



**PARLIAMENT OF INDIA**

**RAJYA SABHA**

**44**

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

**FORTY FOURTH REPORT**

**ON**

**THE CONSTITUTION (ONE HUNDRED AND  
FOURTEENTH AMENDMENT) BILL, 2010**

**(PRESENTED TO THE RAJYA SABHA ON 9<sup>TH</sup> DECEMBER, 2010)  
(LAID ON THE TABLE OF THE LOK SABHA ON 9<sup>TH</sup> DECEMBER, 2010)**

**RAJYA SABHA SECRETARIAT  
NEW DELHI**

DECEMBER, 2010/AGRAHAYANA, 1932 (SAKA)

***Website:<http://rajyasabha.nic.in>  
E-mail:[rsc-pers@sansad.nic.in](mailto:rsc-pers@sansad.nic.in)***

PARLIAMENT OF INDIA  
RAJYA SABHA

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

FORTY FOURTH REPORT

ON

THE CONSTITUTION (ONE HUNDRED AND  
FOURTEENTH AMENDMENT) BILL, 2010

(PRESENTED TO THE RAJYA SABHA ON 9<sup>TH</sup> DECEMBER, 2010)  
(LAID ON THE TABLE OF THE LOK SABHA ON 9<sup>TH</sup> DECEMBER, 2010)

RAJYA SABHA SECRETARIAT  
NEW DELHI  
DECEMBER, 2010/AGRAHAYANA, 1932 (SAKA)

## CONTENTS

		PAGES
1.	COMPOSITION OF THE COMMITTEE.....	(i)-(ii)
2.	INTRODUCTION .....	(iii)
3.	REPORT .....	1-8
4.	RELEVANT MINUTES OF THE MEETINGS OF THE COMMITTEE .....	9-16
5.	ANNEXURE – .....	17-43
	A.	
	The Constitution (One Hundred and Fourteenth Amendment) Bill, 2010 .....	19-23
	B.	
	Comments of the Department of Justice on the Memoranda received from individuals/organisations/ stakeholders .....	24-43

COMPOSITION OF THE COMMITTEE (2010-11)  
(Constituted on 31st August, 2010)

1. Shrimati Jayanthi Natarajan — *Chairperson*

**RAJYA SABHA**

2. Shri Shantaram Laxman Naik
3. Dr. Abhishek Manu Singhvi
4. Shri Balavant *alias* Bal Apte
5. Shri Ram Jethmalani
6. Shri Parimal Nathwani
7. Shri Amar Singh
8. Shri Ram Vilas Paswan
9. Shri O. T. Lepcha
- \*10. Vacant

**LOK SABHA**

11. Shri N.S.V. Chitthan
12. Shrimati Deepa Dasmunsi
13. Shrimati Jyoti Dhurve
14. Shri D.B. Chandre Gowda
15. Dr. Monazir Hassan
16. Shri Arjun Munda
17. Shri Shailendra Kumar
18. Shrimati Chandresh Kumari
19. Shri Bhajan Lal
20. Dr. Kirodi Lal Meena
21. Ms. Meenakshi Natarajan
22. Shri Devji M. Patel
23. Shri Harin Pathak
24. Shri Lalu Prasad
25. Shri S. Semmalai
26. Shri Vijay Bahadur Singh
27. Dr. Prabha Kishor Taviad
28. Shri Manish Tewari
29. Shri R. Thamaraiselvan
30. Adv. P.T. Thomas (Idukki)
31. Vacant

**SECRETARIAT**

Shri Deepak Goyal, Joint Secretary

Shri K.P. Singh, Director

Shri K.N. Earendra Kumar, Joint Director  
Shrimati Niangkhanem Guite, Assistant Director  
Shrimati Catherine John L., Committee Officer

## INTRODUCTION

I, the Chairperson of the Standing Committee on Personnel, Public Grievances, Law and Justice, having been authorised by the Committee, present this Forty Fourth Report of the Committee relating to The Constitution (One Hundred and Fourteenth Amendment) Bill, 2010.

2. In pursuance of the rules relating to the Department-related Parliamentary Standing Committee, the Hon'ble Chairman, Rajya Sabha referred@ the Bill, as introduced in the Lok Sabha on the 25th August, 2010 to this Committee.

3. The Committee decided to issue Press Release to solicit views/suggestions from interested individuals/organisations/ experts/institutions on the various provisions of the Bill. The Press Release appeared in print media on the 25th September, 2010. In response thereto, a number of memoranda were received. The memoranda containing the relevant suggestions were forwarded to the Department of Justice, Ministry of Law and Justice for their comments thereon.

4. The Committee considered the Bill and heard the presentation of the Secretary, Department of Justice, Ministry of Law and Justice and took oral evidence of some non-official witnesses to have better appreciation of the subject.

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

- (i) Background note on the Bill received from the Department of Justice;
- (ii) The Constitution (One Hundred and Fourteenth Amendment) Bill, 2010;
- (iii) The Constitution of India;
- (iv) The Constitution (Fifteenth Amendment) Act, 1963; and
- (v) Comments of the Ministry of Law and Justice on the views/suggestions contained in the memoranda submitted by individuals/organisations/experts on various provisions of the Bill.

6. The Committee held two meetings to discuss the Bill in detail.

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

NEW DELHI;  
7<sup>th</sup> December, 2010

**JAYANTHI NATARAJAN**  
*Chairperson,*  
*Committee on Personnel*  
*Public Grievances, Law and Justice*

## REPORT

The Constitution (One Hundred and Fourteenth Amendment) Bill, 2010 (Annexure-A) introduced\* in the Lok Sabha on 25th August, 2010 seeks to increase the age of retirement of Judges and additional Judges or acting Judges of High Courts from sixty-two years to sixty-five years.

2. To attain the objective, the Bill seeks to amend clause (1) of Article 217 of the Constitution by substituting the word “sixty-five years” for the words “sixty-two years”, and to amend clause (3) of Article 224 of the Constitution by substituting the words “sixty-five years” for the words “sixty-two years”. The Bill was referred\*\* by the Hon’ble Chairman, Rajya Sabha, in consultation with the Hon’ble Speaker, Lok Sabha to the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on the 15th September, 2010 for examination and report.

3. The Statement of Objects and Reasons appended to the Bill elucidate the reasons and the need for bringing forth the proposed amendment. It states as under:

*“Clause (1) of article 217 of the Constitution of India allows every Judge of a High Court to hold office until he attains the age of sixty-two years. Clause (3) of article 224 of the Constitution provides that no person appointed as an additional or acting Judge of a High Court shall hold office after attaining the age of sixty-two years. The age of retirement of High Court Judges, which was fixed at sixty years in the beginning, was enhanced to sixty-two years by the Constitution (Fifteenth Amendment) Act, 1963. Since then, no revision has taken place in this regard.”*

4. The Statement of Objects and Reasons further states:

*“The Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, in its 39th Report dated the 29th April, 2010, has recommended to raise the retirement age of the Judges of the High Courts from sixty-two to sixty-five to be at par with the retirement age of the Judges of the Supreme Court. Further, most of the reasons adduced by the Fifth Central Pay Commission in support of its recommendation for increasing the age of retirement of the Central Government employees, such as global practices, increase in life expectancy, improved health standards, need for utilisation of experience and wisdom of senior employees, etc., would also apply to the Judges.”*

*“In view of the present state of vacancies of Judges in High Courts, it is extremely difficult to clear the heavy pendency of cases in the High Courts. Increasing the age of retirement by three more years would restrict occurrence of new vacancies on account of superannuation for the next three years during which time the existing backlog in vacancies could be cleared. This would have a clear impact on reduction of pendency of cases in the High Courts.”*

*“It is, therefore, proposed to increase the age of retirement of Judges and additional or acting Judges of High Courts from sixty-two years to sixty-five years.”*

5. The Committee, considered the background note dated 24th September, 2010 submitted by the Ministry of Law and Justice (Department of Justice) which reads as follows:-



*“The Constitution (One Hundred and Fourteenth Amendment) Bill, 2010 has been introduced in the Lok Sabha further to amend the Constitution (Fifteenth Amendment) Act, 1963. Pursuant to the recommendation of the Committee in its 39th Report presented in both the Houses of Parliament on 29th April, 2010 that ‘Government should immediately bring forward a proposal to raise the retirement age of Judges of High Courts from 62 to 65 to be at par with the retirement age of Judges of the Supreme Court without any further delay’. The age of retirement of the Judges of Supreme Court of India has been determined as 65 years since the commencement of the Constitution. However, the retirement age of High Court Judges, which was fixed at 60 years in the beginning, was revised to 62 years in October, 1963. This was preceded by increase in the retirement age of Central Government employees from 55 to 58 years w.e.f. 1.12.1962 on the recommendations of the Second Central Pay Commission, mainly relying upon increase in life expectancy in India. Soon after, the retirement age of the Judges of High Courts was raised from 60 to 62 years on the same basis w.e.f. 5.10.1963 by the Constitution (Fifteenth Amendment) Act, 1963. The Fifth Central Pay Commission in support of its recommendation for increasing the age of retirement of Central Government employees such as global practices, increase in life expectancy, improved health standards, need for utilization of experience and wisdom of senior employees, etc. apply to the Judges also. It may also be noted that while the life expectancy in India at birth was 58.8 years of age in 1970-75 it has increased to the level of 67.1 years in 2002-2006 for males and from 59.2 years to 70.0 years for females. General increase in the age of longevity also supports the issue of increase in age of retirement of High Court Judges.*

*Hon'ble Supreme Court of India in its Judgment in All India Judges Association case has directed that Judicial Officers, who retire at 60 years of age may be reemployed and allowed to work till the age of 62 years if there are vacancies in the cadre of the District Judges. Thus the District Judges will work upto the age of 62 years. Further, the prevailing huge pendency of cases in High Courts require more stable environment of working in the High Courts. The nation will continue to have the benefit of utilizing the knowledge and experience of High Court Judges, if their age of retirement is raised to 65 years keeping in view the increase in longevity. It will, hopefully, bring about commensurate benefits of greater experience and maturity in judgments.*

*As on 30.04.2010, the working Judge strength in all the High Courts was 625 Judges leaving 270 vacancies to be filled up. Vacancies in the High Courts occur from time to time due to superannuation, resignations etc. The filling up the vacant posts is a long drawn process. Despite continuous follow-up action as per the procedure laid down in the Memorandum of Procedure for appointment of Judges of the High Courts, the backlog has persisted. With the present state of vacancies, it appears extremely difficult to clear the heavy pendency of cases in the High Courts. Increasing the age of retirement by 3 more years would restrict occurrence of new vacancies on account of superannuation for the next three years during which time the existing backlog in vacancies could be cleared. This would have a clear impact on reduction of pendency of cases in the High Courts as envisaged also in the Vision document of the Ministry of Law and Justice”.*

6. The Committee heard the presentation of the Secretary, Department of Justice, Ministry of Law and Justice, on the Bill on Wednesday, the 29th September, 2010.
7. In order to have a broader view on the Bill, the Committee decided to invite views/ suggestions from desirous individuals/organizations. Accordingly, a press release was issued inviting views/suggestions

from individuals/organizations. In response to the press release published in major English and Hindi newspapers on 25th September, 2010, a number of memoranda were received.

8. The Committee considered the memoranda that contained pertinent suggestions/ comments on the various aspects of the Bill. Some significant issues raised in such memoranda have been summarized in the succeeding paras. Some select memoranda were also forwarded to the Ministry of Law and Justice (Department of Justice) for their comments. The statement of these memoranda giving the gist of views and suggestions contained therein, along with the comments of the Ministry of Law and Justice is placed at Annexure-B.

9. To understand the various perspectives on the Bill, the Committee also decided to hear the views of the stakeholders on the Bill. In this process the Committee heard the views of Shri B.V. Acharya, Senior Advocate, Bangalore, Shri M. Rajender Reddy, Advocate and Member, Bar Council of India, Hyderabad and Shri M.A. Rangaswamy, New Delhi on the provisions of the Bill.

10. The major points that emerged in various memoranda are summarized as follows:---

- (i) There is no mechanism in our system to review the judicial work done by High Court judges. A perusal of the Supreme Court decisions remitting the cases back to the High Courts directing to render decision after adducing reasons or after observing due procedure will signify the pathetic situation in various High Courts.
- (ii) Instead of increasing the age of retirement of various judges of High Courts, and also because most of the judges also feel that they are overburdened, it will be better if the Government fill-up the vacant posts of various High Court Judges so that the pending work gets distributed amongst a larger number of judges and dispensation of justice to the people will not suffer due to the shortage of Judges.
- (iii) The High Court judges should be made to give short dates of not longer than two to three weeks, so that the hearings could be conducted at short intervals and the entire case solved within a period of 2-3 years. The rich and powerful party should not be allowed to derive the advantage/ reliefs due to other party's poor financial position.
- (iv) The age of all the judges should not be increased to 65 years. Instead the extension of time period should be given to only those judges whose work record is found satisfactory. Also additional parameters like their health and sound mind should also be taken into consideration. All the judges do not deserve to get extension of time or increase of work period.
- (v) Rather than increasing retirement age, Government should fill up all vacancies of judges in all courts urgently. If necessary the number of courts and judges should be increased to deliver fast justice.
- (vi) All the courts including the Supreme Court should be brought under the Right to information Act, so that litigants can know reasons for delay in cases filed by them.
- (vii) A mechanism to evaluate judges and suitably punish the inefficient should be in place. Basically all Judges should be accountable to the citizen for their action.

- (viii) The number of pending cases in Supreme and High Courts are enormous. The weekly holiday of every Saturday should be converted to second and fourth Saturday of every month. This will enable to increase the working years of judges instead of increasing the retirement age.
- (ix) The Government should plan Indian Judiciary Services. Young talented law graduates should be screened by UPSC or a more tough scrutiny test which is away from political interference. This will increase speedy judgments as well stop favors.
- (x) Vacancies must be filled up by new selection because our Constitution confers equal opportunity to all.
- (xi) The selection procedure for becoming the judge of High Court must be changed and the selection may take place from all Bars and by promotions by a competitive examination organized by Supreme Court and BCI jointly.
- (xii) The judges should be selected through competitive examination so that we get brilliant and talented Judges to solve public issues.
- (xiii) There should be "Online System" for the current and pending issues in the Courts to enable obtaining soft copy of rulings by e-mail.
- (xiv) We are running short of Judges of all categories. Constitution should be amended to extend the services of Judges of High Courts, subject to their medical fitness. There has to be a Medical Council that will format the criteria of fitness as per the prevailing medical standards of our country, giving consideration to the age factor.
- (xv) The Government already avails the services of judges even after their retirement in various manner. For example, they are invited to serve as Chairman, President or Members of various judicial and quasi-judicial forms, like the Administrative Tribunals, Customs Excise and Service Tax Appellate Tribunal, SEBI Tribunal, etc., where the age limit is 65. As such, since the Government itself finds them worthy for such important posts, there is no reason why they cannot continue to serve as a judge.
- (xvi) It should be appreciated that in most of the develop countries, retirement age of judges is above 65 years. For example, in United Kingdom and Canada, the retirement age is 75 years, while for Japan the retirement age is 65 years. As such, in other countries, this is an established practice.
- (xvii) Maturity makes a man perfect. One can give his best during this ripe stage of life.
- (xviii) An aged and experienced person can give his best and matured opinion/judgment in an easy manner.
- (xix) In this way the sitting judges will get more time and opportunity to take initiative in the matter of quick disposal of long pending cases.
- (xx) The efficacy of various Judgments depend on various- skill, knowledge of ramification of law like body of law civil/ common law, criminal law, statute law corpus juries, juries prudence ---- Constitution, etc. Therefore, enhancement of retirement of Judges of High Court/ Acting Judge of provincial - Apex-Court/ High Court from 62 years to 65 years should be according to their skill-knowledge, performance on the above mentioned different subjects.

- (xxi) One catastrophic consequence of the proposal is that there will be no regular vacancies for a post of High Court judges for the next 3 years and the authorities are totally deprived of the opportunity to recruit deserving and meritorious candidates, who are expected to help in speedy disposal of the cases.
- (xxii) Once this Bill is passed, there will be no limit to it and in future, there may be efforts to increase the age further. Besides this, other public agencies may also follow suit starting a chain reaction.
- (xxiii) There should be sincere efforts to appoint most qualified persons as High Court judges by a competitive exam on all India basis rather than increasing their age so that undeserving, unqualified persons should not be appointed as High Court judges and corruption in the higher judiciary can be curtailed. There should be representation to all sections of societies especially for women, SC/ST, etc. as per the provisions of Constitution of India.
- (xxiv) The Committee appointing the retired judges to posts in Tribunals, Commissions, etc. would have to bear in mind that such appointments cannot be made, mainly to oblige someone to continue his medical attention, or enjoy other perquisites on various extraneous grounds. The mental and physical fitness of a judge as well as his general outlook and ability to adjust to the changing age composition of society, and it's expectations would have to be kept in mind.
- (xxv) With increased life span and improved health conditions, when careers of the learned Judges of the High Courts are being cut short at the age of 62, when they are still capable of performing judicial functions, the justice delivery system in our country is being deprived of their substantial knowledge and experience.

11. The Secretary, Department of Justice, in her presentation before the Committee informed that the proposed increase in the age of retirement has also been recommended by this Committee in its earlier Reports. Stressing the need for the amendment, she stated:

*“... although the arrears are getting reduced but because of the institution of cases, there is no clear reduction in the pendency. Then, there are still 270 vacancies in High Courts. So, taking into account all this, as also the recommendations of the Standing Committee and several other decisions taken in the Chief Justices Conference and so on, the Government decided to move this Bill for increasing the retirement age from 62 to 65 years. This is also at par with the kind of thinking that has been going on the increase in the age of retirement of Government Servants mainly because there has been an increase in life expectancy and the people now are not that old when they are 60 or 62. So, taking into account all these things and also in the interest of the judiciary to have a certain amount of permanency in High courts, because sometimes they have very short tenures, and, also to reduce the pendency if we can take care of the vacancy position for some time, we have introduced this...”*

12. Apart from hearing the views of Secretary, Department of Justice, to understand the various perspectives on the Bill, the Committee decided to consider the views of the stakeholders on the Bill also. For this purpose, the Committee invited selected individuals and organizations before the Committee for tendering oral evidence.

13. The Committee's deliberations with such individuals/ representatives of the organizations witnessed a detailed discussion on the various aspects of the proposed amendments in the Bill and also other associated

issues that need to be addressed. The issues that emerged out during the Committee's interaction with the witnesses may be categorized under the following points:

- (i) The collegium system of appointment of Judges should be replaced by a National Judicial Commission and National Judicial Services so that vacancies in the High Courts could be fulfilled timely and in a transparent and accountable manner.
- (ii) Instead of enhancing the age of retirement of Judges, article 224 A of the Constitution should be utilized for the appointment of ad-hoc judges so that the problem of pendency of cases could be taken care of.
- (iii) Vacancies of the judges should be filled up one or two months before the retirement in order to deal with the existing problem of large vacancies of judges in High Courts.
- (iv) Unrestrained use of Article 224A may also be dysfunctional because it may in some cases encourage the corrupt practices.
- (v) The problem of existing vacancies of judges can not be addressed only by enhancing the age of retirement of judges of the High Court in view of the fact that most of the High Courts still do not have the adequate infrastructural capacity such as number of courts so as to accommodate the actual sanctioned strength of judges.
- (vi) To reduce pendency, it would be a better option to recruit the talented and competent people instead of continuing the people who have outlived their utility. The proposed Bill, if enacted, may lead to a situation where there will be no regular vacancies for the post of High Court judges for the next 3 years and the authorities would totally be deprived of the opportunity to recruit deserving and meritorious candidates, who are expected to help in speedy disposal of the cases.
- (vii) Until the present collegium system of appointment of judges remain in place, the present proposal would only enable less meritorious judges to continue in office for 3 more years.
- (viii) The proposed Bill may be passed, provided the amendments proposed in the Bill will only come in to force with prospective effect. Thus, a provision should be incorporated in the Bill that proposed amendment will apply only to those who are recruited hereafter.
- (ix) Also, the benefits of enhancement in retirement age should be conferred on only deserving and meritorious judges after a thorough scrutiny.

#### **Committee's Observations/ Recommendations**

**14. Taking into account the justifications given by the Secretary, Department of Justice, and the statement of objects and reasons appended to the Bill, the Committee supports the proposal for increase in the retirement age of the Judges of the High Courts from sixty-two years to sixty-five years and to be at par with the retirement age of the Judges of the Supreme Court. The Committee also acknowledges that the Bill has been brought forth in pursuance of the recommendations made by the Committee in its earlier, Reports.**

**15. The Committee endorses the Department's view that the rationale of the Fifth Central Pay Commission's recommendation for increasing the age of retirement of Central Government employees such as global practices, increase in life expectancy, improved health standards, need for utilization of**

**experience and wisdom of senior employees, etc. applies to the judges also. A general increase in the expectancy of life also supports the proposal to increase the age of retirement of the High Court Judges.**

16. The Committee also takes note of the Government's reasoning that increasing the age of retirement by three more years would restrict occurrence of new vacancies which would have a clear impact on reducing the pendency of cases in the High Courts. An analysis of the material provided by the Department reveals that a large number of vacancies exist at present in High Courts, i.e., 270 vacancies and only 625 judges are in position. The vacancies have accumulated due to the procedures involved in the appointment of judges. **In this backdrop, when the procedures for appointment of judges have not been successful enough in timely filling-up of the vacancies, the Committee acknowledges that the proposed amendment would provide the much needed relief as enhancement of the age of retirement of High Court Judges would at-least check further increase in the number of vacancies. The Committee, however, does not see the enhancement of age of retirement as a solution to delayed appointment of High Court Judges. The Committee, accordingly, recommends that the process of filling up of the existing vacancies may be expedited by all means.**

17. In the course of the deliberations, the Committee was apprised that some High courts still do not have adequate infrastructural capacity to accommodate the actual sanctioned strength of judges. **The Committee, therefore, is of the view that Government should seriously explore all the possible ways to overcome the infrastructural bottlenecks being faced by the High Court so that the High Courts could function as per their sanctioned strength and the problem of mounting pendency could be effectively dealt with.**

18. **The Committee further feels that the retirement of judges of High Court and Supreme Court coming at par, there would be less competition among the high court judges for getting elevated to the Supreme Court which presently means three years' additional service. This would also ensure a fairly reasonable tenure to the High Court Judges during which they could make some valuable contribution in the dispensation of justice.**

19. During the deliberations, some witnesses had expressed their apprehensions that the proposed Bill, if enacted, may lead to a situation where there will be no regular vacancies for a post of High Court judges for the next 3 years and the authorities would be totally deprived of the opportunity to recruit deserving and meritorious candidates, who are expected to help in speedy disposal of the cases. It was also said that the proposed Bill might be dysfunctional in the sense as it would extend the tenure of judges who are not competent enough and the judges having allegations of corruptions against them.

20. **The Committee takes a serious note of the concerns expressed by the witnesses. Integrity, honesty and output of the Judges are issues that need to be addressed by Government with all seriousness. The appointment and continuance of the judges is regulated under the Constitution, but there is an urgent need on the part of the Government to review the procedure for appointment of the judges in the higher judiciary and also to put in place some mechanism so as to optimize the output in their performance. Towards this objective, Government may consider creation of a National Judicial Commission having representation from the judiciary, executive, Bar and the Parliament. The Committee hopes that Government would take urgent steps in this direction. The concerns of the people that the proposed action might extend benefit in terms of extended years of service in certain non deserving cases too are appreciated, but, in the Committee's view, the solution to this lies in putting in place a well considered mechanism to see that the judiciary rises above from such allegations and the public perception changes.**

21. In some memoranda received by the Committee, it was opined that the benefits of enhancement in retirement age should be conferred on only deserving and meritorious judges after a thorough scrutiny and the present Bill should only be enacted after incorporating such requisite provisions. **The Committee, however, feels that it may not be possible to implement the proposed amendment on a selective basis, such as allowing the benefit of increased age only to the meritorious/ deserving because that is not the practice at present in the Government. Further, Article 224 of the Constitution already provides for appointment of additional judges up to two years. The Committee, therefore, is of the view that whatever be the age of retirement for the Judges, Article 224 of the Constitution can be utilized for obtaining the benefits of the experience and wisdom of meritorious and competent judges for up to two more years, if required.**

22. **The Committee reiterates that issues like, replacing the present judiciary driven system of appointment of judges to a rational, transparent and accountable method, dealing with the errant judges, etc. need to be addressed as soon as possible in a comprehensive manner. The Committee, therefore, feels that it would be much prudent to examine all these issues independently. Mixing of these issues with the proposed Bill and drawing conclusions is not desirable as the proposed Bill is on a different subject-matter and with a different objective, *per se*.**

23. **The Committee, therefore, endorses the proposed Bill in its present form and suggests that the Bill should be passed without delay because delaying it further would defeat the very cause that necessitates its introduction.**

# **MINUTES**



**RELEVANT MINUTES OF THE MEETINGS OF THE  
DEPARTMENT RELATED PARLIAMENTARY STANDING  
COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE**

**III  
THIRD MEETING**

The Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice met at 11.00 A.M. on Wednesday, the 29th September, 2010 in Committee Room No. G074, Ground Floor, Parliament Library Building, New Delhi.

**MEMBERS PRESENT**

1. Shrimati Jayanthi Natarajan — *Chairperson*

**RAJYA SABHA**

2. Shri Shantaram Laxman Naik
3. Shri Balavant *alias* Bal Apte
4. Shri Ram Vilas Paswan
5. Shri M. Rajasekara Murthy

**LOK SABHA**

6. Shrimati Jyoti Dhurve
7. Shri D.B. Chandre Gowda
8. Dr. Monazir Hassan
9. Shri Shailendra Kumar
10. Dr. Kirodi Lal Meena
11. Kumari Meenakshi Natarajan
12. Shri S. Semmalai
13. Shri Manish Tewari
14. Shri R. Thamaraiselvan

**SECRETARIAT**

Shri Deepak Goyal, Joint Secretary

Shri K.P. Singh, Director

Shri K.N. Earendra Kumar, Joint Director

Shrimati Catherine John L., Committee Officer

**WITNESSES**

**I.** \* \* \*

**II. MINISTRY OF LAW AND JUSTICE**

**DEPARTMENT OF JUSTICE**

1. Shrimati Neela Gangadharan, Secretary;
2. Shri Ramesh Abhishek, Joint Secretary; and
3. Shri S.C. Srivastava, Joint Secretary.

**LEGISLATIVE DEPARTMENT**

1. Dr. G.N. Raju, Joint Secretary and Legislative Counsel;
2. Shri Divakar Singh, Deputy Legislative Counsel; and
3. Shri K.V. Kumar, Deputy Legislative Counsel.

- |    |   |   |   |
|----|---|---|---|
| 2. | * | * | * |
| 3. | * | * | * |
| 4. | * | * | * |

**The Constitution (One Hundred and Fourteenth Amendment) Bill, 2010**

5. The Chairperson then informed the Members that The Constitution (One Hundred and Fourteenth Amendment) Bill, 2010 has also been referred to the Committee by Hon'ble Chairman on the 15th September, 2010 for examination and report within three months. The Amendment seeks to increase retirement age of the Judges of High Courts from 62 years to 65 years. She welcomed the Secretary, Department of Justice to the meeting and requested her to make a presentation on (i) The Constitution (One Hundred and Fourteenth Amendment) Bill, 2010; and (ii) \* \* \* The Secretary, while making a presentation on the Bill, illustrated the background for introducing the Bill and explained how the increase in the retirement age of the Judges and additional or acting Judges of High Courts from 62 years to 65 years would enable reduction in pendency of cases in High Courts. The Chairperson and Members asked some clarifications which were given by the Secretary.

- |    |   |   |   |
|----|---|---|---|
| 6. | * | * | * |
|----|---|---|---|
7. A verbatim record of the proceedings of the meeting was kept.
  8. The Committee adjourned at 12.30 A.M.

V  
FIFTH MEETING

The Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice met at 3.00 P.M. on Tuesday, the 23rd November, 2010 in Committee Room 'C', Ground Floor, Parliament House Annexe, New Delhi.

**MEMBERS PRESENT**

1. Shrimati Jayanthi Natarajan — *Chairperson*

**RAJYA SABHA**

2. Shri Shantaram Laxman Naik
3. Shri Balavant *alias* Bal Apte
4. Shri Ram Jethmalani
5. Shri Ram Vilas Paswan

**LOK SABHA**

6. Shri Shailendra Kumar
7. Shri S. Semmalai
8. Dr. Prabha Kishor Taviad
9. Shri Manish Tewari
10. Shri R. Thamaraiselvan
11. Adv. P.T. Thomas (Idukki)

**SECRETARIAT**

Shri Deepak Goyal, Joint Secretary

Shri K.P. Singh, Director

Shri K.N. Earendra Kumar, Joint Director

Shrimati Niangkhanem Guite, Assistant Director

Shrimati Catherine John L., Committee Officer

**NON OFFICIAL WITNESSES**

1. Shri B.V. Acharya, Senior Advocate, Bangalore;
  2. Shri M. Rajender Reddy, Advocate, Member Bar Council of India, Hyderabad; and
  3. Shri M.A. Rangaswamy, Advocate, New Delhi
2. Shri B.V. Acharya, while deposing before the Committee, expressed his reservations on the present form of the Bill and suggested that the Bill should not be passed in its present form as the proposed Bill, if enacted, would stall the recruitment of deserving and meritorious candidates for the next three years. He, however, suggested two safeguards that may be incorporated in the present Bill if the likely unwarranted outcomes of the Bill are to be dealt with. Firstly, the amendment proposed in the Bill should come into force prospectively. Secondly, the benefits of enhancement of the retirement age of judges should be conferred only on deserving and meritorious judges after a thorough scrutiny.
3. Shri M.A. Rangaswamy, on the other hand, supported the proposed Bill on the grounds that enhancement of the retirement age of the judges of High Courts would provide a reasonable career opportunity

to them as they come in High Courts when they are between 40 to 50 years of age. He further added that the proposed Bill would also ensure the benefit of the experience of brilliant senior judges for a longer period.

4. Referring to the reasons provided by the Government to bring forth the Bill, Shri M. Rajender Reddy expressed his disagreement with the reasoning that the present Bill would help in clearing the pendency of cases. While making his presentation before the Committee, he stated that in view of the present status of the vacancies of judges in High Courts, passing of the present Bill would have no significant impact on clearing the huge pendency of cases. Rather he suggested that the Government should first consider the issues which are responsible for non filling up the vacancies. Accusing the present collegium system for its inability in timely filling up of vacancies, he stressed on the need to replace this system with an accountable and answerable system. He also submitted that instead of enhancing the retirement age of judges the Government should make use of article 224 A of the Constitution to ensure the services of efficient and competent judges to the Judiciary.

5. The Committee took note of the issues raised by the witnesses. The Members, then, sought clarifications from the witnesses which were responded to in detail.

*(The witnesses then withdrew)*

6. A verbatim record of the proceedings of the meeting was kept.

7. The Committee adjourned at 4.05 P.M.

VI  
SIXTH MEETING

The Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice met at 3.00 P.M. on Tuesday, the 7th December, 2010 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

**MEMBERS PRESENT**

1. Shrimati Jayanthi Natarajan — *Chairperson*

**RAJYA SABHA**

2. Shri Shantaram Laxman Naik
3. Dr. Abhishek Manu Singhvi
4. Shri Ram Jethmalani
5. Shri Parimal Nathwani
6. Shri O.T. Lepcha

**LOK SABHA**

7. Shri N.S.V. Chitthan
8. Shrimati Deepa Dasmunsi
9. Shri Shailendra Kumar
10. Dr. Kirodi Lal Meena
11. Shri S. Semmalai
12. Dr. Prabha Kishor Taviad
13. Shri Manish Tewari
14. Adv. P. T. Thomas (Idukki)

**SECRETARIAT**

Shri Deepak Goyal, Joint Secretary

Shri K.P. Singh, Director

Shri K.N. Earendra Kumar, Joint Director

Shrimati Niangkhanem Guite, Assistant Director

Shrimati Catherine John L., Committee Officer

2. \* \* \*

3. Thereafter, the Members took up for consideration the draft 44th Report on the Constitution (One Hundred and Fourteenth Amendment) Bill, 2010. The Members shared their views on the draft Report and suggested some additions in the report. The Committee thereafter adopted the draft report along with the changes suggested.

3.1. The Committee nominated Shri Shantaram Laxman Naik and in his absence Shri O.T. Lepcha to present the Report in the Rajya Sabha and Shrimati Deepa Dasmunsi and in her absence Adv. P.T. Thomas (Idukki) to lay the same on the table of the Lok Sabha on 9th December, 2010.

4. \* \* \*
5. A verbatim record of the proceedings of the meeting was kept.
6. The Committee adjourned at 3.20 P.M.

# **ANNEXURE**

**ANNEXURE - A**

AS INTRODUCED IN LOK SABHA

**Bill No. 103 of 2010**

THE CONSTITUTION (ONE HUNDRED AND FOURTEENTH  
AMENDMENT) BILL, 2010

A

BILL

*further to amend The Constitution of India.*

	<p>BE it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:—</p> <p><b>1. (1) This Act may be called the Constitution (One Hundred and Fourteenth Amendment) Act, 2010.</b></p> <p>(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.</p> <p><b>2. In article 217 of the Constitution, in clause (1), for the words “sixty-two years”, the words “sixty-five years” shall be substituted.</b></p> <p><b>3. In article 224 of the Constitution, in clause (3), for the words “sixty-two years”, the words “sixty-five years” shall be substituted.</b></p>	<p>Short title and commencement.</p> <p>Amendment of article 217.</p> <p>Amendment of article 224.</p>
--	---	--



## STATEMENT OF OBJECTS AND REASONS

Clause (1) of article 217 of the Constitution of India allows every Judge of a High Court to hold office until he attains the age of sixty-two years. Clause (3) of article 224 of the Constitution provides that no person appointed as an additional or acting Judge of a High Court shall hold office after attaining the age of sixty-two years. The age of retirement of High Court Judges, which was fixed at sixty years in the beginning, was enhanced to sixty-two years by the Constitution (Fifteenth Amendment) Act, 1963. Since then, no revision has taken place in this regard.

2. The Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, in its 39th Report dated the 29th April, 2010, has recommended to raise the retirement age of the Judges of the High Courts from sixty-two to sixty-five to be at par with the retirement age of the Judges of the Supreme Court. Further, most of the reasons adduced by the Fifth Central Pay Commission in support of its recommendation for increasing the age of retirement of the Central Government employees, such as global practices, increase in life expectancy, improved health standards, need for utilisation of experience and wisdom of senior employees, etc., would also apply to the Judges.

3. In view of the present state of vacancies of Judges in High Courts, it is extremely difficult to clear the heavy pendency of cases in the High Courts. Increasing the age of retirement by three more years would restrict occurrence of new vacancies on account of superannuation for the next three years during which time the existing backlog in vacancies could be cleared. This would have a clear impact on reduction of pendency of cases in the High Courts.

4. It is, therefore, proposed to increase the age of retirement of Judges and additional or acting Judges of High Courts from sixty-two years to sixty-five years.

5. The Constitution (One Hundred and Fourteenth Amendment) Bill, 2010 seeks to achieve the aforesaid objectives.

NEW DELHI;  
*The 13th August, 2010.*

M. VEERAPPA MOILY

## FINANCIAL MEMORANDUM

Clause 2 of the Bill seeks to amend clause (1) of article 217 of the Constitution of India to provide for increase in the age of retirement of Judges of the High Courts from the existing sixty-two years to sixty-five years.

2. Clause 3 of the Bill seeks to amend clause (3) of article 224 of the Constitution to provide for increase in the age of retirement of additional Judges or acting Judges of High Courts from the existing sixty-two years to sixty-five years.

3. The proposal does not involve any financial implications as their continuation of three more years in the office would not affect any increase in their salaries and allowances.

4. The Bill does not involve any expenditure of either recurring or non-recurring nature from the Consolidated Fund of India.



LOK SABHA

---

A

BILL

further to amend the Constitution of India.

---

*(Shri M. Veerappa Moily, Minister of Law and Justice)*

*ANNEXURE - B*

Part-I: COMMENTS AND SUGGESTIONS ON THE BILL

Clause No.

Sl. No.	Name of organization/ individual	Comments/suggestions	Response of Government
1	2	3	4
1.	Prof. K. Chandrasekharan Pillai	(i) Suggested that unless a performance evaluation of the judicial works done by each judge is not undertaken, the proposed amendment should not be passed.	In so far judicial order passed by a High Court Judge is concerned, an appeal always lies in the Supreme Court.
		(ii) A machinery be in a position to ensure only the meritorious entry into the judiciary. It is unfortunate to note that the present mechanism of Collegium has really collapsed.	Appointment of Judges in the Supreme Court and the High Courts are made in accordance with Article 124 (3) and Article 217 (2) of the Constitution of India.
		(iii) The present amendment may be revised in such a manner that only the efficient judges are allowed extension of 3 years. The non-performing judges might be asked to step down by giving them adequate pensionary benefits.	Presently, there is no system where increase in the age of retirement can be linked to performance. The existing constitutional provision does not envisage stepping down of a Judge by giving him adequate pensionary benefits.
		(iv) There should be a provision for appointing a "Performance Review Commission" to undertake the review of the performance of each High Court judge in the proposed amendment.	The concept of Performance Review Commission in respect of constitutional authorities like Judges does not seem to be appropriate.
2.	Shri R.D. Bhardwaj	Instead of increasing the age of retirement of various judges of High Courts and also because most of the judges also feel that they are overburdened, it shall be better if the Government fills up the vacant posts of High Court Judges so that the pending work gets distributed	Filling up of vacancies is a continuous process, as vacancies keep arising due to retirement, resignation, elevation of Judges, etc. The Government make all efforts to fill in the vacancies of the Judges in accordance with laid down procedures.  Even with the best efforts, with the current procedure, clearance of backlog of vacancies

			among them.	is likely to take three years.
3.	Smt. Asha Rao		The ages of all judges should not be increased to 65 years. Instead, the extension of time period should be given to only those judges whose work record is found satisfactory. Also additional parameters like their health and sound mind should also be taken into consideration.	The constitutional provision does not permit an extension of service to a Judge of the High Court.
4.	Shri R.R. Shenoy	(i)	Increasing retirement ages of high court judges from 62 to 65 will amount to rewarding incompetence. The Constitution should be amended so that all judges including those in Supreme Court, retire at 60 as any government servant.	Reduction in the age of retirement is not admissible under proviso to article 221 (2) of the Constitution.
		(ii)	Rather than increasing retirement age, Government should fill up all vacancies of judges in all courts urgently. If necessary the number of courts and judges shall be increased to deliver fast justice.	The Central Government ensures prompt filling up of vacancies in the superior judiciary. The Judges' strength of High Courts is reviewed periodically and strengthened whenever justified.
5.	Shri Sanjay Shama		I fully agree with the proposal to increase the retirement age of the High Court Judges as experience counts in the delivery of qualitative justice. But a Judge whose conduct is doubtful should not get the benefit of increase in the retirement age.	Age of retirement and dealing with doubtful conduct of a judge are two different matters. A case of doubtful character has to be dealt under relevant rules.
6.	Shri A.Z. Siddiqui		Instead of increasing the age of Judges by proposed amendment the efficient judges may be re-appointed as additional judges and they may be allowed to work up to the age of 65 years.	Article 224-A which provides for appointment of retired Judges at sittings of High Courts does not provide for any age limit.
7.	Shri Vinayak Madhubani		It will deprive the expectations of large number of aspirants lawyers who are very keen and ambitious for post of judgeship of High Court	As on 30.04.2010, the working Judge strength in all the High Courts was 625 Judges leaving 270 vacancies to be filled up. In other words, there are always sufficient

			and also several senior District Judges due for retirement at the age of 60 years may not be elevated/promoted as additional judges of High Court, due to increase in the age of retirement of sitting Judges to 65 years.	vacancies for elevation of aspiring lawyers and senior District Judges.
8.	Shri Vinaya Shanker Mishra	(i)  (ii)  (iii)	The present age limit 62 years is sufficient, no need to change.  Vacancies must be filled by new selection because our Constitution confers equal opportunity to all.  The selection procedure for becoming the judge of High Court must be changed. The selection may take place from BARs and by promotions by a competitive examination organized by Supreme Court and BCI jointly.	Increase in life expectancy, improved health standards, need for utilization of experience and wisdom of senior Judges justify increase in their retirement age.  Filling up of vacancies in the High Courts is a continuous, consultative process among the constitutional authorities.  The present system for appointment and transfer of the Judges of the Supreme Court of India and the Judges of the High Courts is based on the Supreme Court Judgment of October 6, 1993 in the Supreme Court Advocates-on-record & Anr. Vs. Union of India, read with advisory opinion of October 28, 1998.
9.	Shri Tansif Shaikh		The judges should have competitive examination so that we get brilliant and talented Judges to solve public Issues.	There is no provision of competitive examination for selection of judges to the higher judiciary in the Constitution of India.

**Part-II: OTHER ISSUES NOT COVERED BY THE BILL**

Sl. No.	Name of organization/Individual	Comments/suggestions	Response of Government
1	2	3	4
1.	Shri R.D. Bhardwaj	(i) Like many other spheres, judges should also be made accountable and pronounce judgments within a specified time-frame of 2/3 years and in some more complicated cases, to a maximum of five years.	Transparency and accountability in the higher judiciary are at present being enforced and maintained through an 'in-house' system by the peer group. Further, the computerization of the courts would bring in openness and transparency in the working of the courts.
		(ii) The rich and powerful party should not be allowed to derive the	

		undue advantage/reliefs due to other party's poor financial position.	
2.	Smt. Asha Rao	A non-judicial Forum should be established where public/ litigant can put forth their grievances. This will enable them to register their complaints against any judge and get suitable remedy.	The Judicial Standards and Accountability Bill, 2010 is under consideration which sets out the judicial standards to be practiced by every Judge, who shall practice universally accepted values of judicial life, norms, guidelines and conventions essential for their conduct and behavior.
3.	Shri R.R. Shenoy	(i) The higher judiciary including SC and State HC be brought under the control of the President, so as to make it accountable. The President shall not be bound by advice by any Ministry on any case. But the President shall have an advisory body consisting of Attorney General and 5 eminent private lawyers.	There is a provision in 'The Judicial Standards and Accountability Bill, 2010' to establish a 'National Judicial Oversight Committee' which will be responsible for dealing with complaints relating to misbehavior or incapacity of Judges.
		(ii) All the courts including the Supreme Court shall be brought under the Right to Information Act, so that litigants can know reasons for delay in cases filed by them.	The current programme of computerization of courts would bring in openness and transparency in the working of the courts.
		(iii) Do away with the vacations like 2 months in summer, diwali vacation etc. All courts shall follow working hours/days of CV Central Government offices.	The question of curtailing/discontinuing the vacations in the courts has been considered in the past, but it has not been found feasible or advisable to do so because of the taxing nature of work of the Judiciary and the Bar.
		(iv) A mechanism to evaluate judges and suitably punish inefficient, should be in place, under the President.	The Supreme Court and High Courts are exercising contempt power as court of records under the constitutional provision. The primary object of the Contempt of Court Act is to maintain dignity of the Court and therefore repealing it is not advisable.
		Contempt of Court Act should be repealed. Citizen must have freedom to criticize delayed/wrong verdicts by courts.	
4.	Shri Sanjay Kale	(i) Government should increase the daily work hours of Supreme Court and High Courts by 30 minutes. The weekly	The working hours in the Supreme Court and High Courts are regulated by the rules framed by the respective Courts. However,



	<p>holiday of every Saturday should be converted to second and fourth Saturday of every month.</p>	<p>Department of Justice has formulated a proposal which <i>inter alia</i> covers operation of morning/ evening / special judicial metropolitan magistrates / shift courts to facilitate administration of justice in the States.</p>	
	<p>(ii) The Government should plan for Indian Judiciary Services. Youth talent law graduates should be screened through UPSC or more tough scrutiny test which is away from political interference.</p>	<p>A proposal for creation of an All India Judicial Service is under consideration.</p>	
5.	Shri Tansif Shaikh	<p>(i) There should be a system' in ground level courts such as how much time required to declare a Result. There should be "Time Limit" for Result declaration.</p>	<p>or examination while formulating proposals of judicial reforms. The ongoing computerization of courts through the e-Court project would bring in transparency in the working of the courts.</p>
		<p>(ii) Also there is "Online System" for the current and pending issues in the courts.</p>	
		<p>(iii) A structure which gives us details of Judges working, working reports, how many cases solved in one month?</p>	
		<p>(iv) There should be separate department to solve issues like corruption in higher and technical education such as student vs. Management of Engineering, Medical Colleges, Students, Youths issues etc.</p>	
		<p>(v) There is CET (Common Entrance Test) for 'Advocates' and 'Judges' also. There is limitation for taking application fees from Advocates.</p>	

Part-I : COMMENTS AND SUGGESTIONS ON THE CONSTITUTION (ONE  
HUNDREDAND FOURTEENTH AMENDMENT) BILL, 2010

Clause No.

Sl. No.	Name of organization/Individual	Comments/suggestions	Response of Government
1	2	3	4
11.	Dr. Kashinath V. Chitte	Constitution should be amended to extend the services of Judges of High Courts subject to their medical fitness. There has to be a Medical Council who will formulate the criteria of fitness as per the prevailing medical standard of our country, giving consideration to the age factor.	In view of the general increase in life expectancy and improved health standards, the proposal to increase the retirement age of High Court judges a medical fitness criteria does not seem necessary.
12.	Shri Vipul B. Joshi, Chairman, Law &, Representation Committee	The age limit for High Court Judges should be at par with the age limit of Supreme Court Judges. Most of the developed countries, retirement age of Judges is above 65 years. For example, in U.K. and Canada, the retirement age is 75 years, while for Japan the retirement age is 65 years. With the increase in age, there is always increase in experience, knowledge and wisdom, which are very important attribute for a Judge and useful to judiciary.	It supports the proposal for increase in the retirement age of the High Court Judges.
13.	Shri Biswanath	Nowadays, the average life span	It supports the proposal for increase in the retirement age of the High Court Judges.

14.	Ganguly  Shri Marthand Singh Chauhan	<p>of human being has increased a lot due to developed medical facilities, high standard of living and modern life style. An aged and experienced person can give his best and matured opinion/judgment. This step will help Government not to search such experienced judges from their field for another few years and it will also help concerned department to reduce their work pressure for time being. Extension of time will give more opportunity to the junior judges for getting promotion in their next higher post. Extension of ages of the Judges may be awarded subject to willingness and mental fitness. There is no age limit for the legislators and that is accepted. So, the relaxation of age in case of Judges may be considered.</p> <p>The increase in the retirement age of High Court Judges from 62 to 65 years will be in the interest of the country.</p>	It supports the proposal for increase in the retirement age of the High Court Judges.
15.	Shri Krishna B. Patil	<p>(i) Another Bill has to be passed to increase the age of retirement of Supreme Court Judges from 65 to 68 which may decrease quality of work at Supreme Court due to old age. It will stop new recruitments at lower level, leading to unemployment. After increase of age to 65, efficient work cannot be expected from old aged Judges due to huge pendency of work at High Courts thereby pendency of work will raise and quality of work may decrease.</p> <p>(ii) Instead of increasing the age of retirement of High Court Judges from 62 to 65, reduce it to 52 years and that of Supreme Court Judges from 65 to 55;</p> <p>(iii) Appoint young and talented advocates by conducting National level Judges Recruitment Exam. in similar manner as that of Civil Services Exam.</p>	<p>As on 30.04.2010, the working Judge strength in all the High Courts was 625 Judges leaving 270 vacancies to be filled up. In other words, there are always sufficient vacancies for elevation of aspiring lawyers and senior District Judges and it will not adversely affect the recruitment in subordinate judiciary. It would take good deal of time to fill up as many as 270 vacancies. At the current rate of filling up of vacant posts, it may take more than 3 years. Thus, the opportunities for being appointed to the High Court would not be lost. Further, the need for utilization of experience and wisdom of senior Judges justify the increase in their retirement age.</p> <p>Reduction in the age of retirement is not admissible under proviso to article 221 (2) of the Constitution.</p> <p>There is no provision of competitive</p>

examination for selection of judges to the higher judiciary in the Constitution of India.

16.	Shri Sidhu Ranjit Singh	Increase in the age of retirement is not necessary and it should be sixty years only.	Reduction in the age of retirement is not admissible under proviso to article 221 (2) of the Constitution.
17.	Shri B.V. Acharya & 59 Others	<p>(i) There will be no regular vacancies for the post of High Court Judges for the next 3 years and the authorities are totally deprived of the opportunity to recruit deserving and meritorious candidates.</p> <p>(ii) The services of the ‘deadwood’ or those who have outlived their utility, but to recruit talented new faces based only on merit and after a thorough scrutiny of their antecedents.</p> <p>(iii) The proposed amendment may be made prospective i.e. make it applicable only to the judges appointed hereafter.</p>	<p>As on 30.04.2010, the working Judge strength in all the High Courts was 625 Judges leaving 270 vacancies to be filled up. In other words, there would be sufficient vacancies of High Court Judges to be filled up in 3 years.</p> <p>Presently, there is no system where increase in the age of retirement can be linked to performance.</p> <p>It is not permissible.</p>
18.	Shri J.R. Poswal, Advocate	<p>The present age of retirement of High Court Judges i.e. 62 years is justified and reasonable. There is no need to increase the same. In case the age of retirement is increased, it will amount to discourage the aspirants/advocates who want to become High Court Judges. After the age of 60 years, the physical and mental fitness of an individual decreases and as such has a bad effect on over all performance of the incumbents in old age. Increase in the age will not only stop the entry of young blood in the judiciary but will also badly affect the performance of the judiciary in general.</p>	<p>Increase in life expectancy, improved health standards, need for utilization of experience and wisdom of senior Judges justify increase in their retirement age. There are always sufficient vacancies of High Court Judges for entry of the experienced advocates. It cannot be said that increase in the retirement age will adversely affect the judicial performance.</p>
19.	Shri Ishita Das,  (Hons.) LLB (Hons.)	<p>There should be a selection procedure to evaluate the Judges at the age of 62.</p>	<p>There is no provision in the Constitution for linking age of retirement with performance.</p>

20.	Shri Ashok Kumar	Judgments of 65 years aged Walia, (Conversant Judges must be treated as of Law) excellent and complied with first in comparison to the other. Salary of Judges above 60 years must be reduced 25 per cent as they have no obligations/responsibilities and they are not accountable for future liabilities in general after 60 years age.	The suggestions cannot be accepted for obvious reasons.
21.	Shri M.A. Bohra, Advocate	The proposed amendment will be detrimental to the fresh candidates.	Sufficient vacancies of High Court Judges would be available for fresh aspirants in view of heavy backlog of vacancies.
22.	Shri Amresh B. Sharma, Advocate	Nation is not facing with lack of good competent judicial officers/district judges or competent advocates who could be elevated to High Courts. Article 224-A provides for appointment of retired Judges as sitting Judges of High Court after the age of 62 years. There is inequality in age of retirement of the High Court Judge and that of a District Judge.	
23.	Shri Dalu Ram Patidar	(i) The proposed amendment will encroach upon the peaceful retired life of Judges as at this age, they would definitely suffer from some kind of diseases. The Judges should retire at the age of 62 thereafter their services could be utilized in Commissions etc.  (ii) This amendment Bill will be a barrier to the employment opportunities of young aspirants.	Increase in life expectancy and improved health standards belie the suggestion. Services of retired Judges after 65 years can be utilized in the Commissions, Committees etc.  There are always sufficient vacancies of High Court Judges for young aspirants.
24.	Shri Kanta Prasad, District & Sessions Judge	No suggestion offered on the issue of increase in the age of retirement of Judges in the proposed amendment.	No comments.
25.	Shri Talwant Singh, Coordinator, Co-ordination	(i) Increase in the retirement age along with increased use of services of the retired judges can	Article 224-A provides for appointment of retired judges at sittings of High Courts.

Committee of	positively help a great deal in Registered lending support to the legal system	
Associations of	and in removing perennial shortage	
Judicial Officers	of judges for which alarming of India, Tis voices are being raised at various	
Hazari Courts, Delhi	forums.	
	(ii) The retirement age of sub-ordinate judges should also be suitably enhanced to bring it at par with the proposed increase in the retirement age of High Court Judges as recommended by Justice Shetty Commission. The difference in retirement age creates a serious impediment in matters of promotion/elevation.	The Hon'ble Supreme Court in its order dated 21.3.2002 in W.P. (C) No.1022 of 1989 - All India Judges Association & Ors. Vs UOI & Ors. had <i>inter-alia</i> observed that "It will not be appropriate seeing the Constitutional framework with regard to the Judiciary, to have an identical age of retirement between the members of the Subordinate Judicial Service and a High Court."
26. Shri M.A.	(i) An extension policy would Rangaswamy, ordinarily be part of a Advocate comprehensive review, covering	The present system for appointment and transfer of the Judges of the Supreme Court of India and the Judges of the High Courts is based on the Supreme Court Judgment of October 6, 1993 in the Supreme Court Advocates-on-record & Arnr. Vs. Union of India, read with advisory opinion of October 28, 1998.
	recruitment, removal of the unfit and a transfer policy.	
	(ii) A strict screening of Judges of age 55 and above for fitness. Those found unfit may be pensioned off with a handsome handshake. This can be made to help in improving the turnover of judges, by making it a condition that they will not sit in the same court where they have practiced for many years.	
27. Shri P.N.	(i) The amendment was not based on	The National Commission to Review the Working of the Constitution and the Law Commission (229th Report - August, 2009) have, <i>inter-alia</i> , recommended the increase of retirement age of the Judges of the High Courts from 62 to 65 years.
Ramalingam,	any Law Commission Report, it	
Advocate-	is only based on the Department	
on-record,	Related Parliamentary Standing	
Supreme Court	Committee. The reason for recommendation was not based on any Committee/Commission, or any public grievance, any analysis/survey by any agency or at the request from any quarters	

		of the judiciary/judges.	
28.	Shri L. Sunil Kumar	(i) If the judges retirement age is increased, it can lead another unemployment problem for the law graduates. The students belong to SC/ST community are facing problems in getting into the court as lawyers and later as the judges. The other minorities like Muslims, Christians, Buddhist and others are under-represented or sometimes unrepresented in this system. So, this should be considered.	Appointment of Judges in the Supreme Court and the High Courts are made in accordance with article 124 (3) and article 217 (2) of the Constitution of India which do not provide for reservation. There are always sufficient vacancies of High Court Judges for young aspirants.
		(ii) The ratio of the judges is low comparing to lawyers and the cases where the Judge benches have not been increased.	The Judge strength is periodically reviewed keeping in view the institution, pendency and disposal of cases. One such review is due and likely to be undertaken shortly. The Judge strength is not fixed with reference to number of Lawyers or the Benches of High Courts.  Increase in life expectancy and improved health standards belie the suggestion.
		(iii) It is well-known that the people/population in India above 55 years of age are prone to many diseases mentally and physically.	
29.	Shri R.L. Jangid, Addl. Advocate General, Rajasthan	On account of pressure of work, majority of Judges face serious ailments and diseases. The IAS, IPS and other high rank officers are retired at the age of 60 years.	The averment that majority of judges face serious ailments and diseases is not correct. One of the reasons for increase in the retirement age of judges is the increase in the retirement age of the AIS officers made in May, 1998.
30.	Shri Prateek Gupta	There is tendency amongst senior High Court Judges to start lobbying for elevation to the Supreme Court as it ensures a longer tenure. Some Judges nearing retirement indulge in parleys and negotiations so as to seek appointments in tribunals and commissions and have a secure post-retirement life. Such practices should be disallowed as it impinges upon the image and credentials of the Judge and the judiciary as a whole.	The suggestions go in favour of the proposal.
31.	Dr. D.C. Bhattacharyya	The Judges are short in relation to the backlog of cases in the High Court and they feel overburdened and have been working under acute work pressure. It has	The need to enhance the age of retirement of High Court Judges by 3 more years has been necessitated to restrict occurrence of new vacancies on account of superannuation for



		also been not possible for Chief Justice of High Court to constitute 5 Judge benches on a regular basis to hear cases involving interpretation of the Constitutional law, as doing that would result in constitution of less number of Division benches, which, in turn, will result in delay in hearing of other civil and criminal matters.	the next three years during which time the existing backlog in vacancies could be cleared. This would have a clear impact on reduction of pendency of cases in the High Courts.
32.	Shri Praveen	The proposed amendment is Vyapari, Co undesirable and unwarranted ordinator-Group under the present circumstances	The number of advocates has no relation with the number of judges appointed from Bar.
	on Legislations	when the influx in the profession of practice of law has increased multi-fold and the strength of the Judges appointed from the Bar is not proportionately increased across the country.	
33.	Prof. K.	Only those judges with a good Chandrasekharan record of performance alone be Pillai, former given the benefit of extension of	The suggestion/classification will amount to discrimination among Judges. Besides, the Constitutional provisions do not permit to fix such criteria.
	Director, ILI	service from 62-65 years.	
34.	Shri M. Rajender Reddy, Advocate, Member, BCI	(i) The proposed amendment should be based on the integrity, conduct and efficiency of the individual judge. It should not benefit all Judges.	The benefit of increase in the retirement age cannot be linked to the integrity, conduct and efficiency of a Judge.
		(ii) In case of enhancement of age from 62 years, there should be recommendation from the Supreme Court and the Govt. should take final decision which will be final otherwise it will be difficult to impeach the corrupt Judges.	The suggestion cannot be accepted.
35.	Shri Hiro Rai &	The proposal will have a Vipul B. Joshi, favourable impact on the high Advocates, Income pendency of cases before the High	It supports the proposal for increase in the retirement age of the High Court Judges.
	Tax Appellate Tribunal Bar Association, Mumbai.	Courts. Several retired Judges of High Courts are rendering valuable services in various forums. Even after attaining the age of 62 years they are able and competent to exercise these functions.	

**OTHER ISSUES NOT COVERED BY THE CONSTITUTION (ONE HUNDRED AND FOURTEENTH AMENDMENT) BILL, 2010**

Part-II :

Sl. No.	Name of organization/Individual	Comments/suggestions	Response of Government
1	2	3	4

6.	Shri Sidhu Ranjit Singh	<p>(i) Introduction of fresh and new talent in the system, to keep the system fresh and young.</p> <p>(ii) Saturday and Sunday off or any two holidays per week. If public holidays overtake Sat-Sun, then Sat-Sun will be a working day.</p> <p>(iii) Introduction of photo on the net, area of job, type of expertise in job (Judges).</p> <p>(iv) Introduction of Talent Search Team (TST) to trace/find best talent, or fit for the job, without any pre-condition.</p>	<p>Provisions already exist in the Constitution for appointment of advocates as High Court Judges.</p> <p>The working hours/holidays in the Supreme Court and High Courts are regulated by the rules framed by the respective Courts.</p> <p>This is for higher judiciary to decide.</p> <p>No such proposal is under consideration.</p>
7.	Shri Marthand	<p>Certain High Courts are still Singh Chauhan functioning in old buildings. They should be housed in the latest building with all infrastructure and logistic facilities.</p>	<p>A Centrally Sponsored Scheme relating to development of infrastructural facilities for the judiciary since 1993-94 is being implemented with a view to augment the resources of the State Governments/UT Administrations. The scheme includes construction of court buildings and residential accommodation for Judges/Judicial Officers covering High Courts and Subordinate Courts.</p>
8.	Shri J.R. Poswal, Advocate	<p>The procedure to appoint the high court judges is defaulted one therefore there should be a written test and thorough medical examination before appointment. There are many instances where a -person who failed to become Civil Judge (Jr. Divn.)/Addl. Sessions Judge ultimately become High Court Judge without facing any interview.</p>	<p>The present system for appointment of the Judges of the Supreme Court of India and the Judges of the High Courts is based on the Supreme Court Judgment of October 6, 1993 in the Supreme Court Advocates-on-record &amp; Am. Vs. Union of India, read with advisory opinion of October 28, 1998. There, is no provision of competitive examination for selection of judges to the higher judiciary in the Constitution of India.</p>

		The existing procedure of appointment of judges has a requirement for medical fitness.
9.	Shri M.A. Bohra, Advocate	Instead of raising the retiring age, existing vacancies should be filled in accordance with the Constitutional provisions. The procedure for appointment of judges should be modified so that Judges are not appointed on the castes, community, etc. Only 10% -25% of the Judges are utilizing the modern techniques and they do not have knowledge of computers.
10.	Shri Kanta Prasad, District & Sessions Judge	Process of Collegium and selection of the puisne judge of High Court is not transparent. There is no test to examine their ability. Public cannot know what is the special quality in the person who is recommended. That is under the cover of confidentiality. The procedure for appointment of Hon'ble Judge of High Court is not amended as required by the change of time. So, there is a need of a comprehensive legislation for the appointment of judges. It has been experienced that each and High Court, there is gender bias. It cannot be said that females are not so competent to be appointed as a Judge, but the judiciary is male dominant. People of SC and ST are not recommended on the basis of non-availability, but the position is contrary to it. Females, Scheduled Castes, Scheduled Tribes and Backward Class are not sufficiently represented in the judiciary and as such, they are not getting fair justice. Amendment of article 124 is required. Judicial officers are very much experienced. For appointments under article 217, at least their percentage of quota must be 50%. The age of
		Appointment of Judges in the Supreme Court and the High Courts are made in accordance with Article 124 (3) and Article 217 (2) of the Constitution of India.

	retirement of the district judges must be increased to 65 years on the same principle applicable to High Court Judges.	
11. Shri P.N. Ramalingam, Advocate-on-record, Supreme Court	Clause 2(b) of article 217 must be amended to include a condition for appointment that any period during which the person has held judicial office or the office of a member of a tribunal or any post under the Union or a State requiring special knowledge of law after he became an advocate.	This requires Constitutional amendment.
12. Shri R.L. Jangid, Addl. Advocate General, Rajasthan	The minimum age of High Court Judges should not be less than 55 years which can be said to be a matured and most experienced age. Hence, there is a need for amending clause (1) of article 217 and clause (3) of article 224 of the Constitution by prescribing minimum age for appointment.	
13. Shri Praveen Vyapari, Co-ordinator-Group on Legislations	(i) The cry of the Hour is more benches of the High Courts in different States of the Union. The long pending suggestion of constituting Courts of Appeal in Four Regional Centres is worth considering which would see the need of more judges being appointed.	Setting up of a Bench of a High Court is considered only if a complete proposal in terms of section 51(2) of the States' Reorganisation Act, 1956 is received from the State Government concerned, including the consent of the Chief Justice of the High Court and the Governor of the State and also if it satisfies the broad guidelines and criteria recommended by the Jaswant Singh Commission.  According to the article 130 of the Constitution, the Supreme Court shall sit in Delhi or in such other place or place as the Chief Justice of India may, with the approval of the President, from time to time, appoint. The Supreme Court has not favoured creation of a Bench away from its principal seat at Delhi.
	(ii) The Constitution does not prescribe the age of appointment of an Advocate as Judge of High Court and	

		merely prescribes the age of retirement.	who is less than 45 years of age is considered for appointment as a Judge of High Court.
	(iii)	The method of appointment is non-transparent and no change has been prescribed for that. It requires consideration prescribing not only the criteria of appointment but also fixing an age for entry in the seat of Judgeship of the High Court which ought not to be lower than 52 years or practice of law of at least 30 years. While fixing the age of appointment at 52 years, the age of superannuation could be reduced to 60 years which is 2 years more than the district judges.	The existing procedure for appointment of Judges of the Supreme Court and the High Courts is based on the Supreme Court Judgment of October 6, 1993 in the case of Supreme Court Advocates-on-record & Anr. Vs. Union of India, and the advisory opinion of the Supreme Court dated October 28, 1998. There is, at present, no specific proposal to bring about any change in the present system of appointment of Judges in the Supreme Court and the High Courts.
14.	Prof. K. Chandrasekharan Pillai, former Director, ILI	(i) There is no mechanism in our system to review the judicial work done by HC Judges. There should be an audit of the work carried out by each HC Judge in our country before the proposed amendment is passed. There should be a provision for appointing a "Performance Review Commission" to undertake the review of the performance of each HC Judge in the proposed amendment.	The concept of Performance Review Commission in respect of Judges is not provided in the Constitution. An appeal against an order passed by a High Court Judge always lies in the Supreme Court.
		(ii) There are judges who do not write judgments. The non-performing judges might be asked to step down by giving them adequate pensionary benefits.	It is not permissible under the provisions of the Constitution.
15.	Shri M. Rajender Reddy, Advocate, Member, BCI	(i) State Governments may be directed to enhance the retirement age of the members of subordinate judiciary from 60 to 63.	The Hon'ble Supreme Court in its order dated 21.3.2002 in W.P. (C) No.1022 of 1989 All India Judges Association & Ors. Vs UOI & Ors. had <i>inter alia</i> observed that "It will not be appropriate seeing the Constitutional framework with regard to the Judiciary, to have an identical age of retirement between the members of the Subordinate Judicial Service and a High Court."
		(ii) Introduce the system of process of	Filling up of vacancies in the High Courts is

filling up the vacant posts of Hon'ble Judges in the respective High Courts and appoint the judges even before the vacancy arises.

a continuous, consultative process among the Constitutional authorities.

Government has been periodically reminding the Chief Justices of High Courts, Chief Justice of India and the Chief Ministers of the States to initiate proposals for filling up all vacant posts of judges in the High Courts.

(iii) The Govt. should also fix an appointment age of HC Judges, no HC Judge shall be appointed before the age of 50 years.

The Constitution does not provide for any such minimum age for appointment as a Judge of the High Court. However, no Advocate is considered for appointment as a Judge of High Court if he/she is below 45 years.