

## JUDICIARY:

Is the third organ of government it settles disputes and performs several other interpretative functions.

### WHY IS IT IMPORTANT?

- i) It settles disputes relating to property, fight, murder, theft, deceit etc.
- ii) Supreme Court acts as the guardian of the constitution, and if any law goes against constitutional limits, it is declared null and void.
- iii) Judiciary acts as Advisor to executive matters of public importance or questions related with law.
- iv) *Public interest litigation*, in such cases involving public interest, a person can raise his voice by writing a letter of complaint against injustice, this letter is called as PIL. PIL was introduced in India in 1980, by Supreme Court judge Krishna Iyer, he opined it as a great success of judicial process which wiped away the tears of power.
- v) Judiciary acts as a protector of basic rights of an individual.
- vi) The cases for which there is no law, judiciary solves the cases on the basis of principle of equity. Decisions in such cases serve as a law for similar disputes in future. The decisions of court in such cases are authoritative *judicial precedents*.
- vii) Judiciary helps in bringing about socio-economic change, and, protects the interest of the children, women, weaker sections, bonded labourers etc.
- viii) Judiciary is important to establish Rule of Law.

### RULE OF LAW:

The main idea behind “Rule of Law” is that all men and women are equal before the law. A man may be punished for breach of law, but he cannot be punished for nothing else. Thus, the “Rule of Law” implies equality before the law or the equal subjection of all classes to the ordinary law of the land, administered by ordinary courts. The laws made by the state shall equally apply on all citizens, non-citizens, tourists and aliens, and, the courts also should administer justice on the basis of equality.

### NEED OF AN INDEPENDENT JUDICIARY:

Independence of judiciary has a great importance in democracy because it protects the liberty of citizens. Montesquieu said that for the success of democracy, it is necessary that the judicial power should be separated from both organs of government.

Independence of judiciary is necessary due to following reasons:

- a) In order to interpret the constitution and to remove differences between organs of government, an imperial and independent judiciary is necessary.
- b) The disputes which generally arise between centre and states in federal set up, can be resolved only by judiciary as they interpret the constitution.
- c) Independent judiciary is important to provide safeguard to the fundamental rights of citizens.

Thus, judiciary not only prevents different institutions from encroaching upon the jurisdiction of each other, but also lays down its own boundaries and establishes limited govt. in the country.

### PROVISIONS THAT ENSURE THE INDEPENDENCE OF JUDICIARY IN INDIA:

Indian constitution lays down. The provisions that ensure the independence of Judiciary in India:

- a) Regarding appointment of judges, the most competent persons in the field of law are appointed by president in consultations with chief justice as Judges.
- b) Salary and allowances of the judges of Supreme Court are paid from the consolidated fund of India. The term and conditions of service fixed cannot be reduced.
- c) Judges cannot be removed for any political reason, as 2/3<sup>rd</sup> majority of both houses is required to impeach the judge.
- d) Parliament has no right to debate on the performance of judge in the court.

e) Supreme Court has complete freedom in framing rules with regard to Court procedures and appointment of officials.

f) Supreme Court has authority to punish those who breach the honour of court.

g) Judges after retirement are not allowed to practice in any court of India.

## **HOW ARE JUDGES APPOINTED?**

### **SUPREME COURT:**

Is at the apex of Judiciary in India. Therefore, no appeal can lie in any other court against the decision given by the supreme court of India.

Article 124(1) of Indian constitution provides that there shall be a Supreme Court consisting of chief justice of India and not more than seven judges. The number of judges was increased with time and finally supreme Court Act of 1985, stated the Supreme Court will have a chief justice and not more than 25 judges.

In India, the power of appointing judges of Supreme and high Court is vested in the president, with consultation of judges in Supreme Court. The senior most judge is appointed as chief justice.

1<sup>st</sup> chief justice – Harilal J. Kania

Present – H.S. Kapadia

### **QUALIFICATION:**

- i. He should be a citizen of India.
- ii. He should be a judge of one or more High Courts for five successive years.
- iii. He should be an advocate of one or more High Court for ten successive years.
- iv. He in the opinion of the president should be an eminent jurist.

### **SALARY AND ALLOWANCES:**

Chief justice of India gets a monthly salary of Rs. 1,25,000 and for other judges it is 90,000. Besides they get free accommodation, other allowances and after retirement pension.

### **OATH OF OFFICE:**

At the time of entering office each judge is required to take oath before president, that they will be loyal to constitution and discharge their duties properly.

### **TERM:**

Every judge of Supreme Court shall hold office till the age of 65.

### **HIGH COURTS & SUBORDINATE COURTS:**

Article 216, lays down a High Court, comprising of one chief justice and panel of judges, depending upon the population of state, its area and work load. Parliament legislation 1966, laid down a separate High Court for Delhi.

Chief justice of High Court is appointed by president of India in consultation with chief justice of Supreme Court and Governor of concerned state. For appointment of other High Court judges, president makes consultation with the chief justice of Supreme Court, Governor of concerned state and also chief justice of concerned High Court.

### **APPOINTMENT OF ACTING CHIEF JUSTICE:**

If office of the chief justice of any state High Court falls vacant or chief justice is absent for some reason, then President can appoint any one of High Court panel as 'Acting chief Justice'.

### **APPOINTMENT OF ADDITIONAL & ACTING JUDGES:**

If for some reason the functions of a High Court has increased temporarily and president feels the necessity to increase number of judges temporarily, he can appoint those who fulfill the requisite qualification as 'Additional Judges' for 2 years. In absence of Judges, president can appoint Acting Judges.

### **QUALIFICATION:**

- a) He should be the citizen of India.
- b) He should have remained in the office of justice for not less than 10 years.
- c) He should have worked for 10 years as High Court lawyer.

## TERM:

Judges of High Court remain in office till the completion of 62 years. Besides on following grounds Judge can be removed;

- i) If he is promoted and transferred to Supreme Court.
- ii) If a Judge resigns or is impeached.

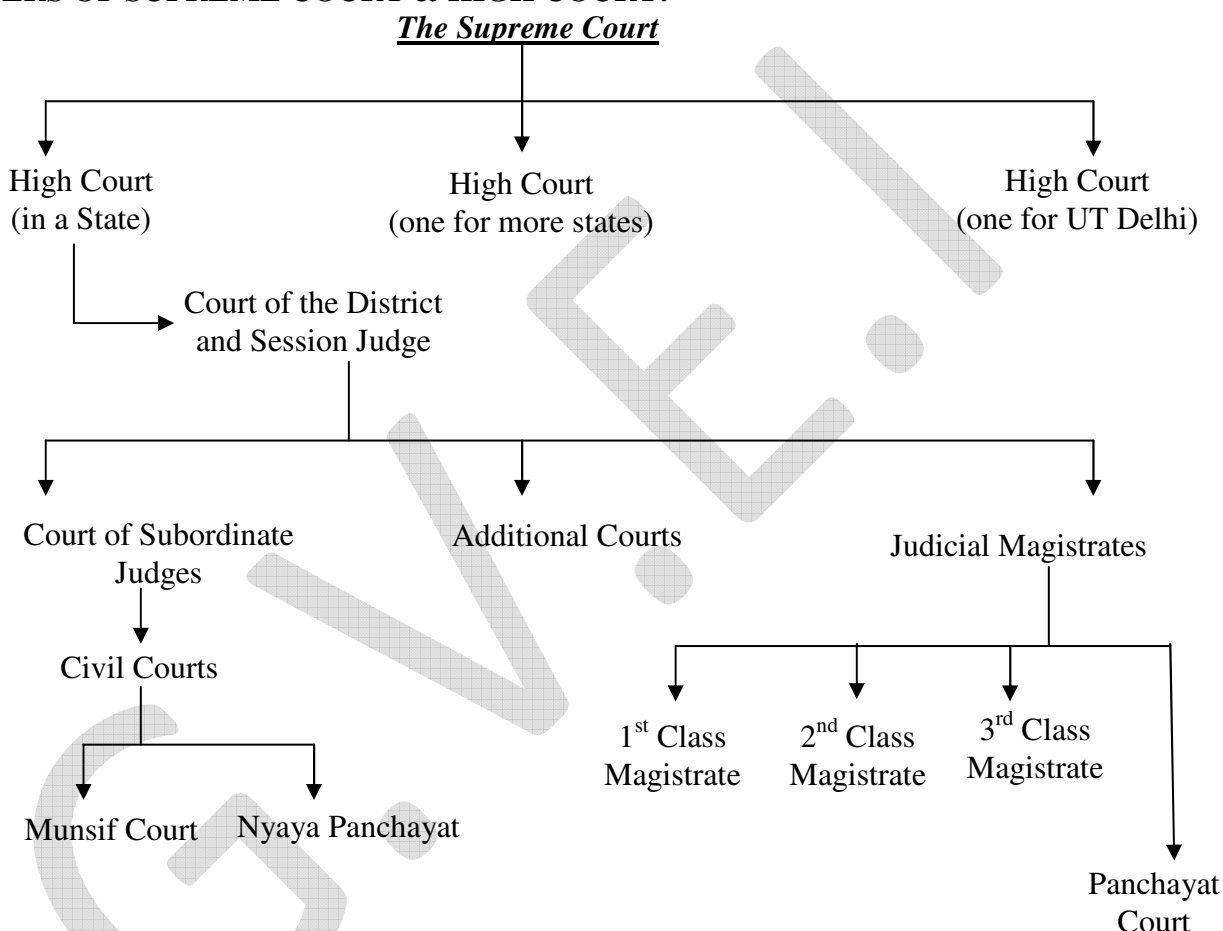
## SALARY:

Chief justice of High Court receives Rs. 1, 000, 00 and other judges get Rs. 80,000, plus allowances and rent free official residence.

## REMOVAL OF JUDGE:

Judges can be removed on grounds of their unconstitutional functions, unsoundness of mind, proved misbehavior and incapacity to discharge functions.

## POWERS OF SUPREME COURT & HIGH COURT:



Indian Supreme Court is vested with very wide powers, and, jurisdiction of Supreme Court can broadly classified as;

- a) Original Jurisdiction      b) Appellate Jurisdiction      c) Advisory Jurisdiction

## POWERS OF SUPREME & HIGH COURT:

(a) **Original Jurisdiction:** Those cases which are directly filed in Supreme Court fall under its jurisdiction. It includes cases which are between;

- i. Central Govt. V/s A State Govt. or many State Govt.'s
- ii. Central Govt. with some State Govt.'s V/s other State Govt.'s
- iii. State Govt. V/s State Govt.

(b) **Appellate Jurisdiction:** Under Appellate Jurisdiction Supreme Court hears the appeals against the decisions given by the High Court. This Jurisdiction of Supreme Court is wide. It includes cases like:

- i. Interpretation of the constitution –to give clarity to the provisions of the constitution and to interpret them.
- ii. Civil cases-personal case.
- iii. Criminal cases
- iv. Special Appeal.

(c) **Advisory Jurisdiction:** Supreme Court advises the president on matters regarding law and constitution.

(d) **Transfer of certain Cases:** Such cases which are pending before high court are taken by Supreme Court, they decide the question of law and send case back to High Court.

(e) **Supreme & High Court** acts as guardian of fundamental rights and protect them.

(f) **Judicial Review:** power of Supreme to declare the law unconstitutional or invalid if it goes against constitution. For examining validity of law, seven judges panel is required and it should be supported by 2/3<sup>rd</sup> majority, but 43<sup>rd</sup> Amendment lay down that decision could be given by simple majority.

(g) **Supreme Court** has power to review its own previous decision.

(h) **Supreme Court also functions as Court of record.** Its decisions are printed and are cited as precedents for other cases.

## JUDICIAL REVIEW:

Invented by the American chief justice Marshall in 1803, in case Marbury V/s Madison, where it was stated that constitution is superior to ordinary law, constitution must govern the cases to which they both apply.

Judicial Review is that power of judiciary through which any law or executive order if found to be against 'Basic Law' could be declared unconstitutional.

Power of Judicial Review in India is a mid-way between British & American systems. Powers of Indian parliament are limited, and, if parliament makes laws in violation of its limits, then Judiciary has power to declare that law unconstitutional, being guardian of Indian constitution. The power of Judicial Review vested in Indian Supreme Court is limited in two ways.

- i. To check that laws made are not unconstitutional.
- ii. Laws do not violate the fundamental rights.

## HOW JUDICIARY USE ITS POWERS FOR PUBLIC INTEREST?

***Socio-economic change and judicial activism:*** In order to see that justice is rendered towards socially and economically weaker sections, judiciary has interpreted the law. This activism has made them guardians of weaker sections.

Judicial Activism of judiciary has been established because of some important decisions:

a) ***Safe guarded the interest of the workers:*** Supreme Court has not only thought of interest of peasant but also about protecting the interest of workers. In the 'Vijay Cotton Mills Case' supreme court upheld the right to make law by the government in order to develop the living standard of the workers as such laws fulfill the requirements of Directive principles. Thus, Supreme Court has protected the interests of workers by giving a decision in favour of increase in the wages of workers.

b) ***Safe guarded the interests of the weaker sections of the society:*** For safe guarding the interests of weaker sections, courts have performed important role; such as:

i. Judiciary had continually remained alert in protecting the interests of women in situations related with death due to dowry and other atrocities.

ii. Courts have also given number of decisions in favour of protecting the interests of children. In recent judgment, Supreme Court stated that children of divorced women shall have share in the property and gravity of father.

iii. Court has also given various decisions to safe guard the interests of socially and economically weaker sections.

iv. Supreme Court ordered that Magistrate before deciding the bailable amount over a person, it is necessary to examine his economic interest. To seek large amount from a poor person as a bailable amount goes against interest of Judiciary.

v. Courts provide "Free legal aid" for those persons who cannot afford to engage the services of a paid lawyer. For this purpose, the court provides for the services of a lawyer who is selected by incumbent, holder of a particular office.

c) ***Public Interest Litigation:*** This another method of providing judicial protection to the weak and subaltern classes who neither know that there are means to free themselves from atrocities and injustice is done to them. While introducing the "Public interest Litigation", Supreme Court said that in order to get justice for inferior and suffering classes, any one can knock the door of the court. There is no need to adopt normal judicial process; Supreme Court serves the cause of justice towards weaker sections, through the receipt of a simple post card, clipping of newspaper etc.

Under PIL in 1979, Supreme Court got number of prisoners who were languishing in prisons of Bihar, for a number of years, released.

d) ***Safe guarded the interests of Government servants and employees:*** Regarding govt. servants and employees Courts always stressed on fixation of bonus or clearness allowance

should be reasonable. Courts have given recognition to strikes undertaken by workers as they have only this ultimate weapon.

e) ***Protection of interests of Prisoners:*** Whenever Courts were informed about in-human treatment given to the prisoners, it immediately ordered the concerned authorities to take suitable measures. When through newspaper Supreme Court came to know that 31 Prisoners under trial were gouged, court immediately ordered authorities to take strict action for those who were involved and proper treatment to prisoner.

f) ***Freedom to students from capitation fees:*** Order of Karnataka Govt. Under which they decided to collect capitation fees from students seeking in Medical & Engineering colleges, but not original inhabitants of Karnataka, was quashed by Supreme Court.

g) ***Safe guard against Economic Exploitation:*** Because of intervention of Supreme Court, the workers engaged in construction get benefit of minimum wages.

h) ***Other Important measures:*** Compensation for those families, who have a member in any Armed forces.

Courts punish those govt. officials who violate court orders, and various other measures.

Thus, Supreme Court itself and as well as directs Govt.'s also to safeguard interests of weaker sections.

