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August 2010



If the tribunal decides that the judge should be removed, they recommend this to the YDPA, who then directs that the judge be removed.

What is the Judges' Code of Ethics?

The Judges' Code of Ethics sets out how judges are supposed to behave while they are judges.

For example, under the Code, a judge cannot:-

- put his private interest over his judicial duties
- use his judicial position for his personal advantage
- bring the judiciary into disrepute or discredit
- be a member of any political party or participate in any political activity.



Can the conduct of judges be discussed in Parliament?

No, unless at least one quarter of the members of the *Dewan Rakyat* or the *Dewan Negara* agrees to table a Motion to discuss it.

The conduct of a judge cannot be discussed in a State Legislative Assembly.

Must Judges take an oath of office?

Yes. Judges of the Superior Courts take an oath to discharge their duty to the best of their ability, that they will bear true faith and allegiance to Malaysia and preserve, protect and defend the Constitution.



Are Judges paid?

Yes. Parliament fixes the amount paid to Judges and it is paid from the Consolidated Fund. These amounts are set out in the Judges' Remuneration Act 1971.



What are the Sessions Courts and Magistrates' Courts?



The Sessions Courts and Magistrates' Courts are created by Acts of Parliament and only have the jurisdiction given to them by Parliament. Under the Subordinate Courts Act 1948 and the Criminal Procedure Code, the Sessions Courts and Magistrates' Courts have the jurisdiction to hear some civil and criminal matters.

'Judges' sit in the Sessions Courts. They are appointed by the YDPA on the recommendation of the Chief Judge of the High Court and must be members of the Judicial and Legal Service. We talked about the Judicial and Legal Service in *The Rakyat Guides: 2. Constitutional Institutions & The Separation of Powers*.

'Magistrates' sit in the Magistrates' Courts. There are First Class Magistrates and Second Class Magistrates who are appointed by the YDPA on the recommendation of the Chief Judge of the High Court. First Class Magistrates must be members of the Judicial and Legal Service.

Frequently Asked Questions



1. What is the Judiciary's most important role?

The Judiciary's most important role is to protect the supremacy of the Constitution, to make sure that everyone obeys the Constitution. Only the Judiciary has the power to interpret the Constitution and to decide if any law passed by Parliament or any act of the Executive is constitutional and valid. Through this power, the Judiciary can check any abuse of powers by the Executive and the Legislature and can protect our fundamental rights.

2. Are our Judges appointed by the Executive?

Yes. Ultimately, the PM decides or must approve the appointment of every judge of the Superior Courts and every Chief Justice, President of the Court of Appeal and Chief Judge.

3. Can our Judiciary act as an effective check to prevent all abuse of power by Parliament or the Executive?

Not in all cases. The Federal Court has accepted that under the Constitution, the Courts only have the legal jurisdiction given to them by Parliament.

This means that the Courts will not question whether the laws made by Parliament are fair or just, but only whether Parliament has the power to make those laws under the Constitution. For example, the Courts have held as valid, laws limiting the right to equality before the law and an arrested person's right to consult a lawyer.

This also means that Parliament can make laws that prevent the Courts from examining something the Executive has done. For example, the Courts have held as valid, laws preventing the Courts from questioning the reasons behind an order by the Minister or police to detain a person without trial under the Internal Security Act.

4. Can our Judiciary protect the Constitution from being changed?

The Constitution gives Parliament the power to change what the Constitution says.

However, many people say that the basic structure of the Constitution, like the parts on fundamental liberties, the distribution of power between the Federal Government and the States and the separation of powers between the Executive, the Legislature and the Judiciary, cannot be changed by Parliament.

What's Next?

Learn about your Constitution in our other *Rakyat Guides* on Constitutional Institutions & the Separation of Powers, Federal-State Relations, Parliament, the Executive and more!



What are the Courts?



The Constitution sets up these courts:-

- the Federal Court
- the Court of Appeal
- two High Courts, one for Peninsular Malaysia known as "the High Court in Malaya", and one for Sabah and Sarawak known as "the High Court in Sabah and Sarawak".

These courts are referred to as the Superior Courts.

The Constitution also sets up a Special Court for the Yang di-Pertuan Agung (YDPA) and other Rulers.

The Constitution also says that Parliament can make laws to set up "Inferior Courts". Under federal laws, Parliament has set up courts like the Sessions Courts, Magistrates' Courts, Penghulu Court and the Industrial Court.

The Superior Courts and the courts set up by Parliament do not decide legal cases that only the Syariah Courts can decide.

What do the Superior Courts do?



The Superior Courts have the power (called "jurisdiction") to make sure that everyone including the Executive, States, Parliament, public authorities and private bodies, obey the Constitution and all laws.

The Superior Courts can:-

- decide what the words in the Constitution or in any law mean when there is a disagreement;
- declare that a law is against the Constitution and therefore invalid and does not have to be followed;
- decide whether any action by the Executive or any State is valid or invalid, by way of "judicial review";

- enforce criminal law;
- resolve disputes between people, between a person and the Executive, between the Federal Government and a State or between one State and another.

However, the power of the Superior Courts to decide these matters has limits.

Limits on Judicial Power

Before March 1988, the judicial power of the Superior Courts came directly from the Constitution, because the Constitution declared that the judicial power of the Federation is vested in the High Courts. This meant that the Courts could review all laws to see if they follow the Constitution and also decide if any action is lawful.

In March 1988, Parliament amended the Constitution to remove the declaration that the judicial power of the Federation is vested in the High Courts, and said that the High Courts only have the jurisdiction given to them by Parliament. Some people say that the amendment limits the power of these Courts, because now these Courts can only examine laws and actions that Parliament allows them to examine. However, other people argue that the amendment is ineffective, because the Courts' judicial power under the Constitution forms part of the basic structure of the Constitution and cannot be

What is the Federal Court?



removed by Parliament. The Federal Court is the highest court in Malaysia and any decision made by it must be followed by everyone and by other Courts.

Only the Federal Court has the jurisdiction to decide:-

- whether a law made by Parliament or a State Legislative Assembly is invalid because the Constitution does not give them the power to make

- such laws;
- any other disputes between the States or between the Federal Government and any State.

However, any other challenge to a law on the ground that it is against the Constitution can be brought before any Superior Court.

The Federal Court also hears appeals from the decisions of other Superior Courts and is the final court of appeal in the country.

The Federal Court can also give its opinion on the Constitution when the YDPA requests for it.

The Federal Court consists of the following judges:-

- the Chief Justice of the Federal Court (Chief Justice)
- the President of the Court of Appeal
- the Chief Judges of the two High Courts
- at least 11 other judges.

What is the Court of Appeal?



The Court of Appeal has the jurisdiction to decide appeals from most decisions made by a High Court judge in civil and criminal cases.

The Court of Appeal consists of the following judges:-

- the President of the Court of Appeal
- 32 other judges.

What is the High Court?



The High Court's jurisdiction is set out in the laws made by Parliament. For example, the Courts of Judicature Act 1964 says that the High Court has unlimited

civil and criminal jurisdiction. This means that the High Court has jurisdiction to decide all civil and criminal cases including appeals from Sessions Courts and Magistrates' Courts.

However, the High Court's jurisdiction has been limited in certain matters by other laws made by Parliament.

The powers of the High Courts include the power to:-

- order any person or authority to do something or to stop doing something;
- declare that the action of a person or authority is invalid and does not need to be followed;
- order any person or authority to produce before the Court people who are held in custody illegally.

The High Court in Malaya has 14 branches in Peninsular Malaysia, and the High Court in Sabah and Sarawak has 6 branches in Sabah and Sarawak.

What is the Special Court?

The Special Court is set up to decide legal cases brought by or against the YDPA or any of the Rulers in their personal capacity. The consent of the Attorney General is needed to bring such an action.



How are Judges appointed?



All Judges of the Superior Courts are appointed by the YDPA. The YDPA must follow the advice of the Prime Minister (PM) on who to appoint. However, the YDPA must consult the Conference of Rulers before making the appointment. Before the PM gives his advice to the YDPA, he or she must consult the following people:-

- To appoint Federal Court judges, the PM must consult the Chief Justice.

- To appoint the President of the Court of Appeal, the PM must consult the Chief Justice.

- To appoint Court of Appeal judges, the PM must consult the Chief Justice and the President of the Court of Appeal.

- To appoint a Chief Judge of any of the High Courts, the PM must consult the Chief Justice and the Chief Judge of each of the High Courts. When appointing the Chief Judge of the High Court in Sabah and Sarawak, the Chief Ministers of Sabah and Sarawak must also be consulted.

- To appoint High Court judges, the PM must consult the Chief Judge of the relevant High Court.

Apart from judges, 'judicial commissioners' may be appointed when more courts are required to hear legal cases. Judicial commissioners have the same powers as a High Court judge. They are appointed by the YDPA, who must follow the advice of the PM, after consulting the Chief Justice.

A person is qualified to be appointed as a judge of the Superior Courts if he or she is a Malaysian citizen and either:-

- a lawyer who has practised in any of the Superior Courts for at least 10 years just before his or her appointment; or
- a member of the Judicial and Legal Service or of the legal service of a State for at least 10 years just before his or her appointment.

Who can be a Judge?



What is the 'Judicial Appointments Commission'?



The Judicial Appointments Commission was set up under the Judicial Appointments Commission Act 2009 (JAC Act) to assist the PM in advising the YDPA on the appointment of judges of the Superior Courts and judicial commissioners.

The Commission selects and recommends to the PM, qualified people for appointment. However, the JAC Act does not say that the PM must accept the names recommended by the Commission.

The Act also says that any person appointed by the Commission must have qualities like integrity, competency, experience, impartiality, fair and good moral character and physical and mental health.

Can a Judge be removed from his position?



All judges of the Superior Courts must retire when they reach 66 years old, or not later than six months after they reach 66 years old if the YDPA consents. However, a judge can resign at any time by informing the YDPA in writing.

A judge of the Superior Courts can be removed if he or she:-

- does not follow the Judges' Code of Ethics; or
- is physically or mentally unable to carry out his or her duties.

To remove a judge, either the PM or the Chief Justice after consulting the PM, must give the YDPA reasons why the judge should be removed. The YDPA must then set up a tribunal consisting of at least 5 judges or former judges of the Superior Courts to decide if the judge should be removed.