

**13****INDIAN JUDICIAL SYSTEM**

The study of legal history or Judicial system consists of the chronological development and growth of a legal system which, in other words means, an analysis of the system of judicial administration prevailing in a particular country in its historical perspective. It is well known that the efficacy of judicial system, by and large, depends upon two major considerations, namely, the existence of a definite hierarchy of courts which follow a simple procedure and a well defined system of law which are uniformly applicable throughout the country. Thus 'Courts' and 'Laws' are the two very important instruments of justice. It is only through the execution of good laws that impartiality in administration of justice can be maintained. Therefore, the subject of legal history of Indian Judicial System mainly deals with the process of gradual evolution and development of "Courts" and "laws" in a chronological order.

It has been rightly said that 'law' is a dynamic concept which changes from time to time and place to place to suit the needs and conditions of a given society which is constantly changing and developing with the advancement of human knowledge and civilisation. The history of human society tells us that "the roots of the present, lie in the past." So, is also the case with the legal institutions. The Courts and laws which we have today, have taken the present shape after years of experimentation and planning. Therefore, in order to appreciate the present judicial system in India, it becomes necessary to probe into the past history of its evolution and development.

**OBJECTIVES**

After studying this lesson you will be able to:

- trace the history of the origin and development of Indian Judicial System in India;
- know the structure of Judiciary in India;
- identify the Hierarchy of Judicial System in India;

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- explain the Jurisdiction of the Supreme Court of India;
- explain the Jurisdiction of the High Courts;
- understand the working of Subordinate Courts;
- assess certain defects in the existing Judicial system in India; and
- highlight the latest judicial trends in India

13.1 PRE-BRITISH ERA

The question quite often arises as to why the beginning of legal history of India is reckoned from the advent of the British East India Company in 1600 A.D. Does it mean that there was no judicial system as such, prior to this period? Obviously the answer is 'No'. The legal and judicial history of India is as old as 5000 years from now. We have references about the existence of a well established judicial system in *Dharmasastras* which contain elaborate laws on different aspects of human conduct. The law was then a part of religion which everyone was supposed to follow meticulously. There were sanctions for the non-observance of these laws. Coming to the Hindu period in the ancient legal history of India, a well organised system of laws and courts is known to have existed for the administration of civil, criminal and revenue justice during the period of Hindu rulers, notably, King Ashok, Chandra Gupta Mourya, Harashvardhan, Kanishka etc. However, with the advent of Mughal rule in India, the Muslim rulers introduced their own laws for judicial administration within their territories whereas the Hindu kingdoms continued with their own judicial system for the administration of justice. Thus, immediately before the arrival of British East India Company, the laws and courts which were in existence in different parts of India were haphazard and had no consistency whatsoever because they mainly depended on the whims and fancies of the rulers who had their own notions of justice which radically differed from one-another. Under the circumstances, it is difficult to establish any direct link between the diverse judicial systems prevailing before 1600 A.D. and the present one. These indigenous legal systems fell into oblivion with the strengthening of the grip of British rule in India in the 17th century. It is mainly for this reason that the indigenous legal systems which prevailed prior to the introduction of British rule in India are generally excluded from the purview of the scope of study of Indian legal history or the Indian Judicial System.



INTEXT QUESTIONS 13.1

Mark True/False against the following statement.

1. "There was no Judicial System in India as such, prior to 1600 A.D."
(True/false)
2. "There existed a well established Judicial System in 'Dharamsastra' which contained elaborate laws on different aspects of human conduct." (True/False)

13.2 BRITISH ERA

The development of Indian Judicial System or legal history of India can be conveniently traced through the following phases:

13.2.1 First Phase

From the point of view of chronology, the beginning of the Indian Judicial System can be traced back to Anglo-India era when the judicial system was at its primitive stage. The British settlers established their first settlement at Surat which was an important trading centre at that time. Subsequently, similar settlements started at Bombay and Madras. The British company was entrusted with the responsibility of governing these three petty settlements in India. For the administration of these settlements, they improvised an elementary judicial system whereby they settled their mutual disputes inter-se. The notable feature of this system was that the administration of law and justice was entrusted to non-legal and non-professional Englishmen who belonged to the trading community having little knowledge of law and its procedure. As a matter of fact they were expected to follow the provisions of English Law in discharging their judicial functions, but in practice they decided cases according to their common sense and their notions of justice. The judiciary in the Presidency Towns was completely dependent and subordinated to the Executive which was the supreme administrative authority in British occupied territories in India. This position continued for about a hundred and fifty years.

13.2.2 Second Phase

The second phase of history of the Indian Judicial System commences from the establishment of the Supreme Court of Judicature at Fort William (Calcutta) under the Regulating Act, 1773 enacted by the British Parliament which is considered to be a landmark in the development of legal institutions in India. It was an English Law Court which consisted of professional English judges who were well versed in law and legal practice. There was also an English Bar to assist the Court in the administration of justice. This Court was modeled on the pattern of the Court of *Westminster* of England. The Supreme Court was completely independent of the legislature as also the executive. To some extent it even exercised some control over the executive and thus introduced in India the concept of judicial control of administrative actions. The net result was that the powers of the executive government were drastically curtailed which eventually led to hostility and frequent clashes between the Supreme Court and the Supreme Council. It was only after the Settlement Act of 1781 that the differences between these two premier institutions of the Company's government in India were resolved by making the Council independent of the Jurisdiction of the Supreme Court.



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13.2.3 Third Phase

The third phase in the evolution of the Indian Judicial System or Anglo-Indian legal history begins when the Company itself took up the administration of justice in Bengal by introducing the 'Adalat System' in the mofussils. In the initial stages, the Adalats were manned by the British executive civil servants of the Company who had no legal training. They, being primarily the executive officers of the Company's government, considered judicial work as their secondary functions of a lesser importance. However, in course of time there was separation of the judicial functions from the executive in civil matters while the administration of criminal justice still remained with the executive official called the Collector. Thus, the Collector-Magistrate played a very significant role in the civil administration and also in the criminal justice system of the Company's government in India. The Adalat System was later extended to other newly acquired territories of the Company in India.

13.2.4 Fourth Phase

The next phase of the legal history of India is marked by the unification of dual system of courts prevailing in the Presidency towns and mofussil areas into a single one with the establishment of High Courts under the High Courts Act of 1861. The judicial system of Presidency towns was essentially based on the English law having a distinct British character while the Mofussil territories outside the Presidency town had the Adalat system based on indigenous laws of Hindus and Muslims. The establishment of the High Court by abolishing the Supreme Court and Sadar Adalats of Presidency Towns was an attempt to simplify the judicial system. Therefore, as rightly suggested by Dr. M. P. Jain, "these High Courts may rightly be considered as the precursor of the modern system of law and justice in India." Initially, High Courts were established in Calcutta, Madras and Bombay which were later extended also to other Northern and Western Provinces.

13.2.5 Fifth Phase

The emergence of the 'Privy Council' as the highest Court of appeal from India, constitutes yet another important phase of development in the Indian Judicial System. It stimulated proper development of laws in India on a uniform pattern and also motivated the courts to apply high judicial standards in discharging their functions as dispensers of justice. The growth of laws became more conspicuous after 1833 with the setting up of the First Law Commission which started the process of codification of Indian laws to ensure uniformity and certainty in the administration of justice. The Second and the Third Law Commissions took in their hand the task of codification of major laws in India.

13.2.6 Sixth Phase

The Government of India Act of 1935 set up the Federal Court of India to act as an intermediate Appellant Court between High Courts and the 'Privy Council' in regard to matters involving the interpretation of the Indian Constitution. It was not to 'pronounce any judgment other than a declaratory judgment' which meant that it could declare what the law was but did not have authority to the exact compliance with its decisions. The Federal Court's power of 'judicial review' was largely a paper work and therefore, a body with very limited power.

13.2.7 Post-Independence Era

Despite the restrictions placed on it, the Federal Court continued to function till 26th January 1950, when independent India's Constitution came into force. In the meantime, the Constituent Assembly became busy drafting the basic framework of the legal system and judiciary. The members of the Constituent Assembly envisaged the judiciary as the guardian of rights and justice. They wanted to keep the judiciary independent and insulated from the coercion and pressures from other organs. 'Sapru Committee Report' on judiciary and the Constituent Assembly's Adhoc Committee on the Supreme Court report formed the bulk of the guidelines for judiciary. A.K.Ayyar, K.Santhanam, M.A.Ayyangar, Tej Bahadur Sapru, B.N.Rau, K.M.Munshi, Saadulla and Dr. B.R.Ambedkar played important role in shaping the judicial system of India.

The Unitary Judicial System seems to have been accepted with the least questioning. The Supreme Court was to have a special, countrywide responsibility for the protection of individual rights. Dr B. R. Ambedkar was perhaps the greatest apostle in the Assembly of what he described as 'one single integrated judiciary having jurisdiction and providing remedies in all cases arising under the Constitutional law, the Civil, or the Criminal law, essential to maintain the unity of the country'.



Figure 13.1: Dr. B. R. Ambedkar
Chairman Drafting Committee

With the Indian independence in 1947, the judicial system had to be modified to suit the changed conditions. The jurisdiction of the Privy Council over the Indian appeals came to an end with the establishment of the Supreme Court of India on January 26, 1950. It must, however, be stated that the pattern of judicial administration even after the independence of India, remained more or less the same. Thus, the modern judicial system is essentially the same as



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bequeathed to us by the British rulers. It has been said: “this is perhaps the best legacy that the Englishmen have left behind.”

Presently, India has a fairly advanced judicial system having a well defined hierarchy of Courts with the Supreme Court at the apex and a number of subordinate Courts below it. The laws are mostly codified having a uniform application throughout the country. The primary object of judicial administration is to ensure even-handed justice to all alike and establish Rule of Law throughout the country. It is, however, distressing to note that introduction of ‘uniform civil code’ as contemplated by Article 44 of the Constitution of India is not yet accomplished despite the Supreme Court decision in this regard.

The independence of judiciary has been well guarded by the Constitution of India and the provisions of appeal are fair to ensure justice to common man.

**INTEXT QUESTION 13.2**

1. “The Regulating Act of 1773 enacted by the British Parliament is considered to be a landmark in the development of Legal Institutions in India.”
(True/False)

13.3 MODERN JUDICIAL SYSTEM AND HIERARCHY OF COURTS

Modern Nation-States function through a set of institutions. The British Reforms helped India in its present legislative framework. The Parliament, the Judiciary and Executive apparatus such as bureaucracy and the police and the formal structure of Union –State relations as well as the electoral system are the set of institutions constituted by the idea of constitutionalism (i.e. securing the ideals of Constitution). Their arrangements, dependencies and inter-dependencies are directly shaped by the highest politico-legal document of our country - i.e., the Constitution. The legal system derives its authority from the Constitution and is deeply embedded in the political system. The presence of judiciary proves the theory of separation of powers wherein the other two organs, viz. legislature and executive stand relatively apart from it.

Parliamentary Democracy works on the principle of ‘Dvision of Power,’ and in the making of law there is direct participation of the legislature and the executive. It is only the judiciary that remains independent and strong safeguarding the interests of the citizens by not allowing the other organs to go beyond the constitutional limits. It acts, therefore, as a check on the acts of the other two

organs which might violate the Constitution, structure and powers assigned to them. Only Judiciary has the powers of interpreting the Constitution and its mandates, and the say of judiciary has to be followed by all organs.



Figure 13.2 : Parliament of India

Indian judiciary is a single integrated and unified system of Courts for the Union as well as the States, which administers both the Union and State laws, and at the head of the entire system stands the Supreme Court of India. The development of the judicial system can be traced to the growth of Modern-Nation-States and constitutionalism.



Figure 13.3 : Supreme Court of India



INTEXT QUESTIONS 13.3

1. “Indian Judiciary is a single integrated and unified system of Courts for the Union as well as the States.” (True/False)
2. “The Legal System derives its authority from the Constitution”. (True/False)



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13.4 STRUCTURE OF JUDICIARY

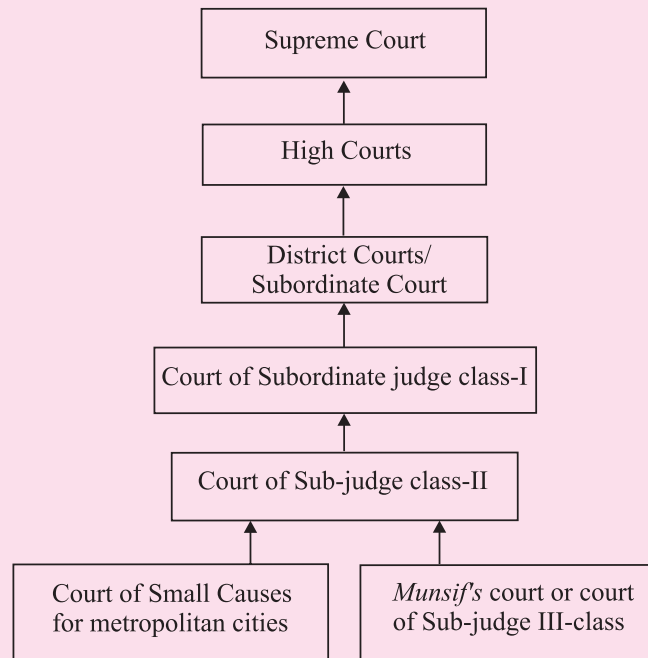
Under our Constitution there is a single integrated system of Courts for the Union as well as the States, which administer both Union and State laws, and at the head of the system stands the Supreme Court of India. Below the Supreme Court are the High Courts of different States and under each High Court there are ‘subordinate courts’, i.e., courts subordinate to and under the control of the High Courts.

At the top of the judicial system is Supreme Court of India followed by High Courts at State level. There are 21 High Courts in the Country. At the District level, there are Subordinate District Courts.

Supreme Court of India

The Supreme Court is the apex Court at national level which was established on 28th January 1950, under Article 124(1) of the Constitution of India. In this context, Article 124 (1) reads as “there shall be a Supreme Court of India consisting of the Chief Justice of India and until Parliament, by law, prescribe a large number of not more than 7 judges. “Though by 2009 Amendment, the number of judges in Supreme Court was raised to 31 including the Chief Justice. All proceedings in the Supreme Court are conducted in English. The seat of Supreme Court is in Delhi and the proceedings are open to the public.

Hierarchy of Civil Judicial System



High Courts

The highest Court in the State is the High Court constituted under Article 214 of the Constitution which reads there shall be a High Court in each State. There are at present, 21 High Courts in the Country. Each High Court comprises of a Chief Justice and such other judges as the President of India from time to time appoint.

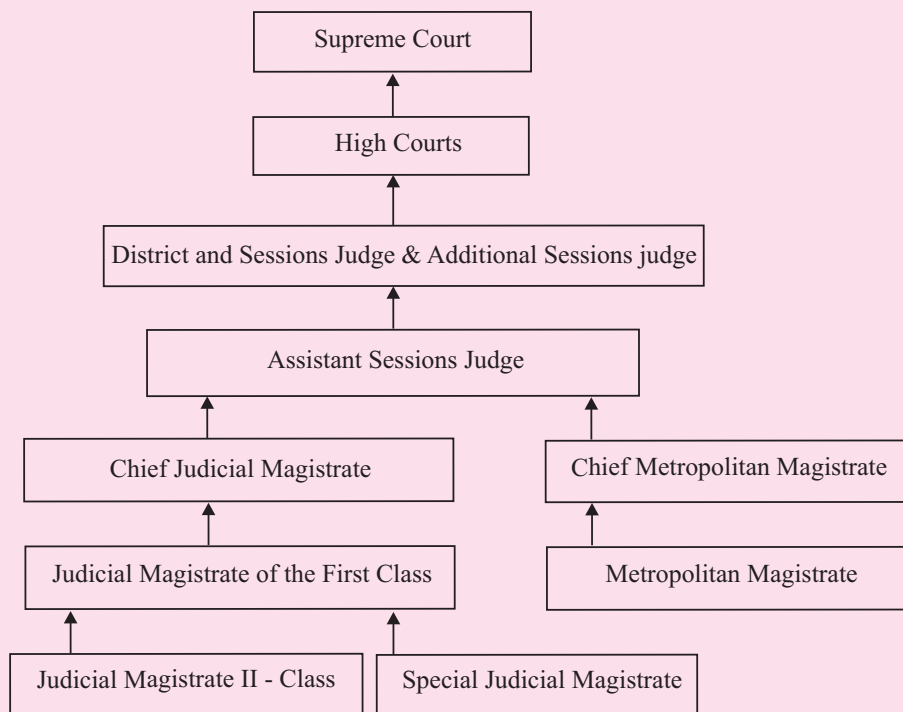
Subordinate Courts

The judicial system comprises of subordinate courts which represent the first-tier of the entire judicial structure. As a general rule, Civil cases are dealt with by one set of Hierarchy of Court known as Civil Court and Criminal cases by another known as Criminal Court. The Power of Civil courts are governed by Civil Procedure Code (CPC) and power of Criminal Court are governed by Criminal Procedure Code(Cr.pc) respectively. Following is the hierarchy chart of all civil and criminal courts in India.



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Hierarchy Chart of Civil and Criminal Courts in India



INTEXT QUESTIONS 13.4

1. The Salient feature of Indian Judiciary is that it has a single integrated and unified Judicial System. (True/False)
2. Courts in India are like a pyramid. (True/False)

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3. The Jurisdictions of Privy Council over the Indian appeals came to an end with the establishment of Supreme Court of India on January 26, 1950. (True/False)
4. The Supreme Court is the Apex Court in India. (True/False)

13.5 JURISDICTION OF THE SUPREME COURT

The Supreme Court has vast jurisdiction and its position is strengthened by the fact that it acts as a Court of Appeal, as a guardian of the Constitution and as a reviewer of its own judgements. Article 141 declares that the law laid down by the Supreme Court shall be binding on all courts within the territory of India. Its jurisdiction is divided into four categories:

- (a) **Original Jurisdiction and Writ Jurisdiction:** Article 131 gives the Supreme Court exclusive and original jurisdiction in a dispute between the Union and a State, or between one State and another, or between a group of States and others. It acts, therefore, as a Federal Court, i.e., the parties to the dispute should be units of a federation i.e. a State of India. No other court in India has the power to entertain such disputes. Supreme Court is the guardian of Fundamental Rights and thus has non-exclusive original jurisdiction as the protector of Fundamental Rights. It has the power to issue writs, such as Habeas Corpus, Quo Warranto, Prohibition, Certiorari and Mandamus. In addition to issuing these writs, the Supreme Court is empowered to issue appropriate directions and orders to the executive. Article 32 of the Constitution gives citizens the right to move to the Supreme Court directly for the enforcement of any of the Fundamental Rights enumerated in part III of the Constitution.
- (b) **Appellate Jurisdiction:** The Supreme Court is the highest Court of Appeal from all courts. Its appellate jurisdiction may be divided into:
 - (i) cases involving interpretation of the Constitution - civil, criminal or otherwise;
 - (ii) civil cases, irrespective of any Constitutional question; and
 - (iii) Criminal cases, irrespective of any Constitutional question.

Article 132 provides for an appeal to the Supreme Court by the High Court certification, the Supreme Court may grant special leave to the appeal. Article 133 provides for an appeal in civil cases, and article 134 provides the Supreme Court with appellate jurisdiction in criminal matters. However, the Supreme Court has the special appellate jurisdiction 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.

- (c) **Advisory Jurisdiction:** Article 143 of the Constitution vests the powers of the President 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. This jurisdiction does not involve a law, the advisory opinion is not binding on the government, it is not executable as a judgment of the court and the court may reserve its opinion in controversial political cases as in the 'Babri Masjid case'.
- (d) **Review Jurisdiction:** The Supreme Court has the power to review any judgment pronounced or order made by it. Article 137 provides for review of judgment or orders by the Supreme Court wherein, subject to the provisions of any law made by the Parliament or any rules made under Article 145, the Supreme Court shall have the power to review any judgment pronounced or made by it. However, the Supreme Court jurisdiction may be enlarged with respect to any of the matters in the Union List as Parliament may by law confer. Parliament may, by law, also enlarge or can impose limitations on the powers and functions exercised by the Supreme Court. Since Parliament and the Judiciary are created by the Constitution, such aforesaid acts must lead to harmonious relationship between the two, and must not lead to altering the basic structure of the Constitution. Moreover, all these powers can also be suspended or superseded whenever there is a declaration of emergency in the country.



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INTEXT QUESTIONS 13.5

Fill in the Blanks:

- The Judges of the Supreme Courts are appointed by the
(Prime Minister/President/Law Minister)
- The Judges of the Supreme Court retire at the age of
(60/62/65)
- The dispute between two or more States is brought before the Supreme Court under its Jurisdiction. (Original/appellate/advisory)
- The ultimate power of interpreting the Constitution of India lies with
(High Courts/Supreme Court/Session Courts)

13.6 HIGH COURTS

There shall be High Court for each State (Article 214), and every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself (Article 215). However, Parliament may, by law, establish a common High Court for two or more States and a Union

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Territory (Article 231). 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. Provisions for additional judges and acting judges being appointed by the President are also given in the Constitution. The President, while appointing the judges shall consult the Chief Justice of India, the Governor of the State and also the Chief Justice of that High Court in the matter of appointment of a judge other than the Chief Justice. A judge of a High Court shall hold office until the age of 62 years. A judge 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.

Jurisdiction of High Courts

The jurisdiction of the High Court of a State is along with the territorial limits of that State. The original jurisdiction of High court includes the enforcement of the Fundamental Rights, settlement of disputes relating to the election to the Union and State legislatures and jurisdiction over revenue matters. Its appellate jurisdiction extends to both civil and criminal matters. On the civil side, an appeal to the High Court is either a first appeal or second appeal.

The criminal appellate jurisdiction consists of appeals from the decisions of:

- (a) A Session Judge, or an additional Session Judge where the sentence is of imprisonment exceeding 7 years
- (b) An Assistant session judge, Metropolitan Magistrate of other Judicial Magistrate in certain certified cases other than 'petty' cases.

The writ jurisdiction of High Court means issuance of Writs/orders for the enforcement of Fundamental Rights and also in cases of ordinary legal rights. High Court also has the power to superintend over all other courts and tribunals, except those dealing with armed forces. It can also frame rules and issue instructions for guidance from time to time with directions for speedier and effective judicial remedy. High Court also has the power to transfer cases to itself from subordinate courts concerning the interpretation of the Constitution. Interpreting the Constitution means guiding the manner in which its provisions are to be applied. However, the Parliament, by law, may extend the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from, any Union Territory. High Courts' power of original and appellate jurisdiction is also circumscribed by the creation of Central Administrative Tribunals, with respect to services under the Union and it has no power to invalidate (declare void) a Central Act, rule, notification or order made by any administrative authority of the Union.

**INTEXT QUESTIONS 13.6**

Fill in the blanks.

1. The Judges of the High Court are appointed by the
(Governor/President/Prime Minister)
2. At present there are High Courts in India. (20, 21, 18)
3. The retirement age of the Judges of a High Court is years.
(60, 65, 62)

13.7 SUBORDINATE COURTS

The hierarchy of courts that lie subordinate to High Courts are referred to as Subordinate Courts. It is for the State Governments to enact for the creation of Subordinate Courts. The nomenclature of these subordinate courts differs from State to State but broadly there is uniformity in terms of the organisational structure (i.e. the hierarchy remains the same for every State at the most). Below the High Courts, there are District Courts for each district, and has appellate 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 I class, Court of Special Judicial Magistrate of II class, Court of Special Munsiff Magistrate for Factories Act and labour laws, etc. Below the Subordinate Courts, at the grass-root level, 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. District Courts can take cognizance of original matters under special status.

The Governor, in consultation with the High Court, makes appointments pertaining to the District Courts. 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 administrative 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.

**INTEXT QUESTIONS 13.7**

1. Which is the highest Criminal Court in a District?
2. Name the highest Civil Court of a District?



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**Notes****13.8 DEFECTS IN EXISTING JUDICIAL SYSTEM**

Despite many positive aspects of the Indian legal system, there are certain glaring defects in the existing Judicial system which need to be removed. A few of them are noted below:-

1. The Supreme Court and the High Courts are overburdened with appellate work which causes inordinate delay in disposal of appeals.
2. The Subordinate Courts are also overworked. That apart, they are unduly influenced by the executive quite often, which hampers the cause of impartial justice. The civil and criminal cases are prolonged due to frequent adjournments from the parties and their Counsel. The judges have a tendency to grant adjournment as a matter of routine.
3. The litigation, particularly the civil litigation, is too costly an affair and is beyond the reach of a common man. At times people are compelled to forego their legitimate claims and prefer to suffer injustice due to expensive justice.
4. Corrupt practices at the Bar and the clerical level interference in the courts, defeat the purpose of law and justice.
5. Touts and professional witnesses are seen roaming about in courts in search of their client. The ignorant and illiterate litigant fall an easy prey to their underhand tactics. This frustrates the cause of justice.
6. Many of the existing laws being more than a century old, have become obsolete and outdated. Therefore, they need to be repealed or amended.' In order to bring about uniformity and certainty in the law relating to damages, the law of torts should be codified on the pattern of American Restatement of Law of Tort.

**INTEXT QUESTIONS 13.8**

1. Enlist the main defects in the existing Judicial System in India.
2. State any three defects in the existing Judicial System.

**13.9 NEW JUDICIAL TRENDS OR DEVELOPMENTS
IN INDIAN JUDICIAL SYSTEM**

After the Indian' independence, the Supreme Court has been making strenuous efforts to reshape the Indian law to suit the needs of changing society through its judicial pronouncements some of which have assumed historic importance in recent years. To quote a few, the classic decision of the Supreme Court in *Kesawanand Bharti*, otherwise known as the Fundamental Rights case; the *Judge's Transfer case*; *Dr. Dastane Case*; *Bangalore Wafer Supply v. Rajappa*; *National Textile Worker's Union v. P.R. Ramkrishnan*, *M.C. Mehta v. Union*

of India, are only a few illustrations of the creative role of the Supreme Court of India.

More recently, the latest judicial trend of Public Interest Litigation, which during initial state Prof. Upendra Baxi prefers to call it as “Social action litigation”, which has opened new vistas for judicial activism and taking justice nearer to the common man. The Supreme Court and some of the High Courts have shown deep interest in PIL cases with a view to ameliorating the miseries and hardships of poor litigants who could not withstand the rigours of the conventional adversarial system of litigation which mostly provides relief only to rich and wealthy litigants. Besides providing relief to poor and needy litigants, the public interest litigation also provides an effective check against the governmental lawlessness and the callous and negligent attitude of the executive official by making them accountable for their lapses or arbitrary acts. It is indeed a very happy development in the legal history of the 20th century in India as it makes Indian judiciary an instrument of social justice for the welfare of the Indian people as a whole. The inception of Lok Adalats for on-the-spot disposal of cases in civil, revenue, criminal and matrimonial matters and insurance claims or motor vehicle accident cases is one more notable feature of the modern judicial system of India.

Indeed, Public Interest Litigation (PIL) as a powerful arm of the legal aid movement in India towards the end of 1970's has come into full bloom in the next two decades. Commenting on the achievements and social dimensions of the public interest litigation, the Supreme Court of India, in its decision in *P. Nallathampy Thera v. Union of India* quoted from Henry Peter Brougham and observed, “it was the boast of Augustus that he found Rome of bricks and left it of marble. But how much nobler will be the boast of the citizens of free India of today when they shall have to say that the law dearer and left it cheaper; found it a sealed book and left it a living letters found it patrimony of the rich and left it the inheritance of the poors found it the two-edged sword of craft and expression and left it the staff of honesty and a shield of innocence”. Public Interest Litigation is very helpful to the people in getting justice. It has resulted in ‘Judicial Activism’.

Again, taking a serious view of contravention of human rights and fundamental freedoms, the protection which is guaranteed in the Constitution, the Supreme Court in *Nilabati Behra v. State of Orissa*, rejecting the government's claim of sovereign immunity, ruled that the rule of Sovereign immunity is alien to the concept of guarantee of fundamental rights and there can be no question of such a defence being available in the constitutional remedy. The Court further observed, the remedy in public law has to *be more* readily available when invoked by the have-nots, who are not possessed of wherewithal for enforcement of their rights in private law, even though its exercise is to be tampered by judicial restraint to avoid circumvention of private law remedies, were more appropriate”.



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The Court in this case ordered compensation of one lakh rupees to be paid by the court to the petitioner for the custody death of petitioner's son Sumar Behera.

The origin, evolution and development of the modern Indian Judicial System is not the creation of one man or of one day. It is rather an outcome of the concerted efforts and experience of a number of able administrators who laboured patiently for generations. It further needs to be emphasised that the history of Indian System is not of a mere theoretical significance but it has a great practical value. The higher judiciary handed down cases of great legal importance which have gone a long way in shaping the judicial institutions in India. Particularly, the contribution of the Privy Council in this area deserves a special mention as most of its *decisions are followed as precedents* having a persuasive value even to this day.

**INTEXT QUESTIONS 13.9**

1. Explain the meaning of PIL.
2. Which are the two new Judicial Trends or development in Indian Judicial System?

**WHAT YOU HAVE LEARNT**

The legal and Judicial history of India is as old as 5000 years from now. From the point of view of chronology, the beginning of Indian Judicial System can be traced back to Anglo-India era when the Judicial System was at its primitive stage. The Regulating Act of 1773 enacted by the British Parliament is considered to be a landmark in the development of Indian Judicial System in India.

The Jurisdiction of Privy Council over the Indian appeals came to an end with the establishment of Supreme Court on January 26, 1950.

The salient feature of Indian Judiciary is that it has a single integrated and unified Judicial System.

The structure of courts in India is like a pyramid. The Supreme Court is the Apex Court in India. The Highest Court in the State is High Court. Then there are Subordinate Courts at District, Sub-Division and Tehsil level.

The growth, evolution and development of modern Indian Judicial System is not the creation of one man or of one day. It is rather an outcome of the concerted efforts and experience of a number of able administrators who laboured patiently for generations.



TERMINAL QUESTIONS

1. Explain the original and Appellate Jurisdiction of the Supreme Court.
2. “Supreme Court is the guardian of Indian Constitution and a protector of Fundamental Rights” Explain.
3. Discuss briefly the Original and Appellate Jurisdiction of the High Court.
5. Explain the importance of PIL in our day to day life.



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ANSWER TO INTEXT QUESTIONS

13.1

1. False
2. True

13.2

1. True

13.3

1. True
2. True

13.4

1. True
2. True
3. True
4. True

13.5

1. President
2. 65
3. Original
4. Supreme Court

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13.6

1. President
2. 21
3. 62

13.7

1. Distt. and Session Judge
2. Distt. and Session Judge

13.8

1. The main defects are
 - (i) Inordinant delay in the disposal of cases.
 - (ii) Corrupt practices at Bar and at the clerical levels in the Lower Courts.
 - (iii) The litigation is too costly and is beyond the reach of common man.
 - (iv) The existing Laws being old, have become obsolete and outdated.
 - (v) The Supreme Courts and High Courts are overburdened with appellate work.
2.
 - (i) The litigation is too costly and is beyond the reach of common man.
 - (ii) Inordinant delay in the disposal of cases.
 - (iii) Corrupt practices at the Bar and at the clerical levels in the lower courts.

13.9

1. PIL is a powerful arm of the legal aid movemnet in India. It is very helpful to the people in getting justice promptly. It has also resulted in 'judicial activism'.
2.
 - (i) Judicial Activism
 - (ii) PIL