

courts where the persons to be recommended are functioning as Judges should be conveyed by the Chief Justice of India to the Government of India.

4. The substance of the views of the others consulted by the Chief Justice of India or on his behalf, particularly those of non-Judges (Members of the Bar) should be stated in the memorandum and be conveyed to the Government of India.

5. Normally, the *collegium* should make its recommendation on the basis of consensus but in case of difference of opinion no one would be appointed, if the CJI dissents.

6. If two or more members of the *collegium* dissent, CJI should not persist with the recommendation.

7. In case of non-appointment of the person recommended, the materials and information conveyed by the Government of India, must be placed before the original *collegium* or the reconstituted one, if so, to consider whether the recommendation should be withdrawn or reiterated. It is only if it unanimously reiterated that the appointment must be made.

8. The CJI may, in his discretion, bring to the knowledge of the person recommended the reasons disclosed by the Government of India for his non-appointment and ask for his response thereto, which, if made, be considered by the *collegium* before withdrawing or reiterating the recommendation.

9. Merit should be predominant consideration though inter-seniority among the Judges in their high courts and their combined seniority on all India basis should be given weight.

10. Cogent and good reasons should be recorded for recommending a person of outstanding merit regardless of his lower seniority.

11. For recommending one of several persons of more or less equal degree of merit, the factor of the high courts not represented on the Supreme Court, may be considered.

12. The judge passed over can be reconsidered unless for strong reasons, it is recorded that he be never appointed.

13. The recommendations made by the CJI without complying with the norms and requirements, are not binding on the Government of India.

The 99th Constitutional (Amendment) Act, 2014^{4A} and the National judicial Appointment Commission Act, 2014^{4B} were enacted with a view to bring more transparency in the judicial appointments. (see chapter 4).

In Article 124, 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 124A" were substituted. Further, three new Articles *viz.* Articles 124A, 124B and 124C were also inserted in the Constitution which are as under:

124A. (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*;