PARMAR SSC

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Courts



Some Basic Pointers:

- Judiciary in India is Integrated (borrowed from GoI act of 1935) and Independent.
- The Supreme Court replaced the Federal Court and the Judicial Committee of Privy Council after India gained Independence.
- 1st sitting: 28 Jan, 1950
- Federal Court was established in 1937 under the provisions of GoI Act 1935.
- SC is also known as 'The Guardian of the Constitution'.

PART V - SUPREME COURT
Chapter IV: [Article 124-147]

Article 124

Establishment and Constitution of Supreme Court

1. Strength of Judges :

- Originally, strength: 1 Chief Justice +7 Judges = 8 Judges
- Present, strength: 1 Chief Justice +33 Judges = 34 Judges

2. Every judge of SC shall be appointed by the President after consultation with CJI.

Tenure

Serves till the age of 65 years, provided that-

(a) a Judge may resign his office by writing to the President.
(b) a Judge to be removed in the manner provided in clause (4).

(Maximum sanctioned strength: 34)

2(A) The age of a SC Judge to be determined in such manner as Parliament may by law provide. (15th CAA, 1963)

3. Qualification for SC Judges:

Must be a Citizen of India.
(a) At least 5 years as a Judge of a High Court, or
(b) At least 10 years as an Advocate of a High Court, or
(c) Distinguished jurist in the opinion of the President.

4. Removal (Brought from USA.)

A Judge can be removed by President after Parliament passes an address by Special Majority (i.e. majority of total membership + 2/3rd of members present and voting) on grounds of:
Proved misbehaviour or Incapacity

- Procedure of Removal for Supreme Court/High Court Judges is mentioned in Judges Enquiry Act, 1968 Motion to remove judges should be signed by 50 members of Rajya Sabha or 100 members of Lok Sabha.

5. Parliament may by law establish procedure for investigating judge's misconduct as mentioned in clause (4).

6. A Judge of SC to subscribe an Oath or affirmation before the President.

7. Restrictions: After retirement, a SC judge cannot practice law in any court within the territory of India.

- No SC Judge has been removed till Date.
- First Chief Justice of SC : Sir Harilal Jekisundas Kania
- 53rd Chief Justice of India : Justice Surya Kant
- 52nd Chief Justice of India : Bhushan Ramkrishna Gavai

Collegium System
(Not mentioned in Constitution)

First Judges Case (1982 - S.P. Gupta Case):

- Recommendation of CJI not binding on the President;
- Gave primacy to the executive in judicial appointments.

Second Judges Case (1993):

- Introduced the Collegium system, holding that "Consultation" means Concurrence.
- Recommendation made by CJI + 2 senior-most judges,
- Recommendation given by CJI will be binding on President.

Third Judges Case (1998):

- Collegium expanded to a 5 member body,
- CJI + 4 senior-most judges, decision binding on the President.

Fourth Judges Case (2015):

- 99th CA was declared unconstitutional and NJAC Act was struck down.
- Collegium System was restored.

The Parliament replaced the collegium system by National Judicial Appointments Commission (NJAC) through 99th CA, 2014 to provide recommendations to the President.

Article 125

Salaries, etc., of Judges

- Salaries & allowances are determined by Parliament.



- First Female Judge of SC: Justice Fathima Beevi (1989)
- No Female Chief Justice of SC till date.

Article 126

Appointment of Acting Chief Justice

President appoints Acting Chief Justice when:

- Chief Justice's seat is vacant, or
- Chief Justice is unable to perform duties.

Article 127

Appointment of Ad Hoc Judges

- CJI, with prior consent of the President and in consultation with the Chief Justice of the concerned High Court, may request a High Court judge (qualified for SC) to sit as an ad hoc judge (temporary judge) in the Supreme Court.
- Such ad hoc judge enjoys powers, jurisdiction, and privileges of SC judges during the time.

Article 128

Attendance of Retired Judges

- Retired SC Judges can be invited to sit and act as Judge of SC.

Article 129

Supreme Court as a Court of Record

SC is a Court of Record:

- Its decisions are preserved as legal precedents.
- Has power to punish for 'Contempt of court.' (Not mentioned in Constitution)

Article 130

Seat of Supreme Court

- The seat of the Supreme Court is at Delhi.
- SC can sit elsewhere if CJI recommends and President approves.

Article 131

Original Jurisdiction of Supreme Court

SC has Exclusive Original Jurisdiction in disputes:

- Between Government of India and one or more States.
- Between GoI and any state or states on one side and one or more states on the other side.
- Between two or more States.

Exceptions:

- Dispute arising of Pre-Constituion Treaty
- Inter State Water Dispute
- Manners related to Finance Commission.

Article 131 (A)

- Introduced by 42nd CA, 1976. It granted SC exclusive authority to determine the validity of central laws, it was further repealed by 43rd CA, 1977.

Article 132

Appellate Jurisdiction of SC (Constitutional Matters)

- By way of appeal from High Court in Constitutional matters.

Article 133

Appellate Jurisdiction of SC (Civil Matters)

- Appeal to SC from HC on judgments in civil cases like: Property, Marriage, Divorce, etc.

Article 134

Appellate Jurisdiction (Criminal Matters)

Article 135

Federal Court's Powers

- SC can exercise powers of the Federal Court under pre-Constitution laws.

Article 136

Special Leave to Appeal

- SC can grant Special Leave to appeal from any court/tribunal judgment (except those related to Armed forces courts or Military Tribunals/Court-Martial.)

Article 137

Review of Judgments

- SC can review its own judgments or orders.

"Judicial review" borrowed from the U.S. Constitution and this term is not mentioned in Indian Constitution.

Article 138

Enlargement of SC Jurisdiction

Parliament may expand SC's jurisdiction by law.

Article 139

Power to Issue Certain Writs

- SC can issue writs for enforcement of Fundamental Rights given under Article 32.
- For other purposes, it requires Parliamentary permission.

Article 140

Ancillary Powers of Supreme Court

Article 141

- Law Declared by SC to be binding on all Courts

Article 142

Enforcement of Decrees and Orders

SC may pass any decree/order for complete justice.

Article 143

Advisory Jurisdiction

President may refer 2 kinds of matters to SC for advice.

1) Pre-constitutional matters
2) Matters of General importance

In pre-constitutional matters, SC must give its advice to President, and in both the cases, the advice is not binding on him.

Article 144

Civil and Judicial Authorities to Act in Aid of SC

Article 145

Rules of Court, etc.

SC can make its own procedural rules with President's approval as long as it does not conflict with the laws made by the Parliament.

Article 146

Officers and Servants of the Supreme Court.

Appointments

- CJI of SC appoints the Court's officers and Staff.

Service Conditions

- CJI sets the rules for the staff employment and salaries.

Expenses

- The SC operating cost, like staff salaries, pensions are paid from Consolidated Fund of India.

Article 147

Interpretation

- Constitution clarifies that when interpreting the constitution, any significant legal question should also be considered: GOI Act, 1935, Indian Independence Act, 1947 and related orders and amendments to both of these Acts.

Trick

SC ne SAARC countries ko SEAT OFFER Kari

- **SC -Art. 124 SC**
- **S -Art 125 Salaries**
- **A -Art 126 Acting Chief Justice**
- **A -Art 127 Ad Hoc judges**
- **R -Art 128 Retired judges**
- **C -Art 129 Court of record**
- **Seat -Art 130 Delhi as a seat**
- **Offer -Art 131- Original jurisdiction**

PART VI-HIGH COURT [Article 214-231]

Article 214

Establishment of High Courts

- Each State shall have a High Court.

Article 215

High Court to be Court of Record

Article 216

Constitution of High Courts

- One Chief Justice and other Judges as Parliament may decide.

No provision for "Distinguished Jurist" in HC like Supreme Court

Article 217

Appointment and Conditions of Judges

1. Appointment of HC Judges is done by the President after consultation with: Chief Justice of India, Governor of State, Chief Justice of the High Court. (Collegium)
   - Maximum age for HC Judge: 62 years
   - HC judge shall hand his resignation to the President.
   - His Removal process is same as that of SC Judge.
2. Qualifications:
   - 10 years advocate of HC, or
   - 10 years holding judicial office.

Article 218

Application of Certain Provisions

- Applies SC Judges' removal procedure to HC Judges, Judges Inquiry Act, 1968

Article 219

Oath or Affirmation

- HC judge take oath before the Governor.

Article 220

Restriction on Practice After Retirement

- Former HC judges cannot practice law before any court except: SC & other HCs.

Article 221

Salaries and Allowances

- Salaries and allowances are drawn from Consolidated Fund of State while Pensions are drawn from Consolidated Fund of India.
- Salaries, allowances, leaves and pension rights are determined by the Parliament.

Article 222

Transfer of Judges

- President can transfer HC judges after consultation with CJI.

Article 223

Appointment of Acting Chief Justice

The President can appoint an Acting Chief Justice when:

(a) The office of the Chief Justice of the High Court is vacant, or

(b) The Chief Justice is unable to perform duties due to absence or any other reason.

Article 224A

Appointment of Retired Judges at Sittings of High Court

The Chief Justice of a HC can request the attendance of a retired judge of that HC or any other HC.

Article 225

Jurisdiction of HC:

- Original Jurisdiction - Revenue matters, election disputes of MPs and MLAs.
- Appellate Jurisdiction - Hear appeals about decisions made by lower courts.
- Writ jurisdiction.

Article 227

Superintendence over Subordinate Courts

Article 229

Officers and Servants of HC-by Chief Justice of HC.

Article 231

Establishment of Common High Court for two or more States. (7th CA, 1956) for example:

a. Maharashtra and Goa have a common HC at Mumbai, Maharashtra.
b. Arunachal Pradesh, Nagaland, Mizoram and Assam have a common HC at Guwahati, Assam.

Article 224

Appointment of Additional and Acting Judges

(1) Additional Judges: If the workload of High Court increases (e.g. due to arrears), the President may appoint additional judges for a temporary period not exceeding 2 years.

(2) Acting Judges: If a judge is absent, unable to perform duties, or seat is vacant, the President may appoint an acting judge.

These appointments to be done in consultation with CJI.

Article 226

Power of HC to Issue Writs

- HC has wider writ jurisdiction than SC
- It can issue writs on Legal + Fundamental Rights.
- HC may refuse to issue writ, SC cannot.

Chandra Kumar Case, 1997

The power of Judicial Review held by the High Courts (under Articles 226 and 227) is a basic feature of the Constitution and cannot be excluded by Parliament through the creation of tribunals.

Article 228

Transfer of Certain Cases to HC

Article 230

Extension of Jurisdiction to Union Territories:

Power of Parliament

- Andaman & Nicobar → Calcutta HC
- Lakshadweep → Kerala HC
- Puducherry → Madras HC
- Dadra and Nagar Haveli & Daman and Diu→ Maharashtra HC.
- Chandigarh,Punjab and Haryana HC

Article 232

Transfer of Cases to Federal Court (Repealed)

By the 7th Constitutional Amendment Act, 1956.

- 1st HC (1862): Calcutta High Court.
- 1st Female HC Judge: Justice Anna Chandy (Kerala).
- 1st Female Chief Justice of HC: Justice Leila Seth (Himachal Pradesh)
- Total High Courts in India: 25

Trick :
NHRC AAO ReST karo (for Article 214-222)

N- No Article
214 : H- High Court
215: R- Court of Records
216: C- Constitution
217: A- Appointment
218: A- Application of certain provisions
219: O- Oath
220: R- Restrictions
221: S - Salary
222: T- Transfer

Subordinate Courts

Article 233

Appointment of District Judges

(1): Distric Judge to be appointed by the Governor in consultation with the High Court.

(2): A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

Article 233A

Validation of Appointments of District Judges.

Article 234

Recruitment of Persons Other than District Judges to the Judicial Services shall be made by the Governor of the state.

Article 235

Control Over Subordinate Courts.

Lok Adalats

- It is one of the alternative dispute redressal mechanism
- It is a forum where disputes/ Cases pending in the court of law or at the pre litigation stage are settled or compromised amicably

National Legal Services Authority (NALSA)

- Patron Chief : Chief Justice of India
- Executive Chief : Seniormost Judge of Supreme Court.

Who Conducts Lok Adalats?

NALSA, along with other legal services institutions.

Status:

Lok Adalats have been given statuatory status under the Legal Services Authorities Act, 1987.

Fees:

There is no court fee payable when a matter is filed in a Lok Adalat.

Appeal :

- The award (Decision) made by the Lok Adalats is deemed to be decree of a civil court and is final and binding on all parties, and no appeal against such an award lies before any court of law.
- If the parties are not satisfied with the award of the Lok Adalats, though there is no provision for an appeal against such an award, they are free to Initiate Litigation by approaching the court of appropriate jurisdiction by filing a case by followng the required procedure, in exercise of their right to litigate.

Nature of cases to be referred to Lok Adalats

- Any case pending before any court.
- Any dispute that has not been brought before any court and is likely to be filed before the court.
- Non-Compoundable offences can not be dealt by Lok Adalats.