



Distance Learning Programme

UPSC Prelims

Indian Polity – I





drishti

INDIAN POLITY-I

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SUPREME COURT

One of the unique features of the Indian Constitution is that, notwithstanding the adoption of a federal system and existence of Central Acts and State Acts in their respective spheres, it has generally provided for a single integrated system of Courts to administer both Union and State laws. At the apex of the entire judicial system, exists the Supreme Court of India below which are the High Courts in each State or group of States. Below the High Courts lies a hierarchy of Subordinate Courts. Panchayat Courts also function in some States under various names like Nyaya Panchayat, Panchayat Adalat, Gram Kachheri, etc. to resolve civil and criminal disputes of petty and local nature.

Historical Background

- For the first time the **Federal Court of India** was set up under the **Government of India Act, 1935**. It consisted of one Chief Justice and such other number of Judges as His Majesty might deem necessary.
- When the Constitution of India came into force on 26th January, 1950, the Federal Court of India was substituted by the Supreme Court of India and the Judicial System for a new India was established with the finest traditions of impartiality, independence and legal scholarship.
- However, the jurisdiction of the Supreme Court is greater than that of its predecessor because the **Supreme Court has replaced the British Privy Council as the highest Court of appeal**.

Constitutional Provisions

- **Articles 124-147 in Part V** of the Constitution deal with the Supreme Court.
- The Parliament has the power to make laws regulating the organisation, independence, jurisdiction, powers, procedures and so on of the Supreme Court.

Composition

- When the Supreme Court was inaugurated in 1950, the original Constitution envisaged a Supreme Court with a Chief Justice and 7 puisne Judges, leaving it to Parliament to increase this number.
- Nevertheless, on account of increasing workloads, the strength of the Supreme Court has been raised from time to time by the Parliament. Accordingly the Parliament enacted the **Supreme Court (Number of Judges) Amendment Act, 2008** and raised the total strength of the Supreme Court to thirty-one, consisting of the Chief Justice of India and thirty puisne Judges.
- Besides, the Chief Justice of India has the power, with prior consent of the President, to request a retired Supreme Court Judge to act as the Judge of the Supreme Court

for a temporary period. Similarly, a High Court Judge can be appointed ad hoc Judge of the Supreme Court for a temporary period if there is a lack of a quorum of the permanent Judges.

Seat

- The Constitution declares **Delhi** as the seat of the Supreme Court. Further, it also authorises the Chief Justice of India to appoint other place(s) as the seat of the Supreme Court, with the approval of the President. This provision is discretionary on the part of the Chief Justice of India and not mandatory. Thus, no authority, including Courts can give any direction either to the Chief Justice of India or to the President in this regard.
- The proceedings of the Supreme Court are conducted in **English only**.

Appointment of Judges

- The Judges of the Supreme Court are appointed by the **President** under his hand and seal.

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The Three Judges Cases 'Consultation v. Concurrence Debate'

For a long time, the judiciary has been embroiled in the controversy over who holds the authority to appoint or transfer the Judges in the higher judiciary. The Supreme Court has given a different interpretation with reference to the provision of consulting the Chief Justice of India.

- **First Judges Case (1982):** The Court held that consultation does not mean concurrence and it only involves an exchange of opinions.
- **Second Judges Case (1993):** The Court ruled that the advice tendered by the Chief Justice of India is binding on the President in the matters of appointment of the Judges of the Supreme Court. But, the Chief Justice would tender his advice on the matter after consulting two of his seniormost colleagues.
- **Third Judges Case (1998):** The Court opined that the consultation process to be adopted by the Chief Justice of India requires 'consultation of plurality Judges'. The sole opinion of the Chief Justice of India does not constitute the consultation process. He should consult a 'Collegium' of four seniormost Judges of the Supreme Court and if two Judges give an adverse opinion, he should not send the recommendation to the Government.
- The Court held that the recommendation made by the Chief Justice of India without complying with the norms and requirements of the consultation process is not binding on the government.
- Considering the appointment of the Chief Justice of India, the Supreme Court in the Second Judges Case (1993) ruled that the senior most Judge of the Supreme Court should alone be appointed to that office.

- The President in this matter, besides taking the advice of his Council of Ministers, consults such other Judges of the Supreme Court and the High Courts as he may deem necessary. For this purpose a **Collegium of Supreme Court Judges** exists, headed by the Chief Justice of India to aid and advice the President in matters of appointments to the higher judiciary.



- In all matters of appointment of Judges to the Supreme Court and High Courts other than the Chief Justice of India, it is obligatory upon the President to consult the Chief Justice of India also.
- It is worth mentioning that the Collegium System is not cited anywhere in the Constitution. The scheme was evolved through Supreme Court judgments collectively known as the **Three Judges Cases**.

National Judicial Appointments Commission (NJAC)

- With a thought to bring more transparency in the judicial appointments, the **Constitution (Ninety-Ninth Amendment) Act, 2014** and the **National Judicial Appointments Commission Act, 2014** were enacted by the Parliament.
- The National Judicial Appointments Commission (NJAC) was a proposed body which would have been responsible for the appointment and transfer of Judges to the higher judiciary in India.
- Subsequently, in **Article 124** of the Constitution, the phrase '*after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose*' was substituted by '*on the recommendation of the National Judicial Appointments Commission referred to in Article 124A*'.
- Further three new Articles viz. **Article 124A, 124B and 124C** had been inserted in the Constitution.
- The NJAC would have replaced the Collegium system for the appointment of Judges.

Composition of NJAC

As per the amended provisions of the Constitution, the Commission would have consisted of the following six persons:

- Chief Justice of India (Chairperson, *ex-officio*)
- Two other senior Judges of the Supreme Court next to the Chief Justice of India, *ex-officio*
- The Union Minister of Law and Justice, *ex-officio*
- Two eminent persons

These (two) eminent persons would have been nominated by a committee consisting of the:

- Chief Justice of India,
- Prime Minister of India, and
- Leader of Opposition in the Lok Sabha (or where there is no such Leader of Opposition, then, the Leader of the single largest Opposition Party in Lok Sabha), provided that of the two eminent persons, one person would be from the Scheduled Castes or Scheduled Tribes or OBC or minority communities or a woman. The eminent persons shall be nominated for a period of three years and shall not be eligible for re-nomination.

Functions of Commission

As per the amended Constitution, the functions of the Commission would have included the following:

- Recommending persons for appointment as Chief Justice of India, Judges of the Supreme Court, Chief Justices of High Courts and other Judges of High Courts.



- Recommending transfer of Chief Justices and other Judges of High Courts from one High Court to any other High Court.
- Ensuring that the persons recommended are of ability, merit and other criteria mentioned in the regulations related to the act.

Supreme Court's Judgement on NJAC

- Several writ petitions were filed in the Supreme Court challenging the Constitutional validity of the The Constitution (Ninety-Ninth Amendment) Act, 2014 and the National Judicial Appointments Commission Act, 2014, on the ground that not only did it threaten the independence of the judiciary but also the competence of the Parliament to clear such an amendment to the Constitution.
- Consequently, in a historic ruling, citing the primacy of the judiciary in Judges' appointments, the Supreme Court declared The Constitution (Ninety-Ninth Amendment) Act, 2014, **unconstitutional**.
- The Supreme Court also effectively revived the decades old Collegium System of the appointment of Judges to the Supreme Court and the High Courts.

Oath or Affirmation

- Every person appointed as a Judge of the Supreme Court, before entering upon his office, has to make and subscribe an oath before the President, or some person appointed by him for this purpose.
- In this oath a Judge of the Supreme Court swears to:
 - bear true faith and allegiance to the Constitution of India,
 - uphold the sovereignty and integrity of India,
 - duly and faithfully and to the best of his ability, knowledge and judgment perform the duties of office without fear or favour, affection or ill will,
 - uphold the Constitution and the laws.
- An oath or affirmation is mentioned for this purpose in the **Third Schedule** of the Constitution.

Qualifications

A person to be qualified for appointment as a Judge of the Supreme Court must fulfil the following conditions:

- He must be a citizen of India.
- He must have been a Judge of a High Court or two or more such Courts in succession for at least five years or
- He must have been an Advocate in a High Court or two or more such Courts in succession for at least ten years or
- He is a distinguished jurist in the opinion of the President.

Note: It is to be mentioned that the Constitution does not prescribe a minimum age for appointment as a Judge of the Supreme Court.


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Distinguished Jurist

The provision to enable the President to appoint a 'distinguished jurist' as a Judge of the Supreme Court even if the concerned person does not qualify on grounds of certain minimum years of service in High Court(s) was intended to open a broad spectrum of choices for appointment to the highest Court of the land.

Term of Office

- The **Constitution does not prescribe** any fixed period of service for the Judges of the Supreme Court after appointment.
- Once appointed, a Judge of the Supreme Court continues to hold office until:
 - He attains the age of **sixty-five years**.
 - He vacates his office by addressing a **resignation to the President**.

Removal

- The Constitution ordains that a Judge of the Supreme Court can be removed from his office only on grounds of **proved misbehaviour or incapacity** and leaves it to the Parliament to frame the actual process for his removal.
- Consequently, in pursuance of **Article 124 (5)** of the Constitution, the Parliament enacted the **Judges (Inquiry) Act, 1968** and the **Judges (Inquiry) Rules, 1969** which lay down the procedure for inquiry into the allegations against the Judge.
- The Constitution authorises the President to remove a Judge of the Supreme Court only after an address by Parliament has been presented to him for such removal. Such an address must be endorsed by a **special majority of each House of Parliament**.

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Special Majority

A majority of not less than two-thirds of the members of the House present and voting which is not less than the majority of the total membership of that House. A few other instances where special majority is required include the removal of the President, Comptroller and Auditor General of India, Chief Election Commissioner, Chairman and Members of UPSC etc.

- **The Judges (Inquiry) Act, 1968** regulates the procedure relating to the removal of a Judge of the Supreme Court. The method of removal is different from the motion of impeachment which is mentioned for removing the President.
 - A removal motion signed by 100 members (in the case of Lok Sabha) or 50 members (in the case of Rajya Sabha) is to be presented to the Speaker or Chairman.
 - The Speaker or Chairman may admit the motion or refuse to admit it.
 - If it is admitted, then the Speaker or Chairman is to constitute a three-member committee to investigate into the charges.
 - The committee should consist of:
 - ◆ The Chief Justice or a Judge of the Supreme Court,
 - ◆ A Chief Justice of a High Court, and
 - ◆ A distinguished jurist.
 - If the committee finds the Judge to be guilty of misbehaviour or suffering from incapacity, the House can take up the consideration of the motion.



- After the motion is passed by each House of Parliament by special majority, an address is presented to the President for the removal of the Judge.
- Finally, the President passes an order removing the Judge.
- It is interesting to know that no Judge of the Supreme Court has been impeached so far. The first and the only case of impeachment is that of Justice V Ramaswami of the Supreme Court (1991–1993). Though the inquiry Committee found him guilty of misbehaviour, he could not be removed as the impeachment motion was defeated in the Lok Sabha.

Other Officials

Acting Chief Justice

The President can appoint a Judge of the Supreme Court as an acting Chief Justice of India under the following circumstances:

- The office of Chief Justice of India is vacant; or
- The Chief Justice of India is temporarily absent; or
- The Chief Justice of India is unable to perform the duties of his office due to reasons whatsoever.

Ad-hoc Judge

- The Chief Justice of India can appoint a Judge of a High Court as an ad hoc Judge of the Supreme Court for a temporary period after consulting the Chief Justice of the High Court concerned with the prior consent of the President.
- He can do so when there is a lack of quorum of the permanent Judges to hold or continue any session of the Supreme Court.
- The Judge so appointed should be qualified otherwise, for appointment as a Judge of the Supreme Court.
- During the period of his appointment as an ad hoc Judge of the Supreme Court, the Judge enjoys all the jurisdiction, powers and privileges of a Judge of the Supreme Court.

Retired Judges

- The Chief Justice of India with the previous consent of the President can at any time, request a retired Judge of the Supreme Court or a retired Judge of a High Court who is otherwise duly qualified to be appointed as a Judge of the Supreme Court, to act as a Judge of the Supreme Court for a temporary period. For this he also requires the consent of the person to be so appointed.
- Such a Judge is entitled to such allowances as the President may determine.
- He also enjoys all the jurisdiction, powers and privileges of a Judge of the Supreme Court. However, he will not be deemed to be a Judge of the Supreme Court otherwise.

Supreme Court Advocates

There are three categories of Advocates who are entitled to practice law before the Supreme Court of India:



Advocates-On-Record

- Only these Advocates are entitled to file any matter or document before the Supreme Court.
- They can also file an appearance or act for a party in the Supreme Court.

Senior Advocates

- These are Advocates who are designated as Senior Advocates by the Supreme Court or by any High Court.
- The Court can designate any Advocate, with his consent, as Senior Advocate if in its opinion by virtue of his ability, standing at the Bar or special knowledge or experience in law the said Advocate is deserving such distinction.

Other Advocates

- These are Advocates whose names are entered on the roll of any State Bar Council maintained under the **Advocates Act, 1961**.
- They can appear and argue any matter on behalf of a party in the Supreme Court, but they are not entitled to file any document or matter before the Supreme Court.

BOOSTER	<h3 style="text-align: center;">Amicus Curiae</h3> <ul style="list-style-type: none"> ■ If a petition is received from the jail or in any other criminal matter if the accused is unrepresented then an Advocate is appointed as <i>amicus curiae</i>, by the Court to defend and argue the case of the accused. ■ In civil matters also the Court can appoint an Advocate as <i>amicus curiae</i> if it thinks it necessary in case of an unrepresented party. ■ The Court can also appoint <i>amicus curiae</i> to assist the Court in any matter of general public importance or in which the interest of the public at large is involved.
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Independence

The Constitution of India has made a conscious effort to keep the Supreme Court independent of the executive and tried to insulate it from the outside interference.

The Supreme Court being the federal Court, the highest Court of appeal, the guarantor of the Fundamental Rights of the citizens and guardian of the Constitution, has been assigned a very significant role in the Indian democratic political system. It therefore becomes very essential to ensure its independence for the effective discharge of the duties assigned to it. It should be free from the encroachments, pressures and interferences of the executive and the legislature, delivering justice without any fear or favour.

The independence of the Supreme Court is sought to be secured by the Constitution in the following ways:

- **Appointment:** Though appointed by the President, acting on the advice of his Council of Ministers, the appointment of Judges to the Supreme Court is made immune from superfluous political interference by making it obligatory upon the President to consult the Chief Justice of India in matters of all such appointments other than his own.
- **Security of tenure:** The security of the tenure of the Judges of the Supreme Court is ensured by the stringent mechanism in place for their removal. Though appointed by