

Chapter - 16

SUPREME COURT

Unlike the American Constitution, the Indian Constitution has established an integrated judicial system with the Supreme Court at the top and the high courts below it. Under a high court (and below the state level), there is a hierarchy of subordinate courts, that is, district courts and other lower courts. This single system of courts, adopted from the Government of India Act of 1935, enforces both Central laws as well as the state laws.

The Supreme Court of India was inaugurated on January 28, 1950. It succeeded the Federal Court of India, established under the Government of India Act of 1935.

Articles 124 to 147 in Part V of the Constitution deal with the organisation, independence, jurisdiction, powers, procedures and so on of the Supreme Court.

ORGANISATION OF SUPREME COURT

At present, the Supreme Court consists of thirty-one judges (one chief justice and thirty other judges). In February 2009, the centre notified an increase in the number of Supreme Court judges from twenty-six to thirty-one, including the Chief Justice of India.

Judges

Appointment of Judges : The judges of the Supreme Court are appointed by the president. The chief justice 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 president after consultation with the chief justice 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.

Qualifications of Judges : A person to be appointed as a judge of the Supreme Court should have the following qualifications:

1. He should be a citizen of India.
2. (a) He should have been a judge of a High Court (or high courts in succession) for five years; or (b) He should have been an advocate of a High Court (or High Courts in succession) for ten years; or (c) He should be a distinguished jurist in the opinion of the president.

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

Tenure of Judges : The Constitution has not fixed the tenure of a judge of the Supreme Court. However, it makes the following three provisions in this regard:

1. He holds office until he attains the age of 65 years. Any question regarding his age is to be determined by such authority and in such manner as provided by Parliament.
2. He can resign his office by writing to the president.
3. He can be removed from his office by the President on the recommendation of the Parliament.

Removal of Judges : A judge of the Supreme Court can be removed from his Office by an order of the president. The President can issue the removal order only after an address by Parliament has been presented to him in the same session for such removal. The address must be supported by a special majority of each

House of Parliament (ie, a majority of the total membership of that House and a majority of not less than two-thirds of the members of that House present and voting). The grounds of removal are two-proved misbehaviour or incapacity.

The Judges Enquiry Act (1968) regulates the procedure relating to the removal of a judge of the Supreme Court by the process of impeachment:

1. A removal motion signed by 100 members (in the case of Lok Sabha) or 50 members (in the case of Rajya Sabha) is to be given to the Speaker/Chairman.
2. The Speaker/Chairman may admit the motion or refuse to admit it.
3. If it is admitted, then the Speaker/Chairman is to constitute a three-member committee to investigate into the charges.
4. The committee should consist of (a) the chief justice or a judge of the Supreme Court, (b) a chief justice of a high court, and (c) a distinguished jurist.
5. If the committee finds the judge to be guilty of misbehaviour or suffering from an incapacity, the House can take up the consideration of the motion.
6. After the motion is passed by each House of Parliament by special majority, an address is presented to the president for removal of the judge.
7. Finally, the president passes an order removing the judge.

It is interesting to know that no judge of the Supreme Court has been impeached so far. The Supreme Court has been impeached so far. The first and the only case of impeachment is that of justice V Ramaswami of the Supreme Court (1991–1993). Though the enquiry Committee found him guilty of misbehaviour, he could not be removed as the impeachment motion was defeated in the Lok Sabha. The Congress Party abstained from voting.

Salaries and Allowances : The salaries, allowances, privileges, leave and pension of the judges of the Supreme Court are determined from time to time by the Parliament. They can-not be varied to their disadvantage after their appointment except during a financial emergency.

Acting Chief Justice

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

1. the office of Chief Justice of India is vacant; or
2. the Chief Justice of India is temporarily absent; or
3. the Chief Justice of India is unable to perform the duties of his office.

Ad hoc Judge

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.

Retired Judges

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.

SEAT OF SUPREME COURT

The Constitution declares Delhi as the seat of the Supreme Court. But, it also authorises the 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.

PROCEDURE OF THE COURT

The Supreme Court can, with the approval of the president, make rules for regulating generally the practice and procedure of the Court. The Constitutional cases or references made by the President under Article 143 are decided by a Bench consisting of at least five judges. All other cases are usually decided by a bench consisting of not less than three judges.

JURISDICTION AND POWERS OF SUPREME COURT

The Constitution has conferred a very extensive jurisdiction and vast powers on the Supreme Court. It is not only a Federal Court like the American Supreme Court but also a final court of appeal like the British House of Lords.

1. Original Jurisdiction

As a federal court, the Supreme Court decides the disputes between different units of the Indian Federation. More elaborately, any dispute between :

- (a) the Centre and one or more states; or
- (b) the Centre and any state or states on one side and one or more states on the other; or
- (c) between two or more states.

In the above federal disputes, the Supreme Court has exclusive original jurisdiction. Exclusive means, no other court can decide such disputes and original means, the power to hear such disputes in the first instance, not by way of appeal.

2. Writ Jurisdiction

The Constitution has constituted the Supreme Court as the guarantor and defender of the fundamental rights of the citizens. The Supreme Court is empowered to issue writs including *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari* for the enforcement of the fundamental rights of an aggrieved citizen. 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.

There is also a difference between the writ jurisdiction of the Supreme Court and that of the high court. The Supreme Court can issue writs only for the enforcement of the Fundamental Rights and not for other purposes. The high court, on the other hand, can issue writs not only of the enforcement of the fundamental rights but also for other purposes. It means that the writ jurisdiction of the high court is wider than that of the Supreme Court.

3. Appellate Jurisdiction

The Supreme Court is primarily a court of appeal and hears appeals against the judgements of the lower courts. It enjoys a wide appellate jurisdiction which can be classified under four heads:

- (a) **Constitutional Matters** : In the constitutional cases, an appeal can be made to the Supreme Court against the judgement of a high court if the high court certifies that the case involves a substantial question of law that requires the interpretation of the Constitution.
- (b) **Civil Matters** : In civil cases, an appeal lies to the Supreme Court from any judgement of a high court if the high court certifies—
 - (i) that the case involves a substantial question of law of general importance; and
 - (ii) that the question needs to be decided by the Supreme Court.
- (c) **Criminal Matters** : The Supreme Court hears appeals against the judgement in a criminal proceeding of a high court if the high court—
 - (i) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or

- (ii) has taken before itself any case from any subordinate court and convicted the accused person and sentenced him to death; or
- (iii) certifies that the case is a fit one for appeal to the Supreme Court.
- (d) Appeal by Special Leave :** The Supreme Court is authorised to grant in its discretion special leave to appeal from any judgement in any matter passed by any court or tribunal in the country (except military tribunal and court martial). This provision contains the four aspects as under:
 - (i) It is a discretionary power and hence, cannot be claimed as a matter of right.
 - (ii) It can be granted in any judgement whether final or interlocutory.
 - (iii) It may be related to any matter—constitutional, civil, criminal, income-tax, labour, revenue, advocates, etc.
 - (iv) It can be granted against any court or tribunal and not necessarily against a high court (of course, except a military court).

4. Advisory Jurisdiction

The Constitution (Article 143) authorises the president to seek the opinion of the Supreme Court in the two categories of matters:

- (a) On any question of law or fact of public importance which has arisen or which is likely to arise.
- (b) On any dispute arising out of any pre-constitution treaty, agreement, covenant, engagement, sanad or other similar instruments.

In both the cases, the opinion expressed by the Supreme Court is only advisory and not a judicial pronouncement. Hence, it is not binding on the president; he may follow or may not follow the opinion.

5. A Court of Record

As a Court of Record, the Supreme Court has two powers:

- (a) The judgements, proceedings and acts of the Supreme Court are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any court.
- (b) It has power to punish for contempt of court, either with simple imprisonment for a term up to six months or with fine up to Rs. 2,000 or with both.

6. Power of Judicial Review

Judicial review is the power of the Supreme Court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments. On examination, if they are found to be violative of the Constitution (*ultra-vires*), they can be declared as illegal, unconstitutional and invalid (null and void) by the Supreme Court.

Judicial review is needed for the following reasons:

- (a) To uphold the principle of the supremacy of the Constitution.
- (b) To maintain federal equilibrium (balance between Centre and states).
- (c) To protect the fundamental rights of the citizens.

The constitutional validity of a legislative enactment or an executive order can be challenged in the Supreme Court on the following three grounds:

- (a) it infringes the Fundamental Rights (Part III),
- (b) it is outside the competence of the authority which has framed it, and
- (c) it is repugnant to the constitutional provisions.

7. Other Powers

Besides the above, the Supreme Court has numerous other powers:

- (a) It decides the disputes regarding the election of the president and the vice-president. In this regard, it has the original, exclusive and final authority.
- (b) It enquires into the conduct and behaviour of the chairman and members of the Union Public Service Commission on a reference made by the president. The advice tendered by the Supreme Court in this regard is binding on the President.
- (c) It has power to review its own judgement or order. Thus, it is not bound by its previous decision and can depart from it in the interest of justice or community welfare.
- (d) It is authorised to withdraw the cases pending before the high courts and dispose them by itself.
- (e) Its law is binding on all courts in India. Its decree or order is enforceable throughout the country.
- (f) It is the ultimate interpreter of the Constitution.
- (g) It has power of judicial superintendence and control over all the courts and tribunals functioning in the entire territory of the country.

