

Appointment and Removal of Judges

1. Introduction

Law have no meaning without adequate enforcement that is why our constitution has put in place an at the apex. The framers of the constitution were aware that political power has to be effectively checked so that it is used only for the prescribed purpose and only in the prescribed manner. If parliament enact a law that runs against the word or spirit of the Constitution, Supreme Court exercising the power of judicial review can strike its own as unconstitutional. An arbitrary executive action, too can be checked in the like manner by Judicial action.

The doctrine of basic structure evolved and applied b the Supreme Court has ensured that parliament could not go on amending the Constitution to achieve shallow political gains. In the past fifty-nine years Judiciary has been that wing of the state that not only consistently performed its own duties but also made the other two wings perform theirs.

In India the body of law constitutes the constitution on, at the very top and as the source of all laws, and then there are laws enacted by parliament and state legislation. Judicial decision of the higher court crystallize the law and sometimes act as precedent if the area is unoccupied for lack of legislation. Certain customs of long standing are

considered to be customary laws so far as they do not contravene any express provision of law.

Besides these, the executive wing of the state also makes a variety of rules, regulations and by laws under the authority conferred by the legislature. This is known as delegated legislation. We have a single integrated system of court to administer both the Union and State laws. This uniformity of judicial structure has been achieved by placing the relevant area of civil and criminal law in the concurrent list.

We have the apex , the Supreme Court , with a High Court for each State or group of States. Under the High Courts are Subordinate Courts. The whole country is divided into judicial districts starting with Nyaya Panchayats at the Village level.

2. Appointment of the Judge

For more transparency in place of colonial system the new provision are inserted in the Constitution as Article 124-A, 124-B and 124-C. Amending the Article 124(2) the new provision is that every judge of Supreme Court and High Court shall be appointed by the president by warrant under his hand and seal on her recommendation of National Judicial Appointments Commission as preferred in Article 124-A.

Article 124-A gives provisions for constitution of National Judicial Appointments Commission. The commission shall be consisting of the following namely:-

- (1) CJI, Chairperson, ex-official.
- (2) Two other judges of supreme court next to C.J.I. members, ex-official.
- (3) The union minister in charge of law and Justice member ex-official
- (4) Two eminent persons to be nominated by the committee consisting of the Prime Minister, Chief Justice of India and the leader of opposition in the House of the people or where there is no such leader of opposition, then the leader of single largest opposition party in the House of the People.

Article 124-B deals with the functions of commission on and those are follows:-

(a) - to recommend person for appointment as Chief Justice of India, Judges of Supreme Court, Chief Justice of High Court and other judges of High Courts.

(b) - to recommend transfer of Chief Justices and other Judges of High Courts from one High Court to ensure that the persons recommended of ability and Integrity.

3.Security and Tenure

In India the retirement age of a Supreme Court judge is 65 (Article 124(3)) and a High Court judge is 62 (Article 217(1)) the judges of Supreme Court and High Court enjoy security of the job and removed only for proved misbehavior and incapacity (as provided for president of India) by a resolution passed by both Houses of parliament supported by majority of not less than two third of the membership of that house and by majority of not less than two-third of the member of that house present and voting. Judges Inquiry act, 1968 also provides safeguard to the judges involved in the removal process.

4. Salaries and allowance

Salary of judges is charge on consolidated fund. The Salary of Supreme Court Judge is charged on the Consolidated fund of India and High Courts Judge on the Consolidated fund of the related slate. Not only this the salary of the judges Supreme Courts and High Courts are mentioned in the Second Schedule of the Constitution itself a judge is entitled without payment of the use and official residence and to travelling facilities and allowance when travels on duty within the territory of India - He is also entitled to line of absence and pension after retirement. Neither the previlidge nor the allowance of a judge nor this right in respect of leave of absence and pension shall be varied to his disadvantage after his retirement.

5. No discussion on conduct of Judge's state legislative/ parliament

Article 211 is provided that there shall be no discussion in the legislature of the state with respect to the conduct of any Judge of Supreme Court or a High Court in the discharge of his duty. A similar provision is made in article 121 which lays down that no discussion shall take place in parliament with respect to the conduct of the judge of Supreme Court or High Court in discharge of his duties except upon a motion for presenting an address to the president praying for the removal of the Judge.

Removal of Judge

In order to ensure that the fear of removal does not make our judges pliant, the constitution provides for an extremely cumbersome process for the removal of a judge under Article 124(4)

The only ground on which a Judge of the Supreme court or High Court can be removed is proved misbehavior or incapacity a Judge can only be removed by an order of the President passed after an address in each House of parliament. Such address must be supported by a majority of the total membership of that House and by a majority of not less than two-thirds of members present and voting. It must be presented to the President in the same session. In the judicial history of India no judge has ever been removed by the President in

the same session. In the judicial history of India no judge has ever been impeached though the proceeding for impeachment had been once initiated against Justice Ramaswamy.

6. Power of Punish for Contempt -129

Provided that the Supreme Court shall have power to punish for contempt of itself likewise Article 215 lays down that every High Court shall have the power to punish for contempt of itself.

7.Independence of Judges

If a society based on rule of law and social justice is to be achieved, it is important that justice is administered without fear or favor. Our constitution, therefore, seeks to pressure and promote the independence of judges through various means. Salaries and condition of service for the judges are fixed and cannot be varied to the disadvantage of the Judge during his tenure in the office.

As per ruling of S.R Bommai v Union of India.

The advice of the Chief Justice with regard to the appointment. Promotion and transfer of Judges is binding on the president.

8. Judicial Activism

Law abhors vacuum . Therefore, when the executive refused to act and legislature could do little about it, Indian judiciary stepped in to save the day. Many call it 'Judiciary' criticism, however sever, centered on judicial intervention without any challenge to the legality of it. It was felt in some quarters that there was excessive judicial intervention in the functioning of the executive wing, but it was necessitated entirely by the lethargy of the executive branch of the government legislature showed a chronic lack of political will to act on many occasions which compelled the Supreme Court to step in and make laws by judicial decisions in order to protect the rights of the citizens. A proactive judiciary is resented everywhere and so was the case in India too, but it has worked well for the citizen of the country and has preserved the democratic values on which our country was founded.

9. Judicial Delay

We have over 22 million case pending before the Courts across the country including the High Court and the Supreme Court of INdia, which makes judicial delay one of the most urgent problems India is facing today, and there can be no quick fixed for a problem quite as staggering. A 2016 report titled 'State of Indian Judiciary' published by The Bengluru - based research organization Daksh, looked into the situation by analyzing a total of 3,514,486 cases pending before 24 High Court and 475 subordinate courts with 1,95,036 cases pending before High Court and 1,719,450 before the subordinate court across India.

The less than optimum strngth of judges affects the justice delivery system in several debilitating ways. Since there are for fewer judges than required the dates are badly spaced out and the disposal takes longer which is also because by the time a judge has sufficient understanding of a case at hand after a few hearing - which might take his time with the case, which results in further delay and if the new judge tries to do too much too swiftly the quality of his judgement might take a hit, which is another unacceptable position.

Often, enough lawyers area blamed for contribution to the delays, which might be true to same extent because in most of the cases, at least one party is interested in delaying one adjudication of the case, and the lawyer representing

such party, would do his bit today of the matter. But that has a very limited impact on the speed at which the case progresses because the advocates are not in charge of the case, the judges are.

Case Law

1. Supreme Court on record association vs Union of India (1993) 4 S.C.C 44
2. S.P. Gupta vs Union of INDIA AIR 1982 S.C. 149
3. K. Veeraswami vs Union of INDIA (1991) 3 S.C. C. 655
4. Justice Ramaswami case
5. C. Ravichandran Iyer vs Judge A.M. Bhattacharya (1995) 5 S.C.C. 457

Conclusion

The judiciary in India has played an active role through its activism, especially through Public Interest Litigation. It has restored the rights of the deprived sections of the society.

The Supreme Court and High Courts have worked in favor of progressive social policies and citizens have great respect for the institution of the judiciary.

However, in a democracy, the principle of separation of powers and three forms of government it is important to maintain the legitimacy of the organs.

This can be possible only when the executive and the legislature are alert and active.

At the same time, the judiciary should be wary of stepping into those areas of activity. There should be those who are not related to it.