

CUET · POLITICAL SCIENCE · CLASS XI · CODE 323

Judiciary

CUET unit: Indian Constitution at Work — Organs of Government
(Judiciary)

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Snapshot

- Establishes the judiciary as a key organ of government that protects the Constitution, fundamental rights, and the rule of law (NCERT Introduction, p. 124).
- Explains **why** India needs an independent judiciary and the constitutional devices used to insulate judges from political pressure — appointment, tenure, salary, contempt power (NCERT pp. 125-126).
- Maps the single integrated pyramidal court structure (SC > HC > District > Subordinate) and details the four jurisdictions of the Supreme Court — Original, Writ, Appellate, Advisory (NCERT pp. 130-133).
- Covers Judicial Activism via Public Interest Litigation (PIL/SAL) from 1979 onwards, with landmark cases (Hussainara Khatoon, Sunil Batra) (NCERT pp. 134-137).
- Traces the Judiciary–Parliament tussle over property rights and amending power, culminating in the Kesavananda Bharati (1973) basic structure doctrine (NCERT pp. 140-143).

Detailed Notes

2.1 Core concepts

The judiciary is one of the three organs of government, and the Supreme Court of India is one of the most powerful courts in the world; since 1950 it has interpreted and protected the Constitution, ensured that democracy does not slide into individual or group dictatorship, and made certain that the powers of the legislature and the executive are exercised within constitutional limits (NCERT Introduction, p. 124). The principal role of the judiciary is to protect the **rule of law** — the principle that all individuals, rich or poor, men or women, forward or backward castes, are subject to the same law (NCERT §"Why do we need an Independent Judiciary", p. 125). This is essential for democracy because the judiciary acts as the impartial umpire when disputes arise between citizens, between citizens and government, or between the Union and the States.

Independence of the judiciary has three closely linked meanings: first, the other organs of government must not restrain the judiciary's functioning; second, they must not interfere with its decisions; and third, judges themselves must act without fear or

favour. Importantly, independence does NOT imply arbitrariness or absence of accountability — the judiciary is accountable to the Constitution, to democratic traditions and to the people of the country (NCERT pp. 125–126). The Constitution secures independence through a careful set of devices: (a) the legislature is largely kept out of the appointment of judges; (b) judges enjoy fixed tenure with security till retirement; (c) the removal procedure is very difficult; (d) salaries and allowances of judges are not subject to legislative approval; (e) the court enjoys the power of contempt of court, protecting judges from unfair criticism; and (f) Parliament is barred from discussing the conduct of judges except during a removal motion (NCERT p. 126).

Appointment of judges is itself part of the political process. By convention the senior-most Supreme Court judge becomes the Chief Justice of India (CJI), but the convention was broken twice — in 1973 when A.N. Ray superseded three senior judges, and in 1975 when M.H. Beg superseded Justice H.R. Khanna (NCERT pp. 127–128). The other judges of the Supreme Court and the High Courts are appointed by the President after "consulting" the CJI. The meaning of "consultation" was settled by the Supreme Court itself between 1982 and 1998, leading to the **collegium / collegiality principle** under which the CJI recommends names in consultation with the four senior-most judges of the Supreme Court (NCERT p. 128). **Removal of judges** is even more closely guarded: a judge of the Supreme Court or a High Court can be removed only on the ground of **proven misbehaviour or incapacity**, and only on a motion approved by a **special majority** of both Houses of Parliament. Only one such case — that of Justice V. Ramaswami in 1991–93 — has actually reached Parliament, and the motion failed because the Congress party abstained, leaving the one-half-of-total-strength threshold unmet (NCERT pp. 128–129).

The **structure of the judiciary** is a single integrated pyramidal system (unlike some federations which run parallel state and federal court systems). The Supreme Court sits at the apex; its decisions are binding on all other courts in India; it can transfer judges of one High Court to another and move cases between different High Courts. Below it sit the **High Courts**, with appellate, writ (under Article 226) and superintendence powers over District Courts and Subordinate Courts which form the bottom of the pyramid (NCERT p. 130). The **jurisdiction of the Supreme Court** is four-fold (NCERT pp. 131–133): **Original** — disputes between the Union and the States, and among the States themselves (the federal-umpire role); **Writ** — issuing the five writs (Habeas Corpus, Mandamus, Prohibition, Certiorari, Quo Warranto) under Article 32 to protect Fundamental Rights; **Appellate** — the highest court of appeal in civil, criminal and constitutional matters, ordinarily requiring a High Court certificate but with the power to grant **special leave** to appeal from any judgment of any court in India; **Advisory** — the President may refer a matter of public importance or a question of constitutional interpretation to the SC, but the SC is not bound to advise and the President is not bound to accept the advice. Article 137 empowers the SC to **review any judgment** it has pronounced; Article 144 requires all civil and judicial authorities in India to act in aid of the SC (NCERT p. 133).

Judicial activism developed in India through the device of **Public Interest Litigation (PIL) / Social Action Litigation (SAL)**. From 1979 onwards the Supreme Court began hearing cases filed not by the aggrieved person but by public-spirited citizens or organisations on behalf of those whose rights were being violated. The landmark beginnings were **Hussainara Khatoon v. State of Bihar** (which exposed the plight of under-trial prisoners languishing in Bihar jails) and **Sunil Batra v. Delhi Administration (1980)** (in which the SC acted on a letter from a prisoner reporting torture in Tihar). The Court has even acted on newspaper reports and postcards from prisoners (NCERT pp. 134–136). The impact of judicial activism has been to democratise access to courts, force executive accountability, and — through directions of the Court — mandate electoral candidates to file affidavits about assets, income and educational qualifications. The negatives, include over-burdening of the courts and a blurring of the separation of powers (NCERT pp. 137–138).

The judiciary protects rights through two main routes: (i) writs under Article 32 (Supreme Court) and Article 226 (High Courts); and (ii) declaring a law unconstitutional under Article 13 — this is **judicial review** (NCERT pp. 138–139). The term "judicial review" is **nowhere expressly mentioned** in the Constitution but is implicit in the written constitution, the Supreme Court's power to strike down laws violating fundamental rights, and the federal distribution of powers. Judicial review extends both to laws that violate fundamental rights and to laws that violate the federal distribution of powers; it applies to laws made by the Union as well as by the States (NCERT p. 139). The **Parliament-Judiciary conflict** centred on the right to property and the scope of Parliament's amending power. In the landmark **Kesavananda Bharati v. State of Kerala (1973)** ruling, the Supreme Court held that the Constitution has a **basic structure** which even Parliament cannot violate by amendment; ruled that the right to property is NOT part of that basic structure; and reserved to itself the right to decide what is "basic structure" (NCERT pp. 141–142). The right to property was eventually **removed from the list of fundamental rights in 1979** (NCERT pp. 142–143). India has a **limited separation of powers** with checks and balances: Parliament is supreme in law-making and amending, the executive in implementation, and the judiciary in adjudication and constitutional interpretation (NCERT p. 141).

2.2 Definitions to memorise

| Term | Definition | Page |
|-----------------------------|--|------|
| Rule of Law | All individuals — rich/poor, men/women, forward/backward — are subjected to the same law. | 125 |
| Independence of Judiciary | Other organs do not restrain its functioning or interfere with decisions; judges act without fear or favour. | 125 |
| Accountability of judiciary | To Constitution, democratic traditions, and the people — independence does not mean unaccountability. | 126 |
| Contempt of Court | | 126 |

| Term | Definition | Page |
|--|--|----------|
| | Power of court to penalise unfair criticism; protects judges' independence. | |
| Special Majority | The majority required in both Houses to approve a motion for removal of a judge of SC/HC. | 128 |
| Proven misbehaviour or incapacity | The sole grounds on which a SC/HC judge can be removed. | 128 |
| Collegium (Collegiality Principle) | CJI recommends judicial appointments in consultation with the four senior-most judges of the Supreme Court. | 128 |
| Single integrated judicial system | Pyramidal SC → HC → District → Subordinate Courts structure, unique to India. | 130 |
| Original Jurisdiction | Cases that the Supreme Court alone can directly hear — chiefly federal disputes between Union and States or among States. | 132 |
| Writ Jurisdiction | Power of SC (Art. 32) and HCs (Art. 226) to issue Habeas Corpus, Mandamus, Prohibition, Certiorari, Quo Warranto to protect fundamental rights. | 131, 138 |
| Appellate Jurisdiction | Power to reconsider cases and the legal issues decided by lower courts; SC is the highest court of appeal. | 132 |
| Advisory Jurisdiction | President may refer a matter of public importance or constitutional interpretation to SC; SC not bound to advise; President not bound to accept. | 133 |
| Special Leave to Appeal | SC's power to grant leave to appeal from any judgment of any court in India. | 132 |
| Article 137 | SC's power to review any of its own judgments. | 133 |
| Article 144 | All civil and judicial authorities to act in aid of the SC. | 133 |
| Judicial Review | Power of SC/HCs to examine constitutionality of any law; if inconsistent with Constitution, the law is declared unconstitutional and inapplicable. | 139 |
| Public Interest Litigation (PIL/SAL) | Litigation filed by a public-spirited person or organisation on behalf of those whose rights have been violated but who cannot easily approach the courts. | 135–136 |
| Hussainara Khatoon (1979) | Early PIL on under-trial prisoners in Bihar. | 135 |
| Sunil Batra v. Delhi Administration (1980) | Letter-petition PIL on prisoner torture in Tihar. | 135 |
| Basic Structure | Doctrine evolved in Kesavananda Bharati (1973) — certain features cannot be amended even by Parliament. | 142 |
| Kesavananda Bharati (1973) | Landmark case laying down the basic-structure doctrine. | 142 |

| Term | Definition | Page |
|--------------------------------|--|---------|
| Right to property | Removed from fundamental rights in 1979 after Parliament-Judiciary tussle. | 142–143 |
| Separation of powers (limited) | India follows limited separation with checks and balances. | 141 |
| 1973 supersession (A.N. Ray) | First breach of senior-most-judge convention — superseded three judges. | 127 |
| 1975 supersession (M.H. Beg) | Second breach — superseded H.R. Khanna. | 127 |

2.3 Diagrams / processes to remember

Three diagrams have become CUET stems in their own right. The first is the **pyramidal court-structure diagram** on p. 130: Supreme Court at the apex (decisions binding on all courts; can transfer HC judges; can move/transfer cases) → High Courts (appellate jurisdiction in civil, criminal and writ matters; writ jurisdiction under Art. 226; superintendence over District and Subordinate courts within the State) → District Courts (hear appeals from subordinate courts in the district; decide cases involving more serious offences) → Subordinate Courts (hear most disputes of civil and criminal nature, including those at the panchayat level). The bullet-point powers of each tier are testable, so memorise each tier with at least two distinguishing functions.

The second is the **jurisdiction-of-the-Supreme-Court diagram** on p. 131: a central circle labelled "Jurisdiction of Supreme Court of India" branches to three boxes — **Original** (Union–State and inter-State disputes), **Appellate** (appeals from lower courts in Civil, Criminal and Constitutional cases), and **Advisory** (advises the President on matters of public importance and law) — with two attached boxes labelled **Writ** (Habeas Corpus, Mandamus, Prohibition, Certiorari, Quo Warranto for protecting Fundamental Rights) and **Special Powers** (special leave to appeal from any judgment or matter of any court in India). The five writs and their order recur frequently as match-the-following items.

The third is the **two-article box on p. 133**: Article 137 (SC's power to review its own judgments) and Article 144 (all civil and judicial authorities to act in aid of the SC). Two short processes complete the picture. **Process A — Removal of a judge**: Proven misbehaviour or incapacity → motion before either House → special majority in both Houses → presidential order of removal. **Process B — Evolution of judicial review and PIL**: 1973 (Kesavananda Bharati basic structure) → 1979 (Hussainara Khatoon; PIL begins) → 1979 (right to property removed) → 1980 (Sunil Batra letter-petition) → 1982–98 (collegium principle finalised). Drilling this timeline gives the chronological backbone for CUET match-the-following items.

2.5 Key Articles / Treaties / Events

| Reference | Source / Subject | NCERT cite |
|---|---|--------------|
| Article 13 | Laws inconsistent with fundamental rights are void — basis of judicial review | p. 139 |
| Article 32 | Right to constitutional remedies; SC's writ jurisdiction | pp. 131, 138 |
| Article 137 | SC's power to review its own judgments | p. 133 |
| Article 144 | All civil and judicial authorities to act in aid of SC | p. 133 |
| Article 226 | High Courts' writ jurisdiction | p. 130 |
| Five writs | Habeas Corpus, Mandamus, Prohibition, Certiorari, Quo Warranto | p. 131 |
| Kesavananda Bharati v. State of Kerala (1973) | Basic-structure doctrine | p. 142 |
| Hussainara Khaton v. State of Bihar (1979) | PIL on under-trial prisoners | p. 135 |
| Sunil Batra v. Delhi Administration (1980) | Letter-petition PIL on prisoner torture | p. 135 |
| 44th Amendment (1978) — Right to property removed from FRs (1979) | Parliament–Judiciary tussle outcome | pp. 142–143 |
| Justice V. Ramaswami removal motion (1991–93) | Only removal motion to reach Parliament; failed by Congress abstention | pp. 128–129 |
| Supersession of senior judges (1973) | A.N. Ray made CJI over three seniors | p. 127 |
| Supersession of H.R. Khanna (1975) | M.H. Beg made CJI | p. 127 |
| Collegium evolution (1982–1998) | CJI + four senior-most SC judges | p. 128 |
| Begin of PIL/SAL | From 1979 onwards | pp. 134–135 |
| Affidavit on assets/income/education by candidates | Mandated by SC directions | p. 137 |

2.4 Common confusions / NTA trap points

1. **"Judicial Review" vs "Writ Jurisdiction"** — writ remedies an individual rights violation; judicial review examines the **constitutionality of a law itself** and can strike it down (NCERT p. 139).
2. **The term "judicial review" is NOT mentioned in the Constitution** — the power is implicit because India has a written Constitution and SC can strike down laws

violating fundamental rights (NCERT p. 139). NTA loves "Which article expressly mentions judicial review?" — answer: none.

3. **Original Jurisdiction is NOT every case the SC hears first** — it specifically means federal disputes (Union–State, inter-State). Writ petitions under Art. 32 are filed directly in SC but belong to Writ jurisdiction, not Original jurisdiction.
4. **Advisory Jurisdiction is optional both ways** — SC may decline to advise, and the President may decline to accept the advice (NCERT p. 133).
5. **Collegium = CJI + FOUR senior-most SC judges** — not three, not five (NCERT p. 128).
6. **Only TWO supersessions** of senior judges have ever occurred — A.N. Ray (1973) over three seniors, and M.H. Beg (1975) over H.R. Khanna.
7. **Kesavananda Bharati (1973) held that right to property was NOT part of basic structure** — students often think the case protected property. The right was actually removed from fundamental rights in 1979 (pp. 142–143).
8. **PIL began in 1979 with Hussainara Khatoon**, not in the 1990s — and was extended in 1980 by Sunil Batra (pp. 134–135).
9. **Justice V. Ramaswami was NOT removed** — the motion failed because Congress abstained (pp. 128–129). NTA traps treat this as a "first successful removal."
10. **Special Leave to Appeal** is a Supreme Court power; it lets the SC bypass the HC certification requirement and grant appeal from any court (p. 132).
11. **Independence does not equal unaccountability** — judges are accountable to the Constitution, democratic traditions and the people (p. 126).
12. **India has a SINGLE integrated judicial system**, not parallel federal and state systems (p. 130).

Practice MCQs

PYQ Alignment

The Judiciary chapter is a recurrent CUET favourite — Original/Appellate/Advisory jurisdiction matches, the Kesavananda Bharati basic-structure question, PIL beginnings (Hussainara Khatoon, Sunil Batra), writs under Articles 32/226, and the collegium/collegiality principle have all appeared as direct factual or statement-based MCQs in CUET 2023–25. Expect 1–2 questions from this chapter, often combining a jurisdiction-match with an assertion-reason item on judicial review or independence. The "term

judicial review is not mentioned in the Constitution" point (p. 139) and the "supersession of senior judges in 1973 and 1975" timeline are particularly common recall traps.

