

8th -Judiciary I



In India we have the rule of law. This means that laws apply equally to all persons and that a certain set of fixed procedures need to be followed when a law is violated. To enforce this rule of law, we have a judicial system that consists of the mechanism of courts that a citizen can approach when a law is violated. As an organ of the state, the judiciary plays a crucial role in the functioning of India's democracy.

What is the role of the judiciary? Courts take decision on a very large number of issues. They can decide that no teacher can beat a student, or the sharing of river waters between states, or they can punish people for particular crimes. Broadly speaking, the work that the judiciary does can be divided into the following:

Dispute resolution: The judicial system provides a mechanism for resolving disputes between citizens and the government, between two states government and between the centre and state government.

Judicial review: As the final interpreter of the constitution, the judiciary also has the power to strike down particular laws passed by the parliament if it believes that these are a violation of the basic structure of the constitution. This is called judicial review.

Upholding the Law and Enforcing Fundamental Rights: every citizen of India can approach the Supreme Court or the high court if they believe that their fundamental rights have been violated.

What is an independent judiciary? To influence the judicial process, the Indian constitution protects against different kinds of situations by providing for the independence of the judiciary. One aspect of this independence is the 'separation of power'. A key feature of the constitution means here is that other branches of the state-like the legislature and the executive- cannot interfere in the work of the judiciary. The courts are not under the government and do not act on their behalf. For the implementation of separation to work well, it is also crucial that all judges in the high court as well as the Supreme Court are appointed with very little interference from these other branches of government. It is the independence of the judiciary that allows the courts to play a central role in ensuring that there is no misuse of power by the legislature and the executive. It also plays a crucial role in protecting the fundamental rights of citizens because anyone can approach the courts if they believe that their rights have been violated.

What is the structure of courts in India? There are three different levels of courts in our country; there are several courts at the lower level while there is only one at the apex level. The courts that most people interact with are what are called subordinate or district courts. These are usually at the district or tehsil level or in towns. Each state is divided into districts that are presided over by a district judge. Each state has a high court which is the highest court of that state. At the top is the Supreme Court that is located in New Delhi and is presided over by the chief justice of India. The decisions made by the Supreme Court are binding on all other courts in India. In India, we have an integrated judicial system, meaning that the decisions made by higher courts are binding on the lower courts. There is an appellate system that exists in India, which means that a person can appeal to a higher court if they believe that the judgment passed by the lower court is not just.

The Supreme Court: The Supreme Court is the highest court in India with the chief justice as its head. The chief justice of the Supreme Court is also the chief justice of India. The chief justice is appointed by the president of India. The other judges are appointed, on the recommendation of the Chief Justice, by the president. So the legislature or executive cannot interfere in the working of the judiciary.

8th -Judiciary I



Required Qualification: To become a judge of the Supreme Court, besides being an Indian citizen, a person must be an advocate at a High Court with a minimum of ten years experience, or a High Court judge with at least five years experience, or a distinguished jurist i.e., expert in law.

Term of Office: The retirement age of the Supreme Court is 65 years.

Power and functions of the Supreme Court: There are three types of jurisdiction that the Supreme Court has, namely

- Original jurisdiction
- Appellate jurisdiction
- Advisory jurisdiction

Original jurisdiction: The Supreme Court has the authority to hear certain types of cases for the first time.

- Cases that involve disputes over the interpretation of the Constitution can be brought directly to the Supreme Court.
- Cases dealing with infringement of fundamental rights.
- Disputes that arise between the central government, and one or more state governments.
- Disputes between two state governments or more.

Appellate jurisdiction: If a person is not satisfied with a judgement given by a High Court, he or she can appeal to the Supreme Court. The Supreme Court will then hear the case and give the final judgement.

Advisory jurisdiction: The Supreme Court advises the president and the Council of Ministers, on matter of constitutional issues or issues of public importance. The president can seek the advice of the Supreme Court but this is not binding on the president.

Judicial Review: Any law or policy made by the government that is not in accordance with the text or intention of the constitution can be declared as illegal. This is known as judicial review.

Court of Records: All the causes brought before the Supreme Court and where judgments have been given is maintained as record by the Supreme Court.

Contempt of court: The Supreme Court has the power to punish anyone for contempt of any law court in India, including itself. Contempt of court refers to any behaviour that opposes or defies the authority or dignity of the court.

Public Interest Litigation (PIL):- Any citizen of India can go to the court if the interest of the public has been affected by the deeds of government. The courts check the malpractices of public officials and prevent the misuse of power by the government.

High Court: The High Court is the apex court in the state. The chief justice of the High Court is appointed by the president on the recommendation of, and in consultation with, the chief justices of India and the governor of the state concerned.

Qualification: To be a High Court judge, a person has to be a citizen of India, a High Court advocate with at least ten years' experience, or a judicial officer with at least experience.

Retirement: A High Court judge retires at the age of 62.

Powers and Functions of the High Court: The High Court has original jurisdiction over cases involving the enforcement of fundamental rights. It can issue writs. It has appellate jurisdiction over both civil and criminal cases. It hears appeals against the decisions taken by the lower courts. Its supervisory jurisdiction involves supervising the activities of the lower courts. It also is a court of record.

