

The independence of the judges of the Supreme Court is sought to be secured by the Constitution in a number of ways:

**Independence of Supreme Court Judges, how secured.** (a) Though the appointing authority is the President, acting with the advice of his Council of Ministers, the appointment of Supreme Court judge has been lifted from the realm of pure politics by requiring the President to consult the Chief Justice of India in the matter.<sup>3</sup>

(b) By laying down that a judge of the Supreme Court shall not be removed by the President, except on a joint address by both Houses of Parliament (supported by a majority of the total membership and a majority of not less than two-thirds of the members present and voting, in each House), on ground of proved misbehaviour or incapacity of the judge in question [Article 124(4)].

This provision is similar to the rule prevailing in England since the Act of Settlement, 1701, to the effect that though judges of the Superior Courts are appointed by the Crown, they do not hold office during his pleasure, but hold their office "on good behaviour" and the Crown may remove them only upon a joint address from both Houses of Parliament.

(c) By fixing the salaries of the judges by the Constitution and providing that though the allowances, leave and pension may be determined by law made by Parliament, these shall not be varied to the disadvantage of a judge during his term of office. In other words, he will not be affected adversely by any changes made by law since his appointment [Article 125(2)].

But it will be competent for the President to override this guarantee, under a Proclamation of "Financial Emergency" [Article 360(4)(b)].

(d) By providing that the administrative expenses of the Supreme Court, the salaries and allowances, etc., of the judges as well as of the staff of the Supreme Court shall be "charged upon the Consolidated Fund of India"; i.e. shall not be subject to vote in Parliament [Article 146(3)].

(e) By forbidding the discussion of the conduct of a judge of the Supreme Court (or of a high court) in Parliament, except upon a motion for an address to the President for the removal of the judge [Article 121].

(f) By laying down that after retirement, a judge of the Supreme Court shall not plead or act in any court or before any authority within the territory of India<sup>7</sup> [Article 124(7)].

[It is to be noted that there are analogous provisions in the case of high court judges; see chapter 23, *post.*]

It has been rightly said that the jurisdiction and powers of our Supreme Court are in their nature and extent wider than those exercised by the highest court of any other country.<sup>8</sup> It is at once a federal court, a court of appeal and a guardian of the Constitution, and the law declared by it, in the exercise of any its jurisdictions under the Constitution, is binding on all other courts within the territory of India [Article 141].

The foreign decisions have only persuasive value in our country and are not binding authorities on our courts.<sup>9</sup> In case where there is a conflict between two or more judgments of Supreme Court, the judgment of the larger bench would be followed.<sup>10</sup>

**Compared with the American Supreme Court.** Our Supreme Court possesses larger powers<sup>11</sup> than the American Supreme Court in several respects —