JUDICIAL STRUCTURE: A COMPARATIVE STUDY OF INDIA AND ITS SUB-CONTINENT

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INTRODUCTION

The Indian judicial system is one of the oldest and lengthiest legal systems in the world.[1] The Constitution secures justice to all its citizens apart from securing liberty, equality, and promoting fraternity. The judiciary occupies a pivotal under the Indian Constitution. It organized the country's judicial system with a striking unity. It works as the final authority in interpreting legal issues and constitutional arrangements. Appeals progress up a set of hierarchically organized courts, whose judges interpret law under a single national constitution. Although states may pass their own laws, there are no separate state constitutions, and the same set of courts interprets both state and national law. Upon closer scrutiny of this seeming cohesiveness, however, two types of clear divisions quickly become evident that between the judiciary's federal units and its different levels.

As India's first Attorney-General most distinguished jurists, Mr. M. C. Setalvad, points out in the Hamlyn Lectures "an impartial and independent judiciary was gradually built up times. The Constitution of India continued and strengthened this incorporating into it what may be called an integrated judicial system to function impartially beyond the range of executive influence and except by Parliament under circumstances prescribed by the Constitution. Judicial system of this nature was essential in order to preserve and ideals of democracy and freedom and of the Rule of Law embodied Constitution"[2]

While it is debatable whether India's political structure is federal with unitary features or unitary with federal features, it is incontestable that its judicial structure is unitary.[3] At the apex of the hierarchy of courts is the Supreme Court of India with jurisdiction wider than that of any High Court. The powers of the various courts are distributed in such a way that every citizen in this country has access to judicial system. The present judicial system of India was

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[1] Rita Singhania, Civil Court System , Singhania & Partners LLP, <www.Singhania.in> accessed on 10 September 2016

[2] M. C. Setalwad, *The Common Law in India* (Hamlyn Lectures 12th series; Stevens & Sons Ltd.,1960) 200.

[3] A. G. Noorani, 'The Indian Judiciary Under The Constitution, Law and Politics in Africa, Asia and Latin America' [1976] 9 VRU Law Review 335-341

not a sudden creation. It has been evolved as the result of slow and gradual process and bears the imprint of the different period of Indian history. The period which however, have made the greatest impact on the existing system are those nearest to the present times and it is not surprising that the period preceding and following the down of independence, more particularly that one after the coming into force of the constitution have been the greatest molding factors.[4]

HISTORY OF DEVELOPMENT OF INDIAN JUDICIAL SYSTEM

History comprises of the growth, evolution and development of the legal system in the country and sets forth the historical process whereby a legal system has come to be what it is over time. The legal system of a country at a given time is not the creation of one man or of one day but is the cumulative fruit of the endeavor, experience, thoughtful planning and patient labor of a large number of people through generations.[5]

Ancient India represented a distinct tradition of law, and had a historically independent school of legal theory and practice.[6] The political structure in the Vedic Period consisted of kingdoms, each tribe forming a separate kingdom. The basic unit of political organization was the *kula* (family). A number of *kulas* formed a *grama* (village), *Gramani* being the head. A group of *gramas* formed a*vis* (clan) and a number of *vis* formed the *jana* (tribe). The leader was *Rajan* (the Vedic King). The king (raja) was the supreme head of the legislative, executive and judiciary branches. The members of the council of minister could give advice to the king, but final decisions were left to the king. The ministers and other officials were directly appointed by the king. The *sabha* and the *samithi* were responsible for the administration of justice at the village level.

According to *Brihaspati Smiriti*, there was a hierarchy of courts in Ancient India beginning with the family Courts and ending with the King. The lowest was the family arbitrator. The next higher court was that of the judge; the next of the Chief Justice who was called Praadivivaka, or adhyaksha; and at the top was the King's court.

[4] Rakesh Singh Bhadoria, 'Ancient Judicial System Of India- Satayamev Jayate', *Lex Hindustan* (New Delhi, 7 August 2016)
[5] Rashika Chaddha, 'Evolution of Law: A short history of Indian legal Theory', *Legal India* (New Delhi, 13 May 2011)
[6] S.D. Sharma, *Administration of Justice in Ancient India* (Harman Publishing House, 1988) 170

Early in this period, which finally culminated into the creation of the Gupta Empire, relations with ancient Greece and Rome were not infrequent. The appearances of similar fundamental institutions of international law in various parts of the world show that they are inherent in international society, irrespective of culture and tradition.

The ideal of justice under Islam was one of the highest in the middle ages. The administration of justice was regarded by the Muslim kings as a religious duty. Sources of Islamic Law are divided into Primary and Secondary Sources. *Quran* is the first and the most important source of Islamic law. It is believed to be the direct words of God as revealed to Muhammad through angel Gabriel in Mecca and Medina. Muslim jurists agree that the *Quran* in its entirety is not a legal code. *Sunna* is the traditions or known practices of Prophet Muhammad, recorded in the *Hadith* literature. *Quran* justifies the use of *Sunna* as a source of law. *Ijma* and Qiyas are the secondary sources of Islamic law. There are 72 Muslim sects in all with the *Shia* sect being the most popular in India

Under the Moghal Empire the country had an efficient system of government with the result that the system of justice took shape. The unit of judicial administration was Qazi. Every provincial capital had its Qazi and at the head of the judicial administration was the Supreme Qazi of the empire (Qazi-ul-quzat). Moreover, every town and every village large enough to be classed as a Qasba had its own Qazi. During this period, the personal laws of the non-Muslims were applied in civil matters, but the criminal law was Islamic in nature. Whenever there was a conflict between Islamic Law and sacred laws of the Hindus, the former prevailed.

After that, the British rule in India brought about the introduction and development of the common law legal system, on which India has based its present judicial framework.[7] In the early seventeenth century, the Crown, through a series of Charters, introduced a judicial system functioning under its authority in the three "presidency" towns (Bombay, Madras and Calcutta), i.e. the largest and most important towns under British rule (the courts were called 'Admiralty Courts' in Bombay and Madras and 'Collector's Court' in Calcutta).

These judicial systems were formulated independently by the Governor and the Council of those towns, and had authority to decide both civil and criminal matters. However, the towns

[7] K.G. Balakrishnan, '*An Overview of the Indian Justice Delivery Mechanism'*, International Conference of the Presidents of the Supreme Courts of the World (Abu Dhabi, March 2008)

functioned independently, and there was a lack of coherence due to dissimilarities in functioning. Moreover, the courts did not derive their authority directly from the Crown, but from the East India Company. This also contributed in making the system unsystematic

In the eighteenth century, with the fortifying of the British burden in India, a more uniform example developed. All "administration" towns now had a uniform legal framework (called a *Mayor's Court*). Before long, by Royal Charter, the courts got their power specifically from the Crown. An arrangement of speaks to the Privy Council was started, and this denoted a noteworthy historic point in the advancement of the Indian Judicial framework, on the grounds that the Privy Council worked as the last court of bid in India for over 200 years. Be that as it may, the courts worked under the English law, with no respect for nearby laws, which raised questions with respect to their adequacy. Additionally, a great part of the nearby criminal equity, at the grass root level, was left in the hands of nearby landowners.

In the late eighteenth century, the Mayor's Court was supplanted with an incomparable Court (in administration towns). This was the main endeavor to make a particular and autonomous legal organ in India, under the immediate power of the Ruler. The Chief Justice and Pusine Judges were selected by the King. This Court had purview over common, criminal, admiral's office and ministerial matters and was required to detail standards of practice and method. Requests from this court lay to the Privy Council.

At the outset, the regional purview of the court amplified as it were to British subjects and "His Majesty's" subjects (every one of those in work of the East India Company and those going into an agreement with one of "His Majesty's" subjects). In regions aside from the administration towns (called "mofussil"), the Organization ruled over every single legal matter. Its ward had no connection with the Crown. Nearby thoughtful and criminal equity was left in the hands of local people, working under a framework known as the "adalat framework".

By the mid nineteenth century, a consistent chain of importance of courts and a sound procedural practice had advanced. The announcement by Queen Victoria that made India a British reliance called for supreme sovereign control over India. The adalat framework and Supreme Court were canceled, a High Court was built up in every administration town, and more were conceived in different territories also. Bids from them went to the Privy Council. Accordingly, this made a uniform legal framework in India, which, in substance, has to a

great extent proceeded till today. The forerunner of the present Supreme Court of India was the Federal Court (built up in 1937), which heard bids from the High Courts, and whose choices were appealable to the Privy Council. The present Supreme Court of India appreciates the joined locale of the Privy Council and the Federal Court, which are no more in presence.

STRUCTURE OF THE INDIAN JUDICIARY & DIFFERENT COURTS OF APPEAL

The Indian judiciary is well knit and integrated. There is one unified judicial system for the entire republic of India. The judicial system provided by the Constitution of India is comprised the three type of courts. At the top, it is Supreme Court, at middle the High Courts and at bottom the subordinate Courts in addition to the Constitution, there are other laws and rules which direct the composition, power and jurisdiction of these courts.

The Supreme Court of India

The Supreme Court of India is the highest court of the land as established by Part V, Chapter IV of the Constitution of India. It acts as the guardian and protector of the Constitution of India more specifically of fundamental rights.[8] It also acts as the only arbiter in matters of relations between the union and the states and the states inter se.

Composition: The Supreme Court originally consisted of a Chief Justice and seven other judges (Art. 124). The strength has been increased several times by the Acts passed by the Parliament. Presently it consists of the Chief Justice of India and not more than 30 other Judges.

Appointment: The Chief Justice of India is appointed by the President in consultation with judges of the Supreme Court and the State High Courts, as he may think necessary, besides taking the advice of the Council of Ministers. As per convention the senior most judge of the Supreme Court is usually appointed as Chief Justice. The President in consultation with the Chief Justice of Supreme Court appoints the other judges of the Supreme Court. A judge takes his oath of office before the President or someone appointed by President for the purpose in the form prescribed in the constitution. The constitution through its Article 124 (6)

[8] Bernard D'Sami, *Indian Legal System and its Relevance for Marginalized and Disadvantaged Groups* (Indira Gandhi National Open University, 2012) 238.

and (7) prohibits a person holding office of Supreme Court Judge from practicing law before any court in territory of India.

Qualification: To be appointed as judge of the Supreme Court, a person must be (i) a citizen of India and (ii) must have been a judge of a High Court or of two such courts in succession for a period of five years or (iii) an advocate of High Court for at least 10 years or a distinguished jurist. There is no minimum age fixed for appointment as a judge.

Term of Office and Removal: A judge of Supreme Court continues in office until he/she attains the age of sixty five years. However, one can resign from office earlier by addressing his resignation to the President. A judge may be removed from his office only by an order of the President on the ground of misbehavior or incapacity but the removal is possible only through regular procedure laid down in the Constitution. If the two Houses of Parliament supported by a majority of the total membership of that House and by a majority of not less than 2/3rd of the members of each House, present and voting recommend the President for the removal of Judge from office, contrary to the common belief, there is no provision in our constitution for the impeachment of a judge.

Seat of the Supreme Court: The seat of the Supreme Court is at Delhi. But the Chief Justice of the Supreme Court, with the previous consent of the President can enable the Supreme Court to sit elsewhere in India, besides Delhi.

Jurisdiction and Power: The Supreme Court has a three-fold jurisdiction. They are classified as: (i) original, (ii) appellate and, (iii) advisory.

Original Jurisdiction: Original jurisdiction means the power to hear and determine a dispute in the first instance. The Supreme Court has original jurisdiction in cases, which extends to disputes: a) between the Government of India and one or more States; b) between the Government of India and any state or States on one side and one or more States on the other; c) between two or more States, and d) disputes regarding the enforcement of fundamental rights. No other Court in India can deal any such suit. Thus the Supreme Court is a federal court. But, there are certain exceptions to this original jurisdiction. This jurisdiction shall not extend to a dispute arising out of a treaty, agreement etc. which is in operation and excludes such jurisdiction. The Supreme Court's jurisdiction may also be excluded in certain other matters like inter-State water disputes (Art. 262), matters referred to the Finance Commission, (Art. 280) adjustment of certain expenses as between the Union and the States

(Art. 290). State cannot claim recovery of damages against the Government of India (Art. 131). The original jurisdiction of the Supreme Court also extends to cases of violation of one's fundamental rights (Art. 32). Under Art. 139A, Supreme Court may transfer cases from High Court to another in the interests of justice.

Appellate Jurisdiction: The Supreme Court is the highest court of appeal from all courts in India. It hears appeals in cases related to civil, criminal and constitutional matters. The appellate jurisdiction of Supreme Court may be divided under three heads:

i) Cases involving interpretation of the Constitution – Civil, Criminal or otherwise

ii) Civil cases, irrespective of any constitutional question

iii) Criminal matters, irrespective of any constitutional question.

Supreme Court accepts appeals by special leave from any judgment, decree or final order in civil proceeding if there is a substantial question of law or interpretation of constitution is required. In a criminal proceeding of a High Court, the appellate jurisdiction of Supreme Court lies as of right (a) where High Court has on appeal reversed an order of acquittal of an accused person and sentenced him to death, or (b) where High Court has withdrawn for trial before itself or High Court certifies a case fit for appeal.

Advisory Jurisdiction: The Supreme Court renders its advice on any question of law or fact of public importance referred to it for consideration by the President. The advice is not binding on the President, who may or may not accept it. The main use of this provision is to enable the Government to get an authoritative opinion as to the legal validity of a matter before action is taken upon.

Other Powers: Supreme Court enjoys numerous other powers also. These are:

(a) Article 129 declares that Supreme Court is a 'court of record'. The decisions of the Supreme Court are recorded and these form precedents for other cases of similar nature. If any person, body or institutions of the country show disrespect to the decisions of Supreme Court, it may institute 'contempt of court' proceeding against that person, body or institutions. It has the power to punish by fine and imprisonment any person guilty of contempt of its authority.

(b) The decision of the Supreme Court is binding on all courts within the territory of India. However, the Supreme Court is not bound by its earlier decision. It can come to a different decision if it is convinced that it had made an error or harmed public interest.

(c) The Supreme Court looks into disputes regarding the election of the President and the Vice- President under Art. 71.

(d) The Supreme Court can make rules regarding the practice and procedure of the Court with the approval of the President.

The High Courts

At the State level, the Constitution provides establishment of a High Court which is the highest organ of judicial administration in the State. At present, there are 24 High Courts in India. According to Art. 214 of the constitution, there shall be a High Court in each state but Article

231 empower Parliament to establish a common High Court for two or more states. Parliament may by law constitute a High Court for a Union Territory or declare any Court in any such territory to be a High Court (Article 241). Delhi has a separate High Court, but other Union Territories come under the jurisdiction of different High Courts.

Appointment of High Court Judges: Every High Court consists of a Chief Justice and such other judges as the President may appoint from time to time. The strength of all the High Courts is not the same. The Chief Justice of the High Court is appointed by the President in consultation with the Chief Justice of India and the Governor of the State concerned. In the appointment of the other judges, the President also consults the Chief Justice of that High Court. Besides, the President has the power to appoint additional judges for temporary period or acting judges in absence of permanent judges.

Qualification: To be eligible for appointment as a judge of a High Court a person must a) be a citizen of India not being over 62 years; and must have b) held a judicial office for at least ten years; or c) should have been for at least 10 years an advocate of High Court or of two or more such courts in succession [Art. 217 (2)]

Term of Office: The judges of the High Court hold office until they attain the age of 62 years. They may resign earlier by writing to the President. A judge of the High Court may be

removed by the President on the grounds of proved misbehavior or incapacity on an address by both Houses of Parliament supported by the vote of two-thirds of members present and voting in each House under Article 217(4). The mode of removal of a judge of High Court is the same as that of a judge of the Supreme Court. The office of a judge may also be vacated if he is appointed a judge of the Supreme Court or being transferred to any other High Court by the President.

Jurisdiction and Function: Each High Court exercises power of superintendence over all the courts and tribunals within its jurisdiction (exceptions being that set by law relating to the armed forces). The High Court can take steps to ensure that the lower courts discharge their duties within the bounds of their authority. It can withdraw case pending before a subordinate court which involves a substantial question of law as to the interpretation of the Constitution and may itself decide it or determine the said question of law and return the case to court for determination.

The High Court can also transfer cases from one lower court to another lower court for disposal. Every High Court is a court of record and has all the powers of such a court, including the power to punish for its contempt. It is the highest court of appeal in the State in both civil and criminal cases. It also hears cases relating to matrimonial matters and the admiralty. A High Court Judge's power to hear specified class of cases is derived only from the application of business by the Chief Justice.

The High Court also has power to issue writs for the enforcement of fundamental rights under Article 226. Besides this, it can issue writ even in case of infringement of legal right of a person, provided the writ must be the appropriate remedy for that. In this way, the power of High Court is much wider than the Supreme Court which is confined only to the enforcement of fundamental rights. The High Court's power to issue extend to the matter of defect of jurisdiction, non-observance of the rules of natural justice, error of law apparent on the face of the record and alternative remedy.

The Subordinate Courts

Chapter VI under Part VI of the Constitution provides the provisions regarding subordinate courts. The subordinate courts, at district level and lower, have almost similar structure all over the country. They deal with civil and criminal cases in accordance with their respective jurisdictions and administer the Code of Civil Procedure and the Code of Criminal Procedure.

Each State is divided into judicial districts. The subordinate judiciary in each district is headed by a District and Sessions Judge. The usual designations on the civil side are District Judge, Additional District Judge, and Civil Judge. On the criminal side, it's Sessions Judge, Additional Sessions Judge, Chief Judicial Magistrate, Judicial Magistrate etc. The Governor in consultation with the High Court appoints the district judges. A person who is not already in Government Service should have at least seven years' experience at the bar to become eligible for the position of a district judge.[9]

In matter of appointment of person other than district judge to the judicial service of a State shall be made by the Governor in accordance with rules made there under. Besides the State Public Service Commission, the High Court has to be consulted in the matter of such appointments.[10] The administrative control of the High Court over the district courts and other lower courts is complete in almost all aspect regarding postings, promotions and grant of leave etc. to any person belonging to the judicial service of a State and holding any post inferior to the post of a judge is vested in the High Court.

District Court: These courts are primarily Civil Courts to hear generally the appeals from the courts of original civil jurisdiction in the Districts and Tehsils (Talukas). However these courts have also been given original civil jurisdiction under many enactments. This court exercises jurisdiction within its territorial or local jurisdiction of the District. These courts are again depending upon the workload classified into Principal District Court, I Additional District Court, and II Additional District Court etc. The Principal District Judge of these courts makes over all supervision of subordinate civil courts.

Session Court: The State is to establish a court of the session court for every district. The court is to be presided over by a judge appointed the High Court.[11] These courts are primarily Criminal Courts, with jurisdiction to revise the orders from the subordinate Magistrates as well as to try serious offences, as prescribed by law. Nevertheless these courts have also been given original criminal jurisdiction under many enactments. This court exercises jurisdiction within its territorial or local jurisdiction of the District.

Principal Civil Judges (SD& JD) Courts: Depending on the monetary jurisdiction assigned to the category of the court, all the civil litigation matters are filed before the courts of the

[9] Article 233
[10] Article 234
[11] Cr.P.C 1973, s. 9

original civil jurisdiction, either the Senior Division or the Junior Division depending upon the workload of the court. These courts again classified into I Additional Civil Judge Senior Division, II Additional Civil Judge Senior Division and Civil Judge Junior Division, I Additional Civil Judge Junior Division, II Additional Civil Judge Junior Division. Most of the times there are more than one Judges of the Junior Division in every Tehsil, and of Senior Division in every District.

The Chief Judicial Magistrates and other Judicial Magistrates' First Class: In every district the State government may, after consultation with the High Court, establish as many Courts of Judicial Magistrates of the First Class and of the second Class, depending upon the work load. The presiding of these courts shall be appointed by the High Court.[12] The Chief Judicial Magistrate heads over the other Judicial Magistrates of First Class in every tehsil. Every Chief Judicial Magistrate shall be subordinate to the Sessions Judge and other Judicial Magistrates shall, subject to the general control of the sessions Judge, be subordinate to the Chief Judicial Magistrate. These courts are primary criminal courts, where every offender is first produced after arrest by the police.

Courts of the Metropolitan Magistrates: In every Metropolitan area, the State Government may, after consultation with the High Court, establish courts of Metropolitan Magistrates, at such places and in such numbers as it thinks necessary. The presiding officers of such courts are appointed by the High Court. The Jurisdiction and powers of every such Magistrate shall extend throughout the Metropolitan area.[13] In every Metropolitan area, the High Court shall appoint Metropolitan Magistrate as Chief Metropolitan Magistrate.[14] The Chief Metropolitan Magistrate and every Additional Chief Metropolitan Magistrate shall be subordinate to the Sessions Judge and every other Metropolitan Magistrate shall, subject to the general control of the Session Judge, be subordinate to the Chief Metropolitan Magistrate.[15] Again another legacy of the British Raj is the courts of original criminal jurisdiction in the presidency towns of Mumbai, Kolkata and Chennai. Though under certain Acts, they have exclusive jurisdiction, where every offender is first produced after arrest by the police.

Other Courts of Appeal

[12] Cr.P.C 1973, s.11(2)
[13] Cr.P.C 1973, s.16
[14] Cr.P.C 1973, s.17
[15] Cr.P.C 1973, s. 18

Besides the courts set up within the framework of the Constitution, the following courts are set up taking into consideration the needs and interests of the people and demands of the time.

(a) *Administrative tribunals:* The Parliament enacted Administrative Tribunals Act in 1985. Through this the Central Administrative Tribunal (CAT) was set up in November 1985, to provide speedy and expensive justice to the central government employees in respect of the service matters. Besides CAT, there are many other tribunals such as Industrial Tribunals, Motor Accident Claim Tribunals, Commercial Tribunals, Cooperative Institutional Tribunals, Commercial Tax Tribunals, etc.

The Family Court Act, 1984 aims at promoting conciliation and securing speedy settlement of disputes relating to marriage and family affairs. These courts are to be set up in a city or town with a population of more than ten lakhs or in such other cases the State government may deem necessary.

(b) *Special Court:* There are specific courts with focused purposes like Labour Courts for labour and industrial related issues; special Indian Legal System and Its Relevance for Marginalized and Disadvantaged Groups courts for corruption related cases or CBI affairs, or special courts for dealing with atrocities on scheduled castes and scheduled tribes. Recently, fast track courts have also been set up in some States for speedy and quick disposal of legal matters.

(c) *Lok Adalat:* these are voluntary agencies at present, which are monitored and overseen by State legal aid and advisory boards. It is proved to be a successful alternative forum for resolution of disputes through conciliatory methods. The Legal Services Authority Act, 1987 has been enacted which provides a statutory footing to the legal aid movement. Under this Act the lok adalats will acquire statutory authority. Every award of the Lok Adalat will be deemed to be a decree of a civil court or order of any other court or tribunal and shall be final and binding on all the parties to the disputes.

FEATURES OF INDIAN JUDICIAL SYSTEM

One of the features of Indian judiciary is that it is mostly based on the common law system. The orders and decision made by the Judges in the Court are taken as the final verdict.

Statutory and regulatory laws are also taken into consideration and many times decisions are based on reference to the similar precedent. Some of the key features are as follows:

1. *Single Integrated System*: The Constitution of India provides for a single integrated judicial system. The structure of the judiciary in India is pyramidal with the Supreme Court at the top, High Courts below them and district and subordinate courts at the lowest level. The lower courts function under the direct superintendence of the higher courts. The unitary character of the judiciary is not an accident but rather a conscious and deliberate act of the constitution makers for whom a single integrated judiciary and uniformity of law were essential for the maintenance of the unity of the country and of uniform standards of judicial behavior and independence.[16]
2. *Independence of Judiciary:* Independence of Judiciary is sine qua non of democracy.[17] It primarily means the independence of judiciary from the control of legislature and executive. The underlying purpose of independence of judiciary is that judges must decide the dispute impartially according to law and not under the influence of any other factor. Explaining the expression "independence" and "judiciary" separately, he says that the judiciary is "the organ of government not forming part of the executive or the legislative, which is not subject to personal, substantive and collective controls, and which performs the primary function of adjudication." [18]It is ensured by various provisions of the constitution in the matter of appointment, security of tenure, salary, allowances, privileges, leave, pension ,power and jurisdiction of Supreme Court , no discussion on the conduct of judges in the Parliament or State Legislature, power to punish for contempt and removal. The basic need for independence of judiciary is based on the following points:

(i) *To maintain proper check and balance*: Judiciary serves as the watchdog by ensuring that all the organs are working in their demarcated areas and according to the law of the land. There is no such encroachment of any organ over the working of other organ. So it basically tries to maintain separation of power among the different organs of the state.

[16] Granville Austin, *The Indian Constitution: Cornerstone Of A Nation* (Oxford University Press, 1999), See also Mahendra P. Singh, *Constitutionality of Market Economy: In Legal Dimensions of Market Economy* (M.P. Singh Et Al. Eds., 1997); H. M. Seervai, *Constitutional Law Of India* (4th Ed. Central Law Publication Co. Pvt. Ltd. 2015) 2484 -2944

[17] Raghvendra Singh Raghuvanshi & Nidhi Vaidya, 'Independence of Judiciary- Indian Experiance' (Social Science Research Network, 25 February 2015).

[18] Shimon Shetreet, *Judicial Independence: New Conceptual Dimensions and Contemporary Challenges, In Judicial Independence: The Contemporary Debate* (Shimon Shetreet & Jules Deschanes eds., 1985) 597-98.

(ii) *Interpreting the provisions of the constitution*: the framers of the constitution were well known that in future with regards to the provision of Constitution uncertainty will definitely occur, so they made all the effort to make the judiciary independent and self-competent to interpret any of the provision in such a manner that such interpretation must be clear and unbiased. If it would not be so, the other organ may have pressurized the judiciary to interpret it according to their will and convenience. Judiciary is given the job to interpret the constitution according to the constitutional philosophy and the constitutional norms.[19]

(iii) *Disputes referred to the judiciary*: it is required from the judiciary to deliver justice in an impartial manner i.e. free from any kind of biasness. It should not do committed or partial justice to the masses by focusing on any particular aspect and not considering all the aspects as a whole.

3. *Judicial Review:* the doctrine of judicial review was first established in the famous case of *Marbury v Madison*[20] in which Marshall, C.J. asserted that 'it is emphatically the province and duty of the judicial department to say what the law is'. Judicial Review in its most widely accepted meaning is the power of the courts to consider the constitutionality of acts of organs of Government (the executive and legislature) and declare it unconstitutional or null and void if it violates or is inconsistent with the basic principles of Grundnorm i.e. Constitution.[21] In other words the power and duty of the courts to disallow all legislative or executive acts of either the central or the State governments, which in the Court's opinion transgresses the Constitution.[22] This judicial functions stems from a feeling that a system based on a written Constitution can hardly be effective in practice without an authoritative, independent and impartial arbiter of constitutional issues and also that it is necessary to restrain governmental organs from exercising powers which may not be sanctioned by the Constitution.[23] The power of judiciary is not limited to enquiring about whether the power belongs to the particular legislature under the question it extends also as to whether the laws are made in conformity with and not in violation of other provisions of the Constitution. In our constitution, if the courts find that the law made by legislature Union or State is

[19] Atin Kumar Das, 'Independence of Judiciary in India: A Critical Analysis', *Legal India* (Delhi, April 12 2014)
[20] [1803] 1 Cr. 137
[21] Rasmi Pradhan, 'Doctrine of Judicial Review in India: Relevancy of Defining Contours', *Legal Service India* (Delhi, July 16, 2014)
[22] Smith, Edward Conard and Zurcher, Arnold Jhon, *Dictionary of America Politics, Barnes and Noble* (New York, 1959) 212.
[23] M. P. Jain, *Indian Constitutional Law* (6th Edn, Lexis Nexis Butterworths Wadha Publications 2015)

violation of the various fundamental rights guaranteed in part III, the law shall be struck down by the courts as unconstitutional under Art. 13(2). In *A.K. Gopalan v State of Madras*[24], Kania, CJ observed that 'the inclusion of Art. 13(1) and (2) in the Constitution appears to be a matter of abundant caution. Even in their absence, if any of the Fundamental rights was infringed by any legislative enactment, the court has always the power to declare the enactment, to the extent it transgress the limits'. Apart from this case there are number of cases in which the court applied this doctrine like *State of Madras v Row*[25], *Hanif Qureshi v state of Bihar*[26], *State of Rajasthan v Union of India*[27], *Gupta v Union of India*[28] etc. Similarly where the courts find that the law is violation of Art. 301 which make available to all persons the freedom of trade, commerce and inter-course throughout the territory of India, the law shall be struck down. Again where the courts find that there has been exclusive delegation of legislative power a particular case, the parent Act as well as the product, i.e. delegated legislation shall be struck down as unconstitutional.[29] It is the cornerstone of constitutionalism which implies limited Government.[30] In this connection Prof. K.V. Rao remarks – "In a democracy public opinion is passive, and in India it is still worse, and that is all the reason why it is imperative that judiciary should come to our rescue. Otherwise …. the Constitution becomes ill-balanced, and leaves heavily on executive supremacy, and tyranny of the majority; and that was not intention of the makers".[31]

4. *High Court for each states as well a Provision for Joint High Courts*: Constitution lays down that there is to be a High Court for each state. However, two or more states can, by mutual consent, have a Joint High Court.
5. *Supreme Court as the Arbiter of legal disputes between the Union and States:* the Supreme Court is the only arbitrator of disputes between the 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. This comes under the original jurisdiction of the Supreme Court. Since there is division of power

[24] [1950] SCR 88 (100)
[25] [1952] SCR 597 (605)
[26] AIR [1958] SC 731
[27] AIR [1977] SC 1361
[28] AIR [1982] SC 149
[29] In *Hamdard Dawakhana v Union of India* [1960] 2 SCC 554; the Supreme Court for the first time struck down as unconstitutional an Act made by union Parliament on the ground of excessive delegation
[30] S.C. Dash, *The Constitution of India: A Comparative Study* (Chaitanya Publishing House, 1960) 334
[31] K.V. Rao, *Parliamentary Democracy of India* (The World Press Pvt. Ltd., 1961)

between the Union and the states, any conflict arising out of this would be decided by the apex authority itself.

6. *Guardian of Fundamental Rights:* As the protector and guardian of fundamental rights, from the very beginning the Supreme Court has adopted the stance that it acts as the 'sentinel on the qui vive' vis-a-vis fundamental rights and has stressed this role in several cases. The Constitution underlines this role of the court through article 32(1), which reads: *"the Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this article."*

   The Constitution-makers made the right of a citizen to move the Supreme Court under article 32, and claim an appropriate writ against the unconstitutional infringement of his fundamental rights, itself a fundamental right.[32]

7. *Judicial Activism:* judicial activism deals with the political role played by the judiciary, like the other two branches of the State viz, the legislature and the executive. Judicial Activism is that way of exercising judicial power which seeks fundamental re-codification of power relations among the dominant institutions of State, manned by members of the ruling classes.[33] The justification for the judicial activism comes from the near collapse of responsible government and the pressures on the judiciary to step in aid which forced the judiciary to respond and to make political or policy-making judgments.[34] In the Indian Context, the framework of judicial activism is wider because of the unique position given to the judiciary especially to the Supreme Court, under the Constitutional scheme. The Supreme Court is at once, the arbiter of federal principle, the guardian of fundamental rights of the citizens, final interpreter of the constitutional and other organic laws and last but not the least the final judge to determine the validity of even a constitutional amendment. Therefore in India, the judiciary mainly the Supreme Court and the 24 High Courts have a greater scope to be active while discharging various judicial functions in comparison to USA. The touchstone of activism is a failure to interpret

[32] S.K. Verma, *Fifty Years of the Supreme Court of India: It's Grasp and Reach* (Indian Law Institute, 2000).
[33] Upendra Baxi, *Courage Craft and Contention -The Indian Supreme Court in the Eighties* (Bombay University Press,1985)
[34] T.R.Adhyarujina, *Judicial Activism and Constitutional Democracy in India* (Bombay University Press, 1992)

the constitution according to the intent of its drafters.[35] Thus it is generally understood and accepted that, it is activism for courts to act beyond their capacities, their expertise and their traditional functions. It marks a significant change in the court's earlier jurisprudence. Now, it is appropriate to understand that what impact the court has made on the quality of life which we daily live and to what extent the judiciary has been able to preserve and establish the values of the Constitution which we so dearly cherish.[36]

THE STRUCTURE OF JUDICIAL SYSTEM IN BANGLADESH

The roots of the Bangladeshi legal system go back to ancient times on the Indian subcontinent. The system developed gradually, passing through various stages in a continuous historical process. The process of evolution has been partly indigenous and partly foreign. The current legal system emanates from a "mixed" system in which the structure, certain legal principles, and specific concepts are modeled on both Indo-Mughal and English law.[37]

Bangladesh became an independent and sovereign nation on December 16, 1971. In order to ensure legal continuity, the Laws Continuance Order of 1971, effective as of March 26, 1971, legalized and made effective all the existing laws inherited from Pakistan, subject to the Proclamation of Independence of 1971. Thereafter, Presidential Order No. 5 of 1972 set the judiciary of the country in motion with the appointment of the judges of the High Court. Subsequently, Presidential Order No. 91 of 1972 established the Appellate Division.[38] According to the Constitution of Bangladesh, the apex of the judiciary is the Supreme Court, which comprises the Appellate Division and the High Court Division. The Chief Justice of the Supreme Court, who is appointed to the Appellate Division, is constitutionally known as the Chief Justice of Bangladesh.

[35] Raoul Berger, *Government by Judiciary: The Transformation of the Fourteenth Amendment* (Cambridge: Harvard University Press, 1977)

[36] I.P.Massey, 'Judicial Activism and The Growth of Administrative Jurisprudence in India: A Retrospect' [1990] 17 Indian Bar Review 55-56

[37] Pranab Kumar Panday and Md. Awal Hossain Mollah, 'The judicial system of Bangladesh: An overview from historical viewpoint' [2011] 53 International Journal of Law and Management 1

[38] Anand M. Bhattarai & Kishor Uprety, *Institutional Framework for Legal and Judicial Training in South Asia: with Particular Reference to Bangladesh and Nepal* (Law and Development Working Paper Series No. 2, The World Bank)

Further acts and ordinances were introduced in later years. These include the Ombudsman Act (Act XV of 1980), the Administrative Tribunals Act (Act VII of 1981), the Income Tax Ordinance (Ordinance XXV of 1984), the Land Reforms Ordinance (Ordinance X of 1984), the Family Courts Ordinance (Ordinance XVIII of 1985), and the Companies Act of 1994. Pursuant to the recommendations of a Law Committee set up in 1976, the Law Reform Ordinance of 1978 amended civil and criminal procedural laws, laws related to court fees, and the law on arbitration. At present, a permanent Law Commission in Bangladesh suggests suitable changes to existing laws, as necessary, so that the national laws can meet the demands of modern times.[39]

The Bangladeshi court system is based on the British model. The judicial system consists of a Lower Court and a Supreme Court, both of which hear civil and criminal cases.[40] The Lower Court consists of administrative courts (magistrate courts) and session judges. The Supreme Court's High Court Division hears original cases and reviews decisions of the Lower Court, and the Appellate Division hears and determines appeals of judgments, decrees, orders, and sentences of the High Court Division. The highest court of appeal is thus the appellate court of the Supreme Court. At the level of local government, the country is divided into divisions, districts, sub-districts, unions, and villages.

The Supreme Court serves as the guardian of the constitution and enforces the fundamental rights of citizens. It consists of a Chief Justice and a number of other judges, all appointed by the president. A judge can remain in office until the age of sixty-five. The Chief Justice and the Judges appointed to the Appellate Division sit only in that Division; other judges sit in the High Court Division. The High Court Division superintends and controls all subordinate courts (at the administrative levels of district and thana) and functions as the Appellate Court. In addition, it superintends a number of special courts and tribunals, such as the Administrative Tribunal, Family Courts, Labor Tribunal, Land, Commercial, Municipal, and Marine Courts. At the district level, the district court is headed by a District and Sessions Judge, who is assisted by additional District Judges, subordinate judges, assistant judges, and Magistrates.

[39] Abul Barkat, Mozammel Hoque, and Zahid Hassan Chowdhury, *State Capacity in Promoting Trade and Investment: The Case of Bangladesh* (Human Development Research Centre for the SocioEconomic Policy and Development Management Branch, Department of Economics and Social Affairs, UNDESA, 25 February 2004)
[40] Chapters I, II, and III of Part VI, Constitution of Bangladesh.

In addition to the constitution—the fundamental law of the land—there are civil and criminal codes. Civil law in Bangladesh also incorporates certain Islamic and Hindu religious principles relating to marriage, inheritance, and other social matters. The Bangladeshi Constitution guarantees a fundamental right to every criminally accused person in Bangladesh (whether or not a citizen) to have a "speedy and public trial" by an 'independent' and 'impartial' judiciary.[41]

It is worth noting that a landmark decision on *Secretary of the Ministry of Finance* v. *Masdar Hossain*[42] determined how far the Constitution actually secured the separation of judiciary from the executive organs of the state, and whether the Parliament and the executive followed the constitutional path. In essence, the case was decided on the issue of how far the independence of judiciary is guaranteed by the constitution and whether its provisions have been followed in practice. In that context, the court identified five preconditions for judicial independence: (a) security of tenure; (b) security of salary; (c) institutional independence of subordinate judiciaries; (d) judicial appointments made by a separate Judicial Service Commission; and (e) administrative independence and financial autonomy.[43]

It is appropriate to note that Article 22 of the Bangladeshi Constitution contains a fundamental principle of state policy to the effect that "the state shall ensure the separation of the judiciary from the executive organs." However, although the constitutional commitment to this principle is spelled out clearly, no positive, effective steps have yet been taken to separate the judiciary from the government administration. Although the Supreme Court gave specific guidelines on how to do so in its judgment, the executive, with the permission of the Supreme Court, has postponed the separation fourteen times already.[44]

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[41] Constitution of Bangladesh, Article 35(3)

[42] [1999] 52 DLR (AD) 82. In delivering its judgment in the Hossain case, the Supreme Court of Bangladesh tried to differentiate between the terms "independence" and "impartiality," saying that it would subscribe to the view of the Supreme Court of Canada in *Walter Valente* v. *Her Majesty the Queen* [1985] 2 RCS 673. Court held that "the concepts of *'independence'* and 'impartiality,' although obviously related, are separate distinct values or requirements. 'Impartiality' refers to a state of mind or attitude of the tribunal in relation to the issues and the parties in a particular case. 'Independence' reflects or embodies the traditional constitutional value of judicial independence and connotes not only a state of mind but also a status or relationship to others … particularly to the executive branch of government …"

[43] See Barrister Tureen Afroz, 'Independence of Judiciary: What Next*?*' *The Daily Star* (Bangladesh, January 4 2004).

[44] Debapriya Bhattacharya, *Globalization and the State: Human Development and Capacity Building Needs; A Review of Asian Country Experiences', in Globalization and the State: Challenges for Economic Growth and Human Development* (United Nations, New York 2004)

THE STRUCTURE OF JUDICIAL SYSTEM IN NEPAL

The preamble of the Interim Constitution of Nepal 2007 fully commits to democratic norms and values, an independent judiciary and rule of law. It also seeks a balance between the three organs of state - the executive, the judiciary and the legislature.[45]

The earliest Nepali laws were based on the Dharmashastras (sacred canons), and where these were silent, the ruler's order or word was law.[46] The Lichhavis were first to develop a judicial system of Adhikarans, such as Kuther Adhikaran for revenue administration and Sholla Adhikaran to hear more serious offences.[47] The Mallas also developed their own judicial system, including the Itachapali and Kotilinga courts to try criminal and civil cases. King Prithivi Narayan Shah later introduced courts presided over by Thakuris as Dittha, assisted by Magars as Bicharis and a Pandit as a legal professional. This system was in place until the Rana rule began in 1846.

The legal arrangements developed during the early periods of history were first consolidated and codified into an Ain (Code), which has been known as the Muluki Ain (Country Code) since its promulgation in 1853 by Prime Minister Jung Bahadur Rana. The preamble of this instrument said that it aimed to make penal provisions uniformly applicable to all persons, irrespective of their rank, class or caste.[48] Since its promulgation, the Country Code has seen several amendments, including the major changes that were made during the reign of King Mahendra Shah in 1963.

With the end of the Rana regime in 1951, the Interim Government recognized the Pradhan Nyayalaya[49] as the highest court. The British model had marked influences on the modern Nepali legal system: it was based on the principle of separation of power between the legislature, executive and judiciary, and envisaged an impartial, independent judiciary, legal profession, and court procedures.[50] No change was made in the trial court structure.

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[45] A Guide To Government In Nepal : Structures, Functions, and Practices, (The Asia Foundation, 2012)

[46] Bhim Bahadur Pandey, 'Nepalko Bittiya Prashashan Uhile ra Ahile', Antarrasthtriya Mancha Magazine, (Kathmandu , June-July 1988).

[47] Shastra Dutta Panta, 'Comparative Constitutions of Nepal', 2nd Edition, (SIRUD, Kathmandu, 2001).

[48] Shreekanta Poudel, 'The Experience of Structural Changes in Judiciary', Nyayeek Awaj (Kathmandu Society of Judicial Officers, 2009)

[49] The term "Pradhan Nyayalaya" was changed into Sarbochha Adalat in 1956.

[50] H.M.Kritzer(ed.), *Legal Systems of the World: A Political, Social and Cultural Encyclopedia*. It may also be noted that the system of law and justice in Nepal, until recently a Hindu kingdom, has its roots in the ancient

Since 1990, Nepal's judiciary has had a three-tier system of District Courts, appeals courts and the Supreme Court. There are 75 District Courts, 16 Appellate Courts and a Supreme Court in Nepal.

After the enactment of the State Cases Act 1961, Nepal moved from an inquisitorial system in criminal trials (where the judge investigates the case) to an adversarial system (where the judge decides based on evidence presented by adversaries), which was further consolidated through the State Cases Act 1992. Nepal has both statutory law — the constitution and laws enacted by parliament — and case law, based on decisions of the Supreme Court. A revision of the civil and criminal codes begun several years ago to replace the Muluki Ain would address Nepal's international treaty obligations, but the process remains to be completed.

Supreme Court: The Supreme Court is the highest judicial body. It comprises a Chief Justice and not more than 14 judges. Additionally, ad hoc judges may be appointed for a fixed term as needed. In practice, such ad hoc appointments have been limited to 10 judges. On the recommendation of the Constitutional Council, the President appoints the Chief Justice for a term of six years from among the Supreme Court judges who have served for at least three years. The Chief Justice then appoints other judges on the recommendation of the Judicial Council from among the judges of the appeals court or any person who has worked in an equivalent position in the judicial service for at least seven years. Senior, Class I judicial service personnel with 12 years of experience who have practiced law for at least 15 years, or distinguished jurists who have worked at least 15 years in the judicial or legal field are eligible for appointment. A judge recommended for appointment requires the approval of a parliamentary hearing for confirmation. Supreme Court judges, including the Chief Justice, hold office until 65 years of age. They can be impeached for reasons of incompetence, moral turpitude or dishonesty by a two-thirds majority of parliament. The Supreme Court has jurisdiction to hear both original and appellate cases, examine decisions referred for confirmation of sentences, review cases, and hear petitions as specified by law. Under extraordinary jurisdiction, it has the power to hear petitions and issue orders of habeas corpus, mandamus, certiorari, prohibito, and quo warranto. It may review its own judgments, revise decisions of a Court of Appeals, or decide the constitutionality of a law. It also has the

Hindu religion and culture. This tradition continued until 1950, when the country was opened to the external world. With the onset of democracy in 1950, Indian legal and judicial values were imported by succeeding generations of law graduates who came from India. Ananda M. Bhattarai, *The Judicial System of Nepal: An Overview, in Fifty Years of Supreme Court of Nepal* (Kathmandu 2006)13–34.

power to make rules for administering the courts and formulating policies. The Full Court, a forum of all sitting judges, is the highest policymaking body in the judiciary.

Court of Appeals: The Court of Appeals is the second in the hierarchy. The Chief Justice appoints its judges from among the judges of District Courts or Class I officers in the judicial service with at least seven years of experience. Senior advocates, advocates who have practiced for at least 10 years, or individuals who have taught or conducted research or worked in other fields of law and justice are also eligible for appointment. Judges of the Court of Appeals hold office until 63 years of age. The court mainly hears appeals of decisions of the District Courts and quasi-judicial bodies.

District Court: The District Court is a trial court with jurisdiction to hear all civil and criminal cases. A District Court judge holds office until 63 years of age. The Chief Justice appoints District Court judges from among Class II officers in judicial service who have worked for at least three years. There is a provision for lateral entry from the Bar Association: advocates with at least eight years of practice are eligible for appointment following a competitive examination conducted by the Judicial Council. The provision for examinations was introduced in the Interim Constitution, but in the absence of an act, this provision has not taken effect.

THE STRUCTURE OF JUDICIAL SYSTEM IN PAKISTAN

The judicial system of Pakistan has passed through several epochs, covering the Hindu era, Muslim period including the Mughal Empire, British colonial period and post-independence period. The post-independence period or the current era, commenced with the partition of India and the establishment of Pakistan, as a sovereign and independent State. During this process of evolution and growth, the judicial system did receive influences and inspirations from foreign doctrines/notions and indigenous norms/practices, both in terms of organizing courts' structure, hierarchy, jurisdiction and adopting trial procedures/practices. The judicial system during Hindu period has been somewhat sketchy, gathered mostly from scattered sources, such as ancient books like Dharamshastra, Smiritis and Arthashastra, and commentaries on the same by historians and jurists. These sources construct a well-defined system of administration of justice during the Hindu period.

The Muslim period in the Indian sub-continent roughly begins in the 11th century A.D. This period may be divided into two parts i.e. the period of early Muslim rulers who ruled Delhi

and some other parts of India and the Mughal period, which replaced such Muslim and other rulers in 1526 A.D. The Mughal Dynasty lasted until the middle of 19th century. During the period of Muslim rulers, the Islamic law remained the law of the land in settling civil and criminal disputes. During this period, different courts were established and functioned at the central, provincial, district and tehsil (Pargana) level. These courts had defined jurisdiction in civil, criminal and revenue matters and operated under the authority of the King. The supreme revenue court was called, the Imperial Diwan. Side by side, with civil and revenue courts, criminal courts, presided over by Faujdar, Kotwal, Shiqdar and Subedar functioned.[51] The highest court of the land was the Emperor's Court, exercising original and appellate jurisdiction.

In the British era, the East India Company was authorized by the Charter of 1623 to decide the cases of its English employees. The Company therefore established its own courts. The administration of justice was initially confined to the Presidency Town of Bombay, Calcutta and Madras. In view of the huge distances between these Towns and the peculiar conditions prevailing there, the administration of justice, which developed in these Towns, was not uniform. There were established two sets of courts, one for the Presidency Towns and the other for the Mufussil. The principal courts for the town were known as the Supreme Courts and Recorders Courts. The High Court of Judicature Act 1861 abolished the Supreme Courts as well as the Sadar Adalats, and in their place, constituted the High Court of Judicature for each Presidency Town. Besides the Presidency Towns, High Courts were also established in Allahabad in 1866, Patna in 1919, Lahore in 1919 and Rangoon in 1936. The Sindh Chief Court was established under the Sind Courts Act 1926. After that, the Government of India Act 1935 retained the High Courts and also provided for the creation of a Federal Court.[52] The Federal Court was established in 1937. The Federal Court exercised original, appellate and advisory jurisdiction.[53]

The Government of India Act 1935 was amended in 1954 with a view to empower the High Courts to issue the prerogative writs.[54] The subsequent Constitutions i.e. 1956, 1962 and 1973 did not drastically alter the judicial structure or the powers and jurisdiction of the superior courts. The changes effected were, renaming the Federal Court as the *Supreme Court* by the 1956 Constitution and the up gradation of the Chief Court of NWFP and Judicial

[51] Dr. Nasim Hassan Shah, *Constitution, Law and Pakistan Affairs* (Wajidalis Limited, Lahore, 1986)
[52] Government of India Act 1935, s. 200
[53] Government of India Act 1935, s. 204, 205, 207, 213
[54] Government of India Act 1935, s. 223-A

Commissioner Court of Baluchistan into full-fledged *High Courts*, by the 1973 Constitution. Later on, a new court called, *Federal Shariat Court* was created in 1980[55] with jurisdiction to determine, suo moto or on petition by a citizen or the Federal or a provincial Government, as to whether or not a certain provision of law is repugnant to the injunctions of Islam.[56]

Supreme Court: The Supreme Court is the apex Court of the land, exercising original, appellate and advisory jurisdiction.[57] It is the Court of ultimate appeal and final arbiter of law and the Constitution.[58] Its decisions are binding on all other courts. The Court consists of a Chief Justice and other judges[59], appointed by the President as per procedure laid down in the Constitution.[60] An Act of Parliament has fixed the number of Judges at 17 i.e. Chief Justice and 16 judges.[61] There is also a provision for appointment of acting judges as well as ad hoc judges in the court.[62] A person with 5 years' experience as a Judge of a High Court or 15 years standing as an advocate of a High Court is eligible to be appointed as judge of the Supreme Court.[63] The Court exercises original jurisdiction in settling inter-governmental disputes[64], be that dispute between the Federal Government and a provincial government or among provincial governments. The Court also exercises original jurisdiction concurrently with High Courts for the enforcement of Fundamental Rights, where a question of 'public importance' is involved.[65] The Court has appellate jurisdiction in civil and criminal matters.[66] Furthermore, the Court has advisory jurisdiction in giving opinion to the Government on a question of law.[67]

High Courts: There is a High Court in each province and yet another High Court for the Islamabad Capital Territory. Each High Court consists of a Chief Justice and other puisne judges. The strength of Lahore High Court is fixed at 60, High Court of Sindh at 40, Peshawar High Court at 20, High Court of Baluchistan at 11 and Islamabad High Court at 7. Qualifications mentioned for the post of a judge are, 10 years' experience as an advocate of a High Court or 10 years' service as a civil servant, including 3 years 40 experience as a

[55] Constitution of Islamic Republic of Pakistan, Article 203-C
[56] Constitution of Islamic Republic of Pakistan, Article 203-D
[57] Constitution of Islamic Republic of Pakistan, Article 184, 185 & 186
[58] Constitution of Islamic Republic of Pakistan, Article 189
[59] Constitution of Islamic Republic of Pakistan, Article 176
[60] Constitution of Islamic Republic of Pakistan, Article 175A
[61] The Supreme Court Number of Judges Act (Act No. XXXIII) 1997
[62] Constitution of Islamic Republic of Pakistan, Article 181 & 182
[63] Constitution of Islamic Republic of Pakistan, Article 177
[64] Constitution of Islamic Republic of Pakistan, Article 184(1)
[65] Constitution of Islamic Republic of Pakistan, Article 184(3)
[66] Constitution of Islamic Republic of Pakistan, Article 185
[67] Constitution of Islamic Republic of Pakistan, Art.186

District Judge or 10 years' experience in a judicial office. The Court exercises original jurisdiction in the enforcement of Fundamental Rights and appellate jurisdiction in respect of judgments/orders of the Subordinate Courts in all civil and criminal matters. Appeals are also entertained against orders/judgments of Special Courts. The High Court supervises and controls all the courts subordinate to it. It appoints its own staff and frames rules of procedure for itself as well as courts subordinate to it.

Federal Shariat Court: The Court consists of 8 Muslim judges including the Chief Justice. The judges of Federal Shariat Court are also appointed through the Judicial Commission, which comprises the Chief Justice of Pakistan, as Chairman with four senior most Judges of the Supreme Court, one former Chief Justice or a retired judge of the Supreme Court, appointed by the Chairman, in consultation with the four member judges of the Supreme Court, Attorney General for Pakistan, the Federal Minister for Law and Justice, Chief Justice of Federal Shariat Court and most senior judge of the Federal Shariat Court, as members. Of the 8 judges, 3 are required to be Ulema (Islamic scholars), who are well versed in Islamic law. The judges hold office for a period of 3 years and the President may further extend such period. The Court may, on its own motion or through petition by a citizen or a government (Federal or provincial), may examine and determine as to whether or not, a certain provision of law is repugnant to the injunctions of Islam. Appeal against its decision lies to the Shariat Appellate Bench of the Supreme Court, consisting of 3 Muslim judges of the Supreme Court and not more than 2 Ulema (Islamic scholars), appointed by the President. If a certain provision of law is declared to be repugnant to the injunctions of Islam, the Government is required to take necessary steps to amend the law, so as to bring it in conformity with the injunctions of Islam. The Court also exercises appellate and revisional jurisdiction over the criminal courts, deciding Hudood cases. The decisions of the Court are binding on the High Courts as well as Subordinate Judiciary. The Court appoints its own staff and frames its own rules of procedure.

Subordinate Courts: The Subordinate Judiciary may be broadly divided into two classes; one, civil courts, established under the Civil Courts Ordinance 1962, and two, criminal courts, created under the Code of Criminal Procedure 1898. In addition, there also exist other courts and tribunals of civil and criminal nature, created under special laws. Their jurisdiction, powers and functions are specified in the statutes, creating them. The decisions and judgments of such special courts are assailable before the superior judiciary (High Court

and/or Supreme Court) through revision or appeal. The civil and criminal courts judges and their terms and conditions are regulated under the provincial rules. The High Court, however, exercises administrative control over such courts. The civil courts consist of District Judge, Additional District Judge, Senior Civil Judge and Civil Judge Class I, II & III. Similarly, the criminal courts comprise of Sessions Judge, Additional Sessions Judge and Judicial Magistrate Class I, II & III. Law fixes their pecuniary and territorial jurisdictions. Appeal against the decision of civil courts lies to the District Judge and to the High Court, if the value of the suit exceeds specified amount. Similarly, in keeping with the quantum of penalty, appeals against criminal courts lie to Sessions Judge or High Court.

CONCLUSION

In a democracy, the legal system and the judiciary are important constituents within the larger political milieu. The modern judiciary in India derives its sources from the Constitution, and acts as a check on the arbitrary decisions of the legislature and the executive. The Constituent Assembly foresaw the significance of Judiciary as a guardian of rights and justice. While the Supreme Court is the highest court of law in India, whose decisions are equally binding on all, the High Courts and the Subordinate Courts ensure justice at the state and district levels respectively. The Indian Judicial System is a mix of the Courts and the Tribunals & Regulators, and all these entities working together as part of an integrated system for the benefit of the nation. The provision for judicial review ensure that the rule of law is maintained, thereby providing for a dignified living and rightful concern for all. A peculiar feature of the legal development in India is that the independence of the judiciary is fairly well assured by the constitution itself and adequate precautions have been taken to help the judiciary to discharge their functions effectively. Laws in India is now mostly codified and is uniform throughout the country and the objective is now to update, reform and bring the law in conformity with the new social conditions prevailing in the country. The nature of democracy and development of the state depends upon how the legal system conducts itself to sustain the overall socio-economic and political environment. So, it can be said that the Indian legal system provides all the machinery for the expansion and preservation of the law.

As far as the Indian judicial system is compared with the judicial system of Bangladesh, Nepal and Pakistan, the legal arrangement in all the sub-continent of India are almost similar. They all are influenced with the British Common Law system. In Bangladesh, it’s divided into Lower Court and a Supreme Court. The Supreme Court comprises of High Court

division and Appellate division and at lower level it's a District Court established in each district. Nepal's judiciary has had a three-tier system of District Courts, Appeals Courts and the Supreme Court. There are 75 District Courts, 16 Appellate Courts and a Supreme Court in Nepal till now. The judiciary of Pakistan has a four-tier system of Supreme Court, High Court, Federal Shariat Court and Subordinate Court. The Supreme Court of Pakistan deals with cases, far beyond its capacity to handle as compared to all other countries where few cases reach the highest Court of Appeal.