

The constitutionality of the provisions of the Constitutional (Ninety-ninth Amendment) Act, 2014 and the National Judicial Appointment Commission Act, 2014 were challenged in the Supreme Court. In response to the same, five-judge Bench of the Supreme Court declared the 99th Amendment Act, 2014 as well as the National Judicial Appointments Commission Act, 2014 to be unconstitutional. (Refer chapter 4).

A judge of a high court gets a salary of Rs 2,25,000 *per mensem* while the Chief Justice gets Rs 2,50,000 *per mensem*.⁵ He is also entitled to such allowances and rights in respect of leave and pension as Parliament may from time to time determine, but such allowances and rights cannot be varied by Parliament to the disadvantage of a judge after his appointment [Article 221].

Salaries, etc.

The qualifications laid down in the Constitution for being eligible for appointment as a judge of the high court are that —

Qualifications for Appointment as High Court Judge.

(a) he must be a citizen of India, not being over 62 years; and must have

(b) (i) held for at least 10 years a judicial office in the territory of India; or

(ii) been for at least 10 years an advocate of a high court or of two or more such courts in succession [Article 217(2)].

As in the case of the judges of the Supreme Court, the Constitution seeks to maintain the independence of the judges of the high courts by a number of provisions:

Independence of the Judges.

(a) By laying down that a judge of the high court shall not be removed, except in the manner provided for the removal of a judge of the Supreme Court, that is, upon an address of each House of Parliament (passed by a special majority [Article 218];

(b) By providing that the expenditure in respect of the salaries and allowances of the judges shall be charged on the Consolidated Fund of the State [Article 202(3)(d)];

(c) By specifying in the Constitution the salaries payable to the judges and providing that the allowances of a judge or his rights in respect of absence or pension shall not be varied by Parliament to his disadvantage after his appointment [Article 221], except under a Proclamation of Financial Emergency [Article 360(4)(b)];

(d) By laying down that after retirement a permanent judge of high court shall not plead or act in a court or before any authority in India, except the Supreme Court and a high court other than the high court in which he had held his office [Article 220].

As Sir Alladi Krishnaswami explained in the Constituent Assembly,⁶ while ensuring the independence of the Judiciary, the Constitution placed the high courts under the control of the Union in certain important matters, in order to keep them outside the range of “provincial politics”. Thus, even though the high court stands at the head of the State Judiciary, it is not so sharply separated from the federal Government as the highest court of an American State (called the State Supreme Court) is. The control of the Union over a high court in India is exercised in the following matters:

Control of the Union over High Courts.

(a) Appointment [Article 217], transfer⁷ from one high court to another [Article 222] and removal [Article 217(1), *Proviso* (b)], and determination of dispute as to age [Article 217(3)], of judges of high courts.