
The Supreme Court

- Interprets the law of the land, protects the FRs and Guardian of the Constitution
- Unlike the dual court system in US, India has the single, unified and integrated judicial system
- **Art 124:-** Supreme court of India
- **Art 124(1):-** There shall be a SC consisting of a Chief Justice of India and not more than 7 other judges
 - Parliament can increase the number of judges. Currently 34 (33+ CJI)
- Federal Court of India -----> Supreme Court of India (28 Jan 1950)

Appointment of Judges:-

- Appointed by the Prez
- A collegium comprising of CJI and 4 other senior most judges recommend the name/s of the person/s to be appointed as judges/s
- Collegium system is the invention of the SC in Second Judges case 1993 and Third Judges case 1998
- The Collegium sends the recommendation to the Law Minister, who forwards it to the Prime Minister to advise the President
- **First Judges case 1982:-**
 - The consultation doesn't mean the concurrence
- **Second Judges Case 1993:-**
 - The consultation means concurrence
 - The advice given by the CJI is binding on the Prez
 - The CJI would consult two senior most judges
- **Third Judges case 1998:-**
 - CJI should consult 4 senior most judges
 - No decision contrary to view of the CJI should be sent
 - The recommendation shouldn't be sent to the Prez, If the two judges give adverse opinion (Plurality)
 - Opinion should be in writing
 - Opinion of CJI is judicially reviewable only on the grounds of procedural irregularity

Appointing the CJI:-

- The outgoing CJI names his successor
- Second Judges case:- The senior most judge should alone be appointed as the CJI

Qualification:-

- Should have been a judge of High Court/s for 5 years
- or should have been an advocate in HC/s for 10 years
- or should be distinguished jurist in the opinion of the Prez

** The constitution doesn't provide for the min age

Oath:-

Oath is administered by the Prez

Salary:-

- Determined by the parliament
- Cannot be varied after the appointment **except during the financial emergency**

Tenure:- Till the age of 65 years (decided by the parliament)

Removal of judges:-

- Removed by an order of the Prez
- The procedure to remove a judge is regulated by Judges enquiry act 1968:-
 - A removal motion must be signed by 100 MPs (LS) and 50 MPs (RS)
 - Speaker/Chairman may or may not admit the motion
 - If admitted then the speaker/chairman constitutes a three member enquiry committee having:
 - CJI or ta SC judge
 - CJ of a HC
 - A distinguished jurist
- If the committee finds the judge guilty, then the motion goes for voting
- Motion should be passed in both the houses by special majority 2 i.e More than 2/3 of P&V and more than 50% of the Total strength

Acting CJI:- The Prez can appoint a judge of the SC as an acting CJI when

- Office of CJI is vacant
- Temporarily absent
- Unable to perform his duties

Ad-Hoc Judges:-

- The CJI can appoint a HC judge as ad-hoc when there is lack of quorum after consulting the CJ of concerned HC with prior permission of President

- He can be appointed for a temporary period
- The judge should possess the qualification of being an SC judge
- Enjoys all powers, privileges of SC judge

Retired Judges:-

- CJI can appoint a retired SC or HC judge (having qualification of an SC judge) with previous consent of the Prez and the concerned judge as well
- He is allowed to the allowances determined by the Prez
- He'll also enjoy the same powers and privileges as an SC judge but will not be deemed to be a judge of the Supreme Court

**** Constitutional cases or references made by the Prez are decided by a 5 judges or bigger bench**

Independence of Supreme Court:-

- The appointment of judges except CJI is made by the Prez after consulting the judiciary itself (collegium): keeping politics away
- Power of Contempt of court: To work w/o fear and interference
- judges don't hold office during the pleasure of Prez
- After retirement no judge of SC is allowed to work as judge in any court or authority
- The salaries of judges is charged upon CFI i.e. non vote-able and unalterable
- The conduct of a SC judge can't be discussed in the legislature

Jurisdiction and Powers of SC:-

- **Original jurisdiction:-**
 - The cases that can be directly considered by SC w/o going to any other court e.g. violation of FRs
- **Original Exclusive Jurisdiction:-**
 - Cases that can be taken up directly by only and only Supreme Court
 - E.g.:- Federal cases
 - However the parliament has excluded some cases from the ambit of its jurisdiction viz:-
 - Inter-state water dispute
 - Pre-constitutional matters
- **Writ Jurisdiction:-**
 - SC can issue the following writs for the enforcement of the FRs as its original jurisdiction
 - **Habeas Corpus:** have the body of
 - **Mandamus:** we command (to do or not to do)-
 - **Prohibition:** to forbid

Prohibition to refer

- to prevent from exceeding the jurisdiction
- **Certiorary:** To be certified
 - to transfer the case to itself or squash the order
 - can be issued against administrative authorities as well
- **Quo-warranto:** By what authority?
- **Appellate jurisdiction:-** The SC is the highest court of appeal
 - **Special leave petition:** The SC can grant special leave to appeal from any judgement passed by any authority in the country except the Court-martial (Art 136)
- **Advisory jurisdiction (art 143):** The Prez can seek advice in:
 1. Any question of Law of public importance
 - not compulsory for the court to give its advice
 2. cases belonging to the disputes arising out of pre-constitution treaties
 - obligatory to advice

Court of record:- Art 129 & 215: SC & HC shall be the court of records:-

- judgements can be referred by any lower court
- power to punish for contempt
- power to determine its own jurisdiction

Contempt of Court:-

- Contempt of Court Act, 1971
 - Contempt of Court (amendment) Act 2004: The court may permit the condemner to defend himself
- Civil contempt:- willful disobedience to any judgement of court
- Criminal contempt:- publish any matter or doing any act that lowers the court's dignity

Other Powers:-

- Decides disputes related to election Prez and Vice Prez
- Recommends removal of members of UPSC
- Has superintendence over all courts and tribunals except a few as water tribunals

