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. In USA, on the other hand, the federal laws are enforced by the federal judiciary and the state laws are enforced by the state judiciary. There is thus a double system of courts in USA—one for the centre and the other for the states. To sum up, India, although a federal country like the USA, has a unified judiciary and one system of fundamental law and justice.

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. However, the jurisdiction of the Supreme Court is greater than that of its prodecessor. This is because, the Supreme Court has replaced the British Privy Council as the highest court of appeal.[1]

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. The Parliament is also authorised to regulate them.

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. This followed the enactment of the Supreme Court (Number of Judges) Amendment Act, 2008. Originally, the strength of the Supreme Court was fixed at eight (one chief justice and seven other judges). The Parliament has increased this number of other judges progressively to ten in 1956, to thirteen in 1960, to seventeen in 1977 and to twenty-five in 1986.

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.

Controversy over Consultation The Supreme Court has given different interpretation of the word 'consultation' in the above provision. In the *First Judges* case (1982), the Court held that consultation does not mean concurrence and it only implies exchange of views. But, in the *Second Judges* case (1993), the Court reversed its earlier ruling and changed the meaning of the word consultation to concurrence. Hence, it ruled that the advice tendered by the Chief Justice of India is binding on the President in the 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 seniormost colleagues. Similarly, in the *third judges* case[2] (1998), the Court opined that the consultation process to be adopted by the Chief justice of India requires 'consultation of plurality judges'. The sole opinion of the chief justice of India does not constitute the consultation process. He should consult a collegium of four seniormost judges of the 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.

Appointment of Chief Justice From 1950 to 1973, the practice has been to appoint the seniormost 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.[3] Again in 1977, M U Beg was appointed as the chief justice of India by superseding the then senior-most judge.[4] 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 seniormost judge of the Supreme Court should alone be appointed to the office of the chief justice of India.

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.

From the above, it is clear that the Constitution has not prescribed a minimum age for appointment as a judge of the Supreme Court.

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

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

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.[5] 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 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 cannot be varied to their disadvantage after their appointment except during a financial emergency. In 2009, the salary of the

chief justice was increased from `33,000 to `1 lakh per month and that of a judge from `30,000 to `90,000 per month[6]. They are also paid sumptuary allowance and provided with free accommodation and other facilities like medical, car, telephone, etc.

The retired chief justice and judges are entitled to 50 per cent of their last drawn salary as monthly pension.

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. 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 (and discharges the duties) of a judge of the Supreme Court.

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. 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 Supreme Court. But, he will not otherwise be deemed to be a judge of the Supreme Court.

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. 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 a seat of the Supreme Court.

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. The judgements are delivered by the open court. All judgements are by majority vote but if differing, then judges can give dissenting judgements or opinions.

Independence of Supreme Court

The Supreme Court has been assigned a very significant role in the Indian democratic political system. It 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 (council of ministers) and the Legislature (Parliament). 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:

1. Mode of Appointment The judges of the Supreme Court are appointed by the Pre-sident (which means the cabinet) in consultation with the members of the judiciary itself (ie, judges of the Supreme Court and the high courts). This provision curtails the absolute discretion of the executive as well as ensures that the judicial appointments are not based on any political or practical considerations.

2. Security of Tenure The judges of the Supreme Court are provided with the Security of Tenure. They can be removed from office by the President only in the manner and on the grounds mentioned in the Constitution. This means that they do not hold their office during the pleasure of the President, though they are appointed by him. This is obvious from the fact that no judge of the Supreme Court has been removed (or impeached) so far.

3. Fixed Service Conditions The salaries, allowances, privileges, leave and pension of the judges of the Supreme Court are determined from time to time by the Parliament. They cannot be changed to their disadvantage after their appointment except during a financial emergency. Thus, the conditions of service of the judges of the Supreme Court remain same during their term of Office.

4. Expenses Charged on Consolidated Fund The salaries, allowances and pensions of the judges and the staff as well as all the administrative expenses of the Supreme Court are charged on the Consolidated Fund of India. Thus, they are non-votable by the Parliament (though they can be discussed by it).

5. Conduct of Judges cannot be Discussed The Constitution prohibits any discussion in Parliament or in a State Legislature with respect to the conduct of the judges of the Supreme Court in the discharge of their duties, except when an impeachment motion is under consideration of the Parliament.

6. Ban on Practice after Retirement The retired judges of the Supreme Court are prohibited from pleading or acting in any Court or before any authority within the territory of India. This ensures that they do not favour any one in the hope of future favour.

7. Power to Punish for its Contempt The Supreme Court can punish any person for its contempt. Thus, its actions and decisions cannot be criticised and opposed by any body. This power is vested in

the Supreme Court to maintain its authority, dignity and honour.

8. Freedom to Appoint its Staff The Chief Justice of India can appoint officers and servants of the Supreme Court without any interference from the executive. He can also prescribe their conditions of service.

9. Its Jurisdiction cannot be Curtailed The Parliament is not authorised to curtail the jurisdiction and powers of the Supreme Court. The Constitution has guaranteed to the Supreme Court, jurisdiction of various kinds. However, the Parliament can extend the same.

10. Separation from Executive The Constitution directs the State to take steps to separate the Judiciary from the Executive in the public services. This means that the executive authorities should not possess the judicial powers. Consequently, upon its implementation, the role of executive authorities in judicial administration came to an end.[7]

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 (the Upper House of the British Parliament). It is also the final interpreter and guardian of the Constitution and guarantor of the fundamental rights of the citizens. Further, it has advisory and supervisory powers. Therefore, Alladi Krishnaswamy Ayyar, a member of the Drafting Committee of the Constitution, rightly remarked: "The Supreme Court of India has more powers than any other Supreme Court in any part of the world." The jurisdiction and powers of the Supreme Court can be classified into the following:

1. Original Jurisdiction.
2. Writ Jurisdiction.
3. Appellate Jurisdiction.
4. Advisory Jurisdiction.
5. A Court of Record.
6. Power of Judicial Review.
7. Other Powers.

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.

With regard to the exclusive original jurisdiction of the Supreme Court, two points should be noted. One, the dispute must involve a question (whether of law or fact) on which the existence or extent of a legal right depends. Thus, the questions of political nature are excluded from it. Two, any suit brought before the Supreme Court by a private citizen against the Centre or a state cannot be entertained under this.

Further, this jurisdiction of the Supreme Court does not extend to the following:

(a) A dispute arising out of any pre-Constitution treaty, agreement, covenant, engagement, sanad or other similar instrument.[8]

(b) A dispute arising out of any treaty, agreement, etc., which specifically provides that the said jurisdiction does not extent to such a dispute.[9]

(c) Inter-state water disputes.[10]

(d) Matters referred to the Finance Commission.

(e) Adjustment of certain expenses and pensions between the Centre and the states.

(f) Ordinary dispute of Commercial nature between the Centre and the states.

(g) Recovery of damages by a state against the Centre.

In 1961, the first suit, under the original jurisdiction of the Supreme Court, was brought by West Bengal against the Centre. The State Government challenged the Constitutional validity of the Coal Bearing Areas (Acquisition and Development) Act, 1957, passed by the Parliament. However, the Supreme Court dismissed the suit by upholding the validity of the Act.

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-warrento* and *certiorari* 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 directly go 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. It means, when the Fundamental Rights of a citizen are violated, the aggrieved party has the option of moving either the high court or the Supreme Court directly.

Therefore, the original jurisdiction of the Supreme Court with regard to federal disputes is different from its original jurisdiction with regard to disputes relating to fundamental rights. In the first case, it is exclusive and in the second case, it is concurrent with high courts jurisdiction. Moreover, the parties involved in the first case are units of the federation (Centre and states) while the dispute in the second case is between a citizen and the Government (Central or state).

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 for 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. But, the Parliament can confer on the Supreme Court, the

power to issue writs for other purposes also.

3. Appellate Jurisdiction

As mentioned earlier, the Supreme Court has not only succeeded the Federal Court of India but also replaced the British Privy Council as the highest court of appeal. 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) Appeals in constitutional matters.

(b) Appeals in civil matters.

(c) Appeals in criminal matters.

(d) Appeals by special leave.

(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. Based on the certificate, the party in the case can appeal to the Supreme Court on the ground that the question has been wrongly decided.

(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.

Originally, only those civil cases that involved a sum of `20,000 could be appealed before the Supreme Court. But this monetary limit was removed by the 30th Constitutional Amendment Act of 1972.

(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.

In the first two cases, an appeal lies to the Supreme Court as a matter of right (ie, without any certificate of the high court). But if the high court has reversed the order of conviction and has ordered the acquittal of the accused, there is no right to appeal to the Supreme Court.

In 1970, the Parliament had enlarged the Criminal Appellate Jurisdiction of the Supreme Court. Accordingly, an appeal lies to the Supreme Court from the judgement 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 imprisonment for life or for ten years; or

(ii) has taken before itself any case from any subordinate court and convicted the accused person and sentenced him to imprisonment for life or for ten years.

Further, the appellate jurisdiction of the Supreme Court extends to all civil and criminal cases in which the Federal Court of India had jurisdiction to hear appeals from the high court but which are not covered under the civil and criminal appellate jurisdiction of the Supreme Court mentioned above.

(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).

Thus, the scope of this provision is very wide and it vests the Supreme Court with a plenary jurisdiction to hear appeals. On the exercise of this power, the Supreme Court itself held that 'being an exceptional and overriding power, it has to be exercised sparingly and with caution and only in special extraordinary situations. Beyond that it is not possible to fetter the exercise of this power by any set formula or rule'.

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.[11]

In the first case, the Supreme Court may tender or may refuse to tender its opinion to the president. But, in the second case, the Supreme Court 'must' tender its opinion to the president. 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. However, it facilitates the government to have an authoritative legal opinion on a matter to be decided by it.

So far (2013), the President has made fifteen references to the Supreme Court under its advisory jurisdiction (also known as consultative jurisdiction). These are mentioned below in the chronological order.

1. Delhi Laws Act in 1951
2. Kerala Education Bill in 1958
3. Berubari Union in 1960
4. Sea Customs Act in 1963
5. Keshav Singh's case relating to the privileges of the Legislature in 1964

6. Presidential Election in 1974
7. Special Courts Bill in 1978
8. Jammu and Kashmir Resettlement Act in 1982
9. Cauvery Water Disputes Tribunal in 1992
10. Rama Janma Bhumi case in 1993
11. Consultation process to be adopted by the chief justice of India in 1998
12. Legislative competence of the Centre and States on the subject of natural gas and liquefied natural gas in 2001
13. The constitutional validity of the Election Commission's decision on deferring the Gujarat Assembly Elections in 2002
14. Punjab Termination of Agreements Act in 2004
15. 2G spectrum case verdict and the mandatory auctioning of natural resources across all sectors in 2012

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. They are recognised as legal precedents and legal references.

(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 `2,000 or with both. In 1991, the Supreme Court has ruled that it has power to punish for contempt not only of itself but also of high courts, subordinate courts and tribunals functioning in the entire country.

Contempt of court may be civil or criminal. Civil contempt means wilful disobedience to any judgement, order, writ or other process of a court or wilful breach of an undertaking given to a court. Criminal contempt means the publication of any matter or doing an act which—**(i)** scandalises or lowers the authority of a court; or **(ii)** prejudices or interferes with the due course of a judicial proceeding; or **(iii)** interferes or obstructs the administration of justice in any other manner.

However, innocent publication and distribution of some matter, fair and accurate report of judicial proceedings, fair and reasonable criticism of judicial acts and comment on the administrative side of the judiciary do not amount to contempt of court.

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. Consequently, they cannot be enforced by the Government.

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 Supreme Court used the power of judicial review in various cases, as for example, the *Golaknath* case (1967), the *Bank Nationalisat-ion* case (1970), the *Privy Purses Abolition* case (1971), the *Kesavananda Bharati* case (1973), the *Minerva Mills* case (1980) and so on.

Though the phrase 'Judicial Review' has nowhere been used in the Constitution, the provisions of several articles[12] explicitly confer the power of judicial review on the Supreme Court. 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.

From the above, it is clear that the scope of judicial review in India is narrower than that of what exists in USA, though the American Constitution does not explicitly mention the concept of judicial review in any of its provisions. This is because, the American Constitution provides for 'due process of law' against that of 'procedure established by law' which is contained in the Indian Constitution. The difference between the two is : 'The due process of law gives wide scope to the Supreme Court to grant protection to the rights of its citizens. It can declare laws violative of these rights void not only on substantive grounds of being unlawful, but also on procedural grounds of being unreasonable. Our Supreme Court, while determining the constitutionality of a law, however examines only the substantive question i.e., whether the law is within the powers of the authority concerned or not. It is not expected to go into the question of its reasonableness, suitability or policy implications.'[13]

The exercise of wide power of judicial review by the American Supreme Court in the name of 'due process of law' clause has made the critics to describe it as a 'third chamber' of the Legislature, a super-legislature, the arbiter of social policy and so on. This American principle of judicial supremacy is also recognised in our constitutional system, but to a limited extent. Nor do we fully follow the British Principle of parliamentary supremacy. There are many limitations on the sovereignty of Parliament in our country, like the written character of the Constitution, the federalism with division of powers, the Fundamental Rights and the judicial review. In effect, what exists in India is a synthesis of both, that is, the American principle of judicial supremacy and the British principle of parliamentary supremacy.

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. If it finds them guilty of misbehaviour, it can recommend to the president for their removal. 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. In brief, the Supreme Court is a self-correcting agency. For example, in the *Kesavananda Bharati* case (1973), the Supreme Court departed from its previous judgement in the *Golak Nath* case (1967).

(d) It is authorised to withdraw the cases pending before the high courts and dispose them by itself. It can also transfer a case or appeal pending before one high court to another high court.

(e) Its law is binding on all courts in India. Its decree or order is enforceable throughout the country. All authorities (civil and judicial) in the country should act in aid of the Supreme Court.

(f) It is the ultimate interpreter of the Constitution. It can give final version to the spirit and content of the provisions of the Constitution and the verbiage used in 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.

The Supreme Court's jurisdiction and powers with respect to matters in the Union list can be enlarged by the Parliament. Further, its jurisdiction and powers with respect to other matters can be enlarged by a special agreement of the Centre and the states.

Supreme Court Advocates

Three categories of Advocates are entitled to practice law before the Supreme Court. They are :

1. Senior Advocates These are Advocates who are designated as Senior Advocates by the Supreme Court of India or by any High Court. The Court can designate any Advocate, with his consent, as Senior Advocate if in its opinion by virtue of his ability, standing at the Bar or special knowledge or experience in law the said Advocate is deserving of such distinction. A Senior Advocate is not entitled to appear without an Advocate-on-Record in the Supreme Court or without a junior in any other court or tribunal in India. He is also not entitled to accept instructions to draw pleadings or affidavits, advise on evidence or do any drafting work of an analogous kind in any court or tribunal in India or undertake conveyancing work of any kind whatsoever but this prohibition shall not extend to settling any such matter as aforesaid in consultation with a junior.

2. Advocates-on-Record Only these advocates are entitled to file any matter or document before the Supreme Court. They can also file an appearance or act for a party in the Supreme Court.

Table 25.1 *Comparing Indian and American Supreme Courts*

Indian Supreme Court	*American Supreme Court*
1. Its original jurisdiction is confined to federal cases.	1. Its original jurisdiction covers not only federal cases but also cases relating to naval forces, maritime activities, ambassadors, etc.
2. Its appellate jurisdiction covers constitutional, civil and criminal cases.	2. Its appellate jurisdiction is confined to constitutional cases only.

3. It has a very wide discretion to grant special leave to appeal in any matter against the judgement of any court or tribunal (except military).	3. It has no such plenary power.
4. It has advisory jurisdiction.	4. It has no advisory jurisdiction.
5. Its scope of judicial review is limited.	5. Its scope of judicial review is very wide.
6. It defends rights of the citizen according to the 'procedure established by law'.	6. It defends rights of the citizen according to the 'due process of law'.
7. Its jurisdiction and powers can be enlarged by Parliament.	7. Its jurisdiction and powers are limited to that conferred by the Constitution.
8. It has power of judicial superintendence and control over state high courts due to integrated judicial system.	8. It has no such power due to double (or separated) judicial system.

Table 25.2 *Articles Related to Supreme Court at a Glance*

Article No.	*Subject-matter*
124.	Establishment and Constitution of Supreme Court
125.	Salaries, etc., of Judges
126.	Appointment of acting Chief Justice
127.	Appointment of ad hoc Judges
128.	Attendance of retired Judges at sittings of the Supreme Court
129.	Supreme Court to be a court of record
130.	Seat of Supreme Court
131.	Original jurisdiction of the Supreme Court
131A.	Exclusive jurisdiction of the Supreme Court in regard to questions as to constitutional validity of Central Laws (Repealed)
132.	Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases
133.	Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters
134.	Appellate jurisdiction of Supreme Court in regard to criminal matters
134A.	Certificate for appeal to the Supreme Court
135.	Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court
136.	Special leave to appeal by the Supreme Court
137.	Review of judgments or orders by the Supreme Court
138.	Enlargement of the jurisdiction of the Supreme Court
139.	Conferment on the Supreme Court of powers to issue certain writs
139A.	Transfer of certain cases
140.	Ancillary powers of Supreme Court