CHAPTER 4

The Role of the Judiciary in Our Society

Injustice anywhere is a threat to justice everywhere.

—Dr Martin Luther King Jr.



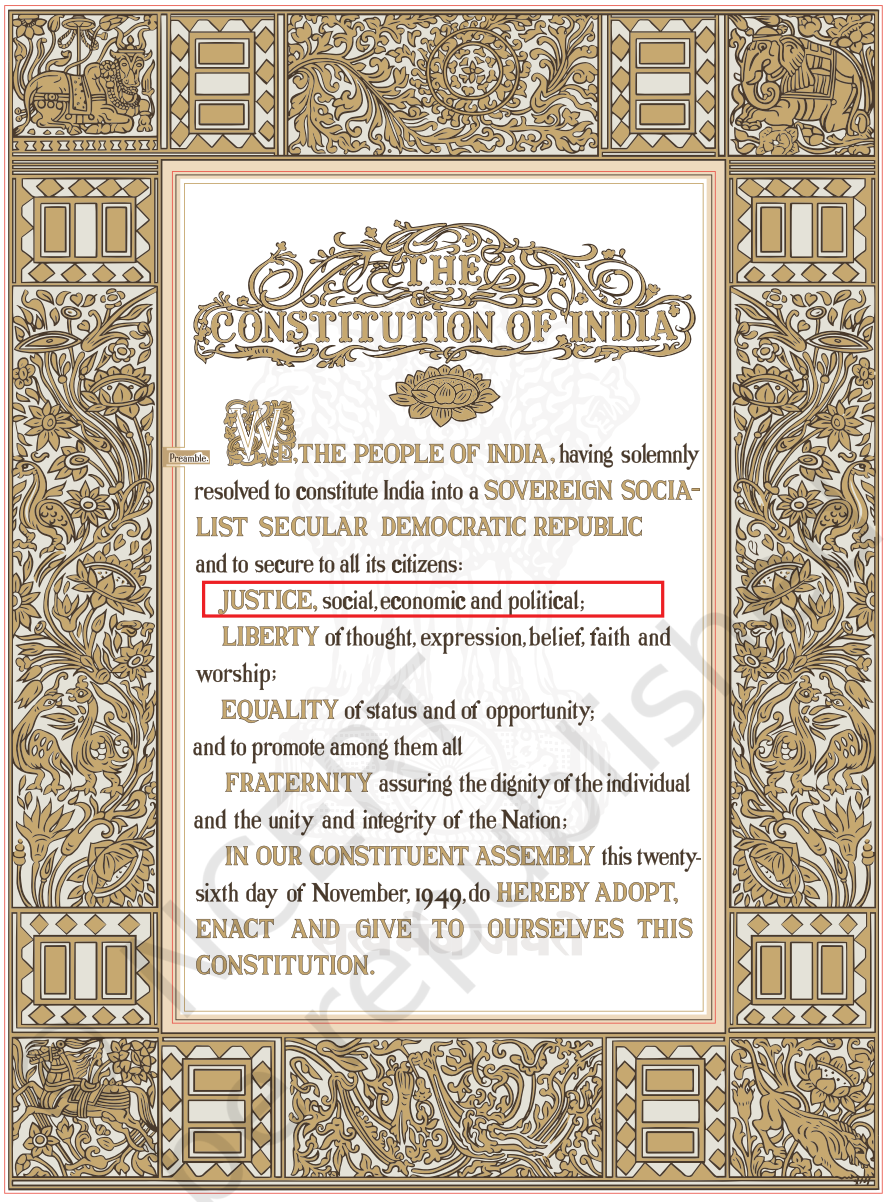
Fig. 4.1. The Supreme Court of India, New Delhi

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The Big Questions

1. *What is the concept of justice?*
2. *Why is it important for a just and harmonious Society?*
3. *What is the structure and role of the judiciary in India?*
4. *What are the alternative modes of dispute resolution?*

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THE CONSTITUTION OF INDIA

Preamble

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

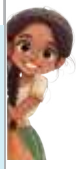
Fig. 4.2. The Preamble to the Constitution of India

The Preamble to the Constitution of India promises all Indian citizens social, economic, and political justice. The founders of independent India laid the foundation for a sound judicial system in a democratic society.

Justice is essential for maintaining peace and harmony in any society. It ensures that individuals in a society can live with equality and dignity. The Judiciary is the institution which ensures fair adjudication of disputes in accordance with the law and that everyone is treated justly and with fairness.

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LET'S EXPLORE



Think of a time when you felt that someone had not been fair to you. How did you feel? What did you think needed to be done to make the situation right? Who could have made things right? What would you do in such a situation? Share in small groups.



LET'S REMEMBER

We know that the Judiciary is one of the three pillars of the government, which is independent from the legislature and the executive. An independent judiciary is essential to ensure that disputes between parties are decided in a fair and just manner.

Society has many complex interactions happening all the time, both personal and professional, therefore, disagreements and disputes may arise from diverse contexts and situations. Often disputes between parties are resolved through dialogue, mediation, or adjudication by courts of law.

The judiciary plays a vital role in ensuring that the laws passed by the legislature are within the framework of the Constitution, and that the executive does not overstep its role as outlined in the Constitution.

This chapter looks at the role and structure of this branch of the State, i.e., the Judiciary.

The Connection Between Law and Justice

As human societies grew larger and more complex, systems of governance started emerging. Societies expect fair treatment and peaceful living for everyone, but now this task has been given over to the government. Governments were given the power to administer a society through laws and the power to enforce such laws, with force if needed. The government's way to ensure that justice is achieved in any society is by the framing of laws.

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Laws are general rules made by the government to regulate individuals' activities in a society and impose consequences for not following them.

These consequences could be something as simple as paying a fine, giving compensation to the affected party or even imprisonment in some cases. The system that enables individuals to complain in case of a grievance, and for the affected person to be able to place their point of view so that justice is ensured (within the framework of the law and the Constitution), is called the judicial system.

Post-independence, hundreds of laws framed during the colonial era were found to be discriminatory, and were contrary to the fundamental principles of a democratic polity. Over the years, the government has taken steps to review laws and has repealed over 1500 such laws, enacted during the British Rule.

For example, the Criminal Tribes Act, 1871, that labelled certain communities as criminals by birth; and the Vernacular Press Act, 1878, that restricted freedom of press, etc., have been repealed. These laws were considered to be inconsistent with the values and principles of justice, and India as a democratic republic.



Fig. 4.3. Segregation of water facilities in public places based on colour and race (Jim Crow laws)

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Unjust laws existed in other counties, like the 'Jim Crow laws' in parts of the United States which prohibited African Americans and other people of colour from using public facilities reserved exclusively for white people. This included access to water fountains, public pools, and even restaurants. The Jim Crow Law was officially repealed in the 1960s.

Similarly, during the apartheid era in South Africa (mid to late 20th century), people were divided by law on the basis of race, with coloured people facing severe restrictions under a range of laws. These restrictions prevented the citizens of those countries from gaining access to public facilities and living a life with dignity. Such laws prevalent in South Africa were repealed in 1991.

Let us revisit the exercise you did at the beginning of this chapter. When you experienced injustice, you might have felt that the wrong-doer should be punished, that you would feel better if they apologised, or that you should be compensated in some way. The person accused, on the other hand, might have thought that they should be given a chance to explain what had happened.

This brings us to two important aspects of justice — substantive justice and procedural justice.



Fig. 4.4. Aspects of justice

Substantive justice focuses on the final result or outcome. It asks whether the decision is actually fair, just, and reasonable.

Procedural justice means that every person involved gets a full opportunity of hearing, before a decision is taken by the court.

As a rule, it is presumed that every person is innocent, till proved guilty.

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The Judicial System in India

The Indian Judicial system is a unified system, comprising of a hierarchy of courts with the Supreme Court of India at the apex level, the High Courts at the State level and Subordinate Courts at the District level.

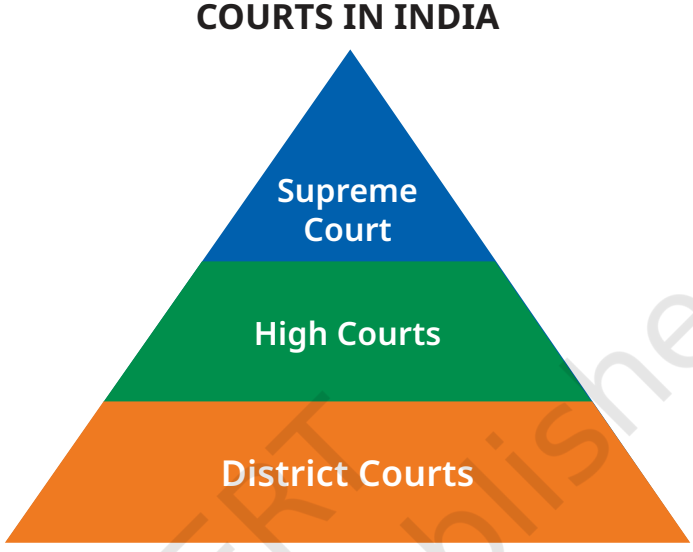


Fig. 4.5. A simplified diagram to illustrate the hierarchy of the judicial system in India

The Supreme Court of India

The Supreme Court of India is the highest court of law in the country, which came into existence on the date when the Constitution of India came into effect, i.e., 26.01.1950.

The Supreme Court is the final interpreter of the Constitution of India.

Article 124 of the Constitution provides for the establishment of the Supreme Court of India, which is seated in New Delhi.



DON'T MISS OUT

This is the logo of the Supreme Court of India. What are the elements familiar to you? Notice the Sanskrit motto, '*yato dharmastato jayah*'

— 'Where there is dharma, there is victory.' *(You might recall this motto from your Grade 6 textbook.)*



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The Chief Justice of the Supreme Court is designated as the Chief Justice of India. The current strength of the Supreme Court is 33+1 i.e. the Chief Justice of India and 33 Supreme Court judges.

As per Article 124, the Judges of the Supreme Court are appointed by the President of India. Every Judge of the Supreme Court is appointed by the President of India.

The Qualifications for appointment as a Judge of the Supreme Court require that he/ she is a citizen of India, and additionally is required to have been:

(i) a Judge of a High Court (or High Courts) for five years; or

(ii) an Advocate of a High Court (or more than one High Court) for ten years; or

(iii) a distinguished jurist, in the opinion of the President of India

A Supreme Court Judge retires when he/she attains the age of 65 years.

Writ Jurisdiction of the Supreme Court and High Court

Writ jurisdiction has been conferred on the Constitutional Courts for enforcement of Fundamental Rights guaranteed by Part III of the Constitution of India.

The Fundamental Rights guaranteed to every citizen of India include Equality, Liberty, Right to Life, Freedom of Speech, Freedom of Religion, etc.

For enforcement of Fundamental Rights, a citizen has the right under the Constitution to file a ***"Writ Petition"*** directly before the Supreme Court (Article 32), where the issue has an all India ramification; or before the High Court (Article 226), which pertains to the violation of the Fundamental Rights of citizens within the territorial limits of the State.



Fig. 4.6. Writ Petition

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Public Interest Litigation (PIL) filed under Articles 32 and 226

PIL is an innovation introduced by the Supreme Court to address issues of public concern and give meaning to the Right to Life under Article 21 of the Constitution of India.

The first reported case of a PIL was a complaint made by a lawyer called Mrs. Kapila Hingorani. She had read in the newspaper that there were prisoners who were undergoing a trial, and who had been in jail for a period longer than what their punishment would have been if they were found guilty. She filed a writ petition to secure the release of all such under-trial prisoners in Bihar. The Supreme Court immediately ordered the release of such prisoners, and also issued guidelines to release almost 40,000 under-trial prisoners throughout India.

Some other important PIL cases are:

M.C. Mehta v. Union of India:

Environmental issues such as cleaning of the River Ganga and the protection of the Taj Mahal, etc., were taken up by the Supreme Court.

Vishaka & Ors. v. State of Rajasthan:

Supreme Court in 1997 laid down guidelines against sexual harassment at workplace. Later in 2013, the Government enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Original Jurisdiction of the Supreme Court

The Supreme Court has exclusive original jurisdiction (Article 131) to decide legal disputes arising between:

(a) The Centre and a State;

(b) The Centre and a State on one side, and another State on the other side;

(c) Inter-state disputes, such as river water disputes, etc.

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Appellate Jurisdiction of the Supreme Court

The Supreme Court can hear an appeal from any final order of the High Court, if the High Court itself certifies that the case involves interpretation of the Constitution or substantial question of law (Articles 132, 133 and 134A). Judgments of the High Court in criminal cases involving death sentence or where a judgment is certified as fit for appeal can be heard by the Supreme Court (Articles 134 and 134A). Supreme Court also has jurisdiction to hear appeals from specialised tribunals like National Green Tribunal (NGT) and National Company Law Appellate Tribunal (NCLAT).

Advisory Jurisdiction

If the President of India seeks the opinion of the Supreme Court on a question of law or fact of public importance, the Supreme Court can give its opinion to the President. Such cases must be heard by a 'Constitution Bench' of not less than five (5) judges (Article 143).

Special Leave Petitions (Article 136)

The Supreme Court has an extraordinary discretionary jurisdiction to grant 'Special Leave to Appeal' from any judgment, decree or order made by any court or tribunal in the territory of India where a question of law of general public importance has arisen, or to do substantive justice between the parties.

The law declared by the Supreme Court of India is binding on all courts within the territory of India (Article 141).



DON'T MISS OUT

The Supreme Court has the power to pass any order that is necessary for doing complete justice (Article 142).

All civil and judicial authorities shall act in aid of the Supreme Court (Article 144).

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High Court

A High Court is the highest court at the State level. Article 214 of the Constitution provides that there shall be a High Court in each State. At present, India has 28 States. There are 25 High Courts, since in some cases, two or more States or Union Territories share a common High Court, as follows:

S. No.	High Court	States / Union Territories Covered
1	Allahabad High Court	Uttar Pradesh
2	Andhra Pradesh High Court	Andhra Pradesh
3	Bombay High Court	Maharashtra, Goa, Union Territory of Dadra & Nagar Haveli and Daman & Diu
4	Calcutta High Court	West Bengal and Union Territory of Andaman & Nicobar Islands
5	Chhattisgarh High Court	Chhattisgarh
6	Delhi High Court	Delhi
7	Gauhati High Court	Assam, Nagaland, Mizoram and Arunachal Pradesh
8	Gujarat High Court	Gujarat
9	Himachal Pradesh High Court	Himachal Pradesh
10	Jammu & Kashmir and Ladakh High Court	Union Territory of Jammu & Kashmir and Union Territory of Ladakh
11	Jharkhand High Court	Jharkhand
12	Karnataka High Court	Karnataka
13	Kerala High Court	Kerala and Union Territory of Lakshadweep
14	Madras High Court	Tamil Nadu and Union Territory of Puducherry
15	Madhya Pradesh High Court	Madhya Pradesh
16	Manipur High Court	Manipur

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17	Meghalaya High Court	Meghalaya
18	Orissa High Court	Odisha
19	Patna High Court	Bihar
20	Punjab & Haryana High Court	Punjab, Haryana and Union Territory of Chandigarh
21	Rajasthan High Court	Rajasthan
22	Sikkim High Court	Sikkim
23	Telangana High Court	Telangana
24	Tripura High Court	Tripura
25	Uttarakhand High Court	Uttarakhand

LET'S EXPLORE

Several High Courts mentioned in the table have more than one bench. Explore which High Courts have more than one bench with the help of your teachers.



The High Court consists of a Chief Justice and other Judges. The number of judges in a High Court varies from State to State. Judges of the High Court are appointed by the President of India in consultation with the Chief Justice of India, the Governor of the State, and the Chief Justice of the concerned High Court.

The qualifications for appointment as a judge of a High Court are provided in Article 217(2) of the Constitution of India. It provides that a High Court Judge should be a citizen of India, and must have held a judicial office in India, or been an advocate of a High Court or more than one High Court for ten years. High Court Judges retire at the age of sixty-two years [Article 217(1) and 224(3)].

Jurisdiction of the High Courts

Each High Court exercises its powers within its territorial limits. The High Court also exercises writ jurisdiction (Article 226).

The High Court entertains appeals against decisions of subordinate courts in civil and criminal matters, as well as

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decisions of certain tribunals. It also exercises supervisory control on the functioning of all subordinate courts within its territorial limits.

Every High Court has the power of superintendence over all courts and tribunals within its territorial jurisdiction (Article 227). This power is supervisory in nature and is exercised to ensure that the subordinate courts and tribunals act within the bounds of their authority and jurisdiction. This power is to be exercised sparingly. The writ and supervisory jurisdiction of the High Courts has also been declared to be part of the basic structure of the Constitution.

Subordinate Courts

In each State, there is a system of subordinate courts below the High Courts. The Constitution makes a few provisions in Articles 233 to 237 of the Constitution to regulate the organisation of these courts, and to ensure independence of the subordinate judiciary.

The subordinate judiciary constitutes a very important segment of the judicial system, as it is in these courts that the judiciary comes in close contact with the people. Subordinate Courts broadly include District Courts, Sessions Courts, Revenue Courts, Small Causes Courts, etc.

Tribunal: A committee or body established to settle certain types of disputes.

It is incumbent on each High Court to maintain and uphold the honour and integrity of the subordinate judiciary in the concerned States.

The Governor of a State in consultation with the High Court appoints the District Judges (Article 233).



LET'S EXPLORE

Which Subordinate Court is closest to where you live?

Tribunals

There are specialised **tribunals** which have been established under various enactments, which are quasi-judicial in nature, and decide on specific categories of disputes.

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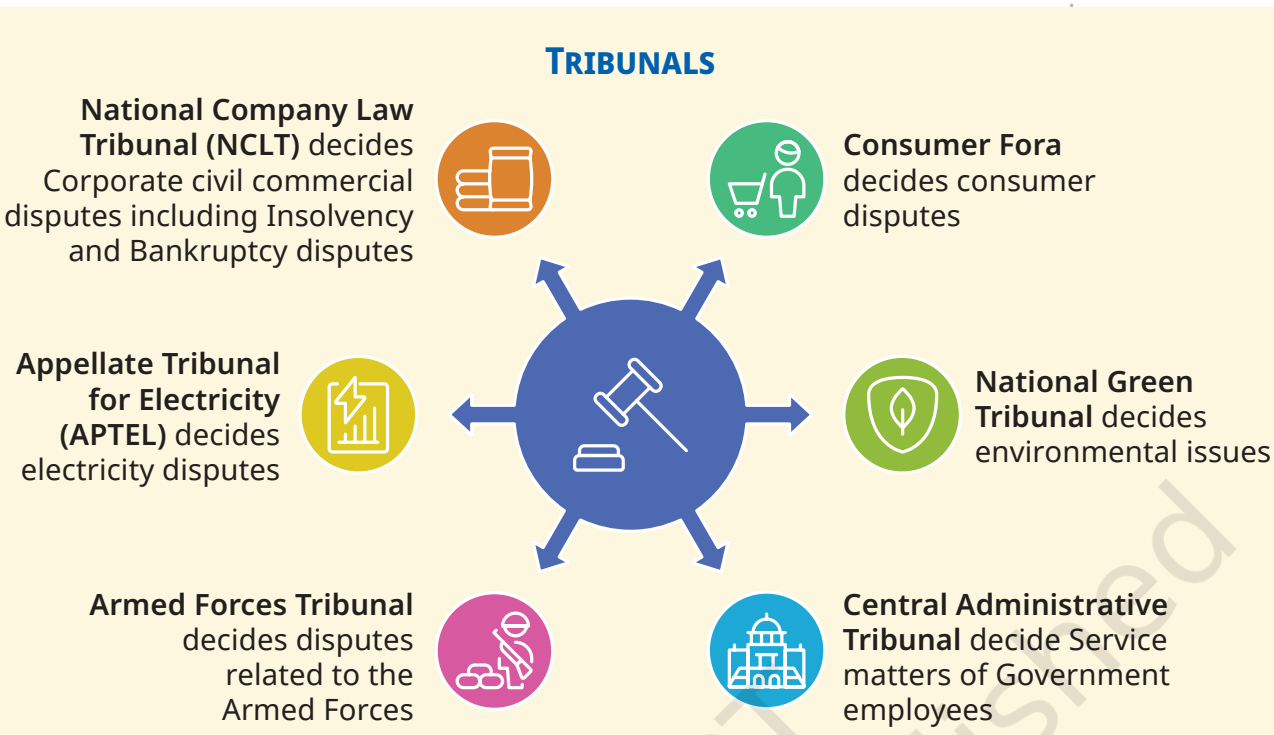


Fig. 4.7. Tribunals and their jurisdiction

LET'S EXPLORE



Fig. 4.8

A builder planned to start constructing a complex of flats in 2011. A family decided to buy a flat, paying an advance of almost ₹65 lakhs. The family visited the site regularly and found that even after four years, there was no sign of a building coming up where their flat was supposed to be constructed. This was a breach of the agreement with the builder. So, the family went to the National Consumer Commission to complain about the builder. After listening to both parties, the Commission ordered the builder to return the amount to the family with interest, and also to pay the cost of the litigation. *(The names of the concerned parties are not mentioned to protect their privacy.)*



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- → The Indian Penal Code, 1860, has been replaced by the **Bhartiya Nyaya Sanhita, 2023.**
- → The Code of Criminal Procedure, 1973, has been replaced by the **Bharatiya Nagarik Suraksha Sanhita, 2023.**
- → The Indian Evidence Act, 1872 has been replaced by the **Bharatiya Sakshya Adhiniyam, 2023.**

These laws aim to facilitate faster justice, use of digital evidence, and better protection for victims while making the justice system modern, transparent and effective.

Digital Technology and Judicial System

Digital technology has been introduced to make the judicial system more accessible and transparent. One use of this technology is allowing **litigants** to directly check the details of their cases instead of only relying on their lawyers. Another example is making copies of court orders and judgements freely available to the public, in multiple languages, so that anyone can read and understand the proceedings of the court.

Litigant: A person involved in a legal case. The person who sues and the person who gets sued are both called litigants.



Fig. 4.9. Online access to details regarding cases are available on the website of each court; details are also available to the public through a portal called the National Judicial Grid of India.

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DON'T MISS OUT

Digital Initiatives

Courts have taken many digital initiatives in past years to make the judicial system more user-friendly. Some examples are:

- → e-Filing
- → Hybrid hearings
- → Live Streaming of Court Proceedings
- → Translation of judgments in multiple Indian languages
- → National Judicial Data Grid

Since 2024-2025, a large display screen dedicated to **'Virtual Justice Clock'** has been prominently positioned at the main entrance gates of the Supreme Court of India. This initiative reinforces the Court's commitment to transparency, accountability and free access to real time judicial data.

Alternate Modes of Dispute Resolution

To further strengthen and reduce the burden on the judiciary, courts increasingly encourage litigants to settle disputes through alternate modes of dispute resolution such as arbitration, mediation/ conciliation, negotiation, *Lok Adalat*, etc.

Arbitration: Arbitration is a mode of dispute resolution, where the parties agree to refer their disputes to an independent adjudicator or panel of adjudicators, referred to as 'arbitrator' or 'panel of arbitrators'. An arbitrator can be a retired judge, a lawyer or an expert. In arriving at a decision, the arbitrator must follow certain basic requirements, such as to act fairly and impartially, allowing each party to put forth their respective case. The decision of the arbitrator/ panel is final and legally binding on the parties, and enforceable by a court of law. Arbitration in India is conducted under the Arbitration and Conciliation Act, 1996.

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Mediation: Mediation is the most common form of Alternate Dispute Resolution, where a neutral person is appointed as a Mediator. The Mediator assists the disputing parties in arriving at a mutual settlement. A mediator has no power to make any decision, or impose a view on the parties. Mediation in India is governed by The Mediation Act, 2023.

Lok Adalats: Lok Adalats are special fora, where disputes/cases can be settled or resolved amicably. Lok Adalats can resolve the disputes which are pending in the courts. In some cases, the parties can even approach Lok Adalats even before going to the Court. Lok Adalats are rooted in the principles of access to justice and derive statutory recognition under the Legal Services Authorities Act, 1987. They function as people's courts, aiming to reduce judicial backlog while promoting amicable dispute resolution without the rigours of formal adjudication.

Gram Nyayalayas: Gram Nyayalayas are established under the Gram Nyayalayas Act, 2008, with the objective of decentralising the judicial system and reducing the burden on regular courts. They function as mobile, village-level courts, designed to adjudicate on disputes which follow a simplified procedure, with no technicalities.

Before we move on...

- The judiciary is one of the three pillars of the government.
- The key roles of the judicial system are to ensure that justice is served and that laws are made within the framework of the Constitution.
- The Constitution prescribes separation of powers among the legislature, executive and judiciary, and that the judiciary remains independent of the other organs of the government.
- The judicial system addresses huge number of cases on a regular basis which are resolved at different levels of courts as well as through alternative modes of dispute resolutions.

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→ Citizens have a role in helping the judicial system by bringing to its notice social concerns that affect the rights of people, animals, and nature.

Questions and Activities

1. Write a model letter to the High Court or Supreme Court about a current social issue you have observed to bring it to the notice of the judiciary.
2. Imagine that you are part of the legislature or executive. Given the large number of cases in the judicial system, what are some innovative solutions that you can devise to address the issue?
3. Create a moot court and enact the following cases. What are the considerations that the judge might need to take into account to arrive at a just outcome?
   i. Anita and Sameer worked in a factory that produced different types of screws. They had both completed an Industrial Training Institute diploma and joined the factory together. One day, Anita discovered that she was getting paid less than Sameer for the same job. After many appeals to her boss and no change in her salary, she decided to go to court. Enact this scene from the litigants' perspective, showcasing their respective points of view. What might be the outcome of the case?
   ii. The people of a village living next to a river used its water for drinking and irrigation purposes. Gradually, they began to notice that the clear water was turning a brownish colour and had begun to smell too. Many people were falling sick. They figured that this was due to the effluents that were being discharged by a factory upstream. What are the steps that the residents of the village could take to ensure that the water is clean again?

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4. Many eminent individuals from across India have served as Supreme Court or High Court judges. Write an essay about one such individual from your state or district, talking about their contributions as a judge of the Supreme Court or High Court.

5. Have an interaction with anyone you know who is a part of the judicial system. Try to understand their work, the challenges they face, and what gives them satisfaction. Create a small presentation and share it with the class.
You can do this in small groups.

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