

Supreme Court of India, Composition, Appointments and Removal

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SUPREME COURT OF INDIA



The Supreme Court of India is the highest judicial authority in the country, established under the Constitution of India in 1950. It serves as the **final court of appeal** and is responsible for upholding the rule of law and protecting citizens' rights. Located in New Delhi, the Supreme Court has the power of judicial review, ensuring that laws and executive actions comply with the Constitution.

The Supreme Court handles cases involving constitutional issues, fundamental rights, and appeals from lower courts. The Supreme Court is also known as the **guardian and protector** of citizens' fundamental rights. The Court is not only the guardian of fundamental rights but also a balancing force between rights and control.

Supreme Court of India History

The Supreme Court of India's roots trace back to the **Regulating Act of 1773**, which established the Supreme Court of Judicature at Calcutta. It was a Court of Record with the authority to handle criminal and civil cases in Bengal, Bihar, and Orissa.

- **King George III** established the Supreme Courts at **Madras** (1800) and **Bombay** (1823), which were replaced by High Courts in 1861 under the **India High Courts Act**.
 - These High Courts served as the highest judicial bodies until the Federal Court of India was created in 1935 to resolve provincial disputes and hear appeals.
- After Independence, the Supreme Court of India was established on January 28, 1950, replacing the Federal Court.
- Article 130 of the Constitution allows the Supreme Court to sit in Delhi or other locations as designated by the Chief Justice with presidential approval.

Supreme Court of India Constitutional Provisions

Articles 124 to 147 of Part V of the **Indian Constitution** deal with provisions concerning the Supreme Court of India. These constitutional provisions concern the Supreme Court's organisation, independence, jurisdiction, powers, and procedures. The Parliament is also empowered to regulate these provisions.

Supreme Court of India Composition

The Supreme Court's **original strength** was eight, including the Chief Justice. However, **Article 124** of the Indian Constitution empowers Parliament to increase or decrease the number of Supreme Court judges. As a result, Parliament passed several Acts to increase the number of other Supreme Court judges. The Supreme Court currently consists of **34 judges**, including the Chief Justice.

Supreme Court Judges Appointment

Every Supreme Court Judge is appointed by the **President of India** by warrant under his hand and seal after consulting with other Supreme Court and High Court judges. A judge remains in office until turning **65**. The President must always consult the Chief Justice of India when appointing a judge other than the chief justice

- According to the **Second Judges Case** (1993), when the Chief Justice is consulted, their advice must be agreed upon and is binding for the President.
- In the **Third Judges Case** (1998), it was decided that the Chief Justice should consult a group of the four most senior Supreme Court judges before recommending a name to the President.
 - This is known as the **Collegium System**. If the Chief Justice makes recommendations without this consultation, those recommendations are not mandatory for the President.

Supreme Court Judges Qualifications

Article 124(3) states that a person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and:

- They must have served as judges in a **high court for at least five years** or consecutively in two or more high courts.
- They must have practised as a **lawyer in a High Court for at least ten years** or in two or more High Courts consecutively.

- Alternatively, they can be considered a **distinguished legal expert** in the opinion of the President.

Supreme Court Judges Salaries & Allowances

Parliament determines the Supreme Court judges' salaries, allowances, privileges, leave, and pension. They cannot be changed to their disadvantage after their appointment unless there is a financial emergency.

Supreme Court Judges Oath and Affirmations

The Chief Justice of India and the judges take an oath before the President or an appointed official. In this oath, they promise to:

- To bear true faith and allegiance to the Constitution of India.
- To uphold the sovereignty and integrity of India.
- To duly and faithfully and to the best of his ability, knowledge, and judgment perform the duties of the office without fear or favour, affection or ill-will.
- To uphold the Constitution and the laws.

Acting, Adhoc and Retired Judges of the Supreme Court

Acting Supreme Court judges are appointed to fill vacancies temporarily until a permanent judge is appointed. The Chief Justice can also appoint ad hoc judges to handle specific cases. In contrast, retired judges may be reappointed to serve in exceptional circumstances, ensuring the court's efficiency and effectiveness.

- **Acting Chief Justice:** As per Article 126, when the office of **Chief Justice of India** becomes vacant or when the Chief Justice is absent or unable to perform his or her duties, such duties shall be performed by other Court Judges appointed by the President for that purpose.
- **Ad hoc Judges:** As per **Article 127**, if there aren't enough Supreme Court judges to hold or continue a session, the Chief Justice of India can temporarily appoint a High Court judge as an ad hoc judge of the Supreme Court.
 - This requires the **President's approval** and **consultation** with the Chief Justice of the concerned High Court.
 - The appointed judge must prioritise Supreme Court duties and will have all the powers and responsibilities of a Supreme Court judge while serving.
- **Retired Judges:** As per Article 128, the Chief Justice of India, with the president's prior approval, can ask someone who has previously been a judge of the Supreme Court, Federal Court, or High Court and is qualified to be a Supreme Court judge, to serve as a judge of the Supreme Court.

Supreme Court Judges Removal

The removal of the judge of a Supreme Court can be based on two grounds: misbehaviour or incapacity to hold office. The method for removing a judge of the Supreme Court through the **impeachment process** is governed by the **Judges Enquiry Act (1968)**:

- The **Speaker** or Chairman must receive a resolution for removal signed by 100 members of the Lok Sabha or 50 members of the Rajya Sabha.
 - The Speaker or Chairman has the option to adopt the motion or refuse to admit it.
- If it is admitted, the Speaker or **Chairman** must appoint a three-person committee to look into the charges.
 - The committee shall consist of a judge or chief justice of the Supreme Court, a chief justice of a high Court, and a distinguished jurist.
- The House can consider the motion if the committee finds the judge guilty of **misbehaviour or suffering from incapacity**.
- Once the motion has been approved by a special majority in each House of Parliament, an address is presented to the President for the removal of the judge. The president finally passed an order removing the judge.

Supreme Court Jurisdiction and Powers

The Constitution of India grants extensive **jurisdiction and powers to the Supreme Court**. Its jurisdiction covers original, appellate, and advisory functions, allowing it to settle disputes, hear appeals, and provide legal guidance to the government.

- **Original Jurisdiction (Article 131):** The Supreme Court has the exclusive authority to hear disputes between the Government of India and one or more states or between two or more states.
 - However, it does not cover disputes arising from treaties or agreements made before the Constitution's commencement.
- **Appellate Jurisdiction:** The Supreme Court's appellate jurisdiction allows it to hear appeals from **High Court** judgments involving significant constitutional or legal questions (Articles 132 and 133). In criminal cases, it can review High Court decisions, especially where death sentences are involved (Article 134).
 - Additionally, the Court has the discretion to grant special leave to appeal from any court or tribunal except in matters related to the Armed Forces (**Article 136**).
- **Advisory Jurisdiction (Article 143):** The President can ask the Supreme Court for advice on important legal or factual matters of public interest or issues related to pre-constitutional agreements or treaties.
- **Writ Jurisdiction (Article 32):** The Supreme Court has the power to issue directions, orders, or writs, including writs like habeas corpus, mandamus, prohibition, quo warranto, and certiorari, to enforce **fundamental rights**.
- **Court of Record:** Under Article 129, the Supreme Court acts as a Court of Record with all of the powers of such a Court, including the authority to punish for contempt of itself.
- **Power of Judicial Review:** The Supreme Court has the authority to conduct **judicial review**, allowing it to determine the legality of legislative and executive actions taken by the federal and state governments.

Supreme Court Independence

The independence of the Supreme Court is secured by constitutional safeguards, including politically neutral appointments and protection from arbitrary removal. Judges' salaries are drawn from the **Consolidated Fund of India**, and they cannot practice law after retirement.

- **Mode of Appointment:** The President appoints the Supreme Court's judges in consultation with the judiciary's members. This clause ensures that appointments are not based on practical or political factors.
- **Security of Tenure:** The president can remove them only in the manner and on the grounds mentioned in the constitution. This means that even if the President appointed them, they do not serve at his or her pleasure.
- **Expenses Charged on Consolidated Fund:** The salaries, allowances, and pensions of the Supreme Court staff are charged to the consolidated fund of India.
- **Conduct of Judges cannot be Discussed:** Except when the Parliament is debating an impeachment resolution, the Constitution prohibits any discussion of the conduct of Supreme Court justices in the discharge of their duties either in the Parliament or in a State Legislature.
- **Ban on Practice after Retirement:** A person who has been a Judge of the Supreme Court is debarred from practising in any Court of law or before any other authority in India.

Supreme Court Related Issues

The Supreme Court of India is facing challenges such as pending cases, leading to delayed justice. Concerns over the judicial appointment process, lack of transparency, judicial overreach, and insufficient diversity also complicate its functioning.

- **Judicial Pendency:** The Supreme Court has a huge backlog of cases, which can lead to delayed justice for litigants. As of April 1, 2024, the Supreme Court of India had 80,194 pending cases.
- **Judicial Appointments:** The Supreme Court has been criticised for its lack of transparency in its functioning, including the selection and appointment of judges. NJAC, by the 99th Constitutional Amendment Act, was struck down as unconstitutional by the Supreme Court of India in 2015.
 - The process of judicial appointments has been a matter of controversy, with allegations of nepotism, favouritism, and political interference.
- **Judicial Overreach:** The Supreme Court has been criticised for overreaching its mandate and interfering with the functioning of other branches of the government.
 - For Example, the **Supreme Court prohibited the sale of alcohol in retail shops**, restaurants, and bars within a 500-meter radius of any national or state highway in response to a Public Interest Litigation (PIL) related to road safety.
- **Lack of Diversity:** The Supreme Court lacks diversity in terms of gender, caste, and religion, which can undermine people's confidence in the judiciary. Since its formation, there have been only eleven woman justices on the court.

Supreme Court Way Forward

To enhance the Supreme Court's effectiveness, key steps include increasing the number of judges, modernising court technology, and promoting transparency in judicial processes. These measures can help reduce case backlogs and improve access to justice.

- **Increasing Judges:** The Parliament should consider increasing the number of judges to reduce the backlog of cases and ensure the timely delivery of justice.

- **Modernisation of Infrastructure:** The Supreme Court should upgrade its technological infrastructure to support e-filing, virtual hearings, and paperless Court proceedings to expedite the hearing of cases.
- **Enhance Transparency:** The Supreme Court should increase transparency in its functioning, including the process of selection and appointment of judges and the publication of its proceedings. The appointment process for judges should be transparent, merit-based, and independent of political influence.
- **Diversity:** The Supreme Court should encourage diversity in terms of gender, caste, and religion, which can help strengthen its credibility and reflect the diversity of the country.
- **Develop Specialised Benches:** The Supreme Court should consider establishing specialised benches to hear cases in specific areas, such as environmental law, intellectual property law, etc., to ensure speedy and efficient case resolution.

Supreme Court of India UPSC PYQs

Question 1: “The most significant achievement of modern law in India is the constitutionalisation of environmental problems by the Supreme Court.” Discuss this statement with the help of relevant case laws. **(UPSC Mains 2022)**

Question 2: From the resolution of contentious issues regarding the distribution of legislative powers by the Courts, ‘Principle of Federal Supremacy’ and ‘Harmonious Construction’ have emerged. Explain. **(UPSC Mains 2019)**

Question 3: Critically examine the Supreme Court’s judgement on ‘National Judicial Appointments Commission Act, 2014’ with reference to the appointment of judges of higher judiciary in India. **(UPSC Mains 2018)**

Question 4: With reference to Indian Judiciary, consider the following statements. **(UPSC Prelims 2021)**

1. Any retired judge of the Supreme Court of India can be called back to sit by the Chief Justice of India with prior permission of the President of India.
2. A High Court in India has the power to review its own judgement as the Supreme Court does.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Ans: (a)

Question 5: Consider the following statements: **(UPSC Prelims 2019)**

1. The 44th Amendment to the Constitution of India introduced an article placing the election of the Prime Minister beyond judicial review.
2. Supreme Court of India struck down the 99th amendment to the Constitution of India as being violative of the independence of the judiciary

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Ans: (b)

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