

The Supreme Court

The Judiciary

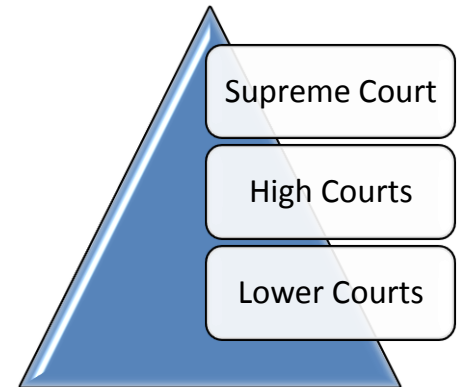
India has a single judiciary system, which means the following:

- The Supreme Court is the head of the Indian judiciary and supervises the functions of the lower courts.
- A single civil and criminal system of laws operates all over the country.
- By the way of appeal, cases from the High Court may be taken to the Supreme Court.

Need for Single Independent Judiciary

India has adopted a single independent judiciary because of the following reasons:

- It is important to make the judiciary independent and free from any executive and legislative interference to deliver the rights of individuals.
- An independent judiciary is required for a federal setup as there is division of powers between state and central governments.
- Only an independent judiciary can protect democracy and safeguard the fundamental rights of people.



The Supreme Court

The Supreme Court is the highest court of appeal in the country. It is located in New Delhi.

Composition: The Supreme Court of India consists of the Chief Justice of India and not more than 25 other judges.

Qualifications: Qualifications required for appointment to the post of judges of the Supreme Court are

- He should be a citizen of India.
- He should be a judge of a High Court for five years or of two and more such courts in succession.
- He should be a distinguished jurist in the opinion of the President.

Appointment

- The President appoints the judges of the Supreme Court in consultation with the other judges of the Supreme Court, High Court and Council of Ministers.
- The senior most judge is made the Chief Justice of India.

Appointment of Ad Hoc Judges

- Judges of High Courts may be appointed as ad hoc judges of the Supreme Court by the Chief Justice of India as and when necessary.
- Ad hoc judges are appointed after consultation with the President and with the consent of the Chief Justice of the High Court.

Term of Office

- The judge of a Supreme Court holds office until he attains the age of 65 years. He may resign from his office by submitting a letter of resignation to the President.

- A judge of the Supreme Court can be removed only by the process of impeachment on the grounds of proved misbehaviour or incapacity.
- A judge of the Supreme Court can be impeached only if such an order is passed by two-thirds majority of the total membership of both Houses of the Parliament.

Salaries of Judges

The judges of the Supreme Court get their salaries from the Consolidated Fund of India and their salaries and allowances cannot be voted upon by the Parliament. The salaries of the judges cannot be reduced to their disadvantage during their tenure. Their salaries can be reduced only during the period of financial emergency.

Independence of Judiciary from Executive and Legislature

The Constitution of India has maintained the independence of the judiciary in the following ways:

- The judges of the Supreme Court are appointed by the President in consultation with the Prime Minister, Cabinet and other judges of the Supreme Court and the High Court. Thus, both executive and judiciary participate in the appointment of the judges.
- The procedure to remove the judges is not easy and simple. A judge can be removed by the President only on the grounds of proven misbehaviour and incapacity. Charges against the judges first have to be addressed by the President in front of both Houses of the Parliament and have to be passed by two-thirds majorities of both Houses.
- A judge can remain in office till he reaches 65 years of age and cannot be removed from his office except by the process of impeachment.
- The salaries and allowances of the judges are charged upon the Consolidated Fund of India and cannot be reduced to their disadvantage.
- The judges are free to announce their decisions, and their decisions cannot be criticised in public or by the press.
- The Supreme Court can punish a person for contempt of court if he refuses to abide by the decisions of the Court.
- No debate and discussions could place in the Parliament regarding the conduct of a judge or any decision taken by him in the court.
- Judges are not allowed to continue practice after their retirement. This provision has been made to ensure that they cannot influence their former colleagues in the judiciary.

Jurisdiction and the Powers of the Supreme Court

The jurisdiction of the Supreme Court includes the following:

Original Jurisdiction

- Some cases directly originate in the Supreme Court and cannot be moved to any other courts than the Supreme Court. This jurisdiction is known as the original jurisdiction. Some cases which can directly originate in the Supreme Court are
 - When any dispute emerges between the Government of India on one hand and one or more states on the other hand.
 - When disputes arise between the Government of India and one or more states on one side and one or more states on the other side.
 - When disputes arise between two or more states.
- Any individual can directly approach the Supreme Court if any of his/her fundamental rights are denied or are taken away by the government.

- If the Supreme Court feels that a case being tried in the High Court involves a significant question of law and order, it may transfer the case to itself.
- All cases where the interpretation of the Constitution is required can be directly filed in the Supreme Court.

Appellate Jurisdiction

Appellate jurisdiction refers to the power of a court to review decisions and change outcomes of decisions of lower courts. The appellate jurisdiction extends to constitutional, civil and criminal cases.

Constitutional Cases: All matters under the High Court which involves the interpretation of the Constitution can be brought before the Supreme Court.

Civil Cases: Appeals can be made to the Supreme Court if the High Court certifies that

- The case involves an important question of law of general importance.
- The case needs to be decided by the Supreme Court.
- If the High Court refuses to give a certificate, the Supreme Court can grant special leave to appeal in certain cases.

Criminal Cases: Two types of appeals in criminal cases can be referred to the Supreme Court if cases with or without the certificate lie before the High Court. The certificate of the High Court is not required in a case where

- The High Court has reversed the judgement given by the lower court of acquittal and punished the accused with a death sentence.
- The High Court withdraws a case from the lower court and gives death sentence to the accused.

Advisory Jurisdiction

The Supreme Court has an advisory jurisdiction on any question of law which is referred to it by the President. It gives its advice under the following circumstances:

- If the President feels that any law is of extreme public importance, he can ask for the advice of the Supreme Court. However, such advice is not binding on the President or the government.
- Disputes which arise out of pre-Constitutional treaties and agreements which are excluded in the original jurisdiction can be referred to the Supreme Court for advisory jurisdiction.

Revisory Jurisdiction

The Supreme Court has the power to review any judgement with a view to undo any erroneous decision given by it. This is important because the Supreme Court is also a court of record and its decisions may be referred by other courts while giving judgments.

Judicial Review

As the Supreme Court is the highest judicial authority, it can review any law passed by the government and can declare it null and void if it violates any provision made in the Constitution. This is known as the power of judicial review. The Supreme Court has the power to review all national and state laws and executive orders and declare them null and void if they do not confirm to the spirit of the Constitution.

Judicial review is an important power of the Supreme Court because of the following reasons:

- In a federal setup like that of India, if any disputes arise between state and central governments, the Supreme Court can settle disputes between them.
- In the Constitution, a law may be ambiguously written. The question of interpretation of law may arise and the Supreme Court has the power to settle disputes.
- At times, the Supreme Court may not have the required wisdom and experience to explain laws. This work can be done easily by the Supreme Court.

Court of Record

The decisions of the Supreme Court are recorded for evidence and testimony. High Courts are expected to give similar judgments in the cases which are handled by them. The Supreme Court is a court of record which means:

- The judgments given by the Supreme Court are preserved and can be produced as evidence in any court.
- If a person is held in contempt of court (disrespecting the decision and dignity of the court), he can be punished by the court.

Administrative and Supervisory Functions of the Supreme Court

- Appointments of officers and staff of the Supreme Court are made by the Chief Justice of India and other judges.
- The Supreme Court makes rules regarding the conduct of advocates and other persons appearing before it.
- The Supreme Court had simplified the procedures in the area of public interest litigation (PIL).
- The Chief Justice may recommend the transfer of any judge of the High Court. However, such a recommendation is not binding on the government if such a recommendation is made without consulting the four senior most judges of the Supreme Court.

Functions of the Supreme Court

- As stated above, the Supreme Court has original jurisdiction to settle disputes which arise between the central government and various state governments. It also has original jurisdiction over cases which deal with the interpretation of the Constitution and enforcement of fundamental rights.
- The Supreme Court decides cases on appeals which are made to it in respect of original jurisdiction.
- Under appellate jurisdiction, any cases pending in the High Courts or lower courts can be brought before the Supreme Court if it involves the interpretation of the Constitution in civil and criminal cases.
- An important function of the Supreme Court is that it can allow leave to appeal against the judgement of any court of India. This power can be exercised by the Supreme Court only when the civil cases involve the law dealing with the interest of the public. This power can be exercised in criminal cases when the interpretation of laws arises and when it is readily realised that grave injustice has been done.
- Any citizen whose fundamental rights have been violated can directly approach the Supreme Court and the latter can issue writs such as habeas corpus, mandamus, quo warranto etc. for the enforcement of fundamental rights.
- The Supreme Court can declare any law made by the Government as null and void if it violates the fundamental rights of any individual.

The Supreme Court of India is the guardian of the Constitution and of democratic principles.