

- (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 renomination.

(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.

124B. 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.

124C. 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.

As per the amended provisions of the Constitution, the Commission was to consist of a) Chief Justice of India (Chairperson, *ex officio*), b) Two other senior judges of the Supreme Court next to the Chief Justice of India — *ex officio*, c) The Union Minister of Law and Justice, *ex-officio*, d) Two eminent persons (to be nominated by a committee consisting of the Chief Justice of India, Prime Minister of India and the Leader of opposition in the Lok Sabha or where there is no such Leader of Opposition, then, the Leader of single largest Opposition Party in Lok Sabha), provided that of the two eminent persons, one person would be from the Scheduled Castes or Scheduled Tribes or OBC or minority communities or a woman. The eminent persons shall be nominated for a period of three years and shall not be eligible for re-nomination.

As per the amended Constitution, the functions of the Commission were to (i) 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, (ii) recommend transfer of Chief Justices and other judges of high courts from one high court to any other high court and (iii) ensure that the persons recommended are of ability, merit and other criteria mentioned in the regulations related to the Act.

However, it is noteworthy that several writ petitions were filed in the Supreme Court challenging the 99th Constitutional Amendment, 2014 and the National Judicial Appointment Commission Act, 2014, and disposing of the above appeals, the five judge Bench of the Supreme Court declared the 99th Amendment to be unconstitutional on the grounds that it violates the basic principles of “Independence of Judiciary” and “Separation of Powers” which in turn violates the basic structure of the Indian Constitution. (Refer chapter 4).