

Examrace

Polity Study Material: Supreme Court

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Supreme Court

Appointment of judges: Every judge of the Supreme Court is appointed by the President by warrant under his hand and seal after consultation with such Judges of the Supreme Court and of the High Courts as the president may deem necessary for the purpose. In case of appointment of a judge, other than chief Justice, the Chief Justice of India is to be necessarily consulted. A Judge of the Supreme Court remains in office until he attains the age of 65 years. No person can be appointed a Judge of the Supreme Court unless

1. he is a citizen of India
 2. has been for at least five years a Judge of High Court or has been for at least ten years an advocate of a High Court or two or more courts in succession
 3. is in the opinion of the President a distinguished jurist.
- Privileges of Judges:** A Judge of the Supreme Court is entitled to such salaries as are specified in the Second Schedule. Every Judge of the Supreme Court is entitled to the use of an official residence without rent. Also, every judge is entitled to such privileges and allowances and to such rights. In respect of leave of absence and pension as may, from time to time, be determined by the Parliament. **Removal of Judges:** Judge of the Supreme Court can only be removed from office by an order of the President, Parliament, supported by a majority of not less than two-thirds of the members of that house present and voting has been presented to the President in the same session for such removal on the ground of proved misbehavior or incapacity. The parliament has been empowered to regulate the procedure for the presentation of an address and for the investigation and proof of the misbehavior or incapacity of a Judge under Article 124.

Composition

The Supreme Court is the highest court of justice in India.

It consists of one chief justice and 25 other judges. There is provision for the appointment of ad hoc judges and even the retired judges may be at times. When the necessity arises, requested to be present. **Powers and Functions:** The Supreme Court is a court of record and exercises all the powers of such a court, including the power to punish for the contempt of itself.

Functions

Its main functions may be studied under the following heads:

Original Jurisdiction

The Supreme Court has exclusive jurisdiction in all disputes-

1. between the Government of India and one or more States
2. between the Government of India and any State or States on the other
3. between two or more States. Such jurisdiction, however, does not extend to a dispute arising out of any treaty, agreement, covenant, engagement or any similar instrument which was executed before the commencement of the Constitution.

Appellate Jurisdiction in Civil Cases

An appeal to the Supreme Court lies from any judgment, decree or final orders of a High court or, a certificate from a high court concerned that the case involves a substantial question as to the interpretation of the Constitution.

Jurisdiction in Criminal Cases

In criminal cases an appeal lies to the Supreme Court if the High Court

1. has given any decree or final order in the case
2. has withdrawn for trial before it self any case from any court subordinate to its authority and has in such trial sentenced the accused to death; or
3. certifies that the case is a fit one for appeal to the Supreme Court.

Advisory Jurisdiction

The President may refer to the Supreme Court any question of law or fact of sufficient importance for its opinion. The President may also refer to the court disputes arising out of any provision of treaty, agreement, consent, engagement, etc. The opinion so expressed is not binding on the President.

Enforcement of Fundamental Rights

The Supreme Court has been armed with powers to issue directions or orders or writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of the Fundamental Rights conferred by the Constitution.

Additional Jurisdiction

Article 138 of the Constitution provides for enlargement of the jurisdiction of the Supreme Court by Parliament with reference to any matter contained in the Union List. It has also jurisdiction on any such matter as the Government of India and the Government of any State may, by agreement, confer. But the Parliament has to give effect to this agreement by passing a law.

Power to Review

The Supreme Court has power to review any judgement or order made by it, subject to any law passed by the Parliament in this regard.

Supplementary Powers

Parliament may by law confer such supplemental powers on the Supreme Courts may appear to be necessary and desirable for the due discharge of its functions. Guardian of the Constitution: It is clear from the powers and functions of the Supreme Court that it is the ultimate interpreter of the Constitution and, as such, its guardian. The authority of the Court is further reinforced by the provision that “the law declared by the Supreme Court shall be binding on all courts within the territory of India” (Art. 141) . Further, in the exercise of its jurisdiction, the court is authorized to pass appropriate decrees or orders in the interests of complete justice in any case before it. Independence of Judiciary: The independence and impartiality of the Supreme Court is the corner-stone of democracy. Justice is said to be blind and this must be so, especially in a democracy which professes all its citizens to be equal before law.

Our Constitution ensures the independence of the Judiciary through the following measures:

1. Though appointed by the President a judge of the Supreme Court can only be removed after an address of each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than $\frac{2}{3}$ of the members present and voting and presented to the President on the ground of proved misbehaviour or incapacity.
2. The salary and the conditions of service of a judge of the Supreme Court cannot be varied to his disadvantage after his appointment.
3. After retirement, a judge of the Supreme Court cannot plead or act in any other Court or before any authority within the territory of India.
4. The salaries. Etc. of the judges and administrative expenses of the Supreme Court are chargeable on the Consolidated Fund of India and are, therefore, not votable.

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