

# ***MEMORANDUM SHOWING THE PROCEDURE FOR APPOINTMENT OF THE CHIEF JUSTICE OF INDIA AND JUDGES OF THE SUPREME COURT OF INDIA***

The Chief Justice of India and the Judges of the Supreme Court are appointed by the President under clause (2) of Article 124 of the Constitution.

## **CHIEF JUSTICE OF INDIA :**

2. Appointment to the office of the Chief Justice of India should be of the seniormost Judge of the Supreme Court considered fit to hold the office. The Union Minister of Law, Justice and Company Affairs would, at the appropriate time, seek the recommendation of the outgoing Chief Justice of India for the appointment of the next Chief Justice of India.

2.1 Whenever there is any doubt about the fitness of the seniormost Judge to hold the office of the Chief Justice of India, consultation with other Judges as envisaged in Article 124 (2) of the Constitution would be made for appointment of the next Chief Justice of India.

2.2 After receipt of the recommendation of the Chief Justice of India, the Union Minister of Law, Justice and Company Affairs will put up the recommendation to the Prime Minister who will advise the President in the matter of appointment.

## **JUDGES OF THE SUPREME COURT :**

3. Whenever a vacancy is expected to arise in the office of a Judge of the Supreme Court, the Chief Justice of India will initiate proposal and forward his recommendation to the Union Minister of Law, Justice and Company Affairs to fill up the vacancy.

**3.1** The opinion of the Chief Justice of India for appointment of a Judge of the Supreme Court should be formed in consultation with a collegium of the four seniormost puisne Judges of the Supreme Court. If the successor Chief Justice of India is not one of the four seniormost puisne Judges, he would be made part of the collegium as he should have a hand in selection of Judges who will function during his term as Chief Justice of India.

**3.2** The Chief Justice of India would ascertain the views of the seniormost Judge in the Supreme Court, who hails from the High Court from where the person recommended comes, but if he does not have any knowledge of his merits and demerits, the next seniormost Judge in the Supreme Court from that High Court should be consulted.

**3.3** The requirement of consultation with a Judge of the Supreme Court would not be confined to that Judge only who has that High Court as a parent High Court and, therefore, would not exclude Judges who have, on transfer, occupied the office of a Judge or Chief Justice of that High Court.

**3.4** The opinion of members of the collegium in respect of each of the recommendations as well as the seniormost Judge in the Supreme Court from the High Court, from which a prospective candidate comes, would be made in writing and the Chief Justice of India, in all cases, must transmit his opinion as also the opinion of all concerned to the Government of India as part of record. If the Chief Justice of India or the other members of the Collegium elicit views, particularly those from the non-Judges, the consultation need not be in writing but he, who elicits the opinion, should make a memorandum thereof and its substance in general terms which should be conveyed to the Government of India.

**3.5** After receipt of the final recommendation of the Chief Justice of India, the Union Minister of Law, Justice and Company Affairs will put up the recommendations to the Prime Minister who will advise the President in the matter of appointment.

**4.** As soon as the appointment is approved, the Secretary to the Government of India in the Department of Justice will inform the Chief Justice of India and obtain from the person selected a certificate of physical fitness signed by a Civil Surgeon or a District Medical Officer. The Medical Certificate is to be obtained from all persons selected for appointment whether they are at the time of appointment in the service of the State or not. The certificate should be in the form annexed.

**5.** As soon as the warrant of appointment is signed by the President, the Secretary to the Government of India in the Department of Justice will announce the appointment and issue the necessary notification in the Gazette of India.

### **APPOINTMENT OF ACTING CHIEF JUSTICE :**

**6.** Appointment of acting Chief Justice is to be made by the President under Article 126 of the Constitution. Vacancy in the office of the Chief Justice must be filled whatever the period of vacancy. In such an eventuality, the seniormost available Judge of the Supreme Court will be appointed to perform the duties of the office of the Chief Justice of India. As soon as the President has approved the appointment, the Secretary to the Government of India in the Department of Justice will inform the Chief Justice of India or in his absence the Judge concerned of the Supreme Court, and will announce the appointment and issue the necessary notification in the Gazette of India.

### **APPOINTMENT OF AD HOC JUDGES :**

7. Article 127 of the Constitution provides that if at any time there should not a quorum of Judges of the Supreme Court available to hold or continue any session of the Court the Chief Justice of India may, with the previous consent of the President and after consultation with the Chief Justice of the High Court concerned request, in writing, a Judge of a High Court duly qualified for appointment as a Judge of the Supreme Court to attend, for such period as may be necessary, the sittings of the Supreme Court . Whenever the necessity for such an appointment arises, the Chief Justice of India will consult the Chief Justice of the High Court concerned whether a Judge is available to attend the sittings of the Supreme Court. The Chief Justice of the High Court will communicate his consent to the release of a particular Judge after consulting the Chief Minister of the State in which the High Court is situated. The Chief Justice of India will then communicate to the Union Minister of Law, Justice and Company Affairs the name of the Judge and the period for which he will be required to attend the sittings of the Supreme Court, certifying that the release of the Judge has been agreed to by the Chief Justice of the High Court concerned and the Chief Minister of the State. The Union Minister of Law, Justice and Company Affairs will put up the recommendation to the Prime Minister, who will advise the President as to the person to be appointed to attend the sittings of the Supreme Court. As soon as the President gives his consent to the appointment, the Secretary to the Government of India in the Department of Justice will (i) inform the Chief Justice of India, who will formally request the Judge concerned, in writing, to attend the sittings of the Supreme Court as an ad hoc Judge and (ii) announce the appointment and issue the necessary notification in the Gazette of India.

**ATTENDANCE OF RETIRED JUDGES AT SITTINGS OF THE SUPREME COURT:**

8. Under Article 128 of the Constitution, the Chief Justice of India may, at any time, with the previous consent of the President, request any person who has held the office of a Judge of the Supreme Court to sit and act as a Judge of the Supreme Court. Whenever, the necessity for such an appointment arises, the Chief Justice of India will informally sound the retired Judge, whom he proposes to recommend, as to the latter's willingness to serve and will there upon communicate to the Union Minister of Law, Justice and Company Affairs the name of the Judge and the period for which he will be required to sit and act as a Judge of the Supreme Court. If the Union Minister of Law, Justice and Company Affairs considers it desirable to bring any point to the notice of the Chief Justice of India or to suggest some other name, he may by personal correspondence convey his suggestions to the Chief Justice of India. On obtaining the views of the Chief Justice of India finally the Union Minister of Law, Justice and Company Affairs will put up the proposal to the Prime Minister who will advise the President as to the person to be appointed to sit and act as a Judge of the Supreme Court. As soon as the President gives his consent to the appointment, the Secretary to the Government of India in the Department of Justice will inform the Chief Justice of India and will announce and issue the necessary notification in the Gazette of India.

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**ANNEXURE**

**FORM OF MEDICAL CERTIFICATE  
(Please see paragraph 4)**

I hereby certify that I have examined Shri Justice..... and can not discover that he has any disease (communicable or otherwise), constitutional weakness or bodily infirmity, which would disqualify\* him for employment as Judge of the Supreme Court except ..... I do not consider this a disqualification\* for employment as Judge of the Supreme Court.

**SIGNATURE:**

**DESIGNATION:**

**Dated.....**

**Signature of Candidate .....**

\* Note: This certificate should take into account the fact that a Supreme Court Judge retires at the age of 65 years.

