

# THE CONSTITUTION (NINETY-NINTH AMENDMENT) ACT, 2014

India

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### Act 99 of 2014

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An Act further to amend the Constitution of IndiaBe it enacted by Parliament in the Sixty-fifth Year of the Republic of India as follows-Declared unconstitutional by Supreme Court Advocates-on-Record Assn. v. Union of India, 2015 SCC OnLine SC 964.

**1. Received the assent of the President on December 31, 2014 and published in the Gazette of India, Extra., Part II, Section 1, dated 31st December, 2014, pp. 1-3, No. 49.**

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

**2. The Supreme Court in Supreme Court Advocates-on-Record Assn. v. Union of India, (1998) 7 SCC 739**

, had interpreted clause (2) of Article 124 and clause (1) of Article 217 of the Constitution with respect to the meaning of "consultation" as "concurrence". Consequently, a Memorandum of Procedure for appointment of Judges to the Supreme Court and High Courts was formulated, and is being followed for appointment.

**3. After review of the relevant constitutional provisions, the pronouncements of the Supreme Court and consultations with eminent Jurists, it is felt that a broad based National Judicial Appointments Commission should be established for making recommendations for appointment of Judges of the Supreme Court and High Courts. The said Commission would provide a meaningful role to the judiciary, the executive and eminent persons to present their view points and make the participants accountable, while also introducing transparency in the selection process.**

**4. The Constitution (One Hundred and Twenty-first Amendment) Bill, 2014 is an enabling constitutional amendment for amending relevant provisions of the Constitution and for setting up a National Judicial Appointments Commission. The proposed Bill seeks to insert new Articles 124-A, 124-B and 124-C after Article 124 of the Constitution. The said Bill also provides for the composition and the functions of the proposed National Judicial Appointments Commission. Further, it provides that Parliament may, by law, regulate the procedure for appointment of Judges and empower the National Judicial Appointments Commission to lay down procedure by regulation for the discharge of its functions, manner of selection of persons for appointment and such other matters as may be considered necessary.**

**5. The proposed Bill seeks to broad base the method of appointment of Judges in the Supreme Court and High Courts, enables participation of judiciary, executive and eminent persons and ensures greater transparency, accountability and objectivity in the appointment of the Judges in the Supreme Court and High Courts.**

**6. The Bill seeks to achieve the above objectives.**

Declared unconstitutional by Supreme Court Advocates-on-Record Assn. v. Union of India, 2015 SCC OnLine SC 964.

## **1. Short title and commencement.-**

(1) This Act may be called the Constitution (Ninety-ninth Amendment) Act, 2014. (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. Declared unconstitutional by Supreme Court Advocates-on-Record Assn. v. Union of India, 2015 SCC OnLine SC 964.

## 2. Amendment of Article 124.-

In Article 124 of the Constitution, in clause (2),--(a)for the words "after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose", the words, figures and letter "on the recommendation of the National Judicial Appointments Commission referred to in Article 124-A" shall be substituted;(b)the first proviso shall be omitted;(c)in the second proviso, for the words "Provided further that", the words "Provided that" shall be substituted.Declared unconstitutional by Supreme Court Advocates-on-Record Assn. v. Union of India, 2015 SCC OnLine SC 964.

## 3. Insertion of new Articles 124-A, 124-B and 124-C.-

After Article 124 of the Constitution, the following articles shall be inserted, namely-"124-A. National Judicial Appointments Commission.-(1) There shall be a Commission to be known as the National Judicial Appointments Commission consisting of the following, namely-(a)the Chief Justice of India, Chairperson, ex officio;(b)two other senior Judges of the Supreme Court next to the Chief Justice of India - 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 committee consisting of the Prime Minister, the Chief Justice of India and the Leader of Opposition in the House of the People or where there is no such Leader of Opposition, then, the Leader of single largest Opposition Party in the House of the People - Members:Provided that one of the eminent person shall be nominated from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities or Women:Provided further that an eminent person shall be nominated for a period of three years and shall not be eligible for re-nomination.(2)No act or proceedings of the National Judicial Appointments Commission shall be questioned or be invalidated merely on the ground of the existence of any vacancy or defect in the constitution of the Commission.

### 124.

-B. Functions of Commission.-It shall be the duty of the National Judicial Appointments Commission to-(a)recommend persons for appointment as Chief Justice of India, Judges of the Supreme Court, Chief Justices of High Courts and other Judges of High Courts;(b)recommend transfer of Chief Justices and other Judges of High Courts from one High Court to any other High Court; and(c)ensure that the person recommended is of ability and integrity.

### 124.

-C. Power of Parliament to make law.-Parliament may, by law, regulate the procedure for the appointment of Chief Justice of India and other Judges of the Supreme Court and Chief Justices and other Judges of High Courts and empower the Commission to lay down by regulations the procedure for the discharge of its functions, the manner of selection of persons for appointment and such other matters as may be considered necessary by it.".Declared unconstitutional by Supreme

Court Advocates-on-Record Assn. v. Union of India, 2015 SCC OnLine SC 964.

#### **4. Amendment of Article 127.-**

In Article 127 of the Constitution, in clause (1), for the words "the Chief Justice of India may, with the previous consent of the President", the words "the National Judicial Appointments Commission on a reference made to it by the Chief Justice of India, may with the previous consent of the President" shall be substituted. Declared unconstitutional by Supreme Court Advocates-on-Record Assn. v. Union of India, 2015 SCC OnLine SC 964.

#### **5. Amendment of Article 128.-**

In Article 128 of the Constitution, for the words "the Chief Justice of India", the words "the National Judicial Appointments Commission" shall be substituted. Declared unconstitutional by Supreme Court Advocates-on-Record Assn. v. Union of India, 2015 SCC OnLine SC 964.

#### **6. Amendment of Article 217.-**

In Article 217 of the Constitution, in clause (1), for the portion beginning with the words "after consultation", and ending with the words "the High Court", the words, figures and letter "on the recommendation of the National Judicial Appointments Commission referred to in Article 124-A" shall be substituted. Declared unconstitutional by Supreme Court Advocates-on-Record Assn. v. Union of India, 2015 SCC OnLine SC 964.

#### **7. Amendment of Article 222.-**

In Article 222 of the Constitution, in clause (1), for the words "after consultation with the Chief Justice of India", the words, figures and letter "on the recommendation of the National Judicial Appointments Commission referred to in Article 124-A" shall be substituted. Declared unconstitutional by Supreme Court Advocates-on-Record Assn. v. Union of India, 2015 SCC OnLine SC 964.

#### **8. Amendment of Article 224.-**

In Article 224 of the Constitution,--(a) in clause (1), for the words "the President may appoint", the words "the President may, in consultation with the National Judicial Appointments Commission, appoint" shall be substituted; (b) in clause (2), for the words "the President may appoint", the words "the President may, in consultation with the National Judicial Appointments Commission, appoint" shall be substituted. Declared unconstitutional by Supreme Court Advocates-on-Record Assn. v. Union of India, 2015 SCC OnLine SC 964.

## **9. Amendment of Article 224-A.-**

In Article 224-A of the Constitution, for the words "the Chief Justice of a High Court for any State may at any time, with the previous consent of the President", the words "the National Judicial Appointments Commission on a reference made to it by the Chief Justice of a High Court for any State, may with the previous consent of the President" shall be substituted. Declared unconstitutional by Supreme Court Advocates-on-Record Assn. v. Union of India, 2015 SCC OnLine SC 964.

## **10. Amendment of Article 231.-**

In Article 231 of the Constitution, in clause (2), sub-clause (a) shall be omitted. Declared unconstitutional by Supreme Court Advocates-on-Record Assn. v. Union of India, 2015 SCC OnLine SC 964 [The Constitution (Ninety-ninth Amendment) Act, 2012, was ruled "unconstitutional and void" by the five-judge Bench of the Supreme Court on October 16 by a 4-1 Special Majority Verdict. Despite invalidating the NJAC Act, the Supreme Court bench acknowledged the underlying problems with the Ambiguous collegium system and Matters of appointment and requested comments from Indians and Civil Society for ways to make it better. However, the court ought to deal with the long-standing difficulties that had given the call for an NJAC credence. The judiciary should adopt a zero-tolerance policy for corruption and deceit. Also Refer]