

## Supreme Court & High Court

### Supreme Court

1. The present-day Supreme Court of India started functioning on January 28, 1950. Its predecessor was the Federal Court of India, which was created as per the Government of India Act of 1935.
2. Articles 124 to 147 mentioned in Part V of the Constitution deal with the organisation, independence, jurisdiction, powers, and procedures and so on of the Supreme Court.
3. At present, the strength of the Supreme Court's judges stands at thirty-four judges (one chief justice and thirty-three other judges).
4. Originally, the strength of the Supreme Court was fixed at eight (one chief justice and seven other judges).
5. **Appointment-** The judges of the Supreme Court are appointed by the president. The appointment of the Chief Justice is made 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 chief justice 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.
6. In 2015 the National Judicial Appointments Commission was declared Ultra Vires by the Supreme Court and hence the collegium system still holds the ground mentioned above.
7. **Qualification-** A person to be appointed as a judge of the Supreme Court should have the following qualifications:
  - (i) He should be a citizen of India.
  - (ii) (a) He should have been a judge of a High Court (or high courts in succession) for five years, or (b) He should have been an advocate of a High Court (or High Courts in succession) for ten years; or (c) He should be a distinguished jurist in the opinion of the president.
8. **Oath-** The oath to the judges and CJI is administered by the President or any other person appointed by him for this purpose.
9. **Tenure of Judges -** A. He holds office until he attains the age of 65 years. B. He can resign his office by writing to the president. C. He can be removed from his office by the President on the recommendation of the Parliament.
10. **Removal of Judges** A judge of the Supreme Court can be removed from his Office by an order of the President. However, he can do so 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 - 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 —proved misbehaviour or incapacity.
11. The removal process of both the Supreme Court and High courts are same.
12. The jurisdiction and powers of the Supreme Court can be classified into- Original Jurisdiction, Writ Jurisdiction, Appellate Jurisdiction, Advisory Jurisdiction, A court of Record and so on.
13. Original Jurisdiction - when the case is involved between centre and states or two or more states or centre and two or more states being anti. The first such instance came in 1961 in West Bengal VS the centre.
14. The Constitution has constituted the Supreme Court as the guarantor and defender of the fundamental rights of the citizens. 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. The difference between the supreme court's and high court's writ jurisdiction is that the

supreme court can issue writs in cases involving only fundamental rights and the high courts can issue writs otherwise as well.

## High Court

1. The institution of high court originated in India in 1862 when the high courts were set up at Calcutta, Bombay and Madras. The fourth one was established at Allahabad in 1866 and subsequently in other provinces in British India and then as they were called states after independence.
2. As per the Seventh Amendment Act of 1956, the Parliament can establish a common high court for two or more states or for two or more states and a union territory.
3. At present, there are 24 high courts in the country. Out of them, three are common high courts. Delhi is the only union territory that has a high court of its own (since 1966). The other union territories fall under the jurisdiction of different state high courts.
4. **Appointment of Judges** The judges of a high court are appointed by the President. The chief justice of the High Court is appointed by the President after consultation with the chief justice of India and the governor of the state concerned. For appointment of other judges, the chief justice of the concerned high court is also consulted. In case of a common high court for two or more states, the governors of all the states concerned are consulted by the president.
5. **Qualifications of Judges** A person to be appointed as a judge of a high court should have the following qualifications: A. He should be a citizen of India. B. (a) He should have held a judicial office in the territory of India for ten years, or (b) He should have been an advocate of a high court (or high courts in succession) for ten years.
6. **Oath or Affirmation** Oath to the judge is administered by the governor of the state or some person appointed by him for this purpose.
7. **Tenure of Judges** - A. He holds office until he attains the age of 62 years. B. He can resign his office by writing to the president. C. He can be removed from his office by the President on the recommendation of the Parliament. D. He vacates his office when he is appointed as a judge of the Supreme Court or when he is transferred to another high court.