

CHAPTER 22

THE SUPREME COURT

Parliament has the power to make laws regulating the constitution, organisation, jurisdiction and powers of the Supreme Court. Subject to such legislation, the Supreme Court consists of the Chief Justice of India and not more than *thirty-three*¹ other judges [Article 124].

Besides, the Chief Justice of India has the power, with the previous consent of the President, to request a retired Supreme Court judge to act as a judge of the Supreme Court for a temporary period. Similarly, a high court judge may be appointed *ad hoc* judge of the Supreme Court for a temporary period if there is a lack of quorum of the permanent Judges [Article 127–128].^{1A}

Every judge of the Supreme Court shall be appointed by the President of India. The President shall, in this matter, consult other persons besides taking the advice of his Ministers. In the matter of appointment of the Chief Justice of India, he shall consult such Judges of the Supreme Court and of the high courts as he may deem necessary. A nine-judge Bench of the Supreme Court has laid down that the senior-most judge of the Supreme Court considered fit to hold the office should be appointed to the office of Chief Justice of India.² And in the case of appointment of other Judges of the Supreme Court, consultation with the Chief Justice of India, in addition to the above, is obligatory [Article 124(2)]. Consultation would generally mean concurrence.² The above provision, thus, modifies the mode of appointment of Judges by the Executive — by providing that the Executive should consult members of the Judiciary itself, who are well-qualified to give their opinion in this matter.³

In a reference⁴ (not as a review or reconsideration of the *Second Judges case*) made by the President under Article 143 relating to the consultation between the Chief Justice of India and his brother Judges in matters of appointment of the Supreme Court Judges and the relevance of seniority in making such appointments, the nine-judge Bench opined:

1. The opinion of the CJI, having primacy in the consultative process and reflecting the opinion of the judiciary, has to be formed on the basis of consultation with the *collegium*, comprising of the CJI and the four senior most Judges of the Supreme Court. The Judge, who is to succeed the CJI should also be included, if he is not one of the four senior most Judges. Their views should be obtained in writing.

2. Views of the senior most Judges of the Supreme Court, who hail from the high courts where the persons to be recommended are functioning as Judges, if not the part of the *collegium*, must be obtained in writing.

3. The recommendation of the *collegium* alongwith the views of its members and that of the senior most Judges of the Supreme Court who hail from the high