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Chapter – 3

Union Government

SuPreme Court of India

- The **Supreme Court of India** is the **highest judicial court** and the **final court of appeal** under the Constitution of India, the **highest constitutional court**, with the power of **judicial review**.
- India is a federal State and has a **single and unified judicial system** with **three tier structure**, i.e. Supreme Court, High Courts and Subordinate Courts.

Brief History of the Supreme Court of India

- The promulgation of **Regulating Act of 1773** established the **Supreme Court of Judicature at Calcutta** as a **Court of Record, with full power & authority**.
- **It was established** to hear and determine all complaints for any crimes and also to entertain, hear and determine any suits or actions in **Bengal, Bihar and Orissa**.
- The **Supreme Courts at Madras and Bombay** were established by **King George – III** in **1800 and 1823 respectively**.
- The **India High Courts Act 1861** created High Courts for various provinces and **abolished Supreme Courts at Calcutta, Madras and Bombay** and also the **Sadar Adalats in Presidency towns**.
- These High Courts had the distinction of being the highest Courts for all cases till the creation of **Federal Court of India** under the **Government of India Act 1935**.
- The **Federal Court** had jurisdiction to solve disputes between provinces and federal states and hear appeal against Judgements from High Courts.
- After India attained independence in 1947, the Constitution of India came into being on **26 January 1950**. The **Supreme Court of India** also came into existence and its first sitting was held on 28 January 1950.
- The law declared by the Supreme Court is **binding on all Courts** within the territory of India.
- It has the power of **judicial review** – to strike down the legislative and executive action contrary to the provisions and the scheme of the constitution, the distribution of power between Union and States or inimical to the fundamental rights guaranteed by the Constitution.

Constitutional Provisions

- The Indian constitution provides for a provision of Supreme Court under **Part V (The Union)** and **Chapter 6 (The Union Judiciary)**.
- **Articles 124 to 147 in Part V** of the Constitution deal with the organisation, independence, jurisdiction, powers and procedures of the Supreme Court.
- The Indian constitution under **Article 124(1)** states that there shall be a Supreme Court of India constituting of a Chief Justice of India (CJI) and, until Parliament by law prescribes a larger number, of not more than seven other Judges.
- The Jurisdiction of the Supreme Court of India can broadly be categorised into **original jurisdiction, appellate jurisdiction and advisory jurisdiction**. However, there are other multiple powers of the Supreme Court.

Organisation of Supreme Court

- At present, the Supreme Court consists of thirty-one judges (one chief justice and thirty other judges).
Supreme Court (Number of Judges) Bill of 2019 has added four judges to strength. It increased the judicial strength from 31 to 34, including the CJI.
- Originally, the strength of the Supreme Court was fixed at eight (one chief justice and seven other judges).
- The Parliament is authorised to regulate them.

Seat of Supreme Court

- The **Constitution declares Delhi as the seat of the Supreme Court**. It also authorises the **CJI** to appoint other place or places as seat of the Supreme Court.
- He can take decision in this regard only with the approval of the President. **This provision is only optional and not compulsory**. This means that no court can give any direction either to the President or to the Chief Justice to appoint any other place as the seat of the Supreme Court.

Appointment of Judges

- The **judges of the Supreme Court** are appointed by the **President**. The CJI is appointed by the President after **consultation with such judges of the Supreme Court** and high courts as he deems necessary.
- The other judges are appointed by the President after **consultation** with the CJI and such other judges of the Supreme Court and the high courts as he deems necessary. The consultation with the chief justice is **obligatory** in the case of appointment of a judge other than Chief justice.

- **Appointment of Chief Justice From 1950 to 1973:** The practice has been to appoint the senior most judge of the Supreme Court as the chief justice of India. This established convention was violated in 1973 when **A N Ray** was appointed as the **Chief Justice of India by superseding three senior judges**. Again in 1977, M U Beg was appointed as the chief justice of India by superseding the then senior-most judge.

This discretion of the government was curtailed by the Supreme Court in the **Second Judges Case (1993)**, in which the Supreme Court ruled that **the senior most judge of the Supreme Court should alone be appointed to the office of the Chief Justice of India**.

Controversy over Consultation and Evolution of Collegium system

The Supreme Court has given different interpretations of the word ‘consultation’ in the above mentioned provisions.

- In the **First Judges case (1982)**, the Court held that consultation does not mean concurrence and it only implies exchange of views.
- In the **Second Judges case (1993)**, the Court reversed its earlier ruling and changed the meaning of the word consultation to **concurrence**.
- In the **Third Judges case (1998)**, the Court opined that the consultation process to be adopted by the **Chief Justice of India** requires ‘**consultation of plurality judges**’.
 - The sole opinion of the CJI does not constitute the consultation process. He should consult a **collegium of four senior most judges of the Supreme Court** and even if two judges give an adverse opinion, he should not send the recommendation to the government.
 - The court held that **the recommendation made by the chief justice of India** without complying with the norms and requirements of the consultation process are not binding on the government.

Collegium System

- Collegium system was born through “**three judges case**” and it is in practice since 1998. It is used for appointments and transfers of judges in High courts and Supreme Courts.
- There is no mention of the Collegium either in the original Constitution of India or in successive amendments

Working of Collegium System and NJAC

- The collegium recommends of the names of lawyers or judges to the Central Government. Similarly, the Central Government also sends some of its proposed names to the Collegium.
- Collegium considers the names or suggestions made by the Central Government and resends the file to the government for final approval.
 - If the **Collegium resends** the same name again then the government has to give its assent to the names. But **time limit is not fixed** to reply. This is the reason that appointment of judges takes a long time.
- Through the **99th Constitutional Amendment Act, 2014 the National Judicial Commission Act (NJAC)** was established to replace the collegium system for the appointment of judges.
- However, the Supreme Court **upheld the collegium system and struck down the NJAC as unconstitutional** on the grounds that the involvement of **Political Executive** in judicial appointment was **against the “Principles of Basic Structure”**. I.e. the **“Independence of Judiciary”**.

Qualifications of Judges

- A person to be appointed as a judge of the Supreme Court should have the following qualifications:
 - He should be a **citizen of India**.
 - He should have been a **judge of a High Court** (or high courts in succession) **for five years**; or
 - He should have been an advocate of a High Court (or High Courts in succession) for ten years; or
 - He should be a **distinguished jurist in the opinion of the president**.
- The Constitution **has not prescribed a minimum age** for appointment as a judge of the Supreme Court.

Oath or Affirmation

A person appointed as a judge of the Supreme Court, before entering upon his office, has to make and subscribe to an **oath or affirmation before the President**, or some other person appointed by him for this purpose. In his oath, a judge of the Supreme Court swears:

- 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 judgement to perform the duties of the Office without fear or favour, affection or ill-will; and
- to uphold the Constitution and the laws.

Tenure of Judges

The Constitution has not fixed the tenure of a judge of the Supreme Court. However, it makes the following three provisions in this regard:

- He holds office until he attains the age of 65 years. Any question regarding his age is to be determined by such authority and in such manner as provided by Parliament.
- He can resign his office by writing to the President.
- He can be removed from his office by the President on the recommendation of the Parliament.

Removal of Judges

- A judge of the Supreme Court can be removed from his office by an **order of the President**. The President can issue the removal order only after an address by Parliament has been presented to him in the same session for such removal.
- The address must be supported by a **special majority** of each House of Parliament (ie, a majority of the total membership of that House and a majority of not less than **two-thirds of the members** of that House present and voting). The grounds of removal are two—**proved misbehaviour or incapacity**.
- **The Judges Enquiry Act (1968)** regulates the procedure relating to the removal of a judge of the Supreme Court by the process of impeachment:
 - No judge of the Supreme Court has been impeached** so far.
 - Impeachment motions of Justice V Ramaswami (1991–1993) and the Justice Dipak Misra (2017-18) were defeated in the Parliament.

Salaries and Allowances

The salaries, allowances, privileges, leave and pension of the judges of the Supreme Court are **determined from time to time by the Parliament**. They cannot be varied to their disadvantage after their appointment except during a financial emergency.

Acting Chief Justice

The President can appoint a judge of the Supreme Court as an acting Chief Justice of India when:

- the office of Chief Justice of India is vacant; or
- the Chief Justice of India is temporarily absent; or
- the Chief Justice of India is unable to perform the duties of his office.

Ad hoc Judge

- When there is a **lack of quorum** of the permanent judges to hold or continue any session of the Supreme Court, **the Chief Justice of India can appoint a judge of a High Court as an ad hoc judge of the Supreme Court** for a temporary period. He can do so only after consultation with the Chief Justice of the High Court concerned and with the previous consent of the president.
- The judge so appointed should be **qualified for appointment as a judge of the Supreme Court**. It is the duty of the judge so appointed to attend the sittings of the Supreme Court, in priority to other duties of his office. While so attending, he enjoys all the jurisdiction, powers and privileges (and discharges the duties) of a judge of the Supreme Court.

Retired Judges

- At any time, the **CJI can request a retired judge** of the Supreme Court or a retired judge of a high court (who is duly qualified for appointment as a judge of the Supreme Court) to act as a judge of the Supreme Court for a temporary period.
- He can do so only with the **previous consent of the President** and also of the person to be so appointed.

Such a judge is entitled to such allowances as the president may determine. He will also enjoy all the jurisdiction, powers and privileges of a judge of the Supreme Court. But, he will not otherwise be deemed to be a judge of the Supreme Court.

Procedure of Court

- The Supreme Court can, with the approval of the President, make rules for regulating generally the practice and procedure of the court.
- The **Constitutional cases or references** made by the President under **Article 143** are decided by a **Bench consisting of at least five judges**. All other cases are usually decided by a bench consisting of not less than three judges. The judgements are delivered by the open court. All judgements are by majority vote but if differing, then judges can give dissenting judgements or opinions.

Independence of Supreme Court

- The Supreme Court is a **Federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and guardian of the Constitution**.

Therefore, its independence becomes very essential for the effective discharge of the duties assigned to it. It should be free from the encroachments, pressures and interferences of the executive (council of ministers) and the Legislature (Parliament). It should be allowed to do justice without fear or favour.

- The Constitution has made the following provisions to **safeguard and ensure the independent and impartial** functioning of the Supreme Court:
 - Mode of appointment
 - Security of tenure
 - Fixed service conditions
 - Expenses charged on the consolidated fund
 - Conduct of judges cannot be discussed
 - Ban on practice after retirement
 - Power to punish for its contempt
 - Freedom to appoint its staff
 - Its jurisdiction cannot be curtailed
 - Separation from Executive

Jurisdiction and Powers of Supreme Court

Original Jurisdiction

- As a Federal court, the Supreme Court decides disputes between different units of the Indian Federation. More elaborately, any dispute 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 federal disputes, the Supreme Court has **exclusive original jurisdiction**.
- Further, this jurisdiction of the Supreme Court **does not extend** to the following:
 - A dispute arising out of any pre-Constitution treaty, agreement, covenant, engagement, sanad or other similar instrument.
 - A dispute arising out of any treaty, agreement, etc., which specifically provides that the said jurisdiction does not extend to such a dispute.
 - Inter-state water disputes.
 - Matters referred to the Finance Commission.
 - Adjustment of certain expenses and pensions between the Centre and the states.
 - Ordinary dispute of Commercial nature between the Centre and the states.
 - Recovery of damages by a state against the Centre.

Writ Jurisdiction

The Supreme Court is empowered to issue writs, including **habeas corpus, mandamus, prohibition, quo-warranto and certiorari** for the enforcement of the fundamental rights of an aggrieved citizen.

- In this regard, the Supreme Court has **original jurisdiction** in the sense that an aggrieved citizen can go directly to the Supreme Court, not necessarily by way of appeal.
- However, the writ jurisdiction of the Supreme Court is not exclusive. The High Courts are also empowered to issue writs for the enforcement of the Fundamental Rights.

Appellate Jurisdiction

The Supreme Court is primarily a court of appeal and hears appeals against the judgements of the lower courts. It enjoys a wide appellate jurisdiction which can be classified under four heads:

- Appeals in constitutional matters
- Appeals in civil matters
- Appeals in criminal matters
- Appeals by special leave

Advisory Jurisdiction

The Constitution **under Article 143** authorises the President to seek the opinion of the Supreme Court in the two categories of matters:

- On any question of law or fact of public importance which has arisen or which is likely to arise.
- On any dispute arising out of any pre-constitution treaty, agreement, covenant, engagement, sanad or other similar instruments.

A Court of Record

As a Court of Record, the Supreme Court has two powers:

- The judgements, proceedings and acts of the Supreme Court are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any court.
- They are **recognised as legal precedents and legal references**.
- It has power to **punish for contempt of court**, either with simple imprisonment for a term up to six months or with fine up to 2,000 or with both.

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 (ultra-vires)**, they can be declared as **illegal, unconstitutional and invalid (null and void)** by the Supreme Court. Consequently, they cannot be enforced by the Government.

Recent issues in Supreme Court

Master of Roster: It refers to the privilege of the Chief Justice to constitute Benches to hear cases.

- The controversy has emerged in the Supreme Court over **absolute power of Chief Justice** on the judicial administration.
- The SC has upheld a number of times that “the Chief Justice is the master of the roster and he alone has the prerogative to constitute the Benches of the Court and allocate cases to the Benches so constituted.”
- Be it the Chief Justice of India or Chief Justice of any high court it is he or she who heads the **administrative** side. This includes allocation of matters before a judge as well.

So, no Judge can take up the matter on his own, unless allocated by the Chief Justice of India.