The Judiciary

Learning Objectives

► To trace the evolution of the Judicial system

► To understand the hierarchical structure of the Indian judiciary

► To explain the Jurisdiction of Supreme court, High Court and Subordinate Courts

► To understand the need for the independent Judiciary

► To know the differences between Civil Law and Criminal Law

"The excellence of the judiciary is a measure of the excellence of the government."

Introduction

The judicial system of a country needs to be efficient in order to ensure proper justice to all. India has a single unified and integrated judicial system. Judiciary plays an important role as an organ of the government. It administers justice, settles disputes, interprets laws, protects fundamental rights and acts as guardian of the Constitution.

Law: It is a system of rules imposed through a government or institution to govern people.

Judiciary: In law, the Judiciary or Judicial system is the system of courts which administers Justice in the name of the State.

Evolution of Indian Judiciary

a. Judiciary during ancient period

During ancient times, the concept of justice was linked with religion. The king was regarded as the fountain head of Justice. Most of the Kings' courts dispensed justice according to 'dharma', (righteousness and duty) a set of conventional laws, Dharmic laws governed not only the individual but also the society.

Smiritis

In ancient India Smiritis defined the social duties for the individual. There are Manusmiriti, Naradasmiriti, Yajnavalkya smiriti etc.

The rebublics of Ganas had their own system of law. We find the existence of Kulika court. Amongst the Vajjis, there was a board of eight Kulikas for the investigation of Criminal cases. Appeal proceeded from Kula courts to Gana Courts.

b. Judiciary during Medieval period

The Tughlaq period saw the compilation of the code of civil procedure. It was called Fiqha-e-Feroze Shahi. The code prescribed details of the procedure and the law in several matters. It was written in Arabic and was

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translated into Persian. This was followed till the reign of Aurangazeb when it was replaced by Fatawa-i-Alamgiri written in 1670.

c. Judiciary during Modern period

The Indian judicial system and laws we have today was formed by the British during the colonial rule in the country. The beginning of Indian codified common law is traced back to 1727 (Under the Charter of 1726) when the Mayor's court in Madras, Bombay and Calcutta were established by the East India Company. Regulating Act of 1773 made provision for the formation of Supreme Court. A Supreme Court was established for the first time at Fort Williams in Calcutta. Sir Elijah Imphey was appointed as chief justice of that court. In 1801 and 1824 Supreme Courts were established in Madras and Bombay. These Supreme Courts functioned until 1862 when they were replaced by the High Courts at all the three places.

Warren Hasting, established Mofussil Diwani Adalat to resolve civil disputes and Mofussil Fauzdari Adalat to resolve criminal disputes. The appeals from these courts could be taken to Sadar Diwani Adalat (civil court of appeal) and Sadar Nizamat Adalat (criminal court of appeal). Lord Cornwallis reorganised the civil and criminal judicial system. Under Cornwallis, the District Fauzdari court was abolished and Circuit Court was setup at Calcutta, Dacca, Murshidabad and Patna. During the period of William Bentinck four Circuit courts were abolished.

> The Calcutta High Court is the oldest High court in the country, established in 1862, whereas the Allahabad High Court is the largest Court.

Sadar Diwani Adalat and Sadar Nizamat Adalat were established at Allahabad. A law commission was setup by Macaulay, which codified the Indian Laws. On the basis of this Commission, A Civil Procedure Code of 1859, An Indian Penal Code of 1860, and a Criminal Procedure Code 1861 were prepared. The Government of India Act 1935 created Federal Court. It was not the highest court as appeals could lie in certain situation to the Privy Council in England. The Jurisdiction of Privy council was abolished by the Abolition of the Privy Council Jurisdiction Act, 1949. The Supreme Court of India was inaugurated on 28 January 1950.
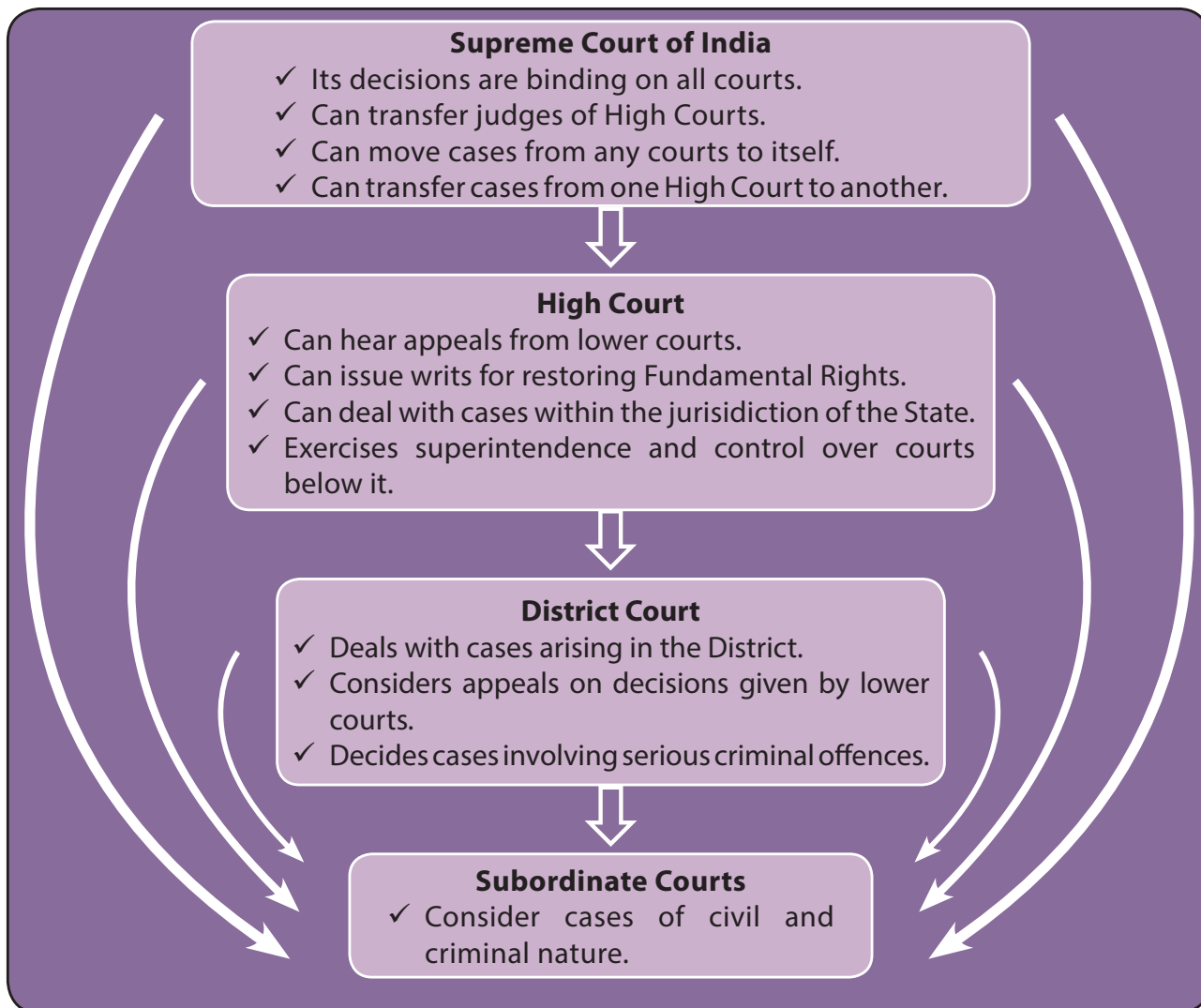
Judiciary and constitution

India framed its own Constitution. Among the noble aims and objectives of the Constitution, the founding fathers accorded the highest place to 'Justice'. During British period, Indian had neither law nor courts of their own and both the law and courts had been designed for the Colonial Power. The Constituent Assembly members therefore tried to ensure the independence of the Courts with full power of Judicial review. Supreme Court Rules, 1966 are framed under Article 145 of the Constitution to regulate the practice and procedure of the Supreme Court. The Supreme Court of India is the highest court of the land as established by Part V ('The Union') under Chapter IV titled 'The Union Judiciary' and Part VI ('The State') under Chapter VI titled 'Subordinate Courts' of the Constitution of India. Articles 124 to 147 of the Constitution of India lay down the composition and jurisdiction of the Supreme Court of India.

The first political philosopher, who propounded the idea of an independent judiciary, was Montesquieu, the famous French philosopher. He believed in the theory of separation of powers of the three branches of the Government - Legislature, Executive and Judiciary.

Structure of courts in India

There are three different levels of courts in our country.

Supreme Court of India
- ✓ Its decisions are binding on all courts.
- ✓ Can transfer judges of High Courts.
- ✓ Can move cases from any courts to itself.
- ✓ Can transfer cases from one High Court to another.

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High Court
- ✓ Can hear appeals from lower courts.
- ✓ Can issue writs for restoring Fundamental Rights.
- ✓ Can deal with cases within the jurisidiction of the State.
- ✓ Exercises superintendence and control over courts below it.

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District Court
- ✓ Deals with cases arising in the District.
- ✓ Considers appeals on decisions given by lower courts.
- ✓ Decides cases involving serious criminal offences.

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Subordinate Courts
- ✓ Consider cases of civil and criminal nature.

District Courts: The Courts that hear civil cases at the district level are called District Courts

Sessions Court: The Courts that hear criminal cases are called the Sessions Court.

The Panchayat Courts: The Panchayat Courts deal with Civil and Criminal cases at the village level.

The Revenue courts: The Revenue courts deal with the cases of land records. It also assesses and collects land revenue from the land holders.

Lok Adalat: Lok Adalat was set up to provide speedy justice. It hears and settles the disputes in the language of the people in the public presence. A Lok Adalat is presided over by a retired judge along with a lawyer and a social worker. Cases are put forward without advocates. These cases are solved through mutual consent. The first Lok Adalat was held on 1982 at Junagadh of Gujarat.

Fast Track courts: These courts were established in the year 2000 with an aim to clear the long pending Sessions and other lower judicial cases.

Tele Law Initiative: To provide legal aid and service to the people in rural areas, the Tele Law Initiative was launched by the Ministry of Law and Justice in collaboration with the Ministry of Electronics and Information Technology. People can seek legal advice from the lawyers through video conferencing available at the common service centre on the 'Tele Law' Portal – a technology enabled platform.

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Family Courts: Family courts specifically handle family law matters. They are civil courts and are utilised for various family related claims such as Child custody, Divorce, Adoption, Juvenile issues etc.,

Mobile courts: Mobile courts will be of great relief to the rural people. It would create greater awareness about the judicial system among the rural masses, cut costs for them and render justice as their doorstep.

E–Courts: The E–Courts project was established in 2005. According to the project all the courts will get computerised. Judicial service centre is the part of e-court. The public as well as the advocates can ask directly the case status and next hearing dates with free of cost.

> **NALSA** – The National Legal Service Authority has been constituted under the Legal Services Authorities Act, 1987 to provide free Legal Services to the weaker sections of the society and to organise Lok Adalats for amicable settlement of disputes.

Role of the Judiciary

Role of Judiciary can be classified as,

Supreme Court of India

Supreme Court of India, New Delhi

This is the highest court of India and is located in New Delhi. According to the Constitution of India, the Supreme Court is the guardian of the Constitution and the highest Court of appeal.

Jurisdiction of Supreme Court

a. **Original Jurisdiction:** The Supreme Court can hear dispute for the first time in that court only. It is mainly concerned disputes between the Union and one or more states and between two or more states.

Dispute Resolution	The Judicial system provides a mechanis for resolving disputes between • Citizen • Citizens and the government • Two State governments • The centre and the State governments
Judicial Review	The Judicial has the power to declare a law unconstitutional if it believes that the law passed by the Parliament is violating the basic structure of the Constitution.
Upholding the Law and Enforcing Fundamental Rights	Every citizen of India can approach the Supreme Court or High Court if they believe that their fundamental rights have been violated.

b. **Appellate Jurisdiction:** It can hear appeals against the decisions made by the High Court on the granting of certificate by the High Court.

c. **Advisory Jurisdiction:** The Court can report to the President its opinion about a question of the public importance referred to it by the President.

d. **Writs Jurisdiction:** The Writs are issued by the Supreme Court under Article 32 and by the High Courts under Article 226 of the Constitution of India.

e. **Court of Record:** It maintains records of the court proceedings and its decisions are finding upon the lower courts.

f. **Special Powers:** It supervises the functioning of the lower courts.

High Court

High Court of Madras

This is the highest court in the states. Every state in India has a High Court. Two or three states may have a common High Court. For example Punjab, Haryana and Chandigarh is having one High Court. It has original, Appellate and Writs Jurisdiction. Below the High Court there are a Subordinate courts in the States.

Independent and impartial function of Judiciary

The framers of the Constitution established independent and impartial judiciary in India. Independence of judiciary is important for the purpose of fair justice. Democratic country like India, judiciary is the custodian of rights of citizens. Therefore, the framers of the Indian Constitution at the time of framing of our constitution were concerned about the kind of judiciary our country should have. This concern of the members of the constituent assembly was responded by Dr. *B.R. Ambedkar* in the following words:

"There can be no difference of opinion in the House that our judiciary must be both independent of the executive and must also be competent in it. And the question is how these two objects can be secured."

An effective judiciary should be independent as well as accountable. The independence of the judiciary is the independence of the exercise of the functions by the judges in an unbiased manner i.e. free from any external influence.

The Litigation Process

There are two different types of legal sections in India: Civil and Criminal

Civil Law	Criminal Law

• It deals with disputes over money property and social matters.
  Eg. Disputes relating to land, rent, marriage dispute etc.,
• A petition has to be filed before the relevant court by the affected parties.
• Sentences awarded in the form of money remuneration and as per the petitioner's claim.
	• It deals with conducts or acts that the law defines as offences.
	  Eg. Theft, murder, women harassment etc.,
	• It usually begins with lodging of an FIR (First Information Report) with police investigation after which a case is filed in the court.
	• Punishment is awarded if proven guilty, the accused is sent to jail.

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Public Interest Litigation (PIL): PIL is a litigation filed in a court of law for the protection of "public interest". The Supreme court introduced this system which allows a person to approach the court with his case. PIL can be filed for the following reasons such as violation of basic human rights, religious rights, pollution, and road safety. This could be done by a written letter stating the case. This concept is unique to the Indian Judiciary.

Conclusion

Judiciary plays a crucial role in a democratic state. Judiciary is the custodian of the Constitution and guardian of fundamental rights. India, the largest representative democracy of the world possesses a well-structured and independent judicial system.

Recap

- Sadar Diwani Adalat and Sadar Nizamat Adalat were established at Allahabad.
- Lok Adalat was set up to provide speedy justice.
- The E–Courts project was established in 2005.
- According to the Constitution of India, the Supreme Court is the guardian of the Constitution

Glossary

Litigation	the process of taking legal action	வழக்கு
Writ	a form of written command in the name of legal authority	நீதிப்பேராணை
Lok Adalat	peoples court	மக்கள் நீதிமன்றம்
Judicial Review	receiving the laws by the court	நீதிபுனராய்வு

Evaluation

I Choose the correct answer

1 The highest and final judicial tribunal of India is

   a) President
   b) Parliament
   c) Supreme Court
   d) Prime Minister

2 Judicial system provides a mechanism for resolving disputes between

   a) Citizen
   b) Citizen and the government
   c) Two State governments
   d) all the above

3. Dispute between States of India comes to the Supreme Court under

   a) Original jurisdiction
   b) Appellate jurisdiction
   c) Advisory jurisdiction
   d) none of these

4. Which of the following state/ Union territories have a common High Court?

   a) Punjab and Jammu Kashmir
   b) Assam and Bengal

c) Punjab, Haryana and Chandigarh

d) Uttar Pradesh and Bihar

5. The System of Public Interest Litigation has been introduced in India by

a) Supreme Court

b) Parliament

c) Political parties

d) Constitutional amendments

6. How many courts are there in apex level in India?

a) One   b) Two

c) Three   d) Four

7. Supreme court is located at

a) Chandigarh   b) Bombay

c) Calcutta   d) New Delhi

8. F I R means

a) First Information Report

b) First information Result

c) First Incident Report

d) None of these

9. The court that hear criminal cases are called

a) District court   b) Sessions court

c) Family court   d) Revenue court

II Fill in the blanks

1. The _____ High Court is the oldest High Court in India.

2. The framers of the Constitution established _____ and _____ judiciary in India.

3. _____, a famous French philosopher propounded the idea of an independent judiciary.

4. _____ deals with disputes over money, property and social matters.

5. During ancient times, most of the Kings' courts dispensed justice according to _____.

III Match the following

1. Supreme Court   -   social duties
2. High Court   -   speedy justice
3. Lok Adalat   -   highest court of appeal
4. Sir Elijah Impey -   highest court in the States
5. Smiritis   -   chief justice

IV State true or false

1. The Supreme Court of India was inaugurated on 28th January 1951.

2. During the Tughlaq period, the code of procedure was written in Arabic.

3. The Regulating Act of 1773 made provision for the formation of Supreme Court.

4. Sadar Diwani Adalat was a Criminal court of appeal.

5. The Allahabad High Court is the largest court in India.

6. The Constitution of India secures justice to all its citizen.

V Choose the correct statement

1. Consider the following statements.

i) A law commission was setup by Macaulay.

ii) It codified the Indian Laws.

Which of the statements given above is / are correct?

a) i only   b) ii only

c) Both i and ii   d) Neither i nor ii

2. Consider the following statements.

i) An Indian Penal Code was prepared in 1860.

ii) The Calcutta High Court was established in 1862.

iii) The Government of India Act, 1935 created Federal Court.

Which of the statements given above is/are correct?

a) i only   b) ii, iii only

c) i,iii only   d) All the above

3. Which of the following statement is not true about India's Supreme Court?

i) The Supreme Court of India is the highest court of the land.

ii) It was established by part V under Chapter IV of Indian Constitution.

iii) Supreme court cannot transfer cases from one High court to another

iv) Its decisions are binding on all courts

a) i   b) ii   c) iii   d) iv

4. **Assertion (A):** The Supreme Court is a Court of Record.

Reason (R): It maintains records of the court proceedings and its decisions are finding upon the lower courts.

a) A is correct and R is wrong.

b) Both A and R are Wrong

c) A is correct and R explains A

d) A is correct and R does not explain A

5. Agree or disagree

a) Every citizen of india can approach the Supreme court.

b) Rich and powerful people control the judiciary system.

c) Every citizen has a right to get justice through the courts.

d) Politicians can not control over judges.

VI Answer the following in one or two sentences

1. Why do we need judicial system?

2. What are the different levels of courts in India?

3. Differentiate Law and Judiciary.

4. Write a note on Lok Adalat.

5. What are the advantages of mobile courts?

VII Answer the following in detail

1. Write about the role of judiciary.

2. Differentiate Civil Law and Criminal Law.

3. Describe Jurisdiction of Supreme Court.

VIII Project and Activity

1. Discuss: Is it necessary to have an independent judiciary? List two reasons.

2. Organize your classroom for a mockup courtroom session. (Take a case with the help of the teacher)

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