

UPSC Civil Services Examination

Political Science & International Relations

Topic: - Appointment and Removal of Judges of the Supreme Court - Indian Polity Notes

Appointment and Removal of Judges of the Supreme Court of India

India works on three tiers of the Judicial System: The Supreme Court, the High Court and Subordinate Courts. In the Constitution of India - **Article 124: Establishment and constitution of Supreme Court** says that:

- There shall be a [Supreme Court of India](#) consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.



Appointment of Judges of the Supreme Court

According to the Constitution of India, the following are the rules for appointment of the Supreme court Judge.

- Every Judge of the Supreme Court shall be appointed by the President by warrant under his/her hand and seal after consultation with such of the Judges of the Supreme Court and of the High Court in the States as President may deem necessary for the purpose and shall hold office until he attains the age of 65 years.

- Supreme Court held that the consultation with Chief Justice is not binding on the President. But the Court held that consultation should be effective.
- In Supreme Court Advocates-on-Record Association vs Union of India 1993, the Court states that the view of the CJI is binding on the President, the Court also held that while advising the President CJI is expected to consult two of the senior-most Judges.
 - CJI is the sole authority to initiate the process of appointment of Judges of the Supreme Court. In case of conflict of opinion between CJI and President, the view expressed by CJI will have primary.
- In July 1998, the President sought the court's opinion on core issues relating to the appointment of Apex Court Judges and transfer of High Court Judges.
- The 11th Presidential Reference sought clarification on certain doubts over the consultation process to be adopted by the Chief Justice of India as stipulated in the 1993 case relating to judges appointment and transfer opinion.
- The crux is as follows:
 - In judicial appointments, it is obligatory for the President to take into account the opinion of the CJI.
 - The opinion of the CJI is binding on the Government. The opinion of the CJI must be formed after due consultation with a collegium of at least four senior-most judges of the Supreme Court.
 - Even if two judges give an adverse opinion, then he should not send the recommendation to the Government.

Eligibility Criteria for Supreme Court Judge

The Indian Constitution says in Article 124 [3] that in order to be appointed as a judge in the Supreme Court of India, the person has to fit in the following criteria:

- He/She is a **citizen of India** and
- has been for at least **five years a Judge of a High Court** or of two or more such Courts in succession; or

- has been for at least **ten years an advocate of a High Court** or of two or more such Courts in succession;
or
- is, in the **opinion of the President**, a distinguished jurist.

Removal of Judges From Supreme Court

The Constitution of India also provides a set of regulations for the removal of the Supreme Court judge. **Article 124(4)** mentions those Removal regulations of the Supreme court judge as follows:

- *A judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and 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 same session for such removal on the ground of proved misbehaviour or incapacity.*

Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under the previous Clause.

- Prof. Rumki Basu argues that the constitutional provisions for enquiring the independence of the judiciary make it amply clear that the Judiciary is beyond executive or legislative interference as stated in the following:

Minimum qualifications for the Judge are prescribed in the constitution itself.

Once appointed, the judges can hold office until the complete **65 years**. They cannot be removed during their tenure except on **proved misbehaviour or incapacity**.

The procedure for removal is too difficult. The motion has to be passed by a majority of the total members of both houses of Parliament and two-thirds of the members present and voting.

- The salaries of the Judges and the administrative expenses of the Supreme Court are charged on the Consolidated Fund of India [CFI] and are not subjected to the vote of Parliament.
- Judges of the Supreme Court cannot plead or act in any court or before any authority within the territory of India after retirement.

UPSC Questions related to Supreme Court Judges in India

What is the importance of Independence of the Supreme Court?

- According to Granville Austin, the constituent Assembly pondered at great length over the issue of independence of the court and two other related issues: the powers of the Supreme Court and scope of judicial reviews.
 - It is the final interpreter and guardian of the constitution.
 - The Supreme Court is the guardian of the Fundamental Rights of the people.
 - It is also the highest and final interpreter of the general law of the country.
 - It is the highest court of appeal in civil and criminal matters.
 - To maintain the Supremacy of the constitution there must be an impartial and independent authority to decide a dispute between Centre and States.
 - In order for the judiciary as an institution to remain strong, it must be ensured that it is free from coercion and political influence.

What is the Collegium System of the Supreme Court?

- The Collegium System of the Supreme Court of India deals with the Appointment and transfer of Judges. The judicial independence of the Supreme Court that evolved over the three popular cases ensures that there won't be any interference of any branch of the state including the Executive and the Legislature in the appointment and transfer of Judges.

How did the collegium system evolve?

- Following are the three cases that led to the **Evolution of the Collegium System** of the Supreme Court for the appointment of the Judges.

Case	Name	Year
First Judges Case	Union of India v.s S.P.Gupta	1982
Second Judges Case	Union of India v.s SCARA (Supreme Court Advocates- on Record Association)	1993
Third Judges Case	In re Special Reference	1998

- After the Second Judges case of 1993, the Supreme Court evolved the principle of Judicial Independence.
- The Third Judges case also resulted in forming the **Memorandum of Procedure (MoP)** of Appointment of the Supreme Court Judge.

What is the Memorandum of Procedure (MoP)?

- Memorandum of Procedure (MoP) is an agreement between the Government and the judiciary that has a set of guidelines for the appointment of judges of supreme court/
- The MoP was formulated after the Third Judges Case in order to govern the process of how the **Collegium System** would make recommendations to the executive.

