

CHAPTER 1 JUDICIARY

INTRODUCTION

The judiciary stands as a fundamental pillar of India's democratic framework, safeguarding the principles of justice, fairness, and constitutional integrity. This chapter delves into the intricate structure and hierarchy of India's courts and legal offices, illustrating how they function within the broader legal system. It examines the constitutional mandates that define the judiciary's role, focusing on its impartiality and the crucial function it serves in upholding the rule of law. Additionally, the chapter scrutinises the processes governing the appointment, training, retirement, and removal of judges, underscoring efforts to maintain judicial independence and efficiency. Concluding with a discussion on judicial review, it highlights the judiciary's role in ensuring that legislative and executive actions comply with constitutional standards, thereby reinforcing the principles of constitutional supremacy and justice.

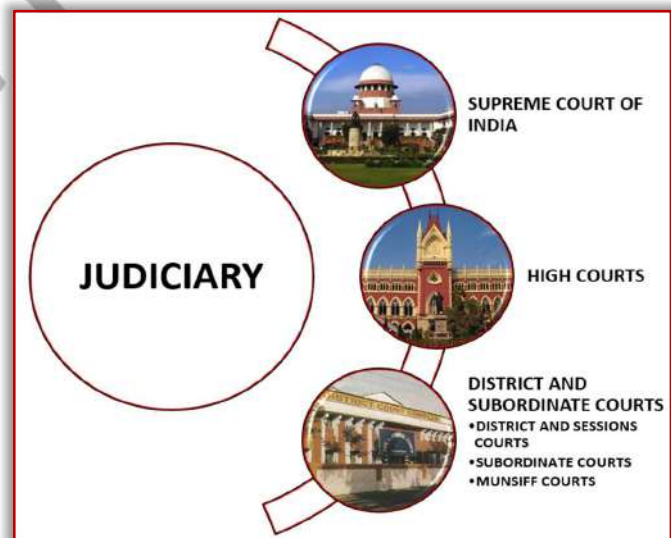
TOPICS COVERED

1. Structure and Hierarchy of Courts and Legal Offices in India.
2. Constitution, Roles, and Impartiality.
3. Appointments, Training, Retirement, and Removal of Judges.
4. Courts and Judicial Review

STRUCTURE, HIERARCHY OF COURTS, AND LEGAL OFFICES IN INDIA

STRUCTURE & HIERARCHY OF COURTS IN INDIA

The Indian Constitution defines the structure of the judicial system. While India operates under a federal framework, where law-making powers are shared between the Centre and the States, the Constitution sets up a unified judiciary to oversee both Central and State laws. At the pinnacle is the Supreme Court, based in New Delhi. Beneath it are the High Courts, which serve one or more states. Following them are district and subordinate courts, often referred to as lower courts. Additionally, specialised tribunals exist to handle specific disputes, such as those related to labour, consumers, and service matters.



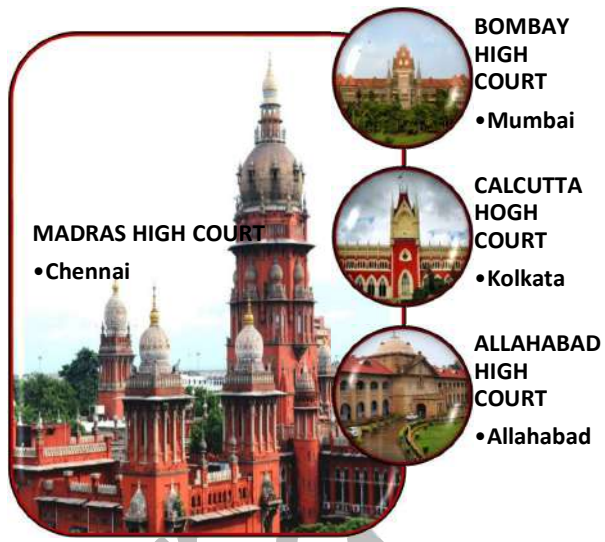
SUPREME COURT OF INDIA

The Supreme Court of India was established on 28 January 1950, replacing both the Federal Court of India and the Judicial Committee of the Privy Council, which were the top judicial bodies during the colonial era. Initially, the Indian Constitution provided for a Supreme Court with a Chief Justice and 7 Judges. However, Parliament was empowered to increase the number of

judges over time. Today, the Supreme Court comprises 31 judges, including the Chief Justice of India.

HIGH COURTS

India has **25 High Courts** operating across its states and union territories. Each High Court has jurisdiction over a specific state, union territory, or a combination of these. Beneath the High Courts lies a network of lower courts, functioning as civil and criminal courts, alongside specialised tribunals. The first four High Courts established in India are the Madras High Court in Chennai, the Bombay High Court in Mumbai, the Calcutta High Court in Kolkata, and the Allahabad High Court in Allahabad.



DISTRICT AND SUBORDINATE COURTS

1. District and Sessions Courts

- **District Judge:** Presides over civil cases and is the highest authority in the district court system below the High Court.
- **Sessions Judge:** Handles criminal cases within the same jurisdiction.
- **Metropolitan Sessions Judge:** Holds this title in cities classified as metropolitan areas by the state government.
- **Additional District Judges:** Assist the District Judge, depending on the caseload.

2. Subordinate Courts

- **Civil Matters:**
 - **Junior Civil Judge Court:** Handles initial stages of civil cases.
 - **Principal Junior Civil Judge Court:** Handles more significant civil cases that exceed the jurisdiction of the Junior Civil Judge.
 - **Senior Civil Judge Court:** Also known as sub-courts, they handle substantial civil cases and appeals from subordinate courts.
- **Criminal Matters:**
 - **Second Class Judicial Magistrates Court:** Handles less severe criminal cases.
 - **First Class Judicial Magistrates Court:** Deals with more serious criminal cases.
 - **Chief Judicial Magistrates Court:** Oversees significant criminal cases and appeals from lower judicial magistrates.

3. Munsiff Courts

- **Jurisdiction:** Handle minor civil cases and have financial jurisdiction determined by state governments. They operate at the lowest level within the civil judiciary system.

TRIBUNALS

The Indian judiciary also encompasses several **semi-judicial entities engaged in dispute resolution**. These bodies are referred to as **semi- or quasi-judicial** because their members may

include administrative officials or non-legally trained individuals. Despite this, they operate in a judicial capacity, hearing legal matters and resolving disputes between parties.

Tribunals are established either through specific constitutional provisions in the Indian Constitution or by legislation passed by the legislature. Their primary purpose is to improve efficiency in dispute resolution and lessen the workload on the courts. Examples of tribunals include the Central Administrative Tribunal (CAT), which addresses grievances of central government employees, and State Administrative Tribunals (SAT), which handle similar issues for state government employees. Additionally, the Telecom Dispute Settlement Appellate Tribunal (TDSAT) resolves conflicts in the telecom sector, and the National Green Tribunal (NGT) handles environmental disputes.

Some tribunals work in conjunction with regulators, which are specialised government agencies tasked with ensuring compliance within their respective sectors. For instance, TDSAT works alongside the Telecom Regulatory Authority of India (TRAI), which helps to establish policies and regulations for settling telecom disputes. These tribunals thus complement and assist the judiciary in upholding law and order.

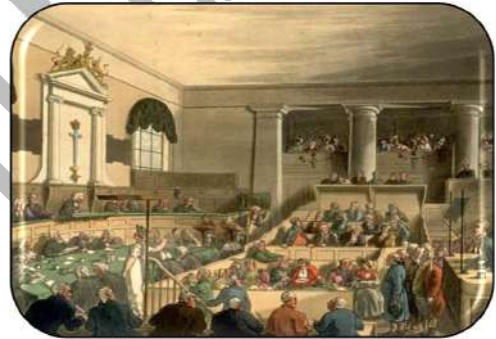
BENEFITS OF HAVING REGIONAL BENCHES FOR THE SUPREME COURT IN INDIA

- 1. Increased Accessibility:** Establishing regional benches would make justice more accessible to people across India. Currently, the Supreme Court is located in New Delhi, which may cause logistical challenges for people from remote regions. With regional benches in key cities, litigants would not have to travel long distances, reducing both financial and time burdens.
- 2. Faster Disposal of Cases:** Given that the Supreme Court hears over 50,000 cases annually, regional benches could help reduce the overwhelming backlog. By distributing the caseload among regional courts, it would allow for quicker case disposal, improving the overall efficiency of the judicial system.
- 3. Decentralisation of Judicial Power:** Regional benches would decentralise the judicial system, allowing for a more even distribution of cases. This could lead to a more balanced adjudication process, especially in regions where local or state-specific matters require attention. It could also promote a greater understanding of regional issues, benefiting from more localised judicial interpretation.
- 4. Alleviating Supreme Court's Caseload:** The regional benches would handle a portion of the existing and future caseload of the Supreme Court. This would enable the apex court to focus more on Constitutional and critical legal matters, improving the quality of judicial review in important cases.



DEMERITS OF HAVING REGIONAL BENCHES FOR THE SUPREME COURT IN INDIA

1. **Risk of Fragmentation:** Establishing regional benches may dilute the centralised authority of the Supreme Court and could lead to inconsistent rulings on similar matters. The possibility of divergent judgments from different benches may create legal uncertainty and reduce the uniformity in judicial interpretation.
2. **Administrative and Logistical Challenges:** The establishment of regional benches would require substantial resources, including infrastructure, personnel, and administrative support. Additionally, managing and coordinating decisions across various regional benches could lead to logistical challenges, including issues related to case distribution and jurisdiction.
3. **Constitutional and Legal Complexities:** The Supreme Court serves as the final court of appeal in India's unified judicial system. Introducing regional benches could complicate the appellate structure, creating confusion over jurisdictional authority and hierarchy. The Law Commission's recommendation for a Constitutional Bench and Cassation Benches was also rejected, highlighting possible legal concerns about this proposal.
4. **Potential Politicisation of the Judiciary:** There is a risk that regional benches could become more susceptible to local political influences. This may undermine the impartiality of the judiciary, especially in states where regional politics play a significant role in governance. The centralised location of the current Supreme Court ensures a level of neutrality that could be compromised with multiple regional benches.



Common Law System

- Inherited from the British common law system.
- Judicial precedents fill any gaps.
- Addresses civil and criminal cases.
- India, UK.

SALIENT FEATURES OF INDIAN JUDICIARY

INDIA AS A COMMON LAW JURISDICTION: India follows a legal tradition inherited from the British common law system. In this system, the rulings, decisions, and judgments made by Indian judges play a crucial role in shaping and developing laws. These **judicial precedents fill any gaps** where legislation is absent, making them binding across various legal matters. This framework not only addresses civil and criminal cases but also ensures that courts and judges have a fundamental role in India's federal structure.

In contrast, many countries such as **Germany, Russia, and those in Continental Europe follow a civil law system.** The key distinction between common law and civil law lies in the source of legal authority. In common law, courts can create laws through their rulings, whereas in civil law systems, only the legislature or executive has the power



Civil Law System

- Only the legislature or executive has the power to make laws
- Germany, Russia

to make laws. India's adoption of the common law system enhances the judiciary's influence and its function in shaping legal principles.

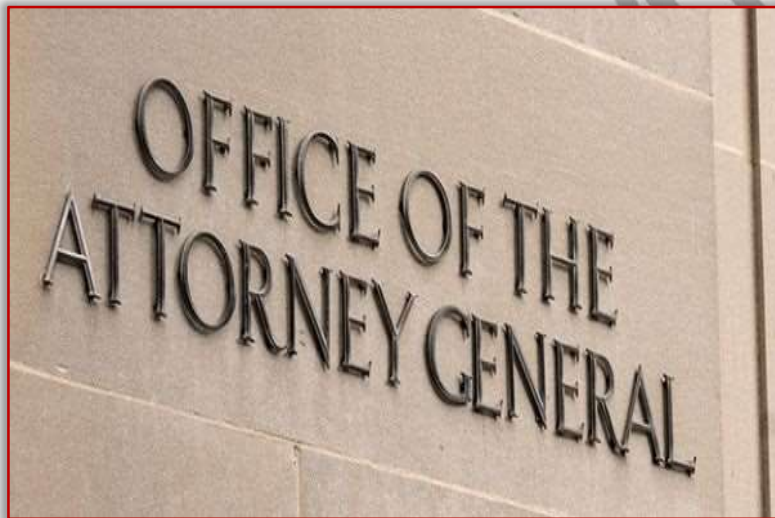
ADVERSARIAL MODEL OF DISPUTE RESOLUTION:

The Indian judiciary operates on an **adversarial system of dispute resolution**, unlike the inquisitorial system used in many civil law nations. In the adversarial system, the role of lawyers representing the parties is essential. Lawyers from both sides argue their cases before an impartial judge, who then renders a decision based on the arguments and evidence presented.

Conversely, in the inquisitorial system, judges take a more active role in investigating the case. They not only preside over the matter but also have the authority to conduct inquiries and examine facts, similar to the functions of law enforcement. In this model, both the judge and the lawyers collaboratively influence the direction and outcome of civil or criminal proceedings.



ATTORNEY GENERAL OF INDIA AND LAW OFFICERS IN INDIA



The Indian judiciary relies heavily on **law officers appointed by the central and state governments** to advise the executive. These law officers derive their authority from the Constitution or specific legal enactments. At the **Union level**, the **Attorney General of India** is the **highest legal officer**, appointed by the **President under Article 76** of the Constitution. The Attorney General serves at the **President's pleasure** and must be eligible for appointment as a

Supreme Court judge, typically requiring significant legal experience.

The Attorney General's primary role is to **provide legal advice to the Government of India and handle legal duties assigned by the President**. The officeholder has the **"right to audience"** in court and may **participate in parliamentary proceedings without voting rights**. The Attorney General is **assisted by the Solicitor General and four Additional Solicitors General**, positions governed by parliamentary rules rather than the Constitution.

At the **state level**, the **Advocate General** serves as the chief legal advisor to the **state government**, appointed by the **Governor under Article 165** of the Constitution. The Advocate General must meet the qualifications of a **High Court judge** and holds office at the **Governor's pleasure**. This office may also be supported by **Additional Advocate Generals**.

CONSTITUTION, ROLES, AND IMPARTIALITY

India's judiciary derives its authority from the Constitution, which remains the foundational legal text guiding the country's democracy.

1. INDEPENDENCE OF JUDICIARY AS A CONSTITUTIONAL SAFEGUARD

Article 50 of the Indian Constitution enshrines the judiciary's independence, ensuring that it remains separate from the executive and legislative branches. This independence is crucial for maintaining the rule of law, promoting good governance, and upholding a free and fair society.

The role and independence of the judiciary in India are linked in two major ways:

- **JUDICIARY AS A WATCHDOG:** The judiciary acts as a monitor, maintaining checks and balances on the other branches of government. For example, the police have extensive powers to investigate crimes, but these powers should not infringe on the rights of the accused. Article 20(3) of the Constitution protects an accused person from self-incrimination (*"No person accused of any offence shall be compelled to be a witness against himself"*). The judiciary steps in when such conflicts arise between the state's power and individual rights, ensuring a fair balance.
- **ENSURING CONSTITUTIONAL FREEDOMS:** To uphold constitutionally guaranteed freedoms, such as the right to free speech and peaceful assembly, the judiciary must remain free from external pressure. This impartiality is essential when adjudicating cases involving conflicts between the government and civil society, particularly in issues of public protest or civil rights.
- **GUARDIAN OF FUNDAMENTAL RIGHTS:** The judiciary safeguards citizens' fundamental rights, both civil and political (like the right to life and non-discrimination) and economic, social, and cultural (like religious freedom and minority rights). For instance, the Supreme Court has interpreted Article 21 (right to life and personal liberty) to include the right to livelihood, stating that street vendors have a right to earn a living, and the right to food for the elderly and destitute.

CIVIL AND POLITICAL RIGHTS

- The Right to Life and Non-Discrimination.



ECONOMIC, SOCIAL AND CULTURAL RIGHTS

- Religious Freedom and Minority rights



2. EXPANDING INTERPRETATION OF RIGHTS: Through judicial interpretation, the courts have broadened the scope of fundamental rights. Although specific rights like the right to livelihood and food were not explicitly written into the Constitution, the **judiciary has expanded Article 21** to include these as enforceable rights. This demonstrates how the courts have adapted the Constitution's original intent to address contemporary social needs.

Expansion of Article 21 by the Judiciary

-  A street vendor's right to operate is linked to livelihood, protected under Article 21.
-  Aged, disabled, and destitute individuals have a right to food, crucial for survival, with the State duty-bound to provide it.
-  Specific rights like livelihood and food were not originally part of the Constitution, the Judiciary has made them enforceable as fundamental rights.
-  The Court continues to fulfil its constitutional role by ensuring these expanded rights for citizens.

3. ENSURING FAIR TRIALS: In criminal law, the independence of the judiciary is essential to ensuring fair trials, even for foreign nationals or individuals accused of crimes against the state, such as terrorism. This impartiality upholds the principle of due process, which requires that the state respect all legal rights owed to an individual and adhere to standards of fairness and liberty.

4. VITAL ROLE IN MODERN DEMOCRACY: Historically, when the judiciary's independence has been undermined, it has adversely affected governance and citizens' rights.

Therefore, maintaining the judiciary's impartiality and autonomy remains a cornerstone of democracy, ensuring that citizens' rights are not compromised, even in times of political turmoil.



ROLE OF INDIAN JUDICIARY: THE ROLE OF COURTS

The Indian judiciary plays a crucial role in upholding the Constitution and ensuring justice, fairness, and the protection of rights. The judiciary comprises the **Supreme Court, High Courts, Subordinate Courts,** and various **Tribunals**. These courts have distinct roles, functions, and powers, derived from the Constitution of India.

SUPREME COURT OF INDIA: ROLES AND FUNCTIONS

The Supreme Court of India performs multiple key functions, including those of an adjudicator, interpreter, and advisor. Its powers are defined primarily through **original, appellate, and advisory jurisdictions**.

1. ADJUDICATOR

- **Original Jurisdiction:** Article 131 grants the Supreme Court the authority to adjudicate disputes between the **Union and one or more states, or between two or more states**. These disputes often involve questions of law or facts concerning legal rights. For instance, the Supreme Court handles cases like **river water disputes** between states.
- **Writ Jurisdiction:** Under Article 32, the Supreme Court has the power to issue writs for the enforcement of fundamental rights, such as **habeas corpus, mandamus, prohibition, quo warranto, and certiorari**.
- **Appellate Jurisdiction:** The Supreme Court exercises appellate jurisdiction when it hears appeals against judgments from High Courts on substantial questions of law or the interpretation of the Constitution. Under Article 136, the Court also has discretionary power to grant special leave to appeal from any judgment or order of any court or tribunal in India.

2. Interpreter: As the highest interpreter of the Constitution, the Supreme Court provides definitive rulings on constitutional matters, ensuring laws and state actions align with the core principles of the Constitution. For instance, the **expansion of Article 21**, which guarantees the **right to life and personal liberty**, has extended to include rights such as **livelihood and food security**.

3. Advisor: Presidential Reference (Article 143): The President of India can seek the advisory opinion of the Supreme Court on **questions of law or fact of public importance**. However, the Supreme Court's opinion is **not binding**. This advisory jurisdiction is seldom exercised but remains an essential part of the Court's role.



Original Jurisdiction:
Article 131
Writ Jurisdiction:
Article 32
Appellate Jurisdiction:
Article 136
Advisory Jurisdiction:
Article 143
As an Activist:
PIL

Judicial Activism and Public Interest Litigation (PIL)

The Supreme Court has taken an active role in shaping Indian democracy through **Public Interest Litigations (PILs)**. PILs have allowed citizens and civil society organizations to approach the Court on behalf of those whose rights have been violated, often providing relief to marginalized sections of society. The court has relaxed its **locus standi** (the right of a party to appear and be heard by a Court).

- **First PIL: Hussainara Khatoon v. State of Bihar (1979):** This case addressed the **inhuman conditions** in Bihar prisons, leading to the establishment of the right to **free legal aid** and **expeditious trials** for prisoners (**Justice P N Bhagwati pic right**). Since then, PILs have covered issues ranging from **environmental rights** to **socio-economic rights** and **political reforms**.



CHARACTERISTICS OF PILS:

1. **Non-adversarial Nature:** PILs are meant to serve as tools for social justice rather than confrontational litigation.
2. **Expanded Citizen Standing:** PILs allow individuals or organizations to represent others in court, expanding access to justice.
3. **Remedial Nature:** PILs often aim to bring Directive Principles of State Policy into the domain of fundamental rights, thereby enhancing access to justice (welfare-oriented model of judiciary). PILs are creating new rights and laws within the realm of the state.
4. **Judicial Oversight:** PILs empower the judiciary to act as a monitor over various state institutions, improving accountability in institutions like jails and child care homes.

CRITICISMS OF PILS:

- **Frivolous Litigation:** The misuse of PILs for personal or political gain has led to unnecessary litigation, diverting judicial resources.
- **Judicial Overreach:** The judiciary has faced criticism for overstepping into the domain of the legislature, particularly through its activism in PILs.

HIGH COURTS AND LOWER COURTS

High Courts serve as the apex of **judicial administration at the State level**, overseeing legal matters and ensuring justice across their jurisdictions. In contrast, **lower courts** operate at the **district level**, handling civil and criminal cases in their respective areas. Lower courts include **District Courts** and **subordinate courts**, which typically function as the initial point of contact for litigants seeking to resolve disputes. These courts have defined **territorial and monetary limits** for civil cases. Similarly, criminal courts at the subordinate level follow a structured hierarchy. Cases adjudicated by these lower courts can be appealed to the High Courts. While subordinate courts focus on **establishing the facts** of a case, **appellate courts**, such as the High Courts, are responsible for **interpreting statutes** and ensuring the correct application of law.

High Courts possess the authority to issue various **directions, orders, or writs**, including **habeas corpus, mandamus, prohibition, quo warranto, and certiorari**, within their jurisdiction for enforcing **Fundamental Rights** or other purposes. This writ jurisdiction parallels that of the **Supreme Court of India**. Additionally, High Courts play a significant role in **public interest litigation**, similar to the Supreme Court. They also exercise **supervisory powers** over all courts within their jurisdiction, including **calling for records, setting general rules, prescribing procedural forms**, and determining the methods for maintaining **book entries and accounts**.

INDEPENDENCE & IMPARTIALITY OF THE INDIAN JUDICIARY

The **independence of the Indian judiciary** is crucial to understand how this independence is ensured and maintained by the Constitution. The **theory of 'constituent mechanism'** for judicial independence highlights the need for the **independence of judges** themselves. Judges are expected to perform their duties in an unbiased manner, as emphasized by Simon Shetreet in *The Culture of Judicial Independence; Judges on Trial*.

It is important to distinguish between the **independence of the judiciary** and the **impartiality of judges**. The former pertains to the institution as a whole, while the latter concerns the individual judges. The **impartiality of judges** is a component of the broader framework of judicial independence. Both concepts are interrelated and aim to maintain **judicial integrity** within the democratic framework of the country.

The **constitutional framework** for ensuring judicial independence is comprehensive. The Indian Constitution includes several provisions to uphold these twin functions:

PROVISIONS RELATING TO THE INSTITUTION OF JUDICIARY: The Constitution affirms that the extensive powers held by the courts, particularly the Supreme Court, cannot be diminished by Parliament. In civil matters, Parliament has only a limited authority to alter the pecuniary limits for appeals to the Supreme Court. Conversely, the Supreme Court possesses broad appellate jurisdiction and supplementary powers to ensure its effective functioning. Both the **Supreme Court** and **High Courts** are recognized as **courts of record** and **possess the power to punish for contempt against the judiciary or judges**.

PROVISIONS RELATING TO THE JUDGES: Ensuring the **independence of judges** is essential for maintaining the overall independence of the judiciary. The following legal provisions are designed to uphold the independence and impartiality of judges:

1. **Security of Tenure:** Once appointed, judges are guaranteed a security of tenure until they reach retirement age, which is 62 for **High Court judges** and 65 for **Supreme Court judges**. After retirement, judges are prohibited from practicing as advocates in the same or equivalent courts. For instance, a retired High Court judge can practice in the Supreme Court but is barred from practicing in any High Court. This provision prevents retired judges from influencing current judicial decisions through presumed familiarity.
2. **Protection from Removal:** Judges can only be removed from office for **proven misbehaviour** or **incapacity**. The legal process for removal is stringent, ensuring that the security of tenure for judges is maintained and that their removal is not arbitrary.
3. **Fixed Salaries and Allowances:** The **salaries and allowances** of judges are fixed and are not subject to the vote of the legislature. Judges receive their emoluments from the **Consolidated Fund of India** (for the Supreme Court) and the **Consolidated Fund of the State** (for High Courts). Their salaries cannot be reduced to their disadvantage, except in the case of a financial emergency.
4. **Immunity from External Examination:** The conduct of judges is immune from examination by other **Constitutional organs**. The judicial conduct of both Supreme Court and High Court judges cannot be discussed in Parliament or state legislatures, except during a motion for the removal of a judge presented to the President.

5. **Control over Establishment:** The **Supreme Court of India** has the authority to manage its own establishment, including making appointments of officers and staff, and determining their service conditions. This ensures that the Supreme Court maintains full control over its administrative functions.

APPOINTMENTS, TRAININGS, RETIREMENT, AND REMOVAL OF JUDGES

1. APPOINTMENT OF JUDGES

CONSTITUTIONAL MANDATE: The method for appointing judges to the Supreme Court, High Courts, and District Courts is defined by the Constitution of India.



- **Supreme Court Judges:** According to **Article 124** of the Constitution:
 - Every judge of the Supreme Court is appointed by the **President** after consulting such judges of the Supreme Court and High Courts as the President deems necessary.
 - For the appointment of a judge other than the **Chief Justice of India**, the **Chief Justice of India** must be consulted.
 - The qualifications for becoming a Supreme Court judge include:
 - **Citizenship of India.**
 - Having served for at least **five years** as a judge of a High Court or multiple High Courts in succession.
 - Having been an advocate for at least **ten years** in a High Court or multiple High Courts in succession.
 - Being a **distinguished jurist** in the opinion of the President.
- **High Court Judges:** As per **Article 217** of the Constitution:
 - Every High Court judge is appointed by the **President** after consulting the **Chief Justice of India**, the **Governor of the State**, and, for the appointment of a judge other than the Chief Justice, the **Chief Justice of the High Court concerned**.
 - The qualifications for a High Court judge include:
 - **Citizenship of India.**
 - Having held a judicial office in India for at least **ten years**.
 - Having practiced as an advocate in a High Court or multiple High Courts for at least **ten years**.
- **District and Subordinate Courts:** The procedure for the appointment of judges to the lower judiciary is detailed in **Article 233** of the Constitution:
 - The appointment of district judges in any State is made by the **Governor of the State** in consultation with the **High Court** exercising jurisdiction in that State.
 - Qualifications for appointment as a District Judge include:
 - Being a **member of the judicial service of the State**, or
 - Having a minimum of **seven years** of practice as a lawyer at the bar.

CURRENT PRACTICE IN THE APPOINTMENT OF JUDGES

Despite the clear **Constitutional mandate**, the **appointment of judges** in practice involves a complex process influenced by evolving norms. The current system has deviated from the original constitutional provisions through the development of the **collegium model**, which is a judicially created process not explicitly outlined in the Constitution.



- **Supreme Court Judges:** Under the collegium system:
 - The **Chief Justice of India (CJI)** consults with the **four senior-most judges** of the Supreme Court.
 - The CJI then sends these recommendations to the **Union Minister of Law and Justice**, who forwards them to the **Prime Minister**.
 - The Prime Minister advises the **President** on the appointment.
- **High Court Judges:** For High Court appointments:
 - The collegium consists of the **Chief Justice of the High Court** and the **two senior-most judges** of the High Court.
 - The Chief Justice of the High Court submits recommendations to the **Chief Minister** of the State and the **Governor** of the State.
 - The Governor and Chief Minister send their opinions directly to the Union Minister of Law and Justice.
 - This material is then forwarded to the Chief Justice of India, who, in consultation with a collegium of **two Supreme Court judges**, sends the recommendations to the Union Minister of Law and Justice.
 - The Union Minister of Law and Justice presents these recommendations to the Prime Minister, who advises the President on the final appointment.

Seniority and Merit:

- **Seniority** is crucial for the elevation of judges, particularly for their appointment as **Chief Justice**.
- For initial appointments to a High Court from the lower judiciary, **inter-se seniority** is significant.
- For elevations of advocates from the bar, **relative merit** plays a key role. The collegium model assesses the relative merits of candidates based on their judgments and cases to determine elevation.

This practice reflects the ongoing adaptation of judicial appointment processes beyond the original constitutional framework.

TRACING THE HISTORICAL DEBATE ON THE ISSUE OF APPOINTMENT OF JUDGES

The appointment of judges in India has been a contentious issue, frequently intersecting with the independence of the judiciary. This debate has seen an ongoing struggle between the executive and the judiciary over the appointment process.

- **Early Concerns:**

- The **14th Law Commission Report (1958)**, chaired by **M.C. Setalvad (pic right)**, India's **first Attorney General**, highlighted early concerns about judicial appointments.
- The Report pointed out that appointments or rejections were often influenced by **political, regional, or communal factors**, rather than merit.
- To address these issues, the Commission recommended **strengthening** the consultation process between the executive and judiciary.



- **Judicial Developments:**

- The **Three Judges Cases** marked significant judicial interventions in the appointment process:
 - **First Judges Case (1981):**
 - Emphasized the primacy of the **Executive** in judicial appointments.
 - Allowed the President to reject the Chief Justice of India's recommendations for **cogent reasons**.
 - **Granted substantial power to the Executive in the appointment process for the next 12 years.**
 - **Second Judges Case (1993):**
 - Shifted the balance, granting **primacy to the Chief Justice of India** in appointments to the Supreme Court and High Courts.
 - Stipulated that appointments should align with the **Chief Justice of India's final opinion**, while emphasizing consultation with other judges.
 - Reduced the executive role and aimed to eliminate **political influence**.
 - **Presidential Reference (1998): Third Judges Case**
 - Reinforced the **consultative process** for judicial appointments.
 - Described the appointment process as an '**integrated participatory consultative process**' involving multiple judges.

- **The Collegium System:**

- The collegium system, **although not constitutionally mandated**, emerged from these judicial rulings and became the prevailing practice for appointments.
- This system has faced **criticism** for its lack of constitutional foundation and the **unilateral nature** of some appointments.

- **Proposed Reforms:** To address these concerns, a proposed **Constitutional amendment** aimed to replace the collegium system with a **Judicial Appointments Commission (JAC)**.

- In **August 2014**, Parliament introduced the Constitution (99th Amendment) Act and the **National Judicial Appointments Commission (NJAC) Act**, aiming to replace the

existing collegium system of appointing judges with a new independent commission. However, in 2015, the Supreme Court deemed both the amendment and the NJAC Act unconstitutional, thus rendering them void.

- **NJAC Structure**

- The Chief Justice of India (ex officio Chairperson).
- Two senior-most judges of the Supreme Court (ex officio members).
- The Union Minister of Law and Justice (ex officio member).
- Two prominent individuals from civil society, nominated by a panel including the Chief Justice, Prime Minister, and the Leader of Opposition in the Lok Sabha, with one of them representing SC/ST/OBC, minorities, or women.

- **Distinction between the Collegium and NJAC:**

- **NJAC:** Judges, including the Chief Justice of India and High Court Chief Justices, were to be appointed based on seniority, while other judges were selected based on merit and specific criteria outlined by the NJAC. Any two members of the commission could veto a recommendation.
- **Collegium System:** In the collegium system, appointments are made by a group of senior-most judges, a process that has been followed for almost 30 years.

- On 16 October 2015, the Constitution Bench of Supreme Court by a 4:1 majority upheld the collegium system and struck down the NJAC as unconstitutional after hearing the petitions filed by several persons and bodies with Supreme Court Advocates on Record Association (SCAoRA) being the first and lead petitioner.

JUDICIAL TRAINING

NATIONAL JUDICIAL ACADEMY (NJA): The **National Judicial Academy (NJA)**, established in **1993**, is a government-funded institution dedicated to the training of Supreme and High Court judges, as well as judicial officers in India. Located in **Bhopal** with a registered office in **New Delhi**, the NJA focuses on suggesting **judicial reforms** and providing **research support** to enhance efficiency, fairness, and productivity in judicial decisions.

NATIONAL JUDICIAL EDUCATION STRATEGY (NJES): The **National Judicial Education Strategy (NJES)** was launched in **2006** to deliver comprehensive judicial education to High Court judges, District Judiciary, and State Judicial Academies. The NJES encompasses a variety of training methods, including **conferences**, **orientations**, **workshops**, and **seminars** focused on core judicial skills, administration, substantive law, and justice.

TRAINING COMPONENTS: The training programs provided by the NJA include: **Conferences** and **workshops** aimed at enhancing judicial skills and administrative capabilities; **Seminars** covering substantive law and issues of justice; **Online skills registry** for judges to improve **proficiency** and **access** to judicial decisions.

The NJA plays a crucial role in **upgrading the skills** of the judiciary, fostering **continuous learning**, and ensuring that judicial officers are well-equipped to handle the evolving demands of the legal system.

RETIREMENT OF JUDGES

• Retirement Age

- **Supreme Court Judges:** The retirement age is **65 years**.
- **High Court Judges:** The retirement age is **62 years**.
- **District Court Judges:** The retirement age is determined by their respective **State Governments** according to special service rules.

• Debates and Proposals

- **114th Amendment Bill, 2010:** This bill proposed to increase the retirement age of High Court judges from **62 to 65 years**.
- **Venkatachaliah Committee (2000):** It suggested increasing the retirement age of Supreme Court judges from **65 to 68 years**. This recommendation aligns with global comparative standards for judicial retirement.

• Rationale for Increasing Retirement Age

- **Global Standards:** The proposals reflect a trend towards aligning with international practices, which often feature higher retirement ages for judges.
- **Judicial Experience and Recruitment:** Higher retirement ages might encourage **senior lawyers** to accept judicial appointments, as they are currently deterred by the lower retirement age of **62** in High Courts.
- **Quality of Judicial Service:** Concerns exist that the relatively early retirement age may impact the **quality** of judicial service and the ability of judges to manage their workload effectively. Increasing the retirement age is proposed as a solution to these issues, aiming to enhance judicial performance and experience.

Overall, these proposals aim to **improve the effectiveness** of the judiciary by extending the period of service for judges, thereby attracting experienced professionals and addressing concerns related to the quality of judicial output.

UNDERSTANDING THE LINKAGES AMONG APPOINTMENT OF JUDGES, INDEPENDENCE OF JUDICIARY, AND RULE OF LAW IN A DEMOCRACY

1. **Success of democracy:** A robust, impartial, and independent judiciary is vital for the effective administration of justice in a democracy.

Comparison of Judicial Retirement Ages

- **United States:** No mandatory retirement age for Supreme Court judges.
- **Australia:** Retirement age for High Court judges is 70.
- **Canada:** Supreme Court judges must retire at 75.
- **United Kingdom:** Retirement age for Supreme Court judges is 75.
- **South Africa:** Constitutional Court judges retire at 70 or after serving for 12 years, whichever comes first.

2. **Judicial independence vs accountability:** While both independence and accountability are crucial for maintaining the rule of law, they can sometimes appear conflicting.
3. **Importance of accountability:** Accountability acts as a safeguard to prevent the misuse of judicial independence.
4. **Mechanisms for accountability:** Processes like the selection, discipline, and removal of judges, based on constitutional and legal frameworks, help maintain this accountability.
5. **Emphasis on judicial independence:** Justice P. Sathasivam (2014) stressed that the rule of law cannot flourish without judicial independence, underlining its importance for democracy.

4. Removal of Judges

Process of Impeachment: Judges of the Supreme Court and High Courts can be removed through a process known as **impeachment**, which is uniformly applicable to both types of courts as specified in the Indian Constitution. The grounds for impeachment are: **Proven Misbehaviour** and **Incapacity**. An inquiry into these grounds is conducted under the **Judges Inquiry Act, 1986**. This inquiry is carried out by a **three-member committee**, consisting of two judges: one from the Supreme Court and one from the Chief Justice of the High Court. If the complaint involves a High Court judge, the committee includes two Supreme Court judges.

Impeachment Procedure: If the committee finds sufficient grounds for impeachment, the Chief Justice of India makes a recommendation to the President of India. If accepted, the impeachment proposal must be introduced in Parliament. The proposal requires support from: **100 MPs in the Lok Sabha** and **50 MPs in the Rajya Sabha**. The concerned judge receives a copy of the proposal before the parliamentary proceedings commence.

Parliamentary Process: According to **Article 124(4) of the Constitution**, the impeachment motion must be passed by a **two-thirds majority** of the members present and voting in each house of Parliament. If successful, the impeachment is formally announced by the President. The impeachment process is thus notably **lengthy and complex**.

Historical Context: The impeachment process in India has been successfully completed only once: **Justice Soumitra Sen (pic right)**, Chief Justice of Calcutta High Court, was impeached in 2011 for misappropriation of funds. In 1991, an impeachment process was initiated against **Justice V. Ramaswamy**, Chief Justice of Punjab and Haryana High Court, but it failed to meet the two-thirds voting requirement.

Removal of Lower Judiciary Judges
: For judges in the lower judiciary, such as District Judges or Additional District Judges, removal can be carried out by the **State Government** in consultation with the High Court.





"Montesquieu's Separation of Powers: In *The Spirit of the Laws*, Montesquieu argues for dividing government into legislative, executive, and judicial branches to prevent tyranny. His theory emphasizes that each branch must operate independently while checking the others to protect individual liberty and maintain democratic balance."

1. Introduction

(a) Judicial Review - General

Judicial review is a legal principle that allows courts to examine and assess executive or legislative actions, such as laws or administrative decisions, to ensure they comply with the constitution. In countries like the United States, France, and Canada, courts can invalidate or nullify laws or executive actions if they are found to be unconstitutional. In contrast, the United Kingdom has more restricted judicial review powers; its courts cannot overturn or nullify acts of Parliament. Different countries may have various limitations on judicial review, with some reviewing only specific branches of government.

(b) Separation of Powers - General

The **doctrine of separation of powers** is crucial in understanding judicial review. This doctrine, which is discussed elsewhere in legal studies, involves **dividing the government into three branches—legislative, executive, and judiciary**. Each branch has distinct powers and responsibilities as defined by the constitution. This separation ensures that no single branch

becomes too dominant or misuses its powers. It establishes checks and balances, allowing each branch to monitor and limit the powers of the others, thereby preventing concentration of power and preserving liberty.

The **separation of powers promotes efficiency and encourages democratic discussion** by ensuring that each branch operates within its defined limits. **Judicial review plays a key role in maintaining these checks and balances** by ensuring that the other branches adhere to their constitutional boundaries.

Another related concept is the **division of powers between federal and state or provincial governments**. This doctrine delineates which matters fall under federal jurisdiction (e.g., national defence, foreign affairs) and which are under state or provincial control (e.g., prisons, direct taxes). The division of powers also includes areas where both levels of government can legislate. Courts have the authority to review and declare laws unconstitutional if they exceed or violate these jurisdictional boundaries.

In India, which follows a parliamentary system, the separation of powers is outlined in the Indian Constitution. The executive branch consists of the President, Prime Minister, and the bureaucracy. The legislative branch includes the Lok Sabha and the



Separation of Powers

- **Legislative:** Makes laws (Lok Sabha, Rajya Sabha)
- **Executive:** Implements laws (President, Prime Minister, Bureaucracy)
- **Judiciary:** Interprets laws (Supreme Court)

- **Checks and Balances:**
 - Legislative monitors Executive.
 - Judiciary checks both Legislative and Executive.

Rajya Sabha. The judiciary, with the Supreme Court as its apex institution, is independent and responsible for interpreting the Constitution, ensuring that the other branches act within their constitutional limits.

2. SCOPE OF JUDICIAL REVIEW IN INDIA

Judicial review is a fundamental aspect of the Indian Constitution, playing a crucial role in upholding constitutional principles, values, and supremacy. This power is vested in both the Supreme Court and the High Courts, enabling them to review legislative and administrative actions. The primary focus of judicial review in India has been the protection and enforcement of fundamental rights, though it also extends to issues related to legislative competence and fairness in executive actions. Here is an overview of its scope:

(a) INDIVIDUAL AND GROUP RIGHTS

ARTICLE 13(2) of the Indian Constitution mandates that the State cannot enact laws that infringe upon the fundamental rights outlined in Part III of the Constitution. Laws that contravene this provision are deemed void to the extent of the infringement. **B. R. Ambedkar, the chairman of the Constitution drafting committee, referred to this article as the 'heart of the Constitution'** because it explicitly empowers courts to conduct judicial reviews concerning fundamental rights.

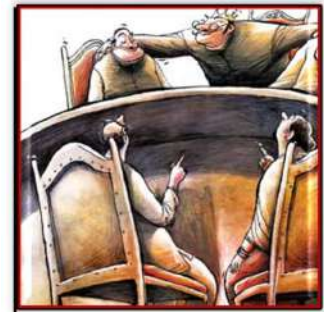
ARTICLE 32 grants the Supreme Court the authority to enforce these fundamental rights. It allows individuals to approach the Supreme Court directly for the enforcement of their rights. The Supreme Court can issue various orders and writs, including:

1. **Habeas Corpus:** Ordering the release of an unlawfully detained person.
2. **Mandamus:** Directing a public authority to perform its duty.
3. **Prohibition:** Preventing a subordinate court from continuing a case.
4. **Quo Warranto:** Directing a person to vacate a public office held unlawfully.
5. **Certiorari:** Removing a case from a subordinate court for review.

Similarly, **ARTICLE 226** provides High Courts with the power to issue writs for the enforcement of fundamental rights within their jurisdiction.

The scope of judicial review has evolved, particularly with regard to the doctrine of **locus standi** (the right to bring a case before the court). Courts have broadened this doctrine to allow those who might not otherwise have access to the judicial system, due to poverty or social and economic disadvantages, to seek redress. This has led to the development of **Public Interest Litigation (PIL)**, where any concerned citizen can petition the court on behalf of individuals or groups whose rights have been violated.

Overall, judicial review in India serves as a mechanism to safeguard individual and group rights, ensure legislative competence, and maintain fairness in executive actions, reflecting the dynamic nature of constitutional governance.



Division of Powers:

- Federal: National defense, foreign affairs
- State: Prisons, direct taxes
- Both: Education, health

JUDICIAL REVIEW OF LEGISLATIVE COMPETENCE: Judicial review also involves assessing the legislative competence of the Centre and the States. Courts ensure that laws enacted by either level of government do not breach the constitutional demarcation of powers between them.

FAIRNESS IN EXECUTIVE ACTIONS: In examining executive or administrative actions, courts use doctrines such as 'proportionality', 'legitimate expectation', 'reasonableness', and the 'principles of natural justice'. These doctrines help ensure that executive actions adhere to legal standards and are not arbitrary or unjust.

Public Interest Litigation (PIL): Courts have broadened the doctrine of **locus standi** (the right to bring a case) to include individuals who, due to poverty or social and economic disadvantages, might not otherwise have access to the judiciary. This has led to the rise of **Public Interest Litigation (PIL)**, enabling any concerned citizen to petition the court on behalf of individuals or groups whose rights have been violated. Overall, judicial review in India plays a vital role in protecting individual rights, ensuring legislative and executive accountability, and maintaining the rule of law.

(b) CENTRE-STATE RELATIONS

Judicial review plays a crucial role in managing the legislative competencies between the Centre and States. **Article 246** of the Indian Constitution outlines the distribution of legislative powers among the different levels of government:

- **Union List (List I):** Matters exclusively under the jurisdiction of Parliament.
- **Concurrent List (List III):** Matters on which both Parliament and State Legislatures can legislate.
- **State List (List II):** Matters exclusively under the jurisdiction of State Legislatures.

This division ensures clear demarcation of powers but allows for overlap where both Centre and States can legislate on certain issues. Judicial review is essential in this context to ensure that the Centre does not encroach on State powers and vice versa. Courts interpret and enforce these boundaries to prevent overreach by either level of government.

(c) FAIRNESS IN EXECUTIVE ACTIONS

Judicial review in administrative matters often involves applying principles such as 'principles of natural justice', 'reasonableness', 'proportionality', and 'legitimate expectation'. Here are some key examples:

- **Principles of Natural Justice:** Derived from the Latin phrase *audi alteram partem* (hear the other side), this principle ensures that individuals are given a fair opportunity to present their case before decisions affecting their rights are made. In **Maneka Gandhi v. Union of India**, the Supreme Court ruled that the confiscation of a passport without a prior hearing violated natural justice principles. The Court held that even in urgent situations, a post-decision hearing should be provided if a prior hearing is impractical.
- **Requirement of Disclosure of Reasons:** Courts mandate that administrative decisions be accompanied by reasons, even if not explicitly required by statute. This practice ensures

transparency and accountability, preventing arbitrary actions and upholding the principles of natural justice by informing the affected parties of the rationale behind decisions.

- **Reasonableness:** This principle is particularly relevant in cases involving state action. For instance, in state contracts, which concern public welfare, the courts require that the state acts reasonably rather than with unchecked discretion. The principle ensures that state actions align with public interest and are not arbitrary.
- **Proportionality:** This principle ensures that any penalty or punishment imposed is proportionate to the offense. For example, the Supreme Court has ruled that the severity of punishments in court martials must correspond to the gravity of the offense, thereby protecting individuals from excessive or disproportionate penalties.

These principles collectively ensure that executive actions are fair, justified, and adhere to legal standards, thereby reinforcing the rule of law and protecting individual rights.

(d) BASIC STRUCTURE

The Supreme Court has expanded the scope of judicial review to include constitutional amendments by establishing the **doctrine of the basic structure**. This doctrine emerged from the Court's interpretation of **Article 368**, which grants Parliament the power to amend the Constitution. Article 368 states that Parliament may amend the Constitution "by way of addition, variation or repeal of any provision" without specifying limitations on this power.



However, **Article 13(2)** restricts Parliament's ability to enact laws that infringe upon the Fundamental Rights guaranteed under Part III of the Constitution. To bypass this restriction, in 1971, Parliament passed the **24th Amendment** to the Constitution, which modified Articles 13 and 368, ostensibly granting it unlimited authority to amend, including provisions related to Fundamental Rights.

The pivotal **1973 case of Kesavananda Bharati v. State of Kerala** addressed the issue of Parliament's power to amend the Constitution and introduced the **basic structure doctrine**. According to this doctrine, Parliament's power to amend the Constitution is limited by the need to preserve its basic structure—essential features such as secularism, democracy, and federalism. The Supreme Court ruled that any constitutional amendment that undermines or destroys these fundamental features is invalid.

Additionally, the Supreme Court has ruled that **judicial review** itself is a part of the basic structure. This means that any amendment that abolishes or undermines the power of judicial review, particularly concerning Fundamental Rights, is unconstitutional and can be nullified by the Court.