

**12**

SUPREME COURT OF INDIA

The Supreme Court is the highest court of India. It is at the apex of the Indian judicial system. In the previous two lessons, you have learnt that the Union legislature, which is known as Parliament, makes laws for the whole country in respect of the Union and the Concurrent Lists and the executive comprising the President, Council of Ministers and bureaucracy enforces them. Judiciary, the third organ of the government, has an equally important role to play. It settles the disputes, interprets laws, protects fundamental rights and acts as guardian of the Constitution. In this lesson, you will learn that India has a single unified and integrated judicial system and that the Supreme Court is the highest court in India.



A view of the Supreme Court of India



Objectives

After studying this lesson, you will be able to

- recognise that India has a single integrated and unified judicial system;
- describe the composition and organization of the Supreme Court of India;

- explain the powers and jurisdiction of the Supreme Court of India;
- appreciate the role of the Supreme Court of India as guardian of the Constitution and protector of Fundamental Rights;
- recall that public interest litigation plays an important role in the protection of our rights.

**Notes**

12.1 Single Unified and Integrated Judicial System

You have already read in the lesson on the Salient Features of the Indian Constitution that the distinct feature of our judiciary is that it is a single unified integrated judicial system for the whole country. A single judiciary represents a hierarchy of courts. The Supreme Court stands at the top of this single integrated judicial system with High Courts at the State level. Below the High Courts, there are several subordinate courts such as the District Courts which deal with civil cases and the Session Courts which decide criminal cases.

INDIAN JUDICIAL SYSTEM



12.2 The Supreme Court

The Supreme Court is the highest judicial authority of India. It consists of the Chief Justice and 25 other judges. The Parliament may increase the number of judges if it deems necessary. To begin with, besides the Chief Justice, there were only 7 other judges. The Parliament has increased the number of judges from time to time. As in 2005, there are 25 judges besides the Chief Justice who is also called the Chief Justice of India.

The Chief Justice and other judges of the Supreme Court are appointed by the President of India. While appointing the Chief Justice, the President is constitutionally required to consult such other judges of the Supreme Court as he deems proper, but outgoing Chief Justice is always consulted. Normally, the senior most judge of the Supreme Court is appointed as the Chief Justice of India, although there is no constitutional requirement to do so. While appointing other judges, the President is bound to consult the Chief Justice and other senior judges, if he deems proper.

Whenever there is vacancy or a likely vacancy in the Supreme Court, the Chief Justice and four other senior most judges consider various names and recommend the names of the persons to be appointed as judges of the Supreme Court. This system is based on a ruling of the Constitutional Bench of a Supreme Court (handed down in 1993 and reinforced in 1999). Thus, while the Constitution still provides that the President is the appointing authority of the Supreme Court judges, the ruling of the Supreme Court, has since 1999, become virtually binding on the President. The power of selection of judges has passed on to a group of Supreme Court judges, called the Collegium of the Court. The President now



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performs the formality of appointing the nominee of the Supreme Court, after the Law Ministry formally recommends these names to him.

12.2.1 Qualifications, Tenure and Removal of Judges

A person is qualified for appointment as a judge only he/she is a citizen of India and if he/she fulfils one of the following conditions:

- a) he/she has been for at least five years a Judge of as High Court or two or more than two such courts; or
- b) he/she has been for at least ten years an advocate of a High Court or of two or more than two such courts; or
- c) he/she is, in the opinion of the President, a distinguished jurist.

The Chief Justice of India and other judges of the Supreme Court hold office till they attain the age of 65 years. A judge may voluntarily resign before expiry of his term. In exceptional cases a Supreme Court judge may be removed before the age of retirement, according to the procedure laid down in the Constitution. Thus a judge of the Supreme Court can be removed from office by an order of the President passed after an address by each House of the Parliament supported by a majority of total membership of the House and not less than two-third majority of the members of the House present and voting, passed in the same session, has been presented to the President for such removal on the ground of proved misbehavior or capacity. So far, proceedings for removal were initiated only in one case against a judge of the Supreme Court. But he/she could not be removed because the resolution could not be passed by the Parliament. It is clear that Supreme Court judges enjoy security of tenure, and the executive cannot arbitrarily remove them.

No person who has held office of a judge of the Supreme Court is allowed to plead as an advocate in any court or before any authority within the territory of India.

The judges of the Supreme Court are paid such salaries as are determined by the Parliament from time to time.

12.2.2 A Court of Record

The Supreme Court is a Court of Record. It has two implications. All its decisions and judgments are cited as precedents in all courts of the country. They have the force of law and are binding on all lower Courts, and indeed the High Courts. As a Court of Record, the Supreme Court can even send a person to jail who may have committed contempt of the court.



Intext Questions 12.1

Fill in the blanks :

- (i) The judges of the Supreme Court are appointed by the _____.
(President / Prime Minister / Law Minister)
- (ii) The Supreme Court of India consists of the Chief Justice and _____ other judges.
(23 / 25 / 27)

- (iii) The judges of Supreme Court retire at the age of _____. (60 / 62 / 65)
- (iv) A person who is a distinguished _____ in the opinion of the President may be appointed as a judge of the Supreme Court. (educationist / jurist / politician)



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12.3 Jurisdiction of The Supreme Court

The scope of powers of Supreme Court to hear and decide cases is called its jurisdiction. The Supreme Court has three types of jurisdictions namely original, appellate and advisory. Let us now examine the three jurisdictions.

12.3.1 Original Jurisdiction

There are certain cases which fall within the exclusive jurisdiction of the Supreme Court. It means that all such cases begin or originate in the Supreme Court, only. It also means that such cases cannot be initiated in any other court. The cases or disputes that come under the original jurisdiction are given below:

- (i)
 - (a) Disputes between the Government of India on the one side and one or more States on the other side.
 - (b) Disputes between the Government of India and one or more States on one side and one or more States on the other side.
 - (c) Disputes between two or more States.
- (ii) The Supreme Court has been invested with special powers in the enforcement of Fundamental Rights. In this connection, it has the power to issue directions or writs.
- (iii) Cases under Public Interests Litigation (PIL) can also be heard directly. (This is an extra Constitutional practice; there is no mention of PIL in the Constitution).

12.3.2 Appellate Jurisdiction

The power of a superior/higher court to hear and decide appeals against the judgment of a lower court is called appellate jurisdiction. The Supreme Court has vast appellate jurisdiction. It hears appeals against the judgment of the High Courts. Thus, it is the highest and the final Court of Appeal. If one of the parties to a dispute is not satisfied with the decision of the High Court, one can go to the Supreme Court and file an appeal. The appeals can be filled in Civil, Criminal and Constitutional cases.

(i) Appeals in Civil Cases

Disputes relating to property, marriage, money, contract and service etc are called civil cases. If a civil case involves a substantial point of law of public importance needing interpretation of the Constitution or law, an appeal against the High Court decision can be made to Supreme Court. Earlier the financial limit of such civil cases was Rs. 20,000/- but now according to the 30th Amendment of 1972, there is no minimum amount for taking a civil appeal to the Supreme Court. If substantial question of interpretation of law or Constitution is involved, appeal may be made against the decision of the High Court.

(ii) Appeals in Criminal Cases

An appeal may be brought to the Supreme Court against a High Court decision in a



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criminal case in a number of situations. Firstly, if a High Court sets aside an appeal or an order of acquittal passed by a lower court and awards death sentence to the accused, he may bring an appeal to the Supreme Court by right.

Secondly, appeal can also be made to the Supreme Court if the High Court withdraws a case from a lower court to itself, declares the accused guilty and awards death sentence. In this situation also appeals can be made as a matter of right and without certificate from the High Court.

The appeal in cases other than these two categories may also be brought to the Supreme Court provided the High Court grants a certificate that the case is fit for appeal to the Supreme Court.

In case where the High Court refuses to certify a case to be fit for appeal to the Supreme Court, one may seek special leave to appeal from the Supreme Court itself. The Supreme Court may grant such a special leave in its discretion but only in rare cases.

(iii) Appeals in Constitutional Cases

A constitutional case is neither a civil dispute, nor concerning a crime. It is a case arising out of different interpretations of Constitution, mainly regarding the fundamental rights. In such Constitutional Cases an appeal can be taken to the Supreme Court only if a High Court certifies that the matter in dispute involves a substantial question of law.

If the High Court denies a certificate of fitness to appeal to the Supreme Court, the Supreme Court can use its discretion and grant special leave to appeal to itself in any case it deems fit.

12.3.3 Advisory Jurisdiction

This power implies Court's right to give advice, if sought. Under advisory jurisdiction, the President of India may refer any question of law or public importance to Supreme Court for its advice. But the Supreme Court is not bound to give advice. In case, the advice or the opinion of the Court is sent to the President, he may or may not accept it. The advice of the Court is not binding on the President. So far, whenever the Court has given its advice, the President has always accepted it. The Court refused to give its advice on the question whether a temple existed at the spot, where Babri Masjid was built at Ayodhya.

12.4 Guardian of The Constitution

The Constitution of India is the supreme law of the land and the Supreme Court is its interpreter and guardian. It does not allow the executive or the Parliament to violate any provision of the Constitution. It can also review any action of the Government, which allegedly violates any provision of the Fundamental Rights. This power of the Supreme Court is called Judicial Review about which we shall study later. If it finds violation of any provision of the Constitution, it may declare the concerned law as **ultra-vires**, or null and void. It is on the basis of this power of Judicial Review of the Supreme Court that it is called guardian of the Constitution. It is also called 'a champion of liberties' and 'a watchdog of democracy'.

In this context the role and the functions of the Supreme Court are wide and comprehensive.



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12.4.1 Protector of Fundamental Rights

The Supreme Court has concurrent right with the High Courts to issue directions, orders and writs for enforcement of fundamental rights. These are in the nature of the **writs** of **Habeas Corpus, Mandamus, Prohibition, Certiorari** and **Quo Warranto**. These writs make the Supreme Court a protector and guarantor of fundamental rights. The idea is that in case of violation of a law or right, the Court may issue directions for compliance with the Constitution. Thus, the citizens of India are secure as far as fundamental rights are concerned.

The Supreme Court has the right to declare a law passed by the legislature null and void if it encroaches upon our fundamental rights. It has rejected many legislations, which violated fundamental rights. This shows how the Supreme Court has always served as the guardian of fundamental rights.

Writ: It is an order issued to a lower Court or a functionary of the State to take steps to restore rights of the people.

12.4.2 Review of Its Own Judgment

If the Supreme Court discovers that there are some new facts or evidences or if it is satisfied that some mistake or error took place in its previous decision, it has the power to review the case and alter its previous decisions. This is generally done when a review petition is filed. Normally, review is done by a bigger bench than the one that originally decided the case.



Intext Questions 12.2

Fill in the blanks :

- i. The dispute between two or more States is brought before the Supreme Court under its _____ jurisdiction (original/ appellate/ advisory).
- ii. The Supreme Court is _____ to give advice to the President of India. (bound/ not bound)
- iii. The ultimate power of interpreting the Constitution of India lies with the _____. (High Court/ Supreme Court/ Sessions Courts)

12.5 Judicial Review

It is a process through which judiciary examines whether a law enacted by a legislature or an action of the executive is in accordance with the Constitution or not. The power of the judicial review was first acquired by the Supreme Court of the United States. Now it is freely exercised by the Supreme Court of India and in many other countries. Our High Courts also exercise this power.

Judicial Review does not mean that every law passed by the legislature is taken up by the Supreme Court for review. It only means that the Court will review the law as and when it gets an opportunity. This is possible in two ways. First, the Court can review the law if its validity is challenged. The Supreme Court or High Court may get an opportunity to

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review a law in another situation also. If a person or institution feels that his/her rights are violated, or a certain benefit due to him under a law is being denied, the Court while examining such a petition may come to the conclusion that the law, under which relief is sought, is itself unconstitutional. Therefore, relief may not be granted.

In a democratic country like India the power of Judicial Review is an important guarantee of the rights of the people. Besides, the Supreme Court has been interpreting various provisions of the Constitution. Its rulings are treated as law of the land.

Let us now see how the Supreme Court has played its role as a custodian of the civil liberties and in particular of the fundamental rights.

The Right to Equality is an important right, which ensures equality before law. The Right to Equality also means absence of special privileges and inequality of treatment. So, the Supreme Court in the name of Protective Discrimination has justified the benefits or concessions in the form of reservations or relaxation of eligibility conditions.

The Right to Freedom has given various kinds of freedoms to all of us. But the freedom of press was not mentioned in the Constitution. It was decided by the Supreme Court that freedom of press as a right is implied in right to freedom of expression. Thus, the Court expanded the right to freedom.

The Supreme Court has regarded the Right to Know as an important right to be able to take part in the participatory process of development and democracy. The Court had ruled that the Right to life in, Article 21 implies and includes the right to education and clean environment also.

Regarding the delay in deciding the cases, the Supreme Court has held that delay in trial constitutes denial of justice. It has also laid down that speedy trial, release on bail of under trials, free legal aid to the poor and accused are also the fundamental rights.

The Supreme Court has used its power of judicial review and given various historic decisions to safeguard the rights of the individuals. It has stood guard of linguistic rights of minorities, religious rights of the people, welfare of the workers and daily wage earners.

It has also taken action to protect bonded labour, prevent exploitation of women, children and deprived sections of society.

No doubt, the Supreme Court through its power of judicial review has guarded our rights in various walks of life. The Supreme Court has given momentous decisions. Through, what is called “judicial activism”, the Court has given such rulings as compulsory use of CNG fuel for the use of public transport vehicles in Delhi so that pollution could be brought under control. Similarly, for the protection of lives of people, it has made the use of helmets compulsory for two-wheeler users, and even the pillion riders.

The power of judicial review is an important guarantee of the rights of the people. It does not allow any violation of the Constitution. It has given several new interpretations to the Constitutional provisions. Thus, it has protected as well as expanded the Constitution.

12.6 Public Interest Litigation (PIL)

Earlier, the judiciary, including Supreme Court, entertained litigation only from those parties that were affected directly or indirectly by it. It heard and decided cases only under its

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original and appellate jurisdiction. But subsequently, the Court permitted cases on the ground of public interest litigation. It means that even people, who are not directly involved in the case, may bring to the notice of the Court matters of public interest. It is the privilege of the Court to entertain the application for public interest litigation (PIL). The concept of PIL was introduced by Justice P.N. Bhagwati.

PIL is important because justice is now easily available to the poor and the weaker sections of society. The Supreme Court on the basis of letters received from journalists, lawyers and social workers and even on the basis of newspaper reports has taken up a number of matters of public interest. Let us take some examples to know how PIL has helped the people to get justice.

Under PIL, the rights of under trials held under illegal detention have been restored. The Supreme Court ordered the release of many detainees without trial on the ground of their personal liberty, which could not be curbed due to judicial or bureaucratic inefficiency.

The Supreme Court has also taken up steps to free bonded labourers, tribals, slum dwellers, women in rescue homes, children in juvenile homes, child labour etc.

In case of environmental pollution, the Supreme Court has ordered closure of a few factories near Kanpur, Delhi and other places.

With more and more decisions coming from the Supreme Court, the scope of PIL has widened. Now a person can approach the Court through a letter and if the Supreme Court believes that the matter is of public interest, it can consider the letter to be a petition and direct the hearing of the matter so that public interest may be protected. The process of PIL has led to increased judicial activism.

**Intext Questions 12.3**

- i. What is judicial review?
- ii. What does PIL mean?
- iii. What power of the Supreme Court ensures protection of fundamental rights of people?

**What You Have Learnt**

The salient feature of Indian Judiciary is that it has a single integrated and unified judicial system.

The Supreme Court is the highest court of the country. It consists of a Chief Justice with 25 other judges. The President of India appoints them. Their names are decided upon and recommended by a Collegium of the Supreme Court judges. They remain in office till the age of 65. They can be removed only through a complicated process.

The Supreme Court hears cases under its original and appellate jurisdictions. It is guardian of the Constitution and protector of fundamental rights. It acts as a Court of Record and can punish for its contempt.

Under Judicial Review the Supreme Court can declare any law null and void if it goes

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against the law of the land. It interprets the Constitution to explain the provisions which are not very clear.

Public Interest Litigation is very helpful to the people in getting justice. It has resulted in judicial activism.



Terminal Exercises

1. Describe the composition of the Supreme Court.
2. How can a judge of the Supreme Court be removed from office.
3. Explain the original and appellate jurisdictions of the Supreme Court.
4. 'Supreme Court is the guardian of Indian Constitution and a protector of Fundamental Rights.' Explain.
5. Explain the importance of PIL in our day-to-day life.



Answers to Intext Questions

12.1

- (i) President
- (ii) 25
- (iii) 65
- (iv) Jurist

12.2

- (i) original
- (ii) not bound
- (iii) Supreme Court

12.3

- (i) Power of the Supreme Court to determine constitutional validity of a law
- (ii) Public Interest Litigation - hearing of matters of public interest
- (iii) Judicial Review

Hints for Terminal Exercises

1. Refer to sections 12.1 to 12.2.2.
2. Refer to section 12.2.1
3. Refer to sections 12.3.1 and 12.3.2
4. Refer to sections 12.4, 12.4.1 and 12.4.2
5. Refer to section 12.6.