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# *Indian Judiciary: Organizational structure and Jurisdiction*

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# Snapshot of the Indian Judiciary

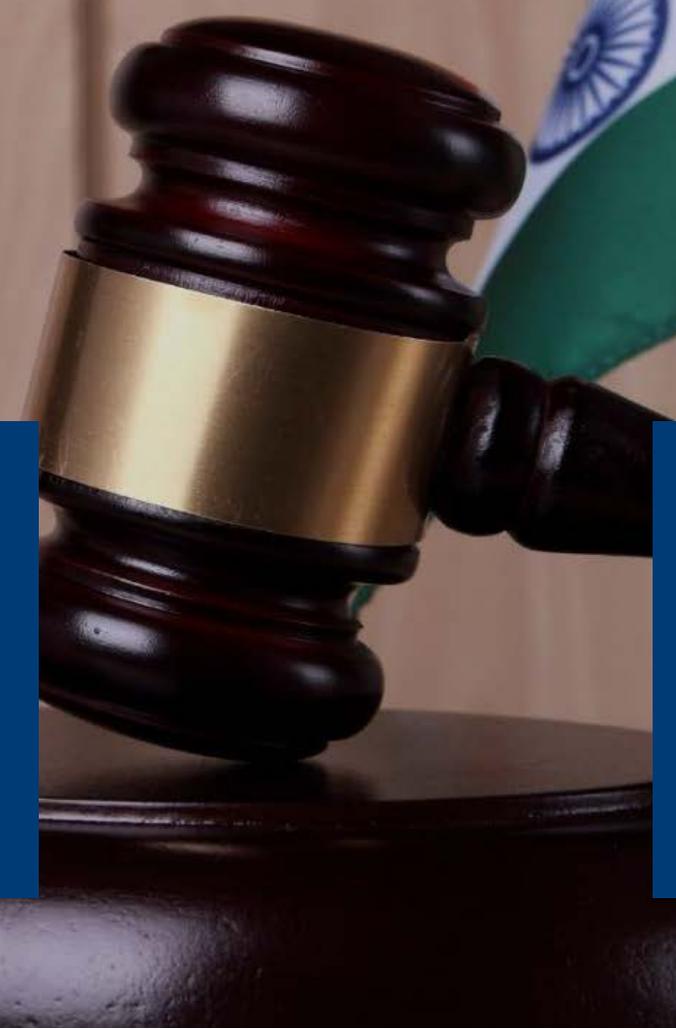
- ❖ The Indian Judiciary is an independent body divested from the executive and legislative wings of the Government of India. The judicial system is stratified into various levels as depicted in the chart below





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# Supreme Court – Powers and Jurisdiction



# Powers of the Supreme Court

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- ❖ SC consists of the Chief Justice of India and not more than twenty five other judges. Ad hoc judges for a temporary period due to lack of quorum of the permanent judges may be appointed – Article 124
- ❖ **Article 129 – Supreme Court is the court of record with the power to punish for contempt of itself**
  - Extraordinary power to punish for contempt exists for the purpose of preventing interference with the course of justice and to ensure rule of law
  - Exercise of jurisdiction is subject to the provisions of Contempt of Courts Act, 1971
- ❖ **Law laid down by the SC is binding on all courts within the territory of India - Article 141**
  - Doctrine of precedent
  - *Per incuriam* decisions do not constitute binding precedent
  - *Obiter dicta* of the Supreme Court is binding on the HCs – Persuasive value for SC
- ❖ **Curative petition** under Article 137 - Power to review judgment / pronounced or order made by it
  - ❖ Could be if it is vitiated by the non-observance of the principles of natural justice or on account of abuse of the process of the Court
  - ❖ Cannot be allowed for reappreciation of evidence.

# Original and Exclusive Jurisdiction

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- ❖ **Article 131 – Exclusive (authority to determine a case which no other court can hear or determine) and Original Jurisdiction (authority to hear and determine the case in the first instance) jurisdiction of the Supreme Court if dispute:-**
  - Between the Union and a State, or between one State and another, or between group of states and others
  - Involves any question *on which the existence or extent of legal right depends* – Disputes should be in respect of legal rights and not of political character
    - **State of Rajasthan v. Union of India (1977) 3 SCC 592** – Suit held to be maintainable under Article 131 as it sought to enforce legal rights of the State against the unconstitutional exercise of emergency powers by the President
  - Disputes excluded from Article 131
    - **Proviso to Article 131** – Article 131 does not extend to treaty, agreement, covenant, etc. executed before the commencement of the Constitution
    - Parliament may by law exclude jurisdiction of SC in state disputes on the use, distribution or control of waters of any inter-State river – Article 262.
- ❖ **Article 32** – Right to constitutional remedies - SC being the guardian of Fundamental Rights and thus has non-exclusive original jurisdiction has the power to issue writs, such as Habeas Corpus, Quo Warranto, Prohibition, Certiorari and Mandamus to protect the violation of Fundamental Rights.

## ***Appellate Jurisdiction of SC***

- ❖ The Supreme Court is the highest court and appeal lies before it from any judgment, decree or final order of High Court in the following cases:-
  - **Substantial question of law as to interpretation of the Constitution as certified by HC –** Appeal to SC against a civil, criminal or other proceeding of HC
    - Questions relating to interpretation of constitution are in a special category for their speedy determination
    - **State of J&K v. Thakur Ganga Singh AIR 1960 SC 356** - The word ‘substantial’ means a question regarding which there is a difference of opinion and not one which has been effectively decided by the SC. Thus, no substantial question of law is involved where the parties agree on the interpretation of Article 14 but disagree on the application of facts.
  - **Substantial question of law of general importance that in the HC’s opinion needs to be decided by the SC as certified by HC** - Appeal to SC against a civil proceeding of HC
  - Appeals in criminal matters without the HC certificate in certain matters and with a certificate

# Supreme Court - Other Jurisdiction

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## ***Special Leave to Appeal to SC***

- ❖ **Article 136 of the Constitution** - Discretionary power to grant special leave to appeal from any judgment, decree, determination, sentence or order in any matter passed or made by any court or tribunal
  - Power to grant special leave not confined to final orders of HC. Thus, **appeals against interlocutory orders or decisions of lower courts are also permissible.**
  - **Pritam Singh v. State; AIR 1950 SC 169** – *Generally speaking this Court will not grant special leave, unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against*

## ***Advisory Jurisdiction of SC***

- ❖ **Article 143** – Authorises the President the power to seek advice regarding any question of law or fact of public importance, or cases belonging to the disputes arising out of pre-constitution treaties and agreements which are excluded from its original jurisdiction.



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# High Court – Powers and Jurisdiction



# Powers and jurisdiction of HC

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## ***Background***

- ❖ HC for each state with every HC acting as a court of record - Article 214 & Article 215
- ❖ Every High Court shall consist of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint.

## ***Appellate Jurisdiction of High Court:***

- ❖ S. 100 of the CPC - High Court has appellate jurisdiction over both civil and criminal cases. Can hear appeal on civil cases tried by the Courts of Munsifs and District Judges. In criminal cases, the jurisdiction extends to cases tried by the Sessions and Additional Sessions Judges
- ❖ 42<sup>nd</sup> Amendment disallowed the High Court to hear appeals against Tribunals and the decisions of various Corporations established under the law of the state. But this restriction on the High Court's appellate jurisdiction was removed by the Forty Third Amendment.

## ***Supervisory Jurisdiction:***

- ❖ Article 227 confers power of superintendence on HC over all the Courts and Tribunals except those which deal with Armed Forces located in the state.

# Powers and jurisdiction of HC

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## ***Supervisory Jurisdiction (contd.):***

- make and issue general rules and prescribe forms for regulating the practice and proceeding of such courts and
- prescribe forms in which books, entries and accounts are to be kept by the officers of such courts.
- ❖ The power of superintendence, vested in the High Court, is judicial as well as administrative in nature. The High Court is thus in charge of the administration of justice in the state.
- ❖ ***Supreme Court has no similar power vis-a-vis the High Courts.***

## ***Writ Jurisdiction :***

- ❖ Article 226 – Power of the HC to issue prerogative writs, throughout the territories where it exercises jurisdiction, to any person or authority, for the enforcement of fundamental rights or for any other purposes
  - **HC as a court of equity** - Wider writ jurisdiction of the HC than the SC since the HC can issue writs not only for enforcement of fundamental rights but also for any other purpose i.e. enforcement of legal right
  - Territorial jurisdiction of the HC
    - Matter must arise within the territorial jurisdiction of the state of the HC
    - Authority or person should be within the territorial jurisdiction of the HC

# Powers and jurisdiction of HC

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## ***Writ Jurisdiction (contd):***

- Discretionary power of the HC to issue writs subject to certain principles –
  - If an alternate efficacious remedy is available to the Petitioner then the Court will not entertain writ petition under Article 226 – However, this is subject to certain exceptions like *error of jurisdiction, violation of principles of natural justice and \_\_\_\_\_* wherein alternate remedy will not act as a bar
  - Inordinate delay in filing writ petition
  - Dispute of facts
  
- ❖ Article 226 (3) – Party against whom an interim order is made in a writ petition without furnishing to such party copies of writ petition and all documents in support of the plea for interim order and without giving an opportunity of hearing to such party – such party may make an application to the HC for vacation of interim order and HC must dispose of the application within 2 weeks or in the manner specified in the n



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# Tribunals and Subordinate Courts



- ❖ 42nd Amendment Act of 1976 provided for the enactment of Art. 323A and Art.323B in the Constitution of India.
  - Art. 323A - Establishment of administrative tribunals by the Parliament by law for adjudication or trial of disputes with respect to recruitment and conditions of service and posts in connection with the affairs of the Government. Administrative Tribunals Act, 1985 was enacted to set up the Central Administrative Tribunal.
    - Vide S. 14 of the ATA – The CAT has all the jurisdiction which belonged to all courts other than the SC. Thus, civil courts or High Courts do not have jurisdiction.
    - Appeal lies to SC from orders of the Administrative Tribunal under Article 136.
  - Art. 323B - establishment of tribunals for adjudication or trial of any disputes or complaints with respect to the matters specified in Article 323 B (2) by the appropriate legislature by law.
    - ITAT,CESTAT, etc. are examples of Tribunal set up by the appropriate legislature by law
    - Such laws may exclude jurisdiction of all courts except the jurisdiction of SC under Article 136
- ❖ **Jaswant Sugar Mills v. AIR 1963 SC 677** - To determine whether an authority acting judicially was a tribunal or not, the 'principle incident' was whether it was invested with the trappings of a court, such as
  - having the authority to determine matters,
  - authority to compel the attendance of witnesses,

- ❖ **Jaswant Sugar Mills AIR 1963 SC 677 (contd.) -**
  - duty to follow the essential rules of evidence and the power to impose sanctions.
  
- ❖ **Engineering Mazdoor Sabha vs The Hind Cycles Ltd., Bombay 1963 AIR 874 -** held that the three essential requisites for a body to be a tribunal were that it had to have the trappings of a court, had to be established by the state and it had to be vested with the inherent judicial
  
- ❖ In *Madras Bar Association v. Union of India*; 2010 (261) ELT 3 (SC) – **Persons with judicial background must necessarily be a part of the constituted Tribunal**

*“.....When the legislature proposes to substitute a Tribunal in place of the High Court to exercise the jurisdiction which the High Court is exercising, it goes without saying that the standards expected from the Judicial Members of the Tribunal and standards applied for appointing such members, should be as nearly as possible as applicable to High Court Judges, which are apart from a basic degree in law, rich experience in the practice of law, independent outlook, integrity, character and good reputation. It is also implied that only men of standing who have special expertise in the field to which the Tribunal relates, will be eligible for appointment as Technical members. Therefore, only persons with a judicial background, that is, those who have been or are Judges of the High Court and lawyers with the prescribed experience, who are eligible for appointment as High Court Judges, can be considered for appointment of Judicial Members”*

# Subordinate Courts

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- ❖ Control over district courts and courts subordinate to it vests with the HC under Article 235 of the Constitution – **The control vested in the HC is a mechanism to ensure independence of the subordinate judiciary** [RS Verma v. Governor of NCT Delhi; (2011) 10 SCC 1]
  
- ❖ The highest court in each district is that of the District and Sessions Judge - Principal court of original civil jurisdiction besides the High Court of the State.
  
- ❖ The District Court or Additional District court exercises jurisdiction both on original side and appellate side in civil and criminal matters arising in the District.
  - ❖ The territorial and pecuniary jurisdiction in civil matters is usually set in concerned state enactments on the subject of civil courts.
  - ❖ On the criminal side, jurisdiction is exclusively derived from the criminal procedure code. The district court is also a court of Sessions when it exercises its jurisdiction on criminal matters under the Code of Criminal procedure.
  
- ❖ The district court has appellate jurisdiction over all subordinate courts situated in the district on both civil and criminal matters.
  
- ❖ Appeals from the district courts lie to the High Court of the concerned state.



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