

Competitive Exams: Political Science Study Material Judiciary in India

Judiciary in India

- Unlike the distribution of legislative and executive powers between the States and the Union, the Indian Constitution does not adopt a similar division of judicial powers; the judicial system in India is unified and integrated.
- Of The three organs of the State, the judiciary enjoys supreme position in the Constitution.
- In order to maintain the supremacy of the Constitution, there must be an independent and impartial authority to adjudicate on the disputes between the Centre and the State/States or between the States.

The Supreme Court

- The Constitution consists provisions related to the Union Judiciary in Art. 124 – 147.
- Initially, there was a Chief Justice and seven other Judges in the Supreme Court.
- The number of the Judges excluding the Chief Justice was increased to 25 in 1985.
- At present, there is one Chief Justice and 25 other Judges in the Supreme Court.
- The power to increase or decrease the number of Judges in the Supreme Court rests with the Parliament.
- The President, if deems fit, may appoint ad hoc Judges in the Supreme Court.
- The senior most Judge of the Supreme Court is appointed as the Chief Justice of India.
- The Judges of the Supreme Court are appointed by the President after consultation with such Judges of the Supreme Court and of the High Courts as the President may deem necessary.
- In the appointment of a Judge, other than Chief Justice, the Chief Justice of India shall always be consulted.
- Article 129 of the Constitution declares that the Supreme Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself.

Qualifications for the Appointment as a Judge of the Supreme Court

A person shall not be qualified for appointment as a Judge of the Supreme Court unless he:

1. is a citizen of India
2. has been for atleast five years a judge of a High Court or a two such Courts in succession;
or
3. has been for atleast ten years an advocate of a High Court or of two or more such Courts in succession; or
4. is, in the opinion of the President, a distinguished jurist.

Judge of SC

- Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President an oath of affirmation according to the form set out in the Third Schedule of the Constitution.
- The Constitution does not prescribe time limit for a Judge to occupy his office.
- A Judge of the Supreme Court continues to hold the office till he attains the age of 65 years.
- A Judge of the Supreme Court may tender his resignation to the President even before he reaches age of 65 years.

Salary and Allowances

- The Chief Justice of India is entitled to receive a salary of Rs. 33, 000 per month and the other Judges of the Supreme Court receive a salary of Rs. 30, 000 per month.
- Besides the salary, they are entitled to a rent free accommodation and other allowances.
- The Parliament has the power to regulate the salary and allowances of the Judges and other allowances of a Judge during his term of office.
- The only exception is that during financial emergency, the salary and other allowances of the Judges can be reduced.
- The salary and other allowances of the Judges are charged upon the Consolidated Fund of India.
- A Judge of the Supreme Court, after retirement, shall not do legal practice in any Court in the territory of India and shall not plead before any authority under the Government.

Rules of Procedure

The Constitution mentions the following rules of procedure to be followed in the functioning of the Supreme Court:

- The Judgements of the Supreme Court shall be delivered in an open Court only.
- The report on the advisory opinion of the Court shall be made in an open Court.

- The Judgement of the Supreme Court shall be delivered with the concurrence of the majority of the Judges presenting the hearing of the case.
- The Judge who does not concur with the majority judgment, has the right to give a dissenting opinion.
- In the following cases, the matter shall be decided by a bench of not less than five judges: If the case involves the interpretation of the Constitution, it involves a substantial question of law, the matter has been entrusted by the President to the Supreme Court for its consideration. Jurisdiction of the Supreme Court The Jurisdiction of the Supreme Court are fivefold viz. Original, Writ, Appellate, Advisory and Revisory jurisdictions.

Original Jurisdiction

- The Original Jurisdiction of the Supreme Court as a federal character.
- It has the exclusive authority to decide any dispute involving a question of law or fact between the Government of India and one or more states or between two or more States inter se.
- According to the Constitution (Seventh Amendment) Act, 1956, the Original Jurisdiction of the Supreme Court does not extend to dispute that arises out of any provision of a treaty, agreement, covenant, management etc. Which has been entered into or executed before 26th January, 1 – 950, and has been continued in operation after that, or which provides that the said jurisdiction shall not extend to such a dispute.
- There are certain provisions in the Constitution which exclude from the Original Jurisdiction of the Supreme Court, certain disputes, the determination of which is vested in other tribunals: Disputes specified in the provision to Article 363 (1). Complaints as to interference with inter-State water supplies, referred to the statutory tribunal mentioned in Article 262 (since the Parliament has enacted the Inter-State Water Disputes Act 1956). Matters referred to the Finance Commission (Article 280). Adjustment of certain expenses between the Union and the State (Article 290).

Writ Jurisdiction

- Article 32 imposes duty on the Supreme Court to enforce the Fundamental Rights.
- Under this Article, every individual has a right to move the Supreme Court if there has been any infringement on his Fundamental Rights.
- The Writ Jurisdiction sometimes is referred to as the Original Jurisdiction of the Supreme Court, but in the strict sense, Original Jurisdiction relates to the federal character of the Constitution.

Appellate Jurisdiction

The Appellate Jurisdiction of the Supreme Court is three fold:

1. **Constitutional:** In the Constitutional matters, an appeal lies to the Supreme Court if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution. If the High Court refuses to give the certificate, the Supreme Court may grant special leave for appeal if it is satisfied that the case does involve such a question.
2. **Civil:** In civil cases, an appeal lies to the Supreme Court if a High Court certifies that the value of the subject matter of the dispute is not less than Rs. 20, 000 or that the case is fit for appeal to the Supreme Court. The appellate jurisdiction of the Court in civil cases can be enlarged if the Parliament passes a law to that effect.
3. **Criminal:** In the criminal cases, an appeal lies to the Supreme Court if the High Court
 - a. has on appeal, reversed the order of acquittal of an accused and sentenced him to death; or
 - b. has withdrawn for trial before itself any case from any subordinate and has in such trial convicted the accused and sentenced him to death; or
 - c. certifies that the case is fit for appeal to the Supreme Court.
4. The Appellate Jurisdiction of the Supreme Court in criminal matters can be extended by the Parliament, subject to such conditions and limitations as may be specified therein.
5. The Supreme Court under Article 136 enjoys the power of granting special leave to appeal from any judgment, decree, order or sentence in any case or matter passed by any Court or tribunal except court martial's.

Advisory Jurisdiction

- One of the salient features of the Supreme Court of India is its consultative role (Art 143).
- The President can refer to the Court either a question of law or a question of fact, provided that it is of public importance.
- However, it is not compulsory for the Court to give its advice.
- The President is empowered to refer to the Supreme Court for its opinion (under An 138), disputes arising out of any treaty, agreement etc. which had been entered into or executed before the commencement of the Constitution.
- In such cases, it is obligatory for the Courts, under the Indian Constitution, to give its opinion to the President.

Revisory Jurisdiction

- The Supreme Court under Article 137 is empowered to review any judgement or order made by it with a view to remove any mistake or error that might have crept in the judgement or order.
- This means that even though all the judgements and orders passed by the Supreme Court are binding on all the Courts of India, they are not binding on the Supreme Court.

Removal of the Judges of the Supreme Court

- The Constitution under Article 124 (4) provides that a Judge of the Supreme Court can be removed by the President after an address by each of the House of the Parliament supported by a majority of the total membership of that House and by a majority of not less than two-third of the members of that House present and voting, on the ground of proved misbehavior or incapacity.
- The Parliament under Article 124 (5) may, by law, regulate the procedure for the presentation of an address and for the investigation and proof of the misbehavior or incapacity of a Judge. Accordingly, the Parliament in 1968 passed the Judges (inquiry) Act.
- Under this Act, a motion seeking the removal of a Judge can be preferred before either House of the Parliament.
- If it is to be introduced in the Lok Sabha, it should be signed in by not less than 100 members of the Lok Sabha.
- If it is to be introduced in the Rajya Sabha, the motion should be signed in by not less than 50 members.
- The motion can be moved only after a prior notice of 14 days to that Judge.
- After being properly introduced, the presiding officer of that House appoints a three-member Judicial Committee to inquire into the misbehaviour or incapacity of the accused Judge.
- The head of the Judicial Committee shall be a serving Judge of the Supreme Court.
- Of the other two members, one should be a serving member of the Supreme Court or a High Court and another one may be an eminent jurist.
- The Judge in question has the right to defend himself or through his counsel before the Judicial Committee.
- The Committee submits its report to the presiding officer of the House in which the motion has been introduced.
- The Parliament may or may not act upon the report of the Judicial Committee.
- If the Judicial Committee fail to establish proof of misbehavior or incapacity, the Parliament cannot take up the motion.

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- If the motion is passed by the originating House with the required majority, it moves to the other House which should also pass the motion with the same majority.
- After that it goes for the assent of the President in the same session of the Parliament. If the address has been passed, then the President removes the Judge in question from the House.

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