

Introduction to Politics, with reference to India

Judiciary

Judiciary

Features

- The Indian Constitution has established an integrated and independent judicial system.
- Meaning that in India, a hierarchical judicial system is followed with the Supreme Court at the top followed by high courts and then lower courts (i.e. district courts, civil courts etc.).

Supreme Court of India

Features

- The Supreme Court's power, functions, responsibilities etc. are enshrined in Part V of the Constitution from Articles 124 to 147.
- The Supreme Court of India is the country's highest judicial court. It is the final court of appeal in the country.
- In 1950, there were 7 Judges and one Chief Justice. Currently there are 34 Judges including Chief Justice of India.

Supreme Court of India

Appointment of Judges

- Judges are appointed by the President.
- A judge of the SC can hold office till he attains the age of 65 years.
- They can also resign from the post by writing to the President and can be removed from the post by the President on recommendation of the Parliament.
- President's decision of appointment of judges is based on the collegium system.
- The collegium is composed of total 5 members i.e. Chief Justice of India and 4 senior most judges of SC who make the recommendations on appointment of judges of SC.
- These recommendations are then sent to the Government of India whose role is restricted to only do a background check on the recommended names. The Govt. can send the names back for reconsideration but it is up to the CJI and the collegium to accept it or not. Those names are then finally passed on to the President who gives his final warrant seal to their appointments.

Supreme Court of India

Appointment of Chief Justice of India

- According to the government's Memorandum of procedure for the appointment of Supreme Court Judges, seniority is to be the norm. The outgoing Chief Justice recommends the successor.
- The Law Minister will then put up the recommendation to the Prime Minister who will advise the President on the matter of appointment.
- This convention of seniority was famously broken by the former Prime Minister Indira Gandhi, who appointed Justice AN Ray as CJI in 1973 over his seniors.

Supreme Court of India

Qualification of Judges

- He should be a citizen of India
- He should have been a HC judge for five years or an advocate practicing in HC for 10 years or a distinguished jurist in the opinion of the President.

Supreme Court of India

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 two—proved misbehaviour or incapacity.

Supreme Court of India

Independence

- **Mode of Appointment:** The judges are appointed by the President on the basis of recommendation by the collegium system.
- **Security of Tenure:** The judges can be removed by the President only by the means provided by the Constitution.
- **Fixed Service Conditions:** 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 changed to their disadvantage after their appointment except during a financial emergency. Thus, the conditions of service of the judges of the Supreme Court remain the same during their term of Office.

Supreme Court of India

Independence

- Expenses Charged on Consolidated Fund of India: The salaries, allowances and pensions of the judges and the staff as well as all the administrative expenses of the Supreme Court are charged on the Consolidated Fund of India. Thus, they are non-votable by the Parliament (though they can be discussed by it).
- Freedom to Appoint its Staff
- Its jurisdiction cannot be curtailed: The Constitution has given the power to Parliament to extend the jurisdiction and powers of SC and HC but not to curtail it.

Supreme Court of India

Jurisdiction and Powers

- The Supreme Court has wide powers and functions.
- It is the highest Court of people.
- A Guarantor and protector of the Constitution.
- Final interpreter of the Constitution
- And guarantor of Fundamental rights of citizens.

Supreme Court of India

Jurisdiction and Powers

- Original Jurisdiction (Article 131): As a federal court, the Supreme Court is the final and the only authority to settle the disputes between: (a) the Centre and one or more states; or (b) the Centre and any state or states on one side and one or more states on the other; or (c) between two or more states.
- Writ Jurisdiction: The Supreme Court under Article 32 has been designated as the guarantor and protector of Fundamental rights of the citizens. Thus, the Supreme Court is empowered to issue writs including habeas corpus, mandamus, prohibition, quo-warranto and certiorari for the enforcement of the fundamental rights of an aggrieved citizen.
- Appellate Jurisdiction: The SC being the highest court of appeal hears appeals against the judgement of lower courts. Appellate jurisdiction is of four kinds – 1) appeals related to constitutional matters; 2) appeals in civil matters; 3) appeals in criminal matters; 4) appeals by special leave
- Advisory jurisdiction: The Constitution (Article 143) authorizes the president to seek the opinion of the Supreme Court

Supreme Court of India

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 i.e. for legal references.
 - It has power to punish for contempt of court. The punishment can be both civil or criminal in nature.

Supreme Court of India

Judicial Review

- **Power of Judicial Review:** Judicial review is the power of the Supreme Court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments. On examination, if they are found to be violative of the Constitution (ultra-vires), they can be declared as illegal, unconstitutional, and invalid (null and void) by the Supreme Court. Consequently, they cannot be enforced by the Government.

Supreme Court of India

Judicial Activism

- Judicial activism denotes the proactive role played by the judiciary in the protection of the rights of citizens and in the promotion of justice in the society. In other words, it implies the assertive role played by the judiciary to force the other two organs of the government (legislature and executive) to discharge their constitutional duties.
- It is the antithesis of “judicial restraint”, which means the self-control exercised by the judiciary.
- It could mean an active interpretation of existing legislation by a judge, made with a view to enhance the utility of that legislation for social betterment. Judges may depart from normally practised strict adherence to judicial precedent in favour of progressive and new social policies. It can also lead to lawmaking by judges.

Supreme Court of India

Public Interest Litigation

- In India, the PIL is a product of the judicial activism role of the Supreme Court. It was introduced in the early 1980s. Justice V.R. Krishna Iyer and Justice P.N. Bhagwati were the pioneers of the concept of PIL.
- The introduction of PIL in India was facilitated by the relaxation of the traditional rule of 'locus standi'.
- According to this rule, only that person whose rights are infringed alone can move the court for the remedies, whereas, the PIL is an exception to this traditional rule.
- Under the PIL, any public-spirited citizen or a social organisation can move the court for the enforcement of the rights of any person or group of persons who because of their poverty or ignorance or socially or economically disadvantaged position are themselves unable to approach the court for the remedies.
- Thus, in a PIL, any member of the public having 'sufficient interest' can approach the court for enforcing the rights of other persons and redressal of a common grievance.

Supreme Court of India

Challenges

- Pendency of cases
- Delay in justice – “due process is the punishment”
- Delay in appointments
- Overreach into the domains of Executive and Legislature
- Independence in appointment of judges