

MODULE - 4

Indian Court System and
Methods of Resolution
Disputes



Notes

Indian Judicial System

13.4 STRUCTURE OF JUDICIARY

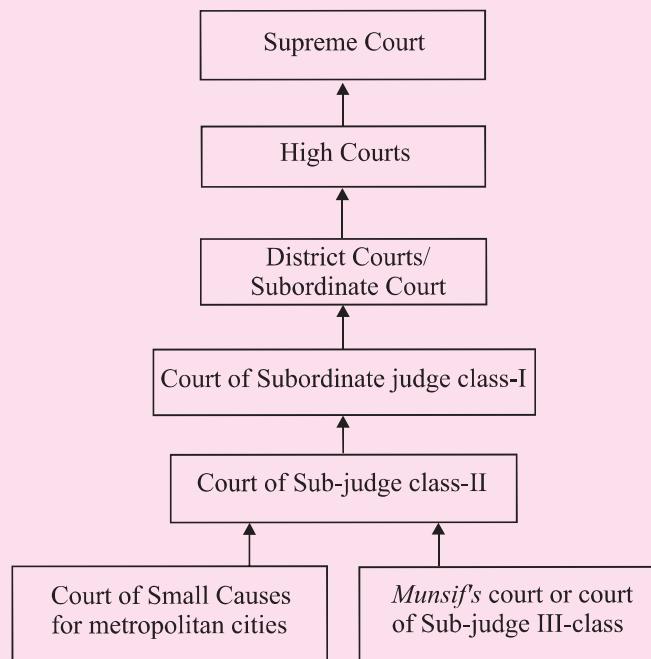
Under our Constitution there is a single integrated system of Courts for the Union as well as the States, which administer both Union and State laws, and at the head of the system stands the Supreme Court of India. Below the Supreme Court are the High Courts of different States and under each High Court there are ‘subordinate courts’, i.e., courts subordinate to and under the control of the High Courts.

At the top of the judicial system is Supreme Court of India followed by High Courts at State level. There are 21 High Courts in the Country. At the District level, there are Subordinate District Courts.

Supreme Court of India

The Supreme Court is the apex Court at national level which was established on 28th January 1950, under Article 124(1) of the Constitution of India. In this context, Article 124 (1) reads as “there shall be a Supreme Court of India consisting of the Chief Justice of India and until Parliament, by law, prescribe a large number of not more than 7 judges. “Though by 2009 Amendment, the number of judges in Supreme Court was raised to 31 including the Chief Justice. All proceedings in the Supreme Court are conducted in English. The seat of Supreme Court is in Delhi and the proceedings are open to the public.

Hierarchy of Civil Judicial System





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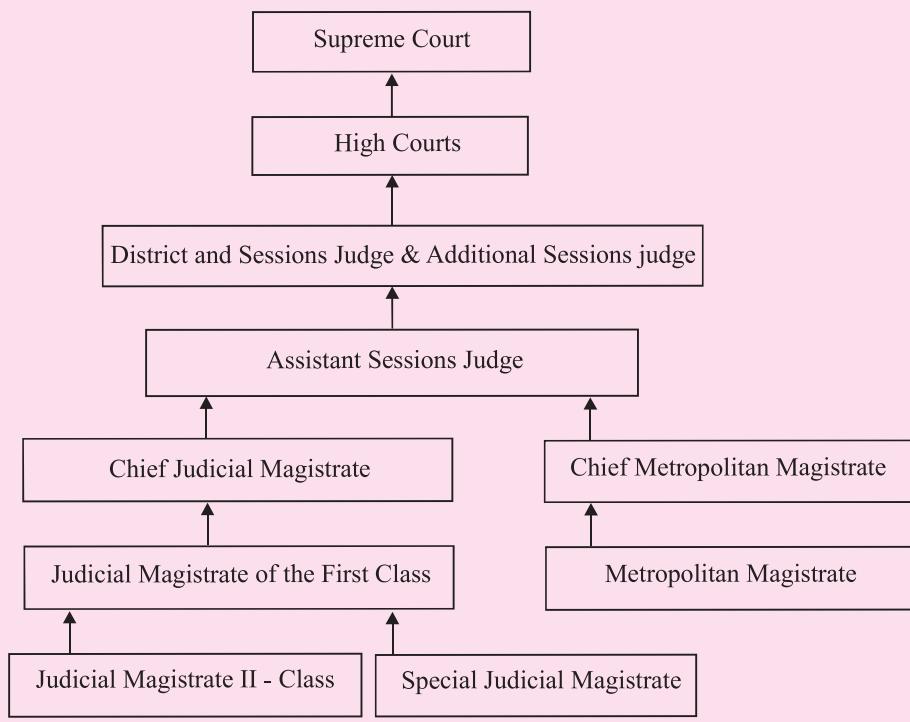
High Courts

The highest Court in the State is the High Court constituted under Article 214 of the Constitution which reads there shall be a High Court in each State. There are at present, 21 High Courts in the Country. Each High Court comprises of a Chief Justice and such other judges as the President of India from time to time appoint.

Subordinate Courts

The judicial system comprises of subordinate courts which represent the first-tier of the entire judicial structure. As a general rule, Civil cases are dealt with by one set of Hierarchy of Court known as Civil Court and Criminal cases by another known as Criminal Court. The Power of Civil courts are governed by Civil Procedure Code (CPC) and power of Criminal Court are governed by Criminal Procedure Code(Cr.pc) respectively. Following is the hierarchy chart of all civil and criminal courts in India.

Hierarchy Chart of Civil and Criminal Courts in India



INTEXT QUESTIONS 13.4

1. The Salient feature of Indian Judiciary is that it has a single integrated and unified Judicial System. (True/False)
2. Courts in India are like a pyramid. (True/False)

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3. The Jurisdictions of Privy Council over the Indian appeals came to an end with the establishment of Supreme Court of India on January 26, 1950. (True/False)
4. The Supreme Court is the Apex Court in India. (True/False)

13.5 JURISDICTION OF THE SUPREME COURT

The Supreme Court has vast jurisdiction and its position is strengthened by the fact that it acts as a Court of Appeal, as a guardian of the Constitution and as a reviewer of its own judgements. Article 141 declares that the law laid down by the Supreme Court shall be binding on all courts within the territory of India. Its jurisdiction is divided into four categories:

- (a) **Original Jurisdiction and Writ Jurisdiction:** Article 131 gives the Supreme Court exclusive and original jurisdiction in a dispute between the Union and a State, or between one State and another, or between a group of States and others. It acts, therefore, as a Federal Court, i.e., the parties to the dispute should be units of a federation i.e. a State of India. No other court in India has the power to entertain such disputes. Supreme Court is the guardian of Fundamental Rights and thus has non-exclusive original jurisdiction as the protector of Fundamental Rights. It has the power to issue writs, such as Habeas Corpus, Quo Warranto, Prohibition, Certiorari and Mandamus. In addition to issuing these writs, the Supreme Court is empowered to issue appropriate directions and orders to the executive. Article 32 of the Constitution gives citizens the right to move to the Supreme Court directly for the enforcement of any of the Fundamental Rights enumerated in part III of the Constitution.
- (b) **Appellate Jurisdiction:** The Supreme Court is the highest Court of Appeal from all courts. Its appellate jurisdiction may be divided into:
 - (i) cases involving interpretation of the Constitution - civil, criminal or otherwise;
 - (ii) civil cases, irrespective of any Constitutional question; and
 - (iii) Criminal cases, irrespective of any Constitutional question.

Article 132 provides for an appeal to the Supreme Court by the High Court certification, the Supreme Court may grant special leave to the appeal. Article 133 provides for an appeal in civil cases, and article 134 provides the Supreme Court with appellate jurisdiction in criminal matters. However, the Supreme Court has the special appellate jurisdiction to grant, in its discretion, special leave appeal from any judgment, decree sentence or order in any case or matter passed or made by any court or tribunal.



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- (c) **Advisory Jurisdiction:** Article 143 of the Constitution vests the powers of the President to seek advice regarding any question of law or fact of public importance, or cases belonging to the disputes arising out of pre-constitution treaties and agreements which are excluded from its original jurisdiction. This jurisdiction does not involve a law, the advisory opinion is not binding on the government, it is not executable as a judgment of the court and the court may reserve its opinion in controversial political cases as in the 'Babri Masjid case'.
- (d) **Review Jurisdiction:** The Supreme Court has the power to review any judgment pronounced or order made by it. Article 137 provides for review of judgment or orders by the Supreme Court wherein, subject to the provisions of any law made by the Parliament or any rules made under Article 145, the Supreme Court shall have the power to review any judgment pronounced or made by it. However, the Supreme Court jurisdiction may be enlarged with respect to any of the matters in the Union List as Parliament may by law confer. Parliament may, by law, also enlarge or can impose limitations on the powers and functions exercised by the Supreme Court. Since Parliament and the Judiciary are created by the Constitution, such aforesaid acts must lead to harmonious relationship between the two, and must not lead to altering the basic structure of the Constitution. Moreover, all these powers can also be suspended or superseded whenever there is a declaration of emergency in the country.



INTEXT QUESTIONS 13.5

Fill in the Blanks:

1. The Judges of the Supreme Courts are appointed by the
(Prime Minister/President/Law Minister)
2. The Judges of the Supreme Court retire at the age of
(60/62/65)
3. The dispute between two or more States is brought before the Supreme Court under its Jurisdiction. (Original/appellate/advisory)
4. The ultimate power of interpreting the Constitution of India lies with
(High Courts/Supreme Court/Session Courts)

13.6 HIGH COURTS

There shall be High Court for each State (Article 214), and every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself (Article 215). However, Parliament may, by law, establish a common High Court for two or more States and a Union

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Territory (Article 231). Every High Court shall consist of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint. Provisions for additional judges and acting judges being appointed by the President are also given in the Constitution. The President, while appointing the judges shall consult the Chief Justice of India, the Governor of the State and also the Chief Justice of that High Court in the matter of appointment of a judge other than the Chief Justice. A judge of a High Court shall hold office until the age of 62 years. A judge can vacate the seat by resigning, by being appointed a judge of the Supreme Court or by being transferred to any other High Court by the President. A judge can be removed by the President on grounds of misbehaviour or incapacity in the same manner in which a judge of the Supreme Court is removed.

Jurisdiction of High Courts

The jurisdiction of the High Court of a State is along with the territorial limits of that State. The original jurisdiction of High court includes the enforcement of the Fundamental Rights, settlement of disputes relating to the election to the Union and State legislatures and jurisdiction over revenue matters. Its appellate jurisdiction extends to both civil and criminal matters. On the civil side, an appeal to the High Court is either a first appeal or second appeal.

The criminal appellate jurisdiction consists of appeals from the decisions of:

- (a) A Session Judge, or an additional Session Judge where the sentence is of imprisonment exceeding 7 years
- (b) An Assistant session judge, Metropolitan Magistrate of other Judicial Magistrate in certain certified cases other than 'petty' cases.

The writ jurisdiction of High Court means issuance of Writs/orders for the enforcement of Fundamental Rights and also in cases of ordinary legal rights. High Court also has the power to superintend over all other courts and tribunals, except those dealing with armed forces. It can also frame rules and issue instructions for guidance from time to time with directions for speedier and effective judicial remedy. High Court also has the power to transfer cases to itself from subordinate courts concerning the interpretation of the Constitution. Interpreting the Constitution means guiding the manner in which its provisions are to be applied. However, the Parliament, by law, may extend the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from, any Union Territory. High Courts' power of original and appellate jurisdiction is also circumscribed by the creation of Central Administrative Tribunals, with respect to services under the Union and it has no power to invalidate(declare void) a Central Act, rule, notification or order made by any administrative authority of the Union.

**INTEXT QUESTIONS 13.6****Fill in the blanks.**

1. The Judges of the High Court are appointed by the
(Governor/President/Prime Minister)
2. At present there are High Courts in India. (20, 21, 18)
3. The retirement age of the Judges of a High Court is years.
(60, 65, 62)

**Notes****13.7 SUBORDINATE COURTS**

The hierarchy of courts that lie subordinate to High Courts are referred to as Subordinate Courts. It is for the State Governments to enact for the creation of Subordinate Courts. The nomenclature of these subordinate courts differs from State to State but broadly there is uniformity in terms of the organisational structure (i.e. the hierarchy remains the same for every State at the most). Below the High Courts, there are District Courts for each district, and has appellate jurisdiction in the district. Under the District Courts, there are the lower courts such as the Additional District Court, Sub Court, Munsiff Magistrate Court, Court of Special Judicial Magistrate of I class, Court of Special Judicial Magistrate of II class, Court of Special Munsiff Magistrate for Factories Act and labour laws, etc. Below the Subordinate Courts, at the grass-root level, are the Panchayat Courts (Nyaya Panchayat, Gram Panchayat, Panchayat Adalat, etc.). These are, however, not considered as courts under the purview of the criminal courts jurisdiction. District Courts can take cognizance of original matters under special status.

The Governor, in consultation with the High Court, makes appointments pertaining to the District Courts. Appointment of persons other than the District Judges to the judicial service of a State is made by the Governor in accordance with the rules made by him in that behalf after consultation with the High Court and the State Public Service Commission. The High Court exercises administrative control over the District Courts and the courts subordinate to them, in matters as posting, promotions and granting of leave to all persons belonging to the State Judicial Service.

**INTEXT QUESTIONS 13.7**

1. Which is the highest Criminal Court in a District?
2. Name the highest Civil Court of a District?

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13.8 DEFECTS IN EXISTING JUDICIAL SYSTEM

Despite many positive aspects of the Indian legal system, there are certain glaring defects in the existing Judicial system which need to be removed. A few of them are noted below:-

1. The Supreme Court and the High Courts are overburdened with appellate work which causes inordinate delay in disposal of appeals.
2. The Subordinate Courts are also overworked. That apart, they are unduly influenced by the executive quite often, which hampers the cause of impartial justice. The civil and criminal cases are prolonged due to frequent adjournments from the parties and their Counsel. The judges have a tendency to grant adjournment as a matter of routine.
3. The litigation, particularly the civil litigation, is too costly an affair and is beyond the reach of a common man. At times people are compelled to forego their legitimate claims and prefer to suffer injustice due to expensive justice.
4. Corrupt practices at the Bar and the clerical level interference in the courts, defeat the purpose of law and justice.
5. Touts and professional witnesses are seen roaming about in courts in search of their client. The ignorant and illiterate litigant fall an easy prey to their underhand tactics. This frustrates the cause of justice.
6. Many of the existing laws being more than a century old, have become obsolete and outdated. Therefore, they need to be repealed or amended.' In order to bring about uniformity and certainty in the law relating to damages, the law of torts should be codified on the pattern of American Restatement of Law of Tort.



INTEXT QUESTIONS 13.8

1. Enlist the main defects in the existing Judicial System in India.
2. State any three defects in the existing Judicial System.

13.9 NEW JUDICIAL TRENDS OR DEVELOPMENTS IN INDIAN JUDICIAL SYSTEM

After the Indian' independence, the Supreme Court has been making strenuous efforts to reshape the Indian law to suit the needs of changing society through its judicial pronouncements some of which have assumed historic importance in recent years. To quote a few, the classic decision of the Supreme Court in *Kesawanand Bharti*, otherwise known as the Fundamental Rights case; the *Judge's Transfer case*; *Dr. Dastane Case*; *Bangalore Wafer Supply v. Rajappa*; *National Textile Worker's Union v. P.R. Ramkrishnan*, *M.C. Mehta v. Union*