

THE NATIONAL JUDICIAL APPOINTMENTS COMMISSION ACT, 2014
[NO. 40 OF 2014]

Preamble:

The purpose of enactment of this act is to regulate the procedure to be followed by the National Judicial Appointments Commission (hereinafter referred as "NJAC") for appointment of CJI and other Judges of Supreme Court and Chief Justices and other Judges of High Courts including their transfers and other related matters.

Important sections:

Section 1:

- This Act may be called the National Judicial Appointments Commission Act, 2014 and came into effect from 13.04.2015.

Section 3:

- The Headquarters shall be at Delhi.

Section 4 (Reference to Commission for filling Vacancies):

- *Within 30 days from the date of commencement of the Act, Central Government shall intimate the vacancies of Judges in SC and in HC to the Commission for making its recommendations to fill up such vacancies.*
- *In case of vacancy due to retirement of Judge in SC and in HC, the Central Government shall make reference to Commission 6 months prior to the date of occurrence of vacancy.*
- *In case of vacancy due to death or resignation of Judge in SC and in HC, the Central Government shall make reference to Commission within 30 days of occurrence of vacancy.*

Section 5 (Procedure for selection of Judges of SC):

- The Commission shall recommend the senior most Judge of the SC for appointment as the CJI if he is considered fit to hold the office and he should not be the member of commission in the meeting.
- On the basis of ability, merit and other criteria as may be specified by regulations, the commission shall recommend the name for appointment as Judge of SC from eligible persons provided that for appointment of HC Judge, apart from seniority, the ability and merit of such Judge shall be considered. Provided further that in case of any 2 members are not agreed on any name, the Commission shall not recommend such person for appointment.

Section 6 (Procedure for section of Judges of HC):

- The Commission shall recommend for appointment a Judge of a High Court to be the Chief Justice of a High Court on the basis of inter se seniority of High Court Judges and ability, merit and any other criteria of suitability as may be specified by regulations. Further, the Commission shall seek nomination from the Chief Justice of the concerned High Court for the purpose of recommending for appointment a person to be a Judge of that High Court.
- The Commission shall also on the basis of ability, merit and any other criteria of suitability nominate name for appointment as a Judge of a High Court from amongst eligible persons and forward such names to the Chief Justice of the concerned High Court for its views. Further the Chief Justice of the concerned High Court shall consult two senior most Judges of that High Court and such other Judges and eminent advocates of that High Court as may be specified.
- *If any two members of the Commission do not agree, commission shall not recommend appointment.*
- The Commission shall elicit in writing the views of the Governor and the Chief Minister of the State also.

Section 7 (Power of President for recommendations):

- The President shall appoint the CJI or a Judge of the SC or the Chief Justice of a High Court or the Judge of a High Court on the recommendations made by the Commission provided that the President may ask the commission for reconsideration but if the Commission makes a recommendation after reconsideration the President shall make the appointment accordingly.

Section 9 (Power of Transfer of Judges):

- The Commission shall recommend for transfer of Chief Justices and other Judges of High Courts from one High Court to any other High Court as per the procedure specified.

Section 12 (Power of make regulations):

- The Commission may make regulations to carry out the provisions of this Act, namely:
 - the criteria, other procedure and conditions for selection and appointment of a Judge of the Supreme Court;
 - the criteria, other procedure and conditions for selection and appointment of a Judge of the High Court;
 - other Judges and eminent advocates who may be consulted by the Chief Justice;
 - the manner of eliciting views of the Governor and the Chief Minister;
 - the procedure for transfer of Chief Justices and other Judges from one High Court to any other High Court;
 - the procedure to be followed by the Commission in the discharge of its functions under section 10;
 - any other matter in respect of which provision is to be made by regulations.

Section 13 (Rules and regulations to be laid before parliament):

- Every rule and regulation made under this Act shall be laid before each House of Parliament for a total period of thirty days which may be comprised in one session or in two or more successive sessions.

Article 124A of the Constitution:

(1) There shall be a Commission to be known as the National Judicial Appointments Commission consisting of the following, namely:

- the Chief Justice of India, Chairperson, ex officio;
- two other senior Judges of the Supreme Court next to the Chief Justice of India, Members, ex officio;
- the Union Minister in charge of Law and Justice, Member, ex officio;
- 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.

Note: *This document contains the views of the author on the analysis of the Act and it is for personal and private circulation and not bearing any opinion or advice.*