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JUDICIARY

Supreme Court

- 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**.
- The Supreme Court of India has been established by **Part V, Chapter IV** of the Constitution of India. **Articles 124 to 147** of the Constitution lays down the composition and jurisdiction of the Supreme Court of India.
- **Article 124** states the establishment and constitution of supreme court.
- Presently supreme court of 34 judges including chief justice of India.
- Indian Constitution has established an **integrated judicial system** with the Supreme Court at the top and the high courts below it.
- The single system of courts adopted from the Government of India Act 1935 enforces both central and state laws.
- The parliament can increase the number of judges of supreme court of India.
- The judges of the Supreme Court are appointed by the president after 'consulting' the Chief Justice of India (CJI).
- Senior most judge of the Supreme Court is appointed to the office of the chief justice of India by president of India.
- Supreme court judge holds office until he attains the **age of 65 years**.
- The judges of the Supreme Court can resign before their term by giving their **resignation in writing** to the President. The Parliament also has power to remove the Judges by invoking impeachment provisions.
- Under Article 124 a person to be appointed as a judge of the Supreme Court should have the following qualifications:
 - He should be a citizen of India.
 - (a) He should have been a judge of a High Court for five years; or
 - (b) He should have been an advocate of a High Court for ten years; or
 - (c) He should be a distinguished jurist in the opinion of the president.
- Supreme Court is the **guarantor of the fundamental rights of the citizens and guardian of the Constitution**.
- Under **Article 130** the Constitution declares Delhi as the seat of the Supreme Court.
- The Supreme Court of India has more powers than any other Supreme Court in any part of the world.

Jurisdiction and Powers of Supreme Court

The jurisdiction and powers of the Supreme Court can be classified into the following:

- Original Jurisdiction
- Writ Jurisdiction
- Appellate Jurisdiction
- Advisory Jurisdiction
- A Court of Record

- Power of Judicial Review

Original Jurisdiction

- The cases which are brought directly in the first instance to the Supreme Court come under original jurisdiction.
- The Supreme Court decides the disputes between:
 - The Centre and one or more states; or
 - The Centre and any state or states on one side and one or more states on the other; or
 - between two or more states
- In the above disputes the Supreme Court has exclusive original jurisdiction.

Writ Jurisdiction

- Every individual has the right to move the supreme court directly by appropriate proceedings for the enforcement of his fundamental rights through the issuance of writs.

Appellate Jurisdiction

- The Supreme Court is the final appellate court in the country.
- The Supreme Court is primarily a court of appeal and hears appeals against the judgments of the lower courts.
 - Appeals in constitutional matters.
 - Appeals in civil matters. (Article 133)
 - Appeals in criminal matters. (Article 134)
 - Appeals by special leave (Article 136)

Advisory Jurisdiction

- The Constitution (Article 143) authorizes the president to seek the opinion of the Supreme Court. It is duly bound to give its opinion, which is not binding on president.

Court Of Record

As a court of record, Supreme court has two powers:

- Judgments, Proceedings and acts of supreme court are recorded for perpetual memory and testimony.
- It can punish for contempt of 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 violative of the Constitution they can be declared as illegal, unconstitutional and invalid by the Supreme Court.
- Some of the famous cases in which supreme court used the power of judicial review are:
 - Golakanath case (1967)

- o Bank Nationalization case (1970)
- o Privy purse Abolition case (1971)
- o Keshavananda Bharati case (1973)
- o Minera mills case (1980)

Rights of the Supreme Court

- The two most important rights of Judiciary are –
 - o It can restore fundamental rights by issuing writs of Habeas Corpus; mandamus etc. under Article 32 of the Constitution and the same action can be taken by the High Courts as well under the Article 226 of Constitution.
 - o Under Article 13 of the Constitution - the Supreme Court can declare the concerned law as unconstitutional and therefore non-operational.
- The Judicial Review (JR) is one of the most important powers of the Supreme Court.
- Judicial Review means the power of the Supreme Court to examine the constitutionality of any law; so, if the Court arrives at the conclusion that the aforesaid law is inconsistent with the provisions of the Constitution, such a law is declared as unconstitutional and inapplicable.
- The Supreme Court (and the High Courts) has the power to check the Constitutional validity of any legislation or action of the executive, when it is challenged before them. This power is called judicial review.
- The Supreme Court of India also guards the Constitution against any change in its basic principles by the Parliament.
- The independence and powers exercised by the Indian judiciary in India make the Supreme Court to act as the guardian of the Fundamental Rights.
- The Indian Constitution is based on a subtle principle of limited separation of powers and checks and balances, which means - each organ of the government has a clear area of functioning. For example,
 - o The Parliament is supreme in making laws and amending the Constitution;
 - o The Executive is supreme in implementing the laws; and
 - o The judiciary is supreme in settling disputes and deciding whether the laws that have been made are in accordance with the provisions of the Constitution.
- In a landmark judgment of *Kesavananda Bharati* case (1973), the Supreme Court ruled that there is a '**Basic Structure**' of the Constitution and nobody — not even the Parliament (through amendment)— can violate the basic structure.
- In *Kesavananda Bharati* case, the Supreme Court did two things –
 - o It said that right to property was not part of the basic structure and therefore could be suitably amended.
 - o The Court reserved to itself the right to decide whether various matters are part of the basic structure of the Constitution.

High Court

- The high court operates below the Supreme Court but above the subordinate courts.

- Presently there are **25 high courts** in the country. Out of them, four are common high courts. Delhi is the only union territory that has a own high court.
- The Constitution of India provides for a high court for each state, but the Seventh Amendment Act of 1956 authorised the Parliament to establish a common high court for two or more states or for two or more states and a union territory.
- The judges of a high court are appointed by the President. The chief justice is appointed by the President after consultation with the chief justice of India and the governor of the respective state.
- The judges of a high court hold office until he attains the age of **62 years**.
- The **President** can transfer a judge from one high court to another after consulting the Chief Justice of India.
- **Parliament** can extend the jurisdiction of a High Court.
- **Under Article 226** of the constitution, the High Courts are given powers of issuing writs not only for the enforcement of the Fundamental Rights, but also for other purposes. In exercise of this power, a Court may issue the same type of writs, orders or directions which the Supreme Court is empowered to issue under Article 32.



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