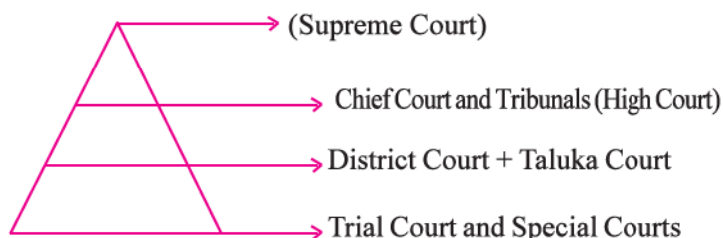


We have studied in detail about the two organs of the Government, the Legislative and the Executive. Now we shall study in detail about the third organ of the Government, the Judiciary, which is the independent, statutory and impartial organ of the government.

The Consitution of India provides for a systematic, organized and uniform judicial system throughout India. The Indian judiciary system is in the form of a pyramid hierarchy. We have established a uniform



judiciary and in it at the top most level there is a Supreme Court which is the Apex court at the middle level there are High Courts and under their jurisdiction are the District Courts at the district level and at the taluka level there are Local and Special courts. Apart from these there are Trial Courts and Tribunals, which are established to cater to various objectives.

Importance of Judiciary

A neutral and impartial Judiciary is essential in the Federal System for the protection and preservation of the rights of the Indian citizens and to solve any incongruity between the Center and State or between One State and the other State regarding the division of workload. The Judiciary is an important organ as to interpret Constitutionality of any provision of any Law so that the supremacy of the Constitution prevails. In order that the Legislature or the Executive do not violate any of the Constitutional limitations, we require in a country, Independent, firm, impartial and fearless Judiciary which is the foundation of democracy. The objective of the Constitution is to see that in the Judiciary process there is no flaw or delay and the citizens get quick, cheap and equal justice.

In the presence of alert Legislature and Executive, the Judiciary would always remain active; but many a times due to administrative inactiveness and irresponsibility of the Executive and an authoritativeness of the Legislature impartial, cognizant, independent and fearless Judiciary has shown Judicial inactiveness.

Apex Court (Supreme Court)

Supreme Court is at the apex of the Indian Judiciary. As per the Constitution of India it is the top most judicial organization. It is situated in Delhi. All the civil and criminal courts of India have to work under the jurisdiction of the Supreme Court. The Supreme Court consists of one chief justice and 28 additional judges. The chief justice of the Supreme Court is appointed by the President of India. The number of judges in the Supreme Court is decided by the Parliament but if the President feels that the workload of the Supreme Court is increased then the President can appoint additional adhoc judges to the Supreme Court as per the provision of the Constitution. The judges in the Supreme Court are appointed on the basis of seniority. Except for the chief justice of the Supreme Court all the other judges are appointed in consultation with the chief justice as well as other senior judges.

Qualifications : A person who is appointed as judge of the Supreme Court should be -

- (1) A citizen of India.
- (2) Should have provided a service of at least 5 years as a judge in any one of the High Court of India or
- (3) Should have an experience of at least 10 years as an advocate in any of the High Court of India or
- (4) Should be a distinguished judge or a famous jurist as per the opinion of the President or
- (5) Should not be more than 65 years of age.

Thus the retirement age is 65 years for the judges of the Supreme Court.

Time Period : The retirement age is 65 years for a judge of the Supreme Court. However the change in the age of retirement can be made by the Parliament through framing a law. They cannot carry the practice of law in any of the Indian courts but they can provide their services in committees appointed to investigate into uncommon situations or events. If incapable to carry out their duties before the time of retirement then under such circumstances they can resign willingly from their posts by tendering written resignation to the President. But the judges can be removed from their posts and power if they are found to be guilty of incapability, misconduct or inefficiency. This removal is in accordance with the provisions of the constitution and is carried out through “Impeachment Motion in Parliament.” The procedure for it is as follows. Every House of Parliament has to submit a memorandum having majority support to the President of the total number of members and at least 2/3 (two third) number of the members present in the respective session. Based on the presentation, by the order of the President, the judge can be removed from his post. The Parliament monitors the presentation of the memorandum regarding the misbehaviour of the judge and the conducting of the investigation as well as the conducting of proof for the same. The concerned judge is given the opportunity to present his narration in his self-defence in the Parliament.

The President of India administers the oath of secrecy and loyalty towards the Constitution, to the judges who are appointed to the Supreme Court. Before taking the charge of their posts the judges are required to take the oath in oral as well as sign the pledge.

The Power and Jurisdiction of the Supreme Court

The Supreme Court of India possesses more powers and has vast jurisdiction in comparison to any other country of the World. This jurisdiction can be divided into Original Jurisdiction, Appellate Jurisdiction and Advisory Jurisdiction.

(1) Original Jurisdiction : When a court has a power to directly give judgment after hearing a case, such a power is known as Original Jurisdiction and the Supreme court has the power to make decision regarding the case, which no other courts has. Under this jurisdiction the following parties should be involved whose conflicts are resolved by the Supreme Court.

- (i) It has the power to settle the dispute between the Government of India and one or more states.
- (ii) It has the power of resolving difference of opinions, fights or conflicts between the Government of India and one or more states on the one side and one or more other States.
- (iii) It has complete power to give judgment regarding fights or quarrells between State-States.
- (iv) The Supreme Court has the right to give judgement concerning any set of Union Government or constitutionality.
- (v) It has the power to protect and preserve the Fundamental Rights of the citizen of India. Moreover it is empowered to issue of Habeas Corpus Mandamus or order of prohibition.

It is not in the jurisdiction of the Supreme Court to settle disputes related to the distribution of river waters between State-State, States-State, State-States or States-States. A separate ‘Water Tribunal’ gives Judgment. The judgment of the Supreme Court is final and it cannot be challenged anywhere. They have to be respected by all.

(2) Appellate Jurisdiction: three types of appeals can be made in the Supreme Court under the Appellate Jurisdiction. (i) Cases of Constitutional interpretation (ii) Appeal against the civil cases (iii) Appeal against criminal cases.

(i) Any person can approach a Supreme Court against the judgment, order or writ given by the High Court on any case only if a certificate is issued by the High Court along with the judgment that the case involves any matter pertaining to the constitution which has been falsely interpreted or contains any important question of law and hence the petitioner can appeal in the Supreme Court for the same. If any such

certification is not given by the High Court and if the petitioner approaches the Supreme Court then in such circumstances if the Supreme Court finds that any constitutional right is violated then it can accept the petitioner's appeal. But in any of the circumstances only the petitioner who is a party in the working of High Court, can approach the Supreme Court, only under the reasons that a false judgment is issued by the High Court or any other Court.

(ii) In case of the civil cases if the High Court certifies that the case involves important question of interpretation of law and that the case holds general importance and it is necessary that Supreme Court decides, then an appeal can be made in the Supreme Court. Judgment of any civil cases involving a sum of rupees one lakh or more can be challenged in the Supreme Court.

(iii) In case of the criminal cases if any lower court has acquitted the criminal from a capital punishment and in that case the High Court has given capital punishment to the criminal then in such circumstances an appeal can be made in the Supreme Court. The Supreme Court can review its own judgments. It can transfer cases, that are going on in other courts to the Supreme Court. The Parliament can **increase** the powers of the Supreme Court by framing Act.

(3) Advisory Jurisdiction : If the President feels that any particular matter or question holds importance from the point of view of public welfare then the President can take a counsel of the Supreme Court by sending the matter or question to the Supreme Court for consideration. Under this provision the President can avail counsel from the Supreme Court in the questions pertaining to law, reality, and constitutional interpretation or relevancy of any Bill. But if the Supreme Court finds it unnecessary to consider or give opinion on the sent matter it can send it back to the President. And it is not mandatory for the President to follow the advice or counsel given by the Supreme Court.

(4) Other powers : A Supreme Court has the power to review its own judgment or decision. The Supreme Court can punish for 'Contempt of the Court'. Supreme Court has a power to nullify any steps, law taken by the Executive if it violates the Constitution. This right has been given to the President in the constitution under the provision of Right to Constitutional Remedies. Supreme Court is thus the guardian and saviour of the constitution and citizens.

Court of Records

Court of Records holds an evidential value and when any records from the court are presented, no objection can be taken against it. The judgments and decisions of the Supreme Court are considered as permanent documents and all are bound to accept it. They are used as references by the subordinate courts while giving judgments and decisions. Any court showing its contempt or disapproval can be punished.

High Court

One of the key positions in the continuous hierarchical pyramid of the Indian Judiciary is occupied at the state level by the High Courts. High Court is the apex court at state level. The constitution provides one high court for every state. The President has the power to form one High Court for two or more states. In India there is one common High Court for the states of Punjab, Haryana and Chandigarh. Similarly under the jurisdiction of the High Court of Assam falls the states of Manipur, Meghalaya, Nagaland, Tripura, Mizoram and Arunachal Pradesh.

Formation : The chief justice of the High Court is appointed by the President in consultation with the chief justice of the Supreme Court and the governor of the respective state. The chief justice of High Court is consulted in the appointment of the other judges of the High Court. A President is a representative of the Prime Minister and the Cabinet of Ministers and hence only President appoints a chief justice only after discussion and consultation with the Prime Minister and the Cabinet Ministers.

The age limit of judges of the High Court is 62 years. They can tender resignation addressed to the President. The President can remove any of the judges of the High Court through the process of impeachment carried out in the Parliament and on **proving the charges** of misconduct or **malpractice** of the judges. The judges of the High Court can be transferred anywhere in India. The number of judges is not the same in all the High Courts of India. If the President feels that the workload of the High Court has increased then he can appoint adhoc in-charge judges to the High Court for a period of two years. All the work of the Supreme Court and the High Court is carried out in English language but if any Legislative Assembly of any state passes a resolution that the work of the High Court of related state be carried out in the language of that state then the work of the High Court of that state can function in the language of that state.

Qualification : As per the provision of the Constitution the person eligible to be appointed to the High Court (i) Should be a citizen of India (ii) Should have served for a minimum period of 10 years on any of the judicial post in the lower court of the Indian states. (iii) Should have at least 10 years of practice as an advocate in the High Court (IV) Should be a distinguished jurist, constitutional expert or famous law maker as per the opinion of the President. (v) Should be below 62 years of age.

The Judge of the High Court has to take an oath of secrecy in front of the governor of the state or any person appointed by the governor and sign the corresponding Pledge.

The Jurisdiction of the High Court : The power and functions of the High Court can be divided into the following three jurisdictions :

(1) Original Jurisdiction : Under the original jurisdiction the High Court is empowered to issue directions, orders or writs including writs in the nature of Habeas Corpus to any person, authority and any government in case of violation of the fundamental rights of citizens. The High Court has the authority in the cases related to companies, marriage, divorce and alimony. The cases of contempt of court, land revenue and its imbursement, land reforms and returns can also be carried out in the High Court. All writ petitions challenging the judgments given by Lower Court of the civil and the criminal courts can be made in the High Court. These petition challenging the provisions provided in the entrance examination.

(2) Appellate Jurisdiction : Under the appellate jurisdiction of the High Court the court hears the petition against the civil and the criminal cases. Any petition challenging the judgment of the lower courts and tribunals can be made in the High Court. In case a Session Court has issued any judgment punishing the accused for more than 4 years, then the petitioner can challenge the judgment in the High Court. If any accused is given a capital punishment by a Sessions Court in a case of murder for which a less severe punishment is issued by the lower court then in such condition the judgment can be challenged in the High Court. The petitioner who is unsatisfied with the judgment of the Tribunal can also approach a High Court. The High Court has a power to decide upon important questions pertaining to law including constitutional interpretation.

(3) Administrative Jurisdiction : Each High Court has the authority and power to supervise the working of all subordinate courts and Tribunals of the state or of its region. If the High Court feels it is necessary then it can ask case papers from the subordinate court and then carry out the case proceedings. The Court can frame general Laws to control the procedure and Functioning of the Courts under its power. The High Court can decide criteria and tabular form of various types of fees. All these provisions should be in accord and harmony with the Constitution. The High Court can guide and direct the subordinate Courts in the matter of maintaining records and entries.

The High Court occupies the place as the Court of Records. The High Court publishes its judgments, decisions in an organised form.. These Judgements and decision are binding and final for they can use these court decisions and judgments as reference while taking decisions on various cases in future. The lawyers use these published judgments and decisions as citations while pleading their cases. The court has a power to punish for contempt of Court.

The High Court of Gujarat is located on the Sarkhej-Gandhinagar Highway, Sola, Ahmedabad.

Subordinate Courts

Under the guidance and supervision of the High Court of any state there are District and Taluka Courts, Fast Track Court, POTA Courts, Tribunals and certain special courts. Each state is divided into an administrative unit called District, consisting of a Civil Court, Criminal Court and Revenue Court.

District Judge

The appointment and promotion of any individual to the post of a District Judge is done by the Governor of the respective state in consultation with the High Court of that state.

Qualifications : A person being appointed as a District Judge should be a citizen of India, should possess a practice as an advocate for at least seven years. An officer in the judiciary of either the state or the Central Government too is eligible to be appointed as the Judge of the District Court. All the other judges other than the District Judge are appointed by the Governor or the High Court in consultation with the State Public Service Commission in accordance with the rules framed by the Constitution.

The judge who handles the civil suites is called as the District Judge and the Judge who handles the criminal cases is called a Sessions Judge. A District Court hears the petitions challenging the judgments of the lower courts under it. All the civil suits of rupee one lakh or more either by the Government or against the government are carried out in the District Civil Courts. The Judge of the District Court has the power to run the cases of marriage, divorce, alimony, reforms and cases of parental custody.

The criminal courts include Session Court, First Class Judicial Magistrate Court, Second Class Judicial Magistrate Court, Mamlatdar and Executive Magistrate Court. These courts have a power to give punishment of imprisonment ranging from 3 to 10 years and a penalty up to rupees 5000 or more. In case of a murder, the court can give capital punishment, life time imprisonment and life sentence.

Apart from these in a district there are small cause court and family court too. For the case pertaining to land-revenue there is Revenue Court and for the disputes of the labourers there is a Labour Court along with other Tribunals. As per example a Tribunal for compensating vehicle-accidents, for the protection of service and other rights of the teachers and professors there is a 'Gujarat Educational Organisation Service Tribunal', Tribunals for recovering debts, for the protection of consumer's right, 'Consumer's Rights Protection Forum'. These tribunals function like a court and help the cases wherein the petitioners recover their losses and receive compensation. In each district there is a 'Fast Track Court' with an objective to run a case faster. For hearing the cases of POTA, there are POTA Courts in Gujarat. All these courts have gathered importance by decentralizing their administration and function independently, firmly and lawfully. People have started taking all the benefits and have become aware.

Lok Adalats

Gujarat State is first to start Lok Adalats to provide speedy and economical justice to the poor, weak and exploited section of the society. Under this the court provides free support and guidance through 'Legal Aid Service Center' situated in Ahmedabad. Lok Adalats function voluntarily even on Sundays and holidays at the district and taluka headquarters as per the convenience of the petitioners. The Lok Adalats generally hear the cases of accident and is related compensation, divorce, alimony, general debts, personal complaints, police

complaints etc. Lok Adalats consist of advocates, social workers, educationists, reputed citizens, businessmen, police officers, insurance officers, judges and judicial officers. Here cases are settled amicably such that both the parties are satisfied. The cases fought in the Lok Adalats are neither won nor loss. Lok Adalats save time and money. Many pending cases are solved. All the judgments of the Lok Adalats are backed by the law. Therefore the Lok Adalats have become a centre of attraction.

Independence of Judiciary

The Indian Constitution has kept the Judiciary independent, firm and fearless from the Legislature and the Executive for the protection of the fundamental rights of the citizens, for the social, political and economical equality and for providing justice. The Judiciary should not be inclined or biased towards the Government. The terms and conditions for the appointment of judges, the appointment process, pay scales, transfer, promotion, retirement etc. is taken care of by the Executive as per the constitutional provision. The judges are appointed for a specific period of time. The Executives cannot remove any of the judges due to their will or any political pressure. The pay scale, the term of service, promotion, transfer, benefits of promotion, pension fund of the judges cannot be altered. During the term of service of the judges any of their behaviour or their judgments cannot be discussed or critically reviewed in the Parliament or the Legislative Assembly. The judges after their retirement cannot carry out their practice in any of the courts. The purpose is to empower the judges to perform their duties fearlessly, honestly, self reliantly, independently and firmly so that the judges can impart true, transparent and quick justice. The Indian Constitution has given the Judiciary an independent, impartial and uniform place. The cases of public welfare, the questions of public welfare or important problems pertaining to public welfare can be written on a simple post card or an ordinary letter to the Supreme Court. In the past, the Supreme Court has treated such matters as petitions and has given trend setting judgments. This has proved the vigilance of the Judiciary in the public.

At present there are about 3.5 crore pending cases in our Judiciary. Insufficient number of courts, judges and staff is the reason in the delay in justice. The present Central Government has undertaken the task of reframing one and a half thousand old and irrelevant laws.

Exercise

1. Answer the following questions in short :

- (1) State the required qualifications for being appointed as the Judge of the Supreme Court.
- (2) State the powers under the original jurisdiction of the Supreme Court.
- (3) Describe matters that are out of the jurisdiction of the Supreme Court.
- (4) Explain the process of impeachment.
- (5) Describe the powers of the High Court in the criminal cases.
- (6) State the required qualifications of the judge of the High Court.
- (7) Name the various subordinate courts.

2. Explain the following statements :

- (1) Judiciary is the foundation of democracy.
- (2) The Supreme Court is the protector and guardian of the Constitution and citizens.
- (3) The High Court occupies a key position.
- (4) Lok Adalats have become a centre of attraction.
- (5) The functioning of the Judiciary is a boon in case of negligence by the Legislature and the Executive.
- (6) The Supreme Court is considered as a Court of Records.
- (7) The Judges of the Supreme Court cannot practice law in any of the courts after retirement.

3. Write short notes on :

- (1) Independence of the Judiciary.
- (2) Appellate jurisdiction of the High Court.
- (3) Court of Records.
- (4) Lok Adalats and Public Interest Litigations.
- (5) Subordinate courts.

4. Choose the correct option :

- (1) The retirement age for a Judge of Supreme Court and High Court is
(A) 65 and 58 (B) 65 and 60 (C) 60 and 65 (D) 65 and 62
- (2) How many years of experience as a lawyer is required to be appointed as a District Judge ?
(A) Three years (B) Seven years (C) Ten years (D) Five years
- (3) In which state is the High Court of Mizoram and Tripura situated ?
(A) Meghalaya (B) Arunachal (C) Assam (D) Nagaland
- (4) The headquarter of 'Legal Aid service Centre' is situated at ?
(A) Vadodara (B) Rajkot (C) Ahmedabad (D) Gandhinagar
- (5) Who appoints the judges of the Supreme Court ?
(A) Prime Minister (B) President (C) Vice President (D) Law Minister
- (6) Which organization has been formed to settle the complaints of the consumers ?
(A) Free Judicial Counseling Centre (B) Civil Court
(C) Consumer Forum (D) Small Cause Court

Activity

- Form a 'Student Court' and provide direct training to carry out proceeding pertaining to small-big matters of indiscipline in this court. Give judgment as well as order fine.
- Prepare a handwritten issue containing all the details of the chief justice of the Supreme Court and the High Court. Paste pictures.
- Prepare a scrapbook of the trendsetting judgments of the last five years.
- Arrange a debate competition under the chairmanship of an expert MLA on the topic of 'Impartial, fearless and firm Judiciary.'
- Arrange a visit to the Lok Adalat and Consumer Forum and organize an essay competition or report writing.
- Arrange a lecture of any famous MLA on the topic of 'Supremacy of the Judiciary and independence.'
- Organize a poster competition, slogan competition on the occasion of 'Human Rights Day', or 'Consumer Rights Day.' Take out a rally in your area to increase public awareness.

