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Indian Judiciary

Structure of Indian Judiciary

Integrated

Unlike in the USA where the Centre and the States have their own independent judiciary, India has a single integrated judiciary. Integrated judicial system means that **decisions made by higher courts are binding on the lower courts. It means all the courts can entertain cases related to union or state laws in india.**

Pyramidical

The SC at the top, HCs of States- two or more States can have one common HC, and then at the bottom, we have the Subordinate Courts. SC and HC put together are called as Higher Judiciary, and the below them is Lower Judiciary.

Supreme Court

What is meant by the independence of judiciary?

1. Other organs of the State must not restraint the functioning of judiciary
2. Other organs must not interfere in the functioning of judiciary
3. Judiciary should be able to function without fear or favour

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Supreme Court

How Independence of Judiciary is Ensured

- Appointments are made in consultation with the Judiciary (judicial primacy)
- Article 124(4): Removal by a special majority of the Houses.
- Article 125(2): Salaries and allowances can not be decreased to the disadvantage.
- Article 146(3): Salaries and allowances are charged on the consolidated fund of India
- Article 121 and 211: No discussion on the conduct of Judges of the SC/HC in any House of the Parliament, except during the impeachment process.
- SC can make its own rules for the conduct of the business
- Ban on practice after retirement for judges of Supreme Court
- Power to punish for its contempt
- Freedom to appoint its staff

Supreme Court

Difference between question of law and question of fact

In jurisprudence, a question of law is a question which must be answered by applying relevant legal principles, by an interpretation of the law. Such a question is distinct from a question of fact, which must be answered by reference to facts and evidence, and inferences arising from those facts.

To illustrate the difference:

Question of fact: Did Mr. and Mrs. X leave their ailing 90 year old mother home alone for 4 days?

Question of law: Does leaving an ailing mother of old age for 4 days fit the legal definition of parent neglect?

Supreme Court

Art 124(1): Establishment and constitution of Supreme Court.

There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.

SC Judges Act

Strength at present: Chief Justice along with 33 other Judges. 33 Judges are also called as "Puisne Judges".

Change in the number of Judges is not considered an Amendment to the Constitution.

Seat of Supreme Court

The Constitution declares Delhi as the seat of the Supreme Court. It also authorises the CJI to appoint other place or places as seat of the Supreme Court. He can take decision in this regard only with the approval of the President

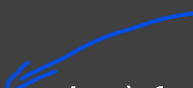
Supreme Court

Qualifications of Judges

A person to be appointed as a judge of the Supreme Court should have the following qualifications:

- He should be a citizen of India.
- He should have been a judge of a High Court (or high courts in succession) for five years; or
- He should have been an advocate of a High Court (or High Courts in succession) for ten years; or
- He should be a distinguished jurist in the opinion of the president.
- The Constitution has not prescribed a minimum age for appointment as a judge of the Supreme Court

more chances of selection.



Supreme Court

Tenure of Judges

The Constitution has not fixed the tenure of a judge of the Supreme Court. However, it makes the following three provisions in this regard:

- He holds office until he attains the age of 65 years.
- He can resign his office by writing to the President.
- He can be removed from his office by the President on the recommendation of the Parliament

Oath of Judges

SC judges:

Administered by the president or a person appointed by him.

HC judges:

- administered by the governor or person appointed by him.

Supreme Court

Removal of Judges

- A judge of the Supreme Court can be removed from his office by an order of the President. The President can issue the removal order only after an address by Parliament has been presented to him in the same session for such removal.
- The address must be supported by a special majority of each House of Parliament (ie, a majority of the total membership of that House and a majority of not less than two-thirds of the members of that House present and voting).

The grounds of removal are : **proven misbehaviour or incapacity.**

Supreme Court

The Judges Enquiry Act (1968) regulates the procedure relating to the removal of a judge of the Supreme Court by the process of impeachment.

1. A motion of impeachment addressed to the President is to be signed by at least 100 members of the Lok Sabha or 50 members of the Rajya Sabha and then delivered to the Speaker of Lok Sabha or the Chairman of Rajya Sabha.
2. The motion is to be investigated by a Committee of 3 judges of the Supreme Court and a distinguished jurist.
3. If the Committee finds the judge guilty of misbehavior or that he suffers from incapacity, the motion along with the report of the committee is taken up for consideration in the House where motion was moved.
4. The judge is then removed by the requisite majority in both the houses, i.e. majority of total and 2/3 of its members present and voting.

Supreme Court

Issues and need for reforms

1. Method pursued by the legislature in the Act of 1968 makes judges susceptible to a political process of voting which may or may not impeach judges despite a 3-member committee holding the Judge guilty.
2. Entire process concerns of a possibility of harming judicial independence. This stems from a possibility of Judges being harassed to toe the ideology of a party in majority or face their wrath in an impending motion of impeachment.
3. The words “misbehaviour” or “incapacity” have neither been defined nor clarified in the Constitution.
4. The process of removing a judge is too elaborate and somewhat cumbersome
5. This process has not been able to hold the judiciary accountable

Supreme Court

Salaries and Allowances

The salaries, allowances, privileges, leave and pension of the judges of the Supreme Court are determined from time to time by the Parliament. They cannot be varied to their disadvantage after their appointment except during a financial emergency.

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Supreme Court

Article 124(2): Appointment of the SC Judges

Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal and shall hold office until he attains the age of sixty-five years.

Appointment of judges is to be done by the President in consultation with the CJI and other judges of SC and HC as the President may deem necessary.

The CJI is appointed by the President.

99th Constitutional Amendment Act and NJAC-2014: Introduced Art 124A and made changes to the Art 124(2) but this was struck by the SC as being violative of the Basic Structure of the separation of powers and the independence of the Judiciary.

Supreme Court

Appointment of Chief Justice From 1950 to 1973

The practice established since the beginning was to appoint the senior most judge of the Supreme Court as the chief justice of India. This established convention was violated in 1973 when A N Ray was appointed as the Chief Justice of India by superseding three senior judges. Again in 1977, M H Beg was appointed as the chief justice of India by superseding the then senior-most judge.

The debate over Consultation and Concurrence

Was the consultation non-binding on the President, or did it mean that the view expressed by the CJI and his Colleagues was binding, i.e. concurrence?

Supreme Court

The Supreme Court has given different interpretations of the word 'consultation' in the above mentioned provisions.

SP Gupta vs UOI

In the First Judges case (1982), the Court held that consultation does not mean concurrence and it only implies exchange of views.

This means that the **Executive has primacy** in the appointment process. Court also stated that in most circumstances the judiciary and the executive must work together.


Supreme court advocates on record vs UOI

In the Second Judges case (1993), the Court reversed its earlier ruling and **changed** the meaning of the word **consultation to concurrence**.

SC overturned the judgement of the **SP Gupta** case and held that consultation meant concurrence, i.e. the **view of the CJI** would have primacy in the appointment of the SC judges. Here, the CJI would also consult two senior-most judges of the SC.

The SC also held that the senior-most judge of the SC should be the CJI of India, i.e. appointment of the CJI should be done on the basis of seniority.

Supreme Court

 **In the Third Judges case (1998)**, the Court **considered** that the consultation process to be adopted by the Chief Justice of India requires '**consultation of plurality judges**'. The sole opinion of the CJI does not constitute the consultation process.

4th Judges case (NJAC case 2015)

- Court struck down the NJAC and 99th CAA on the grounds of violating basic structure of the constitution
- Independence of judiciary is compromised as a result of the primacy to the executive
- Even 2 members can veto the proposal of appointing a person
- Violates the principal of separation of powers

Justice Chelmeshwar provided a strong dissent in the case stating that judicial primacy not a part of the basic structure of the constitution. Collegium system does not ensure judicial independence.

Supreme Court

Collegium System

- This judgement also led to the formation of the Collegium consisting of the CJI and four other Judges of the SC. **Consensus-based approach** has to be adopted for the appointment.
- In case a Judge of an HC is being promoted to the Judge of the SC, the CJI should also consult a Judge of the SC belonging to that HC, along with four senior-most judges.
- The views of Judges should be expressed in writing and not orally
- The court held that the recommendation made by the chief justice of India without complying with the norms and requirements of the consultation process are not binding on the government.

Supreme Court

Issues with Collegium

- There is no transparency in the proceedings of the Collegium – Justice Ruma Pal
- Allegations of corruption and favouritism
- The role of the executive has been diluted by the collegium system and the balance between the Executive and the Judiciary has been compromised. This has created a tussle between the Executive and the Judiciary.
- The Judiciary is appointing its own members and there are no checks and balance in the system.
- The collegium system structurally tends to favour particular sections of society and is far from being representative of the population
- There are inordinate delays in the appointment of High Court judges and depleting numbers in the higher judiciary threaten to affect the justice delivery mechanism. The total sanctioned strength of judges across the 25 high courts is 1,098 but the working strength is only 645, a shortfall of 453 judges.

Supreme Court

Way Ahead

- Introduce another bill while giving primacy to the judiciary in NJAC
- Ensure diversity in collegium system till NJAC is adopted
- Enact a law to ensure judicial accountability and transparency
- Effectively implement the MoP after due consultation with the judiciary
- British practice where decisions on such matters are taken by a **judicial appointment commission since 2005**. *In the UK, eligible candidates can submit their applications for appointment and they need to disclose their relationship with sitting and ret'd judges as well as provide details on their background.*
- The present collegium is overburdened with work and to resolve this an independent secretariat should be set up to assist in its functioning.
- Any adverse report by IB against eligible candidates should be treated with caution and an inquiry committee shall be formed to look into such reports.

Supreme Court

Ad hoc Judges

- When there is a **lack of quorum** of the permanent judges to hold or continue any session of the Supreme Court, the Chief Justice of India can appoint a judge of a High Court as an ad hoc judge of the Supreme Court for a temporary period.
- He can do so only after consultation with the Chief Justice of the High Court concerned and with the previous consent of the president.
- The judge so appointed should be qualified for appointment as a judge of the Supreme Court.
- It is the duty of the judge so appointed to attend the sittings of the Supreme Court, in priority to other duties of his office. While so attending, he enjoys all the jurisdiction, powers and privileges (and discharges the duties) of a judge of the Supreme Court

Supreme Court

Retired Judges

- At any time, the CJI can request a retired judge of the Supreme Court or a retired judge of a high court (who is duly qualified for appointment as a judge of the Supreme Court) to act as a judge of the Supreme Court for a temporary period.
- He can do so only with the previous consent of the President and also of the person to be so appointed.
- Such a judge is entitled to such allowances as the president may determine. He will also enjoy all the jurisdiction, powers and privileges of a judge of the Supreme Court

Supreme Court

Recently SC expressed concerns over the appointment of ad hoc and retd judges, considering the no of judges in HC there is a need to evolve a simpler procedure. The executive should not delay the appointments.

The court last year had laid down certain situations in which the judiciary should seek the appointments of ad hoc judges-

- i) If the vacancies in HC are over 20% or
- ii) If the cases have been pending for over 5 years
- iii) or if there is a sharp dip in the rate of disposal of cases compared to the filing of cases.

Supreme Court

Jurisdiction of the Supreme Court: Territorial and Subject-Matter

Territorial Jurisdiction

It includes the entire territory of India.

Subject Matter Jurisdiction

Article 131: Original and Exclusive Jurisdiction (On federal disputes)

- Original: The case would be heard for the first time directly (first instance) in the SC such as a case between Gol and one or more States, Gol
- Exclusive: Such cases would be heard only in the SC and no other Court of the Country, i.e. there is no shared jurisdiction on such matters.
- Writ powers of the SC are not exclusive as writs can be issued by the HCs too.

Supreme Court

The Supreme Court is also a court of appeal and hears appeals against the judgements of the lower courts. It enjoys a wide appellate jurisdiction which can be classified under four heads:

1. Appeals in constitutional matters
2. Appeals in civil matters
3. Appeals in criminal matters
4. Appeals by special leave

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Supreme Court

Constitutional Matters

Under Art. 132(1), an appeal lies to the Supreme Court from any judgment, decree or final order, whether in a civil, criminal or other proceedings, of a High Court if it certifies that the case involves a substantial question of law as to the interpretation of the Constitution.

Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters. Article 133

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Supreme Court

The appellate jurisdiction of the Supreme Court on criminal matters is conferred by Article 134.

- The Supreme Court has only a limited criminal appellate jurisdiction in order to avoid piling up of cases in the Supreme Court. This can happen in two modes:

Without the certificate of appeal from HC an appeal lies to the Supreme Court if,

- The High Court on appeal has reversed an order of acquittal of an accused person and sentenced him to death or sentenced him to imprisonment for life or for a period of not less than 10 years. It exists as a matter of right
- The High Court has withdrawn for trial a case from a lower court and sentenced the accused to death or sentenced him to imprisonment for life or for a period of not less than 10 years

With certificate

The Supreme Court can hear an appeal in a criminal case if the High Court certifies that the case is a fit one for appeal to the Supreme Court. A certificate needs to be granted only in cases **where there is a substantial question of law involved.**

Supreme Court

Article 136: Special Leave Petition of the SC

- The case did not fall under the Art 131, 132, and 133 and the SC feels that injustice may have been carried out and there is a need for correction.
- The Court can step out to set right and prevent a miscarriage of justice.
- The SC can not hear Special Leave Petition from the cases of Armed Forces Tribunal.
- It can be an interlocutory matter- that is final judgement has been given but sentencing has not been announced yet from any court on any matter.

Some issues with SLP of SC

1. It has primarily become a court of appeal
2. Acceptance of SLPs has become too high. Presently stands at 14%
3. No standard guidelines or norms to accept SLPs. Dependent on face value of advocate

Supreme Court

Article 142: Enforcement of decrees and orders of Supreme Court and orders as to discovery

- The SC can pass decree or order to ensure "Complete Justice".
- This article has been cited by the SC to claim extraordinary powers to carry out "complete justice", by even going out of our jurisdiction

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Supreme Court

Article 137: Review of judgments or orders by the Supreme Court

- Review Petition: SC can review its own decisions.
- In a 1975 ruling, Justice Krishna Iyer said a review can be accepted “only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility”.
- A review petitions have to be filed within 30 days of the concerned judgment.
- Such a petition must also carry a certificate from SC AoR.
- The review jurisdiction should only be used when an error has occurred in the judgment and such an error is believed to cause a miscarriage of justice
- Also can be entertained if any material evidence is discovered after the judgment despite the best efforts of the parties involved.

Supreme Court

Curative Petition

- An innovation of the SC where it can review its review judgements.
- The court has derived this from others under Art. 142 and is not mentioned explicitly in the constitution
- The court propounded this power in Rupa Ashok Hurra vs Ashok Hurra and stated that-
- It can entertain a curative petition against a review judgment only when there has been a glaring omission or a grave error by the court
- It must be accompanied by a certificate of a senior advocate on record of the SC.

Supreme Court

Advisory Jurisdiction

The Constitution under Article 143 authorises the President to seek the opinion of the Supreme Court in the two categories of matters:

Article 143(1)

- If a question of law or fact has arisen which is of **public importance and** the opinion of the SC is needed, The President can refer the case to the SC for the opinion of the SC. Examples: Berubari Case, Third Judges Case.
- The SC **may or may not provide** advice, so it is not binding on the SC.

Article 143(2)

- It is an exception to Art 131.
- In the case of a **pre-constitutional treaty, agreements**, etc if the President seeks the advice of the SC, the **SC is bound** to give advice on such matter.

Supreme Court

What is the utility of the advisory powers of the Supreme Court?

- Firstly, it allows the government to seek legal opinion on a matter of importance before taking action on it. This may prevent unnecessary litigations later.
- Secondly, in the light of the advice of the Supreme Court, the government can make suitable changes in its action or legislations.

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Supreme Court

A Court of Record

As a Court of Record, the Supreme Court has two powers:

- The judgements, proceedings and acts of the Supreme Court are recorded for **perpetual memory and testimony**. These records are admitted to be of **evidentiary value** and cannot be questioned when produced before any court.
- They are recognised as legal precedents and legal references.

High Courts

High Courts were first established in the three Presidency cities of Calcutta, Bombay and Madras in 1862. The High Court of Delhi came up in 1966.

Currently there are 25 High Courts. While many states have their own High Courts, Punjab and Haryana share a common High Court at Chandigarh, and four North Eastern states of Assam, Nagaland, Mizoram and Arunachal Pradesh have a common High Court at Guwahati.

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High Courts

Appointment of judges to the High Court

- Article 217 of the Constitution: It states that the Judge of a High Court shall be appointed by the President in consultation with the Chief Justice of India (CJI), the Governor of the State.
- In the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court is consulted.

Consultation Process:

- High Court judges are recommended by a Collegium comprising the CJI and two senior-most judges.
- The proposal, however, is initiated by the Chief Justice of the High Court concerned in consultation with two senior-most colleagues.
- The recommendation is sent to the Chief Minister, who advises the Governor to send the proposal to the Union Law Minister.
- The Chief Justice of the High Court is appointed as per the policy of having Chief Justices from outside the respective States.
- The Collegium takes the call on the elevation.

High Courts

Tenure and Removal of Judges of High Courts

- A permanent Judge of the High Court serves until he or she reaches the age of 62.
- Removal: Judge can be removed from his office by an order of the President on the recommendation of the Parliament.
- Ground for Removal: Misbehaviour and incapacity only.

High Courts

Procedure of transfer of HC judge:

- Article 222 of the Constitution makes provision for the transfer of a Judge (including Chief Justice) from one High Court to any other High Court.
- The initiation of the proposal for the transfer of a Judge should be made by the Chief Justice of India (CJI).
- The opinion of the CJI “is determinative”.
- CJI is expected to take into account the views of the Chief Justice of the High Court from which the Judge is to be transferred and Chief Justice of the High Court to which the transfer is to be affected.
- The views of one or more Supreme Court Judges who are in a position to offer his/their views are also taken into account.
- In the case of transfer of a Chief Justice, only the views of one or more knowledgeable Supreme Court Judges need to be taken into account.
- The views on the proposed transfer of a Judge or a Chief Justice of the High Court should be expressed in writing and should be considered by the CJI and the four senior most Judges of the Supreme Court.

High Courts

- The proposal once referred to the Government, the Union Minister of Law, Justice and Company Affairs would submit a recommendation to the Prime Minister who will then advise the President as to the transfer of the Judge concerned.
- After the President approves the transfer, the notification will be gazetted and the judge remains transferred

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High Courts

Original Jurisdiction of High Courts

- As defined under a specific law of the legislature
- Writs powers for enforcement of Fundamental and other rights

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High Courts

Appellate powers of High Courts

- In Civil cases value more than 5 lacs can be heard. Appeals can be made against the decision of the district court.
- In criminal cases the appeals can be made against the decision of the sessions court. In cases where sessions court has pronounced the accused as guilty and given capital punishment, the sentence must be confirmed by the High Court before the person is hanged to death. Even if the accused does not file an appeal against death sentence, the State refers it to the High Court for confirmation.

High Courts

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

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High Courts

Superintendence of Subordinate Courts

- A High Court has the right of superintendence and control over all the subordinate courts in all the matter of judicial and administrative nature.
- In the exercise of its power of superintendence, the High Court may call for any information from the lower courts; may make and issue general rules and prescribe norms for regulating the practice and proceedings of these courts; and it may issue such directions, from time to time, as it may deem necessary.
- It can also make rules and regulations relating to the appointment, demotion, promotion and leave of absence for the officers of the subordinate courts.

Judiciary Related Issues

JUDICIAL PENDENCY

- Presently 5 Cr+ cases are pending in the courts
- Pendency is consistent across the hierarchy contrary to the popular belief
- Average case takes 14 years from the initiation stage till the time Supreme Court gives decisions
- Leads to unnecessary delays and creates excessive burden on the poor litigants
- Almost 20% cases in HCs are more than 10 years old
- Delays access to justice in certain vital cases such as habeas corpus petitions
- Results in allegations of corruption against the registry

Judiciary Related Issues

REASONS FOR JUDICIAL PENDENCY

- Vacancies and shortage of judges
- Dilatory tactics adopted by lawyers
- Senior Advocates are overburdened with work in the Supreme Court
- Poor case management in the lower courts
- Poor infrastructure of the courts
- Archaic procedural laws
- Increasing litigation rate and inability to implement ADR mechanism effectively

Judiciary Related Issues

National Court of Appeals

- According to this idea, the Supreme Court should have multiple seats located at different places to entertain appeals against the decision of the lower courts.
- Whereas the Constitutional seat located in Delhi should only entertain cases related to Fundamental Rights and Federal matters.

Advantages of the National Court of Appeals:

- It would improve the accessibility to justice to the people living in far-flung areas of the country.
- It would make justice more affordable to the poor and the marginalized.
- The Constitutional Seat can focus on constitutionally important cases, whereas the appellate court may entertain an appeal against the decision of the lower courts, thereby relieving the constitutional seat from such work.

Judiciary Related Issues

Concerns associated with the setting up of the National Court of Appeals

- It would be a costly affair and will create a huge drain on the resources of the country.
- The quality of judgments may suffer due to the lack of a uniform approach by the National Court of Appeals.
- The present strength of the Supreme Court is not enough to deal with the workload that will be created due to the setting up of the National Court of Appeals.



THANKS!

Any questions?

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