

14

STRUCTURE AND JURISDICTION OF INDIAN JUDICIARY

14.1 INTRODUCTION

In the previous lessons you have learnt about the two organs of the government, i.e. the legislature and the executive. You have seen that laws are made by the legislature and enforced by the executive. Here in this lesson you will learn about the judiciary, which is the third important organ of the government. It adjudicates in disputes, interprets laws, protects the fundamental rights of the citizens and acts as the guardian of the Constitution. Let us now learn about our judicial system.

14.2 OBJECTIVES

After studying this lesson you will be able to:

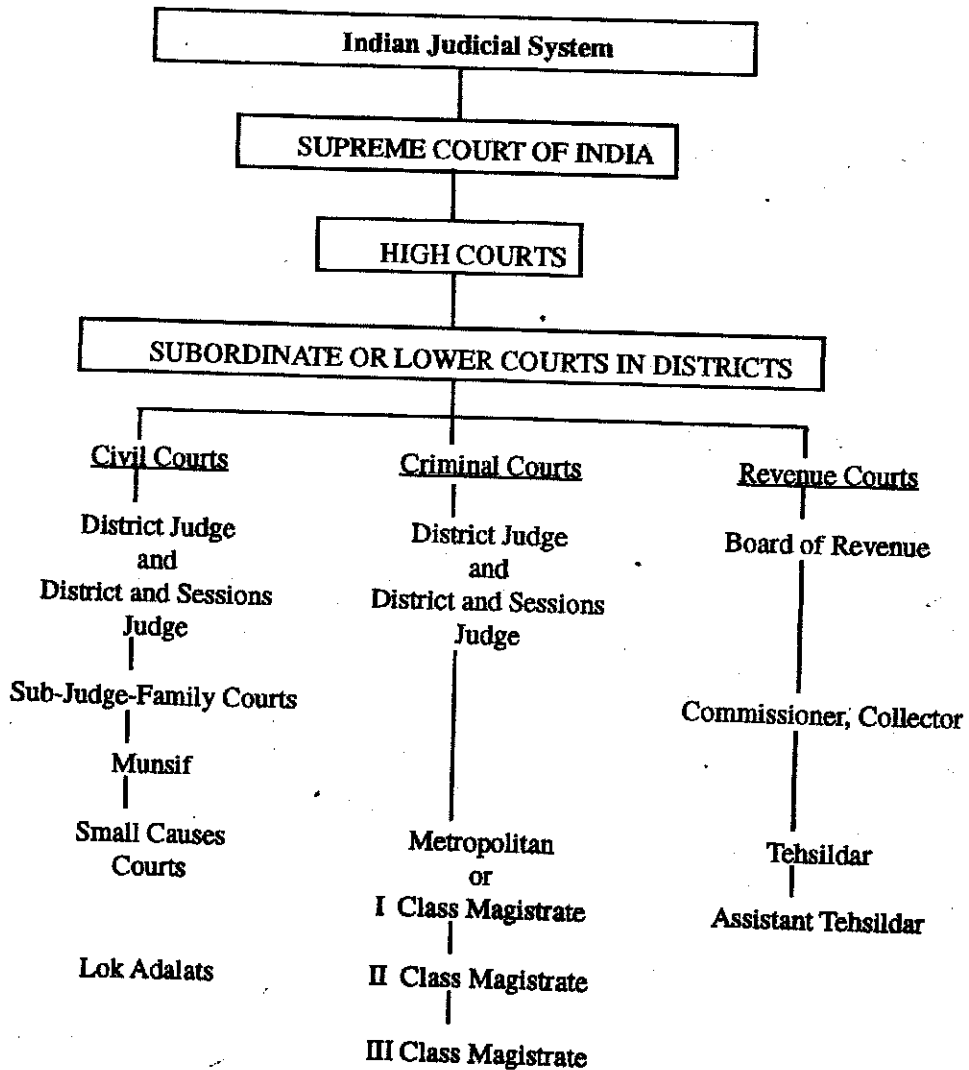
- recognise the single integrated and unified judicial system in India;
- describe the organisation of the Supreme Court of India;
- explain the powers and jurisdiction of the Supreme Court;
- appreciate the role of the Supreme Court as guardian of the Constitution and protector of fundamental rights;
- describe the organisation of the State High Courts;
- explain the powers and jurisdiction of the High Courts, and
- explain the working of the subordinate courts at the district level.

14.3 SINGLE UNIFIED AND INTEGRATED JUDICIAL SYSTEM

In one of the previous lessons you have studied that though our Constitution has been described as a Union of States, the Constitution itself is federal in character. There is a Union Government at the Central level and there are State Governments of the Constituent units at the States level. Both the Central Government and the State Governments derive

their powers from the Constitution and there is division of powers between the Union and the States.

But the distinct feature of our judiciary is that it has a single unified and integrated judicial system for the whole country. The Supreme Court is the highest court at the apex and down below there are several High Courts and subordinate or lower courts, which function in different parts of India.



14.4 THE SUPREME COURT

The Supreme Court of India is the highest court in the country. Its seat is at New Delhi. But it can meet at any other place also.

14.4.1 Organisation

At present there is a Chief Justice and 25 other judges in the Supreme Court. The Parliament has the power to increase the number of its judges. The Chief Justice and other judges of the Supreme Court are appointed by the President. While appointing the Chief Justice, the President consults such other judges as he deems proper. The outgoing Chief Justice is

always consulted. In practice, normally, the seniormost judge of the Supreme Court is appointed as the Chief Justice of India. While appointing other judges, the President is bound to consult the Chief Justice. He may also consult such other judges as he deems necessary.

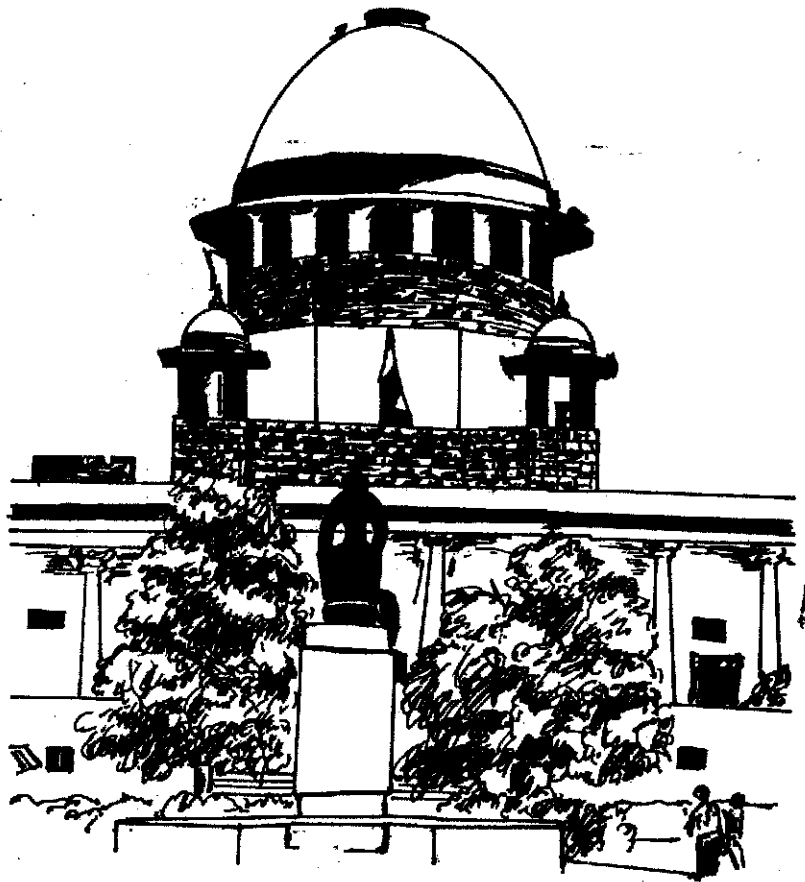


Fig. 14.1: Supreme Court

However, according to the judgement of a nine-judge Bench of the Supreme Court delivered on 6 October 1993, in the Judges Case, now the position is that the senior-most Judge of the Supreme Court, considered fit to hold the office, should be appointed to the office of the Chief Justice of India.

In case of appointment of other Judges of the Supreme Court, Consultation with the Chief Justice of India and four other-senior judges is compulsory, and binding for the President.

The above position modifies the mode of appointment of judges. Henceforth, the executive must consult members of the Judiciary itself, who are well qualified to give their opinion in this matter. This means that the President is bound to go by the decision of the Chief Justice of India.

In special circumstances, the Chief Justice may appoint, with the consent of the President, *ad-hoc* judges who are duly qualified. The retired judges of the Supreme Court and the High Courts can also be appointed as *ad-hoc* judges.

14.4.2. Qualifications of Judges

A person to be appointed as a judge of the Supreme Court should have the following qualifications:

- (i) He or she should be a citizen of India.

(ii) He or she should have worked as a judge of one or more High Courts for a minimum period of five years.

or

He or she should have been an advocate in one or more High Courts for at least ten years.

or

He or she, in the opinion of the President, is a distinguished jurist.

14.4.3 Tenure of Office

The Chief Justice and all other judges of the Supreme Court hold office till they attain the age of 65 years. A judge may voluntarily resign before the expiry of his term. The creation of a reasonable sense of security of tenure in the judges is essential for maintaining independence of the judiciary.

14.4.4 Removal from office

A Supreme Court judge may be removed from office before he or she attains the age of 65 years, on the grounds of incapacity or proved misbehaviour. He or she may be removed by the President if an address or resolution of each House of Parliament separately supported by a majority of total membership and a majority of not less than two-thirds of the members present and voting in each House is presented to the President in the same session for the removal of a judge. This procedure is provided to protect the term of office of the judges. So far, no judge has been removed by this procedure.

14.4.5 Salary and Allowances

The Chief Justice of India receives a monthly salary of Rs. 33,000/-. It has recently been increased to Rs. 30,000. The other judges get Rs. 30,000/- per month, as salary. Entitled to several other facilities such as rent-free and furnished official residence and some allowances, etc. After retirement, a judge receives as is decided by Parliament from time to time. The salaries and allowances and pensions of the judges are charged on the Consolidated Fund of India and are not subject to vote of the Parliament.

The salary or allowances of a judge or his or her pension cannot be reduced except during the period of financial emergency when the President can reduce the salaries of the judges. Thus, the Constitution provides for good working conditions to enable them to function impartially and independently.

INTEXT QUESTIONS 14.1

I. Fill in the blanks by picking appropriate words or figures given in the brackets:

- (i) The judges of the Supreme Court are appointed by the _____. (President/Prime Minister/Law Minister)
- (ii) At present the Supreme Court consists of the Chief Justice and _____ other judges. (21, 23, 25, 27)
- (iii) The judges of the Supreme Court retire at the age of _____ years. (58, 60, 62, 65)
- (iv) The monthly salary of the Chief Justice of India is Rs. _____. (33000, 9000, 10000, 12000)

- (v) The number of judges can be increased by the _____ (President, Prime Minister, Parliament, Chief Justice).

2. Answer the following questions:

- (i) Which Court stands at the apex of our judicial system?
 (ii) Who issues orders for the removal of a judge after a resolution for removal is passed by the Parliament?

14.4.6 Powers of the Supreme Court

The Supreme court has enormous powers. The Parliament by law may enlarge the scope of its powers. Its right or power to hear cases and decide disputes is called its jurisdiction. Its jurisdiction is as follows:

14.4.7 Jurisdiction of the Supreme Court

The Supreme Court has the power to decide cases under:

- (i) Original Jurisdiction,
 (ii) Appellate Jurisdiction, and
 (iii) Advisory Jurisdiction.

1. Original Jurisdiction

There are certain cases which begin or originate directly in the Supreme Court. These are:

- (i) Disputes between the Central Government, on the one side, and the Governments of one or more States, on the other.
 (ii) Disputes between the Central Government and the Governments of one or more States, on the one side, and the Governments, of one or more States, on the other.
 (iii) Disputes between two or more States.

Besides this, cases pertaining to violation of Fundamental Rights can also begin in the Supreme Court.

Original Jurisdiction: It is the exclusive right of a Court to hear certain categories of cases. It means that these cases cannot be initiated in a lower Court.

2. Appellate Jurisdiction

The Supreme Court is the final court of appeal in India. An appeal against the decision of a High Court may be filed in the Supreme Court, if one of the parties is not satisfied with the decision of the High Court. Appeals can be brought in Constitutional, Civil and Criminal cases.

(i) Appeals in Constitutional Cases

If a High Court certifies that the matter in dispute involves a substantial question of law, an appeal may be made to the Supreme Court. The Supreme Court in its discretion may also grant special leave or permission for appeal to itself, in any case it deems fit, if a certificate of fitness to appeal was denied by the High Court concerned.

(ii) Appeals in Civil Cases

Civil cases include disputes relating to property, money or contract. An appeal against the decision of a High Court in a civil case can be made to the Supreme Court if the disputed case involves a substantial point of law of public importance, which needs interpretation by the Supreme Court.

(iii) Appeals in Criminal Cases

In Criminal cases, an appeal may be made to the Supreme Court on the following conditions:

- (a) Without Certificate
- (b) With Certificate

(a) Without Certificate

When the High Court reverses the decision of acquittal of the accused person passed by a lower court and sentences his or her to death, an appeal lies to the Supreme Court by right, an appeal can also be made to the Supreme Court if the High Court withdraws a case from a lower court to itself, declares the accused guilty and passes death sentences against him or her. In these two situations appeals can be made as a matter of right and without certificate from the High Court.

(b) With Certificate

If the High Court certifies that a case involves a constitutional question, an appeal in such a case may be made to the Supreme Court. In rare cases, the Supreme Court itself may grant special leave to appeal to itself.

Appellate Jurisdiction: The right of a Higher Court to hear appeals against the decision of a lower court is called its appellate jurisdiction. The discontented party may appeal against the decisions of a lower Court.

3. Advisory Jurisdiction

Under its advisory jurisdiction, the President may seek the advice of the Supreme Court on any matter of public importance. But the Supreme Court is not bound to give advice. The advice given by the Supreme Court is not binding, though so far all its advisory opinions have been accepted by the government.

14.4.8 Supreme Court as the Guardian of the Constitution

The Constitution of India is the Supreme Law of India and the Supreme Court is its ultimate interpreter. The Supreme Court has the duty to defend and protect it. Nothing should be done against the Constitution even by the Parliament or State Legislatures or the Centre or the States. If the Supreme Court finds that any law or executive order is against the Constitution, it can declare it *ultravires*, void or unconstitutional.

The power to examine the validity of laws or executive orders is called the Supreme Court's power of Judicial Review. You will read in detail about this power in Lesson No. 15. In a judgement on 18 March 1997 the Supreme Court ruled that the Parliament cannot take away its judicial review power even by way of a Constitutional amendment.

14.4.9 Protector of Fundamental Rights

The Supreme Court, along with the High Courts, has also the responsibility of protecting the Fundamental Rights of the citizens. If a citizen feels that his/her Rights have been violated, then he or she can file a petition to the Supreme Court, can issue writs or orders like writs of Habeas Corpus, Mandamus, Prohibition, Certiorati and Quo-warranto to protect the Rights. You will study in detail about these writs in the next lesson on the role of Judiciary as Protector of Fundamental Rights.

14.4.10 Court of Record

The Supreme Court is a court of record. All its decision and judgements are preserved. They are cited as examples in all the courts of the country. It has the power to punish any body who shows disrespect or contempt to itself.

14.4.11 Review of its own Judgement or Orders by itself

The Supreme Court has the power to review and alter its own previous decisions if it discovers new facts or evidences or if it is satisfied that some mistake or error took place which would hamper public interest.

14.4.12 Binding nature of Law declared by the Supreme Court

Any law declared by the Supreme Court can be binding on all the courts within the territory of India.

14.4.13 Judicial Activism

Of late, the Supreme Court has actively started giving decisions in cases of public interest litigation or issues which strictly fall within the domain of either the legislative or the executive organ of the government. Such cases are like removal of polluting industries from the cities, prohibition of misuse of public parks, investigation and checking of corruption in high places, etc. This attitude of the court is called Judicial Activism about which you will learn in detail in Lesson No. 16.

INTEXT QUESTIONS 14.2

1. Fill in the blanks by picking up appropriate words from the brackets:
 - (i) The dispute between two or more States is brought before the Supreme Court under its _____ jurisdiction. (appellate / original).
 - (ii) The President can ask for the advice of the Supreme Court on an issues of _____ importance. (legal/political).
 - (iii) The Supreme Court is _____ to give advice to the President. (bound/not bound)
 - (iv) The ultimate power of intepretation of the Constitution lies with the _____ (High Court/Supreme Court)
2. Answer the following questions:
 - (i) If a law is against the Constitution, what can the Supreme Court do?

.....

(ii) What can the Supreme Court do, if a person shows disrespect to it?

.....

.....

14.5 HIGH COURTS IN THE STATES

14.5.1 Organisation

There is a High Court for each state. However, there can be a common High Court for two or more States. For example, Punjab, Haryana and Chandigarh have a common High Court situated at Chandigarh. Similarly, the High Court of Guwahati is common for seven North-Eastern States of Assam, Nagaland, Manipur, Meghalaya, Mizoram, Tripura and Arunachal Pradesh. Delhi has a separate High Court. Every High court has a Chief Justice and a number of judges. The number of judges varies from State to State. The number of judges of each High Court is determined by the President.

At present there are 18 High Courts for 25 States and 7 Union Territories. (jurisdiction of various High Courts is given at the end of the lesson in Enrichment Material).

The judges of the High Courts are appointed by the President of India. While appointing the Chief Justice of a High Court, the President has to consult the Chief Justice of the Supreme Court and the Governor of the State concerned. While appointing other judges, the President consults the Chief Justice of the Supreme Court, the Chief Justice of the High Court and the Governor of the State concerned. The judges can be transferred from one High Court to another by the President. As mentioned earlier, consultation with the Chief Justice of the Supreme Court in respect of appointments and transfers of the judges of the High Courts is also obligatory and binding for the President. Ever since the decision of the Supreme Court in Judges Case in 1993.

14.5.2 Qualifications of Judges

In order to be appointed as a judge of a High Court, the person concerned should possess the following qualifications:

- (i) He or she should be a citizen of India.
- (ii) He or she should have held a judicial office, such as the office of a District or Sessions Judge for at least ten years.

or

He or she should have been an advocate in one or more High Courts for at least ten years continuously.

14.5.3 Tenure and Removal

Once appointed, the High Court judges hold office till they attain the age of 62 years. After retirement, they may be appointed judges of the Supreme Court or they may practice as advocates either in the Supreme Court or in any High Court other than the High Courts in which they were judges.

A High Court judge may be removed before he or she attains the age of 62 years, on the ground of incapacity or proved misbehaviour. He or she may be removed by the President if

a resolution is adopted by both the Houses of Parliament by a two-thirds majority, separately by each House. The procedure for the removal of a High Court judge is similar to that of the removal of a Supreme Court judge.

14.5.4 Salary and Allowances

The Chief Justice of a High Court is paid a monthly salary of Rs. 30,000/- and other judges get Rs. 26,000/- each. In addition to it, the judges are also entitled to a rent-free accommodation and other allowances. After retirement they are entitled to a yearly pension of as is decided by Parliament from time to time. Their emoluments are charged on the Consolidated Fund of the State and are not subject to control of the State Legislature or Executive.

INTEXT QUESTIONS 14.3

1. Fill in the blanks with appropriate words or figures given in the brackets:
 - (i) At present there are _____ High Courts in India. (16, 18, 20)
 - (ii) The Union Territory of _____ has its own separate High Court. (Daman and Diu, Chandigarh, Delhi)
 - (iii) The judges of a High Court are appointed by the _____ (Governor of the State, President, Prime Minister)
 - (iv) The retirement age of the judges of a High Court is _____ years. (58, 62, 65)
 - (v) The salary of the Chief Justice of a High Court is Rs. _____ per month (8000/-, 9000/-, 10000/-, 30000)

14.5.5 Powers and Jurisdiction of the High Court

The High Courts have the power to hear and decide cases which are directly filed in it. This power is called Original Jurisdiction. When a High Court hears an appeal against the decision of a lower Court, it is called its Appellate Jurisdiction. A High Court is mostly a court of appeal. Appeals in both civil and criminal cases are brought to it against the decisions of the Lower Courts.

The Original Jurisdiction of a High Court is very limited. Cases of violation of the Fundamental Rights can be started in a High Court, besides the Supreme Court. The High Courts have the power to issue orders to restore the Fundamental Rights of the people. You will recall that these orders are called writs.

Every death sentence awarded by a Lower Court has to be confirmed by the High Court.

The High Courts of Mumbai (Bombay) and Chennai (Madras) have the power to entertain and hear cases of marriage and divorce of Christians and Parsis in their original jurisdiction.

By an Act of Parliament the High Courts of Delhi and Himachal Pradesh have been accorded original jurisdiction to hear civil cases of property of the value of Rs. 5 lakh or above.

A High Court can hear election petitions in its original jurisdiction, challenging the election of a member of Parliament or State Legislative Assembly. It sets aside the election of a member if it finds that he or she used corrupt means in his or her election. All the lower Courts function under the control and guidance of the High Court in the State.

14.5.6 Court of Record

A High Court is also a Court of Record, like the Supreme Court. Lower Courts in a State are bound to follow the decisions of the High Court which are cited as precedents. A High Courts has also the power to punish for its contempt or disrespect.

INTEXT QUESTIONS 14.4

1. Under what jurisdiction are cases directly brought to the High Court?
.....
.....
2. In which High Courts can cases involving marriage and divorce of Christians be directly initiated?
.....
.....
3. Who confirms the death sentence passed by a Sessions Court?
.....
.....
4. In which Court can cases of violation of Fundamental Right be straightaway started?
.....
.....

14.6 SUBORDINATE COURTS

In each district of India there are various types of subordinate or lower Courts. They are Civil Courts, Criminal Courts and Revenue Courts. These Courts hear civil cases, criminal cases and revenue cases, respectively.

Civil cases pertain to disputes between two or more persons regarding property, breach of agreement, divorce or landlord-tenant disputes. Civil Courts settle these disputes.

Criminal cases relate to violation of laws. These cases involve theft, dacoity, rape, arson, pick-pocketing, physical assault, murder, etc. In such cases the guilty person is awarded punishment like fine, imprisonment or even death sentence.

Revenue cases relate to land revenue on agriculture land in the district.

14.6.1 Civil Courts

The Court of District Judge is the highest Civil Court in a district to deal with Civil cases. Very often the same Court is called the Court of District and Sessions Judge, when it deals with both civil and Criminal cases at the district level. The judge of this court is appointed by the Governor of the State.

Below the Court of District Judge, there may be one or more Courts of Sub Judges in the district. Separate Family Courts, which are equal to Courts of Sub Judges, have been established in districts to exclusively hear cases of family disputes, like divorce, custody of

children, etc. Below them there are Courts of Munsifs and Small Causes Courts which decide cases involving petty amounts. No appeal can be made against the decisions of the Small Causes Courts. All these courts hear and settle civil disputes.

The Court of District Judge hears not only appeals against the decisions of the Courts of Sub Judges, but also some of the cases begin directly in the Court of District Judge itself. Appeals against the decisions of this court may be heard by the High Court of the State.

Civil Court: Civil Courts deal with cases pertaining to disputes between two or more persons regarding property, divorce, contract, breach of agreement or landlord - tenant disputes.

14.6.2 Criminal Courts

The Court of the Sessions Judge is the highest court for criminal cases in a district. Below this court, there are Courts of Magistrates of First, Second and Third class. In metropolitan cities like Delhi, Calcutta, Mumbai and Chennai, First Class Magistrates are called Metropolitan Magistrates. All these Criminal Courts are competent to try the accused and to award punishment, as sanctioned by law, to those who are found guilty of violation of law.

Small cases at the village level are settled by the Nyaya Panchayats. You will read about them in detail in Lesson No. 24.

Criminal Courts: Criminal Courts hear criminal cases which are related to violation of laws. These cases involve theft, dacoity, rape, arson, pick-pocketing, physical assault, murder etc. In such cases the guilty person is awarded punishment. It may be fine, imprisonment or even death sentence.

14.6.3 Revenue Courts

Revenue Courts deal with cases of land revenue in the district. The highest revenue court in the district is the Board of Revenue. Under it are the Courts of Commissioner, Collector, Tehsildar and Assistant Tehsildar. The Board of Revenue hears the final appeals against all the lower revenue courts under it.

Land Revenue: It is a sort of tax on agriculture land which the Government realizes from the farmers.

INTEXT QUESTIONS 14.5

1. Name the highest Civil Court of a District.

.....

2. Which is the highest Criminal Court of a district?

.....

3. Fill in the blanks:

- (i) There can be no appeal against the decision of _____ Courts.
 - (ii) Small cases at village level are decided by _____.
-

WHAT YOU HAVE LEARNT

The distinct feature of our judiciary is that it has a single integrated and unified judicial system.

The Supreme Court is the highest Court in India. There is a Chief Justice and 25 other judges in this court. They are appointed by the President. They hold office up to the age of 65 years.

It has original, appellate and advisory jurisdiction. It is the guardian of the Constitution and the protector of the Fundamental Rights. It has the power of judicial review. It is also the Court of Record.

There are 18 High Courts for 25 States and seven Union Territories. Their judges are also appointed by the President. They can remain in office up to the age of 62 years.

A High Court is mostly a Court of appeal. Its original jurisdiction is very limited.

In every district there are subordinate Civil, Family, Criminal and Revenue Courts. Appeals against the decisions of the Lower Courts are taken to the High Court of the State.

TERMINAL EXERCISES

1. Describe the organisation of the Supreme Court.
2. How can a judge of the Supreme Court be removed from office?
3. Explain the original and advisory jurisdiction of the Supreme Court.
4. Describe the appellate jurisdiction of the Supreme Court.
5. Describe the organisation of the state High Court.
6. Explain the powers and jurisdiction of the High court.
7. How are Subordinate Courts in a district organised?
8. In what way are the powers and functions of Civil Courts different from Criminal Courts in a district?

EXTENDED LEARNING

Conflict between the Supreme Court and the Parliament regarding the primacy of Fundamental Rights or Directive Principles.

A state of tension between the Parliament and the Judiciary has been going on right from the beginning. The conflict relates to the Fundamental Rights and the Directive Principles of State Policy. The Supreme Court has laid more emphasis on the Fundamental Rights than on the Directive Principles. The Supreme Court invalidated those laws which were based on the Directive Principles relating to the socio-economic uplift of the masses, and which

curtained the Fundamental Rights. For example, the laws relating to abolition of the zamindari system, bank nationalisation and the ordinance for abolition of the privy purses were declared unconstitutional by the Supreme Court.

Therefore, the 42nd Amendment to the Constitution put limitation on the Supreme Court's power of judicial review. But the 44th amendment once again restored this power.

ENRICHMENT MATERIAL

High Courts and their Territorial Jurisdiction

You have learnt that there are 18 High Courts in our country for 25 States and 7 Union Territories. Details about the High Courts of Our Country with their territorial jurisdiction are given below:

<i>S.No.</i>	<i>Name of the High Court</i>	<i>Year of Establishment</i>	<i>Jurisdiction</i>	<i>Seat of High Court</i>
1.	Allahabad	1866	Uttar Pradesh	Allahabad
2.	Andhra Pradesh	1954	Andhra Pradesh	Hyderabad
3.	Bombay	1861	Maharashtra, Goa and Union Territories of Daman & Diu and Dadar and Nagar Haveli	(Benches at Nagpur, Panaji and Aurangabad)
4.	Calcutta	1861	West Bengal and Union Territory of Andaman and Nicobar Islands	Calcutta
5.	Delhi	1966	Delhi	Delhi
6.	Guwahati	1972	Assam, Manipur Meghalaya, Nagaland Tripura, Mizoram, Arunachal Pradesh	Guwahati (Benches at Imphal, Agartala, Shillong & Temporary Bench at Kohima).
7.	Gujarat	1960	Gujarat	Ahmedabad
8.	Himachal Pradesh	1971	Himachal Pradesh	Shimla
9.	Jammu & Kashmir	1928	Jammu & Kashmir	Srinagar, Jammu
10.	Karnataka	1884	Karnataka	Bangalore
11.	Kerala	1956	Kerala & Union Territory of Lakshadweep	Ernakulam
12.	Madhya Pradesh	1956	Madhya Pradesh	Jabalpur (Benches at Gwalior and Indore)
13.	Chennai	1861	Tamil Nadu and Union Territory of Pondicherry	Chennai
14.	Orissa	1948	Orissa	Cuttack
15.	Patna	1916	Bihar	Patna (Bench at Ranchi)
16.	Punjab and Haryana	1947	Punjab, Haryana and Union Territory of Chandigarh	Chandigarh
17.	Rajasthan	1949	Rajasthan	Jodhpur (Bench at Jaipur)
18.	Gangtok	1975	Sikkim	Gangtok

ANSWER TO INTEXT QUESTIONS

- 14.1** 1. (i) President
(ii) 25
(iii) 65
(iv) 10000
(v) Parliament
2. (i) Supreme Court
(ii) President
- 14.2** 1. (i) Original
(ii) Legal
(iii) Not bound
(iv) Supreme Court.
2. (i) Declare it unconstitutional
(ii) Punish him/her for contempt of Court.
- 14.3** 1. (i) 18
(ii) Delhi
(iii) President
(iv) 62
(v) 9000
- 14.4** 1. Original
2. Chennai, Mumbai
3. High Court, Mumbai
4. In any High Court or the Supreme Court.
- 14.5** 1. Court of District Judge
2. Court of Sessions Judge
3. (i) Small Causes
(ii) Nyaya Panchayats

HINTS TO TERMINAL EXERCISES

1. Refer to section 14.4.1
2. Refer to Section 14.4.4
3. Refer to Sections 14.4.7.1
4. Refer to Sections 14.4.7
5. Refer to Section 14.5.1
6. Refer to Section 14.5.5
7. Refer to Section 14.6
8. Refer to Sections 14.6.1, 14.6.2