

Chapter 1 : INDIAN JUDICIARY - CLAT Legal Aptitude Study Material 5

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The Supreme Court has three kinds of jurisdiction, namely i Original; ii Appellate, and iii Advisory. The Supreme Court is empowered to decide all disputes between the Union and one or more States. It is empowered to issue directions or orders of writs including those in the nature of writs of habeas corpus, mandamus, prohibition, quowarrant and certiorari, whichever may be appropriate, to enforce the fundamental rights. The Supreme Court hears appeals from any judgement passed by a High Court and which involves a substantial question of law as to the interpretation of the Constitution. The appeals for civil and criminal cases arising from the judgements of High Courts lie with the Supreme Court. However in case of a civil suit appeal, the case must involve a substantial question of law of general importance. It has jurisdiction over all courts and tribunals in India and can grant special leave to appeal against any judgement made by these courts and tribunals. The President can seek the opinion of Supreme Court on important questions of law and fact. The Supreme Court shall have the power to make rules for its working, subject to the laws made by the parliament in this regard. The minimum number of Judges to decide an issue involving the interpretation of the constitution or any Presidential reference is five. Judicial Review, as emphasised in the Indian Constitution, represents the competence of the Supreme Court to act as the guardian and protector of fundamental rights as also the institutions which are set up under the Constitution. The Judiciary, in other words, has been assigned the role of preventing the executive and the legislature from violating the rights and freedoms guaranteed to the citizen. It has the power to nullify an executive order or an Act passed by the Parliament or by a State legislature, by declaring in ultra vires of the Constitution or an act as not authorized by law. Attorney General of India: The Constitution provides for the appointment by the President of a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney-General for India. The Attorney-Genral holds office during the pleasure of the President. He gives expert legal advice to the Government of India and performs such duties of legal character as are assigned to him. He has right of audience in all courts in India and can take part in the proceedings of either House of Parliament but he is not entitled to vote. A High Court consists of the chief Justice and some other judges. The Judges can serve upto the age of 62 years, unless they resign or are removed by the President of India on a representation by both the Houses of Parliament in the prescribed constitutional manner. It is the same as the case of a judge of Supreme Court. Qualifications for High Courts: To be a judge of a High Court a person must: The Chief Justice draws a salary of Rs. They also get pension and other retirement benefits. Powers of High Courts: The High court is mainly a Court of Appeal. It can hear appeals in both civil and criminal cases. A person can appeal to the High Court to protect his Fundamental Rights. The High Court controls and supervises the working of the lower courts. The High court is empowered to issue to any person or the Government within its jurisdiction, orders or writs, including writs which are in the nature of habeas corpus, mandamus, prohibition, quo-warrant to and certiorari. The High Courts have powers of superintendence over all subordinate courts and tribunals within their jurisdiction. The Advocate General is appointed by the Governor. Transfer of Chief Justice: Appointment of officers and staff: Officers and servants of the High court are to be appointed by the Chief Justice. The expenses of High court will be charged on the Consolidated Fund of the state. Subject to minor local variations, the structure and functions of the subordinate courts are more or less uniform throughout the country. Each State is divided into a number of districts, each under the jurisdiction of the principal civil court provided over by a district judge. Subordinate to him is a hierarchy of different grades of civil judicial authorities. The court of the District Judge is the highest Civil Court in a district. When a Judge decides a civil cases, he is called the District Judge and when he deals with criminal cases he is called the Sessions Judge, appointed by the Governor in consultation with the Chief Justice of the state. For criminal cases, District Magistrate and Sub Magistrates in the districts and taluk centers respectively. In cities they are called Metropolitan Magistrates.

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