

Factsheet-Indian Judicial system.

#1. Contempt of Court:

1. Constitution empower SC & HC power to punish for its contempt.
2. The expression 'contempt of court' has not been defined by the Constitution.
3. The Contempt of Courts Act, 1971 defines both **civil and criminal contempt**.
4. criticism of court judgement on fair and factual ground is allowed.

#2. Judicial review:

1. JR can't be curtailed or removed by Constitutional Amendment.
2. JR= Basic structure.
3. JR make Indian Parliament not Sovereign in true sense.
4. Term 'Judicial Review' has **nowhere** been used in the Constitution.
5. JR can be used against **both** Legislative and executive decisions.
6. Both SC and HC have power of JR.

#3. Supreme court:

1. Parliament is authorized to increase size of SC judges.
2. Centre -state dispute and state-state disputes are exclusive original jurisdiction of SC.
3. enforcement of FR under art 32. (this is original but not exclusive power of SC as HC can also enforce FR under Art 226)
4. No minimum age required for appointment as a judge of the Supreme Court.
5. Eminent jurist can become SC judge but not HC judge.
6. No joint session of parliament for removal of SC and HC judges, it has to pass separately by each house with special majority.
7. Speaker/Chairman has full discretion whether to allow or not allow removal motion in house.
8. President can appoint a judge of the Supreme Court as an acting Chief Justice of India.
9. **retired Judges** can also be appointed as SC judge with all the **jurisdiction, powers and privileges** of a judge of Supreme Court but will not be considered as SC judge.
10. The Constitutional cases or references made by the President under **Article 143** are decided by a Bench consisting of at least **five judges**.
11. **Except impeachment motion, Conduct of Judge can't be discussed into Parliament or State Legislature.**
12. Retired Judge can't practice or take up any work after retirement except post of **Governor**.
13. Parliament can extend power of SC by simple majority but to reduce require constitutional amendment (Special majority in LS and RS+ Half of the states)
14. HC can also interpret constitution but SC can override HC decision as SC is final interpreter.
15. President can ask SC to advise on certain matter this is called advisory jurisdiction/ Presidential reference/ consultative jurisdiction.
16. Advise of SC is **not binding** on President to Comply.
17. SC decide on **electoral dispute** of President and VP.
18. For MPs and MLA electoral dispute is decided by HC first, subjected to appeal in SC.
19. **Only the Fundamental Rights** guaranteed by the Constitution can be enforced under Article 32 and **not any other right** like non-fundamental constitutional rights, statutory rights, customary rights.
20. when the Fundamental Rights of a citizen are violated, the aggrieved party has the **option of moving either the high court or the Supreme Court directly**.
21. The Supreme Court can issue writs **only for the enforcement of fundamental rights**.

22. high court can issue writs not only for the enforcement of Fundamental Rights but also **for any other purpose like legal rights.**
23. Supreme Court can issue writs against a person or government **throughout the territory of India.**
24. high court can issue writs only within territorial boundaries of state.
25. Supreme Court cannot refuse to exercise its writ jurisdiction while HC can refuse, since SC is guarantor of FR and HC is not.
26. Quo-Warranto can't be issued against minister but Mandamus can.
27. In Quo warranto any individual can seek remedy but under Mandamus only aggrieved individual can seek remedy.
28. Article 33 empowers the Parliament to **restrict or abrogate the fundamental rights of the members of armed forces, para-military forces, police forces, intelligence agencies.**
29. SC can take **judicial review of Pardoning** decision of President and can overturn in case of excessive delay in decision making.
30. SC can pass special leave (art 136) to appeal from any judgement of lower court/tribunal etc. except military court towards itself.
31. SLP is a discretionary power of SC, thus, can't be claimed as matter of right.
32. SLP power can be used by SC in any matter.
33. SC can punish an individual not only for contempt of SC but for any other court as well.
34. HC can punish for contempt of HC or any other subordinate court.

#4. PIL:

1. Dispute between **two Private individual** can't be considered under PIL.
2. Any body can file PIL on behalf of community whose interest is at stake.
3. PIL can be filed in SC or HC.
4. It is pure discretion of court to entertain any PIL or reject it.
5. Court is not duty bound to consider cases under PIL.
6. Court can punish the person filing PIL on frivolous ground.
7. **PILs can be filed either in the High Court or in the Supreme Court.**

#5. Tribunals:

1. Enjoy constitutional status under art 323 A and 323 B.
2. Decisions of tribunals can't be challenged directly into SC. (One has to go to HC first)
3. Tribunals function on principle of natural justice.
4. Tribunals have power to punish for its contempt.
5. One can challenge contempt decision of tribunal only in SC and not High court.
6. Tribunals can be created by Union and also the state legislature.

#6. High court:

1. Parliament can establish a **common high court** for two or more states or for two or more states and a union territory.
2. State legislature can't establish HC.
3. **Delhi** is the **only union territory** that has a high court of its own.
4. Only **Parliament** and not state legislature have the power to **extend territorial jurisdiction of HC.**
5. Strength (total number of judges) of HC is decided by **President and of SC is decided by Parliament.**
6. **No minimum age** for qualification.
7. Unlike SC, **Eminent jurist can't be made Judge** of HC.
8. Procedure for removal of HC judge is same to that of a SC judge.

9. President and not Governor can transfer HC judge. (Consultation of CJI)
10. President can appoint HC judge as Chief Justice of HC.
11. Governor can transfer, appoint District judges in consultation with HC.
12. President can appoint duly qualified persons as additional judges of a high court for a temporary period.
13. Salary of sitting judge is charged on Consolidated fund of State.
14. Pension of retired judge is charged on Consolidated fund of India.
15. Jurisdiction of HC can be **increased by Parliament** and State Legislature, however, **can't be reduced**.
16. To reduce jurisdiction of HC, **Constitutional amendment** Process is required and passed with special majority in Parliament and ratified by half of the states.
17. HC is the **Protector** of the Fundamental Rights of the citizens in state.
18. HC along with SC is vested with the Power to **interpret** the Constitution.
19. HC can make Judicial review of laws made by Parliament as well as state legislature.
20. **Death sentence** by session court has to be confirmed by HC before execution.
21. Any judgement by District court **more than 7 years of imprisonment** have automatic appeal to HC.
22. **Military Court** does not fall under HC Supervision.
23. **all courts and tribunals in state falls under supervision of HC.**
24. **Governor has to consult HC** in matter of promotion, appointment and transfer of District Courts.
25. power of JR applies to both **Legislative action as well as Executive actions.**

#7. Judicial activism:

Origin: USA.

Meaning: assertive role played by the judiciary to **force the other two organs of the government (legislature and executive) to discharge their constitutional duties.**

India this trend was witnessed during 1970s.

Judicial Activism has **no constitutional articles to support its origin.**

Contributing factors for JA= PIL, Due process of law, Basic structure doctrine, creative interpretation of Article 21, article 142, Article 136.

Judicial Overreach= when Judicial activism crosses its limits + judiciary oversteps the powers given to it, it may interfere with the proper functioning of the legislative or executive organs of government.

Judicial Overreach **destroys the spirit of separation of powers.**

#8. Some important legal terms:

Cognisable Offences

1. In cognisable offences, an officer can take cognizance of and arrest a suspect without seeking a court's warrant to do so.
2. Within 24 hours of the arrest, the officer must have detention ratified by a judicial magistrate.
3. According to 177th Law Commission Report, cognisable offences are those that require an immediate arrest.
4. Cognizable offences are generally heinous or serious in nature such as murder, rape, kidnapping, theft, dowry death etc.
5. The first information report (FIR) is registered only in cognizable crimes.

Non-Cognizable Offences

1. In case of a non-cognizable offence, the police cannot arrest the accused without a warrant as well as cannot start an investigation without the permission of the court.

2. The crimes of forgery, cheating, defamation, public nuisance, etc., fall in the category of non-cognizable crimes.

Anticipatory bail:

1. When a person has reason to believe that he may be arrested on the accusation of committing a non-bailable offence then he can move to High Court or the Court of Session u/s 438 of CrPC for anticipatory bail.
2. It is a preventive relief which was not originally included in The Code of Criminal Procedure, 1973 ('CrPC').
3. As opposed to ordinary bail, which is granted to a person who is under arrest, in anticipatory bail, a person is directed to be released on bail even before arrest made.

Parole :

1. A parole happens after the accused has been given the sentence and set a jail time.
2. A parole is when a person gets some time off from their jail sentence in order to fulfill some requirements.
3. While bail is granted to under-trial, parole can be granted to convicts.
4. Unlike bail where some money has to be submitted as insurance, No money is required to be paid to anyone before freedom is awarded in case of parole.

Compoundable and non-compoundable case:

1. Compoundable offences are those offences where, the complainant (one who has filed the case, i.e. the victim), enter into a compromise, and agrees to have the charges dropped against the accused.
2. Compoundable offences are generally not very serious in nature.
3. Example: dishonest misappropriation of property, defamation etc.
4. Non-Compoundable offences are some offences, which cannot be compromised.
5. They can only be quashed.
6. The reason for this is, because the nature of offence is so grave and criminal, that the Accused cannot be allowed to go scot-free.
7. Here, in these types of cases generally, it is the "state", i.e. police, who has filed the case, and hence the question of complainant entering into compromise does not arise.
Example: Rape, murder etc.

#9. CBI:

1. Created: 1963.
2. Santhanam committee recommendation.
3. Draw its power from DSPEA (1946)
4. Under Ministry of personnel not MoHA.
5. Neither constitutional nor statutory body.
6. Have its own court as well.
7. Power of investigation and prosecution.
8. Member of INTERPOL.
9. CBI Director has 2 years of tenurial security.
10. Need state Govt. approval to investigate any case in state jurisdiction.
11. Does not have its own cadre.
12. Personnel are on deputation from various state police services and IPS.