



### Learning Objectives



- ❖ To discuss the nature and significance of Indian Judiciary.
- ❖ To trace the evolution of Indian Judiciary.
- ❖ To examine the features of the Indian Judiciary.
- ❖ To evaluate the role of the judiciary as the interpreter of the Constitution.
- ❖ To discuss the factors promoting the independence of Judiciary.
- ❖ To explain the nature and significance of Judicial Review, Public Interest Litigation and Judicial Activism.
- ❖ To know light on the nature of Constitutional Law, Administrative Law and Indian Penal Code.
- ❖ To explain the Organisation, Power and Functions of the Supreme Court of India.
- ❖ To know light on the Organisation, Powers and Functions of the High Courts and Sub-ordinate Courts.



What does the judiciary exactly do? I see people trusting the judiciary more than the legislature and the executive. Whenever their rights are violated, they look up to the judiciary and are so confident that their rights and privileges will be safeguarded.

### Supreme Court of India



“The Supreme Court, an all-India Court, will stand firm and aloof from party politics and political theories. It is unconcerned with the changes in the Government. The Court stands to administer the law for the time being in force, has goodwill and sympathy for all, but is allied to none”- Hon’ble Sri Harilal J. Kania, First Chief Justice of India.

The judiciary is one of the three organs of the government, the other two being the Legislature and the Executive. The judiciary is engaged in the interpretation of law and serves as a protector of the Constitution. It guarantees the administration of justice and protects the individual from encroachments of rights and privileges by the government and other individuals. The establishment of an independent and impartial judiciary is a pre-requisite for the functioning of a civilized state. The judiciary assumes greater importance in a federal polity



## Thirukkural



### 1. Recite Thirukkural verses for bail

In February, a Tamil Nadu court reportedly ordered three college students, arrested in an assault case, to recite 10 verses of Thirukkural daily for 10 days totally 100 verses as a condition for granting bail.

The court in Mettupalayam ordered the students, who were charged with assaulting a person, to appear before a Tamil teacher in the Government Boys High School in the area to recite the verses.

The court also asked the head of the school to issue a certificate to the students at the end of the 10th day.

### 2. Madurai Bench paves way for in-depth study of Thirukkural



One of the most significant contribution of the Madurai Bench of the Madras High Court towards promoting the cause of Tamil is a direction issued to School Education Department in 2017 to make 108 out of the 133 chapters of Thirukkural a part of school syllabus. The Madurai Bench direction led to passing of a G.O. for teaching 1330 couplets to students from the academic year 2017-18. It also ensure that students from Class VI to XII get to learn the couplets and their intended meaning in depth and not just superficially as was being done all these years.

Thirukkural is perhaps the only ancient secular text from India that has been translated into 60 languages the world over.



such as India as it also acts as a protector of the federation resolving the conflicts of jurisdiction between the Centre and the States.

### Group Activity



#### What Do You Think?

After carefully reading three case studies read the qualification of a judge given in this chapter.

What kind of a person makes a good judge? Discuss with your team members. Write a paragraph not more than 250 words on what your team would look for in a person before appointing him or her as a judge.

Each group consists of 5 members. Display your group work in the classroom Notice Board.

## 4.1 Evolution of Indian Judiciary

### Judicial System in Ancient India

India has been a Sub – Continent of different races, different cultures, different languages and a multitude of political and social systems. In ancient times, as well as in the medieval times, none of the Indian States was segregating judicial functions from the executive. During the Vedic period, the authority of the head of the family (Kulapa or Kulapato) was insulated from royal interferences; Similarly the clannish or tribal bodies like Grama, Gopa, Vishaya, Jana and Gana enjoyed autonomous powers. In the ancient Indian monarchical orders, the king was considered to be the highest judicial authority. As king's will was the law, his word was the highest and absolute verdict in disputes.

However, most of the disputes were settled and disposed of at the local level through caste bodies or local administrative bodies. Extreme cases like treason were tried in the king's court. There was no regular system of jurisprudence or judicial procedures. Most often the accused was to prove his innocence either through evidences and witnesses or through subjection to different kinds of ordeals such as ordeal by fire, ordeal by water and ordeal by poison.

Punishments (penal system) was severe and even barbaric if blood money was in vogue (less was to be replaced with material compensation)- Whipping, flogging, amputation of limbs, impalement, rigorous imprisonment, enslavement, banishment, confiscation of property, beheading, hanging and trampling by elephants were some of the punishments meted out to the culprits. In kingdoms which came under Brahmanical influence, smritis were invoked in trial as well as in awarding punishments.

There were a number of smritis such as Manusmrit, Narada Smriti, and Yagnavalkya Smritis : of which Manu Smriti was held as a core Smriti, other smritis had certain variations. The Smritis generally upheld the graded varna – Jati social order. There was no 'equality before law' concept. Brahmins were mostly insulated from regular procedures and regular punishments. On any account, Brahmins, even if they committed the most heinous crimes, were to be exempted from physical torture, amputation, impalement or capital punishment. On the other hand the depressed castes were subjected to



severe ordeals and extreme punishments; changing of caste based occupations was treated (Varna Sangraha) as a serious crime.

Arthasastra suggests disproportionate punishments for restricting instances of crimes; penalties levied on culprits, and confiscation of properties as a major source of royal income. The smritis treated women as inferior humans and were prejudiced against them even in matters of inheritance. The Sudras, and Panchamas were ineligible for a fair trial and fair punishment. Trade disputes were mostly settled through guilds (SRENIS). Similarly each artisan group had its own guild to resolve disputes within. The Mahasabhas of the Pallava – Pandya-Chola empires insulated Brahmins from regular system of justice. The Mahasabha's variyam (Dharma variam, Nyaya variam) settled issues within the mahasabhas. The

local bodies like Ur, Urar, Nadu, Nattar and Nagarathar had their own judicial arrangements.

The Buddhist kingdoms (like that of Asoka) mostly disregarded smritis and enforced some sort of equal treatment to various social groups in matters of judicial disputes. Asoka removed cruel punishments and even instructed his official to be more humane and compassionate towards prisoners. The episode involving Kovalan's execution in Silappadikaram reveals the defects in the system of judicial procedure. Though high moral stature of the adjudicating officials were insisted in literature, we very often found arbitrariness in judicial trial and in awarding exemptions or punishments. There was no rule of law but rule of the powerful authorities that we find in ancient India.

## Ordeals

**Trail by Balance:** A palm leaf chit, with the alleged crime inscribed on it was placed on one side of the balance, and the accused was to sit on the other side of the balance. If the plate of the balance on while the accused came down, the accused was declared guilty

**Ordeal of Fire:** The accused was made to walk through fire and was deemed innocent only if the person suffered no injury.

**Ordeal of water :** The accused was made to drink the water used to clean the idol was deemed innocent if it had no harmful effects on him within the next 14 days.

**Ordeal By Poison :** The accused was made to consume poison and was deemed innocent only if did not have any effect on the person.

**Ordeal of Lot :** The accused was asked draw from the lot and was deemed innocent if he chose the lot of dharma.

**Ordeal of Rice Grains :** The accused was made to chow rice without the husk being removed and the presence of blood stains in his mouth resulted in the person being declared guilty.

**Ordeal of Fountain - Cheese :** The accused was compelled to drink a potion that could make him/her delirious and was deemed guilty if the person confessed the crime.



In medieval India, the Muslim rulers had faced a peculiar situation, where the majority of their subjects were Non-Muslims. While they applied Islamic law in cases where Muslims and Muslim interests were involved, they preferred a policy of non-intervention in the socio-religious affairs of the Non-Muslims, hence allowed the traditional system of justice in the rural areas. The Muslim rulers made a clear distinction between civil and criminal disputes and assigned deferent system for each of them. However, in cases of blasphemy, extreme punishment were awarded to the accused.

## 4.2 Judicial System in Medieval India

In Medieval India, the Sultan/Sultana was the supreme authority administering justice in his/her kingdom. He / She administered justice in the following capacities namely Diwan-e-Qaza (Arbitrator), Diwan-e-Mazalim (Head of Bureaucracy) and Diwan-e-Riyasat (Commander-in-Chief). There existed a systematic classification and organization of courts in Medieval India. The administrative divisions were the basis for judicial organization. The jurisdiction of courts at the Capital, Provinces, Districts, Parganas and Villages were clearly demarcated. Generally, at the Capital of Sultanate, the following six courts were established.

- ❖ The King's Court
- ❖ Diwan-Al-Mazalim
- ❖ Diwan-e-Rialat
- ❖ Sadre Jahan's Court
- ❖ Chief Justice's Court
- ❖ Diwan-e-Riyasat

The King's Court was presided over by the Sultan and the Court had both original and appellate jurisdiction. It was the highest court of appeal and in the administration of justice, the Sultan was assisted by Muftis (legal experts). Diwan-Al-Mazalim and Diwan-e-Risalat are the highest courts of appeal in criminal and civil matters respectively. Though these Courts were to be officially presided over by the Sultan, he seldom attended the sessions of the Courts. In the absence of the Sultan, the courts were presided over by Qazi-ul-Quzat, the highest judicial officer of the State. But later, the post of Sadre Jahan was created making him the de-facto head of the judiciary. The Sadre Jahan's Court and the Chief Justice's Court remained separate for long until amalgamated later by Alauddin-Khilji. The Chief Justice's Court dealt with both civil and criminal cases and the Chief Justice was assisted by judges who were men of ability and integrity and were greatly respected. Mufti, Pandit, Mohtasib (in charge of prosecutions) and Dadbak (administrative officer) were the officers attached to the Chief Justice's Court. The Diwan-e-Siyasat was primarily a court dealing with cases of high treason.

## 4.3 Judicial System in Modern India

The East India Company was incorporated in 1600 by the Charter of Queen Elizabeth I. The Charter granted recognition and authority to the Company to facilitate the regulation of trade. With regard to the administration in Madras, the Charter of 1661 led to the appointment of Governor and the Council in each of its



settlement. Once the company became a territorial power, especially at Madras, it introduced an adhoc system of judicial administration, in which the existing native systems were accommodated, as the company preferred a policy of non-intervention in native affairs. The Governor and the Council were empowered to decide on both civil and criminal cases in accordance with the law of England. However, in disputes involving only the natives the native traditions were continued. The year 1665 was of great significance as it witnessed the first trial by jury in Madras in the case of Mrs. Ascentia Dawas during the Governorship of Fox Croft. The appointment of Streynsham Master as the Governor in 1678 resulted in the reorganization of the judicial system of Madras. The Court of the Governor and Council came to be known as the High Court of Judicature and English was declared as the court language. The Charter of 1683 led to the Company establishing Courts of Admiralty to try traders committing various crimes on high seas. The Charter of 1687 authorized the Company to create the Corporation of Madras and the Mayor's Court was attached to it. It functioned as a court of record for the Madras town.

### Activity

Read more about the case of Mrs. Ascentia Dawas, the first trial by jury in Madras.



With regard to the administration of justice in Bombay, the Charter of 1668 authorized the Company to

exercise judicial authority over Bombay. The proclamation of 1672 introduced English Law in Bombay and the Court of Judicature and the new central court was established. The application of English law was confined to cases involving Europeans and European interests. The court exercised jurisdiction over civil, criminal and testamentary cases. Further, Justices of Peace were appointed to administer criminal law. After examining the witnesses and making an initial enquiry, the cases were moved to the Court of Judicature. However, the invasion of Sidi Yakub, the Mughal Admiral led to the dissolution of courts in Bombay in 1690. After 12 years, in 1718, the Court of Judicature was revived. The court had jurisdiction over civil and criminal matters. Though the court met only once a week, it was highly regarded for its speedy trial and impartial decisions.

With regard to the Calcutta Presidency, the Governor and the Council were endowed with judicial powers. In the case of civil and criminal matters, the Company followed the already existing Mughal system of judicial administration. The Faujdari Court presided over by the English Collector decided on the criminal cases and the civil cases were referred to an arbitrator by the Collector. The Collector played a very important role in the judicial administration of Calcutta and the office dealt with civil, criminal and revenue cases.

Thus, the Charter of 1687 applied only to Madras while the Charter of 1726 constituted a Mayor's Court in each of the three Presidencies. The Charter of



1753 further reformed certain judicial provisions of the Charter of 1726. It also set up five courts namely the Court of Requests, the Mayor's Court, the Courts of the President and the Council and the King-in-Council. Another landmark in the evolution of Indian judiciary was the Warren Hasting's Plan of 1772. It regulated the system of judicial administration. In 1780, he also reorganized the Provincial Adalats.

One of the major development in the field of judiciary during the colonial period was the codification of native laws.



**Warren Hastings**



**Cornwallis**

The first Governor General Warren Hastings caused the codification at Hindu Law, and Cornwallis code was another major contribution. Similarly, the Islamic law was also codified and adopted in courts.

The Regulating Act of 1773 empowered the Crown to establish the Supreme Court of Judicature in Calcutta and the Charter of 1774 expounded on the jurisdiction of the court. However, the Supreme Courts were not established at Bombay and Madras during the same period. The Supreme Courts were established in Madras and Bombay in the years 1801 and 1824 respectively. In 1793, Lord Cornwallis prepared "A Set of Regulations" popularly

known as the Cornwallis Code and it dealt with both civil and criminal justice. He reorganized civil courts, abolished court fees and reformed criminal courts. Lord Minto after being appointed as the Governor-General of Bengal in 1807 increased the powers and jurisdiction of the various courts. Lord Hastings who became Governor General in 1813, introduced many reforms in the civil and criminal judicature of the country. Efforts were taken to curb red-tapism in the administration of justice. He was succeeded by Lord Bentinck who reorganized and consolidated the



**Calcutta High Court**



**Bombay High Court**



**Madras High Court**

whole system of judicial administration in India. He abolished the Provincial Courts





of Appeal and their functions were transferred to District Diwani Adalats. Between 1834 and 1861, the King's Court and the Company's Court formed the dual system of courts with separate jurisdictions. The Indian High Courts Act of 1861 empowered the Crown to establish the High Courts of Judicature at Calcutta, Madras and Bombay and this also led to the abolition of Supreme Courts. This was considered a landmark in the evolution of High Courts in India. Later, the Government of India Act of 1935 effected considerable changes in the nature and jurisdiction of the High Courts. Between independence and the enforcement of the Constitution, seven High Courts at Punjab, Assam, Orissa, Rajasthan, Travancore, Mysore and Jammu and Kashmir were established. The other High Courts were established later. The Constitution of India after being enforced recognized all the existing High Courts and empowered the Parliament to establish High Courts for all the States or combined High Courts for two or more States and Union Territories. The 42<sup>nd</sup> Constitutional Amendment Act, 1976 brought in drastic changes in the jurisdiction of the High Courts.

Thus, in the very beginning, there were only the three High Courts of Calcutta, Madras and Bombay. The Acts and regulations prior to independence brought in remarkable changes in their organization and jurisdiction, thereby ensuring their independence and impartiality. After the enforcement of the Constitution, their positions have been strengthened and apart from their original and appellate jurisdiction in civil and criminal cases they also act as the protector and interpreter of the Constitution.

**Source:** Sumeet Malik, V.D. Kulshreshtha's Landmarks in Indian Legal and Constitutional History, EBC Publishing Private Ltd, Lucknow, 2017.

With respect to the establishment of the Supreme Court of India, the Government of India Act, 1935 is a landmark legislation. The Act attempted to change the structure of the Indian government. There was a shift from a 'unitary' to a 'federal' type of government necessitating the need of a Federal Court. Thus, the Act made specific provision in this regard and the Federal Court was inaugurated in the year 1937. It consisted of a Chief Justice and six judges. In 1950, the Federal Court of India was succeeded by the Supreme Court of India. The Federal Court in its short span of 12 years left an indelible impact on the legal history of India. It was the first court with a national jurisdiction. It was from this Federal Court that its successor inherited the traditions of independence, integrity and impartiality. Also, between 1726 and 1833, the role of the Privy Council requires special mention. It contributed immensely to the judicial system of India, laying down the fundamental principles of Indian law that serve as a beacon to the Indian Courts even today.

The Indian Independence Act, 1947 resulted in the transfer of political power and this necessitated the establishment of a separate and independent judicial body. With this objective, the jurisdiction of the Federal Court was enlarged and the Abolition of the Privy Council Jurisdiction Act, 1949 was passed making the Federal Court of India the highest judicial body in





the country. With the enforcement of the Constitution on 26 January 1950, Article 124 provided for the establishment of the Supreme Court of India. Thus, there has been a slow and steady evolution of the Indian judicial system and it has proven to be better and wiser with time.

## Activity

### A Landmark Verdict

In a blow to both the Chhattisgarh government and the Centre, the Supreme Court has declared as illegal and unconstitutional the deployment of tribal youths as Special Police Officers - either as 'Koya Commandos', SalwaJudum or any other force - in the fight against the Maoist insurgency and ordered their immediate disarming. The ruling - issued by Justice B. Sudershan Reddy and Justice S.S. Nijjar on the writ petition filed by social anthropologist Prof. Nandini Sundar and others - strongly indicted the State for violating Constitutional principles in arming youth who had passed only fifth standard and conferring on them the powers of police.

Writing the order, Justice Reddy directed the State of Chhattisgarh to immediately cease and desist from using SPOs in any manner or form in any activities, directly or indirectly, aimed at controlling, countering, mitigating or otherwise eliminating Maoist/Naxalite activities in the State of Chhattisgarh. The Bench made it clear that the State of Chhattisgarh should take all appropriate measures to prevent the operation of any group, including but not limited to SalwaJudum and Koya commandos, that in any manner or form seek to take law into private hands, act unconstitutionally or otherwise violate the human rights of any person. The Bench said "The primordial value is that it is the responsibility of every organ of the State to function within the four corners of constitutional responsibility. That is the ultimate rule of law."

**Courtesy : The Hindu, 3.8.2011.**

### Group Discussion

Teacher can organise a Group Discussion about the landmark judgement of the Supreme Court of India. Time allotted : 20 minutes



**Courtesy :The Hindu,10.3.2005.**

## Activity

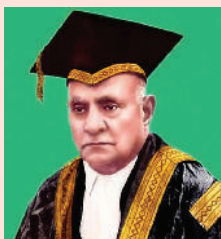


Read more about the Privy Council and have a discussion in class about its significance in the evolution of judicial administration in India.

## Sir Hari Singh Gour



In 1921, Sir Hari Singh Gour was the first person in the legal history of India to realize the necessity of establishing an All-India Court of Final Appeal in place of the Privy Council.



## 4.4 Supreme Court of India

### Uniqueness – Sources of Law – Jurisdiction and Powers – Organization

The Constitution of India provides for a three - tier judicial system:

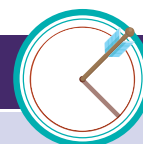
- (1). The Supreme Court of India
- (2). The High Courts in the constituent States and
- (3). The District and Sessions Courts in the judicial districts in every state.



The Constitution also provides for an independent judiciary i.e. independence of the Executive and the legislature. In a

democratic federal polity like India. The Supreme Court assumes a much bigger note as the guardian of the Constitution, as an arbitrator in disputes between States and the Union Government and in disputes among the States, and as the highest appellate Courts in all civil and criminal cases. It is endowed with the onerous responsibility of safeguarding and enforcing the fundamental rights and freedoms of all citizens of India. However, unlike the federal system in the USA, the Constitution of India does not provide for two sets of judiciary (one as federal, another for States). India has only a unitary judiciary system, with the Supreme Court as the apex Court, with authority over all other Courts in India.

## Activity



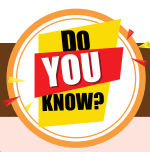
### Newspaper Follow-Up

Follow the newspaper for one month and collect news items related to civil cases in the District and Session court, High Court and Supreme Court of our country. Write the headlines of the news in the chart. Display the chart in the notice board or present your collections in the classroom.

**The Sources of Law :** The Constitution is the fountain source of law in India. Statutes enacted by legislatures of the union, State or Union Territories become another source of law as long as these are in conformity the basics of the Constitution. Besides the subordinate legislations in the form of rules, regulations as well as by – laws of any administrative body, unless and until negated by the judiciary constitute the third source of law.



## Integrated Judiciary



“The Indian Federation, though a dual polity, has no dual judiciary at all. The High Courts and The Supreme Court constitute one single integrated judiciary having jurisdiction and providing remedies in all cases under the Constitutional law, The Civil law or the criminal law. This is done to eliminate all diversities in a remedial procedure”

-Dr. B. R. Ambedkar

### Jurisdiction and Powers on the Supreme Court:

The Supreme Court has original, appellate and advisory jurisdiction. The original jurisdiction of the Supreme Court extends to all cases which can originate in the Supreme Court. These include disputes between the Government of India and one or more States, or between two or more States. In disputes involving fundamental rights, the Supreme Courts has both original and appellate jurisdiction. It can issue Writs of Habeas Corpus, Writ of Mandamus, Writ of prohibition, Writ of Certiorari and the Writ of Quo warranto.

The Supreme Court is the highest or Apex appellate Court in India, where appeals against judgments of High Courts can be made; ( in both civil and criminal cases)

The Supreme Court of India has also been vested with certain Advisory Powers. The President can seek its advice on any legislative measure. However, the advice of the Supreme Court is not binding on the President (Article - 143).

The Supreme Court functions as the guardian of the Constitution; It is the final authority to interpret the Constitutional

## Debate



### Topic : Justice delayed is justice denied

**Justice comes slowly in smaller courts, with 2.91 crore cases pending**

- ❖ With more than 8 lakh cases pending in district and subordinate courts, Uttar Pradesh tops the list of States with the highest number of decade-old-court cases.
- ❖ As per the National Judicial Data Grid, there are 2.91 crore cases pending in district and subordinate courts, out of which 21.90 lakh cases are pending for more than 10 years.
- ❖ Uttar Pradesh is followed by Bihar, with more than 3 lakh pending cases, and Maharashtra with over 2 lakh cases. Sikkim and Andaman and Nicobar are at the bottom with two and no pending cases, respectively.
- ❖ Teacher can organise a Critical Debate on “Justice delayed is justice denied”. Learners can be divided into two groups. One group may justify the topic and another group may disagree.

law, and has the authority to declare any law or executive action, or judgments of lower Courts ‘null and void’ if the Supreme Court find them against the letter and spirit of the Constitution. It is also the apex agency to safeguard the fundamental rights listed out in the Constitution.

### Organization of the Supreme Court

The Supreme Court of India has been established by Part V, Chapter IV



of the Constitution of India. Articles 124 to 147 of the Constitution lays down the composition and jurisdiction of the Supreme Court of India. Originally the Constitution provided for the chief Justice and seven lower ranking Judges. The Constitution enables the Parliament to increase this number. By 2008, the number of judge have been increased from eight to 30. By 2019, there are 34 judges including chief justice.

As to the appointment of the Supreme Court judges, The Chief Justice of India should consult a “Collegium” of four senior most judges of the Supreme Court. The Collegium makes the decision in consensus. Every Judge of the Supreme Court is appointed by the President after consultation with the cabinet and the Judges of the Supreme Court and such Judges shall hold office until they attain the age of sixty five years. If any of the judges wants to lay down office, he can do so through an hand written signed resignation letter to the President; the Parliament can remove a Judge through an impeachment. To be considered for the office of Judge, one must be a citizen of India and his qualification is per the Parliament’s decision, and the should have

been judge of High Court at least for a period of 5 years; or an advocates of a High Court or of two or more such courts in succession for at least 10 years or the person must be, in the opinion of the President, a distinguished jurist.

### Appointments are generally made on the basis of Seniority



In 2007, Justice K.G. Balakrishnan became the first Chief Justice of the Supreme Court from the scheduled caste community.

The Supreme Court of India under the present Constitution commenced functioning on January 28, 1950. It was placed then in the Chamber of Princes in the Parliament. It moved to the present building in 1958.



Harilal J. Kania was the first Chief Justice of the Supreme Court. The other judges who assumed office along with him were Justices Sayid Faze Ali, M. Patanjali Sastri, Mehar Chand Mahajan, Bijan Kumar, Mukherjea and S.R.Das.

### Impeachment

A Judge of the Supreme Court can be tried by an order of the President, after an address by each House of the Parliament supported by a majority of the total membership of that house and by a majority of not less than two thirds of the members of the house present and voting in the same session.

### High Courts

The High Court is the head of a State’s judicial administration and every constituent state is expected to have a High Court. However, at present, four High Courts have jurisdiction over more than one state. Among the Union Territories, Delhi alone has a High Court of its own. Other six Union Territories come under the



Jurisdiction of nearby State High Courts. Each High Court comprises of a Chief Justice and such other Judges as the President may from time to time, appoint. The Chief Justice of the High Court is appointed by the President in consultation with the Chief Justice of India and the Governor of the State. In appointing other judges, the Chief Justice of that High Court is also consulted. The Judges of the High Courts hold office until the age of 62 years and are removable in the same manner as a Judge of the Supreme Court. To be considered for appointment as a Judge one must be a citizen of India and have held a Judicial office in India for 10 years or must have practiced as an advocate of High Court.

The High Courts too have original and appellate jurisdictions, in cases arising within the territories of the State. Each High Court has powers of Super, intendant over all courts within its jurisdiction. Though the High Courts are the party of single and integrated judicial system, yet they are completely independent judicial institutions. The Supreme Court has no direct administrative control over them, nor they are in any way controlled try either the legislature or executive of the State. But the Judger may be transferred from one High Court to another by the President his consultation with the Chief Justice of India.

The High Court too has the power to issue writ in cases involving 'Fundamental Rights'.

### **Legal Remedies for Safeguarding Fundamental Rights**

Both the Supreme Court and High Court have the power to issue writs with

a view to ensure quicker justice and early relief to persons whose rights are violated. There are five such writs.

- 1. Habeas Corpus:** Literally means a demand to produce the person in body. It applies in cases where a person is alleged to have been illegally detained. This writ safeguards personal liberty of every individual.
- 2. Mandamus** is a command to act law fully and to resist from penetrating an unlawful act, It is meant to direct any authority to perform its legal duty. Mandamus may he issued against any authority, Officers, Government or even judicial bodies that tail or refuse to perform a public duty and discharge a legal obligation.
- 3. Prohibition** is issued by a higher Court to a lower court or tribunal for prohibiting it from exceeding its jurisdiction. Writ of Prohibition is issued only against a judicial or quasi – judicial body.
- 4. Certiorari** too lies against judicial or quasi – judicial authorities, and it means 'to be informed'. The writ of certiorari is issued to quash illegal orders of judicial or quasi – judicial bodies
- 5. Quo – Warranto** is a question asking 'with what authority or warrant'. This is meant ascertain the legal position in regard to claim of a person to hold a public office.

Besides these writs, the High Court's under Article 226 may issue other directions and orders in the interests of justice to the people.



## 4.5 Judicial Review, Public Interest Litigation And Judicial Activism

### Judicial Review

The Supreme Court and the High Courts in India are entrusted with the power of judicial review, which extends to adjudicating upon the Constitutionality of legislations as well as the legality of executive action.

Parliamentary and State legislations which contravened Constitutional requirements have been struck down by Judiciary.

Judicial review has been extended to review ability of Constitutional amendments by evolving the doctrine of the basic structure of the Constitution according to which a Constitutional amendment which destroys or damages an essential feature of the Constitution, for example secularism, democracy and federalism, would be unconstitutional.

### Public Interest Litigation

Any citizen of India can approach the courts for public case (upon the interest of the public) by filing a petition under (a) the Supreme Court by article 32, (b) in the High Court under article 226 and (c) in the magistrate court under section 133 of the CRPC. The guidelines provide that Public interest Litigations can be filed under the following categories: 1. Bonded labour matters, 2. Neglected children, 3. Non- payment of minimum wages, 4. Petitions from jails complaining of harassment, death in jail, speedy trial as a fundamental right etc. 5. Petitions against police for refusing to register a

case, harassment of bride, bride burning, rape, murder, kidnapping etc. 6. Petitions complaining harassment or torture of persons belonging to scheduled caste and scheduled tribes. 7. Petitions pertaining to environmental pollution.

The Public interest Litigation jurisdiction forged by the Supreme Court is an extension of its jurisdiction under article 32 of the Constitution. Public interest Litigation is not in the nature of adversary litigation, but it is a challenge and an opportunity to the government and its officers to make such issues as human rights meaningful to the deprived and vulnerable sections of the society and to assure them socio-economic justice which is the signature tune of the Constitution. A Public interest Litigation may be filed against state and central government, municipal authority, but not against any private party.

Recently in India, many cases from the area of Public interest Litigation has come into picture which has been filed in the court of law. As in 2005 a case was decided by the Supreme Court named Common cause society Vs. Union of India. In this Public interest Litigation, the petitioner filed a Public interest Litigation praying to the court to enact a road safety act in view of the numerous road accidents. Secondly, in the Sangammal Pandey Vs. State of UP case the Lucknow bench of the High Court stayed construction activities near Kanshiram memorial up to a specific date.

In the Peoples union for democratic rights Vs. Union of India case, the Supreme Court permitted Public interest Litigations





at the instance of 'public spirited citizens' for the enforcement of Constitutional and legal rights of any person or group of persons who because of their socially or economically disadvantaged position are unable to approach the courts for relief. Public interest Litigation is a part of the process of 'participate justice' and standing in civil litigation, of that pattern which has liberal reception at the judicial doorsteps.



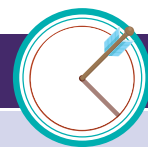
Parmanand Katara

In the Parmanand Katara vs. Union of India case the Supreme Court held in the Public interest Litigation filed by a human rights activist fighting for general public interest, that it is a paramount obligation of every member of the medical profession to give medical aid to every injured citizen as soon as possible without waiting for any procedural formalities.

The law making has assumed new dimensions through judicial activism of the courts. The judiciary has adopted a healthy trend of interpreting law in social context. Judicial activism describes judicial rulings suspected of being based on personal or political considerations rather than on existing law. The question

of judicial activism is closely related to Constitutional interpretation, statutory constructions and separation of powers.

### Activity



Do you as an Indian citizen have the right to disagree with judicial opinion? How will you express your opinion?

In group of three, discuss and make comments for class discussion on:

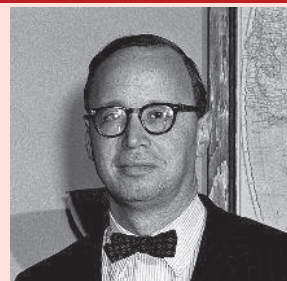
- Criticizing the Judgment of the court
- Consequences of the criticism

The Indian judiciary, being a wing of the State has thus played a more activist role than its US counterpart in seeking to transform Indian society into a modern one, by enforcing the modern principles and ideas in the Constitution through court verdicts. Article 21 of the Constitution has been called up frequently in the Supreme Court. Judgments upon this article suggest the trends of judicial activism.

In the A.K. Gopalan vs. State of Madras case, the Supreme Court rejected the argument that to deprive a person of his life or liberty, not only the procedure prescribed by law for doing so must be

## Judicial Activism

Judicial activism as a dynamic process of judicial outlook in a changing society. Arthur Schlesinger Jr. introduced the term judicial activism in 1947, in America in an article titled 'The Supreme Court; 1947'. According to Black's law dictionary judicial activism is a judicial philosophy which motivates judges to depart from the traditional precedents in favour of new progressive social policies.





**A.K. Gopalan** fair, but reasonable and just. However, subsequently in *Menaka Gandhi vs. Union of India* case this requirement of substantive due process was introduced into article 21 by judicial interpretation. Thus the due process clause, which was avoided by the Constitution makers, was introduced by judicial activism of the Supreme Court.

In subsequent decisions, the Supreme Court has upheld death sentences in cases such as *Bagwan Dass vs. State of Delhi* case, which involved honour killing of a man and woman for marrying outside their caste.

### Australian Courts

In Australia, the highest court is known as the High Court of Australia while the State Courts are known as the Supreme Court.

## 4.6 Constitutional Law, Administrative Law and Indian Penal Code

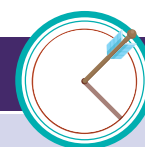
### Constitutional Law

Essentially, The Constitutional law is the supreme law. All other laws have to conform to the Constitutional law. Constitutional law contains laws concerning the government and its people. Constitutional law is a body of laws which defines the role, powers, and structures of different entities of the State, namely, the legislature, the executive and the judiciary, as well as the basic rights of citizens and,

the relationship between the central government and state governments.

Constitutional law is a set of rules, which can either be imposing or directive. It provides a way to regulate the nation by proposing a set of laws which shall be abided by the citizens of the country. It leads the country in the right direction without fail. It includes various fundamental rights, fundamental duties and directive principles. We need Constitutional laws to regulate the system that prevails in the country. It acts as an obligation on the citizens, where they cannot go beyond its fundamental rights, which is a must so as to monitor the whole nation at a time.

### Activity



#### Think-Pair-Share

The Constitution represents people's hopes and objectives. The Legislature, an elected body, represents the people. With your partner, work on the following tasks:

- Who should have more power –The Executive, the Legislature or the Judiciary?
- Give reasons for your answer with examples.

### Rule of Law

The colonial regime introduced the English concept of 'Rule of Law' in India. The three major features of the Rule of Law are

- All are equal before law
- Nobody is above law and
- The same law is applicable to all.



The Rule of Law ensures 'equality of all citizens in the judicial process and reduces the scope of nepotism, favoritism, arbitrariness, unhealthy executive interferences in the judicial process. Rule of Law provides an effective check to the abuse of authority by executives and administrators. The procedural laws and Constitutionally guaranteed fundamental rights ensure enforcement of Rule of Law.

### Administrative Law

Administrative law is a branch of public law. It deals with the relationship of individuals and government. It determines the organization and power structure of administrative and quasi-judicial authorities to enforce the law. It is primarily concerned with official actions and procedures and puts in place a control mechanism by which administrative agencies stay within bounds. There are a few reasons for the development of administrative law in India.

Firstly, India is a 'Welfare State'. Government activities have increased and thus the need to regulate the same. Therefore, this branch of administrative law was developed. Secondly, there is the inadequacy of the legislatures. The legislatures have no time to legislate upon the ever changing needs of the society. Even if it does, the lengthy and time taking legislation procedure would render the rule so legislated of no use as the needs would have changed by the time the rule is implemented.

Thirdly, there is judicial delay in India. The judicial procedure of adjudicating matters is very slow, costly complex and formal. Furthermore, there are so many cases already lined up that speedy disposal of suites is not possible. Hence, the need for administrative

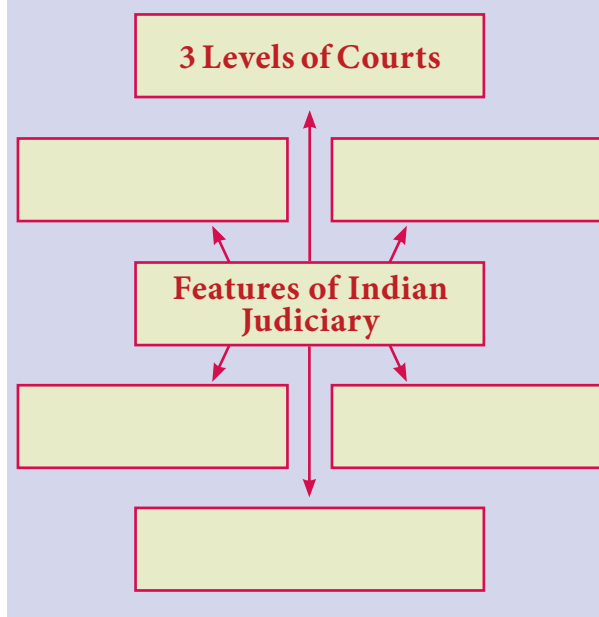
tribunals arose. Fourthly, as administrative law is not a codified law there is a scope of modifying it as per the requirement of the State machinery. Hence, it is more flexible. The rigid legislating procedures need not be followed again and again.

### Difference between Constitutional Law and Administrative Law

There is a basic difference between Constitutional law and administrative law. A Constitutional law is the supreme law of the land. No law is above the Constitutional laws and hence must satisfy its provisions and not be in its violation. Administrative law is therefore subordinate to Constitutional law. Constitutional law deals with the structure of the State and its various organs. Administrative laws deal only with the administration. Administrative authorities should first follow the Constitutional laws and then work as per administrative law.

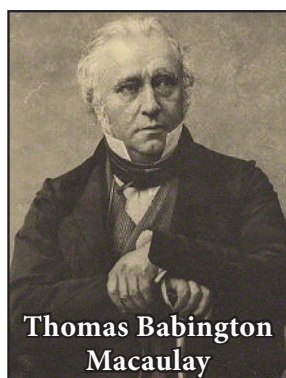
#### Activity

Write a few features of Judiciary.





## Indian Penal Code



The Indian Penal Code is the criminal code of India. It is a comprehensive code intended to cover all substantive aspects of criminal law. The code was drafted in 1860 on the recommendation of the first law commission of India established in 1834. It came into force in British India during the early British Raj period of 1862. The objective of this act is to provide a general penal code for India.

The Indian Penal Code has a basic format, it is a document that lists all the cases and punishments that a person committing any crimes is liable to be charged. It covers any person of Indian citizenship. The exceptions are the military and other armed forces, they cannot be charged based on the Indian Penal Code. They have a different set of laws under the Indian Penal Code as well. The Indian judicial system is one that has evolved into a stable and fair system of detention and penalizing, after being tested well for several years.

The most important feature of the Indian Penal Code is the impartial nature of judgments promoted by the document. The code stands alike for government employees, as for common man, and even for a judicial officer. It prevents any sort of corruption or misuse on the part of the people in power.

## Lok Adalat

Lok Adalat is called as people's court. 'Lok' stands for people, 'Adalat' is court. The Advent of legal services Authority's Act, 1987 gave as statutory status to Lok Adalat. The disputes are settled through mutual agreement between the parties. It is otherwise called speedy settlement of disputes.

## Glossary



- ❖ **Constitution:** It is a body of fundamental principles or established precedents according to which a state or other organization is acknowledged to be governed.
- ❖ **Judiciary:** It is the system of courts that interprets and applies the law in the name of the state.
- ❖ **Fundamental Rights:** They are a group of rights that have been recognized by the Supreme Court as requiring a high degree of protection from government encroachment. These rights are specifically identified in the Constitution.
- ❖ **Trial:** It is a formal meeting in a law court, at which a judge and jury listen to evidence and decide whether a person is guilty of a crime.
- ❖ **Trial by Jury:** It is a lawful proceeding in which a jury makes a decision or findings of fact. It is distinguished from a bench trial in which a judge or panel of judges makes all decisions.
- ❖ **Judicial Review:** It is a process under which executive or legislative actions are subject to review by the judiciary.
- ❖ **Judicial Restraint:** It is a theory of judicial interpretation that encourages judges to limit the exercise of their own power.



- ❖ **Judicial Activism:** It is a philosophy of judicial decision making whereby judges allow their personal views about public policy, among other factors, to guide their decisions.
- ❖ **Public Interest Litigation:** It is the litigation for the protection of the public interest. It is litigation introduced in a court of law, not by the aggrieved party but by the court itself or by any other private party.
- ❖ **Original Jurisdiction:** It is a court's authority to hear a case for the first time.
- ❖ **Appellate Jurisdiction:** It is the power of an appellate court to review, amend and overrule decisions of a trial court or other lower tribunal.
- ❖ **Advisory Jurisdiction:** It is when a lower court or any Constitutional body seeks the advice of the Supreme Court in a matter of law.
- ❖ **Administrative Courts:** It is a type of court specializing in administrative law, particularly disputes concerning the exercise of public power.
- ❖ **Public Law:** It is that part of law which governs relationships between individuals and the government, and those relationships between individuals which are of direct concern to society.

## Evaluation



### I. Choose the correct answer:

1. Which of the following is not an organ of the government?  
(a) Legislature (b) Bureaucracy  
(c) Executive (d) Judiciary
2. Which of the following is described as the protector of the federation?  
(a) Legislature (b) Executive  
(c) Judiciary (d) Cabinet
3. Who among the following was considered 'the fountain of justice' in Ancient India?  
(a) Monarch (b) Senapathi  
(c) Chief Minister (d) Chief Justice
4. Who among the following was the supreme judicial authority in Medieval India?  
(a) Sultan (b) Qazi-ul-Quzat  
(c) Chief Justice (d) Mufti
5. Which of the following Charter authorized the East India Company to exercise judicial authority over Bombay?  
(a) Charter of 1661 (b) Charter of 1813  
(c) Charter of 1668 (d) Charter of 1853





6. Which of the following Charter applied only to the Madras Presidency with regard to the establishment of a Mayor's Court?  
(a) Charter of 1687                      (b) Charter of 1726  
(c) Charter of 1813                      (d) Charter of 1661
7. Which of the following empowered the Crown to establish the Supreme Court of Judicature in Calcutta?  
(a) Charter of 1774                      (b) Regulating Act of 1773  
(c) Cornwallis Code                      (d) Charter of 1726
8. In which year was the Federal Court inaugurated?  
(a) 1937                                      (b) 1936  
(c) 1935                                      (d) 1932
9. Which of the following refers to a theory of judgement that takes into account the spirit of the law and the changing times?  
(a) Judicial Review                      (b) Judicial Activism  
(c) Judicial Restraint                      (d) None of the Above
10. Which of the following is an alternative dispute resolution mechanism in India?  
(a) Supreme Court                      (b) High Court  
(c) District Courts                      (d) Lok Adalats
11. Which of the following Articles empowers the High Courts to issue writs?  
(a) Article 226                              (b) Article 227  
(c) Article 228                              (d) Article 229

## **II. Answer the following questions very shortly:**

1. What were the six courts capital of sultanate?
2. What was the primary function of the Privy Council?
3. Define Judicial Review.
4. Define Judicial Activism.
5. What is Administrative Law?
6. What is Constitutional Law?
7. What is the Indian Penal Code?

## **III. Answer the following questions shortly:**

1. Briefly discuss the factors promoting the independence of judiciary.
2. Briefly discuss the significance of Public Interest Litigations.
3. Give a brief account of the nature and significance of Administrative Law.
4. Write a short note on Lok Adalats.

## **IV. Answer the following questions detail:**

1. Trace the evolution of Indian Judiciary.
2. Examine the salient features of the Indian Judiciary.
3. Discuss the organization, powers and functions of the Supreme Court of India.
4. Discuss the organization, powers and functions of the High Courts.





## Reference Books



- ❖ Justice M. Rama Jois, Legal And Constitutional History Of India: Ancient Legal, Judicial And Constitutional System, Universal Law Publishing Co Ltd, 2010.
- ❖ M.V. Pylee, Constitutional History of India, S.Chand & Co, 2011.
- ❖ Sumeet Malik, Landmarks in Indian Legal and Constitutional History, 11th Edition, New Delhi, 2016.
- ❖ Dr. Subhash C. Kashyap, Constitution of India: Review and Reassessment, Universal Law Publishing Co Pvt Ltd, New Delhi, 2010.

## Web links



- ❖ Supreme Court of India, <https://www.sci.gov.in/>
- ❖ High Courts of India, <http://www.indiancourts.nic.in/>
- ❖ Madras High Court, <http://www.hcmadras.tn.nic.in/>
- ❖ Ministry of Law and Justice, Government of India, <http://lawmin.gov.in/>
- ❖ Law Commission of India, <http://lawcommissionofindia.nic.in/>



## ICT Corner

### Indian Judiciary - IPC

Through this app you will learn more about The Indian Penal Code.



#### Procedure:

- Step - 1** Open Play Store and type Indian Penal Code quiz (or) Scan the QR Code.
- Step - 2** Click START button to open quiz
- Step - 3** Click the correct answer then you will find your Score.

#### URL:

<https://play.google.com/store/apps/details?id=com.IPC.IPC>



\*Pictures are indicative