

CHAPTER 23

THE HIGH COURT

There shall be a high court in each State [Article 214] but Parliament has the power to establish a common high court for two or more States¹ [Article 231]. The high court stands at the head of the Judiciary in the State [see Table XVII].

The High Court of a State.

Constitution of High Courts.

(a) Every high court shall consist of a Chief Justice and such other judges as the President of India may from time to time appoint.

(b) Besides, the President has the power to appoint (i) *additional* judges for a temporary period not exceeding two years, for the clearance of arrears of work in a high court; (ii) an acting judge, when a permanent judge of a high court (other than a Chief Justice) is temporarily absent or unable to perform his duties or is appointed to act temporarily as Chief Justice. The acting judge holds office until the permanent judge resumes his office. But neither an additional nor an acting Judge can hold office beyond the age of 62 years.²

Every Judge of a High Court shall be appointed by the President. In making the appointment, the President shall consult the Chief Justice of India (CJI), the Governor of the State (and also the Chief Justice of that High Court in the matter of appointment of a judge other than the Chief Justice).

Participatory Consultative Process.— A nine-judge Bench of the Supreme Court³ has held that (1) the process of the appointment of the judges of the high courts is an integrated “participatory consultative process” for selecting the best and most suitable persons available for appointment; and all the constitutional functionaries must perform this duty collectively with a view primarily to reach an agreed decision, subserving the constitutional purpose, so that the occasion of primacy does not arise.

(2) Initiation of the proposal for appointment in the case of high court must invariably be made by the Chief Justice of that high court.

(3) In the event of conflicting opinions by the constitutional functionaries, the opinion of the judiciary “symbolised by the view of the Chief Justice of India” formed by him in consultation with two senior-most Judges of the Supreme Court who come from that State, would have supremacy.

(4) No appointment of any judge of a high court can be made unless it is in conformity with the opinion of the CJI.

(5) In exceptional cases alone, for stated strong cogent reasons, disclosed to the CJI, indicating that the recommendee is not suitable for appointment, that the appointment recommended by the CJI may not be made. However, if the stated reasons are not accepted by the CJI and the other judges of the Supreme Court,