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THE JUDICIARY

When you read the Constitution of India, you will come to know that it is characterised as a federal Constitution. By federal Constitution we mean a written Constitution which provides the division of powers between Central and the State Governments. It is the supreme law of the land. But the language of the Constitution is very complex as its meaning is likely to be interpreted by different authorities at different times in different manners. Hence, it is natural that dispute might arise between the Centre and its constituent units (primarily the States) regarding their respective powers. Therefore, in order to maintain the supremacy of the Constitution, there has to be an independent and impartial authority which will decide disputes between the Centre and the States and States *inter se* (among States). This function has been entrusted upon the Supreme Court of India.

The Constitution of India has provided a single integrated and unified judicial system for the whole country. It means that for the entire country, there is one unified judicial system, one hierarchy of courts with the Supreme Court as the highest or the apex court. It is also the highest and the final interpreter of the Constitution and the general law of the land.



OBJECTIVES

After studying this lesson, you will be able to:

- know about the procedure of appointment of Judges to the Supreme Court and the High Courts of India;
- explain the jurisdiction of the Supreme Court and the High Courts;
- know the powers of both the Supreme Court and the High Courts of India;
- appreciate the significance of 'Judicial Activism';
- appreciate the role of PIL in dispensing justice to the weak and the downtrodden;

- recognise the role of Head of the State and the the Heads of its units i.e. States in the process of recruitment of the judicial heads of the Courts; and
- recognise the significance of the Constitution as the Fundamental Law of the country.

23.1 COMPOSITION AND ORGANISATION OF THE SUPREME COURT

The Supreme Court of India consists of a Chief Justice and, 30 other Judges. The Parliament may increase this number by law. Originally, the total number of judges was seven but in 1977, it was increased to 17 and in 1986 to 25, excluding the Chief Justice. Later in 2009, it was fixed at 31 Judges including the Chief Justice of India.

Under article 124(2), Supreme Court judges are to be appointed by the President “after consultation with such judges of the Supreme Court and of the High Courts as the President may deem necessary”. The provision in the Article says that in the case of appointment of a judge other than the Chief Justice, the Chief Justice of India shall always be consulted. It is obligatory for the Government in which it has to consult the Chief Justice and other judges.

Significantly, the appointment is not required to be made in consultation but only ‘after consultation’, and the opinion should be in written. In actual practice, after receiving the opinion of the Chief Justice, the Cabinet deliberates on the matter and advises the President in regard to the persons to be appointed. The President acts on the advice. The Chief Justice has to consult four senior most Judges of the Supreme Court and if two of the four disagree on some name, it can not be recommended. Infact, decisions are to be taken by consensus where the Chief Justice and at least three of the four Judges agree.



Figure 23.1: Supreme Court of India



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In case of the Chief Justice, the senior most Judge is usually appointed. The practice has virtually been transformed into a convention and is followed by the executive without any exception. But on April 25, 1973, the convention was broken when the Government appointed Justice A. N. Roy superseding three of his senior colleagues. The government's action has been criticised of arbitrariness and undermining the independence and impartiality of the Judiciary. To avoid such types of controversies, a bill was introduced in the Lok Sabha by the National Front Government for setting up a National Judicial Commission in 1990 by the then Law Minister, Dinesh Goswami, empowering the President to constitute a high level Judicial Commission for making recommendation for the appointment of the Judges to the Supreme Court (other than the Chief Justice of India), Chief Justice of High Courts and to the transfer of Judges from one High Court to another. But the Constitutional Amendment Bill lapsed consequently upon the dissolution of the Lok Sabha.

A person to be qualified for appointment as a Judge of the Supreme Court–

- must be a citizen of India;
- should have been a Judge of the High Court for at least five years;
- should have been an advocate of the High Court for at least ten years; and
- is a distinguished Jurist in the opinion of the President

Interestingly, a non-practising or an academic lawyer may also be appointed as Judge of the Supreme Court, if he/she is, in the opinion of the President, a distinguished Jurist. But in India so far, no non practising lawyer has been appointed as a Judge of the Supreme Court.

Every person appointed as a judge of the Supreme Court, before he/she enters upon his office, takes an oath before the President or some other person appointed by him in the form prescribed in III Scheduled of the Constitution.

Every Judge of the Supreme Court holds office until the age of 65 years. A judge may be removed from his/her office only by an order of the President passed after an address by each House of Parliament for his removal on the ground of 'proved misbehavior or incapacity', supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members present and voting in the same session. The procedure of the presentation of an address for investigation and proof of misbehavior or incapacity of a Judge will be determined by Parliament (Article 124 (5)). The Supreme Court has held that a Judge of the Supreme Court or High Court can be prosecuted and convicted for criminal misconduct. The expression 'misbehavior' in article 124 (5) includes criminal misconduct as defined in the Prevention of Corruption Act.

The Constitution prohibits a person who has held office as a judge of the Supreme Court from practising law before any Court in the territory of India (Article 124(6) and (7)). But under Article 128, the Chief Justice may appoint the retired Judges of the Supreme Court to sit and act as *Ad hoc* Judges in the Supreme Court.

When the office of the Chief Justice of India is vacant or when the Chief Justice is unable to perform the duties of his office due to absence, the President shall appoint an Acting Chief Justice from among the Judges of the Supreme Court to perform the duties of the Chief Justice (Article 126).

If at any time, there is no quorum of judges of the Supreme Court available to hold or continue any session of the Court, the Chief Justice of India is empowered to appoint *Ad hoc* judges in the Supreme Court from among judges of High Courts, having qualifications to be appointed Judges of the Supreme Court, for such period as he/she deems necessary. He/she can do so only with previous consent of the President and after consultation with the Chief Justice of the High Court concerned. The Judge so appointed is duty bound to give priority to the Supreme Court duties.

The Chief Justice of India may also invite a retired Judge of the Supreme Court or a retired Judge of the High Court having the qualification to be Judge of the Supreme Court, to sit and act as a Judge of the Supreme Court for such period as he deems necessary. This has to be done with the previous consent of the President and also of the person to be appointed (Article 127 and 128).

Judges of the Supreme Court are to be paid such salaries as may be determined by Parliament by law and until so determined salaries are laid down in the Second Schedule (Article 125). In addition to this, they are also allowed sumptuary allowances, rent free furnished residences, telephone, water, electricity, medical and many other facilities.

The Constitution provides that Supreme Court shall sit in Delhi. However, the Chief Justice of India may with the previous approval of President be able to sit in such other place or places as he/she may decide (Article 130). At present, the Supreme Court is functioning from Delhi.

**INTEXT QUESTIONS 23.1**

1. What is the present number of Judges in the Supreme Court, including the Chief Justice of India?
2. How does the President of India appoint the Judges of the Supreme Court, other than the Chief Justice?

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3. How is the Chief Justice of India appointed? Mention the case which was an exception to the accepted convention.
4. Why and when was a bill introduced to set up a National Judicial Commission?
5. What are the grounds on which the Judge of Supreme Court can be removed?

23.2 POWERS AND JURISDICTION OF THE SUPREME COURT

Article 129 provides that the Supreme Court shall be a Court of record and shall have all powers of such a Court. Being the highest court of the land, its proceedings, acts and decisions are kept on record for perpetual memory and for presentation as evidence, in support of the law. Being a Court of record it implies that its records can be used as evidence and cannot be questioned for their authenticity in any court. Court of record also means that it can punish for its own contempt. But this is a summary power, used rarely and under pressing circumstances. It does not restrict genuine and well intentioned criticism of Court and its functioning. Fair and reasonable criticism of judicial acts in the interest of public good does not constitute the contempt.

23.2.1 Jurisdiction

The Supreme Court has *original*, *appellate* and *advisory* jurisdictions.

A. Original Jurisdiction

Original Jurisdiction means the power to hear and determine a dispute in the first instance. The Supreme Court has been given exclusive *Original Jurisdiction* which extends to disputes:

- between the Government of India and one or more States.
- between the Government of India and one or more States on one side and one or more States on the other.
- between two or more States.

The Supreme Court in its original jurisdiction cannot entertain any suits brought by individuals against the Government of India. The dispute relating to the original jurisdiction of the Court must involve a question of law or fact on which the existence of legal right depends. This means that the Court has no jurisdiction in matters of political nature.

However, this jurisdiction shall not extend to a dispute arising out of a treaty, agreement etc. which is in operation and excludes such jurisdiction (Article 131).

The jurisdiction of Supreme Court also excludes in inter-State water disputes (Article 262), matters referred to the Finance Commission (Article 280) and adjustment of certain expenses and pensions between the Union and States (Article 290).

If any dispute is to be brought before the Supreme Court, it must involve a question of law on which the legal right depends. Under Article 139A, the Supreme Court may transfer to itself cases from one or more High Courts if these involve questions of law or of great importance. The Supreme Court may transfer cases from one High Court to another in the interest of justice.

The Original Jurisdiction of the Supreme Court also extends to cases of violation of the Fundamental Rights of individuals and the Court can issue several Writs for the enforcement of these rights (Article 32). It is a unique feature of our Constitution that in principle, any individual can straightway approach the highest Court in case of violation of his/her Fundamental Rights.

B. Appellate Jurisdiction

The Appellate Jurisdiction of the Supreme Court extends to civil, criminal and constitutional matters. In a civil matter, an appeal lies to the Supreme Court from any judgment, decree or final order of a High Court if the High Court certifies under Article 134A that a 'substantial question of law' of general importance is involved and the matter needs to be decided by the Supreme Court. The High Court grants certificate only where there have been exceptional circumstances where substantial and grave injustice has been done. Thus, a certificate cannot be granted by the High Court on mere question of fact, where no substantial question of law is involved.

In criminal cases, an appeal to the Supreme Court shall if the High Court:

- has reversed an order of acquittal of an accused person and sentenced him to death.
- has withdrawn for trial before itself any case from any subordinate court to its authority and has in such trial convicted the accused person and sentenced him to death (Article 134).

It is to be noted that before the commencement of the Constitution, there was a Federal Court in India. It was created by the Government of India Act 1935 and has been abolished by the Constitution of independent India. Article 135 was included in the Constitution to enable the Supreme Court to exercise jurisdiction in respect of matters where the Federal Court had the jurisdiction.

Under Article 136 the Supreme Court, by its own, may grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause



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or matter passed or made by any court or tribunal in the territory of India. These powers of the Supreme Court to grant 'special leave to appeal' are far wider than the High Court. The Supreme Court can grant special leave against judgments of any court or tribunal in the territory, except the military courts, and in any type of cases, criminal or revenue. But the Supreme Court has itself said that it will grant special leave to appeal only in cases where there has been gross miscarriage of justice or where the High Court or Tribunal is found to have been wrong in law. So, it is not taken as a usual practice.

**Do you know**

A 'Tribunal' is a body of authority although not a Court, having all the attributes of a Court, which has judicial powers to adjudicate on the question of law or fact affecting the rights to citizens in a judicial manner.

Article 137 provides for the Supreme Court having the power to review its own judgments and orders. The Supreme Court has held that a judgement of the apex Court of the land is final. A review of such a judgement is an exceptional phenomenon, permitted only where a grave error is made out.

C. Advisory Functions

Article 143 of the Constitution confers upon the Supreme Court the Advisory Jurisdiction. The President may seek opinion of the Supreme Court on any question of law or fact of public importance on which he/she thinks it is expedient to obtain such an opinion. On such references from the President, the Supreme Court may report to him/her its opinion thereon. The opinion is only advisory, which the President is free to follow or not to follow. Also, it depends upon the Supreme Court whether to give opinion or not depending on the case.

Article-139 lays down that Parliament may confer on the Supreme Court power to issue directions, orders or writs in matters not already covered under Article 32. Under Article-140, Parliament may supplement the powers of the Supreme Court to enable it to perform effectively the functions placed upon it under the Constitution. Law declared by the Supreme Court is binding on all courts in India under Article-141. Article-142 provides that the Supreme Court in exercise of its jurisdiction may pass such decrees or orders as necessary for doing complete justice. The decree or order made by the Court shall be enforceable throughout the territory of India in such a manner as prescribed by the Parliament. Until provision is made by the Parliament, the orders of the Court will be enforced in the manner prescribed by the President.

For purpose of giving effect to the directions and decisions of the Supreme Court, all authorities, civil and judicial, in the territory of India, have been made subordinate to the authority of the Supreme Court (Article 144). The Supreme Court may from time to time, and with the approval of the President, make rules for regulating generally the practice and procedure of the Court.

**INTEXT QUESTIONS 23.2**

1. What does the term 'legal right' mean?
2. Under which circumstances can the Supreme Court has the power to transfer to itself cases from one or more High Courts?
3. Which Article entitles the Supreme Court to issue 'Writs' for the protection of Fundamental Rights?
4. The Appellate Jurisdiction of Supreme Court extends to which type of cases?
5. Define a 'Tribunal'.

**23.3 JUDICIARY AS THE GUARDIAN OF
CONSTITUTION AND PROTECTOR OF
FUNDAMENTAL RIGHTS**

When the word 'Court' comes in your mind, what is the first thing that strikes you? It is justice. This is because the courts or the judiciary is endowed with the task of providing justice to everyone and everywhere. In India, the judiciary intervenes when Fundamental Rights, as provided in Part III of the Constitution, are violated by any person, authority or the State.

Judiciary acts in accordance to the Article-32 which prescribes the mechanism for enforcement of Fundamental Rights and justice. Dr. B. R. Ambedkar said about the importance of the Article-32 that, "If I was asked to name any particular Article in this Constitution as the most important Article without which this Constitution would be a nullity...I could not refer to any other Article except this one... It is the very soul of the Constitution and the very heart of it". Hence Article-32 of the Constitution provides an effective remedy for the enforcement of the Fundamental Rights.

Article-32 (1) guarantees the rights to move to the Supreme Court by 'appropriate proceedings' for the enforcement of Fundamental Rights conferred by Part III of the Constitution. Clause (2) of Article 32 confers power on the Supreme Court to issue directions, orders or writs including writs in the nature

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of Habeas Corpus, Mandamus, Prohibition, Quo-warranto and Certiorari. Under clauses (3) of Article 32, Parliament can empower any other Court to exercise within its jurisdiction all those powers which were exercisable by the Supreme Court under clause (2). Clause (4) says that the rights guaranteed under this Article shall not be suspended except otherwise provided in the Constitution. Thus, it provides remedy for the protection of Fundamental Rights from legislative and executive interference. Hence, it is clear that whenever there is a violation of Fundamental Rights, any person can move to the Court for an appropriate remedy.

The Judicial system adopted by our country is based on hierarchy of the courts. From the Subordinate Courts to the Supreme Court, we have a chain of the Courts that works at every level to tender justice. Hence, it is expected that the common people first seek justice from the lower level and if there is complexity in the case, then they are free to move the higher one. In this way, to lessen the burden from the Supreme Court, there is a hierarchy of Courts at different levels.

The Supreme Court and the High Courts have been provided with the powers to issue writs under Article 32 and Article 226. Parliament can also empower any Court to issue writs as similar to that of the Supreme Court and the State High Courts. Interestingly, the power of the High Court to issue Writs is wider than the power conferred on the Supreme Court. High Courts have the power to issue writs not only for the enforcement of Fundamental Rights but also for the rights other than Fundamental Rights (Article 226). There are five writs provided in the Constitution about which you must have studied in the chapter of Fundamental Rights.

Besides the writs, the Supreme Court and the High Courts can issue other directions and orders in the interest of justice to the people. Judiciary through these writs and other available mechanism employs its best to protect Fundamental Rights and freedoms of the individuals particularly those provided in the Constitution. Hence, it is called guardian of the Constitution and the protector of Fundamental Rights.

**INTEXT QUESTIONS 23.3**

1. Which Court has the wider powers to issue 'Writs' in the context of Fundamental Rights?
2. Why is Judiciary called the protector of Fundamental Rights?
3. How is the judicial system of India based on the hierarchy of courts?

23.4 PUBLIC INTEREST LITIGATION AND THE JUDICIAL ACTIVISM

The Public Interest Litigation (PIL) is a strategic arm of the legal aid movement which is intended to bring justice within the reach of the poor masses. It is a device to provide justice to those who individually are not in a position to have access to the courts. It was initiated for the benefit of that class of people, who had been denied their constitutional and legal rights because of their socio-economic disabilities. The aim of PIL is to give the common people of this country, access to the courts to obtain legal redress.

According to the traditional anglo-saxon concept of *locus standi*, only the person whose rights were violated could seek for judicial redress. No one could file a petition in the court on his behalf. This doctrine was evolved in an era when the courts were mainly concerned with the rights of the individual. Therefore, it has been felt that traditional interpretation of *locus standi* should be changed to bring justice within the reach of the poor masses. According to the new interpretation of this doctrine, when the rights of an individual or a class of persons are violated and if by the reasons of poverty or disability they cannot approach the court themselves, any public spirited person or institution, acting in good faith can move to the court for the judicial redress.

In a landmark case of '*S.P. Gupta vs. Union of India*' popularly called the *Judges Case*, Justice P. N. Bhagwati said that major impediment in bringing the problems of under privileged before the courts was the traditional rule of *locus standi*. Rejecting the notion, he held that any public spirited individual can move the Court in case where the person concerned seeks judicial redress, provided that the person is acting in the interest of public and not for personal gain, private profit, political motivation or other considerations. Thus, the court has now done away with orthodox bar of *locus standi* and now it can be approached even by a letter which can be treated by the court as writ petition.

The first reported case of PIL was in 1979 which has focused on the inhuman conditions of prisons and undertrial prisoners. In '*Hussainara Khatoon vs. State of Bihar*', PIL was filed by an advocate on the basis of a news report highlighting the plight of thousands of undertrial prisoners languishing in various jails. It had led to a chain of proceedings, resulting in the release of over 40,000 undertrial prisoners. After this case the Supreme Court has defined the right to speedy justice as a basic fundamental right which has been denied to the prisoners.

But still, there were many who were at the whims of the legal and judicial authorities and who have paid a lot than which is expected from them. The Supreme Court has developed a '*compensatory jurisprudence*' to provide an



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amnesty for those who were victimised by justice providing authorities. The compensatory jurisprudence was most clearly articulated by the Court in 1993 in '*Nilabati Behra vs. State of Orissa*' in response to a PIL alleging death of a boy of 22 years in police custody. The Court evolved the principle of public law doctrine of compensation for violation of rights. According to this doctrine, it is the liability of the State for violation of rights. In this case, the Court awarded Rs. 1,50,000 to the mother of the boy as compensation for custodial death.

Similarly, in '*Bandhua Mukti Morcha vs. Union of India*' case one organisation dedicated to the cause of release of bonded labourers informed the Supreme Court through a letter that they conducted a survey of the stone quarries situated in Faridabad District of the State of Haryana and found that there were a large number of labourers working in these stone quarries under inhuman and intolerable conditions and many of them were bonded labourers. The petition requested for a writ to be issued in the view to end the misery, suffering and helplessness of these labourers. The Supreme Court treated the letter as a writ petition and appointed a Commission of Inquiry and ordered the release and rehabilitation of all bonded labourers. Hence, PIL has become the sole instrument of social revolution.

Judicial Activism

The Supreme Court has now realised its proper role in a Welfare State and it is using this new strategy not only for helping the poor for enforcing their Fundamental Rights but for the transformation of the whole society as ordered for a crime free society. The Supreme Court's role in making up for inefficiency of the legislature and the executive is commendable. This is the evolving Judicial Activism of the higher courts.

'Judicial Activism' is a layman's term for the role of Judiciary in initiating the policies to dispense justice. It is usually through the PIL, but the Supreme Court from time to time has given directions, passed writs and issued orders to redress the injustice either on the request or by its own.

Nevertheless, 'Judicial Activism' has been under constant criticism from other two organs of the government, the Executive and the Legislature. Though it emerged only as a result of their inefficiency or lukewarm efforts to provide justice even then they target judiciary on the legal grounds of exceeding its arena. Standing apart of the criticism it is the people who have to decide that what is wrong and what is right, and when it is the question of providing justice, the technicalities should not come in the way to foster justice. Judiciary has to act if and when time comes and other institutions failed on their respective parts.



INTEXT QUESTIONS 23.4

1. What is the primary aim of Public Interest Litigation?
2. What does the traditional anglo-saxon concept of *locus standi* mean?
3. Why is PIL called the sole instrument of social revolution?
4. Which two drawbacks of judiciary resulted into 'Judicial Activism'?
5. In which case the Court has treated a letter as a writ petition?



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23.5 HIGH COURT AND THE SUBORDINATE COURTS

The Constitution of India provides a High Court for each State. The Parliament may, however, establish a common High Court for two or more States and a Union Territory (Article 214 & 231). Similar to the Supreme Court, every High Court is also a Court of record and has the entire original and appellate jurisdiction together with the power to punish for contempt (Article 215). The Chief Justice of a High Court is appointed by the President after consulting the Chief Justice of India and Governor of the State and in case of appointment of Judges, other than the Chief Justice, the Chief Justice of the concerned High Court is also consulted.

For a person to be appointed as a Judge of the High Court he/she must:

- be a citizen of India
- have ten years of service in Judicial Office, or
- have ten years of experience as a High Court Advocate

Every High Court Judge must take an oath of office. He/she holds the office until the age of 62 years. He/she can only be removed from his office in the



Figure 23.2: High Court, Kolkatta

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same manner as provided for the removal of a Judge of the Supreme Court. After retirement, he/she is also restricted to plead before the court he retired from and subordinate courts but he/she can practice in other High Courts and the Supreme Court. Every High Court Judge is entitled to a salary and allowances as decided by Parliament or as specified in the Second Schedule of the Constitution.

After Consulting the Chief Justice of High Court, the President can transfer Judges from one High Court to the other (Article 222). He may also appoint an acting Chief Justice of the High Court and if needed, the additional and other acting Judges for a limited period of two years. Also, the Chief Justice of a High Court with the consent of the President can appoint a retired judge to sit and act as a Judge.

Every High Court shall consist of a Chief Justice and such other Judges as the President may appoint from time to time (Article 216). Each High Court has powers of superintendence over all the Courts and Tribunals except the Tribunals of Armed Forces (Article 227). When a High Court finds that any lower court has a case pending, which has a substantial question of law, then it can take the case itself for determination or decide the question and send it back to the same court for determination (Article 228).

Article 226 provides that every High Court under its jurisdiction has power to issue writs for enforcement of the Fundamental Rights or for any other purpose. By inserting the word 'any other purpose' the High Court has been given much wider power than the Supreme Court. It can issue writs in all the cases of breach of any right while Supreme Court can issue only in the breach of Fundamental Rights. But it should be remembered that the writ in cases other than those of violation of Fundamental Rights is not a normal one. It is an extraordinary remedy which can be expected in special circumstances.

Every Court has the control of its staff. The salaries and allowances of the Judges and of the High Court staff, similar to the Judges of Supreme Court are charged on the Consolidated Fund of the State. The officers and staff of High Courts are appointed by the Chief justice or other such Judge or officer as he/she may decide. The terms and conditions of services of the staff and officers of the court are decided by the rules made by Chief Justice and approved by the President (Article 229). The jurisdiction of a High Court may be extended to or excluded from a Union Territory (Article 230).

As the decisions of the Supreme Court are binding on all courts in India, similarly those declared by the High Court are binding on all subordinate courts within the State and within the territory covered by its jurisdiction.

The Governor after consulting the High Court shall appoint the District Judges. A person who has at least seven years of experience at the bar is eligible for the position of a District Judge (Article 233).

Appointments of persons other than District Judges to the Judicial Service of the State are made by the Governor in consultation with the State Public Service Commission and the High Court (Article 234).

The High Court has an entire administrative control over the District Courts and other lower Courts regarding posting, promotions and grant of leaves etc. to any person belonging to the Judicial service of a State and holding any post inferior to the post of a Judge (Article 235). Article 236 is the interpretation clause and various terms while Article 237 empowers the Governor to apply the provisions regarding Subordinate Courts to any class or classes of magistrate in the State.

Over all, Judiciary as a pillar of the democracy, shall stand firm to deliver justice for the sake of mankind. For its impartiality and responsibility it has been kept independent of the influence of the Legislature and the Executive. With the evolution of 'Judicial Activism' and its instruments like the one of PIL has given more and more responsibilities on it. But, in practical terms if the legislative and the executive shall stand accountable and responsive on their duties, then there is no requirements on the part of Judiciary to exceed its jurisdiction.

**Notes****INTEXT QUESTIONS 23.5**

1. How does the President of India appoint the Judges of the High Courts?
2. Mention any two functions of the High Court.
3. Why is judiciary called the pillar of democracy?

**WHAT YOU HAVE LEARNT**

We are having a hierarchy of Courts from Supreme Court to the High Courts and the Subordinate Courts at the lower level.

Justice should be free from any favour or influences. So, judiciary has been kept independent of legislative and executive interference.

Judiciary has been provided with the Writ jurisdiction for protection of Fundamental Right of the people. Judiciary is provided with various powers which helps it to constitute as the guardian of the Constitution.

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PIL has been evolved as an instrument of social revolution, that has helped in providing justice to the vulnerable and downtrodden.

‘Judicial Activism’ has emerged as a result of the failure of legislature and executive at their part.

The Supreme Court and the High Courts have almost all the identical powers and jurisprudence.

The Subordinate Courts and the inferior Courts have to follow the rulings of the Higher Courts, including the Staff to assist them.

**TERMINAL QUESTIONS**

1. Describe the composition of the Supreme Court with reference to the appointment of the Judges?
2. What are the grounds for the removal of the Judges of the Supreme Court? Explain the procedure of removal.
3. Explain the Jurisdiction of the Supreme Court of India.
4. What is meant by ‘Judicial Activism’ and how does it help in the redressed of injustice?
5. State with an example the role of PIL in the protection of rights of the people.
6. Explain the powers and functions of the High Court.

**ANSWER TO INTEXT QUESTIONS****23.1**

1. Thirty-One.
2. The President of India appoints the judges of the Supreme Court after consultation with such judges of the Supreme Court, he/she may deem necessary. Besides this, the Chief Justice shall always be consulted.
3. Chief Justice of India is also appointed by the President. Usually, the senior most judge of the Supreme Court is appointed as Chief Justice of India. The exception to this was the appointment of Justice A. N. Ray superseding his three senior colleagues.
4. The Law Minister, Dinesh Goswamin of the National Front government introduced a bill to set up a National Judicial Commission in 1990. It was to be constituted to make recommendations for the appointment of judges to the Supreme Court (other than the Chief Justice).
5. On the ground of ‘proved misbehavior or incapacity’



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23.2

1. The term legal right means a right recognised by law and being enforced by the State not necessarily in a Court of law.
2. The Supreme Court can grant a special leave to appeal only in case where there has been gross miscarriage of justice or where the High Court or Tribunal is found to have been wrong in law.
3. Article 32
4. Civil, Criminal and Constitutional cases.
5. A 'Tribunal' is a body of authority although not a Court, having all the attributes of a Court, which has judicial powers to adjudicate on question of law or fact affecting the rights to citizens in a judicial manner.

23.3

1. The High Court
2. Besides 'Writs', the judiciary can issue other directions and orders and use other available mechanism to protect Fundamental Rights.
3. We have a chain of courts from the Subordinate Courts to the Supreme Court. The common people first seek justice from the lower courts. In case complexity, they are free to move to the higher court and so on. This makes the hierarchy of Courts.

23.4

1. The Primary aim of 'PIL' is to bring justice within the reach of the poor masses and give them access to the courts to obtain legal redress.
2. It means that only the person whose rights were violated could seek for judicial redress
3.
 - It tends to bring justice within the reach of the poor masses.
 - It leads to speedy justice
 - It has changed the plight of thousands of under trials.
 - Any body can seek justice on behalf of these who are illiterate, poor, the down trodden.
4. (i) Inefficiency and lukewarm efforts to provide speedy justice.
(ii) Delay in justice due to excessive technicalities.
5. It was accepted in 'Bandhua Mukti Morcha vs Union of India' case related to misery, suffering and helplessness of bonded labour in Haryana.

**Notes****23.5**

1. The High Court judges are appointed by the President after consulting the chief Justice of India, Chief Justice of the State High Court and Governor of the State concerned.
2. (i) The High Court issues 'Writs' or orders for the protection of Fundamental Rights.
(ii) It hears/entertains appeal for the cases decided in subordinate courts.
3. It is pillar of democracy because
 - (i) it stands firm to deliver justice.
 - (ii) it gives the correct interpretation to the Constitutional matters.
 - (iii) it ensures public interest and promotes Welfare State.