

COMMITTEE ON JUDICIAL ACCOUNTABILITY

DRAFT BILL
ON
NATIONAL JUDICIAL COMMISSION

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COMMITTEE ON JUDICIAL ACCOUNTABILITY

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The draft of the National Judicial Commission Bill finalised in a meeting on March 2, 1997 was sent to the Minister of Law & Justice Government of India. The Committee on Judicial Accountability has decided to circulate the Bill to the members of Parliament, Bar Associations of the Supreme Court, High Courts, National Tribunals, Law School & Universities and important public men & women.

The underlying idea is to generate public discussion and mobilise opinion to secure enactment of the urgently needed law dealing with the appointment, removal and transfer of higher judiciary and to bring about transparency and accountability.

Sincerely

Har Dev Singh

Convenor

Encl:

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Kamini Jaiswal
Prashant Bhushan
Advocates

Dear Minister

Please find enclosed draft of a bill to set up the National Judicial Commission for consideration and appropriate action to have it introduced in Parliament for enactment.

The Fourth Convention on Judicial Accountability on September 7, 1996 resolved that an independent, high-powered, multi-member National Judicial Commission vested with the power of appointment, transfer and removal of higher judiciary be set up. A Sub Committee comprising of M/s Shanti Bhushan, Ram Jethmalani, V.M. Tarkunde, Indira Jaisingh, Har Dev Singh, Prashant Bhushan and Kamini Jaiswal was constituted to prepare draft of the Bill. A copy of the resolution is annexed.

The draft of the proposed Bill prepared by the Sub-Committee was considered in a meeting on March 2, 1997 in which former Supreme Court Judges M/S. V.R. Krishna Iyer, P.B. Sawant and K. Jaichadra Reddy and Kuldip Singh, who could not be present in the meeting, conveyed their concurrence in principle. Former High Court Judges M/s. V.M. Tarkunde, Debi Singh Tewatia, P.S. Poti and Rajinder Sachar also participated. Former Chief Justice of Allahabad High Court Mr. S.S. Sodhi conveyed his concurrence. From amongst members of the Committee Mr. Ram Jethmalani, former Law Minister of India, Mr. Anil Diwan, Ms. Indira Jaisingh, Mr. Har Dev Singh senior advocates and Ms. Kamini Jaiswal advocate participated. Mr. Iqbal Chagla, President of the Bombay Bar Association regretted his inability to attend but conveyed his agreement with the setting up of the National Judicial Commission.

The meeting had a fruitful discussion and came out with suggestions which have been incorporated and the draft has been revised.

The meeting decided that the matter be taken up with the Government with a request to initiate steps for amendment of Articles 124, 126, 217, 220 and 221 of the Constitution for enactment of the Bill.

It was further decided that the vacancies occurring in the Supreme Court and the High Court must not be filled up in haste and bearing that in mind, enactment of the proposed law be expedited.

The draft bill is accordingly being sent to you for appropriate action. You are requested to receive a deputation of the members of the Committee on Judicial Accountability at the earliest convenient date.

Yours Sincerely,
(Har Dev Singh)
March 12, 1997

Encl:
Resolution

Mr. R. Khalap
Minister of Law, Justice and Company Affairs

THE NATIONAL JUDICIAL COMMISSION BILL

STATEMENT OF OBJECTS & REASONS

There is a wide spread public perception that the quality of the higher judiciary in the country in general has deteriorated over the last two decades leading to a decline in the quality of administration of justice. Apart from the long delays in the decision of cases, there are also many complaints being heard now about the competence and integrity of judges manning the higher judiciary. It is felt that part of the cause of these problems lie in the present system under the Constitution for the appointment and removal of judges. Experience does seem to suggest that the present system of appointments as well as for removal is not appropriate to the needs of the present days which require that all vacancies will be filled up promptly by the best available persons of high integrity. The present system of appointment has often led to delay in appointments and has often led to inappropriate appointments being made which is ill-suited to judging the merits of prospective appointees.

Experience has also shown that the procedure for removal of judges is too cumbersome and impractical to be effective. Further, it is felt that the matter of determining whether a judge is guilty of misbehaviour and thus fit for being removed, should be left to the professional body rather than to Parliament which is not the appropriate body to decide such questions. It is, therefore, felt necessary, to constitute a high powered National Judicial Commission which will be an eminent body of judicial personages to be entrusted with the task of recommending appointments and removal of members of the higher judiciary. This body will be independent of the Executive as well as of the Judiciary shall be provided with an investigative machinery at its disposal for investigating the antecedents of judge. It shall have the power to examine complaints against judges and in suitable cases set up enquiry committees for conducting a full judicial enquiry into the charges against errant judges. It shall have the final power for recommending the removals of an errant judge after such enquiry. Like wise its recommendations for appointments will also be final and binding. It is hoped that such a high powered eminent body would make the best possible appointments to the higher judiciary and provide the much needed accountability in the higher judiciary. This bill seeks to achieve these purposes.

THE CONSTITUTION AMENDMENT ACT

An act to further amend the Constitution of India

Be it enacted by Parliament in the year of the Republic as follows:

1. Short Title - this Act may be called the Constitution - Amendment Act,
2. Insertion of Chapter III A --

After Chapter III, the following chapter III A shall be inserted.

CHAPTER III A

The National Judicial Commission

123A (1) There shall be a National Judicial Commission consisting of a Chairman and four other members who will be appointed by the President by warrant under his hand and seal.

(2) The functions of the National Judicial Commission will be to recommend the appointment, transfer and removal of Judges and Chief Justices of High Courts and the appointment and removal of Judges and Chief Justice of the Supreme Court.

(3) The Chairman shall be appointed on the recommendation of a collegium consisting of all sitting judges of the Supreme Court. One member of the Commission shall be appointed on the recommendation of a collegium consisting of all the Chief Justices of the High Courts. One member shall be appointed on the recommendation of Union Cabinet. One member shall be appointed on the recommendation of the Leader of the Opposition in the Lok Sabha who will act in consultation with leaders of other opposition parties in both houses. One member shall be appointed on the recommendation of a collegium consisting of all the members of the Bar Council of India.

(4) A person shall not be qualified for appointment to the National Judicial Commission unless:

- a) He is at least 55 years of age; and
 - i) He has been a judge of the Supreme Court or a judge of a High Court; or
 - ii) He is a senior Advocate.

(5) Each member of the National Judicial Commission shall have a fixed tenure of 5 years, but he shall be eligible for further terms if reappointed by any of the appointing authorities. Each vacancy will be filled by appointment on the recommendation of the same authority on whose recommendation the member whose membership fell vacant was originally appointed.

(6) A member can resign his office by a letter addressed to the President. He shall not be removed from the office except on the unanimous recommendation of all the other members of the Commission. No member of the National Judicial Commission after completion of his term will hold any other public office or will practice in a court or chambers.

(7) The Chairman of the National Judicial Commission will have the status and salary of the Chief Justice of the Supreme Court of India, and its members shall have the status and salary of a judge of the Supreme Court of India.

(8) The National Judicial Commission will frame its own rules of procedure and will recruit and frame the terms and conditions of its own staff, including a team of investigators to assist it. The National Judicial Commission shall have such officers, staff and servants including a team of investigators, as may be deemed necessary by the Commission.

(10) The administrative expenses of the National Judicial Commission including all salaries, allowances and pensions payable to or in respect of the officers, staff and servants of the Commission shall be charged upon the consolidated fund of India.

(11) The seat of the National Judicial Commission shall be at New Delhi.

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In place of Article 124, the following shall be substituted:

"124 (1) There shall be a Supreme Court of India consisting of the Chief Justice of India and such number of judges as the National Judicial Commission shall determine from time to time.

2) Every judge of the Supreme Court shall be appointed by the President by warrant under his hand on the recommendation of the National Judicial Commission and shall hold office until he attains the age of 65 years. The Chief Justice of India shall always be appointed by seniority from among the judges of the Supreme Court, unless the National Judicial Commission unanimously recommends otherwise. The recommendations of the National Judicial Commission will be binding on the President.

Before making any recommendation for the appointment of a Judge to the Supreme Court, the National Judicial Commission may consult the Chief Justice of India and other judges of the Supreme court. However in case of a disagreement the view of the Commission shall be final in the matter.

A judge may by writing under his hand addressed to the President resign his office;

(3) If any dispute arises about the age of a judge of the Supreme court, it shall be determined by the National Judicial Commission whose decision shall be final.

(4) A person shall not be qualified for appointment as a judge of the Supreme Court unless he is a citizen of India; and

- a) has been for at least 15 years a judge of a High Court or of two or more High Courts in succession; or
- b) has been for at least 15 years an advocate of a High Court or of two or more High Courts in succession or
- c) is in the opinion of the National Judicial Commission a distinguished jurist.

(5) A Judge shall not be removed from his office except by an order of the President passed on the recommendation of the National Judicial Commission which will be binding on the President.

The National Judicial Commission will recommend the removal of a judge of the Supreme Court only on the finding of misbehaviour or incapacity arrived at after an enquiry by a Committee of three retired judges of the Supreme Court, to be selected by the National Judicial Commission to inquire into charges of misbehaviour or incapacity against the judge. The rules of procedure for framing the charges, constituting the Inquiry Committee and the rules of procedure for the Inquiry shall be framed by the National Judicial Commission.

(6) Once the Inquiry Committee is constituted to enquire into the charges against a judge he shall desist from discharging judicial functions.

(7) Every person appointed to be a judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(8) No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India. He shall not be appointed to any office of profit, including a Commission of Inquiry by the government at the Centre or any State, except on the recommendation of the National Judicial Commission.

4. In Article 126 of the Constitution, in place of the words, "as the President may appoint for the purpose", the following words will be substituted "as the President may appoint on the recommendation of the National Judicial Commission".

5. In place of Article 217, the following will be substituted:

217(1) Every judge of the High Court shall be appointed by the President by warrant under his hand on the recommendation of the National Judicial Commission and shall hold office until he attains the age of 62 years. The Chief Justice of a High Court shall always be appointed by seniority from among the sitting judges of that High Court, unless the National Judicial Commission unanimously recommends otherwise.

(2) The President will be bound by the advice of the National Judicial Commission.

(3) The National Judicial Commission shall not make its recommendation to the President until at least two weeks after the name of the proposed appointee has been duly notified to the public in the press by the National Judicial Commission.

(4) A judge may by writing under his hand addressed to the President resign his office;

(5) If any dispute arises about the age of a judge of the High Court, it shall be determined by the National Judicial Commission whose decision shall be final.

(6) A person shall not be qualified for appointment as a judge of the High Court unless he is a citizen of India; and

- a) has held for at least 10 years a judicial office in the territory of India; or
- b) has been for at least 10 years an advocate of a High Court or of two or more High Courts in succession; or
- c) is in the opinion of the National Judicial Commission a distinguished jurist.

(8) A judge shall not be removed from his office except by an order of the President passed on the recommendation of the National Judicial Commission which will be binding on the President.

The National Judicial Commission will recommend the removal of a judge only on the finding of misbehaviour or incapacity arrived at after an Inquiry Committee of 3 retired judges of the Supreme Court or High Court constituted by the National Judicial Commission to inquire into charges of misbehaviour or incapacity against the judge. The rules of procedure for framing the charges, constituting the Inquiry Committee and the rules of procedure for the Inquiry shall be framed by the National Judicial Commission.

6. In place of article 220, the following will be substituted:

"No person who after the commencement of this Constitution has held office as a judge of a High Court shall plead or act in any Court or before any authority in India except the Supreme Court and the other High Courts. He shall not be appointed to any office of profit, including a Commission of Inquiry by the Government, except on the recommendation of the National Judicial Commission.

7. Article 222 (1) shall be substituted by the following:

"A judge of a High Court may be transferred from one High Court to another High Court by the President on the recommendation of the National Judicial Commission. Such recommendation will be binding on the President".

RESOLUTION PASSED BY THE CONVENTION ON JUDICIAL ACCOUNTABILITY ON 07.09.1996

The Convention notes with serious concern that despite the demonstrated failure of the system of impeachment for holding judges accountable for their misbehaviour, and despite the recommendation of the previous Convention on Judicial Accountability and all other responsible observers of the judiciary that the system of impeachment be replaced by a more practical and easily workable system, nothing has been done to achieve this. On the other hand, the Supreme Court has frowned upon the Bar for raising question about the integrity of judges. This is despite the fact that the so called 'in house' system of the judiciary for cleaning the mess within it has hardly worked at all. Any action against judges for their misbehaviour and lack of integrity so far, though it has been very rare, has been possible only because of the stand taken by the Bar against these judges. The result is that the judges still continue to remain largely unaccountable.

The Convention is of the firm view that we need an independent, high powered, multi-member National Judicial Commission which should be vested with the ultimate power of appointment, transfer and removal of judges. It should have an investigative machinery of its own and its functioning should be transparent. The Convention recommends that Parliament should immediately enact a Constitution Amendment Act to bring about these changes.

The Convention also notes that despite the 9 judges decision vesting the ultimate power of appointment of judges on the Supreme Court of India, the system of appointment of judges still remains unsatisfactory. In particular, the lack of transparency in the system of appointments has allowed the appointment of a number of undesirable persons in the recent past. The Convention is firmly of the view that the vesting of the ultimate power of appointment and transfers in a single person, even if he be the head of the judiciary, is unsatisfactory and is likely to lead to the exercise of this power on the basis of improper information and extraneous considerations.

The Convention constitutes a sub-committee of the following members of the committee to finalize the draft of such a legislation and pursue it with Parliament. The drafting Committee includes M/s. A. Shanti Bhushan, Ram Jethmalani, Indra Jaisingh, V.M. Tarkunde, Har Dev Singh, Kamini Jaiswal and Prashant Bhushan.