

Module-4

The Judiciary

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4.1 Introduction:

Indian judicial system is an independent and effective system. It acts as the guardian of the Constitution of India, fundamental rights and freedom of the people. We have a single and integrated Judicial System, with Supreme Court at the apex, High courts at the state level and other courts under High Courts. The Supreme Court is the highest court of the land.

In order to keep the Judicial system of our country free from the clutches of legislatures, we opted for independent judicial system. In which the appointment of the judges will be done by the President and to provide safety of job, removal procedure of judges is made very difficult – through the method of impeachment.

The Indian Constitution provides for a federal system in which the administrative powers are distributed between the Union and the States. Supreme Court deals with all cases of disputes between, union and any one or more states or between states. Supreme Court is the final interpreter of the Constitution.

4.2. Learning Objectives:

This module deals with:

- The Details of Supreme Court of India
- Judicial Review – Procedure
- Writs powers – Mechanism to protect the fundamental rights
- Judicial Activism
- Lok Adalats
- Public Interest Litigation
- High Courts
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4.3 The Supreme Court of India

It is the supreme judicial authority in India. It is the apex level court and all final appeal in India could be made to Supreme Court. It was started along with the implementation of Constitution of India i.e., on 26th January 1950.

4.3.a. Composition: At the time of inauguration of the constitution, there was one chief justice and 7 other judges. As the work of the Court increased and cases began to accumulate, Parliament increased the number of Judges from 8 in 1950 to 31 in 2008. As the number of the Judges has increased, they sit in smaller Benches of two and three (referred to as a Division Bench) - coming together in larger Benches of 5 and more only when required (referred to as a Constitutional Bench) to do so or to settle a difference of opinion or controversy. Any bench may refer the case up to a larger bench if the need to do so arises. Hence now, Supreme Court of India comprises of, one chief justice and 30 other judges appointed by the president of India. Some times even ad-hoc judges will also be appointed for speedy clearance of cases.

4.3.b. Method of Appointment of Judges: The judges of Supreme Court are appointed by the President of India. In the appointment of other judges, the President consults the Chief Justice of the Supreme Court and while appointing the Chief Justice, the President consults other Judges. Appointments are generally made on the basis of seniority and not political preference.

4.3.c. Acting Chief Justice: When the office of the Chief Justice falls vacant or when the Chief Justice of India may be unable to perform his duties due to absence or otherwise, the President can appoint an acting Chief Justice. Even in this case also seniority would be considered.

4.3.d. Qualifications:

In order to be appointed as a Judge of the Supreme Court,

- A person must be the citizen of India
- Must have served for at least five years, as a Judge of a High Court or of two or more such Courts in succession, or

- Worked as an Advocate 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.
- Provisions exist for the appointment of a Judge of a High Court as an ad-hoc Judge of the Supreme Court and for retired Judges of the Supreme Court or High Courts to sit and act as Judges of that Court.

4.3.e. Term:

Supreme Court Judges retire upon attaining the age of 65 years.

4.3.f. Removal:

The constitution provides for a difficult method of removal of Judges only on the grounds of proved misbehavior or incapacity. Judges can be removed by impeachment.

4.3.g. Salary and Allowances:

The Chief Justice of India and other judges salary are paid out of consolidated fund of India and other allowances in conformity with their position.

4.4 Jurisdiction of the Supreme Court

The supreme court of India has been vested with Original, Appellate and Advisory jurisdictions.

4.4. (i) Original Jurisdiction: The Supreme Court can directly hear several cases which cannot be heard by any other court. It has an original jurisdiction in any disputes:

- Between Government of India and one or more States or
- Between the Government of India and any State or States on one side and one or more States on the other
- Or Between two or more States, that involves any question on which the existence or extent of a legal right depends.

4.4. (ii) Appellate Jurisdiction:

The Supreme Court is the highest court of appeals in India in all civil and criminal cases. It can hear appeals against the decisions of the High courts and this constitutes its Appellate jurisdiction. The appellate jurisdiction of the Supreme Court can be invoked by a certificate granted by the High Court in respect of any judgement, decree or final order of a High Court in both civil and criminal cases, involving substantial questions of law as to the interpretation of the Constitution.

In **Civil Cases** – The following civil cases may be appealed to supreme court for the final judgement in the following cases: - if the High Court concerned certifies : (a) that the case involves a substantial question of law of general importance, and (b) that, in the opinion of the High Court, the said question needs to be decided by the Supreme

Court.

In **Criminal cases** – an appeal to the Supreme Court may be made if the High Court (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death or to imprisonment for life or for a period of not less than 10 years, or (b) has withdrawn for trial before itself any case from any Court subordinate to its authority and in such trial has convicted the accused and sentenced him to death or to imprisonment for life or for a period of not less than 10 years, or (c) certified that the case is a fit one for appeal to the Supreme Court. Parliament is authorized to confer on the Supreme Court any further powers to entertain and hear appeals from any judgement, final order or sentence in a criminal proceeding of a High Court.

In **Constitutional Cases** – Constitutional cases involving substantive point of law requiring the interpretation of the Constitution can be appealed in the Supreme Court if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution.

4.4. (iii) Jurisdiction in respect of Fundamental Rights:

Article 32 of the Constitution grants an extensive original jurisdiction to the Supreme Court in regard to enforcement of Fundamental Rights. It is empowered to issue directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari* to enforce them.

4.4. (iv) Advisory Jurisdiction: The Supreme Court has special advisory jurisdiction in matters which may specifically be referred to it by the President of India. It generally advises President on any legal matters.

4.4. (v) Jurisdiction of Electoral Disputes: All disputes involving the election of the President and the Vice-President are heard directly by the Supreme Court.

4.4. (vi) Power to Interpret and protect the constitution and the power of Judicial review: The constitution is the supreme law of the land and the Supreme court acts as the final interpreter of the constitution. It has the power to reject any law of the legislature or the executive, which is unconstitutional, despite it has been approved by Lok Sabha, Rajya Sabha and signed by the president. Any law which is against the provisions mentioned in constitution will be declared as Ultra Vires and such law will be ceased by the supreme court. Hence Supreme Court is also called as the protector of the constitution. This power of the supreme court is called as Judicial review.

4.4. (vii) Court of Record: All the decisions of the Supreme Court are recorded and other courts uses them as the reference. Records of the Supreme Court are admitted as final evidences and cannot be questioned when these are produced and referred to in any other court.

4.4. (viii) Power to review its own judgements: The Supreme Court has the power to review its own decisions.

4.4. (ix) Other Functions:

- It has power to make rules regarding the functioning and procedures to be followed by other courts.
- The Supreme Court, with the approval of the President, can lay down the conditions of service of its employees.
- The President can take action, remove any member of UPSC but only when the Supreme Court finds them guilty of misbehaviour.
- When the office of the president falls vacant, and if vice president is also not available, the Chief Justice of India takes over as Acting President.

4.5. Judicial Review

It is the power of the Supreme Court to interpret the Constitution and to declare acts of legislature, executive or administrative void, if framed against the provisions mentioned in the Constitution. Any law framed by the Legislature, despite having been approved by both Lok Sabha, Rajya Sabha and President of India, found to be against the written constitution, will be nullified by Supreme Court. This ultimate power of the court is known as Judicial Review.

Judicial Review is not automatic. The court cannot conduct judicial review on its own. It is only when any act is challenged before a court either specially or in the process of litigation, that the court conducts judicial review. Further while rejecting any act as un-constitutional, the court has to demonstrate its unconstitutionality by stating the constitutional provisions violated by it.

The following articles of the Constitution provide a constitutional basis to the system of Judicial Review:-

Article 13: The Supreme Court has the power to scrap any law which is against Fundamental Rights.

Article 32: This article confers the right to move to the Supreme Court for getting enforced the Fundamental Rights enshrined in Part III of the Constitution.

Article 131 & 132: Deals with original and appellate jurisdiction of the Supreme Court respectively. These include the power to settle Centre-State disputes between or among States and the power to interpret the Constitution. In the exercise of these powers, the Supreme Court exercises the power of Judicial Review.

Article 226: Empowers State High Courts for protecting the Fundamental Rights of the people

Article 246: Supreme court has been assigned the power to decide all cases of Union-State disputes over the division of powers.

4.5 (a) Features of Judicial Review in India

- Both the Supreme Court and High Courts exercise the power of Judicial Review. But the final power to determine the constitutional validity of any law is in the hands of the Supreme Court.
- Judicial Review can be conducted with respect to all Central and States laws, the orders and ordinances of the executives and constitutional amendments.
- Judicial Review applies only the questions of law. It cannot be exercised with respect to political issues.
- Judicial Review is not automatic. The court cannot conduct judicial review on its own. It is only when any act is challenged before a court either specially or in the process of litigation, that the court conducts judicial review. Further while rejecting any act as unconstitutional, the court has to demonstrate its unconstitutionality by stating the constitutional provisions violated by it.
- If Supreme Court decides a law as constitutionally invalid, the law ceases to operate with effect from the date of the judgments.
- If only some parts of the law is invalid, only invalid parts becomes non-operative and other parts continue to remain operative.
- Supreme Court can revise its own earlier decisions.

4.6. Writs

For the effective implementation of fundamental rights – there should be a mechanism, which protects these Fundamental Rights. Hence the constitution has guaranteed in Article 32, the right to the people to appeal to the High court or to the Supreme Court for the enforcement of the Fundamental Rights.

The Fundamental Rights will become meaningless, if there is no effective mechanism to check the enforcement of the rights. Hence for the effective enforcement of Fundamental Rights, the Supreme and the High courts are allowed to issue 'Writs'. Basically 'Writ' is a legal instrument, designed to protect the fundamental rights. There are 5 types of Writs. They are:

- I. **Habeas Corpus:** It is a Latin term, which means 'You may have the body'. It is a direction of the court to person who has been detaining another person. It directs the detaining person to bring the detained person in the court for explaining the grounds of his detention. It means that the detained person should be produced before the court, so that the court may examine whether the detention is lawful or unlawful. In case, if the detention is proved unlawful, the court may set him free. However it is not admissible in cases of persons who stand detained under any preventive detention law like MISA, TADA, POTA, etc..
- II. **Mandamus:** It is a Latin term, which means 'We Order'. It is an order issued by the court, to a person or to a body to do that, which is his duty to do. If an official or a person fails to perform his allotted duty, then the court will command him to perform a duty. This writ is issued mostly when some public servant has failed to

perform his duty.

III. Prohibition: The Writ of Prohibition is issued, to stop an inferior court to function beyond its jurisdiction. Then the Superior court issues Prohibition to stop the lower court to Proceed with the case. Example: Prohibiting a Judge from hearing a case in which he is personally interested.

IV. Quo Warranto: If a person is performing a function, which he is not lawfully entitled to, then the court may stop that person through the writ of 'Quo Warranto' from exercising that function. For example: a Police Sub Inspector solving a case himself and judging the situation.

V. Certiorari: This writ is issued by the Upper Court, if it wants some additional information or records from a Lower Court. It may be issued asking a lower court to send to the higher court the records and the proceedings in some case, so that the superior court may be able to deal with the case more effectively.

The difference between Prohibition and Certiorari is that – under Prohibition, the lower court is asked to stop dealing with a case, whereas under Certiorari the superior court asks the lower court to supply it with some information, records and proceedings about a particular trail.

4.7. Judicial Activism

It is a pro-active approach of the judiciary towards prevailing socio-economic political-administrative conditions in the country. It aims at due implementation of laws, policies and programmes by the executive. It acts as a guardian of law by exercising check on executive and legislature.

Supreme Court is coming out with judicial decisions and directives aimed at the protection of public interest and human rights by giving directions to the bureaucracy and police. Supreme Court is using its power to deliver judgements, decisions and opinions and giving directions to the public officials for checking environmental pollution, illegal constructions, encroachments on public property and makes the government and bureaucracy more transparent and responsive to public needs and demands for more efficiency and action. It is trying to activate government, administration and creates awareness amongst public against corruption and other social evils. Apart from this Supreme Court has initiated several CBI probes against persons, public servants alleged to have been involved in several scams and acts of indiscretion.

4.8. Lok Adalats {People's Court}:

During the early 1980's, some the jurists came out with the idea of holding Lok Adalat in the interest of speedy and inexpensive justice. In Lok adalat such disputes, where parties ready to compromise, will be settled out of court. This applies even for criminal cases also.

- Lok Adalat is normally attended by sitting or retired judge of Supreme Court or high court, one or two other judges, eminent lawyers etc., Formal procedures are

dispensed with, where layers don't argue the cases, even witness are not examined.

- Lok Adalat is an assembly of elders which tries settlement. This saves money, time and botheration.

4.9. Public Interest Litigation

- Public Interest Litigation - the concept was developed by two Supreme Court judges namely Justice P.N. Bhagwati and Justice Krishna Iyer.
- Before we proceed with PIL, let us understand how litigation begins? As per the customs and established legal practice, litigation can be started only by an affected person. For example: Civil cases may be filed either by a tenant or a land lord in case of rent control, In case of matrimonial problem, divorce case may be filed either by husband or by wife. With regard to the partition of their parents, property by one of the brother's against the others and similarly by a money lender who is neither getting interest nor the money back.
- In case of criminal matter, the affected person files a case in the police station and the police arrests the accused and prepares the first information report (FIR) and registers the case in the court.
- In both the cases the court takes up the issue and solves the case according to the prescribed procedures.
- But in a country like India, where majority of the people are poor and uneducated, they mayn't approach the court of law for justice even if they are affected many times, as they don't have knowledge, time, money and energy. In such cases justice remains evasive. In order to overcome this drawback PIL concept was developed.
- According to this system, any person (even an unconcerned person, an advocate, an NGO or a social activist) might write an ordinary letter even on a post card, to the chief justice and he may draw the attention of the court towards the matters of public importance. If the court is convinced that the complaint concerns a matter of public interest it will take it up and will decide the case.

4.10. High Courts

India's unitary judicial system is made up of the Supreme Court of India at the national level, for the entire country and the 21 High Courts at the State level. These courts have jurisdiction over a state, a union territory or a group of states and union territories. Below the High Courts are a hierarchy of subordinate courts such as the civil courts, family courts, criminal courts and various other district courts.

Each state is divided into judicial districts presided over by a 'District and Sessions Court'. District Court deals with civil cases, and a Sessions courts deals with criminal cases. These courts are the highest judicial authorities below a High Court of the State. Below the District and Session Courts, are courts of civil jurisdiction, known by different names in different states.

Under Article 141 of the Constitution of India, all courts in India which includes High

courts are bound by the judgments and orders of the Supreme Court of India by precedence.

4.10.(a) Composition:

The High Court of the State consists of a Chief Justice and such other Judges as the President of India may deem it necessary for that State. The number of Judges varies from 3 in Sikkim High Court to 95 in Allahabad High Court. The Constitution also provides for appointment of adhoc-judges, for a period of not exceeding two years to meet the rush work in a High Court.

4.10.(b) Appointment:

Judges in a High Court are appointed by the President of India in consultation with the Chief Justice of India and the governor of the state. High Courts are headed by Chief Justice.

4.10.(c) Qualification:

- He/she should be the citizen of India.
- He/she must have held a judicial office in the territory of India for at least ten years. or
- He or she must be an advocate of a High Court or two or more such courts in succession for atleast ten years.

4.10.(d) Tenure:

High Court Judges including the Chief Justice holds office till he attains the age of 62. Before this, judge may resign if he/she so desires.

4.11. Various High Courts – Seats and Jurisdiction

The Calcutta High Court is the oldest High Court in the country. High courts which handle a large number of cases of a particular region, have permanent *benches* (or a branch of the court) established there. Smaller states with few cases may have circuit benches established. Circuit benches (known as circuit courts in some parts of the world) are temporary courts which hold proceedings for a few selected months in a year. Thus cases built up during this interim period are judged when the circuit court is in session. The following are the twenty-one High Courts sorted by name, year established, jurisdiction, seat of governance (headquarters), benches (branches), and the maximum number of judges sanctioned.

Court name	Estd.,	Jurisdiction	Seat	Benches	Judges
Allahabad High Court	1866	Uttar Pradesh	Allahabad	Lucknow	95
Andhra Pradesh High Court	1954	Andhra Pradesh	Hyderabad		39
Bombay High Court	1862	Maharashtra, Goa, Dadra and Nagar Haveli, Daman and Diu	Mumbai	Nagpur, Panaji, Aurangabad	60
Calcutta High Court	1862	West Bengal, Andaman and Nicobar Islands	Calcutta	Port Blair (circuit bench)	63
Chhattisgarh High Court	2000	Chhattisgarh	Bilaspur		08
Delhi High Court	1966	National Capital Territory of Delhi	New Delhi		36
Gauhati High Court	1948	Arunachal Pradesh, Assam, Manipur, Meghalaya, Nagaland, Tripura, Mizoram	Guwahati	Kohima, Aizwal & Imphal. Circuit Bench at Agartala & Shillong	27
Gujarat High Court	1960	Gujarat	Ahmedabad		42
Himachal Pradesh High Court	1971	Himachal Pradesh	Shimla		09
Jammu and Kashmir High Court	1943	Jammu & Kashmir	Srinagar & Jammu		14
Jharkhand High Court	2000	Jharkhand	Ranchi		12

Karnataka High Court	1884	Karnataka	Bangalore	Circuit Benches at Hubli-Dharwad & Gulbarga	40
Kerala High Court	1956	Kerala, Lakshadweep	Kochi		40
Madhya Pradesh High Court	1936	Madhya Pradesh	Jabalpur	Gwalior, Indore	42
Madras High Court	1862	Tamil Nadu, Pondicherry	Chennai	Madurai	47
Orissa High Court	1948	Orissa	Cuttack		27
Patna High Court	1916	Bihar	Patna		43
Punjab and Haryana High Court	1947	Punjab, Haryana, Chandigarh	Chandigarh		53
Rajasthan High Court	1949	Rajasthan	Jodhpur	Jaipur	40
Sikkim High Court	1975	Sikkim	Gangtok		03
Uttarakhand High Court	2000	Uttarakhand	Nainital		09

4.12. Jurisdiction of a State High Court

1. Original Jurisdiction:

The High Courts of Bombay, Kolkata and Madras possess original jurisdiction in hearing civil as well as criminal cases involving a property of the value of Rs. 20,000/- or more. This is an exclusive right enjoyed by these three High Courts.

Under Article 226, the High Courts have been empowered to issue Writs in order to enforce fundamental rights.

All High Courts possess original jurisdiction in cases relating to divorce, will, admiralty and contempt of the Court.

2. Appellate Jurisdiction:

In Civil Cases – In civil case appeal to the High Court lies at the decision of a district court. Appeal can also be made from the subordinate court directly, provided the dispute involves a value higher than Rs. 5,000/- or on a question of law. When a subordinate court decides a case, 2nd appeal can be made to the High Court.

In Criminal Cases – If the session court has given a punishment of 4 years or more, or if Capital punishment or a death sentence, then appeal may be made to High Court.

3. Court of Record:

All the decisions of the High Court are recorded and other courts use them as the reference. Records of the High Court are admitted as final evidences and cannot be questioned when these are produced and referred to in any other court.

4. Judicial Review:

Any law or ordinance made against the provisions mentioned in the Constitution of India, High Court can declare them 'Ultra Vires' and such law ceases to be in operation.

5. Certification:

In most of the cases decided by High Court, the appeal can go to the Supreme Court when it is certified by the High Court that such an appeal can be made. As such, most of the cases appeal to the Supreme Court depend upon the issue of a Certificate by the High Court.

6. Administrative Powers:

- The High Court has the power to superintend and to control all the courts subordinate to it. It ensures proper working of these courts.
- It can issue general rules regulating the practice and proceedings of subordinate Courts.
- It can ask for the details of the proceedings of the Sub-ordinate Courts.
- It can transfer any case from one court to another court and can even transfer the case to itself and decide the same.
- It has the power to investigate or enquire into the record or other connected documents of any court subordinate to it.
- The High court has the power to appoint its administrative staff and determine the salary, allowances and other conditions of service.
- The appointment, promotion and posting of the District Judges is made by the Governor in consultation with the High Court. Judges of other subordinate courts are appointed by the Governor according to the recommendations of the State Public Service Commission and the High Court.

4.13. Summary:

India has a single and integrated Judicial System, with Supreme Court at the apex, High courts at the state level and other courts under High Courts. The Supreme Court is the highest court of the land. The Supreme Court and High Court of our land act as a guardian of Fundamental Rights and empowered to issue 'Writs'. More over, we have federal form of government, in which, the administrative powers are distributed between the central and the state government. Any disputes between state and state or state and central will be resolved by the Supreme Court. Apart from this Judicial Review power of Supreme Court makes it as a protection of Indian Constitution. Any laws made

against the provisions mentioned in the constitution, the Judiciary declares them as 'Ultra Vires', after which it ceases to be in operation.

4.14. Self assessment Questions

1. When the Supreme Court of India started functioning?
2. What is the retirement age of Supreme Court Judge?
3. _____ is the supreme interpreter of the constitution.
4. Article ____ deals with Writs.
5. Expand PIL.
6. _____ is the oldest High Court in the Country.
7. Which High Court has the maximum number of Judges.
8. The power of Judiciary to check the legislature of the country is known as _____.
9. _____ deals with those disputes, in which parties are ready to compromise and to settle it out of court.
10. If a person detained, is not produced before the court of Law, _____ writ is issued.

4.15. Terminal Questions

Answer the following in a word or sentence each. Each carries 1 mark.

1. When was Supreme Court of India Established?
2. Who appoints the judges of Supreme Court of India?
3. What is the term of Supreme Court Judges?
4. What is 'Writ'?
5. What is Lok Adalat?
6. State the number of High Courts in India.
7. Define Public Interest Litigation.
8. What is the retirement age of High Court Judges?
9. Who is the present Chief Justice of Supreme Court of India?
10. Who appoints the Judges of High Court of States?

Answer the following in a Paragraph each. Each Question carries 5 marks

1. Explain the role of the judiciary as a Guardian of fundamental rights.
2. Explain the organisation of Supreme Court of India.
3. Explain the significance of judicial review.
4. State the procedure of removal of the judges.
5. What is meant by public interest litigation (PIL)?
6. What are Writs?
7. Examine 'judicial activism' in India.
8. Write a note on the Public Interest Litigation?
9. Narrate the various functions of High Courts?

Answer the following in detail. Each question carries 14 marks

1. Explain the Jurisdiction of Supreme Court.
2. What do you mean by Judicial Review? Explain its features?
3. Explain various 'Writ' powers and their importance.
4. Examine the composition, Appointment procedure, qualifications, Tenure and jurisdiction of State High Court.

4.16 Answers**Answers for 1 mark questions**

1. Refer to sub section 4.3
2. Refer to sub section 4.3.b.
3. Refer to sub section 4.3.e.
4. Refer to sub section 4.6
5. Refer to sub section 4.8
6. Refer to sub section 4.10.
7. Refer to sub section 4.9.
8. Refer to sub section 4.10. (d)
9. Justice Sarosh Homi Kapadia
10. Refer to sub section 4.10.(b)

Answers for 5 marks questions

1. Refer to sub section 4.6
2. Refer to sub section 4.3.a.
3. Refer to sub section 4.5
4. Refer to sub section 4.3.f and 3.3.(v)
5. Refer to sub section 4.9.
6. Refer to sub section 4.6
7. Refer to sub section 4.7
8. Refer to sub section 4.9
9. Refer to sub section 4.12.

Answers for 14 marks questions.

1. Refer to sub section 4.4
2. Refer to sub section 4.5 and 4.5. (a)
3. Refer to sub section 4.6
4. Refer to sub section 4.10 and 4.12.