

B.A. LL.B VI SEMESTER

MOOD COURT

Unit-2 Judicial System In India

Topic:- Appointment of judges

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INTRODUCTION:-

- As per the amended constitution, the functions of the Commission would have included the following: Recommending persons for **appointment** as Chief Justice of India, **Judges** of the Supreme Court, Chief **Justices** of High Courts and other **Judges** of High Courts.

Appointment:-

As per legal provision, the appointment of -

- Supreme Court & High Court Judge should be done by the President of India with the consent of Chief Justice of India provided Under Part V & VI.

But existing norm followed in India - As per the [Three Judges Cases](#) – (1982, 1993, 1998), a judge is appointed to the Supreme Court and the High Courts by the [President of India](#) from a list of names recommended by the *collegium* – a closed group of the Chief Justice of India and the senior-most judges of the Supreme Court, for appointments to the Supreme Court, and they, together with the Chief Justice of a High Court and its senior-most judges, for appointments to that court. This has resulted in a Memorandum of Procedure being followed, for the appointments. Judges used to be appointed by the President on the recommendation of the [Union Cabinet](#). After 1993, as held in the Second Judges' Case, the executive was given the power to reject a name recommended by the judiciary. However, according to some, the executive has not been diligent in using this power to reject the names of bad candidates recommended.

Earlier, one recommendation by a collegium came to be challenged in court. The court held that who could become a judge was a matter of fact, and any person had a right to question it. But who should become a judge was a matter of opinion and could not be questioned. As long as an effective consultation took place within a collegium in arriving at that opinion, the content or material placed before it to form the opinion could not be called for scrutiny in a court.

- However, unlikely from the SC & HC judges appointments the Subordinate court Judges, appointments are done as per the statutory provision mentioned under Constitution & other Acts/Code. The appointment generally done by the State Public Service Commission but in few states High Court also appoint but procedure of appointments are same i.e., through a competitive examination. The direct appointment made on two post -

1. Judicial Magistrate - Provincial Judicial Service(Judicial)
2. District Judge (Entry Level) - Higher Judicial Service Exam [candidate whose having 7+ year of experience in Bar]

History of the Higher Judiciary

Appointment Process:-

- The Sapru committee's report, published in 1945, considered the question of the judiciary in some detail, reiterating what the Government of India Act 1935 had set out.: there would be a Federal Court of India which would be the forerunner to the Supreme Court. To separate the judiciary from the executive, the Sapru committee suggested that judges should have fixed salaries and tenures, and that they could only be removed for gross misbehavior. Judges were to be appointed by the president, in consultation with the CJI. The committee appointed to deal with judicial questions as part of the Constituent Assembly in 1946 was influenced by the Sapru report, though there was concern over the degree of power given to presidential will. Nehru However supported the Sapru Committee's suggestions. In 1949, Nehru told the Constituent Assembly judges ought to be to be individuals of "the highest integrity," who could "stand up against the executive government, and whoever may come in their way." BR Ambedkar emphasized the need for judicial independence as well, saying that: "There can be no difference of opinion in the House that our judiciary must both be independent of the executive and must also be competent in itself." Finally, the constitution stated that "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," given that "in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted.

APPOINTMENT OF JUDGES

- ❖ All the Judges of the SC are appointed by the President in consultation with such Judges of the Supreme Court and High Court as he deems necessary for the purpose.
- ❖ While appointing the Judge of the Supreme Court the President is bound to consult the Chief Justice of India.



HOW ARE JUDGES OF INDIAN COURT APPOINTED?

