

4. The Indian Judicial System

Along with the legislature and the Executive, the judiciary too is an important organ of the government. While the legislature makes the laws and executive implements the laws, Judiciary gives justice. In this chapter, we will learn, how Judiciary works to give justice and thereby helps in removing injustice in a society and establishes a healthy society. But before that let us understand why giving justice is necessary.

Opinions, thoughts, perspective, beliefs, faith and culture differ from person to person. If people are tolerant they can avoid conflicts. But if differences of opinion are very sharp they may lead to conflicts. They should be resolved impartially and in accordance with the laws. For this purpose an unbiased judicial machinery is required.

- Conflict of interests may arise between individuals and the government. A decision or law made by the government may seem unfair to people and they may approach the court for justice.
- The government tries to implement the objectives of social justice and equality laid down in the Constitution. The judiciary through its decisions in certain cases or through active involvement can support the government. The court can help to bring the weaker sections of society, women, children, differently-abled and transgender into the mainstream of the society.
- When the common man benefits from the values of freedom, equality, and justice, it leads to the widening and deepening of democracy. This is necessary for the strengthening of

democracy.

- The Rule of Law is protected by the Judiciary. The law treats everyone equally. Rich, poor, developed - backward, men or women, all are equal before law and this is expressed clearly through judicial decisions.
- Judiciary helps to protect the rights of people. Conflicts are resolved in accordance with law and law prevents emergence of repressive and authoritarian groups and individuals.

Structure of the Judiciary : India is Union of States. The Centre and the Constituent States have a separate legislature and executive. But there is one judicial system for the whole of India. There is no division of courts between the Centre and the Constituent States. This means that judiciary in India is an integrated system. The Supreme Court is the apex court under which there are High Courts. The High Courts control the district courts following which there are lower courts which are at the bottom of this structure.

Supreme Court : The Chief Justice of India (CJI) heads the Supreme Court of India. The President appoints the Chief Justice of India and other Judges of Supreme Court. By convention, the senior most judge of the Supreme Court is appointed as the Chief Justice.

The judiciary should not work under any kind of pressure. The independence of the judiciary is maintained so as to enable the judges to fearlessly carry out the function of giving justice. For this purpose, the Constitution has made the following provisions.



Supreme Court of India, Delhi

- The Constitution lays down the eligibility criteria for the judges. A legal expert or one having served as the High Court judge or an experienced advocate is considered eligible.
- Judges are appointed by the President. This helps to avoid any political pressure.
- Judges enjoy security of tenure. They cannot be removed from the post for trivial reasons or for political motives. The retirement age of judges of the Supreme Court is 65 years, while for the High Court it is 62 years.
- The salaries of judges are drawn from the Consolidated Fund of India, no discussion takes place on this issue in the Parliament.
- Personal criticisms cannot be made on judges for their acts and decisions. Contempt of Court is considered a punishable offense. This not only protects the judges from misguided/wrongful criticism but also preserves the independence of the judiciary.
- The Parliament cannot discuss the decisions of the judges. However, it has the right to remove the judges from their position through the impeachment procedure.

Judicial Activism :

Traditionally, the Courts settle the disputes whenever they are approached for that purpose. In the last few decades, this image of the court has undergone a change and they have become increasingly active. This means that the court now seeks to fulfill the constitutional goals of justice and equality. The court has tried to provide legal

protection to the marginalised sections in society, women, tribal, workers, farmers, and children. Public Interest Litigations have played an important role in this regard.

Functions of the Supreme Court

- * As a federal court, it has the responsibility to settle disputes between the Union and the states; between the states and the Union and any state on one hand and one or more states on the other hand.
- * It may also give orders for protection of the fundamental rights of citizen.
- * To review decrees and orders of lower courts and also review its own decisions.
- * In case the President asks for the advice of the Court to understand the legal aspects in matters of public importance, provide the necessary advice.



Can you tell?

Why does the President seek the advice of the Supreme Court on any issue of public importance?

Read the paragraph and write.

Judicial Review : One of the most important responsibilities entrusted to the Supreme Court is the protection of the Constitution. You are aware that the Constitution is the fundamental law of the Nation. The Parliament cannot pass any law that violates the Constitution. Every act or policy made by the Executive should also be consistent with the Constitution. If any law passed by the Legislature or any act of the Executive violates any provision of the Constitution, the said law or act is declared illegal and struck down by the court. This power of the court is known as Judicial Review.

- Should the Court have such a right?

See this example.

The Court had asked candidates contesting elections to declare their property and income details and educational qualifications through an affidavit. The aim was to ensure that the voters will vote on the basis of accurate information about the candidates. Is this not an attempt to make our election process more transparent?

Are there any more such orders from the court with respect to this subject? Find out more on this.

Public Interest Litigation (PIL) refers to litigations filed on issues of public importance by individual citizens, social organisations or Non-Governmental Organisations on behalf of the all people. The court thinks over the questions raised and gives its decision.

High Court : The Indian Union of states confers the Parliament with the power to establish a High Court in each Constituent State in the Union. Currently, there are 24 High Courts in India.

There is a Chief Justice along with other judges in the High Court.

All judges of the High Court are appointed by the President.



Do it.

The Bombay High Court's jurisdiction covers the states of Maharashtra and Goa, and the Union Territories of Dadra and Nagar Haveli and Daman and Diu.

Find out two other such examples where the High Court has jurisdiction over more than one state.

Functions of the High Court

- * To supervise and maintain control over the lower courts in its jurisdiction.
- * Authority to give orders to protect fundamental rights.
- * The Governor seeks the advice of the High Court while appointing judges in the district courts.

District and lower courts : These are courts at the district and tehsil (taluka) level. The people generally go to these courts. Every District Court has one district judge.

The Branches of Law in India : There are two main branches of law: (1) Civil law and (2) Criminal law.

Civil law : This law deals with conflicts which affect or interfere with the rights of a person. For example, Conflicts

regarding land and property, rent agreement, divorce, etc. After filing a petition in the relevant court, the said court gives a decision.

Criminal Law : Serious crimes are dealt under criminal law. For example, theft, robbery, dowry, murder, etc. In these cases, the first step is to file a First Information Report (FIR) with the Police. The police investigates the matter and then a petition is filed in the court. If the

charges are proved, there are provisions for severe punishment.

The Indian judiciary has made a significant contribution in development of the country. Common people have a lot of respect and trust in the judicial system. The judiciary in India has protected individual freedom, the federal system and the Constitution of India. Courts have played an important role in strengthening the democracy in India.

Exercise

1. Choose the correct option and complete the statements.

- (1) Laws are made by
 (a) Legislature (b) Council of Ministers
 (c) Judiciary (d) Executive
- (2) The Chief Justice of Supreme Court is appointed by
 (a) The Prime Minister
 (b) The President
 (c) The Home Minister
 (d) The Chief Justice

2. Explain the concepts.

- (1) Judicial Review
- (2) Public Interest Litigation

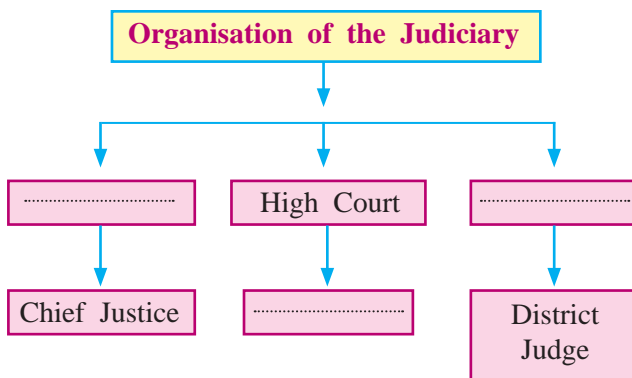
3. Write short notes on.

- (1) Civil and Criminal Law
- (2) Judicial Activism

4. Answer in brief.

- (1) Why are laws necessary in society?
- (2) Enumerate the functions of the Supreme Court.
- (3) Which are the provisions that preserve the independence of the judiciary?

5. Complete the table.



Project

- (1) Organise a 'Moot Court' in your school, prepare and ask questions related to Public Interest Litigations in this Moot Court.
- (2) Visit the nearest police station and understand the procedure of filing a First Information Report (FIR) with the help of your teacher.

