

deadlock.

Money Bill

Article 110 and 199 describe what constitutes a money bill of Central and State Legislatures.

- a. On money bills, RajyaSaba does not have much power.
- b. A money bill can be introduced only in LokSaba.
- c. Sanction of the President is required before the introduction of money bill.
- d. RajyaSaba has the power to delay the passage of the money bill by at most 14 days.
- e. RajyaSaba can offer suggestions and advice but it cannot amend the bill.
- f.

Financial Bill

- a. A bill that deals with certain matters, alongside the matters present in Article 110 or 199.
- b. All money bills are financial bills but all financial bills are not money bills.

Special Provisions of Financial Bill Class I

- a. Can be introduced only in Lok Saba
- b. Can be introduced only with the prior consent of the President.
- c. Rajya Saba has equal powers as the Lok Saba on this bill

Special Provisions of Financial Bill Class II

- a. They involve with some expenditure of money
- b. They can be introduced in both the houses.
- c. The President's consent is required before the bill is taken up for consideration.

Budget – Annual Financial Statement

- a. Article 112 and 202 of the Indian Constitution deals with the Annual Financial Statement of the Centre and State respectively. According to Article 112, either the President has to present the budget or ask one of his ministers to present it. By convention, it is the Finance Minister who presents the budget.
- b. No expenditure can be incurred without the approval of the parliament.
- c. Most of the expenditures are voted by the Parliament. There are certain expenditures on which voting does not take place exclusively. Such expenditures are referred to as expenditures charged on the Consolidated Fund of India.
- d. Charged expenditures on the Consolidated Fund of India
- e. The emoluments and allowances of the president and other expenditure relating to his office
- f. Salaries and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People
- g. Debt charges
- h. Salaries, allowances and pensions payable to or in respect of the Judges of Supreme Court
- i. Salary, allowance and pension of CAG
- j. Sums required satisfying any judgment, decree or award of any court or arbitral tribunal
- k. Parliament by law can declare any other expenditure to be charged on Consolidated Fund of India.

Dual Budget

India follows a system of Dual Budget i.e. Railway Budget is presented separately. This

was done on the recommendations of Acworth Committee in 1921. This separation was done as Railway department was one of the most commercial ministries. Most of the other ministries were spending departments.

Railway Budget precedes the General Budget.

Budget in the Parliament has to go through 6 stages

It is first introduced by the Finance Minister on the last working day of February.

After the General discussion on the budget happens (usually after 3 4 days after the budget is introduced. Generally the policies underlying the budget are discussed.

Committee Stage

Department Related Standing Committee (DRSC) was set up in 1993. There are 24 committees at present with each committee having 21 members from Lok Saba and 10 members from Rajya Saba. Demands of the ministries are submitted to the respective DRSC's, which study the budget in detail and prepare a report. DRSC's help the MPs to control the finances of the government in a more effective manner.

Voting on Demands

Here each department's demands would be taken up and discussed in detail. MP s have certain devices available to them to influence the budget known as cut motions.

Economy cut motion The aim of this motion is to make the demands more reasonable.

Token cut motion-The aim of the token cut motion is to register a grievance on the records of parliament.

Policy disapproval cut motion This is used by the Parliament to express disapproval about the underlying policies of the budget. This would virtually amount to no-confidence motion and the government has to resign.

Appropriation Bill Stage Appropriation bill contains all the bills that have been passed along with the charged expenditure. Appropriation bill authorizes to withdraw from the Consolidated Fund of India.

Finance Bill Taxation part of the budget is present in a separate bill called the finance bill.

UNIT - IV

THE UNION JUDICIARY - SUPREME COURT

Supreme Court of India: Composition, Power, and Functions

Qualifications of Judges

- a. A person to be appointed as a judge of the Supreme Court should have the following qualifications:
- b. He should be a citizen of India.
- c. He should have been a judge of a High Court (or high courts in succession) for five years; or
- d. He should have been an advocate of a High Court (or High Courts in succession) for ten years or
- e. He should be a distinguished jurist in the opinion of the President.
- f. The Constitution has not prescribed a minimum age for appointment as a judge of the Supreme Court.
- g. The Indian constitution under Article 124(1) states that there shall be a Supreme Court of India consisting of a Chief justice of India (CJI) and 31 judges including the CJI. The Jurisdiction of the Supreme Court of India can broadly be categorized into original jurisdiction, appellate jurisdiction and advisory jurisdiction. However, there are other multiple powers of the Supreme Court.

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) 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 collegiums 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 collegiums 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 (chairperson)
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

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 willful 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 behavior 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. Reviser Jurisdiction: The Supreme Court under Art. 137 are empowered to review any judgment or order made by it with a view to removing any mistake or error that might have crept in the judgment 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 misbehavior 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.

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:

- a. 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.
- b. He can resign his office by writing to the President.
- c. He can be removed from his office by the President on the recommendation of the Parliament.

Removal of Judges

A judge of the Supreme Court can be removed from his office by an order of the President. The President can issue the removal order only after an address by Parliament has been presented to him in the same session for such removal.

The address must be supported by a special majority of each House of Parliament (i.e., 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 misbehavior 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:

No judge of the Supreme Court has been impeached so far. Impeachment motions of Justice V Ram swami (1991–1993) and the Justice Deepak Mishra (2017-18) were defeated in the Parliament.

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.

Acting Chief Justice

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

The office of Chief Justice of India is vacant; or

The Chief Justice of India is temporarily absent; or

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

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

Independence of Supreme Court

The Supreme Court 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 favor.

The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the Supreme Court:

- a. Mode of appointment
- b. Security of tenure
- c. Fixed service conditions
- d. Expenses charged on the consolidated fund
- e. Conduct of judges cannot be discussed
- f. Ban on practice after retirement
- g. Power to punish for its contempt
- h. Freedom to appoint its staff
- i. Its jurisdiction cannot be curtailed
- j. Separation from Executive

Jurisdiction and Powers of Supreme Court

A Court of Record

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

- a. The judgments, proceedings and acts of the Supreme Court are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any court.
- b. They are recognized as legal precedents and legal references.
- c. 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.

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 categorized 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

- a. **Constitutional matters**-if high court certifies that the case involves substantial question of law that needs interpretation of constitution.
- b. **Civil matters**- if case involves substantial question of law of general importance
- c. **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
- d. **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 authorizes 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 the authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

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 violating 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.

Recent issues in Supreme Court

Master of Roster: It refers to the privilege of the Chief Justice to constitute Benches to hear cases. The controversy has emerged in the Supreme Court over absolute power of Chief Justice on the judicial administration. The SC has upheld a number of times that "the Chief Justice is the master of the roster and he alone has the prerogative to constitute the Benches of the Court and allocate cases to the Benches so constituted."

Be it the Chief Justice of India or Chief Justice of any high court it is he or she who heads

the administrative side. This includes allocation of matters before a judge as well. So, no Judge can take up the matter on his own, unless allocated by the Chief Justice of India.