

## UNION JUDICIARY

### Part V, chapter IV of the Constitution. (Article 124-147)

- We have different levels of Judiciary which is present at the central level, the state level, and district level. In Part V of the constitution, chapter IV concerns the Union Judiciary.
- In India we have an **independent, integral judicial system.**

### Article 124: Establishment and constitution of Supreme Court

- 1) Supreme Court of India will have Chief Justice of India and **7 judges** (Now 33 Judges, **33+1(CJI)**, done by The Supreme Court (Number of judges) Amendment Act, 2019)
  - 2) Every Judge of the Supreme Court shall be appointed by the President after **consultation** with the of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose.
- Before 99<sup>th</sup> amendment judges of SC were appointed by the president. The chief justice of Supreme Court was appointed by the president with the consultation of SC and HC judges as he deemed necessary for the purpose. But in appointing other judges the president would always consult the CJI. He might consult such other judges of the SC and HC as he might deem necessary.
  - **Case 1: UOI vs. Sankalchand Sheth (1977)**  
The SC held that the word Consultation meant full and effective consultation. It **does not** mean concurrence and the effective consultation. It does not mean concurrence and the president is not bound such consultation.
  - **Case 2: SP Gupta vs. UOI (1982) (1<sup>st</sup> judges' case or judges transfer case)**
- The SC unanimously agreed with the meaning of the term '**Consultation**' as explained by the majority in the case of UOI vs. Sankalchand Seth. This means that the ultimate power to appoint judges was vested in the executive.

- The decision of the government could only be challenged on the grounds of *malafides* or based on a relevant consideration. In effect decision in SP Gupta case gave absolute primacy to the government in appointment of judges.

**Case 3: Supreme Court Advocates on Record Association v. Union of India (1993): (2nd Judges Case or Transfer case)**

- A nine Judge Bench of the Supreme Court by a 7:2 majority overruled its earlier judgment in the SP Gupta case -and held that in the matter of appointment of the Judges of the Supreme Court and the High Courts, the Chief Justice of India should have primacy.
- Greatest of significance should be attached to the opinion of chief justice which is formed after taking into account the views of two senior most judges of Supreme Court
- The selection should be made as a result of participative consultative process. In such process executive should only act as a check on the exercise of the power of Chief Justice of India. Only in exceptional circumstances and for strong reasons the names recommended by the Chief Justice of India me not be appointed.
- The court held that the appointment of Chief Justice of India should be made on the basis of seniority.

• **Case 4: Re presidential reference 1999 (3rd Judge case or Transfer case)**

- A nine-judge bench of Supreme Court held that consultation process to be adopted by Chief Justice of India requires consultation of plurality of judges
- The sole individual opinion of chief justice does not constitutes consultation
- With regard to appointment of Supreme Court judge and transfer of High Court judge the Chief Justice of India should consult a collegium of 4 senior most judges of Supreme Court. The collegium must include the successor Chief Justice of India.

- If two judges give adverse opinion then chief justice should not send opinion to the government.
- In regard to the appointment of High Court judge the collegium should consist of Chief Justice of India and two senior most judges.
- Court made it clear that recommendation for appointment without following the consultation process is not binding on the government.

### **National Judicial Appointment Commission [99 Constitutional Amendment, 2014]**

- 99<sup>th</sup> Amendment: To remove the collegium system the constitution (ninety ninth Amendment) Act, 2014 was passed which entailed the constitution of **National Judicial Appointments Commission 2014** and amended **articles 124 (2), 127 and 128.** It inserted articles **124A, 124B and 124C.** This contended that a special committee needs to be set up for impartial and uninterrupted appointing of judges, which consisted of PM, CJI and person for civil society.
  - **Case 5: Supreme Court Advocates on Record Association vs. UOI (2015)**
    - SC Held that both, 99<sup>th</sup> constitutional amendment and as well as NJAC act 2014 is unconstitutional and void. Therefore, the original collegium system was initiated again.
    - **124(A) (B) (C)** declared **void** by SC on 16<sup>th</sup> October 2016 in the case of **Supreme Court advocates on record association vs. UOI 2016**
- 3) Judge shall hold office until he attains the age of **sixty-five years [124[2]]**; the age of Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may be law provide) **[124(2A)]** (Inserted by the Constitution (Fifteenth Amendment) Act, 1963)**

4) A judge **resigns to President of India.** [124[(2)(a)]]

5) **Qualification** to be a Judge of Supreme Court[124[3]]

- Citizen of India
- Has been for at least five years as 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
- **In the opinion of the President, a distinguished jurist.**

6) **Removal of Judge**

- **Article 124(2) (b)** provides that a judge may be removed according to **art. 124 [4]**
- **Article 124[4]** provides the procedure for removal of a Supreme Court judge. It lays down that a judge may be removed by the President only on grounds are **proved misbehavior or incapacity**
- Prior to the President passing this order, it should be addressed to both the houses and both houses need to approve with Simple majority (total-membership) and 2/3<sup>rd</sup> majority of members (present and voting)
- Such order shall be presented to the president in same session and President orders the removal.
- **Art 124[5]** says that the Parliament may be law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehavior or incapacity of a judge under clause (4)
- **Article 124[6]** provides that the **Oath** by Supreme Court Judge is taken in front of President or some person appointed by President.
- **Article 124[7]** No person who has held office as a judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.

- **Article 125. Salaries, etc. of Judges**
  - Salary, privileges, allowances and rights as are specified in the Second Schedule
  - Neither the privileges nor the allowances of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.
- **Article 126. Appointment of acting Chief Justice – President** May appoint acting Chief Justice to perform the functions of chief justice in his absence
- **Article 127. Appointment of ad hoc. Judges-** Provide for appointment of *ad hoc* Judges in Supreme Court to fulfill the quorum of the judges to hold or to continue the session of court.
- **Article 129. Supreme Court to be a court of record**
  - The Supreme Court shall be a court of record and shall have all the powers of a a court including the power to punish for contempt of itself.
  - Implementation: The contempt of courts Act 1971

### **Laws relating to Contempt of Court**

- The power to punish for contempt rests with the Judges under the Contempt of Courts Act, 1971.
- Section 2(b) states civil contempt and Section 2(c) states criminal contempt.
- **Sec 2(b ) “civil contempt”** means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court;
- **Sec 2( c) “criminal contempt”** means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—
  - (i) scandalizes or tends to scandalise, or lowers or tends to lower the authority of, any court; or (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or (iii) interferes or tends to interfere with,

or obstructs or tends to obstruct, the administration of justice in any other manner;

- Article 215 of Indian Constitution gives power to High Courts to punish for its contempt.
- Article 129 of Indian Constitution gives power to Supreme Court to punish for its contempt.

In **Delhi Judicial Service Assn. v. State of Gujarat 1991**, it has been held that under Article 129 the Supreme Court has power to punish a person for the contempt of itself as well as of its subordinate courts. The expression “including’ extends and widens the scope of power.

It indicates that the Supreme Court as a court of Record has power to punish for contempt of itself and also something else which would fall within the inherent jurisdiction of the court of record.

In **Rajeshwar Singh vs. Subrata Roy Sahara, 2014** Supreme Court held that jurisdiction of Supreme Court under article 129 is independent of provisions of Contempt Of Court Act, 1971

### **International rulings**

In 1987, after the ***Spycatcher judgement***, when the Daily Mirror called British Law Lords “You Old Fools” or, in 2016, after the Brexit ruling, when the Daily Mail called three judges “Enemies of the People” the British judiciary consciously and sensibly ignored the headlines and did not consider contempt prosecution. In fact, **Lord Templeton’s** comment on the Spycatcher headline is worth recalling: *“I cannot deny that I am old; it’s the truth. Whether I am a fool or not is a matter of perception of someone else ... there is no need to invoke the powers of contempt.”*

As far back as 1968, **Lord Denning**, then Master of the Rolls in Britain and perhaps the greatest judge of our time, said of the law of contempt: *“Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself. It is the right of every*

*man, in parliament or out of it, in the press or over the broadcast, to make fair comment, even outspoken comment on matters of public interest... we must rely on our own conduct itself to be its own vindication.”*

### **130. Seat of Supreme Court**

The Supreme Court shall sit in **Delhi** or in such other place or places, as the chief justice of India may, with the approval of the President, from time to time, appoint.

### **131. Original jurisdiction of the Supreme Court**

The Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute-

- a. Between the Government of India and one or more states; or
- b. Between the government of India and any state or states on one side and one or more other states on the other; or
- c. Between two or more states,

If and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

#### **Exclusion**

Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, Sanad or other similar instrument which, having been entered into or executed before the commencement of this constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute. (7<sup>th</sup> amendment act, 1956)

SC is excluded to use its rights of original jurisdiction in the following case:

- The proviso mentioned in the **(article 131)**
- Disputes between states with respect to the use, distribution or control of water of Interstate River or river valley. **(article 262)**
- Matters referred to financial commission. **(article 280)**
- Adjustment of certain expenses as between union and state. **(article 257,258)**

Recently Article 131 was invoked in the case of Sushant Singh Rajput where there was clash of opinion between Bihar government or Maharashtra government

### **Article 132: Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases [CONSTITUTIONAL JURISDICTION]**

An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceedings, (if the High Court certifies under **Article 134A**) that the case involves a **substantial question of law as to the interpretation of this constitution.**

### **133. Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters [CIVIL JURISDICTION]**

- Provides that an appeal shall lie to the supreme court from any judgment, decree or Final order in a civil proceeding of High Court in the territory of India is the high court certified under **article 134 A**
- a) When the case involves a **substantial question of law of general importance** and
- b) In the opinion of the High Court the said question needs to be decided by the Supreme Court.

### **134. Appellate jurisdiction of Supreme Court in regard to criminal matters**

Provides that an appeal shall lie to the Supreme Court from any judgment, final order for sentence in a criminal proceeding of High Court in the territory of India

- a) If the high court has on appeal reversed an order of acquittal of an accused person and sentenced **him to death**, or
- b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or
- c) Certifies that the case is a **fit one** for appeal to the Supreme Court

- **134A- Certificate for Appeal to Supreme Court**



- **136. Special Leave Petition (SLP) to appeal by the Supreme Court**  
 Supreme Court may, in its **discretion**, grant special leave to appeal from any judgment. Decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.  
 This **shall not** apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the **Armed Forces**. [136[2]]
- **Delhi Judicial Service Assn. v. State of Gujarat (1991)**  
 The Supreme Court has held that under Article 136 the Supreme Court has wide power to interfere and correct the judgment and order passed by any court or tribunal in the country. In addition to the appellate power, the court has special residuary power to entertain appeal against any order of any court. The plenary jurisdiction of the court to grant leaves and hear appeals against any order of a court or tribunal confers power of judicial superintendence over all the courts and tribunals including subordinate courts of magistrate and District Judge. The Supreme Court has therefore supervisory jurisdiction over all courts of India.
- **Essar Steel Ltd. Vs UOI (2016)**  
 It was held that The court not competent to judge economic policy of the government,- The Supreme Court has no jurisdiction and competence to judge the validity of the economic policy decision of the government unless it is unconstitutional or in violation of the statute and the rules or it is arbitrary, unreasonable or mala fide.
- **137. Review of judgments or orders by the Supreme Court-**  
**Article 137** provides that subject to the provision of any law made by the Parliament or any rule made under article 145 the Supreme Court shall have the power to review any judgment pronounced or order made by it.

- **Curative Petition**

- The remedy of the curative petition was introduced by the Supreme Court in the case of **Rupa Asok Hurra V. Ashok Hurra.**
- A curative petition is the last remedy provided for any grievances. Its counterpart is the mercy petition which is filed before the President.
- It was also filed in the famous Delhi rape case.

- **139. Conferment on the Supreme Court of powers to issue certain writs**

- Parliament may by law confer on the supreme court power to issue directions, orders or writs, including writs in the nature of *habeas corpus, mandamus, prohibition, quo warranto and certiorari*, or any of the, for any purposes other than those mentioned in clause (2) of article 32.

- **139A. Transfer of certain cases.**

- Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or on an application made by the Attorney- General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Court and dispose of all the cases itself:
- Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment.
- The Supreme Court may, if it deems it expedient so to do for the ends of justice, transfer any case, appeal or other proceedings pending before any high court to any other high court. (42<sup>nd</sup> Amendment Act 1976)

➤ **In Union of India v. Shiromani Gurdwara Prabandhak Committee (1986)**

➤ A petition for transfer of a suit for damage filed in Punjab against Union of India for loss of Gurdwara properties by respondents as a result of operation Blue star was filed in the Supreme Court by the Union of India on the ground that fair trial in Punjab would not be possible in view of extraordinary situation prevailing there. In view of the unusual and sensitive nature of the suit and the extraordinary situation in Punjab Court allowed the petition and transferred the case to the Delhi High Court for trial. The Court said that the power to transfer cases from one state to another must be used with circumstances justified the transfer of the case from Punjab to Delhi Court.

• **141. Law declared by Supreme Court to be binding on all courts-** Article 141 provides that Law cleared by Supreme Court shall be binding on all the courts within the territory of India.

➤ In **Bengal immunity vs. State of Bihar 1955** Supreme Court held that the Supreme Court and apart from its previous decisions. Therefore Supreme Court is not bound by its decision and in proper case it may reverse it.

• **ARTICLE 142: Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.- power to do complete Justice** article 142 provide that Supreme Court may pass such decree or make such orders as is necessary for doing **complete justice** in any matter pending before it.

• **ARTICLE 143: Power of President to consult Supreme Court[ADVISORY JURISDICTION]**

➤ If at any time it appears to the President that

➤ A question of law or fact has arisen, or is likely to arise,

➤ Which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that court for consideration and the court **may**, after such hearing as it thinks fit, report to the President its opinion thereon.

- **Article 143[2]** provides that if the president refers to such matters which are excluded from the provision of article 131 for the advisory opinion of the Supreme Court then the court will be bound to give its opinion on it.
- On any dispute arising out of any treaty, agreement, covenant, engagement, Sanad or other similar instrument which, having been entered into or executed before the commencement of this constitution.

- **In Re Kerala education bill-1958**

SC held that the court is not bound to answer a reference made to it by the president. It also held that in cases of advisory opinion conferred by article 143 is different from regular opinion, it is mandatory on the court to answer any reference or discussion made to it.

- In Special **Courts Bill 1978**: SC held that even in matters arising out of article 143(2) the court may be justified in returning the reference unanswered for a valid reason.
  - **145. Rules of Courts, etc.** - Article 145 provides that Supreme Court may from time to time, with the approval of president make rules for regulating Generally the practice and procedure of the court