

## **Court System in India**

In India the structure of judiciary is like a pyramid. The Supreme Court is at the apex, below it, there are High Courts, the next step in the hierarchy are the district courts and at the bottom of the judicial pyramid are the subordinate courts.

In India, the courts from top to bottom deal with the disputes arising under the laws enacted by the Union Parliament as well as by state legislatures.

## **Functions Of The Judiciary**

1. **Administration of Justice:** To apply the law to specific cases or disputes. When it brought before the courts and renders the appropriate awards and judgment. Creation of judge made law When the might appear in conflict under the given circumstances, judges decided appropriate law on the basis of their wisdom and common sense. Under the doctrine of the 'stare decisis' the previous decision of judges are regarded as binding on forthcoming similar cases.
2. **Guardian of the Constitution:** The conflicts of jurisdiction between the central government and the state governments or between the legislature and the executive are decided by the court. Any law or executive order which violates any provision of the constitution is declared unconstitutional or null and void by the judiciary. For e.g. Judicial review guaranteeing the

fundamental rights of individuals and ensuring balance between the union and the units in a federal state.

3. **Protector of Fundamental Rights:** The judiciary protects the rights of people against the encroachment of the government or any other association or individual. The superior courts enforce the fundamental rights of the people through appropriate writs in the nature of Habeas Corpus, Mandamus, Certiorari, Quo-Warranto etc.
4. **Advisory Function:** In India the Supreme Court, the highest court of law, may give advisory opinion on constitutional questions. Such advice is given even in the absence of an actual dispute, when the chief executive so desires.
5. **Supervisory Function:** Higher courts, in most cases, are assigned the task of supervising the work of the lower courts. The High Courts supervise the work of the subordinate courts in India.
6. **Non-judicial or Administrative Functions:** Miscellaneous functions like the courts may grant certain licenses, administer the estates of deceased persons and appoint receivers. They register marriages; appoint guardians of minor children and lunatics. In some states, they are authorized to confer citizenship on aliens. Superior courts are given the power to exercise control over their officers and servants.

## **Supreme Court**

Appointment of the Chief Justice of India: There is no procedure laid down for the appointment of the Chief Justice of India.

**Appointment of Judges (Art. 124):** Every judge of the Supreme Court shall be appointed by the President after consultation with such judges of the Supreme Court and of the High Court as the President may deem necessary. In case of the appointment of a judge other than the chief justice, the chief justice of India shall always be consulted.

## **Qualification for appointment as a Judge (Art. 124):**

No person shall be qualified for appointment as a judge of the Supreme Court unless he is:

- a citizen of India; and
- has been for at least 5 year a judge of a High Court; or
- has been for at least 10 years an advocate of High Court; or
- is in the opinion of the President, a distinguished jurisdictions (a highly qualified academia / law professor)

## **Tenure:**

A judge of the Supreme Court holds office until he attains the age of 65 years. No minimum age for appointment is fixed. A judge may at any time resign his office by writing addressed to the President. He may be removed by the President by an order issued after being presented an address by each House

of Parliament passed by special (also known as double majority) majority.

Such removal can be on the ground of:

- a. proved misbehaviour or
- b. incapacity.

**Salary of Supreme Court Judges:**

Chief Justice -1 lakh and Other Judges -90,000 (From consolidated fund of India).

**Appointment of acting Chief Justice (Art. 126):** In case of absence of the Chief Justice of the Supreme Court by any reason, the President may appoint a judge of the Supreme Court as the acting Chief Justice during such absence.

**Ad-hoc Judges (Art. 127):**

The Chief Justice with the previous consent of the President can ask a High Court judge after consulting the chief justice of that High Court to attend at the sittings of the Supreme Court as an ad hoc judge. The ad hoc judge will have all the jurisdiction, powers and privileges of a judge of the Supreme Court.

**Attendance of retired Judges (Art. 128):** The chief justice may with the prior consent of the President request a retired judge of the Supreme Court or a High Court who is qualified to be judge of the Supreme Court to and act as a judge of the Supreme Court. The President may determine his allowances. He shall have all the jurisdiction, powers and privileges of the

Supreme Court. But he shall not be deemed to be a judge of the Supreme Court.

## **Independence of Supreme Court:**

The Constitution secures the independence of the judges of the Supreme Court by the following provisions:

- The appointments are made by the President in consultation with the Chief Justice of India.
- The judges are to be removed by Parliament through a tough impeachment process. They cannot be removed by the executive.
- Salaries, allowances and pensions of Supreme Court judges are charged on the Consolidated Fund of India (CFI) and shall not be varied to their disadvantage.
- The conduct of a judge cannot be discussed in the parliament or any legislature (Art.121 and 211).
- A retired judge of the Supreme Court is prohibited from pleading or acting in any Court or authority in India.

## **Supreme Court to be a court record**

The Supreme Court is a Court of record (Art. 129). It means that its record has evidentiary value and cannot be questioned when produced in a Court. It also means that it has the power to punish for contempt.

# **Jurisdiction And Power Of Supreme Court:**

## **A. Original Jurisdiction:**

Original jurisdiction of SC is power to hear a case for the 1st time unlike Appellate jurisdiction. Purely federal in character i.e. have exclusive authority to decide any dispute involving a question of law between, UOI (Union) v/s state or states & any state / states on one side & state / states on the other Two or more states. However, according to 7th amendment, 1956, original jurisdiction of SC does not extends to disputes, arising out of provisions of a treaty, agreement etc. which was executed before 26th Jan 1950 & is in operation ever since.

As per article 71, all disputes regarding election of President & vice President are handled by SC Exclusion to original jurisdiction of states (Art.131). In disputes between centre & state due to disputes arising out of provisions of a treaty, agreement etc. which was executed before 26th Jan 1950 & is in operation ever since. Parliament may by law exclude SC's jurisdiction in disputes with respect to use, distribution & control of water in any interstate river.

### **Exclusive jurisdiction in following cases:**

- Between the government of India and one or more states.

- Between the government of India and one or more states on one side, and one or more states on the other.
- Between two or more states. The dispute must involve any question of law or fact on which the existence or extent of a legal right depends. A legal right is one which is capable of enforcement by a Court law. It must be based on a rule of positive law and not be a matter of political considerations.
- Writ Jurisdiction (Art.32): A type of original jurisdiction of Supreme court.

### **Jurisdiction of SC to enforce FRs:**

Every individual has a right to move to SC directly by appropriate proceedings for the enforcement of his FR, without coming via HC, by means of writs.

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### **B. Appellate Jurisdiction:**

Constitutional Matters (Art.132)

- Appeal lies to SC if HC certifies that the case involves a substantial question of law as to interpret the constitution.
- If HC refuses to give certificate, SC may grant a special leave for appeal if it is satisfied that case does involve such question.

**Civil Matters:** An appeal lies to SC from any judgement in civil proceeding of HC if it certifies:

- that the case involves a substantial question of law of general importance.
- that in opinion of HC, the said question needs to be decided by SC. Thus, No appeal in case of civil

matters lies to SC as a matter of right as it lies only when HC issues a certificate on above 2 conditions

**Criminal Matters (Art.134):** Constitution provides the following provisions as to appeal in criminal matters:

- If HC has sentenced someone to death
- If HC has withdrawn for trial before itself a case from the lower court & in such trial, lower court has sentenced the accused to death
- If HC certifies that the case is fit for appeal to SC, even if HC on appeal has reversed an order of acquittal of accused & sentenced him to death or life imprisonment or for period not less than 10 years (Appellate Jurisdiction is not Applicable in cases of Court Martial) Grant of special leave to appeal - Article 136 Articles 131, and 133 provide for appeals to the Supreme Court from constitutional, civil and criminal matters respectively.
- Under Article 136, the Supreme Court has the power to grant special leave to appeal from any judgement, decree, determination, sentence or order of a Court or tribunal except military tribunals. In the earlier articles, the appeals flow only from the determinations of a High Court.
- Article 136 puts no such restrictions. Under this article, the Supreme Court may hear an appeal even from a subordinate court or tribunal. Even where the law does not provide for any appeal, e.g., from Industrial Tribunals, Election Tribunals, the Central Board of Revenue, the Central Government, the Railway Rates Tribunal, etc.



## **Advisory Jurisdiction (Only consultative Role):**

- President can refer to court either on a question of law or on a question of fact provided it is of public importance. However, it is not compulsory for court to give its advice.
- Further, President is empowered to refer to SC for its opinion regarding disputes, arising out of provisions of a treaty, agreement etc. which was executed before 26th Jan 1950 & is in operation ever since. In such case, it is obligatory for the court to give its opinion to President (In this cases, opinion expresses by SC is only advisory in nature & not binding on President).

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### **C. Revisory Jurisdiction**

- Empowered to review any judgment or order made by it with a view to remove any mistake or error that might have crept in judgment
- Even though, judgment have been passed by SC has a binding effect on all the courts of India, but not on SC itself.

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Review of judgements for orders by the Supreme Court (Article 137)

Under this provision the Supreme Court has the power to review its own judgement. Since there is no court above Supreme Court, its judgement can be reviewed by no court but by itself.

A review will lie on the following grounds:

- Discovery of new and important matters or evidence;
- Mistake or error apparent on the face of the record; and
- Any other sufficient reason.

### Transfer of Certain Cases to High Court (Article 228):

If the High Court is satisfied that a case pending in a subordinate Court involves a substantial question of law as to the interpretation of the Constitution, the High Court will withdraw the case and either determine the question of law and return the case to the court from where it was withdrawn or dispose of the case itself.

Contempt of court:

(Supreme Court has power to punish its own contempt).

- Civil: Willful disobedience to any judge or other processes of the court.
- Criminal: Publication of any matter or doing any act whatsoever which scandalizes or tend to scandalize

authority of the court or tend to interfere course of any judicial proceedings.

### **Curative Petition:**

- A review petition may be filed in SC after delivery of its judgment; Court may review the case under its inherent power but on very restricted grounds.
- The petition 1st has to circulate to a bench of 3 senior most judges & judges who passed the judgment complained of.

### **Others Powers of SC:**

- Make rules regarding procedure & practice of court
- Can recommend removal of members of UPSC to the President
- Power to review the laws passed by the legislature & orders issued by executives & to declare them ultra vires if they contravene any of the provisions of the constitution
- It must be noted that SC cannot pronounce upon the constitutionality of any law or executive's action on its own. It can only pronounce judgment, when said law or executive action is actually challenged by someone
- The ultimate authority to interpret the constitution also rest with SC , which has been described as mouth piece of Indian constitution.

# Appointment & Transfer Of Judges - By National Judicial Appointments Commission (NJAC)

Composition of the NJAC 6 members:

- Chief Justice of India (Chairperson, ex officio)
- Two other senior judges of the Supreme Court next to the Chief Justice of India ex officio.
- The Union Minister of Law and Justice, ex-officio
- Two eminent persons (one of which would be from the SC or ST or OBC or Minority communities or a woman), for 3 yrs, not eligible for re-nomination, to be nominated by a committee consisting of : Chief Justice of India Prime Minister of India Leader of opposition in the Lok Sabha ( where there is no such Leader of Opposition, then, the Leader of single largest Opposition Party in Lok Sabha).

## High Courts

The judiciary in the states consists of a High Court and a system of subordinate courts below it. The High Court is at the apex of the judiciary in the state. Article 214 provides for High Court for each state but there can be common High Courts for two or more states established by Parliament under Article 231. Under Article 230 the jurisdiction of High Court can be extended to the Union Territories also. At present there are only 24 High Courts. A High Court may also have one or more benches of itself within the area of its territorial jurisdiction.

## Indian High court Act, 1861

- High courts established at Calcutta, Bombay & Madras.
- Constitution states that there shall be HC in every state, but, parliament has the power to establish a common HC for 2 or more states.
- Strength of HC is flexible (Unlike SC “ which can be increased by parliament).
- President may from time to time appoint judges of HC, keeping in view amount of work before HC.

## **Appointment of High Court Judges:**

Initiation of proposal for appointment of judges of HC must invariably be made by CJ of that HC Appointment is made with respect to recommendations of NJAC .omposition of the NJAC 6 members i.e. Chief Justice of India (Chairperson, ex officio), Two other senior judges of the Supreme Court next to the Chief Justice of India “ ex officio, The Union Minister of Law and Justice, ex-officio, Two eminent persons (one of which would be from the SC or ST or OBC or Minority communities or a woman ), for 3 yrs, not eligible for re-nomination, to be nominated by a committee consisting of: Chief Justice of India-Prime Minister of India “ Leader of opposition in the Lok Sabha ( where there is no such Leader of Opposition, then, the Leader of single largest Opposition Party in Lok Sabha).

## **Functions of the Commission: Recommending persons to president for appointment as:**

- Chief Justice of India.

- Judges of the Supreme Court.
- Chief Justices of High Courts and other Judges of High Courts.

Recommending transfer of Chief Justices and other Judges of High Courts from one High Court to any other High Court. Ensuring that the persons recommended are of ability and integrity.

### Appointment of Acting CJ, Additional Judges & Ad Hoc Judges

High Court Appointment of acting CJ By President if CJ is ill or incapable to serve. Appointment of additional judges Duly qualified persons as additional judges , for a period of not extending 2 years (when President thinks that there is temporary increase in business of HC) Ad hoc judges CJ of HC with prior permission to President may request retired HC judges to sit & act as a judge of HC for a temporary period Tenure of High Court Judges, 62 Years. Any dispute regarding the age of judge of HC is decided by President in consultation with CJ of India Removal of High Court Judges. HC judge can resign by writing to President; or. By same removal process as in case of SC judges.

### Salary of High Court Judges,CJ

- Rs. 90,000 and Others “ Rs.80,000, From consolidated fund of State.

**Oath** - before Governor (Unlike before President as in case of Supreme Court).

## Qualification for High Court Judges

- Must be citizen of India.
- Must have held a judicial office in territory of India for atleast 10 years or.
- Must have been an advocate of HC in succession for 10 years. After retirement a judge of HC cannot plead in a court or before any authority in India except in SC or HC other than in which he held office Jurisdiction of High Court.

### **A.Original Jurisdiction**

- In civil cases with amount > 2000.
- In criminal cases, authorised to them by President Magistrates.

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### **B.Appellate Jurisdiction**

All HCs entertain appeals in civil & criminal cases from their subordinate courts. They have, however, no jurisdiction over tribunals established by the law relating to armed forces of the country.

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### **C.Writ Jurisdiction**

- Jurisdiction to issue writs under HC is larger than the SC.
- SC can issue them only where a FR has been infringed whereas a HC can issue them, not only in such cases but also where an ordinary legal right has been infringed.

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### **D.Administrative & supervisory Functions of HC:**

- HC supervise & controls the working of courts subordinate to them.
- Frame rules & regulations for transactions of their business. For ex. Transfers, Postings, Promotions etc.
- Not applicable in case of tribunals dealing with armed forces (HC acts as court of records & has power to punish its own contempt)

### Superintendence over Courts:

- Under Article 227 every High Court has a power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. Superintendence covers both administrative as well as judicial.
- The power of superintendence is an extraordinary power to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for making trifling corrections.
- The High Court should intervene in cases of gross injustice or non-exercise or abuse of jurisdiction even though there is no provision for appeal or revision.

**Transfer of Certain Cases to High Court (Article 228):** If the High Court is satisfied that a case pending in a subordinate Court involves a substantial question of law as to the interpretation of the Constitution, the High Court will withdraw the case and either determine the question of law



and return the case to the court from where it was withdrawn or dispose of the case itself.

## **Control over the Subordinate Judiciary:**

As the head of the judiciary in the State, the High Court has got an administrative control over the subordinate judiciary in respect of certain matters. The subordinate courts include District Judges of the city, Civil Courts as well as the Metropolitan Magistrates and Members of the Judicial Services.

## **The control over the judges of these subordinate courts is exercised by the High Court in the following matters:**

- The High Court is to be consulted by the Governor in the matter of appointing, posting and promoting district judges.
- The High Court is consulted along with the state Public Service Commission, by the Governor, in appointing persons to the judicial service of the state.
- The control over district courts and courts subordinate thereto, including the posting and promotion of and the grant of leave to persons belonging to the judicial service and holding any post inferior to the post of a district judge is vested in the High Court.

## **Powers to issue writs:**

- The Supreme Courts and High Courts can issue writs to ensure that rights of the people are not violated either by State or otherwise.
- The Constitution has specifically given the power to issue certain writs' to the High Courts.
- These Courts can issue writs (which are binding directions of the Court) to any person or authority, including government of the State concerned.
- The writs in the nature of Habeas, Corpus, mandamus, prohibition, quo warranto, and certiorari for the enforcement of rights of the people.
- This power is exercised in the original jurisdiction of the High Court, and is not derogatory to similar power of the Supreme Court.

#### Transfer of Cases to the High Court.

- If a High Court is satisfied that a case pending in a subordinate court involves a substantial question of law as to the interpretation of the Constitution, the High Court may withdraw such a case from the lower court.
- After examining the case, the High Court may either dispose it off itself, or may return it to the lower court with instructions for disposal of the case.

### **Court of Record**

- A High Court is also a court of record, like the Supreme Court.
- Lower courts in a State are bound to follow the decisions of the High Court which are cited as precedents.
- A High Court has also the power to punish for its contempt or disrespect.

## **District Judiciary**

Subordinates courts- district courts.

Civil cases- district judges.

Criminal cases- session judges

Appointed by Governor in consultation with CJ of HC. In each district of India there are various types of subordinate or lower courts. They are civil courts, criminal courts and revenue courts. These Courts hear civil cases, criminal cases and revenue cases, respectively.

- Civil cases pertain to disputes between two or more persons regarding property, breach of agreement or contract, divorce or landlord - tenant disputes. Civil Courts settle these disputes. They do not award any punishment as violation of law is not involved in civil cases.  
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- Criminal cases relate to violation of laws. These cases involve theft, dacoity, rape, pickpocketing, physical assault, murder, etc. These cases are filed in the lower court by the police, on behalf of the state, against the accused. In such cases the accused, if found guilty, is awarded punishment like fine, imprisonment or even death sentence.  
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- Revenue cases relate to land revenue on agriculture land in the district.