointment process of High Court and Supreme Court judges is basically a joint or participatory exercise between the executive and the judiciary both taking part in it”.

14. Two other distinguished jurists of the country, Justice M.N. Venkatachaliah and Justice B.R. Krishna Iyer including Late Justice Verma have suggested creation of National Judicial Commission for transparent appointment procedure to the higher judiciary.

15. Some of the Jurists who appeared before the Committee stated that the proposed Commission has representation from Executive through the Minister of Law & Justice. This will amount to interference of Executive in the appointment of judges and thereby will affect the independence of judiciary. They were of the view that the present system would have worked well had the aspects of transparency and accountability been taken care of. They also had the apprehension that the proposed Bill may not be able to sustain the test of judicial scrutiny.

16. The Committee also came across with the suggestions where some of the witnesses had expressed that the collegium was not transparent and accountability was not inbuilt. Now, through the proposed Commission, assessment of legal acumen would be done by the members of the Commission from judiciary, while members of the Commission from executive will assess antecedent/character of the candidate for

appointment to the Bench of higher judiciary. It is expected that the broad base of appointment process will ensure greater transparency and objectivity in the appointments of Higher Judiciary.

17. The Committee acknowledged the recommendation of the Second Administrative Reforms Commission (ARC) in its Fourth Report titled 'Ethics in Governance' for establishment of National Judicial Commission.

18. Law Commission in its Two-hundred and Fourteenth Report (2008) has observed that the Indian Constitution provides a beautiful picture of check and balances under Articles 124(2) and 217(1) for the appointment of Judges of the Supreme Court and High Courts where both the Executive and Judiciary have been given an equal and balanced role. This balance has been upset by the Second Judges Case and the original balance of power needs to be restored.

19. Eminent jurists such as Shri M.N. Venkatachaliah and J.S. Verma, Chief Justices of India (Retired), Justice Ravindaran, Supreme Court Judge(Retired) and Professor Madan Gopal have expressed concern at the quality and the system of appointments made to High Courts under the present collegium system where lobbying is rampant and most eligible are often ignored. They have strongly advocated for setting up of Judicial Appointments Commission to select eligible and meritorious candidate for appointment of High Court Judges.

20. The National Commission to Review the Working of the Indian Constitution (2002) recommended on the issue of appointment, transfer and removal of Judges of higher courts as under:-

“It would be worthwhile to have a participatory mode with the participation of both the executive and the judiciary in making

such recommendations. The Commission proposes the composition of the Collegium which gives due importance to and provides for the effective participation of both the executive and the judicial wings of the State as an integrated scheme for the machinery for appointment of Judges. This Commission, accordingly, recommends the establishment of a National Judicial Commission under the Constitution.”

21. The Attorney General for India, in 2010 was of the view that the Memorandum of Procedure for appointment of Chief Justice and Judges of Supreme Court and High Courts do not reflect the correct position in the law and requires to be revised. According to him, the Executive is also a consultee and if appointment can only be made as a result of consensus between all the consultees then a negative opinion from the Executive cannot be ignored or overridden. Another negative opinion can come from any consultee and not from the Executive alone. The entire text of opinion of Attorney General is at **Annexure-IV**.

22. The same Attorney General of India who appeared before the Committee on the Bill was of the opinion:-

- that appointment of judges of higher judiciary is a part of Basic Structure of Constitution and the structure of Constitution as it was at the time of its enactment in 1950 has to be considered from the point view of Basic Structure doctrine of Constitution. Judicial pronouncement in 1993 has altered the Basic structure of Constitution by interpreting the word 'consultation' to mean the 'concurrence' within the meaning of Articles 124(2) and 217(1) of Constitution.

- The present collegium which has been evolved through judicial decisions in 90s has received criticism especially from retired Chief Justices and judges for failing to attract outstanding people in legal fraternity to the Bench of higher judiciary thereby affecting independence of judiciary which is one of the Basic Structures of Constitution.
- As to the aspect of sustainability of the Bill he averred that Parliament may in its wisdom keep structure and function of Judicial Appointments Commission under a new Schedule to the Constitution to make it difficult for the Government to alter its composition through ordinary legislation in future.

23. None of the democratic countries in the world has the mechanism where Judges are appointing themselves. However, evidence of the mechanism of Commission having presence of Executive therein is found in the United Kingdom, South Africa, Russia, Canada, Sri Lanka, Japan etc.

C. Provisions of the Bill and suggestions received from stakeholders

24. In the course of examination of the Bill, the Committee came across the various suggestions from the witnesses and also from those who submitted their views in writing. The Committee went through the suggestions made by stakeholders before it. Some of the important suggestions which drew the attention of the Committee on the provisions of the Bill are enumerated in the succeeding paragraphs.

Structure of JAC

25. The composition of Judicial Appointments Commission as provided in the Bill (Clause 3) is as under:-

- Chief Justice of India - Chairperson - *Ex-officio*;
- Two senior most Judges of Supreme Court next to Chief Justice of India - Member - *Ex-officio*;
- Union Minister in-charge of Law and Justice - Member *Ex-officio*;
- and
- Two eminent persons to be nominated by a Committee comprising the Prime Minister, Chief Justice of India and Leader of Opposition in the House of People - Members.

26. The Secretary to Government of India in the Department of Justice would be the convener to the Commission.

27. Two eminent persons shall be nominated for a period of three years without being re-nominated.

28. The important suggestions on the composition of Judicial Appointments Commission are as under:-

- Structure and functions of Judicial Appointments Commission needs to be protected under Article 368 of the Constitution of India to safeguard independence of judiciary which is a Basic Structure of Constitution;
- The area of eminence for the Eminent members in the Judicial Appointments Commission to be specified in the Bill;
- Consensus in the Commission may be near impossible always. To avoid the tie in the Commission, composition of the Commission may be increased to seven with Hon'ble Vice President of India as Chairman;
- Bar is one of the stake holders for appointment to higher judiciary needs representation in the composition of the Commission;

- Retired Chief Vigilance Commissioner should be made the ex-officio member of the Commission;
- Registrar-General, Supreme Court of India may be convener of the Commission instead of the Secretary, Department of Justice, Ministry of Law and Justice; and
- Attorney-General for India may be a member of the Commission in place of Minister of Law and Justice.

Functions of JAC

29. The function of JAC is to recommend persons of outstanding calibre in legal profession with impeccable integrity for appointment as Chief Justice of India, Judges of Supreme Court, Chief Justices of High Courts and other Judges of High Courts to the President of India. It also recommends to President of India for transfer of Chief Justices of High Courts and other Judges of High Courts from one High Court to other High Court. The Commission will have to elicit views of Governor, Chief Minister and Chief Justice of High Court of that State for appointment of Judges of that High Court as provided in Clause 5 of the Bill.

30. The important suggestions on the function of Judicial Appointments Commission are as under :-

- State level Judicial Commission on the lines of JAC may be provided in the Bill;
- A body comprising Governor, Chief Minister, Leader of Opposition of Legislative Assembly, Chief Justice of High Court may be provided for consultation of names to be recommended to JAC for appointment of judges of that High Court; and

- Fifty percent of High Court Judges may be reserved for judges of Subordinate Judiciary.

Independent Secretariat

31. The Secretariat to the Commission will be constituted which will initiate the process of short-listing of candidates by rules and regulations under Clause 6 of the Bill.

32. Suggestions have been received to provide independence and permanent Secretariat to the Commission.

Filling-up of vacancies in Higher Judiciary

33. Clause 7 of the Bill provides time period within which intimation for filling up of vacancies caused by superannuation, resignation, death, etc. Two months' period for the Government to intimate to the Commission before occurrence of vacancy on account of superannuation and two months' period after the occurrence of resignation and death is provided in the Bill.

34. It was put forth before the Committee that the process of appointment should be initiated atleast six months before the occurrence of those vacancies arising due to superannuation while the process of initiation of filling up vacancies arising due to death or resignation of a judge, the process should be initiated seven days after its occurrence.

Procedure of Shortlisting of Candidates

35. Procedures for short-listing candidates for selection to the Bench of higher Judiciary mentioned under Clause 8(3) of the Bill is to be laid down through rules and regulations under Clauses 11 and 12 of the Bill.

36. Suggestions have been received to create a Statutory Search Committee of short-listing candidates for the consideration of JAC as members of JAC are high-profile persons having role in the selection of the candidate to the Bench of the higher Judiciary. It could be more practicable if Panel is prepared by the Search Committee for selection by the JAC.

Other Issues

37. Some important suggestions received by Committee on issues not directly connected to the provisions of the Bill are as under:-

- Laying down of guidelines for transfer of judges should be made clear by the Commission;
- Casting vote to the chairman of the Commission in the event of split in the Commission on the name of candidate for appointment to the Bench of higher judiciary;
- All India Judicial Service as envisaged of Article 312 of Constitution should be made operational to attract best available talents for subordinate judiciary which is a recruiting ground for higher judiciary. Necessary legislation be enacted for the purpose.
- 2/3 judges are appointed to the High Courts from the Bar of High Court. Provisions may be made in the Bill for including the Members of Bar also in the consultation process for appointment of Judges;
- Retirement age of High Courts and Supreme Court Judges to be increased from 65 to 68, respectively;
- Rotation of the post of Chief Justice of India amongst Judges of Supreme Court;

- Cooling off period of ten years for Judges for post-retirement appointment in Commissions and Tribunals;
- Keep Judicial Appointments Commission within ambit of the Right of Information Act, 2005; and
- Judicial Appointments Commission to recommend to the President of India for removal of judges and replace the cumbersome process of impeachment of judges.
- Impeachment procedure of judges of higher judiciary is too cumbersome and impracticable. Removal of judges needs to be assigned to Judicial Appointments Committee for being recommended to the President of India. Necessary Constitutional amendment should be enacted.

D. COMMITTEE'S RECOMMENDATIONS/OBSERVATIONS

38. The Committee appreciates the attempt of Government to set up Judicial Appointments Commission in place of present collegium which has inherent deficiencies and problems of opacity and non-accountability and reducing the Executive to a secondary position in the process of appointment of judges to the higher judiciary. It feels that the proposed Commission would ensure equal and active participation of both the Executive and the Judiciary in collaborative and participatory manner to find best and brightest persons with impeccable integrity to the Bench of higher Judiciary for the purpose of securing independent and impartial judiciary which is a Basic Structure of the Constitution, as per judicial pronouncement, whether one agrees or not.

39. The Committee joins the concern echoed by many stakeholders who appeared before the Committee pleading for giving protection of Article 368 of the Constitution to structure and functions of JAC so as to protect the Basic Structure of Constitution. The Committee, accordingly, recommends that structure and functions of the Commission should be mentioned in the Constitution itself. The Committee while endorsing their views, observes that constitutional status to the appointment and transfer of Judges by the Commission may be given to allay apprehension expressed by legal luminaries.

40. The Committee observes the Bill is not seeking to restore the pre-1993 position which the Government could have rightfully exercised. The Committee appreciates the attempt of Government to maintain a balance between the executive and the judiciary in regard to judicial appointments.

41. The Committee observes that the present Judicial Appointments Commission is broad based having representation from Judiciary, Executive and civil society which would facilitate wider consultation for assessing the suitability and integrity of the persons to be appointed as judges to Bench of higher judiciary. In that context, the Committee suggests that there should be three eminent persons in the Commission instead of two as provided for in the Bill and at least one out of the three Members should be from SC/ST/OBC/Women/minority preferably by rotation. The Committee also suggests that the fields of eminence may be specified in the Bill.

42. The Committee feels that the Judicial Appointments Commission would be overridden to handle appointment of eight hundred odd Judges of 24 High Courts in the country. The only

procedure prescribed in the case of appointment of High Court Judges is to elicit views of Governor and Chief Minister of concerned State and Chief Justice of concerned High Court in writing. It is not mentioned how shortlisting of candidates to the Bench of higher Judiciary would be done upon which the views of these three constitutional functionaries are to be sought.

43. The Committee notes that according to Clause 5 of the Bill the views of three constitutional functionaries of the State, namely, Governor, Chief Minister and Chief Justice of the concerned High Court would be solicited separately in writing. It implies that there will not be any consultation amongst the three constitutional functionaries of the State. The Committee feels that this process is time consuming and also limits the scope of consultation, amongst themselves.

44. Considering the responsibility of Judicial Appointments Commission to select 800 odd Judges of 24 High Courts in the country and also the fact that suitable involvement of the Constitutional and other functionaries at the State level in the process of appointment, Committee feels that in order to assist the Judicial Appointment Commission, Government may consider the feasibility and practicability of creation of State Level Commission at the earliest. The State Level Commission may be consisted of the Chief Minister of the State, Chief Justice of High Court and Leader of Opposition. The Committee hopes this would not only lessen the burden of Commission at apex level but will also provide for a more broad based appointment process.

45. One of the responsibilities of Judicial Appointments Commission is transfer of judges of High Court from one to another.

The initiative of the proposal of transfer is made by Chief Justice of India whose opinion in this regard is determinative. This has been reflected in the Memoranda of Procedure for appointment and transfer of Chief Justice and Judges of High Courts prepared by Department of Justice. The Committee desires that regulations may be made at the earliest by the Commission for transfer of the judges in supersession of Memoranda of Procedure for appointment and transfer of Chief Justice and Judges and of High Courts prepared by Department of Justice. The Committee also desires that the judge of High Court who is in-charge of administration should be invariably from outside of the State concerned.

46. The objective of the Bill is not only to ensure fairness and transparency in appointment of judges to the Bench of higher judiciary, but also to ensure timely filling up of vacancies in the judiciary. The Committee desires that the Judicial Appointments Commission should initiate process for appointment to judges of High Courts well in advance so that the vacancy is filled up in time-bound manner so as to improve justice delivery system in order to gain confidence of the people.

47. The Committee notes that the Bill delegates its primary function to the Commission i.e., procedure for short-listing the candidates for their selection as High Court Judges. It implies that Parliament is delegating its legislating power to the Commission which should have been part of this Bill. The Committee feels that leaving vital thing to the regulations to be made by the Commission need not only to be reasonably restricted but also the Bill should specifically provide therefor. The Committee, therefore, suggests that the Government may consider that Clause 8(3) should lay down the

broad parameters in respect of procedure for short listing the candidates for selection of Judges in the High Courts.

48. The earlier selection processes i.e. pre and post 1993, did not provide any opportunity to the aspiring eligible advocates to express their willingness to be the judge of the High Court. The Committee feels that Government may consider for a procedure whereby such opportunity is given through public notification etc. to the members of Bar. The Committee recommends that the eligible member of Bar should be given an opportunity to be considered for appointment of judge of High Court in an objective and transparent manner through advertisement as is the practice in the United Kingdom.

49. The Constitution (One Hundred and Twentieth Amendment) Bill is directly linked to this Bill, whereas the Judicial Standards and Accountability Bill is also linked to both the Bills. The Committee recommends to Government that all the three Bills may be taken into consideration at the earliest.

50. All India Judicial Service has been envisaged under Article 312 of the Constitution of India. The Committee expresses its concern over the delay in its creation. The Committee insists that AIJS may be created without further delay to attract best talent to the subordinate judiciary from where 33 percent of the judicial officers are elevated to the Bench of High Courts. Reservation as per existing policy of Government of India may be made applicable in the All India Judicial Service also.

51. The Committee recommends that suitable modifications, accordingly, may be made in the proposed Bill in the light of Committee's recommendations in the preceding paras.

RECOMMENDATIONS/OBSERVATIONS OF
THE COMMITTEE AT A GLANCE

1. The Committee appreciates the attempt of Government to set up Judicial Appointments Commission in place of present collegium which has inherent deficiencies and problems of opacity and non-accountability and reducing the Executive to a secondary position in the process of appointment of judges to the higher judiciary. It feels that the proposed Commission would ensure equal and active participation of both the Executive and the Judiciary in collaborative and participatory manner to find best and brightest persons with impeccable integrity to the Bench of higher Judiciary for the purpose of securing independent and impartial judiciary which is a Basic Structure of the Constitution, as per judicial pronouncement, whether one agrees or not. [Para 38]

2. The Committee joins the concern echoed by many stakeholders who appeared before the Committee pleading for giving protection of Article 368 of the Constitution to structure and functions of JAC so as to protect the Basic Structure of Constitution. The Committee, accordingly, recommends that structure and functions of the Commission should be mentioned in the Constitution itself. The Committee while endorsing their views, observes that constitutional status to the appointment and transfer of Judges by the Commission may be given to allay apprehension expressed by legal luminaries. [Para 39]

3. The Committee observes the Bill is not seeking to restore the pre-1993 position which the Government could have rightfully exercised. The Committee appreciates the attempt of Government to

maintain a balance between the executive and the judiciary in regard to judicial appointments. [Para 40]

4. The Committee observes that the present Judicial Appointments Commission is broad based having representation from Judiciary, Executive and civil society which would facilitate wider consultation for assessing the suitability and integrity of the persons to be appointed as judges to Bench of higher judiciary. In that context, the Committee suggests that there should be three eminent persons in the Commission instead of two as provided for in the Bill and at least one out of the three Members should be from SC/ST/OBC/Women/minority preferably by rotation. The Committee also suggests that the fields of eminence may be specified in the Bill. [Para 41]

5. The Committee feels that the Judicial Appointments Commission would be overridden to handle appointment of eight hundred odd Judges of 24 High Courts in the country. The only procedure prescribed in the case of appointment of High Court Judges is to elicit views of Governor and Chief Minister of concerned State and Chief Justice of concerned High Court in writing. It is not mentioned how shortlisting of candidates to the Bench of higher Judiciary would be done upon which the views of these three constitutional functionaries are to be sought. [Para 42]

6. The Committee notes that according to Clause 5 of the Bill the views of three constitutional functionaries of the State, namely, Governor, Chief Minister and Chief Justice of the concerned High Court would be solicited separately in writing. It implies that there will not be any consultation amongst the three constitutional

functionaries of the State. The Committee feels that this process is time consuming and also limits the scope of consultation, amongst themselves. [Para 43]

7. Considering the responsibility of Judicial Appointments Commission to select 800 odd Judges of 24 High Courts in the country and also the fact that suitable involvement of the Constitutional and other functionaries at the State level in the process of appointment, Committee feels that in order to assist the Judicial Appointment Commission, Government may consider the feasibility and practicability of creation of State Level Commission at the earliest. The State Level Commission may be consisted of the Chief Minister of the State, Chief Justice of High Court and Leader of Opposition. The Committee hopes this would not only lessen the burden of Commission at apex level but will also provide for a more broad based appointment process. [Para 44]

8. One of the responsibilities of Judicial Appointments Commission is transfer of judges of High Court from one to another. The initiative of the proposal of transfer is made by Chief Justice of India whose opinion in this regard is determinative. This has been reflected in the Memoranda of Procedure for appointment and transfer of Chief Justice and Judges of High Courts prepared by Department of Justice. The Committee desires that regulations may be made at the earliest by the Commission for transfer of the judges in supersession of Memoranda of Procedure for appointment and transfer of Chief Justice and Judges and of High Courts prepared by Department of Justice. The Committee also desires that the judge of High Court who is in-charge of administration should be invariably from outside of the State concerned. [Para 45]

9. The objective of the Bill is not only to ensure fairness and transparency in appointment of judges to the Bench of higher judiciary, but also to ensure timely filling up of vacancies in the judiciary. The Committee desires that the Judicial Appointments Commission should initiate process for appointment to judges of High Courts well in advance so that the vacancy is filled up in time-bound manner so as to improve justice delivery system in order to gain confidence of the people. [Para 46]

10. The Committee notes that the Bill delegates its primary function to the Commission i.e., procedure for short-listing the candidates for their selection as High Court Judges. It implies that Parliament is delegating its legislating power to the Commission which should have been part of this Bill. The Committee feels that leaving vital thing to the regulations to be made by the Commission need not only to be reasonably restricted but also the Bill should specifically provide therefor. The Committee, therefore, suggests that the Government may consider that Clause 8(3) should lay down the broad parameters in respect of procedure for short listing the candidates for selection of Judges in the High Courts. [Para 47]

11. The earlier selection processes i.e. pre and post 1993, did not provide any opportunity to the aspiring eligible advocates to express their willingness to be the judge of the High Court. The Committee feels that Government may consider for a procedure whereby such opportunity is given through public notification etc. to the members of Bar. The Committee recommends that the eligible member of Bar should be given an opportunity to be considered for appointment of judge of High Court in an objective and transparent manner through advertisement as is the practice in the United Kingdom. [Para 48]

12. The Constitution (One Hundred and Twentieth Amendment) Bill is directly linked to this Bill, whereas the Judicial Standards and Accountability Bill is also linked to both the Bills. The Committee recommends to Government that all the three Bills may be taken into consideration at the earliest. [Para 49]

13. All India Judicial Service has been envisaged under Article 312 of the Constitution of India. The Committee expresses its concern over the delay in its creation. The Committee insists that AIJS may be created without further delay to attract best talent to the subordinate judiciary from where 33 percent of the judicial officers are elevated to the Bench of High Courts. Reservation as per existing policy of Government of India may be made applicable in the All India Judicial Service also. [Para 50]

14. The Committee recommends that suitable modifications, accordingly, may be made in the proposed Bill in the light of Committee's recommendations in the preceding paras. [Para 51]

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