

Q. Critically evaluate the Judicial system of China.

Marks: 10

Ans. The judicial structure of China is simple and is pyramidal. The local People's Courts constitute the base and Supreme People's Court is at the apex. According to Criminal Procedure Law of People's Republic of China, during the criminal proceeding, People's Court, People's Procuratorate and public security organ shall perform their task respectively as well as cooperate. Thus broadly speaking, China's judicial system institutionally comprises of the three parts which not only refer to courts, but also to procuratorates and public security organs.

The organization of the People's Court is determined by law. Their work is supervised by the Supreme People's Court. The higher People's Courts in the provinces also work under the supervision of the Supreme People's Court. The provincial People's Courts supervise the working of the courts below them. Each of the People's Court consists of a President and a number of judges who are elected by the corresponding Congress of the region.

Supreme People's Court:

The Supreme People's Court is the apex of hierarchical judicial system of China.

Composition and Tenure: It consists of President, some Vice-Presidents and judges. The number of judges is fixed by law. President of the court is elected by the NPC and is removable the latter. The Vice-President and judges are elected by the Standing Committee, on the recommendation of the President and are removable by the same committee.

The President other members of the court are elected for a period of five years. They are re-eligible only once.

Powers: The powers of the court are not defined in the Constitution. However normally, it performs the following powers and functions.

- i. Article 127 states, "The Supreme People's Court is the highest judicial organ. Supreme People's Court supervises the administration of justice by Local People's Courts at different level..."
- ii. It performs such other functions as the NPC entrusts it.
- iii. It possesses original jurisdiction in cases of national importance.
- iv. It possesses appellate jurisdiction as well. It hears appeals against decisions of the higher People's Court in the province and autonomous regions.
- v. Its main function is to establish socialist legality under the leadership of the Communist Party.

The People's Procuratorates:

Like the erstwhile Soviet Union, the People's Republic of China maintains the system of People's Procuratorates. The local people's Procuratorates exist at different levels all over the country. Besides, there are military Procuratorates. At the apex of Procuratorates is the Supreme People's Procuratorate with the Procurator General at the head.

Appointment and Removal of Supreme People's Procuratorate :

The Procurator General of the Supreme People's Procuratorate is elected by the NPC. His term coincides with that of the NPC. He is eligible for re-election but he cannot serve for more than two consecutive terms. The other members of the court are elected by the Standing Committee. Supreme People's Procuratorate is responsible to the NPC and its Standing Committee.

Local People's Procuratorate:

The Local People's Procuratorates are elected by the local organs of the State authority and are responsible to the organs of State authority that create them.. They function according to democratic centralism principle and under the guidance of the Procuratorates at the higher level. the Supreme People's Procuratorate directs the work of the local Procuratorates. They, in turn, direct the work of Procuratorates at the lower level.

Functions of Procurators:

People's Procuratorates at all levels exercise Procuratorial powers independently according to the law. The administrative organs, public organisations or individuals do not interfere in their work.

Following are some of their main functions:

1. To present the people guilty of violation of the socialist legality before the courts and prosecute.
2. To advise the Government on the legal matters. Supreme People's Procuratorate, for instance, does not merely advise the Government on legal matters, it acts as the Chief Public Prosecutor and Government pleader.
3. To take action not only against citizens but also against central and provincial Governments for any action, contrary to law.
4. To exercise Procuratorial authority over all departments of the State Council, all local organs of the state, persons working in the state organs and the citizens, to ensure proper observance of law.
5. To prosecute the officials who in their opinion are guilty. They cannot however, annul the decision of the State organs.
6. To act as the guardian of socialist legality.
7. To ensure that the criminals who seek to sabotage the people's Government are suppressed.

A critical analysis of the Procuratorates' functions reveals that it is an instrument of the party for ensuring complete submission of the people before the wishes of the Government and the party.