

CIVICS

Chapter 6: JUDICARY



JUDICIARY

The Judiciary

When we speak of the judiciary, we mean the judges, or the courts taken collectively. Besides punishing wrong-doers and protecting the innocent from being wrongfully punished, the judiciary performs many other functions which we will discuss in this chapter.

In brief, the judiciary performs the following functions:

- It settles disputes between people, between the government and the people, between state governments, and between the states and the Centre.
- It upholds the rights of the citizens.
- It interprets the Constitution and has the power to declare a law null and void (strike down a law) if the law violates the principles of the Constitution.

However, while performing these functions, the judiciary can take no step outside what is laid down by the law. For example, in deciding upon the guilt or innocence of an accused person, it must follow the process laid down by the law. Also, it cannot interfere in the powers of the other two organs of the government. The executive and the legislature. For example, it cannot make a law even if it feels that there is a need for such a law. The sources of law in our country are? (i) the Constitution, (ii) laws made by the Union and state legislatures, (iii) case law (points of law established by judgments in previous cases), and (iv) customary law (local customs that are not against the law of the country).

The Judiciary and Law

The judiciary has the power to strike down only those laws that violate the Constitution. It can neither strike down other laws, nor change them. In June 2011, an NGO called Mental Health Foundation filed a PIL (see end of chapter) in the Delhi High Court, asking the court to strike down the law that makes attempting to commit suicide a crime. Despite the fact that there have been a lot of protests about the unfairness of punishing a mentally unwell person, the court said, "It is not for the court to decide on this issue."

Q. what is the status of this law now? Whose job is it to change laws to suit the changing needs and perspectives of the people?

FEATURES OF THE JUDICIAL SYSTEM

The two most significant features of our judicial system are:

- Unified or integrated judiciary
- Independence of the judiciary

UNIFIED JUDICIARY

We have a unified or integrated judiciary. This means the courts are connected from the lowest to the highest levels. If a person (or body) is not satisfied with the decision of a lower court, he (it) can appeal to a higher court. A higher court has the power to strike down or modify the decision of a lower court. The decision of a higher court is binding on a lower court. Also, decisions made by a higher court can be used as a reference by a lower court while deciding similar cases. This ensures uniformity in justice. Suppose each state had its own supreme court and no one could appeal against the decision of such a court, then people in different states could have received different decisions in similar cases and there would be no uniformity. The Supreme Court is the highest court in our country. The high courts (in states) are under the Supreme Court.

The courts below high courts are called subordinate courts. These are of two types? civil and criminal. Civil courts deal with civil cases, or disputes related to property, contracts, divorce, and so on, while criminal courts deal with criminal cases or crimes, such as cheating, forgery, robbery and murder. A civil case is filed by a person (group or body) against another person (group or body), while a criminal case is filed by the government against an accused person (or persons). The wronged party is usually compensated in the form of money by the offending party in a civil case. The guilty in a criminal case is fined, imprisoned or given the death sentence (in very rare cases). Appeals in both types of cases can go up to a high court and finally to the Supreme Court.

Know a Little More

Every country does not have a unified judiciary. In the US, for example, there are two separate levels of courts? State courts decide cases involving state laws, while federal courts deal with violations of federal laws. Each state has its own Supreme Court. The decision of this court is final in cases involving state laws. However, the US Supreme Court has the power to strike down state laws that violate the US Constitution.

INDEPENDENT JUDICIARY

An independent judiciary that functions without interference from the executive or the legislature is essential to ensure that everyone is equal before the law and has equal access to constitutional remedies. If the judiciary worked under the executive or legislature, people would not be able to seek remedies against injustices done by government functionaries or politicians.

Not only is the judiciary independent, it also has the power to determine whether a law passed by the legislature or an action of the executive abides by the Constitution. This is called the power of judicial review. The judiciary can strike down laws and question the actions of ministers and government functionaries. It can issue directives, or orders, to any authority or agency. It has been entrusted (by the Constitution) with the task of protecting the rights of the people and can order the

government to pay compensation to victims of injustice at the hands of government agencies or officials.

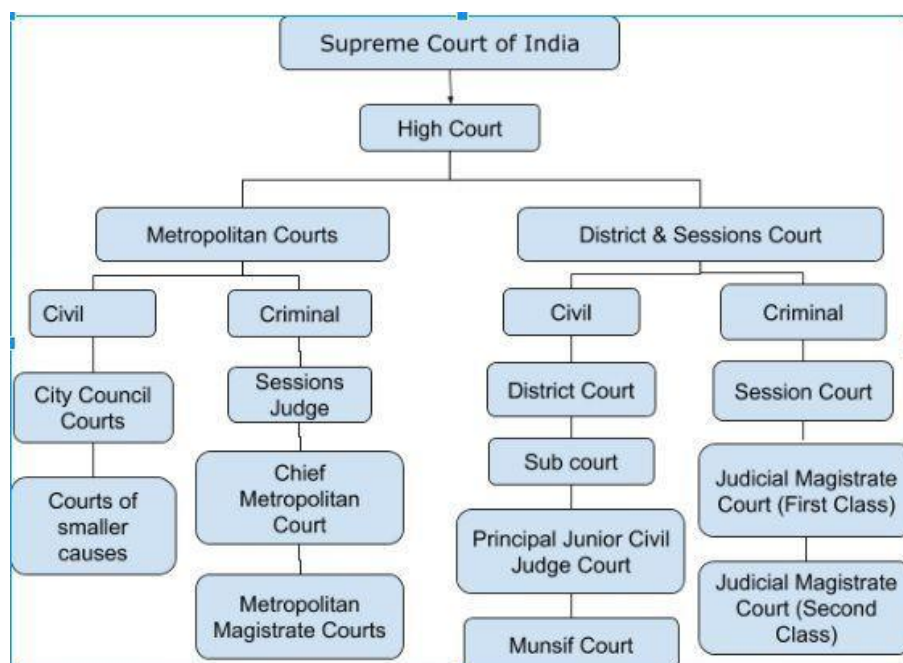
PROCESS OF APPEALS

Krishnalal and his mother were accused of killing his wife by burning her, while Krishnalal claimed that she had committed suicide. The sessions court of Sri Ganganagar (Rajasthan) found Krishnalal and his mother 'not guilty'. The Rajasthan government went up in appeal to the high court, which felt that the session's judge had not given enough importance to the evidence of the neighbours and held that the two were guilty. Krishnalal's mother appealed to the Supreme Court against the high court's judgment. The Supreme Court upheld the high court's decision.

The Constitution provides for certain safeguards in order to make the judiciary truly independent. The executive or legislature cannot appoint judges at will (we will discuss this later). And once a judge has been appointed, his or her salary cannot be changed to his disadvantage by Parliament. The removal of a Supreme Court or high court judge from office is also not an easy matter. A proposal for the impeachment (removal from office) of a judge on grounds of serious misbehaviour or misuse of power has to be passed by two thirds of the members of Parliament (present and voting).

Power of Judiciary: Issuing Directives

In 2011, the Allahabad High Court took note of newspaper reports on Bundelkhand farmers being driven to suicide because they were unable to pay back loans. (A court has the power to take notice of a matter on its own, even if no one files a case.) It issued directives to the state and Central governments to submit reports on the suicides committed, relief given to farmers, measures taken for development of the area, and so on.





STRUCTURE OF INDIAN JUDICIARY

THE SUPREME COURT

The Supreme Court is the highest court in the country. It is the final court of appeal. However, a person sentenced by the Supreme Court, may appeal to the President for mercy.

Composition The Supreme Court is headed by the Chief Justice, who is appointed by the President in consultation with the judges of the Supreme Court and high courts. At present, the Supreme Court has 30 other judges who are appointed by the President in consultation with the Chief Justice. To become a judge of the Supreme Court, a person must be an Indian citizen and have 10 years of experience as an advocate of a high court, or five years of experience as a judge of a high court or be a distinguished jurist (expert in law). Unless impeached, a judge of the Supreme Court serves till the age of 65.

Know a Little More

The National Judicial Commission was established through the 99th amendment to the Constitution, passed in 2015. However, in October 2015, the Supreme Court struck down the Commission as unconstitutional.

Q. what does this show about the balance of power between the legislature and the judiciary?

Jurisdiction

The power or authority of a court and the area within which it can exercise this authority is called its jurisdiction. Jurisdictions are of many types.

1) Original jurisdiction: A court is said to have original jurisdiction over matters that can be introduced only in that court and not in any other. The Supreme Court has original jurisdiction over:

- Disputes between the central government and one or more state governments
- Disputes between one or more state governments
- Cases related to the constitutional validity of laws passed by Parliament

2) Appellate jurisdiction: A court is said to have appellate jurisdiction when it has the power to hear appeals against the judgments of lower courts. The Supreme Court has appellate jurisdiction over the following:

- Appeals against the decisions of high courts
- Cases certified by the high courts as needing to be tried by the Supreme Court
- Cases that require the interpretation of the Constitution
- When a high court changes the sentence passed by a lower court to a death sentence
- A review of its own judgment

3) Advisory jurisdiction The Supreme Court advises the President on constitutional matters when asked by the President to do so. This is referred to as its advisory jurisdiction. The advice given by the Supreme Court is not binding on the President.

4) Supervisory jurisdiction The Supreme Court has supervisory jurisdiction over all the courts below it. That means it can make rules for them and regulate their functioning.

Court of record

A court of record keeps records of all its decisions. The records of the Supreme Court's decisions are used by other courts as a reference while deciding on similar cases.

THE HIGH COURTS

The highest court in a state is the high court. At present there are 24 high courts. Some of these have jurisdiction over more than one state. These are the Punjab and Haryana High Court (Chandigarh), the High Court at Hyderabad (Andhra Pradesh and Telangana) and the Gauhati High Court (Assam, Nagaland, Mizoram and Arunachal Pradesh). The Bombay High Court serves Maharashtra, Goa, Daman and Diu, and Dadra and Nagar Haveli; the Calcutta High Court has jurisdiction over West Bengal and the Andaman and Nicobar Islands; the Madras High Court has jurisdiction over

INTER-STATE DISPUTE

After Independence, Belgaum was a part of what was known as Bombay state. In 1948, the Belgaum municipality requested the Indian government to include Belgaum in the proposed state of Maharashtra. However, when the states were demarcated on the basis of the States Reorganisation Act, Belgaum went to the state of Mysore (now Karnataka). There has been an ongoing dispute between the two states over the status of Belgaum, and in 2010, the state of Maharashtra filed a

petition in the Supreme Court, staking a claim over Belgaum and challenging the validity of the States Reorganisation Act.

Tamil Nadu and Puducherry; and the Kerala High Court has jurisdiction over Lakshadweep in addition to Kerala.



The madras High court Which, Serves Tamil Nadu and Puducherry

Composition

A high court is headed by a Chief Justice, who is appointed by the President in consultation with the Chief Justice of India and the Governor of the state. The other judges of a high court are appointed by the President in consultation with the Chief Justice of India, the Chief Justice of the high court concerned and the Governor of the state. To be a judge of a high court, a person must be a citizen of India and have 10 years of experience as an advocate of a high court. A high court judge normally serves till the age of 62.

Jurisdiction

- A high court has original jurisdiction in disputes related to elections in the state.
- It also has original jurisdiction in cases related to the violation of the Fundamental Rights. In other words, a case related to the Fundamental Rights is filed directly in a high court, rather than going up in appeal from a subordinate court. However, such a case may also be filed

directly in the Supreme Court.

- Cases (both civil and criminal) other than those related to the elections and the Fundamental Rights are first filed in the subordinate courts. The high court has appellate jurisdiction over all such cases filed in courts under it.
- A high court has supervisory jurisdiction over the courts under it.
- A high court is a court of record.

THE SUBORDINATE COURTS

Each state is divided into districts. The highest civil court in a district is the district court, presided over by the district judge. Below the district court is the court of the civil judge (senior) and the court of the civil judge (junior).

Sessions Court

The highest criminal court in a district is the sessions court. This is presided over by the sessions judge, who is the same as the district judge. Hence, he/she is also known as the district and sessions judge. Below the sessions court are the courts of the chief judicial magistrate (CJM), the first-class judicial magistrate and the second-class judicial magistrate, in that order. (Please refer to the Structure of the Indian Judiciary on page 236). Appeals go up from the lower to the higher courts, for example, a criminal case is usually filed in a judicial magistrate's court, from which it goes to the sessions court, and so on. Judges of the subordinate courts are drawn from the state judicial services. Each state has its own rules and examinations for these services.

Nyaya Panchayats

Nyaya panchayats or panchayat courts are village-level courts that are not a part of the judicial hierarchy. Thus, no one can appeal against their decisions to a higher court. However, anyone who is dissatisfied with the decision of a nyaya panchayat can file a fresh petition (a written complaint or request) in a subordinate court. Each state has its own laws for the functioning of panchayat courts, which can give decisions on minor civil and criminal cases.

JUSTICE FOR ALL

It is often said that though everyone is equal before the law, some are more equal than others. What this means is that the rich and powerful are at a greater advantage than others. There are several reasons for this.

- Legal proceedings (the process of a case being decided in court) take a long time and cost money. Not everyone can afford to spend so much time or money.
- The way a case is decided often depends on the way it is presented before a court which again depends on the kind of counsel (lawyer) one has. Not everyone can pay for a competent lawyer.

- Poor and illiterate people are often not aware of their rights or of the remedies available to them.

Some steps have been taken to make more accessible to all and to speed up legal proceedings. Lok Adalat's and public interest litigation (PIL) are among these.

LOK ADALATS

Lok Adalat's have been set up in accordance with an Act of Parliament to provide speedy justice. A Lok Adalat is headed by a retired judge, who is usually helped by a lawyer and a social worker. People wishing to settle a dispute through a Lok Adalat do not have to pay a court fee. They can put forward their cases directly to the judge, without the services of a counsel. The court settles disputes on the basis of mutual understanding and compromise. The disputing parties have to accept the decision of the court and cannot appeal to a higher court. They can, of course, file a fresh case in another court if they wish to.



PUBLIC INTEREST LITIGATION

The process of settling a dispute or claim in a court of law is called a litigation. Usually, such a process is initiated by a person (group or body) who feels that his/her right has been violated. A public interest litigation (PIL), on the other hand, can be initiated by any person or organisation on behalf of people whose rights have been violated. This provision for filing PILs was initiated by the Supreme Court in the early 1980s in response to the need to help common people have access to justice. The good thing about a PIL is that it does not require complicated procedure that a normal case has to follow. Just a simple letter addressed to the court suffices. PILs also can be filed on general issues affecting the public -such as environmental pollution, Health services, etc.

A Few exemplary cases of PIL

Use of CNG in Delhi

Perhaps you know that public transport in Delhi runs on compressed natural gas (CNG) rather than petrol or diesel. This is because CNG causes less pollution than other fuels. The switch to CNG was the result of a PIL filed on July 1998 in the Supreme Court by M. C. Mehta, a lawyer and

environmental activist (a person, who works for a cause), against the failure of the government to protect the people of Delhi from air pollution. In response, the Supreme Court directed the government to take an initiative to promote the use of CNG.



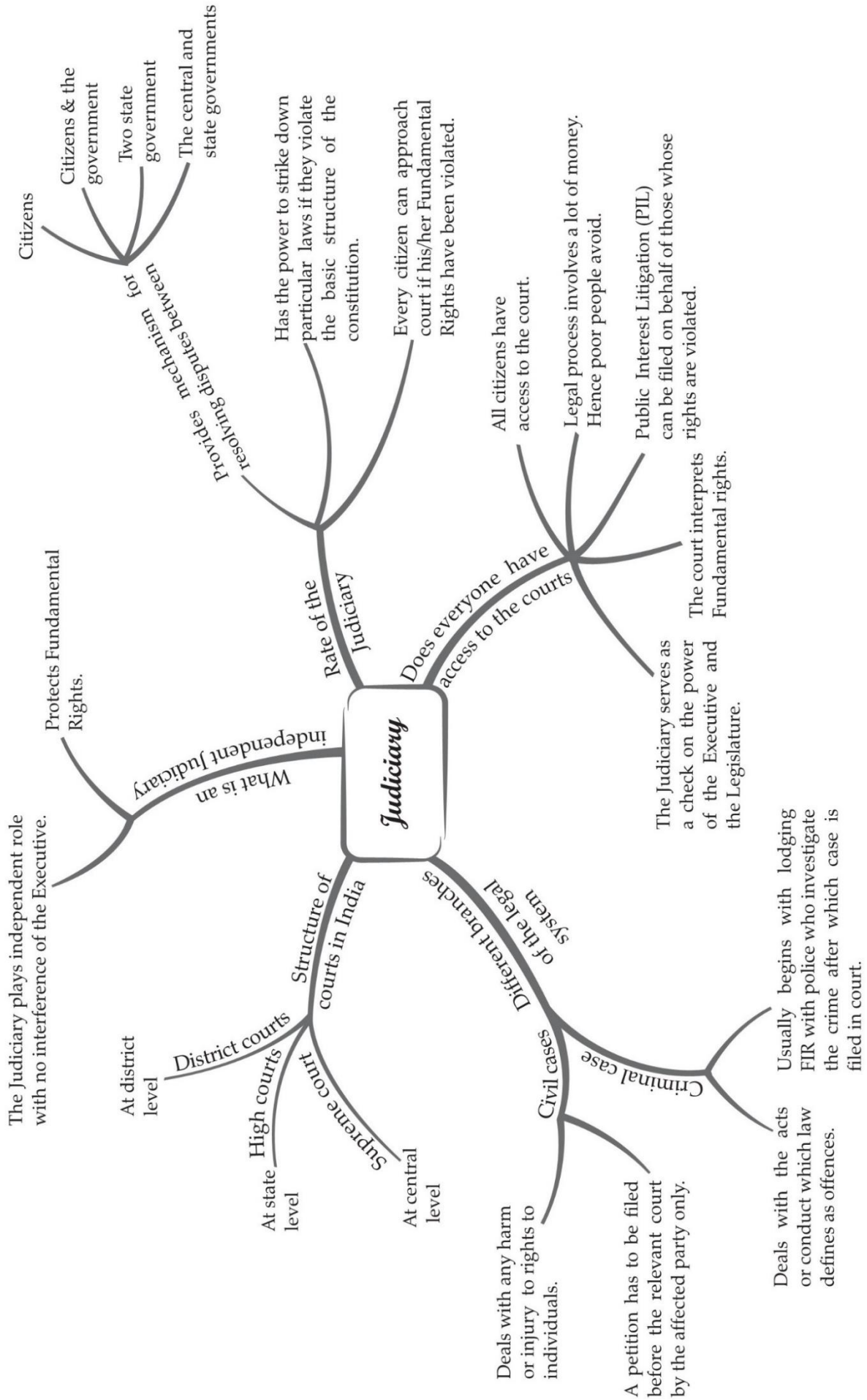
Right to Food

In 2001, there was a drought in Odisha and Rajasthan, and the poor were starving and even dying. In April that year, an NGO called People's Union for Civil Liberties (PUCL) filed a PIL in the Supreme Court, saying that the Right to Food should be seen as a part of the Right to Life guaranteed by the Constitution. In its petition, the organization pointed out that people were starving when government god owns were full of grains. In response, the Supreme Court directed the government to make food available through the public distribution system (ration shops), provide more jobs and provide mid-day meals to schoolchildren.



MIND MAP : LEARNING MADE SIMPLE

CHAPTER-23



Important Questions

Multiple Choice Questions-

Question 1. When was the Supreme Court of India established?

- (a) 26th Jan 1946
- (b) 26th Jan 1947
- (c) 26th Jan 1948
- (d) 26th Jan 1950

Question 2. Which case directed the West Bengal government to pay compensation for the loss suffered as well as to come up with a blueprint for primary health care with particular reference to treatment of patients during an emergency.

- (a) State of West Bengal vs union of India.
- (b) State vs Laxman Kumar and other.
- (c) Paschim Banga Khet Mazdoor Samity vs State of West Bengal.
- (d) State of Calcutta vs union of India.

Question 3. What is the full form of PIL?

- (a) Public Interest Limitations
- (b) Public Interest litigation
- (c) Public Interesting law
- (d) People Interest Litigation

Question 4. 43 Muslims of Hashimpura, Meerut were killed in the year

- (a) 1990
- (b) 2002
- (c) 1991
- (d) 1987

Question 5. When was the mechanism of Public Interest Litigation (PIL) was devised by the Supreme Court?

- (a) 1980
- (b) 1990
- (c) 1970
- (d) 1960

Question 6. What is judiciary?

- (a) Helper of government
- (b) Controller of Government
- (c) Organ of government
- (d) None of these

Question 7. Name the only Union Territory which has a High Court of its own?

- (a) Pondicherry
- (b) Delhi
- (c) Chandigarh
- (d) Daman and Diu

Question 8. What type of cases is related to civil cases?

- (a) Kidnapping
- (b) Cheating
- (c) Disputes over property
- (d) Robberies

Question 9. In which age judge of the High Court get retired?

- (a) 62 years
- (b) 65 years
- (c) 60 years
- (d) 64 years

Question 10. The idea of the Public Interest Litigation was given by whom?

- (a) President of India
- (b) Prime Minister of India
- (c) Supreme Court of India
- (d) Parliament

Question 11. Which article states the fundamental Right to Life guaranteed the right to food?

- (a) Article 21
- (b) Article 23
- (c) Article 25
- (d) Article 20

Question 12. Which is the highest court of appeal in our country?

- (a) High Court

- (b) Supreme Court
- (c) Lok Adalat
- (d) None of these

Question 13. What is rule of law?

- (a) Rich people are superior to other
- (b) Low caste people are inferior
- (c) All are same before law
- (d) None of these

Question 14. Which is the highest judicial authority in a state?

- (a) Supreme Court
- (b) High court
- (c) Lok Adalat
- (d) None of these

Question 15. Unsatisfied from which court an individual go to the Supreme Court?

- (a) Lok Adalats
- (b) Nyaya Panchayats
- (c) High Court
- (d) District Court

Very Short:

1. Mention one function of the judiciary.
2. What do you mean by 'judicial review'?
3. Where were High Courts first established and when?
4. The seven north-east states have a common High Court. Where is this located?
5. What do you mean when you say 'we have an integrated judicial system'?
6. What do you mean by the appellate system?
7. Name a few offences that are associated with criminal law.
8. In which Article of the Constitution is the Fundamental Right to Life guaranteed?
9. How many judges are there in the Supreme Court?
10. Give full form of FIR and PIL.

Short Questions:

1. What do you understand by the word 'law'?
2. What does judiciary mean?
3. How is the work of the judiciary categorised?
4. What is the structure of the judicial system of India?
5. Why is the judiciary important for the functioning of the democracy in India?
6. What is a Judicial System? What is its role in dispute resolution?

Long Questions:

1. What is an independent judiciary? Explain in brief.
2. Write a brief note on the independence of the judiciary.
3. What is the structures of the courts in India?
4. Write a brief note on 'Public Interest Litigation.'
5. In principle, the courts are accessible to all. But what happens in reality?

Answer Key:

MCQ:

1. (d) 26th Jan 1950
2. (c) Paschim Banga Khet Mazdoor Samity vs State of West Bengal
3. (b) Public Interest litigation
4. (d) 1987
5. (a) 1980
6. (c) Organ of government
7. (b) Delhi
8. (c) Disputes over property
9. (a) 62 years
- 10.(c) Supreme Court of India
- 11.(a) Article 21
- 12.(b) Supreme Court
- 13.(c) All are same before law
- 14.(b) High court
- 15.(c) High court

Very Short Answer:

1. The judiciary settles disputes.
 2. The judiciary has the power to strike down particular laws passed by the Parliament if it finds they don't adhere to Constitution. This is known as judicial review.
 3. High Courts were first established in the three Presidency cities of Calcutta, Bombay and Madras in 1962.
 4. It is located at Guwahati.
 5. It means that the decisions made by higher courts are binding on the lower courts
 6. It means that a person can appeal to a higher court if they are not satisfied with the judgement of the lower court.
 7. Theft, harassing a woman for more dowry, murder.
 8. The Fundamental Right to Life is guaranteed in Article 21 of the Constitution.
 9. There are 26 judges in the Supreme Court.
 10. FIR – First Information Report
- PIL – Public Interest Litigation

Short Answer:

Ans: 1. Law is a system of rules, usually imposed through a government or Institution and is applied to govern a group people. It shapes politics, economics and society in numerous ways.

Ans: 2. In law, the judiciary or judicial system is the system of courts which administers justice in the name of the state. It is the mechanism for the resolution of disputes and pronouncement of punishment. As an organ of the State, the judiciary plays a crucial role in the functioning of India's democracy.

Ans: 3. The Judiciary comprises of courts that take decisions on a very large number of issues. The work of the judiciary can be divided into 3 categories, namely Dispute Resolution, Judicial Review and upholding the Law and Enforcing Fundamental Rights.

Ans: 4. The judicial system of India is stratified into various levels. At the apex is the Supreme Court, which is followed by High Courts at the state level, District Courts at the district level and Lok Adalats at the Village and Panchayat Level.

The structure of the courts from the lower to the highest level resembles a pyramid.

Ans: 5. However, in spite of this there is no denying that the judiciary has played a crucial role in democratic India, serving as a check on the powers of the executive and the legislature as well as in protecting the fundamental rights of citizens. The members of the constituent assembly had quite correctly envisioned a system of courts with an independent judiciary as a key feature of our democracy.

Ans: 6. A judicial system is a mechanism of courts that a citizen can approach when a law is violated. It plays a very significant role in resolving dispute between:

- (i) citizens
- (ii) citizens and the government
- (iii) two state governments
- (iv) the centre and state governments

Long Answer:

Ans: 1. The Indian Constitution provides for the independence of the judiciary. It means that other branches of the State such as 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. The courts ensure that there is no misuse of power of the legislature and the executive. Anyone can approach the courts if they find that their Fundamental Rights have been violated.

Thus, the courts are not influenced by anyone, not even by the rich and powerful people.

Ans: 2. The Judiciary of India is an independent body. It is separate from the Executive and Legislative bodies of the Indian Government. The Executive and Legislature, that is the Central and State Governments, cannot interfere in the work of the judiciary.

The courts are not under the government and do not act on their behalf.

Judges in the High Court as well as the Supreme Court are appointed by the President with very little interference from the other branches of the government. It is also very difficult to remove a judge from his post.

Ans: 3. There are three different levels of courts in India. At the lower level, we have subordinate or district courts. These courts hear many kinds of case. At the state level, we have High Courts. There are 21 High Courts in our country. The High Court is the highest authority in a state. At the top in the Supreme Court. It is the foremost judicial in our country. It is located in New Delhi and is presided over by the Chief Justice of India.

Thus, the structure of the courts from the lower to the highest level is such that it resembles a pyramid.

Ans: 4. Public Interest Litigation (PIL) is a mechanism devised by the Supreme Court of India in the early 1980s to increase access to justice. Under this mechanism any individual or organization is allowed to file a PIL in the High Court or the Supreme Court on behalf of those whose rights are being violated. The legal process that it involves is very simple. Even a letter or telegram addressed to the Supreme Court, or the High Court can be treated as a PIL. Thus, PIL plays a very significant role in facilitating justice.

Ans: 5. In principle, every citizen has a right to justice through the courts. Here, it is worth mentioning that the courts play a very significant role in protecting our Fundamental Rights. If any citizen finds that their Fundamental Rights are violated, they can approach the court.

But things are not the same in reality. Access to courts has always been tough for the poor. These

people do not dare to go to the court because they know that the legal procedures are very lengthy and complicated and involve a lot of money.