

CHAPTER 26

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 predecessor. 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.

¹Before 1950, the British Privy Council had the jurisdiction to hear appeals from India.

COMPOSITION AND APPOINTMENT

At present, the Supreme Court consists of thirty-four judges (one chief justice and thirty three other judges). 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, to twenty-five in 1986, to thirty in 2008 and to thirty-three in 2019.

The various Acts relating to the composition of the Supreme Court are summarised in Table 26.2.

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/she 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/she 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^{1a} (1981), the Court held that consultation does not mean concurrence

^{1a}S.P. Gupta vs. Union of India (1981).



and it only implies exchange of views. But, in the *Second Judges case*^{1b} (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/her advice on the matter after consulting two of his/her senior-most 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/she should consult a collegium of four seniormost judges of the Supreme Court and even if two judges give an adverse opinion, he/she 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.

The 99th Constitutional Amendment Act of 2014 and the National Judicial Appointments Commission Act of 2014 have replaced the collegium system of appointing judges to the Supreme Court and High Courts with a new body called the National Judicial Appointments Commission (NJAC). However, in 2015, the Supreme Court has declared both the 99th Constitutional Amendment as well as the NJAC Act as unconstitutional and void. Consequently, the earlier collegium system became operative again. This verdict was delivered by the Supreme Court in the *Fourth Judges case*^{2a} (2015). The court opined that the new system

^{1b}Supreme Court Advocates-on-Record Association vs. Union of India (1993).

²In Re-Presidential Reference (1998). The President sought the Supreme Court's opinion (under Article 143) on certain doubts over the Consultation process to be adopted by the chief justice of India as stipulated in the 1993 case.

^{2a}Supreme Court Advocates-on-Record Association vs. Union of India (2015).

(i.e., NJAC) would affect the independence of the judiciary.

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, OATH AND SALARIES

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

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

³A.N. Ray was fourth in seniority. The three superseded judges were J.M. Shelat, K.S. Hegde and A.N. Grover. All the three judges resigned from the Supreme Court. They were superseded due to their judgement in *Kesavananda Bharati* case (1973), which was not favourable to the Government.

⁴He was H.R. Khanna and he too resigned. His dissenting judgement upholding the right to life even during emergency in the *ADM Jabalpur vs. Shivkant Shukla* case (1976) was not appreciated by the Government.

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

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 2018, the salary of the chief justice was increased from ₹1 lakh to ₹2.80 lakh per month and that of a judge from ₹90,000 to ₹2.50 lakh per month⁵. 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.

TENURE AND REMOVAL

Tenure of Judges The Constitution has not fixed the tenure of a judge of the Supreme

⁵In 1950, their salaries were fixed at ₹5,000 per month and ₹4,000 per month respectively. In 1986, their salaries were raised to ₹10,000 per month and ₹9,000 per month respectively. In 1998, their salaries were raised to ₹33,000 per month and ₹30,000 per month respectively. In 2009, their salaries were raised to ₹1 lakh per month and ₹90,000 per month respectively.

Court. However, it makes the following three provisions in this regard:

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

Removal of Judges A judge of the Supreme Court can be removed from his/her 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/her 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 impeachment⁶:

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.

⁶The word ‘impeachment’ is not used in the constitution in relation to the removal of judges. However, it is used only in the case of the removal of the President.



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 case of impeachment is that of Justice V. Ramaswami of the Supreme Court (1991–1993). Though the enquiry Committee found him/her guilty of misbehaviour, he/she could not be removed as the impeachment motion was defeated in the Lok Sabha. The Congress Party abstained from voting.

ACTING, ADHOC AND RETIRED JUDGES

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/her 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/she 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/her office. While so attending,

he/she enjoys all the jurisdiction, powers and privileges (and discharges the duties) of a judge of the Supreme Court.

Retired Judge 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/she 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/she will also enjoy all the jurisdiction, powers and privileges of a judge of Supreme Court. But, he/she will not otherwise be deemed to be a judge of the Supreme Court.

SEAT AND PROCEDURE

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/she 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 decided by single judges and division benches. 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 President (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/her. 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/she 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.

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 Constituent Assembly, 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. Constitutional Interpretation
8. 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:

- (a) Between the Centre and one or more states; or
- (b) Between the Centre and any state or states on one side and one or more other states on the other side; 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 treaty, agreement, covenant, engagement, sanad or other similar instrument which, having been entered into or executed before the commencement of the constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.
- (b) Inter-state river water disputes.⁷
- (c) Matters referred to the Finance Commission.
- (d) Adjustment of certain expenses and pensions between the Centre and the states.

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

⁷The Inter-State River Water Disputes Act of 1956 has excluded the original jurisdiction of the Supreme Court in disputes between states with respect to the use, distribution or control of the water of inter-state river or river valley.

including *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* 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 High

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 not less than ₹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/her to death; or
- (ii) has taken before itself any case from any subordinate court and convicted the accused person and sentenced him/her 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/her 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/her to imprisonment for life or for ten years.

(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 instrument, which is excluded from the original jurisdiction of the Supreme Court.

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/she 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, 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 itself. 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 Courts Act (1971) In 1961, the government appointed a special committee under the chairmanship of H.N. Sanyal, the then Additional Solicitor General of India, to examine the law relating to the contempt of courts. This committee submitted its report in 1963. Based on the recommendations made by the committee, the Contempt of Courts Act, 1971 was enacted by the Parliament.

Under the Act, the contempt of court may be civil or criminal. The 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. The criminal contempt, on the other hand, 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 matter, fair and accurate report of judicial proceedings and fair criticism of judicial acts do not amount to contempt of court.

Under the Act, a contempt of court is punishable with simple imprisonment for a term upto six months or with fine upto ₹2,000 or with both.

The Act also provides that no court shall initiate any proceedings of contempt after the expiry of one year from the date on which the contempt is alleged to have been committed.

Further, this Act is not applicable to contempt of Nyaya Panchayats or other village courts which have been established for the administration of justice.

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.

7. | Review Jurisdiction

The Supreme Court has power to review any judgement pronounced or order made by it. A review petition has to be filed within thirty days from the date of the judgement or order sought to be reviewed. Also, the review petition should be submitted to the same judge or bench that delivered the judgement or order. Further, a review petition is allowed on the following grounds:

- (i) Discovery of new and important matter or evidence.
- (ii) Mistake or error apparent on the face of the record.
- (iii) Any other sufficient reason.

The court may either dismiss the review petition or direct notice to the opposite party. However, even after the dismissal of the review petition, the court can still reconsider its final judgement or order by way of a curative petition on limited grounds like:

- (i) Violation of the principles of natural justice.
- (ii) To cure a gross miscarriage of justice.

- (iii) To prevent abuse of the process of the court.
- (iv) Bias of the judge.

8. Constitutional Interpretation

The Supreme Court 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.

While interpreting the constitution, the Supreme Court is guided by a number of doctrines. In other words, the Supreme Court applies various doctrines in interpreting the constitution. The important doctrines are mentioned below:

1. Doctrine of Severability
2. Doctrine of Waiver
3. Doctrine of Eclipse
4. Doctrine of Territorial Nexus
5. Doctrine of Pith and Substance
6. Doctrine of Colourable Legislation
7. Doctrine of Implied Powers
8. Doctrine of Incidental and Ancillary Powers
9. Doctrine of Precedent
10. Doctrine of Occupied Field
11. Doctrine of Prospective Overruling
12. Doctrine of Harmonious Construction
13. Doctrine of Liberal Interpretation

9. 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 UPSC or SPSC or JSPSC 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 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.
- (d) 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.
- (e) 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.

● INDIAN AND AMERICAN SUPREME COURTS COMPARED

There are differences in the jurisdiction and powers of the Supreme Court of India and that of the Supreme Court of USA. These are summarised in Table 26.1.

Table 26.1 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 26.2 Acts Relating to the Composition of the Supreme Court

Sl. No.	Act (Year)	Maximum Number of Judges Fixed (Excluding Chief Justice of India)	Maximum Number of Judges Fixed (Including Chief Justice of India)
1.	Article 124 of the Constitution	7	8
2.	Supreme Court (Number of Judges) Act, 1956	10	11
3.	Supreme Court (Number of Judges) Amendment Act, 1960	13	14
4.	Supreme Court (Number of Judges) Amendment Act, 1977	17	18
5.	Supreme Court (Number of Judges) Amendment Act, 1986	25	26
6.	Supreme Court (Number of Judges) Amendment Act, 2008	30	31
7.	Supreme Court (Number of Judges) Amendment Act, 2019	33	34

Note: Article 124(1) of the Constitution reads as follows: "There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other judges".

**Table 26.3** Articles Related to Supreme Court at a Glance

Article No.	Subject-matter
124.	Establishment and Constitution of Supreme Court
124A.	National Judicial Appointments Commission
124B.	Functions of Commission
124C.	Power of Parliament to make law
125.	Salaries, etc., of Judges
126.	Appointment of acting Chief Justice
127.	Appointment of <i>ad hoc</i> 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
141.	Law declared by Supreme Court to be binding on all courts
142.	Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.
143.	Power of President to consult Supreme Court
144.	Civil and judicial authorities to act in aid of the Supreme Court
144A.	Special provisions as to disposal of questions relating to constitutional validity of laws (Repealed)
145.	Rules of court, etc.
146.	Officers and servants and the expenses of the Supreme Court
147.	Interpretation

In a number of cases, the Supreme Court has pointed out the significance of the power of judicial review in our country. Some of the observations made by it, in this regard, are given below:

"In India it is the Constitution that is supreme and that a statute law to be valid, must be in conformity with the constitutional requirements and it is for the judiciary to decide whether any enactment is constitutional or not".²

"Our constitution contains express provisions for judicial review of legislation as to its conformity with the constitution. This is especially true as regards the Fundamental Rights, to which the court has been assigned the role of sentinel on the qui vive".³

"As long as some Fundamental Rights exist and are a part of the Constitution, the power of judicial review has also to be exercised with a view to see that the guarantees afforded by these Rights are not contravened".⁴

"The Constitution is supreme lex, the permanent law of the land, and there is no branch of government above it. Every organ of government, be it the executive or the legislature or the judiciary, derives its authority from the Constitution and it has to act within the limits of its authority. No one however highly placed and no authority howsoever lofty, can claim that it shall be the sole judge of the extent of its power under the Constitution or whether its action is within the confines of such power laid down by the constitution. This Court is the ultimate interpreter of the Constitution and to this Court is assigned the delicate task of determining what is the power conferred on each branch of government, whether it is limited, and if so, what are the limits and whether any action of that branch transgresses such limits".⁵

²Chief Justice Kania in *A.K. Gopalan vs. State of Madras* (1950).

³Chief Justice Patanjali Shastri in *State of Madras vs. V.G. Row* (1952).

⁴Justice Khanna in *Kesavananda Bharati vs. State of Kerala* (1973).

⁵Justice Bhagwati in *State of Rajasthan vs. Union of India* (1977).

"It is the function of the Judges, may their duty, to pronounce upon the validity of laws. If courts are totally deprived of that power, the Fundamental Rights conferred on the people will become a mere adornment because rights without remedies are as writ in water. A controlled Constitution will then become uncontrolled".⁶

"The judges of the Supreme Court have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations".⁷

"The founding fathers very wisely, therefore, incorporated in the Constitution itself the provisions of judicial review so as to maintain the balance of federalism, to protect the Fundamental Rights and Fundamental Freedoms guaranteed to the citizens and to afford a useful weapon for availability, availment and enjoyment of equality, liberty and Fundamental Freedoms and to help to create a healthy nationalism. The function of judicial review is a part of the constitutional interpretation itself. It adjusts the Constitution to meet new conditions and needs of the time".⁸

● CONSTITUTIONAL PROVISIONS FOR JUDICIAL REVIEW

Though the phrase 'Judicial Review' has nowhere been used in the Constitution, the provisions of several Articles explicitly confer the power of judicial review on the Supreme Court and the High Courts. These provisions are explained below:

- Article 13 declares that all laws that are inconsistent with or in derogation of the

⁶Chief Justice Chandrachud in *Minerva Mills vs. Union of India* (1980).

⁷Chief Justice Ahmadi in *L. Chandra Kumar vs. Union of India* (1997).

⁸Justice Ramaswami in *S.S. Bola vs. B.D. Sharma* (1997).

- Fundamental Rights shall be null and void.
2. Article 32 guarantees the right to move the Supreme Court for the enforcement of the Fundamental Rights and empowers the Supreme Court to issue directions or orders or writs for that purpose.
 3. Article 131 provides for the original jurisdiction of the Supreme Court in centre-state and inter-state disputes.
 4. Article 132 provides for the appellate jurisdiction of the Supreme Court in constitutional cases.
 5. Article 133 provides for the appellate jurisdiction of the Supreme Court in civil cases.
 6. Article 134 provides for the appellate jurisdiction of the Supreme Court in criminal cases.
 7. Article 134-A deals with the certificate for appeal to the Supreme Court from the High Courts.⁹
 8. Article 135 empowers the Supreme Court to exercise the jurisdiction and powers of the Federal Court under any pre-constitution law.
 9. Article 136 authorises the Supreme Court to grant special leave to appeal from any court or tribunal (except military tribunal and court martial).
 10. Article 143 authorises the President to seek the opinion of the Supreme Court on any question of law or fact and on any pre-constitution legal matters.
 11. Article 226 empowers the High Courts to issue directions or orders or writs for the enforcement of the Fundamental Rights and for any other purpose.
 12. Article 227 vests in the High Courts the power of superintendence over all courts and tribunals within their respective territorial jurisdictions (except military courts or tribunals).
 13. Article 245 deals with the territorial extent of laws made by Parliament and by the Legislatures of States.
 14. Article 246 deals with the subject matter of laws made by Parliament and by the Legislatures of States (i.e., Union List, State List and Concurrent List).
 15. Articles 251 and 254 provide that in case of a conflict between the central law and state law, the central law prevails over the state law and the state law shall be void.
 16. Article 372 deals with the continuance in force of the pre-constitution laws.

SCOPE OF JUDICIAL REVIEW

The constitutional validity of a legislative enactment or an executive order can be challenged in the Supreme Court or in the High Courts 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 what exists in the 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".¹⁰

⁹This provision was added by the 44th Constitutional Amendment Act of 1978.

¹⁰Subhash C. Kashyap, *Our Constitution*, National Book Trust, Third Edition, 2001, p. 232.



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.

JUDICIAL REVIEW OF THE NINTH SCHEDULE

Article 31B saves the acts and regulations included in the Ninth Schedule from being challenged and invalidated on the ground of contravention of any of the Fundamental Rights. Article 31B along with the Ninth Schedule was added by the 1st Constitutional Amendment Act of 1951.

Originally (in 1951), the Ninth Schedule contained only 13 acts and regulations but at present their number is 282.¹¹ Of these, the acts and regulations of the state legislature deal with land reforms and abolition of the zamindari system and that of the Parliament deal with other matters.

However, in the *Kesavananda Bharati case*¹² (1973), the Supreme Court rules that the acts and regulations that are included

¹¹Though the last entry is numbered 284, the actual total number is 282. This is because, the three entries (87, 92 and 130) have been deleted and one entry is numbered as 257A.

¹²*Kesavananda Bharati vs. State of Kerala* (1973).

in the Ninth Schedule are open to challenge on the grounds of being violative of the basic structure of the constitution. This was later clarified by the court in the *Waman Rao case*¹³ (1980) wherein it held that the various acts and regulations included in the Ninth Schedule after 24 April, 1973 (date of judgement in the *Kesavananda Bharati* case) are valid only if they do not damage the basic structure of the constitution.

Again, in the *I.R. Coelho case*¹⁴ (2007), the Supreme Court reaffirmed the above view. In this case, the court ruled that there could not be any blanket immunity from judicial review of the laws included in the Ninth Schedule. It held that judicial review is a 'basic feature' of the constitution and it could not be taken away putting a law under the Ninth Schedule. It said that the laws placed under the Ninth Schedule after 24 April, 1973, are open to challenge in court if they violated fundamental rights guaranteed under Articles 14, 15, 19 and 21 or the basic structure of the constitution.

While delivering the above judgement, the Supreme Court made the following conclusions:

1. A law that abrogates or abridges rights guaranteed by Part III of the Constitution may violate the basic structure doctrine, or it may not. If former is the consequence of law, whether by an amendment of any Article of Part III or by an insertion in the Ninth Schedule, such law will have to be invalidated in the exercise of judicial review power of the Court. The constitutional validity of the Ninth Schedule laws on the touchstone of basic structure doctrine can be adjudged by applying the direct impact and effect test, i.e., rights test, which means the form of an amendment is not the relevant factor, but the consequence

¹³*Waman Rao vs. Union of India* (1980).

¹⁴*I.R. Coelho vs. State of Tamil Nadu* (2007).

- thereof would be the determinative factor.
2. The majority judgement in the *Kesavanand Bharati Case* read with *Indira Gandhi case*¹⁵ requires the validity of each new constitutional Amendment to be judged on its own merits. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account for determining whether or not it destroys basic structure. The impact test would determine the validity of the challenge.
 3. All amendments to the Constitution made on or after 24th April, 1973 by which the Ninth Schedule is amended by inclusion of various laws therein shall have to be tested on the touchstone of the basic or essential features of the Constitution as reflected in Article 21 read with Articles 14 and 19 and the principles underlying them. To put it differently, even though an act is put in the Ninth Schedule by a Constitutional Amendment, its provisions would be open to attack on the ground that they destroy or damage the basic structure if the Fundamental Right or rights taken away or abrogated pertain or pertain to the basic structure.
 4. Justification for conferring protection, not blanket protection, on the laws included in the Ninth Schedule by Constitutional Amendments shall be a matter of constitutional adjudication by examining the nature and extent of infraction of a Fundamental Right by a statute, sought to be constitutionally protected, and on the touchstone of the basic structure doctrine as reflected in Article 21 read with Articles 14 and 19 by application of the "rights test" and the "essence of the right" test taking the synoptic view of the articles in Part III
- as held in the *Indira Gandhi Case*¹⁶. Applying the above test to the Ninth Schedule laws, if the infraction affects the basic structure, then such a law or laws will not get the protection of the Ninth Schedule. When the triangle of Article 21 read with Article 14 and Article 19 is sought to be eliminated not only the "essence of the right" test but also the "rights test" has to apply. There is also a difference between the "rights test" and the "essence of the right" test. Both form part of application of the basic structure doctrine. When in a controlled constitution conferring limited power of amendment, an entire chapter is made in applicable, the "essence of the right" test as applied in *Nagaraj case*¹⁷ will have no applicability. In such a situation, to judge the validity of the law, it is the "rights test" which is more appropriate.
5. If the validity of any Ninth Schedule law has already been upheld by this Court, it would not be open to challenge such law again on the principles declared by this judgement. However, if a law held to be violative of any rights in Part III is subsequently incorporated in the Ninth Schedule after 24th April, 1973, such a violation / infraction shall be open to challenge on the ground that it destroys or damages the basic structure as indicated in Article 21 read with Articles 14 and 19 and the principles underlying them.
 6. Action taken and transactions finalized as a result of the impugned Acts shall not be open to challenge.
- The number of acts and regulations included in the Ninth Schedule before and after April 24, 1973 are mentioned in Table 27.1.

¹⁵ *Indira Nehru Gandhi vs. Raj Narain* (1975).

¹⁶ *Ibid.*

¹⁷ *M. Nagaraj vs. Union of India* (2006).

**Table 27.1** Number of Acts and Regulations Included in the Ninth Schedule

Serial Number	Amendment Number (Year)	Number of Acts and Regulations Included in the Ninth Schedule
I. Included Before April 24, 1973		
1.	First Amendment (1951)	13 (1 to 13)
2.	Fourth Amendment (1955)	7 (14 to 20)
3.	Seventh Amendment (1964)	44 (21 to 64)
4.	Twenty-Ninth Amendment (1972)	2 (65 to 66)
II. Included After April 24, 1973		
5.	Thirty-Fourth Amendment (1974)	20 (67 to 86)
6.	Thirty-Ninth Amendment (1975)	38 (87 to 124)
7.	Fortieth Amendment (1976)	64 (125 to 188)
8.	Forty-Seventh Amendment (1984)	14 (189 to 202)
9.	Sixty-Sixth Amendment (1990)	55 (203 to 257)
10.	Seventy-Sixth Amendment (1994)	1 (257A)
11.	Seventy-Eighth Amendment (1995)	27 (258 to 284)

Note: Entries 87, 92 and 130 have been omitted by the Forty-Fourth Amendment (1978).

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