

Introduction

In order to ensure transparency and fair work in the system, the constitution-makers kept these three organs independent of each other. The Judiciary is the ultimate interpreter of the rights while it acts as a guardian of the Constitution. It can also conduct checks on the legislature and the executive and ensure that no one goes beyond their ambit of power. The Constitution ensures that the judiciary remains even-handed in all circumstances. The Supreme Court of India is the highest judicial court and the final court of appeal under the Constitution of India, the highest constitutional court, with the power of judicial review. India is a federal State and has a single and unified judicial system with three tier structure, i.e., Supreme Court, High Courts and Subordinate Courts.

History of the Supreme Court of India

- ❑ The Supreme Court of Judicature in Calcutta was constituted as a Court of Record with full jurisdiction and authority with the adoption of the Regulating Act of 1773.
- ❑ The Supreme Courts at Madras and Bombay were formed by King George - III in 1800 and 1823, respectively.
- ❑ The India High Courts Act of 1861 established High Courts in a number of provinces and as well as the Supreme Courts in Calcutta, Madras, and Bombay.
- ❑ These High Courts had the distinction of being the highest Courts for all cases till the creation of Federal Court of India under the Government of India Act 1935. The Federal Court had the authority to hear appeals against decisions from High Courts and resolve issues between provinces and federal states.
- ❑ After Independence, Supreme Court of India was established, and its inaugural session took place on January 28, 1950.
- ❑ It's the highest authority and the final interpreter of the law which means that it has the power to

give final decisions on all the matters of the law. Its judgments are binding on all the lower courts. It has the power of judicial review through which it can review the action of the executive and the legislature.

Constitutional Provisions

The Indian Constitution provides for a provision of Supreme Court under Part V (The Union) and Chapter 6 (The Union Judiciary). Articles 124 to 147 in Part V of the Constitution deal with the organisation, independence, jurisdiction, powers and procedures of the Supreme Court.

Article 124 of the Constitution,

- ❑ The first part of this Article provides for the setting up of the Supreme Court which will be composed of one Chief Justice of India and only seven Judges until the Parliament by law prescribes any more Judges.
- ❑ The second part of this Article states that the Chief Justice of India will be appointed by the President after consulting other Judges whom he thinks suitable and will hold the office until he attains the age of 65 years. Whereas the President will have to take into account the Chief Justice's opinion when he appoints the other Judges.
- ❑ This Article in its part 2(a) says that a judge can by writing to the President, resign from his position, whereas,
- ❑ this Article in its part 2(b) says that the judge can be removed under the provision contained in clause 4.
- ❑ The Jurisdiction of the Supreme Court of India can broadly be categorised into original jurisdiction, appellate jurisdiction and advisory jurisdiction. However, there are other multiple powers of the Supreme Court.

Composition of Supreme Court

With respect to Article 124(2), the number of Judges

was only limited to seven but the Parliament by law prescribed & amended that the number of Judges should be increased to thirty-one, i.e., thirty Judges and the Chief Justice of India.

This was done with a rationale that seven-Judges will not be able to suffice the work, the Judiciary undertakes. In order to work efficiently, the number of Judges should be increased otherwise the cases will keep on piling up and there will be more scenes of injustice. The Parliament is authorised to regulate them.

Earlier, the Supreme Court consists of thirty-one Judges (one Chief Justice and thirty other Judges). Recently, Supreme Court (Number of Judges) Bill, 2019 added four Judges. It increased the judicial strength from 31 to 34, including the Chief Justice of India.

Qualification of Judges

Article 124 in its clause (4), provides a checklist for the qualification of the Judges of Supreme Court which is as follows-

The person,

- ❑ Should be a citizen of India,
- ❑ Should have been a judge of the High Court or of at least two courts in succession, for a span of five years,
- ❑ Should have been an advocate of the High Court or at least two courts in succession, for a span of 10 years,
- ❑ And should be a distinguished jurist.

Salaries and Allowances

Article 125, talks about the salaries and allowances to be given to the Judges of the Supreme Court.

- ❑ In clause (1), it was mentioned that the Judges of the Supreme Court will be paid the salaries determined by the Parliament by law. This is present in the second schedule until any other law regarding the salaries is made.
- ❑ In clause (2), it was further mentioned that the Judges will get privileges, allowances, and rights regarding leave of absence and pension with respect to the law prescribed by the Parliament.

Now, the Parliament by law can alter the rights that may hamper the judge's position. But this Article makes

sure that it should not happen as it states further that, the Parliament should not enact any law which will stand as a disadvantage to the position of the judge after he has been appointed.

Oath or Affirmation

A person appointed as a judge of the Supreme Court, before entering upon his office, has to make and subscribe to an oath or affirmation before the President, or some other person appointed by him for this purpose. In his oath, a judge of the Supreme Court swears:

- ❑ to bear true faith and allegiance to the Constitution of India;
- ❑ to uphold the sovereignty and integrity of India;
- ❑ to duly and faithfully and to the best of his ability, knowledge and judgement to perform the duties of the Office without fear or favour, affection or ill-will; and
- ❑ to uphold the Constitution and the laws.

Seat of the Supreme Court

Article 130, of the Constitution declares Delhi as the seat of the Supreme Court. It also authorises Chief Justice of India to appoint other place or places as seat of the Supreme Court.

He can take decision in this regard only with the approval of the President. This provision is only optional and not compulsory. This means that no court can give any direction either to the President or to the Chief Justice to appoint any other place as the seat of the Supreme Court.

Other Temporary Judges

Acting Chief Justice (Article 126)

The President can appoint a judge of the Supreme Court as an acting Chief Justice of India when:

- ❑ the office of Chief Justice of India is vacant; or
- ❑ the Chief Justice of India is temporarily absent; or
- ❑ the Chief Justice of India is unable to perform the duties of his office.

Ad-hoc Judge (Article 127)

- ❑ When there is a lack of quorum of the permanent judges to hold or continue any session of the Supreme Court, the Chief Justice of India can appoint a judge of a High Court as an Ad-hoc judge of the

Supreme Court for a temporary period. He can do so only after consultation with the Chief Justice of the High Court concerned and with the previous consent of the President.

- ❑ The judge so appointed should be qualified for appointment as a judge of the Supreme Court. It is the duty of the judge so appointed to attend the sittings of the Supreme Court, in priority to other duties of his office. While so attending, he enjoys all the jurisdiction, powers and privileges of a judge of the Supreme Court.

Retired Judges (Article 128)

At any time, the Chief Justice of India can request a retired judge of the Supreme Court or a retired judge of a high court (who is duly qualified for appointment as a judge of the Supreme Court) to act as a judge of the Supreme Court for a temporary period.

He can do so only with the previous consent of the President and also of the person to be so appointed.

Such a judge is entitled to such allowances as the President may determine. He will also enjoy all the jurisdiction, powers and privileges of a judge of the Supreme Court. But he will not otherwise be deemed to be a judge of the Supreme Court.

Appointment of Judges

The Judges of the Supreme Court are appointed by the President. The Chief Justice of India is appointed by the President after consultation with such Judges of the Supreme Court and High Courts as he deems necessary.

The other Judges are appointed by the President after consultation with Chief Justice of India and such other Judges of the Supreme Court and the High Courts as he deems necessary. The consultation with the Chief Justice is obligatory in the case of appointment of a judge other than Chief Justice of India.

Controversy over consultation

The Supreme Court has given different interpretation of the word consultation.

In first Judges case

The court held that consultation does not mean concurrence and it only implies exchange of view.

Appointment of Chief Justice From 1950 to 1973:

The practice has been to appoint the senior most judge

of the Supreme Court as the Chief Justice of India. This established convention was violated in 1973 when A. N. Ray was appointed as the Chief Justice of India by superseding three senior Judges. Again in 1977, M. U. Beg was appointed as the Chief Justice of India by superseding the then senior-most judge.

This discretion of the Government was curtailed by the Supreme Court in the Second Judges Case (1993), in which the Supreme Court ruled that the senior most judge of the Supreme Court should alone be appointed to the office of the Chief Justice of India.

Second Judges' case

The court reversed its earlier ruling and changed the meaning of the word consultation. Hence, it ruled that the advice tendered by the Chief Justice of India is binding on the President in matters of appointment of the Judges of the Supreme Court. but the Chief Justice would tender his advice on the matter after consulting two of his senior most colleagues.

Third Judges' case

The court held that the consultation process to be adopted by the Chief Justice of India requires consultation of plurality Judges. Sole opinion of Chief Justice of India does not constitute the consultation process. He should consult a collegium of four senior most Judges of Supreme Court and even if two Judges give an adverse opinion, he should not send the recommendation to the Government the court held that the recommendation made by the Chief Justice of India without complying with the norms and requirements of the consultation process are not binding on the Government.

National Judicial Appointments Commission (NJAC)

The 99th Constitutional Amendment Act of 2014 have replaced the collegium system of appointing Judges to the Supreme Court and High Court with a new body called the National Judicial Appointments Commission (NJAC). After this amendment, under Article 124(2), every judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal on the recommendation of the National Judicial Appointment Commission referred to in Article 124 A.

NJAC, as provided by Article 124 (A), consisted of

- ❑ Chief Justice of India;
- ❑ two other senior Judges of the Supreme Court;
- ❑ Union Law Minister

- ❑ 2 eminent people' to be nominated by the committee consisting of the Prime Minister, Chief Minister of India and the leader of opposition.

The above composition clearly states that NJAC has both judicial as well as executive the representatives.

Thus, the 99th Amendment Act which brought NJAC held that the established wisdom of appointment of Judges can be shared with the political executive. This was a huge change in the methodology used to appoint a Judge of the Supreme Court.

But thereafter, in Supreme Court Advocates on Record Association v. Union of India (Fourth Judges case), the Supreme Court struck down NJAC act as 'unconstitutional and void'. The Court declared that the 'NJAC' act altered the basic features of the constitution as it impairs the 'independence of the judiciary' and the 'separation of powers' by conferring arbitrary and uncharted powers on various authorities under the statute. Therefore, the amendment cannot be sustained. As a result of this discussion, the position as it stood prior to the constitution 99th Amendment Act i.e., 'collegium system' got revived.

Tenure and Removal of Judges

According to Article 124(2), the Judges of the Supreme Court will hold their office until they reach the age of 65 years. However, the tenure of the judge can be shortened on the following conditions:

- ❑ If he resigns (Article 124(2))
- ❑ If he dies during his tenure.
- ❑ If he is impeached

Procedure of Impeachment

A judge of the Supreme Court stands removed if:

- ❑ A motion is signed by the 50 members of Rajya Sabha and 100 members of the Lok Sabha.
- ❑ An inquiry committee under Judges Inquiry Act, 1968 is constituted for the investigation of the charges.
- ❑ If the inquiry committee proves the charges, then it is addressed in both the house of Parliament.
- ❑ If the motion is passed with two-third majority in both houses then the motion is addressed to the President.
- ❑ The judge has the right to in order to prove that he

is not guilty.

- ❑ If the President is satisfied with motion addressed to him, he may issue an order to remove the judge.

Judge should be proved incapable or guilty of his act. It can be proved through the procedure for the investigation regarding the same matter and the following procedure has to be laid down by the law of the Parliament. This right is given to the Parliament under Article 124(5).

Judges (Inquiry) Act, 1968 [Inquiry Committee]

In this, the procedure for the investigation into the charges against the Judges was laid down.

The Judge can only be removed after proven misbehaviour or incapacity. This Act further specified that it will consist of the following people-

- ❑ Any judge of the Supreme Court, or the Chief Justice of the Supreme Court,
- ❑ Any Chief Justice of the High Court, and
- ❑ Any person who is a distinguished jurist in the opinion of the Speaker.

These members will unanimously frame charges against the judge and will investigate it.

Independence of Supreme Court

The Supreme Court is a federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and guardian of the Constitution. Therefore, its independence becomes very essential for the effective discharge of the duties assigned to it. It should be free from the encroachments, pressures and interferences of the executive and the Legislature. It should be allowed to do justice without fear or favour.

The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the Supreme Court:

- ❑ Mode of appointment
 - ❑ Security of tenure
 - ❑ Fixed service conditions
 - ❑ Expenses charged on the consolidated fund
 - ❑ Conduct of judges cannot be discussed
 - ❑ Ban on practice after retirement
 - ❑ Power to punish for its contempt
 - ❑ Freedom to appoint its staff
 - ❑ Its jurisdiction cannot be curtailed
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- ❑ Separation from Executive

Jurisdiction and Powers of the Supreme Court

Supreme Court of India is the apex judicial authority in India. Under Article 141 it has been stated that the decision of the Supreme Court is binding upon all the other courts. It tends to regulate the judicial system of the country in order to maintain public peace and protect it from any external transgression. Therefore, it possesses a very wide range of powers and functions which are discussed below:

- ❑ ***Original Jurisdiction:*** Under Article 131 of the Indian constitution, the Supreme Court has original jurisdiction in the following cases:
 - If there is a dispute between the Government of India and one or more States
 - Between the Government of India and any state or states on the one side and one or more States on the other side
 - Between two or more States

Even the dispute arising in the election of the President and Vice President is dealt with by the Supreme Court. In these matters, the Supreme Court has original jurisdiction to exercise its power without the intervention of any other judicial authority.

This jurisdiction of the Supreme Court is subjected to certain limitations.

- A dispute arising out of any pre-Constitution treaty, agreement, covenant, engagement, sanad or another similar instrument.
- A dispute arising out of any treaty, agreement, etc, which specifically provides that the said jurisdiction does not extend to such a dispute.
- Inter-state water disputes.
- Matters referred to the Finance Commission.
- Adjustment of certain expenses and pensions between the Centre and the States.
- Ordinary dispute of Commercial nature between the Centre and the States.
- Recovery of damages by a State against the Centre.
- ❑ ***Writ Jurisdiction:*** Under Article 32 it has given the right to an individual to approach the Supreme Court if there is any violation of his fundamental

rights. Under Article 32, a court can issue orders or writs (habeas corpus, certiorari, mandamus, prohibition, quo-warranto) for the enforcement of the fundamental rights of an aggrieved citizen.

In this regard, the Supreme Court has original jurisdiction in the sense that an aggrieved citizen can go directly to the Supreme Court, not necessarily by way of appeal. However, the writ jurisdiction of the Supreme Court is not exclusive. The High Courts are also empowered to issue writs for the enforcement of the Fundamental Rights.

As the Supreme Court is the highest judicial authority it protects the fundamental rights of an individual from any kind of infringement.

- ❑ ***Appellate Jurisdiction:*** The Supreme is the apex judicial authority of appeals and enjoys constitutional, civil as well as criminal appeals.
 - ***Constitutional Appeal:*** Under Article 132 of the constitution, it has been stated that appeal for any final judgement of the High Court whether of civil or criminal nature for which the High Court issues a certificate stating that it contains a substantial question of law as to the interpretation of the provisions of the constitution lies in the Supreme Court. Even if the High Court refuses to issue the certificate, the Supreme Court has the power to grant special leave petition in these matters.
 - ***Civil Appeals:*** Cases of civil nature shall lie in the Supreme Court if the High Court is satisfied with the following conditions and certifies that:
 - ☞ The matter involves a substantial question of law
 - ☞ If the High Court thinks that this case needs to be decided by the Supreme Court
 - ***Criminal Appeals:*** under Article 134(1) a criminal appeal shall lie in the Supreme Court under the following circumstances:
 - ☞ If the High Court in an appeal has reversed the judgment of the lower court and sentenced death penalty to the accused who has been acquitted.
 - ☞ In the second situation when the High Court itself has withdrawn a case from a lower court and then sentenced the accused person death penalty.

☞ If a case is certified by the High Court that it is fit for the appeal in the Supreme Court. Sometimes the Supreme Court is conferred with powers by the parliament in order to deal with certain cases decided by the High Court.

- **Special Leave Petition:** The Supreme Court has the jurisdiction to grant special leave petition to the final judgement given by any lower courts except for the courts or tribunal which has been formed by the law relating to armed forces. However, if the judgement or order is given by a High Court (single judge bench) then the no appeal for that matter will be entertained in the Supreme Court.

Under Article 138 of the Indian Constitution the law expands the jurisdiction of the Supreme Court in respect of subjects contained under the union list and shall also have jurisdiction over any other subject for which the consent of state has been obtained.

- **Advisory Jurisdiction:** Article 143 authorises the President of India to seek an advisory opinion from the Supreme Court in the two categories of matters:
 - a. matters of public importance
 - b. of any question arising out of pre-constitution, treaty, agreement, engagement, Sanad or other similar instruments.

Also, Article 144 states that all authorities civil and judicial in the territory of India shall act in aid of the Supreme Court.

- **Courts of record:** Under Article 129 of the Indian constitution, it has been stated very clearly that the Supreme Court of India is a court of record and has the power to punish for contempt itself. A court of record means the proceedings, decisions or acts of a court which are enrolled for the evidential matter and for the interminable and testimonial purposes. They are unquestionable when presented before any other court.

Miscellaneous Powers and Functions

Apart from the powers mentioned above Supreme Court has following powers too:

1. **Power to punish for contempt:** Supreme Court under Article 129 has the power to punish a person if found guilty of contempt of court. Contempt of

court basically means hampering the proceedings of the court neglecting its order, defying its authority which ultimately results in disrespect of the court. The consequences arising out of it includes both the civil or criminal penalties depending upon the gravity of the consequences. Civil contempt means wilful disobedience to any judgment. Criminal contempt means doing any act which lowers the authority of the court or causing interference in judicial proceedings.

2. **Judicial review:** If any law is passed by the Parliament or the State Legislature which does not comply with the provisions of the Indian constitution or is passed with the jurisdiction which they even do not possess will be declared void by the Supreme Court through judicial review.
3. **Custodian of the fundamental rights:** It is the custodian of the fundamental rights. Under Article 32 every citizen of India has the Locus Standi to move to court in order to seek legal remedy if there is any kind of infringement to the fundamental rights.
4. The Supreme Court is conferred with the power to make rules for carrying out its practice and procedure.
5. **Appointment of Ad-hoc Judges:** Article 127 states that if at any time there is a lack of quorum of Judges of Supreme Court, the Chief Justice of India may with the previous consent of the President and Chief Justice of High Court, concerning request in writing the attendance of Judge of High Court duly qualified to be appointed as Judge of the Supreme Court.
6. **Appointment of retired Judges of the Supreme Court or High Court:** Article 128, states that the Chief Justice of India any time with the previous consent of the President and the person to be so appointed can appoint any person who had previously held the office of a Judge of Supreme Court.
7. **Appointment of Acting Chief Justice:** Article 126, states that when the office of Chief Justice of India vacant or when the Chief Justice is by reason of absence or otherwise unable to perform duties of the office, the President in such case can appoint

Judge of the court to discharge the duties of the office.

8. *Revisory Jurisdiction:* The Supreme Court under Article 137, has the power to review its own judgement

- a. If new evidence is found.
- b. If a fact which is related to the records of the came to the light.
- c. If there are enough reasons to suffice for a review Supreme Court itself states that nothing can restrain it from reviewing its own decisions if it is satisfied with its effects over the general public.

9. *Supreme Court as a Court of Record:* Under

Article 129, Supreme Court is the court of record. Its judgment is unquestionable and are accepted by all the lower courts as precedents. Under Article 141 the decision of the High Court is considered to be final and binding upon all the lower courts and regarded as law.

10. Appeals under The Peoples Representation Act, 1951 can be filed in the Supreme Court.
 11. Deciding authority regarding the election of President and Vice President.
 12. Enquiring authority in the conduct and behaviour of UPSC members.
 13. Withdraw cases pending before High Courts and dispose of them themselves.
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