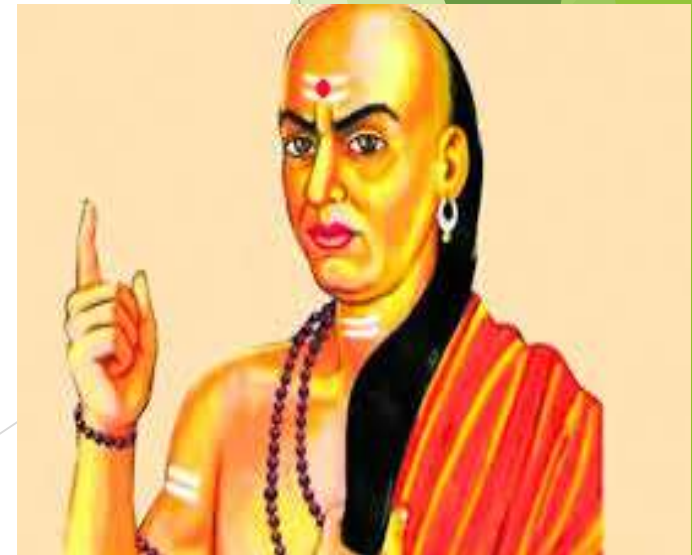


JUDICIAL SYSTEM OF INDIA

“The member of constituent Assembly brought to the framing of the Judicial provisions of The Constitution an idealism equalled only by that shown towards the fundamental rights. Indeed, the judiciary was seen as an extension of the rights, for it was the court that would give the rights force. -**Granville Austin**”

Historical Background

- The concept of Dharma or law in ancient India was inspired by the Vedas which contained rules of conduct and rites and compiled in Dharma Sutras, were practiced in a number of branches of the Vedic schools. The earliest document throwing light on the theory of jurisprudence, which forms part of practical governance, is the Artha Sastra of Kautilya dating back to circa 300 B.C. The third chapter deals with Vyavahara i.e. transactions between two or more parties or Vivada or disputation.
- In medieval India, the religious leaders endeavoured to transform Islam into a religion of law, but as custodian of justice, the rulers made the Sharia, a court subservient to their sovereign power. Theoretically the rulers had to be obedient to the Sharia and history speaks about certain cases where sovereigns unhesistently submitted to the Qazi's decision. The rulers sat in a Court known as Mazalim (complaints). According to Ibn Battuta, Muhammad bin Tughalaq, ruler of Tughalaq dynasty, heard complaints each Monday and Thursday. From 13th century onwards, an officer known as Amir-i- dad presided over the secular Court in sultan's absence.
- During Mughals period the secular judge was known as Mir- adl . He acted as a judge on the Emperor's behalf. He was required to make impartial and personal inquiries. He was also responsible for implementing qazi's decisions. Emperor Akbar also appointed two officers, called tui-begis, to supervise the adherence to the law and fixed a nominal amount as their fee. The same system was followed till British took over the power of India.



SUPREME COURT IN MAKING

The promulgation of Regulating Act of 1773 by the King of England paved the way for establishment of the Supreme Court of Judicature at Calcutta. The Letters of Patent was issued on 26 March 1774 to establish the Supreme Court of Judicature at Calcutta, as a Court of Record, with full power & authority to hear and determine all complaints for any crimes and also to entertain, hear and determine any suits or actions against any of His Majesty's subjects in Bengal, Bihar and Orissa. The Supreme Courts at Madras and Bombay was established by King George - III on 26 December 1800 and on 8 December 1823 respectively. The India High Courts Act 1861 was enacted to create High Courts for various provinces and abolished Supreme Courts at Calcutta, Madras and Bombay and also the Sadar Adalats in Presidency towns. These High Courts had the distinction of being the highest Courts for all cases till the creation of Federal Court of India under the Government of India Act 1935. The Federal Court had jurisdiction to solve disputes between provinces and federal states and hear appeal against Judgements from High Courts. After India attained independence in 1947, the Constitution of India came into being on 26 January 1950. The Supreme Court of India also came into existence and its first sitting was held on 28 January 1950.

The role of Indian Judiciary



- **Administration of justice:** The primary function of the Judiciary in India is to apply the law to specific cases where it needs to settle disputes. When any dispute is brought before the courts, its function is to determine the facts through evidence presented by the contesting people. The court then decides what law applies to the case and applies it. When the court finds someone found guilty of violating the law in the trial, the court will give a sentence on the penalty of the guilty person.
- **Creation of judge-case law:** In cases, judges cannot select the appropriate direction that applies to the topic. They make decisions based on their wisdom and common sense. When these decisions happen, they build up a body of 'judge-made law' or 'case law'. The previous decisions of the judges are generally regarded as binding later on for judges in similar cases.
- **Guardian of the Constitution:** The Supreme Court is the guardian of the Constitution. The court decides any conflicts between the central government and the state governments. If a law or order violates any constitutional provision, the Supreme Court can declare it null and void.
- **Protector of Fundamental Rights:** One of the main functions of the Judiciary is to make sure that people's rights are not trampled upon by the State or anyone else. The Supreme Court enforces the Fundamental Rights by issuing writs.

Supreme court of India



Functions-

- It takes up appeals against the verdicts of the High Courts, other courts and tribunals.
- It settles disputes between various government authorities, between state governments, and between the centre and any state government.
- It also hears matters which the President refers to it, in its advisory role.
- The SC can also take up cases suo moto (on its own).
- The law that SC declares is binding on all the courts in India and on the Union as well as the state governments.

Jurisdictions

1. Article 131 of Indian constitution mentions the original Jurisdiction of Supreme court of India.
2. According to Article 143(1) Supreme court give the Adviser to the President of India if President want.
3. According to the article 133(1), 134(1), 134(2), 136(1) of Indian Constitution Supreme court have appellate Jurisdiction.

Eligibility-

As per Article 124, an Indian citizen who is below 65 years of age is eligible to be recommended for appointment as a judge of the SC if:

1. he/she has been a judge of one or more High Courts, for at least 5 years, or
2. he/she has been an advocate in one or more High Courts for at least 10 years, or
3. he/she is in the opinion of the President, a distinguished jurist.

High court



Composition-

Each state has one high court

The high court is headed by the Chief Justice of high court

The Chief Justice is assisted by the other high court judges.

(if required, parliament can increase the number of high courts to solve pending cases)

Jurisdiction-

Jurisdiction is the power that a court of law exercises to carry out judgements and enforce laws.

1. Original jurisdiction

2. Appellate jurisdiction

3. Advisory jurisdiction

4. Judicial review 5. Jurisdiction to issue Directions, Order and Weits.

■ Qualifications for appointment as judge of high court

High court judge should be a citizen of India

Judge of the high court held a judicial office for at least 10 years or worked as an advocate in a high court for at least 10 years.

■ Appointment

Every judge is appointed by the president in consultation with the Chief Justice of SC and governor of the concerned state.

In case of appointment for other high court judges, it is also done by the president in consultation with the Chief Justice of SC, Chief Justice of HC and governor of the state.

Hierarchy of Courts in India

Supreme Court of India



State High Court



District Courts: District Courts are established by the State Governments of India for every district or group of districts based on the caseload and population density. District Courts are under the direct administration of High Courts and are bound by High Court judgments. Every district generally has two kinds of courts:

- a. Civil Courts
- b. Criminal Courts

District Courts are presided over by District Judges. Additional District Judges and Assistant District Judges may be appointed based on the caseload. Appeals against District Court judgments lie in the High Court.

Lok Adalats/Village Courts: these are subordinate courts at the village level which provide a system for alternate dispute resolution in villages.

Tribunals: the Constitution provides the government with the power to set up special Tribunals for the administration of specific matters such as tax cases, land cases, consumer cases etc.

Public Interest Litigation or PIL

Public Interest Litigation (PIL) is an effective tool to advance social justice in India. Borrowed from the American tradition of Social Action Litigation, PILs have been widely used in India to advance the causes of disadvantaged and marginalized communities. The general rule to bring a cause of action in court is the rule of locus standi i.e. the party must possess sufficient connection or suffer particular harm in order to be a party to the case. In PILs, this rule is relaxed considerably as any citizen of India may bring an action in court to reduce a wrong if there has been a breach of Fundamental Rights. PILs are an effective tool in the furtherance of animal protection by allowing animal rights groups and activists to file PILs at the Supreme Court and give a voice to the voiceless.

Some landmark PILs related to animal welfare filed in the Supreme Court of India include the cases of People for Ethical Treatment of Animals vs Union of India (a case regarding the protection of animals against exploitation and ill-treatment during film-making) and Animal Welfare Board of India vs A.Nagaraja & Ors. (a case regarding the prohibition of a traditional bull-fighting practice called Jallikattu).

Thank you

By
Prof.Kushal Chakraborty