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UNION AND STATE JUDICIARY

UNION JUDICIARY

SUPREME COURT

At present, the Supreme Court consists of thirty-four judges (one chief justice and thirty-three other judges). Originally, the strength of the Supreme Court was fixed at eight (one chief justice and seven other judges). The Parliament has increased this number of other judges progressively

Appointment of Judges

The judges of the Supreme Court are appointed by the president. The chief justice is appointed by the president after consultation with such judges of the Supreme Court and high courts as he deems necessary. The other judges are appointed by president after consultation with the chief justice and such other judges of the Supreme Court and the high courts as he deems necessary.

Appointment of Chief Justice

The practice has been to appoint the senior most judge of the Supreme Court as the chief justice of India.

Qualifications of Judges

- 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.

Oath or Affirmation A person appointed as a judge of the Supreme Court, before entering upon his Office, has to make and subscribe an oath or affirmation before the President, or some person appointed by him for this purpose. In his oath, a judge of the Supreme Court swears:

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1. to bear true faith and allegiance to the Constitution of India;
 2. to uphold the sovereignty and integrity of India;
 3. to duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of the Office without fear or favour, affection or ill-will; and
 4. to uphold the Constitution and the laws.

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:

1. He holds office until he attains the age of 65 years. Any question regarding his age is to be determined by such authority and in such manner as provided by Parliament.
2. He can resign his office by writing to the president.
3. He can be removed from his office by the President on the recommendation of the Parliament.

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 misbehavior or incapacity.

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.

Acting Chief Justice

The President can appoint a judge of the Supreme Court as an acting Chief Justice of India when:

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1. the office of Chief Justice of India is vacant; or
 2. the Chief Justice of India is temporarily absent; or
 3. the Chief Justice of India is unable to perform the duties of his office.

Ad hoc Judge

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

Retired Judges

At any time, the chief justice of India 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.

SEAT OF SUPREME COURT

The Constitution declares Delhi as the seat of the Supreme Court. But, it also authorizes the chief justice of India 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.

Jurisdiction and Powers of Supreme Court

1.Original Jurisdiction

As a federal court, the Supreme Court decides the disputes between different units of the Indian Federation. More elaborately, any dispute 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.

In the above federal disputes, the Supreme Court has exclusive original jurisdiction.

2. Writ Jurisdiction

The Constitution has constituted the Supreme Court as the guarantor and defender of the fundamental rights of the citizens. 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.

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In this regard, the Supreme Court has original jurisdiction in the sense that an aggrieved citizen can directly go to the Supreme Court, not necessarily by way of appeal. However, the writ jurisdiction of the Supreme Court is not exclusive.

The high courts are also empowered to issue writs for the enforcement of the Fundamental Rights. It means, when the Fundamental Rights of a citizen are violated, the aggrieved party has the option of moving either the high court or the Supreme Court directly.

3. Appellate Jurisdiction

(a) Appeals in constitutional matters

In the constitutional cases, an appeal can be made to the Supreme Court against the judgement of a high court if the high court certifies that the case involves a substantial question of law that requires the interpretation of the Constitution.

(b) Appeals in civil matters

In civil cases, an appeal lies to the Supreme Court from any judgement of a high court if the high court certifies—

- (i) that the case involves a substantial question of law of general importance;
- (ii) that the question needs to be decided by the Supreme Court.

Originally, only those civil cases that involved a sum of 20,000 could be appealed before the Supreme Court. But this monetary limit was removed by the 30th Constitutional Amendment Act of 1972.

(c) Appeals in criminal matters

The Supreme Court hears appeals against denudement in a criminal proceeding of a high court if the high court—

- (i) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or
- (ii) has taken before itself any case from any subordinate court and convicted the accused person and sentenced him to death; or
- (iii) certifies that the case is a fit one for appeal to the Supreme Court.

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(d) Appeals by special leave

The Supreme Court is authorised to grant in its discretion special leave to appeal from any judgement in any matter passed by any court or tribunal in the country (except military tribunal and court martial).

This provision contains the four aspects as under:

- (i) It is a discretionary power and hence, cannot be claimed as a matter of right.
- (ii) It can be granted in any judgement whether final or interlocutory.
- (iii) It may be related to any matter—constitutional, civil, criminal, income tax, labour, revenue, advocates, etc.
- (iv) It can be granted against any court or tribunal and not necessarily against a high court (of course, except a military court).

4. Advisory Jurisdiction

The Constitution (Article 143) authorises the president to seek the opinion of the Supreme Court in the two categories of matters:

- (a) On any question of law or fact of public importance which has arisen or which is likely to arise.
- (b) On any dispute arising out of any pre-constitution treaty, agreement, covenant, engagement, sanad, or other similar instruments.

5. A Court of Record

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

- (a) 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.
- (b) It has power to punish for contempt of court, either with simple imprisonment for a term up to six months or with fine up to 2,000 or with both. In 1991, the Supreme Court has ruled that it has power to punish for contempt not only of itself but also of high courts, subordinate courts and tribunals functioning in the entire country.

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Contempt of court may be civil or criminal. Civil contempt means willful disobedience to any judgement, order, writ or other process of a court or willful breach of an undertaking given to a court. Criminal contempt means the publication of any matter or doing an act which—

- (i) scandalises or lowers the authority of a court; or
- (ii) prejudices or interferes with the due course of a judicial proceeding; or
- (iii) interferes or obstructs the administration of justice in any other manner.

6. 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.

Judicial Review

Judicial Review is an important contribution of the U.S.A. to political science. The power of the Judiciary to declare law unconstitutional is called judicial review. In England the judiciary has no power to sit in judgement on the law passed by parliament.

But in countries like U.S.A., Canada, India, Australia, if the legislature passes a law which is against the constitution, the judiciary can declare such law as ultra vires. The Supreme Court enjoys the power of judicial review.

The Supreme Court of India has judicial review power with regard to:

- (a) disputes between the centre and the states.
- (b) to interpret and clarify a provision of the constitution above which there are some doubts and differences of opinion.
- (c) protecting the fundamental rights.
- (d) those laws passed by the legislature which are not in accordance with the constitution.

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Merits

1. Judges are competent to make judicial review by virtue of their knowledge and experience.
2. It enables the federal judiciary to act as the guardian of the constitution.
3. The courts are independent and less biased than legislatures.
4. It protects the fundamental rights of the people in particular the rights of the minorities.
5. It is necessary to preserve a free and limited government.
6. It enables the judiciary to guard against legislative haste and rashness.

De-merits

1. It may violate the spirit of separation of powers.
2. By giving the power of judicial review to the courts the smooth functioning of the representative system of government is affected as the courts infringe upon the legislative and executive functions.
3. Judicial review delays the operation and implementation of important and pressing social policies so necessary for the needs of a dynamic society.
4. Almost all problems coming before the judges involves issues of political, economic and social importance and legislation on them. Thus, it makes the judiciary a super legislature.
5. Issues brought before the courts are decided by a majority of single judge (in the U.S.A. five to four majority). It shows how the judges are sharply divided amongst themselves and their judgement vitally affects the nation as a whole.
6. Judges may overlook the challenges of the changing times and may refuse to move forward. They may become conservative.
7. Judges may follow blindly only the letter of the law totally ignoring its spirit.

They may develop hard attitude. Judicial review has been accepted as an important doctrine in the working of the judiciary.

STATE JUDICIARY

HIGH COURT:

Every high court (whether exclusive or common) consists of a chief justice and such other judges as the president may from time to time deem necessary to appoint. Thus, the Constitution does not specify the strength of a high court and leaves it to the discretion of the president.

Appointment of Judges

The judges of a high court are appointed by the President. The chief justice is appointed by the President after consultation with the chief justice of India and the governor of the state concerned. For appointment of other judges, the chief justice of the concerned high court is also consulted. In case of a common high court for two or more states, the governors of all the states concerned are consulted by the president.

Qualifications

The qualifications laid down in the constitution for the appointment as a High court Judge are following:

He must be a citizen of India, He must not be over 62 years of age, He must have held a judicial office in the territory of Indore must have been an advocate of a High Court for at least 10 years.

Oath

A person appointed as a judge of a high court, before entering upon his office, has to make and subscribe an oath or affirmation before the governor of the state or some person appointed by him for this purpose. In his oath, a judge of a high court swears:

1. to bear true faith and allegiance to the Constitution of India;
2. to uphold the sovereignty and integrity of India;
3. to duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of the office without fear or favour, affection or ill-will; and
4. to uphold the Constitution and the laws.

Tenure of Judges

The Constitution has not fixed the tenure of a judge of a high court. However, it makes the following four provisions in this regard:

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- i. He holds office until he attains the age of 62 years,
 - ii. he can resign his office by writing to the President,
 - iii. he can be removed from his office by the President on their commendation of the Parliament.
 - iv. he vacates his office when he is appointed as a judge of the Supreme Court or when he is transferred to another high court.

Removal of Judges:

A judge of a high 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 the 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 (i.e., a majority of the total membership of that House and majority of not less than two-thirds of the members of that House present and voting).

The grounds of removal are two—proved misbehavior or incapacity. Thus, a judge of a high court can be removed in the same manner and on the same grounds as a judge of the Supreme Court.

Salaries and Allowances

The salaries, allowances, privileges, leave and pension of the judges of a high 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. The retired chief justice and judges are entitled to 50% of their last drawn salary as monthly pension.

Transfer of Judges

The President can transfer a judge from one high court to another after consulting the Chief Justice of India. On transfer, he is entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament.

Acting Chief Justice

The President can appoint a judge of a high court as an acting chief justice of the high court when:

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1. the office of chief justice of the high court is vacant; or
 2. the chief justice of the high court is temporarily absent; or
 3. the chief justice of the high court is unable to perform the duties of his office.

Independence of High Court

1. Mode of Appointment
2. Security of Tenure
3. Fixed Service Conditions
4. Expenses Charged on Consolidated Fund
5. Conduct of Judges cannot be Discussed
6. Ban on Practice after Retirement
7. Power to Punish for its Contempt
8. Freedom to Appoint its Staff
9. Its Jurisdiction cannot be Curtailed
10. Separation from Executive

Jurisdiction and powers

The High Court has the following jurisdiction and powers as per the constitution.

1. Original Jurisdiction

The High Courts at the three presidency towns of Bombay, Calcutta and Madras had an original jurisdiction, both civil and criminal, over cases arising within the respective presidency towns. The original criminal jurisdiction of the High Court has, however, been completely taken away by the criminal procedure code, 1973.

Though city civil courts have also been set up to try civil cases within the same area, the original civil jurisdiction of these High Courts has not altogether been abolished but retained in respect of actions of higher value.

2. Appellate Jurisdiction

The High Court is the highest court in the state of Tamil Nadu. It has appellate jurisdiction in both civil and criminal cases. On the civil side, an appeal from the decision of District Judge and from that of a subordinate Judge in cases of higher value, lie direct to the High Court.



3. Writ Jurisdiction

According to B.R. Ambedkar, the Chairman of the Drafting Committee of the Constitution of India, Article 32 is the soul and heart of the constitution, because, it safeguards the rights, liberty and privileges of every citizen of India in terms of writs.

As such, the High Court has the writ jurisdiction under Article 226.

There are five writs, namely, Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo-warranto.

4. Power of Superintendence

The High Court has the power of superintendence over all courts and tribunals throughout its territorial Jurisdiction, except military tribunals. Indeed, it has a wide power.

5. Head of State Judiciary

As the head of the state judiciary, the High Court has got an administrative control over the subordinate judiciary in respect of certain matters, besides its appellate and supervisory jurisdiction over them. Thus, the High Court is powerful. Also, it acts as the court of records. Above all, it has the bench jurisdiction in which the most important and burning cases of the state are settled.

6. A Court of Record

As a court of record, a high court has two powers:

- (a) The judgements, proceedings and acts of the high courts are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any subordinate court. They are recognised as legal precedents and legal references.
- (b) It has power to punish for contempt of court, either with simple imprisonment or with fine or with both.

7. Power of Judicial Review

Judicial review is the power of a high 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

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can be declared as illegal, unconstitutional and invalid (null and void) by the high court. Consequently, they cannot be enforced by the government.

Though the phrase 'judicial review' has nowhere been used in the Constitution, the provisions of Articles 13 and 226 explicitly confer the power of judicial review on a high court.

SUBORDINATE COURTS

The state judiciary consists of a high court and a hierarchy of subordinate courts, also known as lower courts. The subordinate courts are so called because of their subordination to the state high court. Articles 233 to 237 in Part VI of the Constitution make the following provisions to regulate the organization of subordinate courts and to ensure their independence from the executive.

Appointment of District Judges

The appointment, posting and promotion of district judges in a state are made by the governor of the state in consultation with the high court.

A person to be appointed as district judge should have the following qualifications:

- (a) He should not already be in the service of the Central or the state government.
- (b) He should have been an advocate or a pleader for seven years.
- (c) He should be recommended by the high court for appointment.

Appointment of other Judges

Appointment of persons (other than district judges) to the judicial service of a state are made by the governor of the state after consultation with the State Public Service Commission and the high court

Control over Subordinate Courts

The control over district courts and other subordinate courts including the posting, promotion and leave of persons belonging to the judicial service of a state and holding any post inferior to the post of district judge is vested in the high court.

Interpretation

The expression 'district judge' includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court,

chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge.

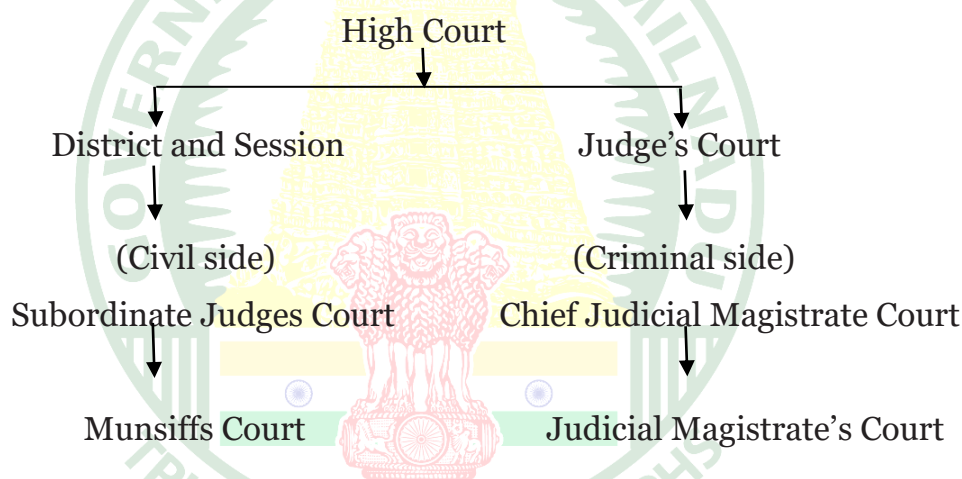
Application of the above Provisions to Certain Magistrates

The Governor may direct that the above-mentioned provisions relating to persons in the state judicial service would apply to any class or classes of magistrates in the state.

Structure and Jurisdiction

The organisational structure, jurisdiction and nomenclature of the subordinate judiciary are laid down by the states. Hence, they differ slightly from state to state. Broadly speaking, there are three tiers of civil and criminal courts below the High Court.

This is shown as follows:



The district judge is the highest judicial authority in the district. He possesses original and appellate jurisdiction in both civil as well as criminal matters.

National Legal Services Authority

Article 39A of the Constitution of India provides for free legal aid to the poor and weaker sections of the society and ensures justice for all. Articles 14 and 22(1) of the Constitution also make it obligatory for the State to ensure equality before law and a legal system which promotes justice on the basis of equal opportunity to all.

In the year 1987, the Legal Services Authorities Act was enacted by the Parliament which came into force on 9th November, 1995 to establish a nationwide uniform network for providing free and competent legal services to the weaker sections of the society on the basis of equal opportunity.



Lok Adalats

Lok Adalat is a forum where the cases (or disputes) which are pending in a court or which are at pre-litigation stage (not yet brought before a court) are compromised or settled in an amicable manner.

Statutory Status

The first Lok Adalat camp in the post-independence era was organized in Gujarat in 1982. This initiative proved very successful in the settlement of disputes.

Consequently, the institution of Lok Adalat started spreading to other parts of the country. At that time, this institution was functioning as a voluntary and conciliatory agency without any statutory backing for its decisions.

In view of its growing popularity, there arose a demand for providing a statutory backing to this institution and the awards given by Lok Adalat's. Hence, the institution of Lok Adalat has been given statutory status under the Legal Services Authorities Act, 1987.

Family Courts

In addition to the hierarchy of regular courts, family courts also are constituted in various states in India. According to Family Courts Act of 1984, these courts have powers and jurisdiction to enquire into the cases relating to marriages and family affairs with a view to settle cases without much expenditure and going to regular courts which are expensive. Matters such as dispute within the family, divorce, dowry harrasment, etc. are looked into by these courts. These courts follow the Civil Procedure Code.

GRAM NYAYALAYAS

The Gram Nyayalayas Act, 2008 has been enacted to provide for the establishment of the Gram Nyayalayas at the grass roots level for the purposes of providing access to justice to the citizens at their doorsteps and to ensure that opportunities for securing justice are not denied to any citizen due to social, economic or other disabilities.



Questions:

1. List out the merits and demerits of Judicial Review.
2. Write briefly about the Jurisdiction and Powers of Supreme Court.
3. Write briefly about the Subordinate Courts of High Courts.

