

## Feature of Indian Judiciary: Single Integrated and Independent System of Judiciary

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Hierarchy of courts with Supreme court at top.

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Single Judiciary for both Central and State Laws

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Judiciary is independent from executive (Article 50)

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This single system of courts, adopted from the Government of India Act of 1935.

The Supreme Court of India was inaugurated on January 28, 1950. It succeeded the Federal Court of India.

But the jurisdiction of supreme court is greater than that of erstwhile federal court.

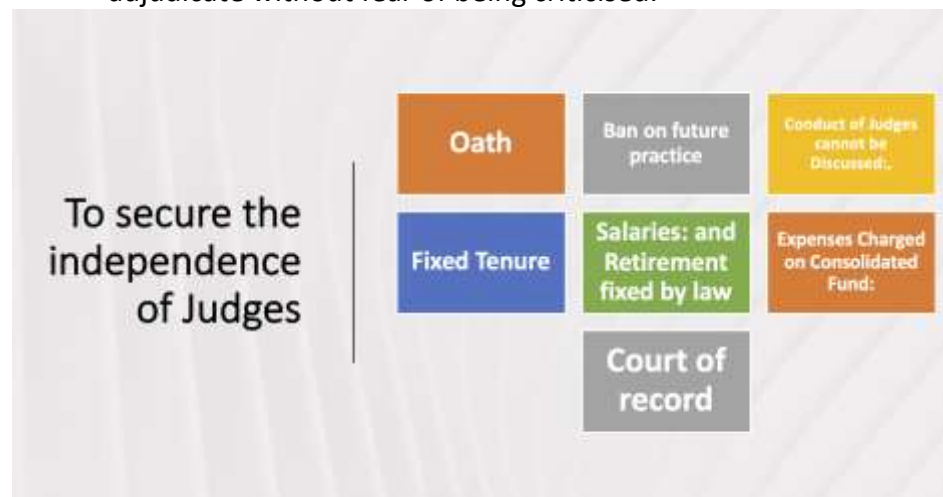
Civil Cases	Criminal Cases	Jurisdiction
<b>District Court</b>		
District Judge	Session Judge	Any Sentence, but death sentence needs to be ratified by HC
Additional District Judge	Additional Session Judge	Any Sentence, but death sentence needs to be ratified by HC
Assistant District Judge	Assistant Session Judge	10 Years
<b>Subordinate Courts</b>		
Senior Civil Judge /Principal Junior Civil Judge	Chief Judicial Magistrate	7 Years
Junior Civil Judge	Judicial Magistrate-I	3 Years
Musif	Judicial Magistrate-II	1 Year

## Why do we need Independent judiciary?

The principal role of the judiciary is to protect rule of law and ensure supremacy of law. It safeguards rights of the individual, settles disputes in accordance with the law and ensures that democracy does not give way to individual or group dictatorship. In order to be able to do all this, it is necessary that the judiciary is independent of any political pressures.

### Broad features which ensures the judicial independence:

- The legislature is not involved in the process of appointment of judges so that party politics would not play a role in the process of appointment.
- The judges have a fixed tenure, they hold office till reaching the age of retirement. they have security of tenure. Security of tenure ensures that judges could function without fear or favour.
- The judiciary is not financially dependent on either the executive or legislature. The Constitution provides that the salaries and allowances of the judges are not subjected to the approval of the legislature.
- The actions and decisions of the judges are immune from personal criticisms.
- The judiciary has the power to penalise those who are found guilty of contempt of court. This authority of the court is seen as an effective protection to the judges from unfair criticism. Even, parliament cannot discuss the conduct of the judges except when the proceeding to remove a judge is being carried out. This gives the judiciary independence to adjudicate without fear of being criticised.



### Judiciary and rights:

Supreme Court can remedy the violation of rights:

- Can restore fundamental rights by issuing writs of Habeas Corpus; mandamus etc. (article 32). The High Courts also have the power to issue such writs (article 226).
- Supreme Court can declare the concerned law as unconstitutional and therefore non-operational (article 13).
- the Supreme Court as the protector of fundamental rights of the citizen on the one hand and interpreter of Constitution on the other hand.

- Article 13 also implicitly includes Judicial Review: Judicial Review means the power of the Supreme Court (or High Courts) to examine the constitutionality of any law if the Court arrives at the conclusion that the law is inconsistent with the provisions of the Constitution, such a law is declared as unconstitutional and inapplicable.
- Supreme Court includes power to review legislations on the ground that they violate fundamental rights or on the ground that they violate the federal distribution of powers. (Say, when Union enacts unduly in matters listed under the state list).
- The practice of entertaining PILs has further added to the powers of the judiciary in protecting rights of citizens.

#### **Removal of Judge:**

- can be removed from his Office by an **order of the president**.
- **On grounds only of proved misbehavior or incapacity.**
- 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.

#### **The Judges Enquiry Act (1968):**

1. **Motion can be adopted in either house of parliament**
  1. **signed by 100 members – LS**
  2. **50 members (in the case of Rajya Sabha)**
2. The Speaker/Chairman may admit the motion or refuse to admit it.
3. Other houses **constitute a three-member committee to investigate into the charges.**
  1. **the chief justice or a judge of the Supreme Court,**
  2. **a chief justice of a high court, and**
  3. **a distinguished jurist.**
4. **the House can take up the consideration of the motion.**
5. **by special majority, an address is presented to the president for removal of judge.**
6. Finally, the president passes an order removing the judge.

#### **Comparison with Other Countries: Removal of Judges**

- **England:** England there is no such majority specified. in India, there are provisions for investigation of the Judge whereas there are no such provisions in England.
- **United States:**
  - **Ground:** US it is the **judicial misconduct** by which a Judge can be removed.
  - After the motion is passed in both the Houses by the two-third majority then it is addressed to the Governor for removal of the Judge.
- **Canada:** In Canada, the Canadian Judicial council investigates the alleged federally appointed Judge for misconduct. After investigating, the Council may recommend the Minister of Justice for the removal of the alleged Judge. The

minister then gets the approval of both the Houses i.e. House of Commons and Senate before he removes the Judge.

#### **Unsuccessful Attempt to Remove a Judge**

- In 1991 the first-ever motion to remove a Supreme Court Justice was signed by 108 members of Parliament.
- Erstwhile CJ of Punjab High Court was **accused of misappropriating funds.**
- The commission **consisting of Judges of Supreme Court found Justice V. Ramaswamy “guilty of willful and gross misuses of office.**
- The motion recommending his removal **got the required two-third majority among the members who were present and voting,** but the Congress party abstained from voting in the House. **Therefore, the motion could not get the support of one-half of the total strength of the House.**