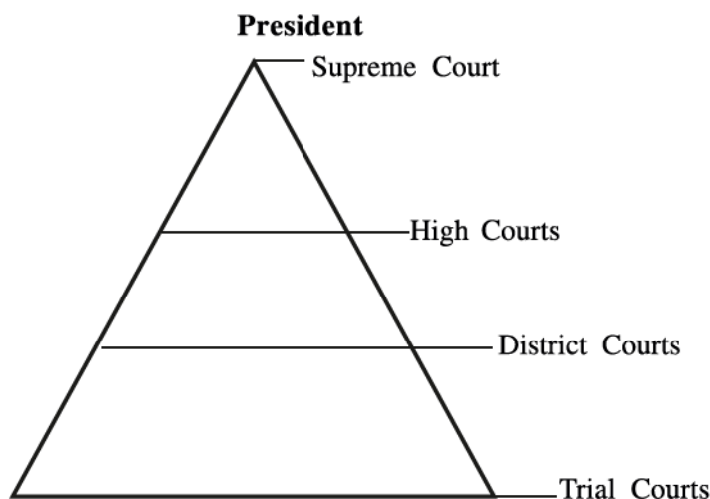


Legislature, Executive and Judiciary are the three organs of the Government. In this chapter we will have the detail concept of the Government's third organ, Judiciary.

The principal function of the Judiciary is to give justice. The function of the Judiciary is to punish or fine the violator if the law is violated at the time of its execution by the Executor and laws framed by the Legislature. Secondly, interpretation of the fundamental law of the nation means the Constitution is also the function of the Supreme Court. In this manner, the Judiciary is important for protection of independence of citizens and other rights.

It is necessary that for the protection of the rights of the citizens that judges should be independent, impartial and fearless in democratic countries.

Judiciary of India : Judiciary of India is formed by uniform system. For the whole nation single, common and integrated Judiciary is provided.



Structure of Judiciary in Pyramid Shape

According to the above diagram, the Supreme Court is at the top of the Judiciary amongst courts which sits at Delhi.

President is the constitutional and formal head of entire judiciary so the convict can file Mercy Petition before the President against the punishment ordered by the Supreme Court. According to Article 72 of the Constitution of India, the President has power to pardon the punishment given to any person, to suspend the execution of punishment, to reprieve it or to remit the punishment. Our President holds the highest position in structure of judiciary.

Judiciary at Central Level and State Level

In this chapter we will have the concept of (A) Judiciary at Central Level and (B) Judiciary at State Level.

(A) Judiciary at Central Level : Supreme Court is at Central level in Judiciary.

Structure of Supreme Court

According to Article 124 of the Constitution of India Supreme Court is the superior court of India. In the year 2015 the number of judges of our Supreme Court is 28(1 Chief + 27). Parliament may prescribe increase in the number of other judges by Act. If it seems to the President that the work load relating to justice has increased in Supreme Court then for that extent President can appoint required judges.

Procedure for Appointment of Judges : President appoints the Judges of Supreme Court and High Courts.

Qualification of a Judge of Supreme Court : According to our Constitution a person to be appointed as a judge of a Supreme Court.

- (1) Must be a citizen of India.
- (2) He must have served, for at least five years as a Judge of any High Court of India.
- (3) He must have practiced law for at least ten years in any High Court of India.
- (4) Must have been a distinguished jurist, in the opinion of the President.
- (5) He must not be of more than 65 years of age.

Duration of Service of Judges : Age of retirement of Supreme Court Judge is fixed at 65 years. However, before this period if the Judge so desires then by addressing to the President a resignation in writing, resigns his office. Besides this, upon death, proved incapable, compulsory retirement on account of misbehavior or on account of breach of constitutional limitations, judge can be removed from the office by the impeachment proceedings.

According to the Constitution, a judge after retirement can not practice law in any court of India.

Generally, a retired senior Supreme Court judge is selected as Chairman of National Human Right Commission.

Oath : Every judge of the Supreme Court shall, before he accepts the office, make and subscribe before the President, an oath for faithfulness towards the Constitution of India and for its protection.

Salary and Perquisites : A great responsibility as the protector of independent judiciary, protection of fundamental rights of citizens and protection of the Constitution is on the Judges. For this, to make them anxiety free, to keep them away from allurements and temptation, salary, rent-allowances, pension and other court expenditure are sanctioned from Consolidated Fund of Centre. That cannot be reduced during their service tenure. Their salary, rent-allowance, perquisites, etc. can be reduced only when the emergency is declared. They are also provided with fully furnished residence during service tenure.

Powers and jurisdiction of the Supreme Court : The powers and jurisdiction of Supreme Court of India are very wide. These powers and jurisdiction can be divided into four parts.

(1) Original jurisdiction : According to our Constitution, Supreme Court has original jurisdiction on the following matters. According to this authority, Supreme Court has the power to decide following disputes.

- (a) To dispose of the dispute or conflict between Central (Union) Government and one or more States.
- (b) Power to decide disputes between States or Union and one or more States on one side and one or more other States on the other. For example, disputes relating to distribution of water of rivers.
- (c) This court has the authority to give judgment on the question relating to constitutionality or otherwise of law made by the Central Government.
- (d) Supreme Court has the power to protect fundamental rights of the citizens. High Courts also have this power.

(2) Appellate Jurisdiction : According to Constitution, an appeal shall lie to the Supreme Court of India against judgments of different High Courts. Its judgments are final. Judgment rendered by it can not be challenged before any other court of the nation.

Appellate jurisdiction includes following matters.

- (a) **Matters of interpretation of Constitution :** A power to give final decision in the matter

of interpretation of constitution is only with the Supreme Court.

(b) Appeal in civil suits :

- (i) In this matter, the High Court must have granted the certificate of leave to appeal in the Supreme Court.
- (ii) Decision of high court must contain the point of interpretation of the law.

(c) Appeals in criminal cases : Following conditions must be fulfilled to appeal in Supreme Court.

- (i) If the trial court has acquitted the accused from the death punishment but high court has convicted the accused for death punishment, then
- (ii) If the High Court has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused and sentenced him to death;
- (iii) When the High Court certifies that this dispute deserves review.

(d) Power of Special Leave to Appeal : According to the Constitution, Supreme Court has the power to grant leave to appeal, only when, there is a question of removing gross injustice or there is a need of clarifying further of any principle of justice.

(3) Advisory Jurisdiction : If the question of law or fact has arisen or is likely to arise and it appears to the President that the question is of public importance then he may refer that question to the Supreme Court for its advice and for that question the court may, after conducting such hearing as it may feel appropriate, advise the President. Opinion given by the Court is only an advice. It depends upon the wish of the President to accept it or not.

(4) Other Powers :

- (a) The Supreme Court has the power to review its own judgment.
- (b) The Supreme Court can punish for the contempt of court.
- (c) Has the power to resolve the dispute relating to the election of President or Vice-President.
- (d) For the protection of the rights of the citizens, the Supreme Court has the power to declare unconstitutional or void any step, order, decision of the Executive not consistent with the Constitution. As an exception, no appeal can lie before the Supreme Court against the decisions or judgment of Military Court under the Martial Law.

Court of Record : The Supreme Court is regarded as Court of Record. The decisions or judgments given by it for the subordinate courts are considered as permanent document and those decisions are considered as binding on the head of the subordinate courts. Its decisions are used as reference in cases of High Courts and subordinate courts and its regulations are binding to the subordinate courts.

(B) Judiciary at State Level : Judiciary at State Level includes High Court, District Courts and Subordinate Courts.

High Court : In the Pyramid shaped of judiciary of India in the form of continuous chain next to the Supreme Court is the High Court which is superior in the territory of the State and is performing the function of giving justice by interpreting the laws.

According to our Constitution, a provision is made for a High Court for every Unit State. The President has the power to establish one common High Court for two or more States.

Structure of High Court : According to the Constitution, High Court shall consist of one Chief Justice and such other Judges as the President may appoint from time to time.

Under some circumstances, on account of increase in the work of the High Court temporarily or on account of pendency of cases, the President can appoint additional acting judges on a temporary basis in the number of judges of the High Court.

Appointment : The President appoints judges of the High Court after consultation with the Chief Justice of India, Governor of that State in which appointment of a judge of the High Court of the State is to be made and the Chief Justice of the High Court in case of appointment of Judges other than the Chief Justice.

Duration : The tenure of Judges of High Courts is 62 years. They may resign from the post by addressing it to the President. The President may remove any judge of the High Court in accordance with the Constitution if proved guilty by the Parliament in the impeachment proceeding. The President can transfer him in any State of India.

Qualifications of a Judge : According to the Constitution, for the appointment of a Chief Justice or any judge of the High Court, a person.

- (1) Must be a citizen of India.
- (2) Must have held for minimum ten years a judicial office in the State territory in India.
- (3) Must have practiced law for minimum ten years in the High Court.
- (4) Must have been jurist or a distinguished constitutionalist in the opinion of the President.
- (5) He must be of less than 62 years of age.

Oath : Every person appointed to be a Judge of a High Court shall, before he enters upon his office, make and subscribe before the Governor of the State or some person appointed in that behalf of him, signs the pledge.

Salary and Other Perquisites : According to the Constitution, the Chief Justice and other Judges of High Court have been paid appropriate salary. Besides, like other officers of Government, rent-allowance, pension, facility of fully furnished residence and vehicle facility are given in the context of service. Except in financial emergency, any kind of reduction can not be put on it. After retirement they can not practice as an advocate in the High Court where they have served.

Jurisdictions : Jurisdictions of High Court can be divided in to four divisions as follows.

(1) Original Jurisdiction : According to the Constitution, for the violation of fundamental rights of the citizens, it has the power to issue orders-directions and writs like habeas corpus and quo warranto against any person, authority or Government.

(2) Appellate Jurisdiction : An appeal can lie in the High Court against the judgments of any court falls within the jurisdiction of the High Court within the territory of the State. It is called right to appeal. According to this right (a) an appeal can be made in the High Court when the judge of the Criminal Court of District and has punished for his offence for a period more then four years (b) an appeal can be made in the High Court when the judge of a District Session Court against the judgment of the Criminal Court subordinate to it has sentenced the accused to death holding the accused responsible for the charge of murder.

(3) Superintendence Jurisdiction :

- (i) According to the Constitution, High Court keeps supervision and control over all subordinate courts and tribunal commissions throughout the entire territory of the State.
- (ii) It can call for returns and files from the subordinate courts.
- (iii) Issue general rules for judicial practice and proceeding for subordinate courts.
- (iv) Provide guidance to the subordinate courts on how to maintain account and entries.

- (v) Appoint employees and officers of the subordinate courts and fix the standard of court fees.
High Court does not have power to supervise or control over Military Courts and Commissions.
- (vi) State Government in consultation with the judge of High Court appoints judges in the Courts of District.

Position of High Court : High Court is the connecting ring between its subordinate courts and the Supreme Court. Just as Supreme Court holds the status and prestige at the Central (Union) level, the High Court holds the same status and prestige at State level.

According to the provision of the Constitution, the High Court of the State enjoys the status of Court of Records like Supreme Court. The judgments, decisions given by the High Court are published in an appropriate and codified in proper form.

Subordinate Courts : Just as High Court is subordinate to Supreme Court, District and Taluka Courts are subordinate to High Court of States. Every State is divided into administrative unit – district in which are included criminal, civil courts.

District Judge

Appointment: According to Article 233 of the Constitution, persons are appointed as District Judge of any State and promoted on that place by the Governor after consultation with the High Court exercising jurisdiction in relation to that State.

Qualifications

A person appointed as District Judge –

- (1) Must be a citizen of India.
- (2) Must be having minimum seven years of experience as advocate or Vakil.

Transfer of District Judges and Promotion are made in accordance with the rules framed after consultation with the High Court and appointment of other judges are made in accordance with the rules framed after consultation with State Public Service Commission and High Court.

(A) Civil Court: Civil Judge (Senior Judge) has power to try a suit exceeding rupees five lakhs, suit by or against Government, suit relating to divorce, cases relating to land acquisition (relating to compensation). Civil Judge (Junior Division) has powers to try suit up to rupees five lakhs, suits by or against Government.

(B) Criminal Courts: In Section 6 of the Criminal Procedure Code, classification has been made of criminal courts as (i) Session Court (ii) Judicial Magistrate First Class - Metropolitan Magistrate Court.

In addition to Session Judge in the Session Court, additional and assistant session judges are also appointed who can impose punishment of death, imprisonment for life, imprisonment exceeding 10 years.

Now, with a view to provide justice at the door-step of a house, additional District Courts have also been established under the control of District Court.

Judicial Magistrate First Class is having the power to punish up to three years of imprisonment and a fine upto Rs. 10000/-

Besides this, City Civil and Sessions Courts and Small Cause Courts are also constituted. Labour Courts are also constituted for dispute of labourers.

City Civil Court and Small Cause Court are established in metropolitan city which are determining civil cases. At present, such Courts are in big cities like Mumbai, Kolkata, Chennai, Ahmedabad etc.

Special Courts are also constituted for cases of land revenue. Some special tribunals have also been constituted like Motor – Accident Tribunal, Debt Recovery Tribunals, Consumer Dispute Resolution Forum also plays the role of the Court and disposes of the suit relating to damage caused to the consumers.

Consumer Protection Act : This Act has been framed with the objective of providing punishment by speedy procedure against the traders cheating the consumers by deceitfully gaining confidence on the basis of false representation and for providing expeditious legal system for compensation to be paid to the consumers victimized of damages.

After passing of the Consumer Protection Act by the Parliament, the assent of the President was received on day of 24th December 1986. Therefore, the day of 24th December is celebrated as National Consumer's Right Day in India. We have three tier judicial system in force for the protection of the consumers. Consumer Courts known as District Forum at district level, State Commission at State level, National Commission at national level are operational. In which consumer can complaint.

The rights available to the consumers from this Act in brief are as follows.

- (1) Right of protection against the sale of things which are injurious to property and life.
- (2) Right to information with regard to standard, quality, measurement, weight, purity and price of goods.
- (3) Right to receive goods-service and facility by competition at reasonable rates.
- (4) Right to get compensation against the cheating and unfair practice of the trader.
- (5) Right of consumers to represent complaint.
- (6) Right to acquire necessary information and expertise to become vigilant consumer.

Legal Service Authorities : In Part-4 of our Constitution, a provision is made in the Directive Principles of State Policy of equal justice and free legal aid to the citizens. Any citizen of India does not remain deprived of opportunity for getting justice due to poverty or any other incapability, Legal Services Authorities are necessary besides arranging Lok Adalats. For the formation of these legal authorities, Legal Services Authority Act, 1987 is made in India. Today, in Gujarat the main centre of legal aid authority is at Shahibaugh, Ahmedabad. That became the first 'Law Clinic' in the entire Asia.

Lok Adalat : A main function of the State Legal Service Authority is to conduct Lok Adalats. Lok Adalat is an alternative medium for disposal of cases. In every Lok Adalat, assistance of sitting judges or retired judges, advocates, law teachers or social worker can be availed.

In the courts of entire country the cases have been accumulated in greater scale. In these circumstances, it was inevitable to find the way to dispose the case by explanation and skill, without expense or delay. Lok Adalat is such a medium where parties forget their difference of opinion and compromise with the help of sitting or retired judges, advocates or social workers. This is the slogan of Lok Adalat – 'None's victory, None's defeat.' Orders of Lok Adalats are not less significant than the orders of the courts. As a result, there is statutory provision that orders disposing the cases in the Lok Adalats can be executed through Courts.

National Legal Service Authority has emphasised upon the establishment of permanent Lok Adalat in every district. As a result, in some districts of some States such Lok Adalats are functioning. In some districts of State of Gujarat permanent Lok Adalat has been established. Some functions for every fifteen days in a month or once in a month.

Lok Adalat has a jurisdiction to hear only those cases which are capable of compromise pursuant to law.

In this Lok Adalat judges do not sit as a judge and advocates do not appear as an advocate. It does not have any fixed proceedings. A conversation takes place between the parties informally. And reducing the difference of opinion a compromise is arrived at which is acceptable to the parties. This experiment is proved quite successful in India. For the first time the experiment of Lok Adalat has took place in the Gujarat State. The concept of Lok Adalat was initiated from the Ashram of Sarvodaya worker Shri Harivallabh Parikh at Rangpur. Its proper initiation was taken place on the day of 14/2/1982 at Una of Junagadh district.

Woman Courts : A woman court is an informal structure runs by Gujarat State Woman Commission and through Woman “Samkhyas” for joining women of the society in the process of justice to get a neutral justice to women by a woman, it is an informal alternative arrangement for a justice in a short time.

Gujarat Government has undertaken the initiative of this Woman Court by Women for woman for bringing happy disposal of their questions in their own Taluka so that the ladies of the remote and internal villages have not to go far away. Till today 144 woman courts are functioning in Gujarat. In these courts problems relating to women are getting solved. In addition to that, literature having information of planning and legal information are distributed to them free of cost. State Woman Commission has organised legal awareness camp at district level for awareness in women. Structure of woman court is of three layers, at State level, at District level and at Taluka level.

EXERCISE

1. Answer the following questions in detail :

- (1) State the structure of judiciary at Central level
- (2) State the structure of judiciary at State level.
- (3) State the powers and jurisdiction of the Supreme Court.
- (4) State the jurisdiction of High Court.

2. Write short notes on the following :

- (1) Structure of Indian judiciary.
- (2) Position of High Court.

3. Answer the following questions in brief (five to seven sentences) :

- (1) Function of judiciary.
- (2) State the qualifications of a judge of the Supreme Court.
- (3) When can an appeal relating to criminal case lie in the Supreme Court?
- (4) State the original jurisdiction of the Supreme Court.
- (5) What is Court of Record?
- (6) State the qualification of a judge of the High Court.
- (7) State the original jurisdiction of the High Court.
- (8) State the administrative jurisdiction of the High Court.
- (9) What is Consumer Protection Act?
- (10) What is legal service authority?
- (11) What is Lok Adalat? What is its object?
- (12) Give information on Woman Courts.

4. Answer the following questions in brief (one to two sentences) :

- (1) Who is the supreme head of judiciary of India?
- (2) When can an appeal relating to civil suits lie in the Supreme Court?
- (3) Who is appointing the judges in the District Court?
- (4) State the slogan of Lok Adalat.
- (5) State the objective of Woman Court.

5. Write the correct option in the given box :

- (1) What is the principal function of the judiciary? ☐
- (a) to do justice (b) to deliver judgments
(c) to punish (d) to give good advice
- (2) Which type of structure has the judiciary of India? ☐
- (a) square (b) circular
(c) pyramid (d) cylindrical
- (3) How many year of age a judge of a Supreme Court should not have more then? ☐
- (a) 60 (b) 55 (c) 30 (d) 65
- (4) For how many minimum years of service should a judge has served in any of the High Courts of India for qualification of judge of a Supreme Court? ☐
- (a) Five (b) Six (c) Seven (d) Eight
- (5) In which court will the dispute of two Unit States proceed? ☐
- (a) Supreme Court (b) High Court (c) woman court (d) Lok Adalat
- (6) To whom shall our Supreme Court give legal advice? ☐
- (a) President (b) Prime Minister (c) Commander (d) Legislature
- (7) When is National Consumer Right day celebrated in India? ☐
- (a) 24th December (b) 24th January (c) 26th January (d) 15th August
- (8) Where is the centre of Legal Service Authority situated in Gujarat? ☐
- (a) Gh-5, Gandhinagar (b) Shahibaugh, Ahmedabad
(c) Rajkot (d) Bhavnagar.
- (9) "None's victory, none's defeat." This statement is of which court? ☐
- (a) Woman Court (b) Supreme Court
(c) Lok Adalat (d) High Court
- (10) in which State in India was the Lok Adalat experimented for the first time? ☐
- (a) Gujarat (b) Maharashtra
(c) Bihar (d) Uttar Pradesh
- (11) Which court is established for joining women in the process of justice, for giving neutral justice to women by women? ☐
- (a) Lok Adalat (b) Woman Courts
(c) Rural Courts (d) High Courts

Activity

- Take the students for the visit of nearest court.
- A lecture can be arranged of a lawyer.