

Department of Political Science

Indian Government and Politics

SEM-II (Hons.), SEM-IV (GE) & SEM- VI (For the students of other Discipline)

CC-4, CC-1D/GE-4 & GE-2

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Supreme Court of India

Supreme Court at the apex of Indian Judiciary is the highest authority to uphold the constitution of India, to protect rights and liberties of citizens and to uphold the values of rule of law. Hence it is known as the guardian of our Constitution. The Indian constitution provides for a provision of Supreme Court under Part 5 (The Union) and Chapter 6 titled The Union Judiciary. Indian Constitution has provided an independent judiciary with a hierarchical setup containing High Courts and Subordinate Courts under it.

Composition of the Supreme Court

Article 124(1) and Amendment act of 2008 states that there shall be a Supreme Court of India consisting of a Chief justice of India (CJI) and **31 judges including the CJI**. Article 124(2) states that every judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the judges of Supreme Court and of the High Courts in the states. Here the collegium system (appointment of judges to the courts) was followed also known as the three judges cases, which comprises of the Chief Justice of India and four senior most judges of the SC, one chief justice of a high court and two of its senior most judges. This system demanded a consensus decision of all the senior most judges in conformity with the Chief Justice of India.

However due to lack of transparency and delay in appointment, a new article 124 A was incorporated in the constitution, under which the National Judiciary Appointments Commission (NJAC) replaced the collegium system for the appointment of judges as mandated in the existing pre-amended constitution by a new system.

The NJAC consists of the following persons:

1. Chief Justice of India (chair person)
2. Two senior most Supreme Court judges
3. The Union Minister of Law and Justice

4. Two eminent persons nominated by committee consisting of CJI, Prime minister of India and leader of opposition.

Functions of the Commission are as follows:

- Recommending persons for CJI, judges of supreme court, Chief Justice of High court, Judges of High court,
- Transfer of Chief justices and judges from one court to other
- Ensure persons recommended are of ability and integrity

Jurisdiction (Articles 141, 137)

Articles 137 to 141 of the Constitution of India lay down the composition and jurisdiction of the Supreme Court of India. Art 141, states that Law declared by Supreme Court is binding on all the courts in India and Art 137 empowers SC to review its own judgment. The Jurisdiction of the Supreme Court of India can broadly be categorised into three parts:

Original Jurisdiction- (Art 131)

This jurisdiction extends to cases originating in SC only and states that Indian SC has original and exclusive jurisdiction in cases between:

- Government on one hand and one or more states on the other
- Government and one or more states on one side and other states on the other
- Two or more states

Appellate Jurisdiction- (Art 132,133,134)

Appeal lies with SC against high court in following 4 categories

1. Constitutional matters-if high court certifies that the case involves substantial question of law that needs interpretation of constitution.
2. Civil matters- if case involves substantial question of law of general importance
3. Criminal matters-if high court has on appeal reversed the order of acquittal of an accused and sentenced him to death or has withdrawn for trial before itself any case from subordinate court
4. Special leave to appeal is granted by SC if it is satisfied that the case does not involve any question of law. However it cannot be passed in case of judgment passed by a court or tribunal of armed forces.

However, under this jurisdiction SC can transfer to itself cases from one or more high courts if it involves question of law in the interest of justice.

Advisory Jurisdiction (Art 143)

The Article 143 authorises the President to seek 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 Art 144 states that all authorities civil and judicial in the territory of India shall act in aid of the Supreme Court.

Powers of the Supreme Court

1. Power to punish for contempt (civil or criminal) of court with simple imprisonment for 6 months or fine up to 2000. Civil contempt means wilful disobedience to any judgment. Criminal contempt means doing any act which lowers the authority of court or causing interference in judicial proceedings

2. **Judicial review** - to examine constitutionality of legislative enactments and executive orders. The grounds of review is limited by- Parliamentary legislation or rules made by Supreme Court.

3. Deciding authority regarding election of President and Vice President

4. Enquiring authority in conduct and behaviour of UPSC members

5. Withdraw cases pending before high courts and dispose them itself

6. **Appointment of ad hoc judges**-Art 127 states that if at any time there is lack of quorum of Judges of Supreme Court, the CJI may with previous consent of the President and Chief Justice of High Court concerned request in writing the attendance of Judge of High Court duly qualified to be appointed as Judge of SC.

7. **Appointment of retired judges of supreme court or high court** - Art 128- The CJI at any time with the previous consent of the President and the person to be so appointed can appoint any person who had previously held office of a Judge of SC.

8. **Appointment of acting Chief Justice**- Art 126- when the office of CJI is vacant or when the Chief Justice is by reason of absence or otherwise unable to perform duties of office, the President in such case can appoint Judge of the court to discharge the duties of office.

9. **Revisory Jurisdiction:** The Supreme Court under Art. 137 is empowered to review any judgement or order made by it with a view to removing any mistake or error that might have crept in the judgement or order.

10. Supreme Court as a Court of Record

The Supreme Court is a court of record as its decisions are of evidentiary value and cannot be questioned in any court.

Removal of Supreme Court Judge:

A judge of Supreme Court can be removed only from the office by the President on the basis of a resolution passed by both the Houses of parliament with a majority of the total membership and a

majority of not less than two-thirds of the members present and voting in each house, on the grounds of proved misbehaviour or incapacity of the judge in question.

Hence, a democratic country like India needs a judiciary because democratic values tend to lose their prominence without proper checks and balances.

** Source-<https://m-jagranjosh.com>

#Edited By Anirban Das