
Unit 12: JUDICIARY

Structure

- 12.0 Objectives
- 12.1 Introduction
- 12.2 Evolution and Development of Judiciary in India
- 12.3 The Supreme Court
 - 12.3.1 Composition and Appointments
 - 12.3.2 Tenure
 - 12.3.3 Salaries
 - 12.3.4 Immunities
- 12.4 Jurisdiction of the Supreme Court
 - 12.4.1 Original Jurisdiction
 - 12.4.2 Appellant Jurisdiction
 - 12.4.3 Advisory Jurisdiction
 - 12.4.4 Review Jurisdiction
- 12.5 The High Court
 - 12.5.1 Composition of the High Court
 - 12.5.2 Jurisdiction
- 12.6 Subordinate Courts
- 12.7 Judicial Review
- 12.8 Judicial Reforms
- 12.9 Let Us Sum Up
- 12.10 Some Useful Books
- 12.11 Answers to Check Your Progress Exercises

12.0 OBJECTIVES

This unit deals with the structure, composition, jurisdiction and functions of the Indian judiciary. After going through this unit, you should be able to:

- Trace the evolution of the judicial system in India;
- Describe the composition of the courts in India;
- Explain the functions and jurisdiction of the Supreme Court, High Court and the Subordinate Courts; and
- Explain the concept of judicial review and its importance in safeguarding fundamental rights.

12.1 INTRODUCTION

In a political system based on constitutional government, the functions of rule making, rule enforcement and rule interpretation are separated into the three institutions of the legislature, the executive and the judiciary. A judiciary that is independent of and acting as a check on the arbitrary exercise of legislative and executive power is an essential feature of a constitutional government. The judiciary is also the final arbiter on what that constitution itself means. In a federal system, the judiciary also serves as a tribunal for the final determination of disputes between the union and its constituent units. Given the tremendous importance of the role and functions of the Supreme Court and the High Courts, various measures have been adopted to ensure the independence of the judiciary. Let us first trace the evolution of the modern

judicial system in India and then examine the various constitutional provisions relating to its powers and functions.

12.2 EVOLUTION AND DEVELOPMENT OF JUDICIARY IN INDIA

The development of judiciary in general can be traced to the growth of modern nation-states. This was the stage when it was assumed that power and administration of justice was prerogative of the state.

During the ancient times, administration of justice was not considered a function of the state as it was based on religious law or dharma. Most of the kings courts dispensed justice according to dharma, 'a set of eternal laws rested upon the individual duty to be performed in four stages of life (ashrama) and status of individual according to his status (varna)'. The king had no true legislative power, the power to make ordinances "on his own initiative and pleasure". Even if a law has been enacted and royally recognised, an individual to whom custom applies may disobey it on the ground that it conflicts the precepts of dharma. At the village level, the local/village/popular courts dispensed justice according to the customary laws.

However, during the medieval times, the king arrogated to himself an important role in administering justice. He was the highest judge in the land.

With the advent of the British rule in India, judicial system on the basis of Anglo-Saxon jurisprudence was introduced in India. The Royal Charter of Charles II of the year 1661 gave the Governor and Council the power to adjudicate both civil and criminal cases according to the laws of England. But it was with the Regulating Act of 1773 that the first Supreme Court came to be established in India. Located at Calcutta, the Supreme Court consisted of Chief Justice and three judges (subsequently it was reduced to two judges) appointed by the Crown and it was made a King's court rather than a Company's court. The court held jurisdiction over "his majesty's subjects" wherever the Supreme Courts were established. Supreme Courts were established in Madras and in Bombay later.

Judicial system during this period consisted of two systems, the Supreme Courts in the Presidencies and the Sadr courts in the provinces. While the former followed the English law and procedure, the latter followed regulation laws and personal laws.

Subsequently, these two systems were merged under the High Courts Act of 1861. This Act replaced the Supreme Courts and the native courts (Sadr Dewani Adalat and Sadr Nizamat Adalat) in the presidency towns of Calcutta,

Bombay and Madras with High Courts. The highest court of appeal however was the judicial committee of the Privy Council.

At this stage of development of the Indian legal system, we see the beginning of a new era in the emergence of a unified court system.

The Federal Court of India was established in Delhi by the Act of 1935. This was to act as an intermediate appellant between the High Courts and the Privy Council in regard to matters involving the interpretation of the Indian constitution. In addition to this appellate jurisdiction, the Federal Court had advisory as well as original jurisdiction in certain other matters. This court continued to function until 26 January 1950, the day the independent India's constitution came into force.

12.3 THE SUPREME COURT

The entire judicature has been divided into three tiers. At the top there is a Supreme Court, below it is the High Court and the lowest rank is occupied by session's court.

The Supreme Court is the highest court of law. The Constitution says that the law declared by the Supreme Court shall be binding on all small courts within the territory of India. Below the Supreme Court, are the High Courts located in the states. Under each High Court there are District Sessions Courts, Subordinate Courts and Courts of Minor Jurisdiction called Small Cause Courts.

Given the importance of the judiciary in a federal system resting on limited government, the Supreme Court was designed to make it the final authority in the interpretation of the Constitution. While framing the judicial provisions, the Constituent Assembly gave a great deal of attention to such issues as the independence of the courts, the power of the Supreme Court and the issue of judicial review.

12.3.1 Composition and Appointments

The Supreme Court consists of the Chief Justice of India and such other number of other judges as is provided by the law. When the Supreme Court was inaugurated, it had only eight judges. Its strength has risen to twenty five judges. The President of India, who is the appointing authority, makes these appointments on the advice of the Prime Minister and the Council of Ministers.

The Constitution stipulates in Article 124 (2) that the President shall appoint judges of the Supreme Court under his hand and seal after consultation with such of the judges of the Supreme Court as the President

may deem necessary. In the case of the Chief Justice of the India, the President shall consult such judges of the Supreme Court and of the High Courts as he may deem necessary. In spite of this clear constitutional provision, the appointment of the Chief Justice of India has become a matter of political controversy. Here it may be worth recalling the issues that were raised in 1973 when the Government of India appointed Justice SS Ray as the Chief Justice of India superseding four other judges, against the recommendations of the outgoing Chief Justice, SM Sikri.

To eliminate politics in the appointment of judges, high minimum qualifications have been prescribed. For appointment to the Supreme Court, a person should be a citizen of India, a judge of the High Court for at least five years, or should have been an advocate of High Court for at least ten years or a distinguished jurist in the opinion of the President of India.

12.3.2 Tenure

Once appointed, a judge holds office until he attains 65 years. A judge of the Supreme Court may resign his office or may be removed in case of misbehaviour or incapacity. According to the procedure laid out in the Constitution, each house of the Parliament will have to pass a resolution supported by two third of the members present and voting. The motion of impeachment against a judge was table in Parliament for the first in 1991. This involved Supreme Court Justice V Ramaswami. When an audit report revealed several irregularities committed by the judge during his tenure as the Chief Justice of the Punjab and Haryana High Court, a three man judicial committee was set up with a serving and a retired Supreme Court judge and the Chief Justice of the Bombay High Court. The Committee concluded that there had indeed been a wilful and gross misuse of official position and intentional and habitual extravagance at the cost of the public exchequer which amounted to 'misbehaviour'. Justice Ramaswami, however, maintained that there were procedural irregularities in the notice of the motion, the constitution of the committee and its functioning. The impeachment motion moved in May 1993 failed with 196 out of 401 voting for it and the remaining 205 abstaining. But accepting reality, the judge subsequently resigned.

12.3.3 Salaries

A very important element that determines the independence of the judges is the remuneration received by them. The salaries and allowances of the judges are fixed high in order to secure their independence, efficiency and impartiality. Besides, the salary, every judge is entitled to a rent-free official

accommodation. The Constitution also provided that the salaries of the judges cannot be changed to their disadvantage, except in times of a Financial Emergency. The administrative expenses of the Supreme Court, the salaries, allowances, etc., of the judges are charged on the Consolidated Fund of India.

12.3.4 Immunities

To shield judges from political controversies, the Constitution grants them immunity from criticisms against decisions and actions made in their official capacity. The Court is empowered to initiate contempt proceedings against those who impute motives to the judges in the discharge of their official duties. Even the Parliament cannot discuss the conduct of the judge except when a resolution for his removal is before it.

Check Your Progress Exercise-1

Note: I) Use the space below for your answer.

ii) Check your answer with the model answer given at the end of this unit.

- 1) What are the qualifications required for appointment as a judge of the Supreme Court?

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- 2) What is the procedure for removing a judge of the Supreme Court.?

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12.4 JURISDICTION OF THE SUPREME COURT

Article 141 declares that the law laid down by the Supreme Court shall be binding on all courts within the territory of India. The different categories into which the jurisdiction of the Supreme Court is divided is as follows: 1) Original Jurisdiction, 2) Appellate Jurisdiction, 3) Advisory Jurisdiction, 4) and Review Jurisdiction.

12.4.1 Original Jurisdiction

The Supreme Court has original jurisdiction firstly as a federal court. In a federal system like that in India, both the Union and the State governments derive their powers from and are limited by the same constitution. Differences of interpretation of the Union-States distribution of powers, or conflicts between States governments require authoritative

resolution by a judicial organ independent of both levels of government. Under Article 131, the Supreme Court is given exclusive jurisdiction in a dispute between the Union and a State or between one State and another, or between a group of States and others. When we say that the Supreme Court has an exclusive jurisdiction, we mean that no other court in India has the power to entertain such disputes. Similarly, the original jurisdiction of the Supreme Court will mean that the parties to the dispute should be units of the federation. Unlike the Supreme Courts in Australia and the United States, the Indian Supreme Court does not have original jurisdiction to decide disputes between residents of different states or those between a State and the resident of another State.

The Supreme Court also has non-exclusive original jurisdiction as the protector of Fundamental Rights. Article 32 of the Constitution gives citizens the right to move the Supreme Court directly for the enforcement of any of the fundamental rights enumerated in Part III of the Constitution. As the guardian of Fundamental Rights the Supreme Court has the power to issue writs such as Habeas Corpus, Quo Warranto, Prohibition, Certiorari, and Mandamus. Habeas Corpus is a writ issued by the court to bring before the court a person from illegal custody. The court can decide the legality of detention and release the person if detention is found to be illegal. By using the writ of Mandamus, the court may order the public officials to perform their legal duties. Prohibition is a writ to prevent a court or tribunal from doing something in excess of its authority. By the writ of Certiorari, the court may strike off an order passed by any official of the government, local body or a statutory body. Quo warranto is a writ issued to a person who authorisedly occupies a public office to step down from that office. In addition to issuing these writs, the Supreme Court is empowered to issue appropriate directions and orders to the executive.

12.4.2 Appellate Jurisdiction

The Supreme Court is the highest court of appeal from all courts in the territory of India. It has comprehensive appellant jurisdiction in cases involving constitutional issues; civil and criminal cases involving specified threshold values of property or a death sentence; and wide ranging powers of special appeals.

Article 132 of the Constitution provides for an appeal to the Supreme Court from any judgement or final order of a court in civil, criminal or other proceedings of a High Court, if it involves a substantial question of law as to

the interpretation of the Constitution. The appeal again depends upon whether the High Court certifies, and if does not, the Supreme Court may grant special leave to appeal.

Article 133 of the Constitution provides that an appeal in civil cases lies to the Supreme Court from any judgement, order or civil proceedings of a High Court. This appeal may be made if the case involves a substantial question of law of general importance or if in the opinion of the High Court the said question needs to be decided by the Supreme Court.

Article 134 provides the Supreme Court with appellate jurisdiction in criminal matters from any judgement, final order, or sentence of a High Court. This jurisdiction can be invoked only in three different categories of cases: a) if the High Court on appeal reverses an order of acquittal of an accused person and sentenced to death. b) if the High Court has withdrawn for trial before itself any case from any court subordinate to its authority and has in such a trial convicted the accused person and sentenced him to death, and c) if the High Court certifies that the case is fit for appeal to the Supreme Court.

Finally, the Supreme Court has the special appellate jurisdiction. It has the power to grant, in its discretion, special leave appeal from any judgment, decree sentence or order in any case or matter passed or made by any court or tribunal.

12.4.3 Advisory Jurisdiction

The Supreme Court is vested with the power to render advisory opinions on any question of fact or law that may be referred to it by the President. The advisory role of the Supreme Court is different from ordinary adjudication in three senses: first, there is no litigation between two parties; second, the advisory opinion of the Court is not binding on the government; finally, it is not executable as a judgement of the court. The practice of seeking advisory opinion of the Supreme Court helps the executive to arrive at a sound decision on important issues. At the same time, it gives a soft option to the Indian government on some politically difficult issues. A case in point is the controversy surrounding the Babri Masjid complex in Ayodhya. The government decided to refer aspects of the dispute to the Supreme Court for an opinion. Since there was no legal point at issue, the referral to the Supreme Court had had the potential for politicising the judiciary instead of resolving what was essentially a political problem.

12.4.4 Review Jurisdiction

The Supreme Court has the power to review any judgement pronounced or order made by it. This means that the Supreme Court may review its own judgement order.

From the above it is clear that the Supreme Court in India is far more powerful than its counterpart in the United States of America. The American Supreme Court deals primarily with cases arising out of the federal relationship or those relating to the constitutional validity of laws and treaties. The Indian Supreme Court apart from interpreting the Constitution, functions as the court of appeal in the country in matters of civil and criminal cases. It can entertain appeals without any limitation upon its discretion from the decisions not only of any court but also of any tribunal within the territory of India. The advisory jurisdiction of the Indian Supreme Court also is something absent from the purview of the American Supreme Court.

Despite these powers, the Indian Supreme Court is a creature of the Constitution and depends for the continuation of these powers on the Union legislature which can impose limitations on them by amending the Constitution. Moreover, all these powers can also be suspended or superseded whenever there is a declaration of emergency in the country.

12.5 THE HIGH COURT

The constitution provides for a High Court at the apex of the State judiciary. Chapter V of Part VI of the Constitution of India contains provisions regarding the organisation and functions of the High Court. By the provision of Article 125 which says “there shall be a High Court for each state”, every state in India has a High Court and these courts have a constitutional status.

The parliament has the power to establish a common High Court for two or more states. For instance, Punjab and Haryana have a common High Court. Similarly, there is one High Court for Assam, Nagaland, Meghalaya, Manipur and Tripura.

In case of Union Territories, the Parliament may by law extend the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from any Union Territory, or create a High Court for a Union Territory. Thus, Delhi, a Union Territory, has a separate High Court of its own while, the Madras High Court has jurisdiction over Pondicherry, the Kerala High Court over Lakshadweep, the Mumbai High Court over Dadra and Nagar Haveli, the Kolkota High Court over Andaman and Nicobar Islands, the Punjab Haryana High Court over Chandhigarh.

12.5.1 Composition of the High Court

Unlike the Supreme Court, there is no minimum number of judges for the High Court. The President, from time to time will fix the number of judges in each High Court. The Chief Justice of the High Court is appointed by the President of India in consultation with the Chief Justice of India and the Governor of the State, which in actual terms mean the real executive of the State. In appointing the judges, the President is required to consult the Chief Justice of the High Court. The Constitution also provides for the appointment of additional judges to cope with the work. However, these appointments are temporary not exceeding two years period.

A judge of a High Court normally holds office until he attains the age of 62 years. He can vacate the seat by resigning, by being appointed a judge of the Supreme Court or by being transferred to any other High Court by the President. A judge can be removed by the President on grounds of misbehaviour or incapacity in the same manner in which a judge of the Supreme Court is removed.

12.5.2 Jurisdiction

The original jurisdiction of a High Court includes enforcement of Fundamental Rights, settlement of disputes relating to the election to Union and State legislatures and jurisdiction over revenue matters. Its appellate jurisdiction extends to both civil and criminal matters. In civil matters, the High Court is either a first appeal or a second appeal court. In criminal matters, appeal from decisions of a session's judge or an additional sessions judge where sentence of imprisonment exceeds seven years and other specified cases other than petty crimes constitute the appellate jurisdiction of a High Court. In addition to these normal original and appellate jurisdictions, the Constituent vests the High Courts with four additional powers. These are:

- The power to issue writs or orders for the enforcement of the Fundamental Rights. Interestingly, the writ jurisdiction of a High Court is larger than that of the Supreme Court. It can not only issue writs not only in cases of infringement of Fundamental Rights but also in cases of an ordinary legal right.
- The power of superintendence over all other courts and tribunals except those dealing with the armed forces. It can frame rules and also issue instructions for guidance from time to time with directions for speedier and effective judicial remedy.

- The power to transfer cases to itself from subordinate courts concerning the interpretation of the constitution.
- The power to appoint officers and servants of the High Court.

In certain cases, the jurisdiction of High Courts is restricted. For instance, it has no jurisdiction over a tribunal and no power to invalidate a Central Act or even any rule, notification or orders made by any administrative authority of the Union, whether it is violative of Fundamental Rights are not.

Check Your Progress Exercise-2

Note: I) Use the space below for your answer.

ii) Check your answer with the model answer given at the end of this unit.

1) In what areas does the Supreme Court have original jurisdiction. Which area is an exclusive preserve of the Supreme Court?

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2) The writ jurisdiction of a High Courts is wider than that of the Supreme Court and can issue

writs.....

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12.6 SUBORDINATE COURTS

Under the High Court, there is a hierarchy of courts which are referred to in the Indian constitution as subordinate courts. Since these courts have come into existence because of enactments by the state government, their nomenclature and designation differs from state to state. However, broadly in terms of organisational structure there is uniformity.

The state is divided into districts and each district has a district court which has an appellant jurisdiction in the district. Under the district courts, there are the lower courts such as the Additional District Court, Sub-Court, Munsiff Magistrate Court, Court of Special Judicial Magistrate of the II Class, Court of Special Judicial Magistrate of I Class, Court of Special Munsiff Magistrate for Factories Act and Labour Laws, etc. At the bottom of the hierarchy of Subordinate Courts are the Panchayat Courts (Nyaya Panchayat,

Gram Panchayat, Panchayat Adalat etc). These are, however, not considered as courts under the purview of the criminal courts jurisdiction.

The principle function of the District Court is to hear appeals from the subordinate courts. However, the courts can also take cognisance of original matters under special status for instance, the Indian Succession Act, the Guardian Act and Wards Act and Land Acquisition Act.

The Constitution ensures independence of subordinate judiciary. Appointments to the District Courts are made by the Governor in consultation with the High Court. A person to be eligible for appointment should be either an advocate or a pleader of seven years standing, or an officer in the service of the Union or the State. Appointment of persons other than the District Judges to the judicial service of a State is made by the Governor in accordance with the rules made by him in that behalf after consultation with the High Court and the State Public Service Commission.

The High Court exercises control over the District Courts and the courts subordinate to them, in matters as posting, promotions and granting of leave to all persons belonging to the State judicial service.

12.7 JUDICIAL REVIEW

Literally the notion of judicial review means the revision of the decree or sentence of an inferior court by a superior court. Judicial review has a more technical significance in public law, particularly in countries having a written constitution, founded on the concept of limited government. Judicial review in this case means that Courts of law have the power of testing the validity of legislative as well as other governmental action with reference to the provisions of the constitution.

In England, there is no written constitution. Here the Parliament exercises supreme authority. The courts do not have the power to review laws passed by the sovereign parliament. However, English Courts review the legality of executive actions. In the United States, the judiciary assumed the power to scrutinise executive actions and examine the constitutional validity of legislation by the doctrine of 'due process'. By contrast, in India, the power of the court to declare legislative enactments invalid is expressly enacted in the constitution. Fundamental rights enumerated in the Constitution are made justiciable and the right to constitutional remedy has itself been made a Fundamental right.

The Supreme Court's power of judicial review extends to constitutional amendments as well as to other actions of the legislatures, the

executive and the other governmental agencies. However, judicial review has been particularly significant and contentious in regard to constitutional amendments. Under Article 368, constitutional amendments could be made by the Parliament. But Article 13 provides that the state shall not make any law which takes away or abridges fundamental rights and that any law made in contravention with this rule shall be void. The issue is, would the amendment of the constitution be a law made by the state? Can such a law infringing fundamental rights be declared unconstitutional? This was a riddle before the judiciary for about two decades after India became a republic.

In the early years, the courts held that a constitutional amendment is not law within the meaning of Article 13 and hence, would not be held void if it violated any fundamental right. But in 1967, in the famous *Golak Nath Case*, the Supreme Court adopted a contrary position. It was held that a constitutional amendment is law and if that amendment violated any of the fundamental rights, it can be declared unconstitutional. All former amendments that violated the fundamental rights to property were found to be unconstitutional. When a law remains in force for a long time, it establishes itself and is observed by the society. If all past amendments are declared invalid, the number of transactions that took place in pursuance of those amendments become unsettled. This will lead to chaos in the economic and political system. In order to avoid this situation and for the purpose of maintaining the transactions in fact, the past amendments were held valid. The Supreme Court clarified that no future transactions or amendments contrary to fundamental rights shall be valid. This technique of treating old transactions valid and future ones invalid is called prospective over-ruling. The Court also held that Article 368 with amendments does not contain the power to amend the constitution, but only prescribes the procedure to amend. This interpretation created difficulty. Even when there is a need to amend a particular provision of the constitution, it might be impossible to do so if the amendment had an impact on fundamental rights.

In 1970, when the Supreme Court struck down some of Mrs Indira Gandhi's populist measures, such as the abolition of the privy purses of the former princes and nationalisation of banks, the Prime Minister set about to assert the supremacy of the Parliament. She was able to give effect to her wishes after gaining two-thirds majority in the 1971 General Elections. In 1972, the Parliament passed the 25th Constitutional Amendment act which allowed the legislature to encroach on fundamental rights if it was said to be

done pursuant to giving effect to the Directive Principles of State Policy. No court was permitted to question such a declaration. The 28th Amendment act ended the recognition granted to former rulers of Indian states and their privy purses were abolished.

These amendments were challenged in the Supreme Court in the famous Kesavananda Barathi Case (otherwise known as the Fundamental Rights Case) of 1973. The Supreme Court ruled that while the parliament could amend even the fundamental rights guaranteed by the Constitution, it was not competent to alter the 'basic structure' or 'framework' of the constitution. Under the newly evolved doctrine of 'basic structure', a constitutional amendment is valid only when it does not affect the basic structure of the constitution. The second part of Article 31C (no law containing a declaration to implement the Directive Principles contained in Article 39 (b) and (c) shall be questioned) was held not valid because the amendment took away the opportunity for judicial review, which is one of the basic features of the constitution. The doctrine of basic features gave wide amplitude to the power of judicial review.

Later history shows the significant role played by this doctrine in the review of constitutional amendments. For challenging the election to Parliament of a person who holds the office of Prime Minister, the 39th Constitutional Amendment provided a different procedure. The election can be challenged only before an authority under special law made by Parliament and the validity of such a law shall not be called in question. The Supreme Court held that this amendment was invalid as it was against the basic structure of the Constitution. It argued that free and fair elections are essential in democracy and to exclude judicial examination of the fairness of the election of a particular candidate is not proper and goes against the democratic ideal that is the basis of our constitution.

In a later case, the Minerva Mill Case, the Supreme Court went a step ahead. The 42nd Constitutional Amendment of 1976, among other things, had added a clause to Article 368 placing a constitutional amendment beyond judicial review. The Court held that this was against the doctrine of judicial review, the basic feature of the constitution.

One of the limits on judicial review has been the principle of *locus standi*. This means that only a person aggrieved by an administrative action or by an unjust provision of law shall have the right to move the court for redressal. In 1982, however, the Supreme Court in a judgement on the

democratic rights of construction workers of the Asian Games granted the Peoples Union of Democratic Rights, the right of Public Interest Litigation (PIL). Taking recourse to epistolary jurisdiction under which the US Supreme Court treated a post card from a prisoner as petition, the Supreme Court of India stated that any 'public spirited' individual or organisation could move the court even by writing a letter. In 1988, the Supreme Court delineated the matters to be entertained as PIL. The categories are: matter concerning bonded labour, neglected children, petition from prisoners, petition against police, petition against atrocities on women, children, Scheduled Castes and Scheduled Tribes, environmental matters, adulteration of drugs and foods, maintenance of heritage and culture and other such matters of public interest.

Since the granting of the right to PIL, what some claim to be the only major democratic right of the people of India, and granted not by the Parliament but by the judiciary, the courts have been flooded by PILs. While the flood of such litigation indicates the widespread nature of the deprivation of democratic rights, they also pose the danger of adding to the pressure on the courts that are already overloaded.

12.8 JUDICIAL REFORMS

The most striking criticism against administration of justice is the large number of pending cases and the delay in the dispensation of justice. In the early 1990s, there were more than two crore cases pending in different courts. Reasons for the piling of a large number of cases can be attributed to structural and procedural flaws in the judiciary. The availability of multiple remedies at different rungs of the judicial ladder also enables dishonest and recalcitrant suitors to abuse the judicial system. This leads to the piling up of cases as well as delay in the dispensation of justice.

Another weakness of the judicial system is cumbersome procedures and forbidding cost of justice. Suggestions for judicial reforms have come up, to help achieve a new order and bring economic, political and social justice.

In fact, the Tenth Law Commission had invited suggestions for judicial reforms. One suggestion was to reduce the workload of the Supreme Court of India which accepts nearly one lakh cases every year (whereas the US Supreme Court accepts only 100 to 150 cases of the five thousand filed). Among the suggestions to reduce the load of the Supreme Court, one was to establish a Constitutional Court to deal exclusively with constitutional matters and another was to establish Zonal Courts of Appeal in the country.

Check Your Progress Exercise-3

Note: I) Use the space below for your answer.

ii) Check your answer with the model answer given at the end of this unit.

1) What is the significance of the Keshavananda Bharati Case of 1973?

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2) What is PIL?

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12.9 LET US SUM UP

As we saw, the existing judicature in India can be traced to the British period. The Royal Charter of the Charles II (1661), the Regulating Act of 1773, the Indian High Courts Act of 1861 and the Act of 1935 are the important milestones in the evolution of modern judicial system in India. The Constitution of India has designed the Supreme Court as the highest court of law. The law declared by the Supreme Court has been made binding on all small courts, that is, the High Courts and the Subordinate courts

Given the importance of judiciary as a federal court and as a guardian of fundamental rights of the citizen, the framers of the Indian Constitution gave great deal of thought to such issues as the independence of the courts and judicial review.

Judicial review is a technique by which the courts examine the actions of the legislature, the executive and the other governmental agencies and decide whether or not these actions are valid and within the limits set by the constitution. The foundation of judicial review is (a) that the constitution is a legal instrument, and (b) that this law is superior in status to the laws made by the legislature that is itself set up by the constitution. It is now well established in India that judicial review constitutes the basic structure or feature of the Constitution of India.

12.10 SOME USEFUL BOOKS

Kirpal B.N, Desai, Subramaniam, et al (eds.) (2002), *Supreme but not infallible: Essays in Honour of the Supreme Court of India*, Oxford University Press, New Delhi

Baxi, Upendra, (1976), *Sociology of Law*, Satvahan,

Babu, D.D., (1972), *Limited Government and Judicial Review*.

Lingat, Robert (1973), *The Classical Law of India*, translated by JDM Derette, Thomson Press, New Delhi

Stokes, Eric, (1959), *The English Utilitarian & India*, Cambridge, London.

12.11 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress Exercise-1

- 1) A person to be appointment as a judge of the Supreme Court should be a citizen of India, should have been a High Court judge for at least five years, an advocate of High Court for at least ten years or a distinguished jurist.
- 2) A Supreme Court judge can be removed for misbehaviour or incapacity. Each house of the Parliament has to pass a resolution supported by two third of the members present and voting.

Check Your Progress Exercise-2

- 1) It has original jurisdiction as a guardian of Fundamental rights and as a federal court. As a federal court it has exclusive jurisdiction in disputes between the Union and a State or between one State and another, or between a group of States and others.
- 2) Not only to enforce fundamental rights but also any legal right.

Check Your Progress Exercise-3

- 1) The Supreme Court evolved the doctrine of basic structure or features of the constitution which gave wide amplitude to the power of judicial review.
- 2) PIL is a democratic right which allows any 'public spirited' individual or organisation to move the court to seek justice on behalf of the victims of state and societal forces.