

Bill No. LX of 2013

THE CONSTITUTION (ONE HUNDRED AND TWENTIETH
AMENDMENT) BILL, 2013

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further to amend the Constitution of India.

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 Constitution (One Hundred and Twentieth Amendment) Act, 2013.

Short title and commencement.

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

2. In article 124 of the Constitution, in clause (2),—

Amendment of article 124.

10 (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 Judicial Appointments Commission as referred to in article 124A" 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.

Insertion of
new article
124A.

3. After article 124 of the Constitution, the following article shall be inserted, namely:—

Judicial
Appointments
Commission.

"124A. (1) There shall be a Commission to be known as the Judicial Appointments Commission. 5

(2) Parliament may, by law, provide for—

(a) the composition of the Commission;

(b) the appointment, qualifications, conditions of service and tenure of office of the Chairperson and other members of the Commission;

(c) the functions of the Commission; 10

(d) the procedure to be followed by the Commission in discharge of its functions;

(e) the manner of selection of persons for appointment as Chief Justice of India and other Judges of the Supreme Court, Chief Justices and other Judges of High Courts; and 15

(f) such other matters as may be considered necessary.

Amendment
of article 217.

4. 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 "on the recommendation of the Judicial Appointments Commission referred to in article 124A" shall be substituted. 20

Amendment
of article 222.

5. In article 222 of the Constitution, in clause (1), for the words "after consultation with the Chief Justice of India", the words "on the recommendation of the Judicial Appointments Commission referred to in article 124A" shall be substituted.

Amendment
of article 231.

6. In article 231 of the Constitution, in clause (2), sub-clause (a) shall be omitted.

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 consultation with the Chief Justice of India under clause (1) of article 222 of the Constitution.

3. As regards the appointment of Judges of the 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 the 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 Procedure 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 Constitution (One Hundred and Twentieth Amendment) Bill, 2013 proposes to insert a new article 124A to constitute a Judicial Appointments Commission for making recommendations with respect to the appointment of Judges in Higher Judiciary.

6. The proposed Bill would enable equal participation of Judiciary and Executive in appointment of Judges in higher judiciary and make the system of appointments more accountable and thereby increase the confidence of the public in the institution of judiciary.

7. The Bill seeks to achieve the above objectives.

NEW DELHI;

KAPIL SIBAL

The 24th August, 2013.

ANNEXURE

EXTRACTS FROM THE CONSTITUTION OF INDIA

	*	*	*	*	*
Establishment and constitution of Supreme Court.	124. (1) *	*	*	*	*
	(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal 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 and shall hold office until he attains the age of sixty-five-years:				
	Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted:				
	Provided further that—				
	(a) a Judge may, by writing under his hand addressed to the President, resign his office;				
	(b) a Judge may be removed from his office in the manner provided in clause (4).				
	*	*	*	*	*
Appointment and conditions of the office of a Judge of a High Court.	217. (1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal 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, and shall hold office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of sixty-two years:				
	Provided that—				
	(a) a Judge may, by writing under his hand addressed to the President, resign his office;				
	(b) a Judge may be removed from his office by the President in the manner provided in clause (4) of article 124 for the removal of a Judge of the Supreme court;				
	(c) the office of a Judge shall be vacated by his being appointed by the president to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.				
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Transfer of a Judge from one High Court to another.	222. (1) The President may, after consultation with the Chief Justice of India, transfer a Judge from one High Court to any other High Court.				
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Establishment of a common High Court for two or more States.	231. (1) Notwithstanding anything contained in the preceding provisions of this Chapter, Parliament may by law establish a common High Court for two or more States or for two or more States and a Union territory.				
	(2) In relation to any such High Court,—				
	(a) the reference in article 217 to the Governor of the State shall be construed as a reference to the Governors of all the States in relation to which the High Court exercises jurisdiction;				
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RAJYA SABHA

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further to amend the Constitution of India.

(Shri Kapil Sibal, Minister of Law and Justice)