

[VIEW ALL PARTS](#)



# PART V

ARTICLE

## 124

### Establishment and constitution of Supreme Court

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(1) 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 thirty-three other Judges.

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for that purpose and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted:

Provided further that—

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office in the manner provided in clause (4).

(2A) The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.

(3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and —

(a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or

(b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or

(c) is, in the opinion of the President, a distinguished jurist.

*Explanation I.*—In this clause “High Court” means a High Court which exercises, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

*Explanation II.*—In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district judge after he became an advocate shall be included.

(4) 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 the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) 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 clause (4).

(6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(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.

VERSION 1

### **Article 103, Draft Constitution 1948**

(1) There shall be a Supreme Court of India consisting of a Chief Justice of India and such number of other judges not being less than seven as Parliament may by law prescribe.

(2) Every judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the judges of the Supreme Court and of the High Courts in the States as may be necessary for the purpose and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a judge, other than the Chief Justice, the Chief Justice of India shall always be consulted:

Provided further that—

(a) A judge may, by writing under his hand addressed to the President, resign his office;

(b) A judge may be removed from his office in the manner provided in clause (4).

(3) A person shall not be qualified for appointment as a judge of the Supreme Court unless he is a citizen of India and-

(a) Has been for at least five years a judge of a High Court or of two or more such courts in succession; or

(b) Has been for at least ten years an advocate of a High Court or of two or more such courts in succession.

*Explanation I:-*In this clause 'High Court' means a High Court which exercises, or which before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

*Explanation II:-*In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person held judicial office after he became an advocate, shall be included.

(4) A judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address supported by not less than two-thirds of the members present and voting has been presented to the President by both Houses of Parliament in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) 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 last preceding clause.

(6) Every person appointed to be a judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President or some person appointed in that behalf by him a declaration according to the form set out for the purpose in the Third Schedule.

(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.

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## VERSION 2

(1) 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.

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme

Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted:

Provided further that—

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office in the manner provided in clause (4).

(3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and—

(a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or

(b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or

(c) is, in the opinion of the President, a distinguished jurist.

*Explanation I.*—In this clause “High Court” means a High Court which exercises, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

*Explanation II.*—In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district judge after he became an advocate shall be included.

(4) 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 the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) 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 clause (4).

(6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(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.

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## SUMMARY

Draft Article 103 (Article 124) was debated on 24 May 1949. It established the Supreme Court of India and also laid out provisions relating to the appointment, impeachment, and conduct of its judges.

There was heated debate surrounding the consultation requirement in clause (2). One member proposed the removal of this requirement altogether, allowing the President to be solely responsible for the appointment of the Chief Just. Other members suggested amendments to the parties involved in the consultation or confirmation procedure. For instance, one member proposed that the appointment of any person to the position of Chief Justice had to be subject to confirmation of a two-thirds majority vote of a joint session of Parliament. This received some support in the Assembly, although it was countered that this would result in the Chief Justice being selected at the pleasure of the leader of the majority party. Another member proposed that the Council of States also be consulted by the President for the appointment of the Chief Justice. However, this was dismissed as importing the system of electing judges, rather than selecting them, given the political nature of the Council of States. A third member, citing a memo circulated by the Federal Court and Chief Justices of various High Courts, proposed that the appointment of the Chief of Justice of India should occur only with the concurrence of the sitting Chief Justice. His amendment was positively received by some members,

one of whom supported its adoption, while the other further proposed that this requirement extends to the appointment of any judge in the High Court or Supreme Court. The Chairman of the Drafting Committee responded that the Draft Article sufficiently ensured the independence of the judiciary, as neither the executive nor the legislature had absolute authority in the matter.

Other members objected to the age of retirement prescribed by the Draft Article. One member proposed that the retirement age be raised to sixty-eight years, citing the recommendations of the Federal Court on the matter. Another proposed that judges could '*hold their office during good behaviour or until he resigns*'. A third member who had qualms about the ability of older judges to keep up with the strenuous schedule imposed on members of the judiciary suggested that the age limit be reduced to sixty years. The President could then use his discretion to extend this to sixty-five years on a case-by-case basis, keeping in mind the fitness and ability of the individual judge. In response, a member suggested that the matter be left to Parliament, rather than constitutionally prescribing an arbitrary age limit, while another stated that although fixing a fair age limit was a difficult task, the existing limit was '*by no means unfair, for it does not go beyond any reasonable age-limit*'.

Another source of contention in the Assembly was clause (7). One member proposed that judges should be debarred from holding any executive office after retirement, while another suggested that they be debarred from holding any office of profit. While a few other members agreed with these amendments, others contended that it was unfair to limit the activities of judges post-retirement. The Chairman of the Drafting Committee agreed with the latter view, especially in situations where only a retired judge would possess the experience and capability necessary to perform public service.

An important amendment was moved by a member who sought to expand the list of persons who could be appointed to the courts. Citing the example of the International Court of Justice at the Hague, he proposed that clause (3) be amended to permit the President to appoint a '*distinguished jurist*' to the courts. This was positively received by other members and the Chairman of the Drafting Committee.

A number of amendments were negatived, while others were withdrawn. All of the amendments proposed by the Chairman of the Drafting Committee were accepted by the Assembly. Two other amendments, to clause (2) and (3) respectively, were also

accepted. The amended Draft Article was passed by the Assembly, and it was adopted on 24 May 1949.

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