

Bill No. LXI of 2013

THE JUDICIAL APPOINTMENTS COMMISSION BILL, 2013

A

BILL

to provide for the composition of the Judicial Appointments Commission for the purpose of recommending persons for appointment as Chief Justice of India and other Judges of the Supreme Court, Chief Justices and other Judges of High Courts, its functions, procedure to be followed by it and for matters connected therewith or incidental thereto.

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

1. (1) This Act may be called the Judicial Appointments Commission Act, 2013.

Short title and commencement.

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

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "Chairperson" means the Chairperson of the Judicial Appointments Commission referred to in clause (a) of sub-section (1) of section 3;

(b) "Commission" means the Judicial Appointments Commission referred to in sub-section (1) of section 3;

(c) "Member" means a Member of the Commission and includes its Chairperson;

(d) "prescribed" means prescribed by the rules made under this Act; 5

(e) "regulations" means the regulations made by the Commission under this Act.

Constitution of
Judicial
Appointments
Commission.

3. (1) The Judicial Appointments Commission, referred to in clause (1) of article 124A of the Constitution, shall consist of—

(a) the Chief Justice of India, Chairperson, *ex officio*; 10

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

(c) the Union Minister in charge of Law and Justice—Member, *ex officio*;

(d) two eminent persons, to be nominated by the collegium consisting of the Prime Minister, the Chief Justice of India and the Leader of Opposition in the House of the People—Members: 15

Provided that the eminent persons shall be nominated for a period of three years and shall not be eligible for re-nomination.

(2) The Secretary to the Government of India in the Department of Justice shall be the convener of the Commission. 20

(3) The fee and allowances payable to the eminent persons shall be such as may be prescribed.

Functions of
Commission.

4. It shall be the duty of the Commission,—

(a) to recommend persons for appointment as Chief Justice of India, Judges of the Supreme Court, Chief Justices of High Courts and other Judges of High Courts; 25

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

(c) to ensure that the person recommended is of ability, integrity and standing in the legal profession. 30

Procedure for
recommendation
with respect to
appointment of
High Court
Judges.

5. In case of appointment of Judge of a High Court, the views of the Governor and the Chief Minister of the concerned State as also of the Chief Justice of High Court shall be elicited in writing in accordance with the procedure as may be specified by regulations made by the Commission.

Officers and
employees of
Commission.

6. (1) The Central Government may appoint such number of officers and other employees as it may consider necessary for the discharge of functions of the Commission under this Act. 35

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

Reference to
Commission for
filling up of
vacancies.

7. (1) The Central Government shall, within a period of three months from the date of coming into force of this Act, intimate the vacancies existing in the Supreme Court and a High Court to the Commission for making of its recommendations. 40

(2) The Central Government shall, two months prior to the date of occurrence of any vacancy by reason of completion of the term of Judge of the Supreme Court and a High Court, make a reference to the Commission for filling up the vacancies. 45

(3) The Central Government shall, within a period of two months from the date of occurrence of any vacancy by reason of death, resignation of the Judge of the Supreme Court and a High Court, make a reference to the Commission for filling up the vacancies.

5 **8.** (1) The Convenor of the Commission shall initiate the process for selection by inviting recommendations from the Chief Justices of High Courts, the Central Government and the State Governments in respect of candidates fulfilling the eligibility criteria. Procedure for short-listing of candidates.

(2) The Commission may, by regulations, specify the procedure for short-listing of candidates for considering their appointment as Judges to the Supreme Court.

(3) The Commission may, by regulations, specify the procedure for short-listing of candidates for considering their appointment as Judges to the High Court.

10 **9.** (1) The Commission shall meet at such time and place as the Chairperson may decide. Meetings of Commission.

(2) The Commission shall have the power to specify, by regulations, the procedure for the discharge of its functions under the Act.

10. No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy in, or defect in the constitution of, the Commission. Vacancies, etc., not to invalidate proceedings of Commission.

15 **11.** (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act. Power to make rules.

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

(a) the fee and allowances payable to the eminent persons under sub-section (3) of section 3;

(b) the terms and other conditions of service of officers and other employees of the Commission under sub-section (2) of section 6;

(c) any other matter which is to be or may be prescribed, in respect of which provision is to be made by the rules.

20 **12.** (1) The Commission may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act. Power to make regulations.

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

(a) the procedure for recommendation with respect to appointment of Judge of a High Court under section 5;

(b) the procedure for short-listing of candidates for considering their appointment as Judges of the Supreme Court under sub-section (2) of section 8;

(c) the procedure for short-listing of candidates for considering their appointment as Judges of the High Court under sub-section (3) of section 8;

(d) the procedure to be followed by the Commission in discharging of its functions under sub-section (2) of section 9;

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

Rules and regulations to be laid before Parliament.

13. Every rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

5

10

Power to remove difficulties.

14. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, after consultation with the Commission, by an order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

15

Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

The Judges of the Supreme Court are appointed by the President under clause (2) of article 124 of the Constitution while the Judges of the High Courts are appointed by the President under clause (1) of article 217 of the Constitution. The President is required to hold consultation with such of the Judges of the Supreme Court and of the High Courts in the States as he may deem necessary for the purpose. However, every Judge of a High Court shall be appointed by the President after consultation with the Chief Justice of India, the Governor of the State and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court.

2. The transfer of Judges from one High Court to another High Court is made by the President after consultations with the Chief Justice of India under clause (1) of article 222 of the Constitution.

3. As regards the appointment of Judges of Supreme Court and High Courts, the Supreme Court in the matters of the Supreme Court Advocates-on-Record Association Vs. Union of India and its Advisory Opinion 1998 in Third Judges case, had interpreted articles 124(2) and 217(1) of the Constitution with respect to the meaning of "consultation" as "concurrence". It was also held that the consultation of the Chief Justice of India means collegium consisting of Chief Justice and two or four Judges, as the case may be. This has resulted in a Memorandum of Procedure laying down the process which is being presently followed for appointment of Judges to both the High Courts and the Supreme Court. The Memorandum of Procedures confers upon the Judiciary itself the power for appointment of Judges.

4. After review of the pronouncements of the Supreme Court and relevant constitutional provisions, it was felt that a broad based Judicial Appointment Commission could be established for making recommendations for selection of Judges. It would provide a meaningful role to the executive and judiciary to present their view points and make the participants accountable while introducing transparency in the selection process.

5. Thus, the Judicial Appointments Commission Bill, 2013 seeks to broad base the appointment process and make it more participatory to ensure greater transparency and objectivity in the appointments to higher judiciary.

6. The proposed Bill provides for the constitution of the Judicial Appointments Commission, comprising of—(a) the Chief Justice of India, an *ex officio* Chairperson; (b) two other Judges of the Supreme Court next to the Chief Justice of India in seniority as *ex officio* Members; (c) the Union Minister in charge of Law and Justice as *ex officio* Member; and (d) two eminent persons, to be nominated by the collegium consisting of the Prime Minister, the Chief Justice of India and the Leader of Opposition in the House of the People, as members.

7. The proposed Bill would enable equal participation of Judiciary and Executive, make the system of appointments more accountable, and thereby increase the confidence of the public in the institutions.

8. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 24th August, 2013

KAPIL SIBAL

FINANCIAL MEMORANDUM

Sub-clause (1) of clause 3 of the Bill provides for establishment of the Judicial Appointments Commission, referred to in clause (1) of article 124A of the Constitution, comprising —(a) the Chief Justice of India an *ex officio* Chairperson; (b) two other Judges of the Supreme Court next to the Chief Justice of India in seniority as *ex officio* Members; (c) the Union Minister in charge of Law and Justice as *ex officio* Member; and (d) two eminent persons to be nominated by the collegium consisting of Prime Minister, Chief Justice of India and the Leader of Opposition in the Lok Sabha.

Sub-clause (2) of clause 3 provides that Secretary to the Government of India in the Department of Justice be the convener of the Commission.

Sub-clause (3) of clause 3 provides that the fee and allowances payable to eminent person shall be such as may be prescribed.

Sub-clause (1) of clause 6 provides that the Central Government may appoint such number of officers and other employees as it may consider necessary for the discharge of functions of the Commission under this Act.

The expenditure on account of the aforesaid provisions would be negligible. At this stage, it is not practicable to make an estimate of expenditure likely to be involved in the financial year 2013-2014, both recurring and non-recurring. However, the expenditure would be met from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 11 of the Bill confers power upon the Central Government to make rules for carrying out the provisions of the Bill. The matters in respect of which rules may be made are—(a) the fee and allowances payable to the eminent persons under sub-section (3) of section 3; (b) the terms and other conditions of service of officers and other employees of the Commission under sub-section (2) of section 6; and (c) any other matter which is to be or may be prescribed, in respect of which provision is to be made by the rules.

2. Clause 12 of the Bill confers power upon the Judicial Appointments Commission to make regulations consistent with the Act and the rules made thereunder to carry out the provisions of the Act. The matters in respect of which, regulations may be made are matters relates to—(a) the procedure for recommendation with respect to appointment of Judge of a High Court under section 5; (b) the procedure for short-listing of candidates for considering their appointment as Judges of the Supreme Court under sub-section (2) of section 8; (c) the procedure for short-listing of candidates for considering their appointment as Judges of the High Court under sub-section (3) of section 8; (d) the procedure to be followed by the Commission in discharging of its functions under sub-section (2) of section 9; and (e) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.

3. The rules made by the Central Government and the regulations made by the Commission shall be laid as soon as may be after they are made before each House of Parliament.

4. The matters in respect of which the rules and regulations may be made are generally matters of procedure and administrative detail and it is not practicable to provide them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

RAJYA SABHA

A

BILL

to provide for the composition of the Judicial Appointments Commission for the purpose of recommending persons for appointment as Chief Justice of India and other Judges of the Supreme Court, Chief Justices and other Judges of High Courts, its functions, procedure to be followed by it and for matters connected therewith or incidental thereto.

(Shri Kapil Sibal, Minister of Law and Justice)