

## Our Judiciary

---

For the entire republic of India, there is one unified judicial system-one hierarchy of courts-with the Supreme Court as the highest or the apex court and as the only arbiter in matters of relations between the Union and the States and the States inter se.

### THE SUPREME COURT

Composition of the Court and Conditions of Judge's Office: Article 124 provided for the establishment of the Supreme Court with a Chief Justice and seven other judges. It, however, authorised Parliament to increase the member of judges by law. The number as fixed by law in 1986 was 25 in addition to the Chief Justice. Under article 124(2), Supreme Court Judges are to be appointed by the President after consultation with such of the judges of the Supreme Court and of the High Courts as the President may deem necessary". The proviso to the article says that "in the case of appointment of a judge other than the Chief Justice, the Chief Justice of India shall always be consulted. The only obligation for the Government was to consult the Chief Justice and other judges. Significantly, the appointment was not required to be made 'in consultation' but only 'after consultation'. In actual practice, after receiving the opinion of the Chief Justice, the Cabinet deliberated on the matter and advised the President in regard to persons to be appointed. The President acted on the advice. In case of the Chief Justice, the senior most judge was usually appointed. The convention, however, was ignored when in the '70s, a

couple of Chief Justices were appointed superseding their more senior colleagues.

It was held in *S.P. Gupta v. Union of India* (AIR 1982 SC 149) that consultation must be effective and must imply exchange of views after examining merits, but that it did not mean concurrence. However this case was overruled in 1993 in the *Supreme Court Advocates-on Record Association Vs. Union of India* (AIR 1994 SC 268). In this case, the Supreme Court practically took over the power of appointment of judges in its own hands. As a safeguard, it mandated the Chief Justice associating two of his senior most colleagues in the selection process. The procedure for appointment was revised in the light of this judgment in 1994 to the effect that the decisive view in the matter of the

### **Objectives**

The lesson's objective is to teach the students the Indian judicial system. The composition of the judicial system and the rights of the courts. The lesson also teaches what judicial review is.

Appointment of judges shall be that of the Chief Justice of India and in case of a vacancy in the office of the Chief Justice of India, the senior most judge shall be appointed unless the retiring Chief Justice reported that he was unfit.

However, following the government's reservations in regard to certain recommendations made by the Chief Justice in the matter of appointment of judges to the Supreme Court, the matter again became highly controversial and the President made a reference to seek the advisory opinion of the Supreme Court under article 143 of the Constitution. The Court pronouncing its advisory opinion on 28 October 1998 [(1998) 7n SCC 739] basically confirmed the position in the 1993 judgment but it provided some more safeguards. The Chief Justice had to consult four senior most judges of the Supreme Court and if two of the four disagreed on some name, it could not be recommended. In effect, decisions were to be taken by consensus where the Chief and at least three of the four had to agree. Every judge of the Supreme Court holds office until the age of 65 years. A judge may be removed from his office

only by an order of the President passed after an address by each House of Parliament for his removal" on the ground of misbehavior or incapacity" supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members present and voting is presented to him in the same session. The procedure may be regulated by Parliament by law (article 124). In the case of Justice Ramaswamy, motion for presenting an address to the President for his removal failed to get the required majority in Lok Sabha. Contrary to the common belief, there is no provision in our Constitution for the impeachment of a judge.

The impeachment is provided for the President and none else. Also, there is a fundamental difference between removal procedure and impeachment procedure and between the impact of the adoption of a motion for impeachment and the passing of a motion for presenting an address to the President seeking orders for the removal of a judge. The grounds for the impeachment of the President have to concern 'violation of the Constitution' while an address for removal of a judge has to be on the ground of "misbehavior or incapacity". In case of impeachment, the moment the motion is passed by the two Houses, the President forthwith ceases to be the President. But in case of the motion for removal, it is for the President to consider every person appointed as a judge of the Supreme Court, before he enters upon his office, takes an oath before the President or some person appointed in that behalf by him in the form prescribed in the Constitution. The Constitution prohibits a person who has held office as a judge of the Supreme Court from practicing law before any court in the territory of India (article 124(6) and (7)).

Judges of the Supreme Court are to be paid such salaries as may be determined by Parliament by law and until so determined salaries as laid down in the Second Schedule (article 125). At present (w.e.f. 1.1.1996) the Chief Justice of India gets a basic salary of Rs.33,000 per annum and all other judges of the Supreme Court get a basic salary of Rs.30,000 per annum under the High Court and Supreme Court Judges (Conditions of Service) Amendment Act of 1998 and 1999. In addition, they are allowed sumptuary allowances (Rs.4000 p.m. for Chief

Justice and Rs 1000 p.m. for others), rent free furnished residences (or Rs.10, 000 p.m.), telephone, water, electricity, medical and other facilities exclusive of allowances and privileges like traveling expenses within the country, pension etc.

When the office of the Chief Justice of India is vacant or when the Chief Justice is unable to perform the duties of his office due to absence, the President shall appoint an Acting Chief Justice from among the judges of the Court to reform the duties of the Chief Justice (article 126).

If at any time there is no quorum of judges of the supreme Court available to hold or continue any session of the Court, the Chief Justice of India is empowered to appoint ad-hoc judges in the Supreme Court from among judges of the High Courts, having qualifications to be appointed judges of the Supreme Court, for such period as he deems necessary. He can do so only with previous consent of the President and after consultation with the Chief Justice of the High Court concerned. The judge so appointed is duty bound to give priority to the Supreme Court duties. The Chief Justice of India may also invite a retired judge of the Supreme Court or a retired judge of the High Court having the qualification to be a judge of the Supreme Court, to sit and act as a judge of the Supreme Court for such period as he deems necessary. This too can be done with the previous consent of the President and also of the person to be so appointed (articles 127 and 128).

**Power and Jurisdiction of the Court:** Article 129 provides that the Supreme Court shall be a court of record and shall have all the powers of such a court. Being the highest court of the land, its proceedings, acts and decisions are kept in record for perpetual memory and for presentation as evidence, when need be, in support of what the law is. Being a court of record implies that its records can be used as evidence and cannot be questioned for their authenticity in any court. (*Daphtary v. Gupta*, AIR 1971 SC 1132; *Namboodripad v. Nambiar*, AIR 1970 SC 2015).

Court of record also means that it can punish for its own contempt. But this is a summary power used sparingly and under pressing circumstances. It does not inhibit genuine and well-intentioned criticism of court and its functioning. Fair and

reasonable criticism of a judicial act in the interest of public good does not constitute contempt.

The Supreme Court has original, appellate and advisory jurisdiction. Original jurisdiction means the power to hear and determine a dispute in the first instance. The Supreme Court has been given exclusive original jurisdiction which extends to disputes (a) between the Government of India and one or more States (e.g. *State of West Bengal v. Union of India*, AIR 1963 SC 1241) (b) between the Government of India and one or more States on one side and one or more States on the other, (c) between two or more States. However, this jurisdiction shall not extend to a dispute arising out of a treaty, agreement etc. which is in operation and excludes such jurisdiction (article 131). The jurisdiction of the Supreme Court may also be excluded in certain other matters, e.g. inter-State water disputes (article 262), matters referred to the Finance Commission (article 280) and adjustment of certain expenses and pensions between the Union and the States (article 290).

Recovery of damages against the Government of India. It cannot be claimed by a State before the Supreme Court under article 131. The article does not cover such ordinary commercial matters between the Union and the States (*Union of India v. State of Rajasthan* (1984) 4 SCC 238). Also, a dispute to be so brought before the Supreme Court must involve a question, whether of law or fact, on which the existence or extent of a legal right depends.

Under the new article 139A inserted by the 44th Amendment in 1978, the Supreme Court may transfer to itself cases from one or more High Courts if these involve questions of law or of great importance. Also, the Supreme Court may transfer cases from one High Court to another in the interests of justice.

The original jurisdiction of the Supreme Court also extends to cases of violation of the fundamental rights of individuals and the Court can issue several writs for the enforcement of these rights (article 32). It is a unique feature of our Constitution that in principle, any individual can straightaway approach the highest court in case of violation of his fundamental rights. The appellate jurisdiction of the Supreme Court extends to civil, criminal and constitutional matters. In a civil matter, an

appeal lies to the Supreme Court from any judgment, decree or final order of a High Court if the High Court certifies under article 134A that a substantial question of law of general importance as to the interpretation of the Constitution is involved and the matter needs to be decided by the Supreme Court (articles 132-134).

Considering an appeal under article 133, the Supreme Court held in *P.K. Dave v. People's Union at Civil Liberties* (AIR 1996 SC 2166) that the High Court should refrain from using intemperate language as part of judicial discipline while commenting upon the conduct of another individual particularly when that individual is not before the court. In criminal cases, an appeal to the Supreme Court shall lie if the High Court (a) has reversed an order of acquittal of an accused person and sentenced him to death, or (b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death (article 134; *Ram Kumar v. State of M.P.*, AIR 1975 SC 1026; *Padda Narayana v. State of U.P.*, AIR 1975 SC 1252).

Under article 134(1)(c) an appeal against a decision of a High Court can be filed before the Supreme Court if the High Court certifies under article 134A that the case is a fit one for appeal to the Supreme Court. But the proviso to sub-clause (c) lays down that such appeals shall be subject to rules made by the Supreme Court and to such other conditions as the High Court may decide. The grant of the certificate by the High Court for appeals in criminal cases to the Supreme Court depends on an evaluation whether the case involves a substantial question of law and its interpretation on which the Supreme Court is urgently required to pronounce its opinion and whether it would result in grave injustice to the accused if he is denied the opportunity of an appeal to the Supreme Court.

Under article 136, the Supreme Court, at its discretion, may grant special leave to appeal from any judgment, decree, determination, sentence or order, in any cause or matter passed or made by any court or tribunal in the territory of India. These powers of the Supreme Court to grant special leave to appeal are far wider than the High Courts' power to grant certificates

to appeal to the Supreme Court under article 134. The Supreme Court can grant special leave against judgments of any court or tribunal in the territory, except the military courts, and in any type of cases, civil, criminal or revenue. But, the Supreme Court has itself said that it will grant special leave to appeal only in cases where there has been gross miscarriage of justice or where the High Court or Tribunal is found to have been wrong in law. If the judgment of the court below shakes the conscience and shocks the sense of justice, Supreme Court shall interfere. (*Haripada Dey v. State of West Bengal*, AIR 1965 SC 757; *Martu v. State of U.P.*, AIR 1971 SC 1050; *Ram Saran v. c.T.a.*, AIR 1962 SC 1326; *Muniswamy v. Ranganathan*, (1991) 2SCC 139; *Mahesh v.State of Delhi*, (1991) Cr LJ 1703 (SC).

Article 137 provides for the Supreme Court having the power to review its own judgments and orders. Article 143 of the Constitution confers upon the Supreme Court advisory jurisdiction. The President may seek the opinion of the Supreme Court on any question of law or fact of public importance on which he thinks it expedient to obtain such an opinion. On such reference from the President, the Supreme Court, after giving it such hearing as it deems fit, may report to the President its opinion thereon. The opinion is only advisory, which the President is free to follow or not to follow. The first such reference was made in the *Delhi Laws case*, (1951) SCR 747. The President may also seek the opinion of the Supreme Court, through a similar reference on any treaty, agreement, covenant, engagement or other similar instrument which had been entered into or executed before the commencement of this Constitution, and has continued in operation thereafter.

Under article 138, the Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer. It shall have such jurisdiction and powers with respect to any matter as the Government of India and the Government of any State may by special agreement confer, if the Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court. This enlarges the jurisdiction of the Supreme Court and provides it with very special jurisdiction to hear cases of most urgent nature directly and in its original

jurisdiction for speedy disposal. Article 139 lays down that Parliament may by law confer on the Supreme Court power to issue directions, orders or writs in matters not already covered under article 32.

Under article 140, Parliament may by law supplement the powers of the Supreme Court. Law declared by the Supreme Court is binding on all courts in India vide article 141. (*Vineet Narain v. Union of India*, AIR 1998 SC 889; *Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd.*, AIR 1997 SC 2477). But no law can be taken to have been declared where no reasons are given. Also, what is binding is the principle or the ratio of the decision and not findings on facts, opinions or arguments (*Supreme Court Employees v. Union of India*, AIR 1991 SC 334; *Ramesh v. Union of India*, AIR 1990 SC 560; *C.I. T. v. S.E. W.*, AIR 1993 SC 43; *Krishan v. Union of India*, (1990) 4 SCC207 (CB)). Decrees and orders of the Supreme Court shall be enforceable throughout India and civil and judicial authorities shall act in aid of the Supreme Court (articles 142 & 144).

For purposes of giving effect to the directions and decisions of the Supreme Court, all authorities, civil e-i judicial, in the territory of India, have been made subordinate to the authority of the Supreme Court in as much as all these are required to "act in aid of the Supreme Court" (article 144). The Supreme Court may from time to time, and with the approval of the President, make rules for regulating generally the practice and procedure of the Court. The Chief Justice of India or such other judge or officer of the court appoints the officers and staff of the Supreme Court as he may direct (articles 145-146). Article 147 clarifies that references to interpretation of the Constitution shall cover interpretation of the Government of India Act 1935, Indian Independence Act 1947 etc.

#### **THE HIGH COURTS**

The Constitution provides for a High Court for each State. Parliament may, however establish by law a common High Court for two or more States or for two or more States and a Union territory (articles 214 and 231). Like the Supreme Court, each High Court is also to be a Court of record and of original