

Appointment of Judges to the Supreme Court and High Courts

Suggestions by JANANEETHI, Kerala

How to improve transparency in judicial appointments?

1. The Collegium for selection of judges to the Supreme Court and High Courts should have nine members. Chaired by the chief justice, the collegium shall have three senior most judges and three eminent, erudite, widely respected and senior lawyers of the respective courts and two nationally reputed, eminent and highly learned social scientists one of whom shall be a woman. The members of the collegium shall not have any relation/affinity – either personal or professional – with the applicant/candidate being considered for appointment of a judge. Any member of the Collegium interested in a candidate shall not participate in the process of selection of that candidate. Any candidate whose appointment is opposed by three or more members shall be dropped from the list of eligible candidates.
2. All vacancies of High Court judges for selection from the Bar shall be notified and applications (letter of interest) from aspiring and eligible candidates called for. Any judge of the High Court or any senior lawyer/respective bar association may also nominate ideal and eligible candidates to be considered for appointment. The Collegium shall devise a mechanism to shortlist the eligible and deserving candidates from the applicants and the select list shall be published. The final selection shall be made only after an interview by the selection committee to gauge the merit/eligibility of a candidate for final selection. The final list shall be published on the notice board of the High Court and on its website. Candidates so selected shall be considered for appointment as HC Judges subject only to clearance of their names by the Intelligence Agencies and shall not otherwise be overlooked for appointment for any other reason. The list of selected candidates forwarded from the High Court shall not be subject to scrutiny by any other higher agency except for reasons relating to security of the nation, independence of the judiciary, etc. Any adverse comments received by the Collegium against appointing a particular candidate need not be published on website for the sake of confidentiality, but of course must be communicated to the concerned candidate, if so demanded.
3. All appointment of HC judges shall be initially on adhoc basis for two years and their confirmation as permanent judges shall be made subject to their conduct and performance during the initial term as additional/adhoc judges. The Advocates' Association shall be consulted before confirmation of an additional judge as a permanent judge of the HC.
4. After retirement, the retired judge shall not accept any appointment for at least five years, either in public or private sector.

5. Every step and procedure of appointments shall be published on the website of the Collegium and of the Ministry of Law and Justice for a period of one month before going to the next step.
6. The term of office on the Collegium shall be limited to 3 years or 70 years of age whichever is earlier. The members are eligible to be nominated only after two terms (6 years).
7. The Collegium shall make periodical review of the performance of Judges selected by them until they are made permanent judges.

What are the eligibility criteria for appointment of Judges?

1. Merit shall be the ONLY criteria of appointment of a judge to the High Courts and Supreme Court. Principles of reservation shall not be applicable in higher judiciary. Active involvement / holding positions in faith-based institutions/organizations, political parties, investments in corporate establishments etc shall be deemed disqualifications to be considered for appointment.
2. Merit means deep knowledge of jurisprudence and Constitution, sound ethical and moral values, indisputable public image, intellectual and psychological integrity, fidelity and loyalty to Constitution, deeply rooted in secularism and a dignified emotional quotient.
3. The elevation of District Judges to the post of HC Judges shall not be automatic and on basis of seniority alone. The person's conduct as a judge, the quality of the work done by him/her, his/her image and reputation as a District Judge, etc. shall be the main criterion for consideration of his/her name for elevation. A person of questionable integrity or reputation shall never find his/her way to the High Court.
4. The elevation of the HC judges as Chief Justice or as Judge of the Supreme Court also shall not be based on seniority alone. His/her conduct/image as a HC judge, his/her eminence in wisdom/knowledge of law and jurisprudence, rate of disposal of cases, promptness in delivering judgments etc shall be examined before his/her selection for higher posts.
5. Canvassing of any kind for selection of SC/HC judges or political/religious/communal endorsement of candidature shall be made a disqualification for selection and for consideration of the candidate's name for next five years.

6. The minimum age for consideration for selection of HC judges shall be 45 years and must have a minimum of 20 years of active practice.

On establishment of an independent Secretariat:

A full-fledged department of skilled and competent staff under a Registrar General and his subordinates shall constitute a Secretariat of the Collegium. It should be an informatics centre/hub where any required knowledge on eligibility or competence of a judge in India shall be made available at the secretariat. International norms and practices of appointment of judges and justice administration shall be made available. Regular updating of judges in law and practices shall be brought to the public by the secretariat. Fiscal autonomy of the Collegium shall be the responsibility of the Secretariat.

How to deal with complaints or adverse reports?

Collegium shall be responsible to examine any complaint / report revealing the nature/habits/past history of the candidates to be appointed as judges. Admittedly the Collegium shall have its intelligence/vigilance wing having people with proven records of efficiency and commitment.

Proposed by

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