
UNIT 2 INDIAN LEGAL SYSTEM AND ITS RELEVANCE FOR MARGINALIZED AND DISADVANTAGED GROUPS

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2.0 OBJECTIVES

The legal system in India is designed in such a way that it becomes meaningful for the citizens. The Fundamental Rights and Directive Principles of the State Policy needs to be implemented whole heartedly both by the Union and the State in a developing country like India the best possible manner. The legal system is the mechanism envisaged by the framers of the Constitution to make it happen. After reading this unit you should be able to understand:

- historical development of Indian legal system;
- the different types of courts in existence;
- the composition and powers of the different courts; and
- the rights available to the marginalised and disadvantage groups.

2.1 INTRODUCTION

The learners are exposed to the Indian legal system in a historical perspective starting with the Supreme Court with its powers and function upto the local levels Courts to show how the judiciary functions in a democratic federal system. The powers of the various courts are distributed in such a way that every citizen in this country has access to judicial system. There is a criticism that the judiciary functions in favour of the rich but this argument has been dispelled by the system of free legal aid. The newer variety of courts like Family Courts, Administrative Tribunals, Consumer Courts, Lok Adalats have been set up. The Union-State legislatures have passed various laws to protect the interests of most vulnerable groups such as women, children, dalits, adivasis, and tribals. In this chapter, we would make an attempt to look at the legal system that protects the marginalized and disadvantaged groups in the country.

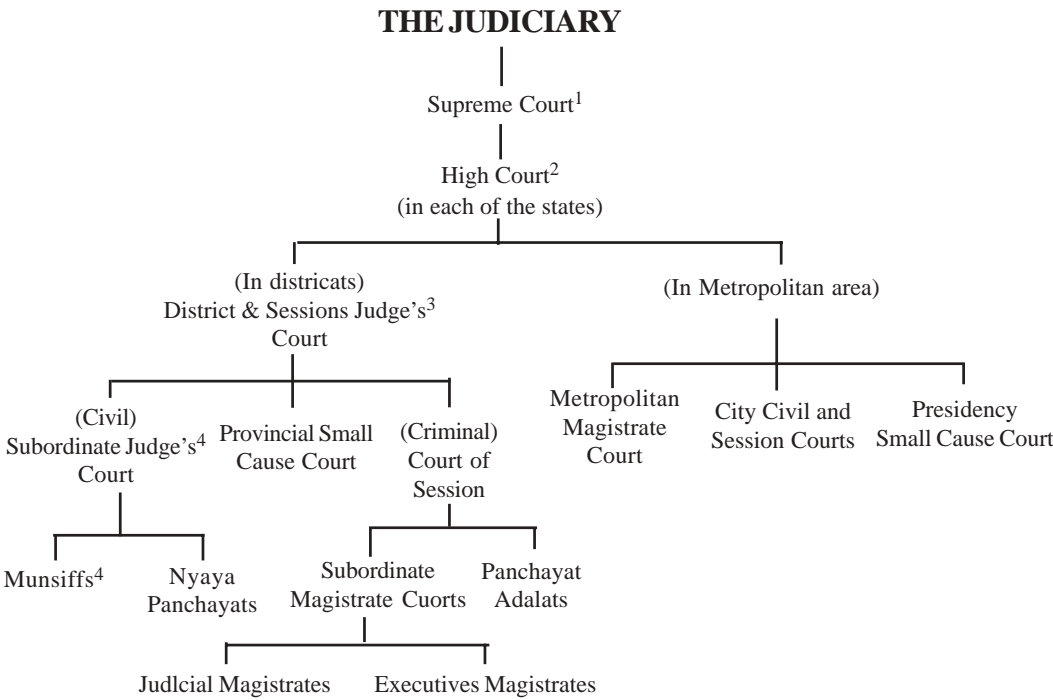
2.3 STRUCTURE OF THE INDIAN JUDICIARY AND DIFFERENT COURTS

Historical Development of Indian Legal System

Way back in 1773, there was provision for a legal member in the Governor General’s council under the Regulating Act. Since then the British rulers took interest in setting up of courts to administer criminal and civil justice. The Government of India Act of 1935 had a provision to set up a Federal Court with original and appellate jurisdiction. In 1950, the Constitution of India, provided an elaborate structure of legal system starting with the Supreme Court as an apex legal institution down upto the court at the panchayat level.

Structure of the Indian Judiciary and different Courts of Appeal

Under our Constitution, there is one unified judicial system and a hierarchy of courts with Supreme Court as the highest court of land for Union as well as the States. We have High Courts in the states and subordinate courts respectively. Besides High Courts and the courts constituted under any law, there are District and Sessions Judges courts in each district and Metropolitan magistrates in metropolitan areas. The organisation of subordinate judiciary varies from State to State, but the essential nature of the hierarchy of court is as, it is presented in the flow chart seen below.



- 1) Chief Justice and 25 other judges
- 2) At the end of 2003, there were over 536 Judges in the High Courts
- 3) At the end of 2003, there were 2107 District & Session Judges, and 1476 Senior Civil Judges and CJM
- 4) At the end of 2003, there were about 4,807 Munsif Subordinate Judges.

At the lowest stage the two branches of jurisdiction – Civil and Criminal Courts are bifurcated. The Union Court and Bench Court constituted under the Village Self Government Act which constituted the lowest Civil and Criminal courts respectively have been substituted by Panchayat Courts set up under post Constitution State legislations. The Panchayat court functions at two levels-Civil and Criminal under various regional names such as Nyaya Panchayat, Panchayat Adalat, Gram Kutchery etc. In

some States, the panchayat courts are the criminal courts of the lowest jurisdiction in respect of petty cases. The munsif courts are the next higher Civil court having jurisdiction over claims upto Rs. 1000 and Rs. 5000 in some specially empowered cases. Above the munsif courts are the subordinate judges who have got unlimited jurisdiction over civil suits and hear first appeals from the judgements of munsifs. The District Judge hears the first appeals from the decisions of the subordinate judges and also from the munsifs, and himself possesses unlimited original jurisdiction in both Civil and Criminal cases. The provincial small cause court tries suits of small value.

The District Judges are appointed by the Governor in Consultation with the High Courts. A person who is not already in government service should have at least seven years experience at the bar to become eligible for the position of a district judge. While Article 233 specifies the appointment of district judges with conditions mentioned above. Article 234 clearly mentions that recruitment of persons other than district judges to the judicial services of a state shall be made by the Governor in accordance with rules made by him in consultation, with State Public Service Commission (SPSC). Beside SPSC High Court has to be consulted in such appointment.

The District judge is the highest judicial authority in a district for both Civil and Criminal Cases who hears appeals from the decisions of the superior magistrates and also tries the more serious criminal case known as the Sessions cases. A subordinate judge is sometimes, also vested with the powers of the Assistant Sessions judge and in that case he combines in his hands both Civil and Criminal powers like a District Judge. Like the Supreme Court, each High Court is also to be court of record and of original and appellate jurisdiction with all the powers of such courts including power to punish for its contempt (Art 215). It exercises appellate jurisdiction over the district and session judges, the President magistrates and the original side of the High Court itself. There is a High Court for each of the State except Manipur, Meghalaya, Tripura and Nagaland who have the High Court of Assam as the Common High Court and Haryana who has a common High Court with Punjab at Chandigarh. The Bombay High Court is common to Maharashtra and Goa. The Supreme Court has appellate jurisdiction over the High Courts and is the highest court of the land. The Supreme Court possesses original and advisory jurisdictions.

Other Courts of Appeal

Besides the courts set up within the framework of the Constitution the following courts are set up taking into consideration the needs and interests of the people and demands of the time.

a) Administrative tribunals

The Parliament enacted Administrative Tribunals Act in 1985. Through this the Central Administrative Tribunal (CAT) was set up in November 1985, to provide speedy and expensive justice to the central government employees in respect of the service matters. Besides CAT, there are many other tribunals such as Industrial Tribunals, Motor Accident Claim Tribunals, Commercial Tribunals, Cooperative Institutional Tribunals, Commercial Tax Tribunals, etc.

The Family Court Act, 1984 aims at promoting conciliation in and securing speedy settlement of disputes relating to marriage and family affairs. These courts are to be set up in a city or town with a population of more than ten lakhs or in such other cases the State government may deem necessary.

b) Special Court

There are specific courts with focused purposes like NDPS Act for narcotic and drugs related matters, Labour Courts for labour and industrial related issues; special courts for corruption related cases or CBI affairs, or special courts for dealing with atrocities on scheduled castes and scheduled tribes. Recently, fast track courts have also been set up in some States for fast and quick disposal of legal cases.

Free legal aid: A high powered committee headed by the Retired Justice PN Bhagwati in Sept. 1980, formulated a model scheme of free legal aid for adoption by States and Union Territories. According to this scheme, every citizen whose annual income from all sources does not exceed to a certain amount is eligible for Free Legal Aid. The limitation as to income is not applicable in case of disputes where one of the parties belongs to Scheduled Castes or /Scheduled Tribes, nomadic tribes, a woman or a child.

Lok Adalat

Lok Adalats, which are voluntary agencies at present, are monitored and overseen by State legal aid and advisory boards. It is proved to be a successful alternative forum for resolution of disputes through conciliatory methods. The Legal Services Authority, 1987 has been enacted which provides a statutory footing to the legal aid movement. Under this Act the lok adalats will acquire statutory authority. Every award of the Lok Adalat will be deemed to be a decree of a civil court or order of any other court or tribunal and shall be final and binding on all the parties to the disputes.

Public Interest Litigations

Any member of the public can now initiate a proceeding on behalf of the agreed person particularly when the person is vulnerable and unable to move to the court at his or her own, either to the High Court or Supreme Court for enforcement of Constitutional rights. The philosophy behind Public Interest Litigation is ‘the right to be heard’ as mentioned in Article 32. The Supreme Court’s decisions in the Slum eviction case, Bonded labour case, Under trials case and Pollution case are significant as far as the public interest litigation is concerned.

Check Your Progress I

- Note :** a) Use the space provided for your answer.
b) Check your answer with those provided at the end of this unit.

1) What is the purpose of Family Courts?

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2.3 THE SUPREME COURT – COMPOSITION, POWERS AND FUNCTIONS

The Indian judiciary is well knit and integrated. There is one unified judicial system for the entire republic of India. The Supreme Court is at the apex of the entire judicial

system. It acts as the guardian and protector of the Constitution of India more specifically of fundamental rights. It also act as the only arbiter in matters of relations between the union and the states and the states interse.

Composition: The Supreme Court originally consisted of a Chief Justice and seven other judges (Art. 124). The strength has been increased several times by the Acts passed by the Parliament. Presently it consists of the Chief Justice of India and not more that 25 other Judges.

Appointment: The Chief Justice of India is appointed by the President in consultation with judges of the Supreme Court and the State High Courts, as he may think necessary, besides taking the advice of the Council of Ministers. As per convention the senior most judge of the Supreme Court is usually appointed as Chief Justice. The President in consultation with the Chief Justice of Supreme Court appoints the other judges of the Supreme Court. A judge takes his oath of office before the President or someone appointed by President for the purpose in the form prescribed in the constitution. The constitution through its Article 124 (6) and (7) prohibits a person holding office of Supreme Court Judge from practicing law before any court in territory of India.

Qualification : To be appointed as judge of the Supreme Court, a person must be (i) a citizen of India and (ii) must have been a judge of a High Court or of two such courts in succession for a period of five years or (iii) an advocate of High Court for at least 10 years or a distinguished jurist. There is no minimum age fixed for appointment as a judge.

Term of Office and Removal: A judge of Supreme Court continues in office until he/she attains the age of sixty-five years. However, one can resign from office earlier by addressing his resignation to the President. A judge may be removed from his office only by an order of the President on the ground of misbehaviour or incapacity but the removal is possible only through regular procedure laid down in the Constitution. If the two Houses of Parliament supported by a majority of the total membership of that House and by a majority of not less than 2/3rd of the members of each House, present and voting recommend the President for the removal of Judge from office, contrary to the common belief, there is no provision in our constitution for the impeachment of a judge.

Salary and Privileges: The Parliament is empowered to determine, by law, the salaries and other privileges of the judges. By the 54th Amendment Act, 1986, the salaries of the judges were revised. The Chief Justice gets a salary of Rs. 33,000 per month and a judge of the Supreme Court gets Rs. 30,000 per month. They are entitled to other privileges like rent free residence, traveling expenses within country, pension, etc. The salaries of the judges and other expenses of the Supreme Court are charged from the consolidated Fund of India.

Seat of the Supreme Court: The seat of the Supreme Court is at Delhi. But the Chief Justice of the Supreme Court, with the previous consent of the President can enable the Supreme Court to sit else where in India, besides Delhi.

Powers and Functions of the Supreme Court: The jurisdiction and powers of the Supreme Court are quite wide. The Supreme Court has a three-fold jurisdiction: (i) original, (ii) appellate and, (iii) advisory.

a) **Original Jurisdiction:** Original jurisdiction means the power to hear and determine a dispute in the first instance. The Supreme Court has original jurisdiction in cases, which extends to disputes: a) between the Government of India and one or more States; b) between the Government of India and any state or States on one side and

one or more States on the other; c) between two or more States, and d) disputes regarding the enforcement of fundamental rights. No other Court in India can deal any such suit. Thus the Supreme Court is a federal court.

However, this jurisdiction shall not extend to a dispute arising out of a treaty, agreement etc. which is in operation and excludes such jurisdiction. The Supreme Court's jurisdiction may also be excluded in certain other matters like inter-State water disputes (Art. 262), matters referred to the Finance Commission, (Art. 280) adjustment of certain expenses as between the Union and the States (Art. 290). State can not claim recovery of damages against the Government of India (Art. 131). The original jurisdiction of the Supreme Court also extends to cases of violation of one's fundamental rights (Art. 32). Under Art. 139A, Supreme Court may transfer cases from High Court to another in the interests of justice.

Appellate Jurisdiction: The Supreme Court is the highest court of appeal from all courts in India. It hears appeals in cases related to civil, criminal and constitutional matters. The appellate jurisdiction of Supreme Court may be divided under three heads:

- i) Cases involving interpretation of the Constitution – Civil, Criminal or otherwise
- ii) Civil cases, irrespective of any constitutional question
- iii) Criminal matters, irrespective of any constitutional question

Supreme Court accepts appeals by special leave from any judgment, decree or final order in civil proceeding if there is a substantial question of law or interpretation of constitution is required. In a criminal proceeding of a High Court, the appellate jurisdiction of Supreme Court lies as of right (a) where High Court has on appeal reversed an order of acquittal of an accused person and sentenced him to death, or (b) where High Court has withdrawn for trial before itself or High Court certifies a case fit for appeal.

Advisory Jurisdiction

The Supreme Court renders its advice on any question of law or fact of public importance referred to it for consideration by the President. The advice is not binding on the President, who may or may not accept it. The main use of this provision is to enable the Government to get an authoritative opinion as to the legal validity of a matter before action is taken upon.

Appeals can also be brought before Supreme Court under Representation of People Act, MRTP Act, Advocates Act, Contempt of Courts Act, Presidential and Vice-Presidential Act 1952.

Other Powers: Supreme Court enjoys numerous other powers such as :

- i) Article 129 declares that Supreme Court is a 'court of record'. The decisions of the Supreme Court are recorded and these form precedents for other cases of similar nature. If any person, body or institutions of the country show disrespect to the decisions of Supreme Court, it may institute 'contempt of court' proceeding against that person, body or institutions. It has the power to punish by fine and imprisonment any person guilty of contempt of its authority.
- ii) The decision of the Supreme Court is binding on all courts within the territory of India. However, the Supreme Court is not bound by its earlier decision. It can come to a different decision if it is convinced that it had made an error or harmed public interest.
- iii) The decrees and orders issued by the Supreme Court are enforceable throughout India.

- iv) The Supreme Court can make rules regarding the practice and procedure of the Court with the approval of the President.
- v) The Supreme Court can appoint its officers and public servants in consultation with the UPSC and determine their conditions of service in consultation with the President.
- vi) The Supreme Court looks into disputes regarding the election of the President and the Vice-President.
- vii) The Supreme Court can recommend the removal of the chairman and members of the UPSC to the President.
- viii) Under Article 139A (inserted by the 44th Amendment Act), the Supreme Court may transfer to itself cases from one or more High Courts if these involve questions of law or if it was of great significance. The Supreme Court may transfer cases from one High Court to another in the interests of justice.

Judicial Review

Judicial Review implies the power of the Supreme Court to decide the legality of legislation in the context of the Constitution. If any law is unconstitutional it can be declared null and void by the Supreme Court. We follow this practice as in the United States of America. The constitution being fundamental law of land must be respected and the constitution can be amended to take care of the judicial interpretation and make the law permissible.

Protection of Fundamental Rights

The Supreme Court undertakes the responsibility of safeguarding people’s fundamental rights. A person whose fundamental right have been violated by any person, body or institution, can move to the Supreme Court. The Supreme Court can enforce these rights by issuing writs of habeas corpus, mandamus, prohibition, Quo warranto and Certiorari.

Check Your Progress II

- Note :** a) Use the space provided for your answers.
b) Check your answers with those provided at the end of this unit.

1) Explain the power of judicial review enjoyed by the Supreme Court.
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2) What is meant by appellate jurisdiction?
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2.4 THE HIGH COURT

At the State level, the Constitution provides establishment of a High Court which is the highest organ of judicial administration in the State. At present, there are 21 High Courts in India, after the formalities for the creation of separate High Courts for each of the three new States – Chhattisgarh, Jharkhand and Uttaranchal. According to Art. 214 of the constitution, there shall be a High Court in each state but Article 231 empowers Parliament to establish a common High Court for two or more states. Parliament may by law constitute a High Court for a Union Territory or declare any Court in any such territory to be a High Court (Article 241). Delhi has a separate High Court, but other Union Territories come under the jurisdiction of different High Courts.

Appointment of High Court Judges: Every High Court consists of a Chief Justice and such other judges as the President may appoint from time to time. The strength of all the High Courts is not the same. The Chief Justice of the High Court is appointed by the President in consultation with the Chief Justice of India and the Governor of the State concerned. In the appointment of the other judges, the President also consults the Chief Justice of that High Court. Besides, the President has the power to appoint additional judges for temporary period or acting judges in absence of permanent judges.

Qualification: To be eligible for appointment as a judge of a High Court a person must a) be a citizen of India not being over 62 years; and must have b) held a judicial office for at least ten years; or c) should have been for at least 10 years an advocate of High Court or of two or more such courts in succession [Art. 217 (2)].

Term of Office: The judges of the High Court hold office until they attain the age of 62 years. They may resign earlier by writing to the President. A judge of the High Court may be removed by the President on the grounds of proved misbehaviour or incapacity on an address by both Houses of Parliament supported by the vote of two-thirds of members present and voting in each House. The mode of removal of a judge of High Court is the same as that of a judge of the Supreme Court. The office of a judge may also be vacated if he is appointed a judge of the Supreme Court or being transferred to any other High Court by the President.

Salary: The Chief Justice of High Court gets Rs. 30,000 per month while a judge gets the monthly salary of Rs 26, 000 besides pension, allowances, etc., as Parliament may from time to time determine, but such allowances and rights can not be varied by Parliament to the disadvantage of a judge after his appointment (Art. 221).

Independence of the Judges : The following provisions maintain the independence of the judges of the High Court.

- i) By laying down that a judge of the High Court shall not be removed except in the manner provided for the removal of a judge of the Supreme Court, on the ground of proved misbehaviour and incapacity.
- ii) By providing the expenditure in respect of the salaries and allowances of the judges to be charged from the Consolidated Fund of the State, and by specifying that the salaries, etc. shall not be varied by Parliament to their disadvantage after their appointment (except under proclamation of Financial emergency).
- iii) By laying down that after retirement a permanent judge of the High Court shall not plead or act in a court in India, except in the Supreme Court or a High Court other than the one in which he had held his office. (Art. 220)

Control of the Union: High Courts are placed under control of union in certain matters to keep them outside provincial politics. According to Article 222, the president may transfer a judge from one High Court to another after consultation with the Chief Justice of India. The Supreme Court has upheld the policy of transferring High Court judges, but the judge concerned can challenge the order by petition under Article 226 if the transfer has been made against the advice of the Chief Justice of India.

Jurisdiction and Functions of the High Court: The Constitution does not make detailed provisions relating to the general jurisdiction of High Courts, as they had existed before the Constitution was framed and had well-defined jurisdictions. Each High Court exercises power of superintendence over all the courts and tribunals within its jurisdiction (exceptions being that set by law relating to the armed forces). The High Court can take steps to ensure that the lower courts discharge their duties within the bounds of their authority. It can withdraw case pending before a subordinate court which involves a substantial question of law as to the interpretation of the Constitution and may itself decide it or determine the said question of law and return the case to court for determination.

The High Court can also transfer cases from one lower court to another lower court for disposal. Every High Court is a court of record and has all the powers of such a court, including the power to punish for its contempt. It is the highest court of appeal in the State in both civil and criminal cases. It also hears cases relating to matrimonial matters and the admiralty. A High Court Judge’s power to hear specified class of cases is derived only from the application of business by the Chief Justice.

The High Court can issue writs for the enforcement of fundamental rights under Article 226. Besides, it can issue writs even in cases where an ordinary legal right has been infringed, provided a writ is a proper remedy in such cases. In this sense the power of High Court to issue writ is wider than that of the Supreme Court whose writ jurisdiction extends to enforcement of fundamental rights alone. It extends to all cases for any other purpose where breach of right is taken place. The scope of powers to enforce fundamental rights is both protective and remedial. It can issue writs for defects of jurisdiction, non observance of the rules of natural justice, error of law apparent on the face of the record and alternative remedy.

The Governor in appointment, posting and promotion of district judges consults the High Court. It is consulted along with the State Public Service Commission, by the Governor, in appointing persons to the judicial service of the State. Control over district courts and other subordinate courts are vested in the High Courts.

Check Your Progress III

Note : a) Use the space provided for your answer.
b) Check your answer with those provided at the end of this unit.

1) How is independence of the Judges of the High Court maintained?

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2.5 INDIAN LEGAL SYSTEM AND ITS RELEVANCE FOR MARGINALIZED GROUPS

Indian legal system is quite vibrant, protective and responsive. It acts for (i) Constitutional Protection, (ii) The laws passed by the Parliament, and (iii) Judicial Pronouncements.

India, being the second most populous country in the world and being exploited by foreign rule, faces several problems. Some of the burning issues are poverty and illiteracy in India. In our present socio-political system, many groups are vulnerable, weak, deprived of their rights and exist on the margin of development processes. In past fifty years, we have made conscious efforts to protect and promote interests of marginalized groups through varied means. We begin with commitment in our constitution through fundamental rights and directive principles of state policies in order to ensure egalitarian, exploitation free and constructive environment. We have made various social legislations to protect and promote interests of marginalized groups consisting of women, children, dalits, etc. while a set of social legislations are promotive and protective, in nature, others are prohibitory against ill practices in their intent.

Constitutional and legal provisions to safeguard and to empower women: Our constitution has firm faith in equality. The challenges facing women's equality lie in patriarchal value system, social attitude and practices. The problems confronting Indian women are continuing discrimination, exploitation, low economic status, lack of political participation, illiteracy, poverty etc. There are various types of crimes committed against women such as female infanticide, dowry deaths, rape, domestic violence, sexual harassment etc. In our constitution we have made special provisions to change their conditions through the followings:

Article 14 provides equal protection before law and equal opportunity to every citizen hence no disqualification or disability on the ground of only sex.

Article 15 prohibits State to discriminate on grounds of religion, race, caste, sex or place of birth.

Article 15 (3) makes a special provision enabling the state to make affirmative discriminations in favour of women.

Article 16 provides equality of opportunity in matters of public employment.

Article 19 (1) (c) gives right to form association for all citizens.

Article 23 prohibits all forms of traffic in human beings, including women and forced labour such as prostitution.

Article 39(a) directs state to frame policy in which citizens, men and women equally, have the right to an adequate means of livelihood.

Article 39(d) assures equal pay for equal work for both men and women.

Article 39(e) health as well as strength of workers, men and women shall not be abused.

Article 42 directs the state to secure maternity relief.

Article 51A (c) by imposing a fundamental duty to renounce practices derogatory to the dignity of women.

Article 243 D-2 gives right to women, to contest elections by making reservation of seats for them in every panchayat and municipality.

Article 325 makes provision for a general electoral roll for every territorial constituency and no person shall be ineligible for inclusion in any such roll.

Article 326 provides right to vote to every citizen whether male or female who is not less than 18 years of age.

Further to check the violence against women, Criminal Law Amendment Act was passed in 1983. The crimes identified under the IPC are as follows:

- i) Rape (Section 376, IPC)
- ii) Kidnapping and abduction for different purposes (Section 363, 373, IPC)
- iii) Homicide for dowry, dowry deaths or other attempts (Section 302/304 - B, IPC)
- iv) Torture – both mental and physical (Section 498 –A, IPC)
- v) Molestation (Section 354, IPC)
- vi) Sexual harassment (Section 509, IPC)
- vii) Importation of girls (upto 21 years of age) (Section 366 - B, IPC)

Constitutional Safeguards to Protect the Adivasis or the Tribals: India has the largest tribal population in the world. Unfortunately, they are subjected to oppression, discrimination and exploitation for several centuries. They have been alienated from their own land, resources and culture by contemporary forces. They also face mass illiteracy and health problems. Thereby, the Indian Constitution has placed them under the special protection. Some the special Rights guaranteed to them are as follows:

Article 19 (5) curtails by law in the interest of any scheduled tribes, the general rights of all citizens to move about freely, settle in and acquire property.

Articles 164, 338 and the Fifth Schedule authorizes to set up Tribal Advisory Councils (TAC) and separate departments in the States for the welfare of the tribes. TAC in the States should consist of not more than twenty members of whom, nearly three-fourths shall be representatives of the scheduled tribes in the legislative assemblies of the State.

Article 244 and the Fifth and Sixth Schedules enables special provisions for the administration and control of scheduled and tribal areas.

Apart form the above constitutional guarantees there are legal measures like the Protection of Civil Rights Act 1976 which was passed to ensure their freedom, dignity, rights, and to protect from their exploration and discrimination.

Special Constitutional Provisions for the Safeguard of Dalits: The word ‘Dalit’ means ‘oppressed’, broken’, ‘downtrodden’. Dalits remain outside the caste-system. They are also known as untouchables. The Constitution calls them scheduled castes (that is, castes needing protective discrimination by the State), but ‘Dalit’ is the name the untouchables themselves have chosen because as they feel, it describes their identity best. Discrimination against dalits is one of the most common forms of social injustice in India today. In spite of the fact that the caste system has been officially banned, it is as much alive today as it was when the Constitution was proclaimed. Various articles of the Constitution dedicated for the welfare of the dalits are as follows:

Article 14 enunciates the right to equality.

Article 15 (1) prohibits discrimination on the basis of religion, race, caste, sex or place of birth.

Article 15(2) advocates removal of disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels and places of public entertainment of the use of wells, tanks, bathing ghats, roads and place of public resort maintained wholly or partially out of State funds or dedicated to the use of the general public.

Article 15 (4) states that the State can make special provisions for the advancement of any socially and educationally backward class of citizens or for the scheduled castes and the scheduled tribes.

Article 16 (4) states that the State can make provision for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the services under the State.

Article 17 forbids the practice of untouchability in any form.

Article 46 asks the State to promote with special care the educational and economic interests of the weaker sections of the community and, in particular, of the Scheduled Castes and tribes who will need to be protected from social injustice and all forms of exploitation.

Article 330, 331, 332, 333 and 334 provides for reservation of seats in the House of the People and the legislative assemblies of the states for Scheduled Castes, Tribes and representatives of the Anglo-Indian community.

Article 164, 338 and the Fifth Schedule authorize the setting up of a national commission, tribal advisory councils and separate departments at the level of states and a special officer at the Centre to look after the welfare of scheduled castes and tribes.

Article 335 stipulates that the claims of the members of the scheduled castes and tribes shall be taken into consideration while making appointments to services and posts in connection with the affairs of the Union or of a State.

Article 340 enables the government to appoint a commission to investigate the conditions of socially and educationally backward classes.

Constitutional Provisions Relating to Children

Children are another group, who are exploited and oppressed, denied of basic human rights and a dignified childhood. The legal system has reached out to their problems by the following Constitutional provisions:

Article 23 lays down that traffic in human beings and beggary and other similar form of forced labour are prohibited and any contravention of the provisions shall be an offence punishable in accordance with law.

Article 24 prohibits employment of children in factory etc. It states that, no children below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Article 39 (e) — the tender age of children should not be abused and citizen should not be forced by economic necessity to enter avocations unsuited to their age and strength.

Article 39 (f) — children should be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 45 — the state shall endeavour to provide within a period of the years from the commencement of the Constitution, for free and compulsory education for all children until complete the age of 14 years.

Since our constitution has made commitment for protection and promotions of rights of children, various laws have been passed to safeguard their childhood. A year wise details of efforts taken to provide legislative protection are discussed below:

1948 — The Factory Act 1948, raised minimum age of employment in factories to 14 years. Therefore, it declares that children can not be employed in industries.

1949 — Employment of Children (Amendment) Act 1949 also restricts employment of children below 14 years of age in establishments covered by that Act.

1951 — Employment of Children (Amendment) Act 1957, (as a result of ILO convention relating to night work by young persons) has prohibited the employment of children between 15 and 17 years at night in railways and ports and also provided for requirement of maintaining register for children under 17 years.

1951 — The Plantation Labour Act 1951 prohibited the employment of children under 12 years in plantations.

1952 — The Mines Act 1952, prohibited the employment of children under 15 years in mines. The Act stipulates two conditions for under ground work.

- i) requirement to have completed 16 years of age.
- ii) requirement to obtain a certificate of physical fitness from a Medical Officer/ Surgeon.

1958 — The Merchant Shipping Act 1958 prohibits children under 15 years to be engaged for work in any capacity in any ship, except in certain specified cases.

1961 — The Motor Transport Workers Act 1961 prohibits the employment of child under 15 years in any Motor Transport undertaking.

1966 — The Beedi and Cigar Workers Conditions of Employment Act 1966 prohibits

- i) The employment of children less than 14 years in any Industrial premises manufacturing beedies and cigars.
- ii) Person between 14 and 18 years to work at night between 7 p.m and 6 a.m.

1978 — The Employment of Children (Amendment) Act, 1978 prohibits employment of child below 15 years in occupation in railway premises such as cinder picking or cleaning or ash pit or building operations, in catering establishment and in any other work which is carried on in close proximity to or between the railway lines.

1986 — The Child Labour (Prohibition & Regulation) Act 1986. The Act prohibits the employment in seven occupations and eighteen processes which have been listed out in art A & B of the Schedule of the Act – of any person who has not completed his/her 14 years of age.

1986 — Juvenile Justice Act, 1986 recognised age of sixteen years in case of boys and eighteen years in case of girls to provide care to delinquent and neglected juveniles.

2000 — Juvenile Justice Act, 2000

Check Your Progress IV

- Note :** a) Use the space provided for your answer.
b) Check your answer with those provided at the end of this unit.
- 1) How can you justify the relevance of Indian judicial system?

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2.6 LET US SUM UP

Our Constitution has a single integrated system of courts with the Supreme Court as its head, below which stands the High Court and other subordinate courts which includes, Panchayat court, munisif courts, provincial small causes courts, magistrate courts, administrative tribunals, Family Court etc. The legal system also has provision for free legal aid, Lok Adalat and public interest litigation.

The Supreme Court is at the apex of the entire judicial system and is the guardian and protector of the Constitution of India. The Supreme Court is headed by the Chief Justice of India and it has 25 judges. The President of India appoints the other Judges in consultation with the Chief Justice. A person can be appointed as Judge of Supreme Court on following conditions : (i) must be citizen of India, (ii) must have been Judge of a High Court for at least 5 years or (iii) an advocate in High Court for at least 10 years, or (iv) must have been distinguish Jurist in the view of the President. A judge of Supreme Court continues in office upto the age of 65 and can be removed by an address of both House of Parliament (supported by majority of total membership and 2/3 of members present and voting) to the President. The Jurisdiction and powers of Supreme Court are too wide. It has three fold jurisdiction– a) Original jurisdiction– b) Appellate Jurisdiction, c) Advisory functions. President Consults the Supreme Court on public matters involving law or fact. The Supreme court is a court of record. It has judicial review as important functions. If any law is unconstitutional, it can be declared null and void by the Supreme Court. The Supreme Court also guards Fundamental Rights and enforces these by issuing writs.

The High Court is the highest court of appeal at the State level. The Chief Justice of High Court is appointed by the President in consultation with the Chief Justice of India and the Governor of the state concerned. Other Judges are appointed by the President in consultation with the Chief Justice of the High Court.

Judges of High Court must a) be a Citizen of India, b) have held judicial office for at least 10 years, c) have been advocate of a High Court or Courts for at least 10 years. They hold office till 62 years. A High Court udge like Supreme Court Judge can be removed by the President on grounds of proved misbehaviour or incapacity on an address by both Houses of Parliament supported by the vote of two-thirds of members present and voting in each House. The Chief Justice gets Rs. 30,000 per month and other Judges Rs. 26,000 besides pension, allowances etc. The High Court has following powers and functions: (i) supervision over all courts and tribunals within its jurisdiction, (ii) takes steps to ensure that the lower courts discharge their duties, (iii) dispose a case pending in the lower court, (iv) issue writs to enforce Fundamental Rights.

The Indian legal system is highly organised and discharges varied functions with its enormous powers. Being a protector and guardian of the Constitution it has within its preview special guarantees and rights to empower the marginalised sections of the country like women, children tribals, and dalits. This makes the legal system to be relevant as it is a necessity in a democratic country.

2.8 KEY WORDS

- Jurisdiction** : the limit or extent within which legal authority may be exercised.
- Contempt of court** : disregard/noncompliance of the court order.
- Tribunal** : bench constituted for specific groups vested with judicial power to provide speed justice.

2.8 SUGGESTED READINGS

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2.9 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress I

- 1) The Family Courts set up by Family Courts Act in 1984, aims to promote conciliation and securing speedy settlement of disputes relating to marriage and family affairs. These court are to be set up in a city or town with a population of more than ten lakhs or in such other cases the State government may deem necessary.

Check Your Progress II

- 1) Judicial review is an important function of the Supreme Court. If any legislation passed by the Union or State Legislature is found to be contrary to the spirit of the Constitution, the Supreme Court declares the same as null and void. It is true that the Supreme Court does not take any initiative in bringing in an Act of Parliament or of the State legislature to decide whether it is in keeping with the provisions of the Constitution or not. It is only when the legislation is challenged and sent to the Supreme Court for its opinion or judgment than the Court decides the legality or otherwise of that legislation. This type of supervision over the country's legislation is known as judicial review.
- 2) Besides original jurisdictions the Supreme Court has appellate jurisdictions also. Appeals are heard against the judgment of the High Courts or judicial Commissioner's Courts. The judgments and decisions of Supreme Court are final as it is the highest court for appeal in India. The appellate jurisdiction of the Supreme Court extends to civil, criminal and constitutional matters.

Check Your Progress III

- 1) The independence of High Court Judges are maintained:
 - By making the process of removing a judge of the High Court difficult.

- By providing the expenditure in respect of the salaries and allowances of the judges charged from the Consolidated Fund of the State, and by specifying that the salaries, other benefits etc. shall not be varied by Parliament to their disadvantage after their appointment (except under Financial emergency).
- By laying down that after retirement a permanent judge of the High Court shall not plead or act in a court in India, except in the Supreme Court or a High Court other than the one in which he has held office.

Check Your Progress IV

- 1) The various constitutional provisions guaranteed, through the Fundamental Rights and Directive Principles of State policy can justify the relevance of the Indian legal system to the marginalized sector. Several amendments and legislations have also been passed over the years to protect and promote women, children, dalits, tribals and other backward classes.