

CHAPTER - VI

JUDICIARY

Judiciary is the branch of government which protects the law.

DUTIES OF JUDICIARY (FUNCTION)

- To punish the criminals
- To protect the laws in the country
- To maintain peace and security in the country.
- To protect the right of the citizen.
- To control the government.
- To give advices needed for the country.

Judiciary is also known as “Guardian of Constitution”.

Why do we need and Independent Judiciary?

In any society there will be conflict between individual and government and there will be conflict between individuals. So to solve all these conflict independent judiciary is needed.

What is Independent Judiciary?

Indian judiciary have more responsibility towards executive and legislative. Judiciary is also responsible towards constitution, democracy people and shouldn't cheat them.

How is Independent Judiciary Protected?

- Appointment
- Tenure
- Salary
- Protection from personal criticism
- Separating executive from judiciary

Appointment

- Judges of Supreme Court and High Court are appointed by the President.
- Politician have no right to appoint judges.

Tenure

Judges have a fixed tenure. Judges can continue in their position till the age of retirement. But they can be removed in the case of violation of constitution and by misbehaviour, before their age of retirement.

Salary

Judges have high salary. By this judges can be remained from corruption and make decision justiciable.

Protection from Personal Criticism

Judges are protected from criticism. Judiciary have the right to punish the persons those who are found guilty of contempt of court. The parliament should not discuss about the behaviour of judges.

Separating Judiciary from Executive

The main duty done by executive is to rule the nation, so they are separated from judiciary. If executive got the duty to implement justice the idea of independent judiciary should be lost.

Appointment of Judges

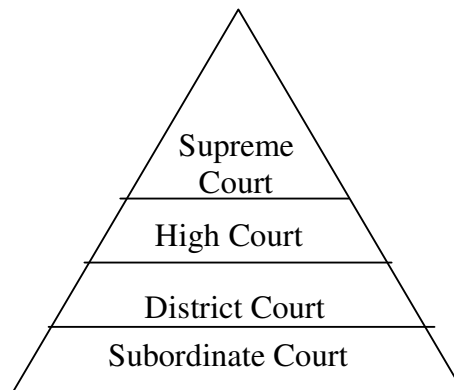
Judges are appointed by president after consulting the chief justice. Chief justice should recommend names of person to be appointed in consultation with four senior most judge of the court, this is called the principle of collegium.

Removal of Judges

- In the case of constitutional violation
- By misbehaviour
- Inability

- For the removal of judges the special majority in both house of parliament is needed.

Structure of Judiciary



SUPREME COURT

Supreme court was known as federal court of India at the time of British rule which is established in 1935. Later it was renamed into Supreme Court on 28th January 1950. There is no right for the judge of Supreme Court to establish a relation between ordinary people.

Qualification to be a Judge in Supreme Court

- He should be an Indian citizen.
- He should have experience as judge in High Court for 5 years.
- The allowances of judges are taken by the government.

Power of Supreme Court

- Original Jurisdiction
- Appellate jurisdiction
- Advisory Jurisdiction
- Writ jurisdiction
- Court of records

Original Jurisdiction

The cases which begins and ends in the Supreme Court itself is known as original jurisdiction.

E.g. Legal disputes arise between central and state government.

The cases related to president and vice president.

Violation of fundamental rights according to Article 32..

Appellate Jurisdiction

The cases doesn't begins in Supreme Court but they are transferred from the High Court to Supreme Court to reconsideration.

E.g. Criminal case

Case related to constitution

Civil case

Advisory Jurisdiction

- The Supreme Court enjoy the power of advisory jurisdiction.
- The president of India can refer any matter of public importance to the Supreme Court for its opinion.
- Judiciary may involved for the interpretation of constitution.

Writ Jurisdiction

If there is any violation in the fundamental rights we can approach Supreme Court according to Article 32. In such cases court can propagate some laws is called writ jurisdiction.

Court of Record

The judiciary is also known as court of record. It maintain record of all previous judgement and makes these available in future.

HIGH COURT

- The 1st High Court was established in 1861 at the time of British rule. At present there are 21 High Court in India. President appoints the judges of High Court and their retirement age is 62.
- First High Court formed at Madras, Kolkata and Bombay.

REMOVAL

They can be removed in the case of constitution violation.

- Misbehaviour
- Inability
- The majority of parliament is needed for the removal of judges of High Court. (The Supreme Court chief justice appointed by the judges of High Court after a discussion with state governors).

POWER OF HIGH COURT

- Original jurisdiction
- Appellate jurisdiction
- Writ jurisdiction

Original Jurisdiction

The case which can be directly considered by the High Court itself is called original jurisdiction.

E.g. According to Article 226 the citizens can approach High Court in the case of violation of fundamental rights.

Appellate Jurisdiction

These cases doesn't begins in High Court. They are transferred from district court for reconsideration.

Writ Jurisdiction

We can directly approach High Court in the case of violation of fundamental rights, according to Article 226.

JUDICIAL ACTIVISM

If executive and legislature fail to do their duties, judiciary involves in their activities. Judicial activism introduced in India in 1979. Even though it have merits and demerits.

Merits

- The rights of court increases
- People become more trust on court.
- Help to reduce the expenses of court.
- It helps to do the duties of executive.

Demerits

- The job burden of court increases.
- It causes conflict between executives and judiciary.

JUDICIAL REVIEW

Supreme Court and High Court have the right to examine the constitutionality of laws passed by parliament and state legislature. This right of court is known as judicial review. Court have the right to declare a law in applicable or it is against the constitution.

PUBLIC INTEREST LITIGATION

The basic function of public interest litigation is to take consideration of rights of those section who cannot easily approach the courts, for this purposes the judiciary allowed public spirited citizens and social organisation to involve the needy and the deprived.