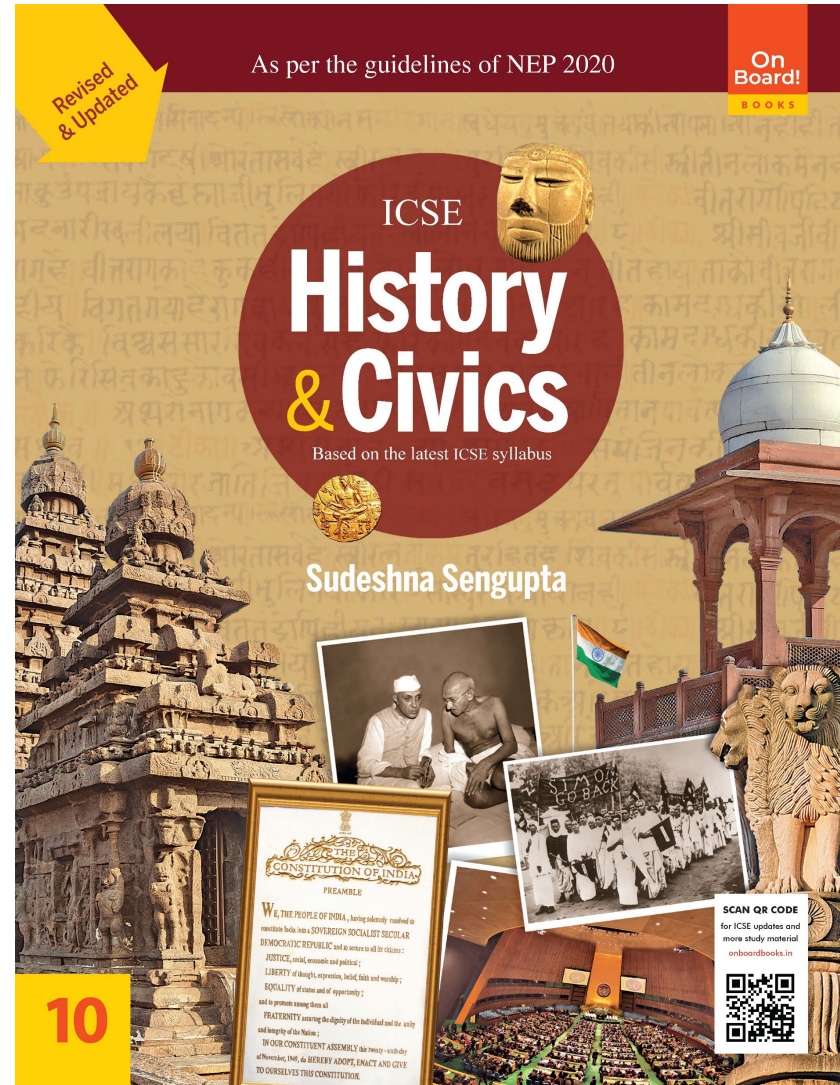


On Board!

BOOKS

ICSE History and Civics 10



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Chapter 4 The Supreme Court

The third and perhaps the most vital organ of a democracy is the judiciary. Although our political system is federal in nature with a dual set of governments, the judiciary is single and unified. Its function is to:

- administer justice in a civil society,
- interpret the laws and protect the natural rights of the citizens in this free country,
- safeguard the Constitution, and
- examine the constitutional validity of the state and Union laws.

That is why it is also called the custodian of the Indian Constitution. The Supreme Court of India thus is the final interpreter and guardian of the Constitution. It is the highest tribunal in the country and is impartial in the dispensation of justice. It is independent of the legislative and executive wings of the government. Delhi, the national capital, is the seat of the Supreme Court.

Composition

The Supreme Court (Number of Judges) Amendment Act, 2019, which received the assent of the President on 9 August 2019, increased the number of Supreme Court judges from 30 to 33, excluding the Chief Justice of India.

Qualifications

A person shall not be qualified for appointment as a judge of the Supreme Court unless:

- He/she: Is a citizen of India.
- Has been for at least 5 years a judge of a High Court or of 2 or more such courts in succession; or has been for at least 10 years an advocate of a High Court or of 2 or more such courts in succession; or is, in the opinion of the President, a distinguished jurist.

Appointment

Every judge of the Supreme Court shall be appointed by the President of India. For the appointment of the Chief Justice, the President consults those judges of the Supreme Court and the High Courts as he deems necessary. A Supreme Court ruling indicates that the senior-most judge of the Supreme Court should be appointed to the office of Chief Justice of India. In appointing the other judges, consultation with the Chief Justice is obligatory.

Independence and impartiality of the judges of the Supreme Court

- Though the President is the appointing authority, he often has to consult the Chief Justice of India and other senior judges whenever required.
- A judge of the Supreme Court cannot be removed except on a joint address by both the Houses of the Parliament on grounds of proved misbehaviour or incapacity.
- The salaries and other allowances of the judges as well as the staff of the Supreme Court shall be charged on the Consolidated Fund of India and cannot be put to vote in the Parliament.
- The conduct of a judge of the Supreme Court cannot be discussed in Parliament except in case of the motion of an address to the President for removal.
- After retirement, a judge of the Supreme Court cannot plead or sit in any court or before any authority within the territory of India.

Term

No minimum age is prescribed nor is there any fixed period of office.

But once appointed, a judge shall continue till any one of the following happens:

- Attains the age of 65 years.
- Resigns by sending a letter to the President.
- Is removed by the process of impeachment.

Oath of office

Every judge has to take the oath of true faith and allegiance before entering upon the office in the Supreme Court. He also promises to uphold the integrity and sovereignty of the country and perform his duties without any fear or favour.

Salary and emoluments

The Chief Justice and the other judges are paid such salaries as may be determined by Parliament from time to time. At present, a judge gets a salary of Rs 2.5 lakhs per month, while the Chief Justice gets Rs 2.8 lakhs besides a rent-free accommodation.

Impeachment

The process involves a motion of address being passed by a special majority of each House of Parliament, i.e. by a majority of the total membership of that House and by a majority not less than two-thirds of the members of that House present and voting.

- A motion addressed to the President signed by at least 100 members of the Lok Sabha or 50 members of the Rajya Sabha is given to either the Speaker or the Chairman.
- This motion is then investigated by a committee of two judges of the Supreme Court and a distinguished jurist.
- If the committee finds the motion acceptable, it is given to the initiating House for consideration.
- After it is passed in each House by the majority mentioned above, it is presented to the President.
- The judge will be removed after the President gives his order for removal.

JURISDICTION OF THE SUPREME COURT

Jurisdiction refers to the scope of authority of the Supreme Court to carry out judgements and enforce laws.

Original jurisdiction

The original jurisdiction empowers the Supreme Court to hear and decide certain cases in the first instance, i.e. these cases cannot be heard in any other court. These cases are:

- A dispute between the Government of India and one or more states.
- Dispute between two or more states.
- Dispute between the Government of India and any state or states on one side and any other state or states on the other side.

Apart from the these cases, the Supreme Court enjoys original jurisdiction in cases where:

- It is empowered to issue directions, orders or writs for the enforcement of Fundamental Rights.
- It has to determine the constitutional validity of the laws passed by the Union Government.
- It has to enquire into and decide all disputes, if any, in connection with the election of the President and the Vice President of India.

Appellate jurisdiction

The Supreme Court is the highest court of appeal in India. The appellate jurisdiction covers three types of cases involving the interpretation of the Constitution—civil, criminal or otherwise.

Civil cases

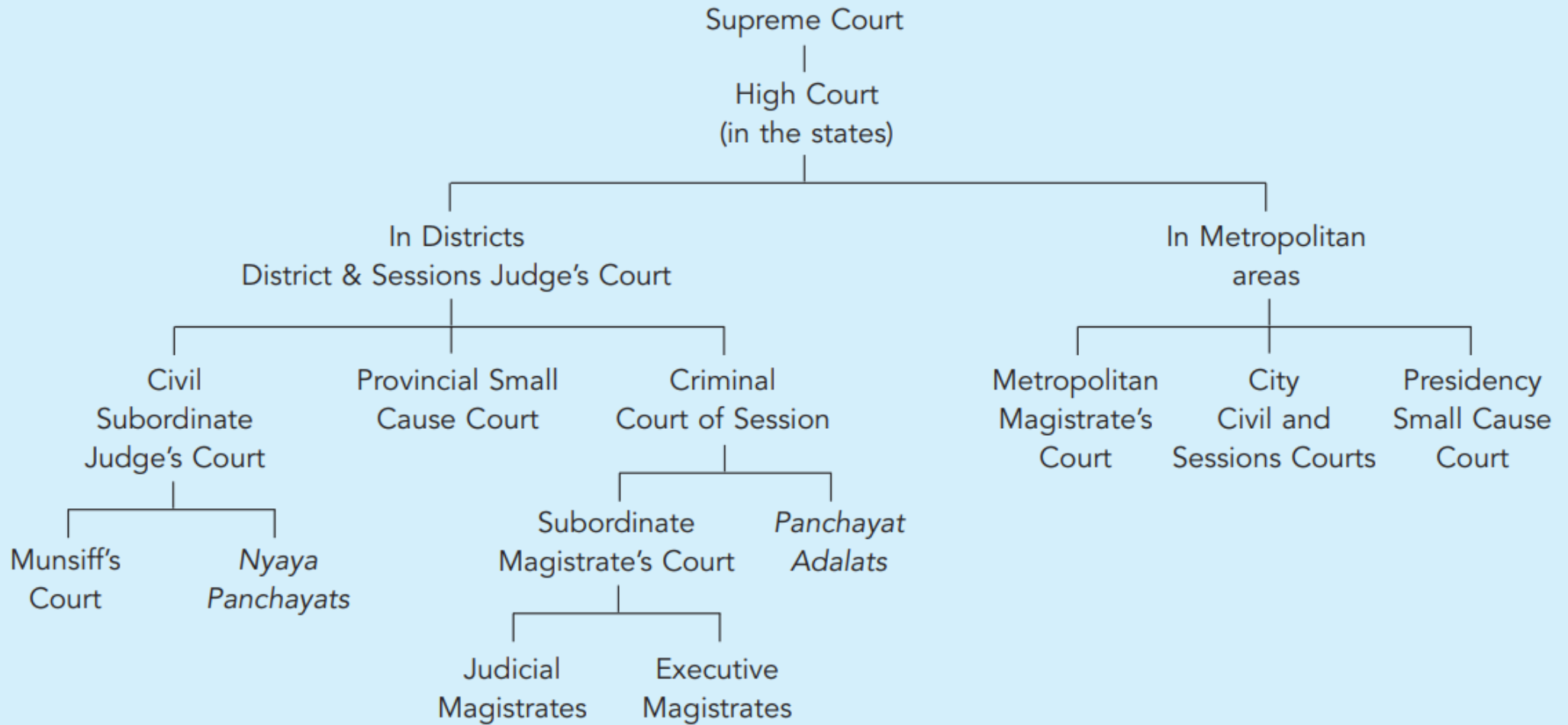
- Where the case involves a substantial question of law as to the interpretation of the Constitution, then an appeal shall lie to the Supreme Court.
- Where the High Court has refused to grant such a certificate but the Supreme Court is satisfied that a substantial question of law as to the interpretation of the Constitution is involved.
- In cases where no constitutional question is involved, an appeal shall lie to the Supreme Court if the High Court certifies that
 - The case involves a substantial question of law of general importance.
 - As per the High Court, the said question should be decided by the Supreme Court.

Criminal cases

- Where the High Court has, on appeal, reversed an order of acquittal of an accused and sentenced him to death.
- The High Court has withdrawn for trial before itself any case from any court subordinate to its authority and convicted the accused to death.
- If the High Court certifies that the case is fit for appeal as it involves a substantial question of law regarding the interpretation of the Constitution.

Supreme court has a special power, which is to be exercised under exceptional circumstances, for example, where there has been a violation of the principles of natural justice, and grave injustice has been done and the case shows sufficient gravity to warrant a review of the decision appealed against.

THE JUDICIARY



Advisory jurisdiction

Matters which call for Supreme Court to exercise its advisory jurisdiction are:

- If the President considers that a question of law is of public importance, then the opinion of the Supreme Court is sought.
- Disputes arising out of pre-constitutional treaties and agreements, which are not a part of the original jurisdiction. Article 138 of the Constitution states that the Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer.

Constitutional cases

In constitutional cases arising out of different interpretations of Constitution in matters like Fundamental Rights, an appeal can be made to the Supreme Court only if a High court certifies that the matter in dispute involves a substantial question of law.

POWERS AND FUNCTIONS

As the protector of the Constitution, the Supreme Court has the power to issue writs (orders or directions) for the enforcement of Fundamental Rights.

- *Habeas Corpus* in Latin means, 'you may have the body'. These are directions given by the court to a person who has detained another, ordering him to produce that person in court within 24 hours to inquire into the cause for detention. If the court is satisfied that the detention order is illegal, the detainee is immediately released.
- *Mandamus* in Latin means 'we command'. These are in the form of directions by the court commanding a subordinate court, a person or a public body to perform its or his/her duty.

- *Prohibition* is issued to prevent an inferior court from exceeding its jurisdiction. This is a preventive measure to avoid a mistake being committed.
- *Certiorari* means, 'to be fully informed of'. This writ ensures that the subordinate courts do not usurp the jurisdiction.
- The Supreme Court or the High Court directs *quo warranto* order against a person who has wrongfully usurped an office. This writ enquires into the legality of the claim asserted to a public office and to take action if the claim is found to be unjustified.

Court of record

The judgements of the Supreme Court are recorded as evidence and for future testimony. They are not questioned when produced as precedents. The judgements are referred to by the lower courts as and when they deem necessary. They have the force of law and are binding on all lower courts including the High courts.

A federal court

As the highest federal court, the Supreme Court has the power to settle any dispute regarding distribution of power between the Union and the states. The Supreme Court also has the power to punish for 'contempt of itself.' The Supreme Court also has the following administrative functions to fulfil:

- Appointing the ancillary staff of officers and servants.
- Rules are made for the conduct of advocates and others appearing before it.
- Transfer of judges is made by the Chief Justice with the recommendation of 4 senior-most judges

Judicial review

Judicial review is the power of the Supreme Court to examine the validity of the laws passed by the Union and the states. The Supreme Court can declare any law that contravenes any provisions of the Constitution 'ultra vires' or null and void. It is on the basis of the power of judicial review that the Supreme court is called 'guardian of the constitution.' In India, the notion of judicial review centres around the concept of 'procedure established by law' which means that a law should be duly enacted in accordance with the provisions of the Constitution.

Procedure

The Supreme Court exercises this power when a complaint is made alleging a certain law to be contrary to the Constitution. If proved, that law becomes inoperative.

Significance

The power of the Supreme Court to issue writs for the enforcement of the Fundamental Rights forms the very basis of judicial review. It would be pointless to enshrine Fundamental Rights in a written constitution if they were not enforceable in courts of law. This power exercised by the courts as sentinels of the Constitution and law is a basic feature of the Constitution.

Though the Parliament can amend the Constitution, the scope and significance of judicial review as the ultimate protector of rights and freedom of citizens should never be undermined in the interests of democracy.

To Remember

Introduction – Judiciary is the third and the most vital organ of democracy, the Supreme Court stands at the apex of this hierarchical structure.

The Supreme Court – Appointment: Judges appointed by the President of India, Qualification: A Supreme Court judge should be a citizen of India, should have served as a High Court Judge for 5 years, should be a distinguished jurist, should be an advocate for 10 years, Term: No minimum age, can be impeached by Parliament, Impeachment: A Supreme Court judge can be impeached on grounds of proven misbehaviour or incapacity, the impeachment is a rigid process, Salary: Charged on the Consolidated Fund of India, Independence and impartiality of the judges: Conduct of judges cannot be discussed by the legislators, a Supreme Court judge shall not plead in any court after retirement.

Jurisdiction – Original jurisdiction: It empowers the Supreme Court to hear and decide cases like inter-state disputes and so on, Appellate jurisdiction: The Supreme Court is the highest court of appeal, it covers cases involving the interpretation of the Constitution, Advisory jurisdiction: If a question of law is of public importance, then the opinion of the Supreme Court is sought.

Powers and functions – Guardian of the Constitution: The Supreme Court has the power to issue writs for the enforcement of the Fundamental Rights, Court of record: Judgements of the Supreme Court are recorded as evidence and future testimony, A federal court: The Supreme Court has the power to settle any dispute regarding distribution of power between the Union and states, Judicial review: This empowers the Supreme Court to act as the protector of rights and freedom in democracy.

Thank You