

SUPREME COURT OF INDIA AND ITS JURISDICTION

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Abstract

The Supreme Court of India is the highest court of the Judicial system in India and it is established under the provisions of the Indian Constitution. The decision or decree passed by the Supreme Court is binding on all the courts within the territory of India and it is the highest court of appeal in India, It is situated in New Delhi according to the provisions of the Indian Constitution. Each and every court situated within the territory of India is bound with the provisions of the Supreme Court.

Keywords: Supreme Court, India, Constitution, Jurisdiction, Judges, Article , Chief Justice, Judgement, , Courts, Government, Commission, Parliament.

Introduction

The Supreme Court is the highest and Apex Court in India. It is established under Chapter IV Part V of the Indian Constitution. According to Article 124(1), the Supreme Court should consist of the CHIEF JUSTICE OF INDIA (CJI) and as many other judges as parliament may describe.

Before 2019 the Supreme Court of India consisted of 1CJI + 7 other judges, but after the Supreme Court (Number of Judges) Amendment Act 2019, the judges count was raised to 1CJI + 33 other Judges.

According to Article 124(2) of the Indian Constitution, every judge of the Supreme Court shall be appointed by the president of India. The CJI will be appointed by the President of India with the consultation of all the other judges of the Supreme Court.

Article 124(3), the qualifications of Supreme Court Judges were described:

- (a) Should be a Citizen of India.
- (b) Should have been a Judge in any state's high court for at least five years. Or
- (c) Should have been an Advocate in any state's high court for at least 10 years.
- (d) He may be appointed by the opinion of the President of India or a distinguished Jurist.

Supreme Court held that the consultation with the Chief Justice is not binding on the president, but the court held that consultation should be effective.

In the case of *Supreme Court Advocates On Record Association vs Union of India*¹, also known as the 2nd Judges case, the supreme court held that in the matter of appointment of judges of supreme court and high courts, the Chief Justice Of India (CJI) should have primacy.

The Chief Justice of India is the sole authority to initiate the process of appointment of Judges of the Supreme Court. In case of a conflict of opinion between CJI and the president, the view expressed by CJI will have primacy.

Article 124(2) Provides that a judges of the Supreme Court holds the office until he attains the age of 65 years.

The Chief Justice of India or supreme court judges may resign his/her office by writing under his hand addressed to president of India which is defined under Article 124(2)(a).

According to Article 124(4) of the Indian Constitution Judges of the supreme court shall be removed by an order of the president only on the grounds of proven misbehavior and incapacity. The order of the president can only be passed when it has been addressed to both houses of the parliament in the same session and the address must be supported by a majority of the total membership of not less than 2/3rd of the members of the house.

Appointment of CJI and other Supreme Court Judges

According to Article 124(2) of the Indian constitution, the president appoints the Chief Justice of India and other supreme court judges.

The outgoing Chief Justice of India will recommend his successor name to be appointed as the next sitting CJI. To avoid the discrepancy in nominating the next sitting of chief justice the parliament in 2015 introduced a bill of the National Judiciary Appointment Commission, the decision of the appointment of the Chief Justice of India will be taken by the National Judicial Appointment

Commission along with the Collegium of Supreme court. The collegium of the Supreme Court Consists of 1CJI + 2 senior-most judges of the Supreme Court.

1.AIR SC 1993 (4)

The National Judicial Appointment Commission consists of

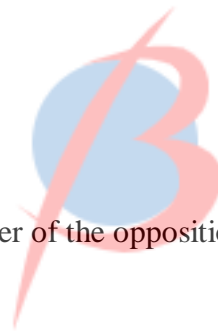
- CJI – Chief Justice Of India.

- Law Ministry of India

- 2 senior judges of the Supreme Court,

- 2 people either Prime Minister/ CJI/ Leader of the opposition.

- SC/ ST/ OBC women.



BRILLOPEDIA

The National Judicial Appointment Commission collectively finalizes one candidate to represent as the Chief Justice of India, the commission will select the person without bias from any external force, and this process will be done in a justiciable manner.

The National Judicial Commission prepares a list of all the eligible candidates and selects the suitable candidate, it also takes the recommendation of the most- senior judge of the honourable Supreme Court of India in preparing the list of candidates, they also recommend the names of the judges based on their merit and ability.

Removal of Judges from the Supreme Court

Article 124(4) of the Indian Constitution describes the removal of the supreme court judges. The Judge of the Supreme Court will not be removed until and unless the order is passed by the president after addressing in each house of the parliament, supported by a majority of members not less than two-thirds of the total members. The Chief Justice of India or Judges of the Supreme Court will be

removed on the proved misbehavior, incapacity, or violation of Indian Constitution.

The Chief Justice of India can retire from his office by writing with his own hands to the office of President. Once appointed, the judges can hold his/her office until the age of 65 years, they cannot be removed from their office until they were proved with misbehavior or incapacity.

The process of removal of Judges from the Supreme Court office is very difficult, the judge of the Supreme Court can't be removed from his office until and unless the order is passed by the president and then should be passed by the two houses of the parliament with the majority which is not less than two-thirds of the voting of the members present in the houses of parliament, the judge of the supreme court and high court will be removed only if they found with any misbehavior which is not accepted under the law, the whole process of the removal of the judges of the supreme court is called impeachment.

According to Article 125 of the Indian Constitution, the Salaries, expenses, and allowances of the Chief Justice of India and Judges of the Supreme Court will be decided by the parliament.

The salaries, expenses, and pensions for the judges of the Supreme Court are given from the Consolidated fund of India, whereas the allowances of the high court judges will be given from the consolidated fund of the state.

The Consolidated funds are the revenues received by the government by way of taxes such as Income tax, central excise, customs, etc.

Salaries, allowances, gratuity, and pensions of the Judges of the Supreme Court are governed and managed by, the Supreme Court Judges (Salaries and conditions of Service), Act 1958.

Functions of the Supreme Court of India

1. The Supreme Court is the highest court in India, it is the highest court for appeal, it receives appeals against the verdicts of the High Courts of all the states within India and also of other courts

and tribunals.

2. It also settles disputes between the different government authorities, the matters between the state government, and also between the matters relating to the central government and state government.

3. It also deals with constitutional matters, which consist atleast five judges of the court in which they sit and decide any case that involves a substantial question of the law as to the interpretation of the constitution of India.

4. The Supreme Court also deals with the matters which the President of India refers to, and also provides advice to the President of India in cases relating to the country when required which is defined according to Article 143 of Indian Constitution.

5. The Supreme Court has the power to take up the cases on suo moto, taking up the cases by suo moto means they can take up the cases on own their notice or without any petition being filed by someone.

6. The decisions given by the Supreme Court will be binding upon every court within the territory of India.

7. The Supreme Court of India, under Article 13 of the Indian Constitution has the power to Judicial review which means it has the power to strike down any legislation and executive action if such found to be inconsistent with the Constitution of India, every pillar of the Indian Constitution should follow the guidelines laid by the Constitution and the supreme court has the power to strike ts void provisions.

JURISDICTION OF SUPREME COURT

There are three different types of Jurisdiction which are given they are: 1. Original Jurisdiction, 2. Appellate Jurisdiction and, 3. Advisory Jurisdiction.

ORIGINAL JURISDICTION OF THE SUPREME COURT OF INDIA

The original jurisdiction of the Supreme Court is defined under Article 131 of the Indian

Constitution, the original jurisdiction takes place:

1. When there is any dispute between the central government and state government.
2. If there is any dispute between the central government and one or more states.
3. Also deals with the disputes between two or more states.

For the citizens of India, Article 32 of the Indian Constitution provides the original jurisdiction to the Supreme Court for the enforcement of the Fundamental Rights. If any citizen's fundamental rights have been violated by any of the person or by any public personality or by any public servant, the person whose right has been violated can directly pass the Writ to the Supreme Court.

The Supreme issues writs or directions such as Habeas Corpus, Mandamus, Quo Warranto, Prohibition, and Certiorari.

Under this jurisdiction, the supreme court has the power to transfer the criminal or civil case from one high court of the state to another state high court in the necessary conditions or situations. The supreme court has the authority to transfer cases from one subordinate court to another high court, the supreme court has jurisdiction over all the courts in India.

APPELLATE JURISDICTION OF SUPREME COURT OF INDIA

The Appellate Jurisdiction is given under Article 136 of the Indian Constitution, the supreme court accepts the cases of the High courts in two types, either they are with a certificate from the high court and without a certificate from the high court.

The cases that the Supreme Court takes without the certificate from the high court are only in cases of criminal matters and the cases that are of serious nature. The cases in which the high court certifies will be received by the Supreme Court in any of the matters either civil or criminal.

This is the very wide appellate jurisdiction over all the Courts and Tribunals, under this type of jurisdiction, it also grants Special Leave to appeal from any judgment, determination, sentence, decree, or order in any case or cause passed by any of the court.

This is given under articles 132, 133, and 134 of the Indian Constitution, it has the full appellate jurisdiction in matters that are related to criminal and civil and also the Constitution and also has the power to issue special leave to any tribunals in the territorial limit of India which do not apply to the

Military courts.

Under this Jurisdiction a superior court hears and resolves appeals against the lower court's judgment, if any of the citizens thinks that the judgment he has received is not in favour of the facts then, he can appeal for a Special Leave Petition. Then the Supreme Court re-opens that particular case and orders the lower courts to certify that particular judgement on what basis it has passed the judgment, based on the facts and orders it will pass the judgment.

ADVISORY JURISDICTION OF SUPREME COURT OF INDIA

This jurisdiction is given under Article 143 of the Indian Constitution, the President of India can seek the Supreme Court's advice over any issue of law. The president requested the Supreme Court to offer its opinion on any of the issues. However, the Supreme Court of India is not bound by this jurisdiction.

The Supreme Court can also advise the president of India on matters related to the question of law, and of matters of relating to public importance. Also, the President can seek the opinion of the Supreme Court according to the matters relating to Article 131 of the Indian Constitution, relating to the original jurisdiction, and matters between the states and the central government.

REVIEW JURISDICTION OF SUPREME COURT OF INDIA

This is defined under Article 137 of the Indian Constitution it gives the powers to the Supreme Court to review the judgments, it can review the subordinate court judgments if it thinks that the judgment has been passed by exceeding its limits.

The Supreme Court can review or asks to verify the decided cases of any of the subordinate court, if there is any discrepancy in the judgment which has been passed by the lower or subordinate court it may rectify the judgment and pass the new judgement.

The power under Article 137 of the Indian Constitution enhances the Supreme Court to review the laws which are being laid down by the legislature.