



TNPSC GROUP I / II - PRELIMINARY WORKSHEET

Supreme Court உச்ச நீதிமன்றம்

Introduction (அறிமுகம்)

- Indian Constitution has established an integrated judicial system with the Supreme Court at the top and the high courts below it.
- Under a high court and below the state level there is a hierarchy of subordinate courts, that is, district courts and other lower court.
- This single system of courts, adopted from the Government of India Act of 1935, enforces both Central laws as well as the state laws.
- In USA, on the other hand, the federal laws are enforced by the federal judiciary and the state laws are enforced by the state judiciary. There is thus a double system of courts in USA – one for the centre and the other for the states.
- The Supreme Court of India was inaugurated on January 28, 1950. It succeeded the Federal Court of India, established under the Government of India Act of 1935.
- This is because, the Supreme Court has replaced the British Privy Council as the highest court of appeal.
- The Parliament is also authorised to regulate them.

Composition and appointment (கட்டமைப்பு மற்றும் நியமனம்)

Article 124: Establishment and constitution of Supreme court.

At present, the Supreme Court consists of thirty-four judges (one chief justice and thirty three other judges).

The Parliament has increased this number of other judges progressively to ten in 1956, to thirteen in 1960, to seventeen in 1977; to twenty-five in 1986, to thirty in 2008 and to thirty-three in 2019.

Appointment of Judges (நீதிபதிகள் நியமனம்)

Sl. NO	Act (Year)	Maximum number of judges fixed (Excluding chief justice of India)	Maximum number of judges fixed (Including chief justice of India)
1	Article 124 of the constitution	7	8
2	Supreme Court (Number of Judges) Act, 1956	10	11
3	Supreme Court (number of judges amendment Act, 1960	13	14
4	Supreme court (number of judges) amendment Act, 1977	17	18
5	Supreme Court (number of judges) Amendment Act, 1986	25	26
6	Supreme Court (number of judges) Amendment Act, 2008	30	31
7	Supreme Court (number of judges) Amendment Act, 2019	33	34

The judges of the Supreme Court are appointed by the President.

The chief justice is appointed by the President after consultation with such judges of the Supreme Court and high courts as deems necessary.

The other judges are appointed by President after consultation with the chief justice and such other judges of the Supreme Court and the high courts as deems necessary.

Controversy over Consultation (ஆலோசனை முறை மீதான சர்ச்சை)

First Judges case - 1981 (முதலாவது நீதிபதிகள் வழக்கு)

- The Court held that consultation does not mean concurrence and it only implies exchange of view.

Second Judges case - 1993 (இரண்டாவது நீதிபதிகள் வழக்கு)

- (1993): the Court reversed its earlier ruling and changed the meaning of the word consultation to concurrence.
- Hence, it ruled that the advice tendered by the Chief Justice of India is binding on the President in the matters of appointment of the judges of the Supreme Court.
- But, the Chief Justice would tender his advice on the matter after consulting two of his seniormost colleagues.

Third Judges case - 1998 (மூன்றாவது நீதிபதிகள் வழக்கு)

- 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 chief justice of India does not constitute the consultation process.
- He should consult a collegium of four seniormost judges of the Supreme Court and even if two judges give an adverse opinion, he should not send the recommendation to the government.
- The 99th Constitutional Amendment Act of 2014 and the National Judicial Appointments Commission Act of 2014.

- Have replaced the collegium system of appointing judges to the Supreme Court and High Courts with a new body called the National Judicial Appointments Commission (NJAC).

Fourth Judges case - (நான்காவது நீதிபதிகள் வழக்கு)

- However, in 2015, the Supreme Court has declared both the 99th Constitutional Amendment as well as the NJAC Act as unconstitutional and void.
- Consequently, the earlier collegium system became operative again.
- This verdict was delivered by the Supreme Court in the Fourth Judges case (2015). The court
- opined that the new system (i.e., NJAC) would affect the independence of the judiciary.

QUALIFICATIONS, OATH AND SALARIES (தகுதிகள், உறுதிமொழிகள், ஊதியம் மற்றும் படிகள்)

Qualifications of Judges (நீதிபதிகளின் தகுதிகள்)

A person to be appointed as a judge of the Supreme Court should have the following qualifications:

1. He should be a citizen of India.
2. (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.

From the above, it is clear that the Constitution has not prescribed a minimum age for appointment as a judge of the Supreme Court.

Oath or Affirmation (உறுதிமொழிகள்)

A person appointed as a judge of the Supreme Court, before entering upon his Office, has to make and subscribe an oath or affirmation before the President. In his oath, a judge of the Supreme Court

swears:

1. to bear true faith and allegiance to the Constitution of India;
2. to uphold the sovereignty and integrity of India;
3. to duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of the Office without fear or favour, affection or ill-will; and
4. to uphold the Constitution and the laws.

Salaries and Allowances (ஊதியம் மற்றும் படிகள்)

Article 125: Salaries, etc., of Judge

- 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.
- In 2018, the salary of the chief justice was increased from ₹1 lakh to ₹2.80 lakh per month and that of a judge from ₹90,000 to ₹2.50 lakh per month.
- They are also paid sumptuary allowance and provided with free accommodation and other facilities like medical, car, telephone, etc.
- The retired chief justice and judges are entitled to 50 per cent of their last drawn salary as monthly pension.

TENURE AND REMOVAL (பதவிக்காலம் மற்றும் பதவிநீக்குதல்)

Tenure of Judges (பதவிக்காலம்)

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

1. He holds office until he attains the age of 65 years.
2. He can resign his office by writing to the president.
3. He can be removed from his office by the President on the recommendation of the Parliament.

Removal of Judges (நீதிபதிகளை நீக்கும் முறை)

- 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 (நீதிபதிகள் விசாரணை சட்டம்)

Regulates the procedure relating to the removal of a judge of the Supreme Court by the process of impeachment:

1. A removal motion signed by 100 members (in the case of Lok Sabha) or 50 members (in the case of Rajya Sabha) is to be given to the Speaker/Chairman.
2. The Speaker/Chairman may admit the motion or refuse to admit it.
3. If it is admitted, then the Speaker/Chairman is to constitute a three-member committee to investigate into the charges.
4. The committee should consist of (a) the chief justice or a judge of the Supreme Court, (b) a chief justice of a high court, and (c) a distinguished jurist.
5. If the committee finds the judge to be guilty of misbehaviour or suffering from an incapacity, the House can take up the consideration of the motion.
6. After the motion is passed by each House of Parliament by special majority, an address is presented to the president for removal of the judge.
7. Finally, the president passes an order removing the judge.

The first case of impeachment is that of Justice V. Ramaswami of the Supreme Court (1991-1993).

The word 'impeachment is not used in the constitution in relation to the removal of judges. However, it is used only in the case of the removal of the president.

ACTING, ADHOC AND RETIRED JUDGES (தற்காலிக நீதிபதிகள் நியமனம்) **Acting Chief Justice**

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

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

Ad hoc Judge (தற்காலிக நீதிபதிகளை நியமித்தல்)

- 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.

Retired Judge (ஓய்வு பெற்ற நீதிபதிகள்)

- At any time, the chief justice of India 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.

SEAT AND PROCEDURE (அமைவிடம் மற்றும் நடைமுறைகள்)

Seat of Supreme Court

Article 130: Seat of Supreme Court

- The Constitution declares Delhi as the seat of the Supreme Court.
- But, it also authorises the chief justice of India 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.

Procedure of the Court (நீதிமன்றத்தின் நடைமுறைகள்)

- 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 decided by single judges and division benches. The judgements are delivered by the open court.

INDEPENDENCE OF SUPREME COURT (சுதந்திரமான அமைப்பு)

- It is a federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and guardian of the Constitution.
- It should be free from the interferences of the executive (council of ministers) and the Legislature (Parliament).
- It should be allowed to do justice without fear or favour.

1. Mode of Appointment (நியமன முறை)

- The judges of the Supreme Court are appointed by the President (which means the cabinet) in consultation with the members of the judiciary itself (ie, judges of the Supreme Court and the high courts).

2. Security of Tenure (பாதுகாப்பான பணிக்காலம்)

- The judges of the Supreme Court are provided with the Security of Tenure. They can be removed from office by the President only in the manner and on the grounds mentioned in the Constitution.

3. Fixed Service Conditions (பணிக்காலம் கட்டுப்பாடுகள்)

- 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 changed to their disadvantage after their appointment except during a financial emergency.

4. Expenses Charged on Consolidated Fund

(ஊதியம் இந்திய குவிப்பு நிதியிலிருந்து வழங்கபடுதல்)

- The salaries, allowances and pensions of the judges and the staff as well as all the administrative expenses of the Supreme Court are charged on the Consolidated Fund of India.

5. Conduct of Judges cannot be Discussed

(நீதிபதிகளின் நடத்தைகளை விவாதிக்க இயலாது)

- The Constitution prohibits any discussion in Parliament or in a State Legislature with respect to the conduct of the judges of the Supreme Court.

6. Ban on Practice after Retirement

(ஓய்வு பெற்ற பின்பு மீண்டும் பணிபுரிய அனுமதி இல்லை)

- The retired judges of the Supreme Court are prohibited from pleading or acting in any Court or before any authority within the territory of India.

7. Power to Punish for its Contempt

(அவமதிப்பிற்கு தண்டனை வழங்கும் அதிகாரம்)

- The Supreme Court can punish any person for its contempt.

8. Freedom to Appoint its Staff (ஊழியர்களை சுதந்திரமாக நியமிக்கும் அதிகாரம்)

- The Chief Justice of India can appoint officers and servants of the Supreme Court without any interference from the executive.

9. Its Jurisdiction cannot be Curtailed (எல்லை வரம்பு குறைக்க இயலாது)

- The Parliament is not authorized to curtail the jurisdiction and powers of the Supreme Court. The Constitution has guaranteed to the Supreme Court, jurisdiction of various kinds. However, the Parliament can extend the same.

JURISDICTION AND POWERS OF SUPREME COURT

(உச்சநீதிமன்றத்தின் அதிகாரங்கள் மற்றும் வரம்புகள்)

- ✓ The Constitution has conferred a very extensive jurisdiction and vast powers on the Supreme Court.
- ✓ It is not only a Federal Court like the American Supreme Court but also a final court of appeal
- ✓ like the British House of Lords (the Upper House of the British Parliament).
- ✓ It is also the final interpreter and guardian of the Constitution and guarantor of the fundamental rights of the citizens. Further, it has advisory and supervisory powers.
- ✓ Therefore, Alladi Krishnaswamy Ayyar, a member of the Drafting Committee of the Constitution, rightly remarked: "The Supreme Court of India has more powers than any other Supreme Court in any part of the world." The jurisdiction and powers of the Supreme Court can be classified into the following:
 - Original Jurisdiction. (முதல் ஏற்பு அதிகார வரம்பு)
 - Writ Jurisdiction. (நீதிப்போரணை அதிகார வரம்பு)
 - Appellate Jurisdiction. (மேல் முறையீட்டு அதிகார வரம்பு)
 - Advisory Jurisdiction. (ஆலோசனை வழங்கும் அதிகார வரம்பு)
 - A Court of Record. (ஆவண நீதிமன்றம் அதிகார வரம்பு)
 - Power of Judicial Review (நிதிமறுஆய்வு)
 - Constitutional Interpretation (அரசியலமைப்பு விளக்கம்)
 - Other Powers. (இதர அதிகாரங்கள்)

1. Original Jurisdiction (முதல் ஏற்பு அதிகார வரம்பு)

Article 131: Original jurisdiction of the Supreme Court

As a federal court, the Supreme Court decides the disputes between different units of the Indian Federation.

- a) Between the Centre and one or more states; or
- b) Between the Centre and any state or states on one side and one or more other states on the other side; or
- c) Between two or more states. In the above federal disputes, the Supreme Court has exclusive original jurisdiction.

Exclusive means, no other court can decide such disputes and original means, the power to hear such disputes in the first instance, not by way of appeal.

2. Writ Jurisdiction (நீதிப்போரனை அதிகார வரம்பு)

- 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.
- In this regard, the Supreme Court has original jurisdiction in the sense that an aggrieved citizen can directly go 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.

3. Appellate Jurisdiction (மேல்முறையீட்டு அதிகார வரம்பு)

As mentioned earlier, the Supreme Court has not only succeeded the Federal Court of India but also replaced the British Privy Council as the highest court of appeal.

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:

- a) Appeals in constitutional matters. Article 132 – (அரசியலமைப்பு வழக்குகள்)
- b) Appeals in civil matters. Article 133 – (உரிமையில் வழக்குகள்)

- c) Appeals in criminal matters. Article 134 - (குற்றவியல் வழக்குள்)
d) Appeals by special leave. Article 136 - (சிறப்பு வழக்குகள்)

a. Constitutional Matters (அரசியலமைப்பு வழக்குகள்)

In the constitutional cases, an appeal can be made to the Supreme Court against the judgement of a high court if the high court certifies that the case involves a substantial question of law that requires the interpretation of the Constitution.

b. Civil Matters (உரிமையில் வழக்குகள்)

In civil cases, an appeal lies to the Supreme Court from any judgement of a high court if the high court certifies-

- That the case involves a substantial question of law of general importance; and
- That the question needs to be decided by the Supreme Court.

c. Criminal Matters (குற்றவியல் வழக்குகள்)

The Supreme Court hears appeals against the judgement in a criminal proceeding of a high court if the high court-

certifies that the case is a fit one for appeal to the Supreme Court.

d. Appeal by Special Leave (சிறப்பு வழக்குகள்)

The Supreme Court is authorised to grant in its discretion special leave to appeal from any judgement in any matter passed by any court or tribunal in the country (except military tribunal and court martial).

4. Advisory Jurisdiction - Article 143 (ஆலோசனை வழங்கும் அதிகார வரம்பு)

The Constitution (Article 143) authorises the president to seek the opinion of the Supreme Court in the two categories of matters:

- a) On any question of law or fact of public importance which has arisen or which is likely to arise.

- b) On any dispute arising out of any pre-constitution treaty, agreement, covenant, or other similar instruments, which is excluded from the original jurisdiction of the Supreme Court.

In the first case, the Supreme Court may tender or may refuse to tender its opinion to the president. But, in the second case, the Supreme Court 'must' tender its opinion to the president.

So far (2019), the President has made fifteen references to the Supreme Court under its advisory jurisdiction (also known as consultative jurisdiction). These are mentioned below in the chronological order.

1. Berubari Union in 1960
2. Cauvery Water Disputes Tribunal in 1992
3. Rama Janma Bhumi case in 1993

5. A Court of Record (ஆவண நீதிமன்றம்)

Article 129: Supreme Court to be a Court of record

- a) The judgements, proceedings and acts of the Supreme Court are recorded for perpetual memory and testimony.
- b) 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.

6. Contempt of Courts Act (1971) (நீதிமன்ற அவமதிப்புச் சட்டம் 1971)

- In 1961 the government appointed a special committee under the chairmanship of H.N. sanyal, the then Additional Solicitor general of India, to examine the law relating to the contempt of courts.
- This committee submitted its report in 1963. Based on the recommendations made by the committee, the contempt of courts Act, 1971 was enacted by the Parliament.

7. Power of Judicial Review (நீதிப்புனராய்வு அதிகாரம்)

- 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.

8. Constitutional Interpretation (அரசியலமைப்பு விளக்கம்)

- The Supreme Court is the ultimate interpreter of the Constitution. It can give final version to the spirit and content of the provisions of the constitution and the verbiage used in the constitution.
- While interpreting the constitution, the Supreme Court is guided by a number of doctrines.
- In other words, the Supreme Court applies various doctrines in interpreting the constitution.

The important doctrines are mentioned below: (முக்கிய கோட்பாடுகள்)

1. Doctrine of Severability (துண்டிக்கக்கூடிய கோட்பாடு)
2. Doctrine of Eclipse (கிரகண கோட்பாடு)
3. Doctrine of Pith and Substance (பித் மற்றும் பொருள் கோட்பாடு)
4. Doctrine of Colourable Legislation (வண்ணமயமான சட்டத்தின் கோட்பாடு)

9. Other Powers (இதர அதிகாரங்கள்)

- It decides the disputes regarding the election of the president and the vice president. In this regard, it has the original, exclusive and final authority.
- It enquires into the conduct and behaviour of the chairman and members of the Union Public Service Commission on a reference made by the president. If it finds them guilty of misbehaviour, it can recommend to

the president for their removal. The advice tendered by the Supreme Court in this regard is binding on the President.

- It is authorised to withdraw the cases pending before the high courts and dispose them by itself. It can also transfer a case or appeal pending before one high court to another high court.
- Its law is binding on all courts in India. Its decree or order is enforceable throughout the country. All authorities (civil and judicial) in the country should act in aid of the Supreme Court.

Important Articles

Articles	Subject
1. Articles 124	Establishment and Constitution of Supreme Court
2. Articles 124 C	Power of Parliament make to law
3. Articles 125	Salaries, etc., of Judge
4. Articles 126	Appointment of acting chief justice
5. Articles 127	Appointment of ad hoc judge
6. Articles 129	Supreme court to be a Court of Record
7. Articles 128	Attendance of retired Judges at sittings of The Supreme Court
8. Articles 130	Seat of Supreme court
9. Articles 131	Original jurisdiction of Supreme court
10. Articles 132	Appellate jurisdiction of Supreme Court in Appeals from High Courts in certain cases.
11. Articles 133	Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters.
12. Articles 134	Appellate jurisdiction of Supreme Court in Regard to criminal matters.
13. Articles 136	Special leave to appeal by the Supreme Court
14. Articles 137	Revisory Jurisdiction
15. Articles 138	Enlargement of the jurisdiction of the Supreme Court
16. Articles 139A	Power to transfer certain cases
17. Articles 140	Ancillary powers of Supreme Court
18. Article 141	Power of Superintendence over Sub - ordinate court as the Highest court in India, the Supreme court enjoy superintendence over sub -ordinate court.

19. Article 142(1)	<p>Unique Power of the court under</p> <p>Subsection 1 of article 142 provides a unique power to the supreme court, to do complete justice between the parties.</p> <p>According to this provision of 'doing complete justice' the Supreme Court shall have full right to pass any order that it considers just.</p> <div> <p>Important Judgements</p> <ul style="list-style-type: none"> • Release of A. G Perarivalan and other convicts • Bhopal Gas Tragedy Case • Liquor Sale Ban Case </div>
20. Articles 143	Power of President to consult Supreme Court.
21. Articles 144	Civil and judicial authorities to act in aid
22. Article 145	Power of Regulating the practice and procedure of the court
23. Article 145(4)	Open Court Judgement
24. Articles 146	Officers and servants and the expenses of The Supreme Court

Master of Roster : The chief justice is Known as the Master of the Roster

Amicus Curiae: An amicus is an advocate who is not representing a party in the case, appointed to assist the court in the matter before the court

Here are some specific recommendations regarding the judiciary from the Second Administrative Reforms Commission (ARC) report:

1. **National Judicial Commission:** The ARC recommended setting up a National Judicial Commission to oversee the appointment, transfer, and discipline of judges.
2. **Judicial Appointments:** The ARC suggested that judicial appointments should be made through a transparent and merit-based process, involving the Chief Justice of India, the Law Minister, and other stakeholders.

3. **Alternative Dispute Resolution:** The ARC recommended promoting alternative dispute resolution mechanisms, such as mediation and arbitration, to reduce the burden on the judiciary.
4. **Court Management:** The ARC suggested introducing modern court management systems, including e-filing, e-service, and video conferencing.
5. **Judicial Infrastructure:** The ARC recommended upgrading judicial infrastructure, including court buildings, libraries, and IT facilities.
6. **Gram Nyayalayas:** The ARC suggested establishing Gram Nyayalayas (village courts) to provide accessible and affordable justice to rural communities.

Judicial Review (நீதிப்புனராய்வு)

The doctrine of judicial review originated and developed in the USA.

It was propounded for the first time in the famous case of Marbury versus Madison (1803) by John Marshall, the then chief justice of the American Supreme Court.

In India, on the other hand, the Constitution itself confers the power of judicial review on the judiciary (both the Supreme Court as well as High Courts).

Further, the Supreme Court has declared the power of judicial review as a basic feature of the Constitution or an element of the basic structure of the Constitution.

MEANING OF JUDICIAL REVIEW (விளக்கம்)

Judicial review is the power of the judiciary 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 judiciary.

Consequently, they cannot be enforced by the Government.

Justice Syed Shah Mohamed Quadri has classified the judicial review into the following three categories

1. Judicial review of constitutional amendments.
2. Judicial review of legislation of the Parliament and State Legislatures and subordinate legislations.
3. Judicial review of administrative action of the Union and State and authorities under the state

The Supreme Court used the power of judicial review in various cases, as for example, the Golaknath case (1967), the Bank Nationalisation case (1970), the Privy Purses Abolition case (1971), the Kesavananda Bharati case (1973), the Minerva Mills case (1980), and so on.

In 2015, the Supreme Court declared both the 99th Constitutional Amendment, 2014 and the National Judicial Appointments Commission (NJAC) Act, 2014 as unconstitutional and null and void.

CONSTITUTIONAL PROVISIONS FOR JUDICIAL REVIEW

(நீதித்துறை மறு ஆய்வுக்கான அரசியலமைப்பு விதிகள்)

Though the phrase 'Judicial Review' has nowhere been used in the Constitution, the provisions of several Articles explicitly confer the power of judicial review on the Supreme Court and the High Courts.

1. Article 13 declares that all laws that are inconsistent with or in derogation of the Fundamental Rights shall be null and void.
2. Article 32 guarantees the right to move the Supreme Court for the enforcement of the Fundamental Rights and empowers the Supreme Court to issue directions or orders or writs for that purpose.

Judicial Activism (நீதித்துறை செயல்பாடு)

This term was first coined in 1947 by Arthur Schlesinger Jr., an American historian and educator.

In India, the doctrine of judicial activism was introduced in mid- 1970s. Justice V.R. Krishna Iyer, Justice P.N. Bhagwati, Justice O. Chinnappa Reddy and Justice D.A. Desai laid the foundations of judicial activism in the country.

MEANING OF JUDICIAL ACTIVISM (பொருள்)

Judicial activism denotes the proactive role played by the judiciary in the protection of the rights of citizens and in the promotion of justice in the society.

In other words, it implies the assertive role played by the judiciary to force the other two organs of the government (legislature and executive) to discharge their constitutional duties.

“Judicial activism can be defined as the process of lawmaking by judges.

It means an active interpretation of existing legislation by a judge, made with a view to enhance the utility of that legislation for social betterment.

Public Interest Litigation

(பொது நல வழக்கு)

The concept of Public Interest Litigation (PIL) originated and developed in the USA in the 1960.

In India, the concept of PIL is closely related to the concept of judicial activism.

In other words, the PIL is an outcome of judicial activism.

In fact, the PIL is the most popular form (or manifestation) of judicial activism.

In India, the PIL was introduced in the early 1980. Justice V.R Krishna Iyer and Justice P.N. Bhagwati were the pioneers of the concept of PIL.

The PIL is also known variously as Social Action Litigation (SAL), Social Interest Litigation (SIL) and Class Action Litigation (CAL).

Meaning OF PIL (பொருள்)

Under the PIL, any public-spirited citizen or a social organisation can move the court for the enforcement of the rights of any person or group of persons who because of their poverty or ignorance or socially or economically disadvantaged position are themselves unable to approach the court for the remedies.

The PIL is absolutely necessary for maintaining the rule of law.

SCOPE OF PIL (தீராக்கம்)

Following categories alone will ordinarily be entertained as PIL:

1. Bonded labour matters
2. Neglected children
3. Non-payment of minimum wages to workers.
4. Petitions from jails complaining of harassment
5. Petitions against police for refusing to register a case
6. Petitions against atrocities on women
7. Petitions from riot-victims
8. Family pension



High Court (மாநில உயர்நீதிமன்றம்)

- In the Indian single integrated judicial system, the high court operates below the Supreme Court but above the subordinate courts.

• Article 214: High court for States

- The judiciary in a state consists of a high court and a hierarchy of subordinate courts.
- The high court occupies the top position in the judicial administration of a state.
- The institution of high court originated in India in 1862 when the high courts were set up at Calcutta, Bombay and Madras.
- These three High Courts were set up under the provision of the Indian High Courts Act, 1861.
- In 1866, a fourth high court was established at Allahabad.

• Article 231: Establishment of a Common High Court for two or more state

- The Constitution of India provides for a high court for each state, but the Seventh Amendment Act of 1956 authorized the Parliament to establish a common high court for two or more states or for two or more states and a union territory.
- At present (2019), there are 25 high courts in the country.
- Among the eight union territories, Delhi alone has a separate high court (since 1966). The union territories of Jammu and Kashmir and Ladakh have a common high court.
- The other union territories fall under the jurisdiction of different state high courts.

- Articles 214 to 231 in Part VI of the Constitution deal with the organization, independence, jurisdiction, powers, procedures and so on of the high courts.

Composition And Appointment (நியமனம் மற்றும் அமைப்பு)

- Every high court (whether exclusive or common) consists of a chief justice and such other judges as the president may from time to time deem necessary to appoint.

Appointment of Judges (நீதிபதிகள் நியமனம்)

Article 217: Appointment and conditions of the office of a Judge of a High Court

- The judges of a high court are appointed by the President.
- The chief justice 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 the Second Judges case (1993), the Supreme Court ruled that no appointment of a judge of the high court can be made, unless it is in conformity with the opinion of the chief justice of India.
- Third Judges case (1998), the Supreme Court opined that in case of the appointment of high court judges, the chief justice of India should consult a collegium of two senior-most judges of the Supreme Court.

QUALIFICATIONS, OATH AND SALARIES

(தகுதிகள் உறுதிமொழிகள் மற்றும் ஊதியம்)

Qualifications of Judges (நீதிபதிகளின் தகுதிகள்)

A person to be appointed as a judge of a high court, should have the following qualifications:

1. should be a citizen of India.

2. should have held a judicial office in the territory of India for ten years; or
3. should have been an advocate of a high court (or high courts in succession) for ten years.

From the above, it is clear that the Constitution has not prescribed a minimum age for appointment as a judge of a high court.

Oath or Affirmation (உறுதிமொழி)

A person appointed as a judge of a high court, before entering upon his office, has to make and subscribe an oath or affirmation before the governor of the state or some person appointed by him for this purpose.

1. to bear true faith and allegiance to the Constitution of India;
2. to uphold the sovereignty and integrity of India;
3. to duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of the office without fear or favour, affection or ill-will; and
4. to uphold the Constitution and the laws.

Salaries and Allowances (ஊதியம் மற்றும் பதிகள்)

- The salaries, allowances, privileges, leave and pension of the judges of a high court are determined from time to time by the Parliament.
- In 2018, the salary of the chief justice was increased from ₹90,000 to 2.50 lakh per month and that of a judge from ₹80,000 to 2.25 lakh per month.
- The retired chief justice and judges are entitled to 50% of their last drawn salary as monthly pension.

TENURE, REMOVAL AND TRANSFER

(பதவிக்காலம் பதவிநீக்கம் பணி மாறுதல் செய்தல்)

Tenure of Judges (பதவிக்காலம்)

The Constitution has not fixed the tenure of a judge of a high court.

1. holds office until he attains the age of 62 years. Any questions regarding his age is to be decided by the president after consultation with the chief justice of India and the decision of the president is final.
2. Can resign his office by writing to the president.
3. can be removed from his office by the President on the recommendation of the Parliament.
4. vacates his office when he is appointed as a judge of the Supreme Court or when he is transferred to another high court.

Removal of Judges (பதவிநீக்கம்)

- A judge of a high 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 the 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 (i.e., a majority of the total membership of that House and 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.
- Thus, a judge of a high court can be removed in the same manner and on the same grounds as a judge of the Supreme Court.

The Judges Enquiry Act (1968) regulates the procedure relating to the removal of a judge of a high court by the process of impeachment:

1. A removal motion signed by 100 members (in the case of Lok Sabha) or 50 members (in the case of Rajya Sabha) is to be given to the Speaker/Chairman.
2. The Speaker/Chairman may admit the motion or refuse to admit it.
3. If it is admitted, then the Speaker/Chairman is to constitute a three-member committee to investigate into the charges.
4. The committee should consist of
 - a. the chief justice or a judge of the Supreme Court,
 - b. a chief justice of a high court, and

c. a distinguished jurist.

5. If the committee finds the judge to be guilty of misbehaviour or suffering from an incapacity, the House can take up the consideration of the motion.
6. After the motion is passed by each House of Parliament by special majority, an address is presented to the president for removal of the judge.
7. Finally, the president passes an order removing the judge.

From the above, it is clear that the procedure for the impeachment of a judge of a high court is the same as that for a judge of the Supreme Court.

Transfer of Judges (நீதிபதிகளை மாறுதல் செய்தல்)

- The President can transfer a judge from one high court to another after consulting the Chief Justice of India.
- On transfer, he is entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament.
- In 1977, the Supreme Court ruled that the transfer of high court judges could be resorted to only as an exceptional measure and only in public interest and not by way of punishment.
- Again in 1994, the Supreme Court held that judicial review is necessary to check arbitrariness in transfer of judges.
- Third Judges case (1998), the Supreme Court opined that in case of the transfer of high court judges, the Chief Justice of India should consult, in addition to the collegium of four seniormost judges of the Supreme Court, the chief justice of the two high courts (one from which the judge is being transferred and the other receiving him/ her).

ACTING, ADDITIONAL AND RETIRED JUDGES

(கூடுதல் மற்றும் தற்காலிக நீதிபதிகள் நியமனம்)

The President can court as an acting chief justice of the high court when:

1. the office of chief justice of the high court is vacant; or
2. the chief justice of the high court is temporarily absent; or

3. the chief justice of the high court is unable to perform the duties.

Additional and Acting Judges (கூடுதல் மற்றும் மாற்று நீதிபதிகள்)

- The President can appoint duly qualified persons as additional judges of a high court for a temporary period not exceeding two years.

Retired Judges (ஓய்வு பெற்ற நீதிபதிகள்)

- At any time, the chief justice of a high court of a state can request a retired judge of that high court or any other high court to act as a judge of the high court of that state for a temporary period.
- Such a judge is entitled to such allowances as the President may determine.

INDEPENDENCE OF HIGH COURT (உயர்நீதிமன்றத்தின் சுகந்திரதன்மை)

- The independence of a high court is very essential for the effective discharge of the duties.
- It should be free from the encroachments, pressures and interferences of the executive (council of ministers) and the legislature.

1. Mode of Appointment (நியமன முறை)

- The judges of a high court are appointed by the president (which means the cabinet) in consultation with the members of the judiciary itself (i.e., chief justice of India and the chief justice of the high court).

2. Security of Tenure (பாதுகாப்பான பதவிக்காலம்)

- The judges of a high court are provided with the security of tenure. They can be removed from office by the president only in the manner and on the grounds mentioned in the Constitution.

3. Fixed Service Conditions (நிர்ணயிக்கப்பட்ட ஊதியம்)

- The salaries, allowances, privileges, leave and pension of the judges of a high court are determined from time to time by the Parliament.

4. Expenses Charged on Consolidated Fund

(மாநிலக் குவிப்பு நீதியிலிருந்து செலவு செய்தல்)

- The salaries and allowances of the judges, the salaries, allowances and pensions of the staff as well as the administrative expenses of a high court are charged on the consolidated fund of the state.
- Thus, they are non-votable by the state legislature.
- It should be noted here that the pension of a high court judge is charged on the Consolidated Fund of India and not the state.

5. Conduct of Judges cannot be Discussed

(நீதிபதிகளின் நடத்தையை விவாதிக்க இயலாது)

- The Constitution prohibits any discussion in Parliament or in a state legislature with respect to the conduct of the judges of a high court in the discharge of their duties, except when an impeachment motion is under consideration of the Parliament.

6. Ban on Practice after Retirement (ஓய்வு பெற்ற பணியாற்ற இயலாது)

- The retired permanent judges of a high court are prohibited from pleading or acting in any court or before any authority in India except the Supreme Court and the other high courts.

7. Power to Punish for its contempt (அவமதிப்பிற்காகத் தண்டிக்கும் அதிகாரம்)

- A high court can punish any person for its contempt. Thus, its actions and decisions cannot be criticised and opposed by anybody.

8. Freedom to Appoint its Staff (ஊழியர்களை சுகந்திரமான நியமிக்கும் அதிகாரம்)

- The chief justice of a high court can appoint officers and servants of the high court without any interference from the executive.

JURISDICTION AND POWERS OF HIGH COURT

(உயர்நீதிமன்றத்தின் அதிகாரங்கள் மற்றும் எல்லை வரம்பு)

- The High court has been vested with quite extensive and effective powers. It is the highest court of appeal in the state.
- It is the protector of the Fundamental Rights of the citizens. It is vested with the power to interpret the Constitution.

A High court enjoys the following jurisdiction and powers:

1. Original jurisdiction.
2. Writ jurisdiction.
3. Appellate jurisdiction.
4. Supervisory jurisdiction.
5. Control over subordinate courts.
6. A court of record.
7. Power of judicial review.

1. Original Jurisdiction (முதலேற்பு அதிகார வரம்பு)

Article 225: Original Jurisdiction

It means the power of a high court to hear disputes in the first instance, not by way of appeal.

1. Disputes relating to the election of members of Parliament and state legislatures.
2. Enforcement of fundamental rights of citizens.
3. The four high courts (i.e., Calcutta, Bombay, Madras and Delhi High Courts) have original civil jurisdiction in cases of higher value.

Before 1973, the Calcutta, Bombay and Madras High Courts also had original criminal jurisdiction. This was fully abolished by the Criminal Procedure Code, 1973.

2. Writ Jurisdiction (நீதிப்போரனை அதிகார வரம்பு)

Article 226: Writ Jurisdiction

Article 226 of the Constitution empowers a high court to issue writs including habeas corpus, mandamus, certiorari, prohibition and quo warranto for the enforcement of the fundamental rights of the citizens and for any other purpose.

The high court can issue writs to any person, authority and government not only within its territorial jurisdiction but also outside its territorial jurisdiction if the cause of action arises within its territorial jurisdiction.

The writ jurisdiction of the high court (under Article 226) is not exclusive but concurrent with the writ jurisdiction of the Supreme Court (under Article 32).

However, the writ jurisdiction of the high court is wider than that of the Supreme Court.

This is because, the Supreme Court can issue writs only for the enforcement of fundamental rights and not for any other purpose, that is, it does not extend to a case where the breach of an ordinary legal right is alleged.

In the Chandra Kumar case (1997), the Supreme Court ruled that the writ jurisdiction of both the high court and the Supreme Court constitute a part of the basic structure of the Constitution.

3. Appellate Jurisdiction (மேல்முறையீட்டு அதிகார வரம்பு)

- A high court is primarily a court of appeal. It hears appeals against the judgements of subordinate courts functioning in its territorial jurisdiction. It has appellate jurisdiction in both civil and criminal matters. Hence, the appellate jurisdiction of a high court is wider than its original jurisdiction.

Supervisory Jurisdiction (மேற்பார்வை செய்யும் அதிகாரம்)

Article 227: Supervisory Jurisdiction

A high court has the power of superintendence over all courts and tribunals functioning in its territorial jurisdiction (except military courts or tribunals).

This power of superintendence of a high court is very broad because,

- (i) it extends to all courts and tribunals whether they are subject to the appellate jurisdiction of the high court or not;
- (ii) (ii) it covers not only administrative superintendence but also judicial superintendence.

4. Control over Subordinate Courts (கீழமை நீதிமன்றங்களை கட்டுப்படுத்துதல்)

In addition to its appellate jurisdiction and supervisory jurisdiction over the subordinate courts as mentioned above, a high court has an administrative control and other powers over them.

- a. It is consulted by the governor in the matters of appointment, posting and promotion of district judges and in the appointments of persons to the judicial service of the state (other than district judges).
- b. It deals with the matters of posting, promotion, grant of leave, transfers and discipline of the members of the judicial service of the state (other than district judges).

5. A Court of Record (ஆவண நீதிமன்றம்)

Article 215: A Court of Record

- a. The judgements, proceedings and acts of the high courts are recorded for perpetual memory and testimony.
- b. It has power to punish for contempt of court, either with simple imprisonment or with fine or with both.

6. Power of Judicial Review (நீதிப்புனராய்வு அதிகாரம்)

Article 32 Power of Judicial Review

Judicial review is the power of a high 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 high court. Consequently, they cannot be enforced by the government.

Though the phrase 'judicial review' has nowhere been used in the Constitution, the provisions of Articles 13 and 226 explicitly confer the power of judicial review on a high court.

The 42nd Amendment Act of 1976 curtailed the judicial review power of high court. It debarred the high courts from considering the constitutional validity of any central law. However, the 43rd Amendment Act of 1977 restored the original position.

Name	Year of establishment	Territorial Jurisdiction	Seat
Allahabad	1866	Uttar Pradesh	Prayagraj Allahabad (Bench at Lucknow)
Andhra Pradesh	2019	Andhra Pradesh	Amaravati
Bombay	1862	Maharashtra, Goa, Dadra and Nagar Haveli and Daman and Diu	Mumbai (Benches at Nagpur, Panaji and Aurangabad)
Calcutta	1862	West Bengal and Andaman and Nicobar Islands	Kolkata (Circuit Benches at Port Blair and Jalpaiguri)
Chhattisgarh	2000	Chhattisgarh	Bilaspur
Delhi	1966	NCT of Delhi	New Delhi
Guwahati	1948	Assam, Nagaland, Mizoram and Arunachal Pradesh	Guwahati (Benches at Kohima, Aizawl and Itanagar)
Gujarat	1960	Gujarat	Ahmedabad
Himachal Pradesh	1971	Himachal Pradesh	Simla
Jammu and Kashmir & Ladakh	1928	Jammu and Kashmir and Ladakh	Srinagar and Jammu
Jharkhand	2000	Jharkhand	Ranchi

Karnataka	1884	Karnataka	Bengaluru (Benches at Dharwad and Gulbarga)
Kerala	1956	Kerala and Lakshadweep	Ernakulam
Madhya Pradesh	1956	Madhya Pradesh	Jabalpur (Benches at Gwalior and Indore)
Madras	1862	Tamil Nadu and Puducherry	Chennai (Bench at Madurai)
Manipur	2013	Manipur	Imphal
Meghalaya	2013	Meghalaya	Shillong
Orissa	1948	Odisha	Cuttack
Patna	1916	Bihar	Patna
Punjab and Haryana	1947	Punjab, Haryana and Chandigarh	Chandigarh
Rajasthan	1949	Rajasthan	Jodhpur (Bench at Jaipur)
Sikkim	1975	Sikkim	Gangtok
Telangana	1954	Telangana	Hyderabad
Tripura	2013	Tripura	Agartala
Uttarakhand	2000	Uttarakhand	Nainital

Important Fact of High Court

(உயர்நீதிமன்றத்தை பற்றி முக்கிய குறிப்புகள்)

I. Common High Court for more than one state and a Union territory

(ஒன்றுக்கு மேற்பட்ட மாநிலங்கள் மற்றும் யூனியன் பிரதேசங்களுக்கென ஒரு பொதுவான நீதிமன்றம்)

1. Bombay High Court - 1862	i. Maharashtra ii. Goa iii. Dadra and Nagar Haveli iv. Daman and Diu
2. Gauhati high court 1948	i. Assam ii. Nagaland iii. Mizoram iv. Arunachal Pradesh

3. Punjab and Haryana High Court 1947	i. Punjab ii. Haryana iii. Chandigarh
---------------------------------------	---

II. Common High Court for a one State and Union territory

i. Calcutta High Court - 1862	i. West Bengal ii. Andaman and Nicobar Islands
ii. Kerala High Court - 1956	i. Kerala ii. Lakshadweep
iii. Madras High Court - 1862	i. Tamil Nadu ii. Puducherry

III. High Court in Union Territory

i. Delhi High Court - 1966	NCT of Delhi - Bench New Delhi
ii. Jammu and Kashmir Ladakh high court - 1928	i. Jammu Kashmir (Seat - Srinagar) ii. Ladakh (Seat - Jammu)

IV. Chronological order (Ascending order)

Bombay/Calcutta/ Madras High Court (1862)
பம்பாய்/ கல்கத்தா/ சென்னை உயர்நீதிமன்றம் (1862)



Allahabad High Court (1866)
அலகாபாத் உயர்நீதிமன்றம் (1866)



Karnataka High Court (1884)
கர்நாடகா உயர்நீதிமன்றம் (1884)



Patna High Court (1906)
பாட்னா உயர்நீதிமன்றம் (1906)



Jammu and Kashmir and Ladakh High Court (1928)
ஜம்மு காஷ்மீர் மற்றும் லடாக் உயர்நீதிமன்றம். (1928)



Orissa High Court (1948)
Gauhati High Court (1948)
ஒரிசா உயர்நீதிமன்றம் (1948)
ஹேளகாத்தி உயர்நீதிமன்றம் (1948)

V. Descending order (chronological order)

1. Andhra Pradesh ஆந்திரப் பிரதேசம்	2019 2019	Amaravati அமராவதி
2. Tripura திரிபுரா	2013 2013	Agartala அகர்தலா
3. Manipur மணிப்பூர்	2013 2013	Imphal இம்பால்
4. Uttarakhand உத்தரகாண்ட்	2000 2000	Nainital நைனிதால்
5. Jharkhand ஜார்கண்ட்	2000 2000	Ranchi ராஞ்சி
6. Chhattisgarh சத்தீஸ்கர்	2000 2000	Bilaspur பிலாஸ்பூர்

Importance Article

Article	Subject
1. Article 214	High Courts for states
2. Article 215	High Courts to be courts of record
3. Article 216	Constitution of High Courts
4. Article 217	Appointment and conditions of the office of a Judge of a High Court
5. Article 219	Oath or affirmation by judges of High Courts
6. Article 221	Salaries etc., of judges
7. Article 222	Transfer of a judge from one High Court to another
8. Article 223	Appointment of acting Chief Justice
9. Article 224	Appointment of additional and acting judge
10. Article 225	Jurisdiction of existing High Courts
11. Article 226	Power of High Courts to issue certain writs
12. Article 227	Power of superintendence over all courts by the High Court
13. Article 228	Transfer of certain cases to High Court
14. Article 229	Officers and servants and the expenses of High Courts
15. Article 230	Extension of jurisdiction of High Courts to union territories

Amendments

- ❖ 7th Amendment Act 1956 - Provided for the establishment of a common High Court
- ❖ 42th Amendment Act 1976- Curtailed Judicial review of high court
- ❖ 43th Amendment Act - 1977 - Restored the Jurisdiction of the Supreme Court and High Court

Subordinate Courts

சார்நிலை நீதிமன்றங்கள்

The state judiciary consists of a high court and a hierarchy of subordinate courts, also known as lower courts.

The subordinate courts are so called because of their subordination to the state high court.

CONSTITUTIONAL PROVISIONS (அரசியலமைப்பு நிலை)

Articles 233 to 237 in Part VI of the Constitution make the following provisions to regulate the organization of subordinate courts and to ensure their independence from the executive.

Appointment of District Judges (மாவட்ட நீதிபதிகள் நியமனம்)

The appointment, posting and promotion of district judges in a state are made by the governor of the state in consultation with the high court.

Appointment of other Judges (இதர நீதிபதிகள் நியமனம்)

Appointment of persons (other than district judges) to the judicial service of a state are made by the governor of the state after consultation with the State Public Service Commission and the high court.

Control over Subordinate Courts (கீழ்நிலை நீதிமன்றங்களின் மீதான கட்டுப்பாடுகள்)

The control over district courts and other subordinate courts including the posting, promotion and leave of persons belonging to the judicial service of a state and holding any post inferior to the post of district judge is vested in the high court.

Important Article

Article	Subject
Article 233	Appointment of District Judges
Article 234	Recruitment of persons other than District Judge to the Judicial Service
Article 235	Control over Subordinate Courts
Article 236	Interpretation
Article 237	Application of the provisions of this chapter to certain class or classes of magistrates

Tribunals (தீர்ப்பாயங்கள்)

The original Constitution did not contain provisions with respect to tribunals. The 42nd Amendment Act of 1976 added a new Part XIV-A to the Constitution. This part is entitled as 'Tribunals' and consists of only two Articles—Article 323 A dealing with administrative tribunals and Article 323 B dealing with tribunals for other matters.

Important Doctrines of Constitutional Interpretation (அரசியலமைப்பு விளக்கத்தின் முக்கியமான கோட்பாடுகள்)

1. Doctrine of severability (பிரிக்கப்படும் தன்மை கோட்பாடு)

The doctrine of severability is also known as the doctrine of separability. This doctrine was devised by the supreme court to resolve the problem of the validity of laws which are declared as unconstitutional.

When a part of the law is declared as un-constitutional, then a question arises whether the whole of the law is to be declared void or only that part of the law, which unconstitutional should be declared as void. According to this doctrine, if the offending provision of the law can be separated from that provision

which is constitutional, then only that part of the law, which is offending, is to be declared as void and not the whole of the law.

In other words, if the invalid part of the law can be separated from the rest, then the rest may continue to be valid and operative.

Important Cases (முக்கிய வழக்குகள்)

SI.NO	Case (year)	Supreme Court Judgement
1.	A.K. Gopalan vs. State of Madras (1950)	It struck down section 14 of the preventive detention Act (1950) on the ground that it violates the fundamental right under Article 22 of the constitution. It declared the rest of the Act as valid and effective.
2.	Minerva Milla vs. Union of India (1980)	It struck down sections 4 and 55 of the 42 nd amendment act (1976) for being beyond the amending power of the parliament. It declared the rest of the act as valid.

2. Doctrine of waiver (உரிமை மறுப்பு கோட்பாடு)

The doctrine of waiver is based on the premise that a person who is entitled to a right or privilege is at liberty to waive or give up that right or privilege. It is a voluntary renunciation of a known right or privilege.

It involves conscious abandonment of an existing legal right, advantage, benefit, claim or privilege, which except for such a waiver, a party could have enjoyed.

It must be noted here that the doctrine of waiver is not applicable to the fundamental rights in India. In other words, a citizen can not waive his fundamental rights in India.

Important cases relating to the doctrine of waiver

(கோட்பாடுகள் தொடர்பாக முக்கிய வழக்குகள்)

SI.NO	Case (year)	Supreme Court Judgement
1.	Behram Khurshid Pesikaka vs. State of Bombay (1954)	It held that in a criminal prosecution, it is not open to an accused person to waive his fundamental rights and get convicted.

2.	Basheshar Nath vs. Commissioner of income tax (1958)	It rejected the contention of the respondent that the petitioner by voluntarily entering into an agreement to pay the tax had waived his fundamental right guaranteed under article 14. It upheld the contention of the petitioner holding that the fundamental rights could not be waved.
3.	Olga Tellis vs. Bombay municipal corporation (1985) (popularly known as the pavement dwellers case)	It held that a person cannot waive any of the fundamental rights conferred upon him by any of his act and there cannot be any estoppel against the constitution. It asserted that the high purpose which the constitution seeks to achieve by conferment of fundamental rights is not only to benefit the individual but to secure the large interests of the community.
4.	Nar Singh pal vs. Union of India (2000)	It reiterated that the fundamental rights under the constitution cannot be bartered away. It asserted that the fundamental rights cannot be compromised, nor can there be any estoppel against the exercise of fundamental rights.

3. Doctrine of Eclipse (கிரகணத்தின் கோட்பாடு)

The doctrine of eclipse is based on the notion that a pre- constitutional law which is inconsistent with a fundamental right is not a nullity or void from its very inception.

Such a law becomes only inoperative from the data of the commencement of the constitution.

It is overshadowed or eclipsed by the fundamental right and remains dormant but is not dead altogether.

It is not wiped out completely from the statute book.

Formulation of the doctrine (கோட்பாட்டின் உருவாக்கம்)

- The doctrine of eclipse was enunciated by the supreme court in the Bhikaji case (1955).
- In this case section 43 of the motor vehicles act (1939) was amended by the central provinces and Berar motor vehicles (amendment act 1947).
- This provision empowered the state government to take over the motor transport business to the exclusion of individual operations.
- But it became void with the commencement of the constitution in 1950 as it violated the fundamental right under article 19(1)(g).
- Later, the 1st Amendment Act (1951) amended Article 19(6) and enabled the government to take over any trade or business either exclusively or in competition with the individuals.
- Consequently the State Government issued a notification to take over the motor transport business.
- This notification was challenged in the Supreme Court.
- The State Government argued that from January 26, 1950 to June 18, 1951, Section 43 of the Motor Vehicles Act (1939) remained invalid, but the amendment of the provision under Article 19(6) by the 1st Amendment Act (1951) made the same Section 43 of the Act valid again.
- Finally, the Supreme Court held that the impugned Act became, for the time being, eclipsed by the fundamental right but the amendment of Article 19(6) removed the shadow.
- In other words, the court upheld the validity of the notification by applying the doctrine of eclipse.

4. Doctrine of territorial nexus (பிராந்திய இணைப்பு கோட்பாடு)

Meaning of the Doctrine

The doctrine of territorial nexus is related to Article 245 which deals with the extent of laws made by the Parliament and the State Legislatures.

1. The Parliament is empowered to make laws for the whole or any part of the territory of India. In addition, it can also make "extra-territorial legislation". This implies that the Parliamentary laws are applicable not only to the persons and property within the territory of India but also to the Indian citizens and their property in any part of the world.
2. A State Legislature is empowered to make laws for the whole or any part of the state. Unlike the Parliament, a State Legislature cannot make "extra-territorial legislation".

From the above, it is clear that the laws made by a State Legislature are not applicable outside the state.

5. Doctrine of pith and substance (பகுதி மற்றும் சாராம்சக் கொள்கை)

Article 246 deals with the division of legislative powers between the Parliament and the State Legislatures. It specifies the different subjects of legislation in three lists, namely, List 1 (Union List), List II (State List) and List III (Concurrent List). Accordingly, the Parliament or a State Legislature should make laws within their respective jurisdictions and should not encroach upon the other's sphere. If it encroaches, then the validity of the law enacted by it is determined by applying the doctrine of pith and substance.

6. DOCTRINE OF COLOURABLE LEGISLATION

(மறைமுக சட்டத்தின் கோட்பாடு)

- The constitution (under Article 246) provides for the division of legislative powers between the Parliament and the State Legislatures. It enumerates the legislative subjects in three lists, namely, the Union List, the State and the Concurrent List under the Seventh Schedule. Both are required to operate within their respective legislative competence.

- But, some times, a legislature makes a law which, though in form appears to be within its competence, in effect and substance lies beyond its ambit. Then the law would be declared as void. In other words, the different colour given to the law (by the legislature so as to bring it within its ambit) would not save it from being declared as invalid. Such a law is called as colourable legislation.

7. Doctrine of precedent (or the doctrine of stare decisis)

(முன்னோடி கோட்பாடு (அல்லது உற்று நோக்கும் தீர்மானத்தின் கோட்பாடு))

- The doctrine of precedent (or the doctrine of stare decisis) is an English doctrine. According to this doctrine, the lower courts are bound by the decisions of the higher courts.

Basis of the Doctrine (அடிப்படை கோட்பாடு)

- The doctrine of precedent has been incorporated in Article 141 of the Constitution. According to this provision, the law declared by the Supreme Court shall be binding on all courts within the territory of India.
- Hence, all the courts and tribunals including the High Courts in India are required to follow the decisions of the Supreme Court.

8. DOCTRINE OF OCCUPIED FIELD (மண்டல ஆக்கிரமிப்பு கோட்பாடு)

The doctrine of occupied field says that when The Parliament enacts a law on a particular subject and thereby occupies the field, a State Legislature will not have authority to make any law on that field.

In other words, according to this doctrine, when a legislative field is already occupied by a central legislation, there would be no scope for a state legislation in that field.

This doctrine is also known as the doctrine of covered field.

DOCTRINE OF PROSPECTIVE OVERRULING

(முன்னோக்கு மேலாண்மை மீறுதல் கோட்பாடு)

Meaning of the Doctrine

The doctrine of prospective overruling is American doctrine.

It was applied in India for the first time by the Supreme Court in the Golak Nath case (1967).

When a court overrules its earlier decision and announces a new ruling, it can restrict the application of the new ruling only to the future transactions so that the validity of the past transactions is not affected.

This is known as the doctrine of prospective overruling.

9. DOCTRINE OF HARMONIOUS (இணக்கமான கோட்பாடு)

When different provisions of the constitution are found to be in conflict with each other, the courts should interpret them harmoniously so as to avoid the conflictual implications between them.

This is known as the doctrine of harmonious construction.

This doctrine is also called as the rule or avoidance of conflict.

Application of the Doctrine

The Supreme Court has applied the doctrine of harmonious construction to reconcile the conflict.

1. Between the fundamental rights and directive principles of state policy.
2. Between fundamental rights and amendment procedure.

10. Doctrine of Liberal Interpretation (தாராளவாத விளக்கக் கோட்பாடு)

According to the doctrine of liberal interpretation, the constitution must be interpreted in a broad and liberal manner and not in a narrow or pedantic sense.

In other words, a broad and liberal spirit should inspire the interpreters of the constitution.

The doctrine of liberal interpretation envisages that the constitution should be interpreted not as a mere law but as the machinery by which the laws are to be made.

It assumes that the constitution is a living and organic thing and hence, it must be interpreted broadly and liberally.

11. Doctrine of Promissory Estoppel

(உறுதிமொழி எஸ்டோப்பலின் கோட்பாடு)

Promissory estoppel is a legal principle that prevents a person from going back on a promise that they made, even if the promise was not supported by a contract. This doctrine was in the news owing to the SC rejecting a petition challenging the Delhi High Court's verdict on the Agnipath Scheme.

12. Doctrine of Laches (லேக்கேஸின் கோட்பாடு)

- Laches means delay.
- The outcome is that a legal right or claim will not be enforced or allowed if a long delay in asserting the right or claim has prejudiced the adverse party.
- Elements of laches include knowledge of a claim, unreasonable delay, neglect, which taken together hurt the opponent.
- It is well known that one who wants remedy must come before the court within a reasonable time.
- Lapse of time violates equity and it is against the concept of justice.