

## Judicial Appointments: Comparison of the 2014 Bills with the 2013 Bills

**2014 Bills:** The Constitution (121<sup>st</sup> Amendment) Bill, 2014 and the National Judicial Appointments Commission Bill, 2014 were introduced in the Lok Sabha on August 11, 2014.<sup>1</sup> They seek to amend the Constitution to replace the method of appointments to the higher judiciary with that of a National Judicial Appointments Commission (NJAC). The Bills were passed with certain amendments in the Lok Sabha on August 13, 2014.<sup>2</sup>

**Lok Sabha Amendments, 2014:** Clause 1 of The Constitution (121<sup>st</sup> Amendment) Bill, 2014, relating to the title of the Bill was amended to ‘The Constitution (99<sup>th</sup> Amendment) Bill, 2014’. Clause 7 of the National Judicial Appointments Commission Bill, 2014 stated that the President may require the NJAC to reconsider the recommendations made by it. If the NJAC were to make a unanimous recommendation after such reconsideration, the President would then be required to make the appointment accordingly. As amended, the clause now states that if the President sends a request for reconsideration, then such request would be considered in the same manner as in Section 5 and Section 6 (where it is stated that if two or more members disagree upon a name, then it shall not be recommended to the President). Therefore, ‘unanimity’ would not be required and only if two or more members were to disagree, the name would not be reconsidered for appointment.<sup>3</sup>

**2013 Bills:** Earlier, the Constitution (120<sup>th</sup> Amendment) Bill, 2013 and the Judicial Appointments Commission (JAC) Bill, 2013 were introduced in the Rajya Sabha in August 2013 in this regard. The Standing Committee submitted its report on the JAC Bill, 2013 in December 2013. However, The Constitution (120<sup>th</sup> Amendment) Bill, 2013, which was passed by the Rajya Sabha, lapsed with the dissolution of the 15<sup>th</sup> Lok Sabha. The JAC Bill, 2013 was withdrawn on August 11, 2014.

The Table below compares the provisions of the 2014 Bills with that of the 2013 Bills and the recommendations of the Standing Committee, 2013.

**Table 1: Comparison of the provisions of the 2014 Bills with that of the 2013 Bills and the recommendations of the Standing Committee:**

The Constitution (120 <sup>th</sup> Amendment) Bill, 2013 and The Judicial Appointments Commission (JAC) Bill, 2013	Recommendations of the Standing Committee, 2013	Constitution (121 <sup>st</sup> Amendment) Bill, 2014 and the National Judicial Appointments Commission Bill, 2014
<b>Prescribing of the Composition and functions of the Commission</b>		
The Constitution (120 <sup>th</sup> Amendment) Bill, 2013 created a Judicial Appointments Commission (JAC) to make recommendations for appointments to the Supreme Court and high courts.  But it left the composition and functions of the JAC to be determined by law made by Parliament.	Composition and functions of the JAC should be included in the Constitution. Procedure to be followed by the JAC may be determined by law made by Parliament.	Standing Committee recommendations incorporated.
<b>Members of the Commission</b>		
The JAC Bill, 2013 provided that the JAC shall comprise:  (i) the Chief Justice of India (Chairperson) (ii) two other senior most judges of the Supreme Court, (iii) the Union Minister for Law and Justice, and (iv) two eminent persons to be nominated by the Prime Minister, the CJI and the Leader of Opposition of the Lok Sabha.	<b>Eminent persons:</b> There should be three eminent persons, instead of two. At least one of the three members should be an SC, ST, OBC, woman, or minority, preferably by rotation.	<ul style="list-style-type: none"> <li>▪ The composition remains unchanged, with 6 members.</li> <li>▪ However, it adds that one of the <b>eminent persons</b> shall be nominated from amongst the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities or women.</li> </ul>
<b>Functions of the Commission</b>		

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August 12, 2014

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<p>The functions of the JAC include making recommendations for: (i) the appointment of the CJI, SC judges, Chief Justices and other judges of the HCs; (ii) transfer of Chief Justices and other HC judges from one HC to another.</p> <p>The JAC is to ensure that the person recommended is of ability and integrity.</p>	<p>Not addressed</p>	<ul style="list-style-type: none"> <li>▪ Functions have been included in the Constitutional (121<sup>st</sup> Amendment) Bill, 2014.</li> <li>▪ The functions remain unchanged.</li> </ul>
<p><b>Power of the President to require reconsideration</b></p>		
<p>No provision.</p>	<p>Not addressed.</p>	<p>The President may require the Commission to reconsider the recommendations made by it. If the Commission makes a unanimous recommendation after such reconsideration, the President shall make the appointment accordingly.</p>
<p><b>Procedure for Selection of Supreme Court judges</b></p>		
<p><b>Procedure for short listing:</b> The Union Secretary of the Department of Justice will initiate the process by inviting recommendations from the Chief Justices of HCs, the central and state governments.</p> <p>The JAC may specify the procedure for short listing of candidates for appointments to the SC and HC through regulations.</p>	<p>Not addressed.</p>	<p><b>Chief Justice of India:</b> The NJAC shall recommend the senior most judge of the Supreme Court for appointment as Chief Justice of India. This is provided he is considered fit to hold the office.</p> <p><b>SC judges:</b> The NJAC shall recommend names of persons on the basis of their ability, merit and other criteria specified in the regulations.</p> <p><b>Veto power of members:</b> The Commission shall not recommend a person for appointment if any two members of the Commission do not agree to such recommendation.</p>
<p><b>Procedure for Selection of High Court judges</b></p>		
<p>For appointment of HC judges, the JAC will elicit views of the Governor, Chief Minister and Chief Justice of the HC of the relevant state, in writing.</p>	<ul style="list-style-type: none"> <li>▪ <b>Short listing of candidates for HC:</b> The Bill should lay down the broad parameters for short listing of candidates for selection as HC judges.</li> <li>▪ <b>Nominations:</b> Eligible members of the Bar should be given an opportunity to be considered for appointment to High Courts, by way of public notifications and advertisements, as is the practice in the United Kingdom.</li> </ul>	<p><b>Chief Justice of High Courts:</b> The Commission is to recommend a Judge of a High Court to be the Chief Justice of a High Court on the basis of inter-se seniority of High Court judges and ability, merit and other criteria of suitability as specified in the regulations.</p> <p><b>Veto power of members:</b> The Commission shall not recommend a person for appointment if any two members of the Commission do not agree to such recommendation.</p> <p><b>Other HC Judges:</b></p> <ul style="list-style-type: none"> <li>▪ <b>Nominations:</b> Nominations shall be sought from Chief Justice of the concerned High Court for appointments of HC judges.</li> <li>▪ <b>Eliciting views:</b> The Commission shall nominate names for appointment of HC judges and forward such names to the Chief Justice of the concerned HCs for his views.</li> <li>▪ In both cases, the Chief Justice of the HC shall consult two senior most judges of that HC and other judges and advocates as</li> </ul>

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specified in the regulations.

- **Views of the Governor and CM:** The NJAC shall elicit the views of the Governor and Chief Minister of the state before making recommendations.
- **Transfer of Chief Justices and other HC judges:** The NJAC would make recommendations for transfer of Chief Justices and other judges of the High Courts. The procedure to be followed will be specified in the regulations.

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#### Reference to Commission for filling up vacancies

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| <ul style="list-style-type: none"><li>▪ When a vacancy arises in the SC or HCs, the central government will make a reference to the JAC.</li><li>▪ Existing vacancies will be notified to the JAC within <i>three months</i> of the Act entering into force.</li><li>▪ When a vacancy arises due to the completion of term, a reference will be made to the JAC <i>two months</i> in advance;</li><li>▪ For vacancies due to death or resignation, a reference should be made within <i>two months</i> of its occurrence.</li></ul> | Not addressed. | <ul style="list-style-type: none"><li>▪ When a vacancy arises in the SC or HCs, the central government will make a reference to the NJAC.</li><li>▪ Existing vacancies will be notified to the NJAC within <i>thirty days</i> of the Act entering into force.</li><li>▪ When a vacancy arises due to the completion of term, a reference will be made to the NJAC <i>six months</i> in advance.</li><li>▪ For vacancies due to death or resignation, within <i>thirty days</i> of its occurrence.</li></ul> |
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Sources: The Constitution (121<sup>st</sup> Amendment) Bill, 2014; The National Judicial Appointments Commission Bill, 2014; The Constitution (120<sup>th</sup> Amendment) Bill, 2013; The Judicial Appointments Commission Bill, 2013; The Judicial Appointments' Commission Bill, 2013, 64<sup>th</sup> Report, Standing Committee, Rajya Sabha.; PRS.

<sup>1</sup> The Constitution (121<sup>st</sup> Amendment) Bill, 2014, <http://www.prsindia.org/billtrack/the-constitution-121st-amendment-bill-2014-3360/>; The National Judicial Appointments Commission Bill, 2014, <http://www.prsindia.org/billtrack/the-national-judicial-appointments-commission-bill-2014-3359/>.

<sup>2</sup> Lok Sabha, Bulletin Part I, No. 32, August 13, 2014.

<sup>3</sup> National Judicial Appointments Commission Bill, 2014, as passed by the Lok Sabha on August 13, 2014, [http://164.100.24.219/BillsTexts/LSBillTexts/PassedLoksabha/96C\\_2014\\_LS\\_Eng.pdf](http://164.100.24.219/BillsTexts/LSBillTexts/PassedLoksabha/96C_2014_LS_Eng.pdf).

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