



POLITY  
- Part 5

- Judicial System

## Supreme Court

- The Supreme Court of India was inaugurated on January 28, 1950.
- Articles 124 to 147 in Part V of the Constitution deal with the organization, independence, jurisdiction, powers, procedures of the Supreme Court.
- The Parliament is also authorized to regulate them
- At present the Supreme Court consists of 31 Judges including the Chief Justice of India

## Appointment of Judges

- The Judges of Supreme Court are appointed by the President
- The Chief Justice is appointed by the President after consulting Judges of Supreme Court as he deems fit
- The other Judges are appointed by The President after consultation with the Chief Justice of India.
- The Supreme Court Chief Justice should consult a collegium of four senior most judges of the Supreme Court
- Normally the senior most Judge is appointed as Chief Justice but there have been exceptions in the past.

## Qualifications of Judges

- A person to be appointed as judge of the Supreme Court should have the following qualifications:
  1. He should be a citizen of India
  2. He should have been a judge of a High Court for five years or He should have been an advocate of a High Court for 10 years or He should be a distinguished jurist in the opinion of the president.
- So there is no minimum age for appointment as a judge of the Supreme Court.
- He holds office until he attains the age of 65 years.
- He can be removed from his office by the President on the recommendation of the Parliament.

## Removal of Supreme Court Judge

- A judge of the Supreme Court can be removed from his office by an order of the President.
- The President can issue the removal order only after an address by Parliament has been presented to him in the same session for such removal.
- The address must be supported by a special majority of each house of Parliament. Majority of the total membership of that house and a majority of not less than two-thirds of the members of that House present and voting.
- The ground of removal are
  1. Proved misbehavior
  2. Incapacity

## Removal of Supreme Court Judge

- The Judges Enquiry Act (1968) regulates the procedure relating to the removal of a Judge of the Supreme Court by the process of impeachment:
  1. 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 given to the Speaker/Chairman
  2. The Speaker/Chairman may admit the motion or refuse to admit it
  3. If it is admitted, then Speaker/Chairman is to constitute a three member committee to investigate into the charges
  4. The committee should consist of a) the chief justice or a judge of the Supreme Court and c) a distinguished jurist

## Removal of a Supreme Court Judge

- If the committee finds the judge to be guilty of misbehavior 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 removal of the Judge
- Finally the President passes an order removing the Judge.
- So far no Judge has been Impeached.



## Amicus Curiae

- An amicus curiae literally means ‘friend of the court’ is someone who is not a party to a case and may not have been solicited by a party and who assists a court by offering information, expertise or insight that has a bearing on the issues in the case, and is typically presented in the form of a brief.
- Recently Supreme Court had appointed its amicus curiae and senior advocate P S Narasimha as mediator to handle all applications concerning the Board of Control for Cricket in India case pending in the Apex court.
- Narasimha after hearing them, would make the recommendations to Committee of Administrators which is managing the BCCI.

## Procedure of the Supreme Court

- The Supreme Court can, with the approval of the president, make rules for regulating generally the practice and procedure of the Court.
- The Constitutional cases or references made by the President under Article 143 are decided by a Bench consisting of at least five judges.
- All other cases are usually decided by a bench consisting of not less than three judges.
- Supreme Court is the highest court of appeal, the guarantor of the fundamental rights of the citizens and guardian of the Constitution.

## Supreme Court

- The salaries, allowances and pensions of the judge and staff as well as all the administrative expenses of the Supreme Court are charged on the Consolidated Fund of India. Thus they are non-voteable by the Parliament.
- The retired judges of the Supreme Court are prohibited from pleading or acting in any Court or before any authority within the territory of India.
- The Parliament is not authorized to curtail the jurisdiction and powers of Supreme Court.
- Supreme Court is the final interpreter and guardian of the Constitution

## Supreme Court

- The jurisdiction and powers of the Supreme Court:
  1. Original Jurisdiction Some cases no other Court can decide  
example: Centre-State, State-state
  2. Writ Jurisdiction
  3. Appellate Jurisdiction
  4. A court of Record
  5. Advisory Jurisdiction
  6. Power of Judicial Review
- Supreme Court can not decide on
  - matters referred to the Finance Commission
  - Article 262 of the Constitution of India states that the Centre has the power to make any laws regarding the inter state water dispute and may bar the Supreme Court from exercising jurisdiction over such disputes

## Judicial Review of the Ninth Schedule

- Article 31B saves the acts and regulations included in the Ninth Schedule from being challenged and invalidated on the ground of contravention of any of the Fundamental Rights.
- Article 31B along with the Ninth Schedule was added by the 1<sup>st</sup> Constitutional Amendment Act of 1951.
- Ninth Schedule contained 13 acts and regulations in 1951. Their number has gone to 282 in 2016.
- Supreme Court in 1973 said: All amendments to the Constitution made after 24<sup>th</sup> April 1973 by which the 9<sup>th</sup> schedule is amended by inclusion of various laws therein shall have to be tested on the touchstone of the basic or essential features of the Constitution as reflected in Article 21 read with Article 14 and 19 and the principles underlying them.

## National Emergency

- Under Article 352, the President can declare a national emergency when the security of India or a part of it threatened by war or external aggression or armed rebellion
- A proclamation of national emergency may be applicable to the entire country or only a part of it.
- The President can proclaim a national emergency only after getting a written recommendation from the cabinet.
- The proclamation of Emergency must be approved by both the Houses of Parliament within one month from the date of its issue. In case Lok Sabha dissolved, 30 days after the reconstitution of Lok Sabha. Provided Rajya Sabha has already approved it

## National Emergency

- If approved by both the houses of Parliament, the emergency continues for six months and can be extended to an indefinite period with an approval of the Parliament for every six months.
- Every resolution approving the proclamation of emergency or its continuance must be passed by either House Of Parliament by a special majority that is
  1. a majority of the total membership of that House and
  2. a majority of not less than two-thirds of the members of that house present and voting.
- A proclamation of emergency may be revoked by the President at any time by a subsequent proclamation. Such a proclamation does not require the Parliamentary approval

## National Emergency

- During a national emergency, the executive power of the Centre extends to directing any state regarding the manner in which its executive power is to be exercised.
- During a national emergency, the Parliament becomes empowered to make laws on any subject mentioned in the State List. The Laws made by Parliament on the state subjects during a National Emergency become inoperative six months after the emergency has ceased to operate.
- While proclamation of national emergency is in operation, the President can issue ordinances on the state subjects also, if Parliament is not in session.
- During national emergency the President can modify the the distribution of revenues between the centre and the states



## National Emergency

- While a proclamation of National Emergency is in operation, the life of the Lok Sabha may be extended beyond its normal term by a law of Parliament for one year at a time for any length of time.
- However this extension cannot continue beyond a period of six months after the emergency has ceased to operate. Same is applicable for State Assembly.
- Article 358 says during emergency rights under Article 19 gets suspended but when the emergency is imposed on account of external aggression and not when it is imposed on armed rebellion.
  - Article 359 says President can suspend the right to move to court for the enforcement of Fundamental Rights under Article 19 only Article 21 and 22 remain enforceable. But President can suspend this right by an order

## President's Rule

- Article 355: Centre to ensure that State Governments function in accordance with the provisions of the Constitution.
- In case of failure of Constitutional machinery in State, Centre takes over the government of a state under Article 356. This is called as 'President Rule' It is also known as 'State Emergency' or 'Constitutional Emergency'
- The President's Rule can be proclaimed on two grounds:
  1. When President is satisfied that government of the state cannot be carried on accordance with the provisions of the Constitution. There may and may not be Governor's report in this regard
  2. Whenever a state fails to comply with instructions of the Centre.

## President's Rule

- A proclamation imposing President's Rule must be approved by both the Houses of Parliament within two months from the date of its issue.
- However if Lok Sabha has been dissolved or under dissolution, then the proclamation has to be approved by new Lok Sabha within 30 days from their first sitting, provided the Rajya Sabha approves it already.
- If approved by both the Houses of Parliament, the President's Rule continues for six months.
- It can be extended for a maximum period of three years with the approval of the Parliament, every six months.
- Resolution is to be passed by the Parliament by a simple majority, a majority of the members of the House present and voting

## President's Rule

- The 44<sup>th</sup> Amendment Act of 1978 introduced a safe guard for likelihood of misuse of the provision of the President's Rule:
- Beyond one year, the President's Rule can be extended by six months at a time only when the following two conditions are fulfilled:
  1. a proclamation of National Emergency should be in operation in the whole of India or in part of India
  2. The Election Commission must certify that the general elections to the legislative assembly of the concerned state can not be held on account of difficulties.
- A proclamation of President's Rule may be revoked by the President at any time by subsequent proclamation by the President.

## President's Rule

- During the President's Rule, the President acquires the extraordinary powers:
  1. He can take up the functions of the state government and powers vested in the governor or any other executive authority in the State
  2. He can declare that the powers of the State Legislature will be exercised by the Parliament
  3. He can take all other necessary steps including the suspension of the constitutional provisions relating to any body or authority in the state.
- President dismisses the state council of ministers headed by the Chief Minister.
- President Rules the state through Governor and Chief Secretary

## President's Rule

- The president can authorize, expenditure from the state consolidated fund when Parliament is not in session, pending sanction by the Parliament
- The President can promulgate, when the Parliament is not in session, ordinances for the governance of the state.
- The President's Rule has no effect on Fundamental rights of the citizens, High Court functioning.
- For the first time, the President's Rule was imposed in Punjab in 1951.
- Since 1950, the President's Rule has been imposed on more than 100 occasions.

## Financial Emergency

- In case the economic situation of the country becomes unstable or credit of India is threatened the financial emergency can be imposed
- It is imposed under Article 360 of the Constitution of India
- President of India can declare this emergency
- Such an emergency must be approved by the Parliament within two months.
- There is no maximum period prescribed for its operation
- The imposition of emergency is subject to judicial review
- It has never been declared.
- The President may issue directions for the reduction of salaries and allowances of all or any class of persons serving in the state / Union and of judges of Supreme Court and High Court.
- During the operation of a financial emergency, the Centre acquires full control over the states in financial matters.

## Privileges to Individuals MPs

- They cannot be arrested during the session of Parliament and 40 days before the beginning and 40 days after the end of a session. This privilege is available only in civil cases and not in criminal cases or preventive detention cases.
- They have freedom of speech in Parliament. No member is liable to any proceedings in any court for anything said or any vote given by him in Parliament or its committees. This freedom is subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of Parliament.
- They are exempted from jury service. They can refuse to give evidence and appear as a witness in a case pending in a court when Parliament is in session.



## Contempt of the House

- When any individual or authority disregards any of the privileges etc. it is considered as breach of privilege.
- Any act or omission which obstructs a House of Parliament, its member or its officer in the performance of their functions or which violates the dignity, authority and honour of the House is treated as a contempt of the House.
- Such acts are punishable by the House.

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- WE WILL UPGRADE YOU
- WE WILL TRANSFORM YOU

Thank You