

# Chapter 7

## The Judiciary

### 1 The Judicial System 2015 X 20

The judiciary of China consists of four kinds of people's courts. At the apex of the judicial system stands the Supreme People's Court, and below it are the local people's courts at various levels, military courts and other special people's courts.

The President of the Supreme People's Court is elected by the National People's Congress. The judges of the local people's courts are elected by the local people's congress. The judges of all courts are elected for 5 years, subject to recall by their electorate.

All cases in the People's Courts are tried in public, unless otherwise provided by the law. The accused has the right of defence. The Constitution forbids any interference by administrative organs, public organisations or individuals in the judicial functions of the People's Courts.

The Supreme People's Court, the highest judicial organ, administers justice in accordance with the Constitution, laws and 'decrees'. It supervises the work of local people's courts at various levels and of special people's courts. The people's courts at the higher levels supervise the work of the people's courts at the lower levels.

The Supreme People's Court is responsible and accountable to the NPC and its Standing Committee. Local people's courts at various levels are responsible and accountable to local people's congresses at the corresponding levels.

As an integral part of the judiciary, the Constitution establishes a system of people's procuratorates. These are state organs created for supervision. They act as the 'watchdog' of socialist legality in China's judicial system. The Supreme People's Procuratorate is elected by the NPC and its Standing Committee. It directs the work of the local People's Procuratorates at different levels.

### 2 Characteristics of the Judicial System

The judicial system of China as introduced by the new Constitution exhibits the following characteristic features.

1 **Democratic character.** Like the judiciary of the erstwhile Soviet Union, the judiciary of China is based on democratic principle. All courts in China, from top to bottom, are elected. The Supreme People's Court is constituted by the National People's Congress and its Standing Committee.

The judges of the local people's courts are elected by local people's congresses.

**2 Accountability and recall of judges.** A related, and second feature of the Chinese judiciary is the responsibility and accountability of the judges to their electors. If a judge deviates from the law, he may be recalled by his electors. This ensures public control over the administration of justice.

**3 Trial of cases with participation of people's assessors.** One of the distinctive features of the present Chinese judicial system is trial of cases with participation of "people's assessors". The people's assessors are the representatives of the people. They are the exact counterparts of people's assessors in the courts of the erstwhile Soviet Union. While discharging their functions in court, the assessors participate in deciding not only questions of fact but questions of law. The participation of the people's assessors ensures that each case will be thoroughly examined, and the legitimate interests and rights of the accused duly protected.

**4 A simple judicial procedure.** The Chinese judicial procedure is simple and intelligible to the masses of people. Since the judges are elected and responsible, people have confidence in the courts. The trial of cases is not delayed.

**5 Right of the accused to defence.** The right of the accused to defence is guaranteed in the Constitution. The ways of exercising this right are regulated in detail by the legislation on criminal court procedure. The courts and the procuratorate must do everything so that the accused may defend himself in the statutory manner against the charges brought against him.

**6 Procuratorate.** Like the office of the Procurator-General of the erstwhile Soviet Union, the Chinese procuratorate system is a distinctive feature of the judicial system. The Supreme People's Procuratorate works as the watchdog of the Chinese socialist legality. It possesses the supreme authority to supervise the observance of the Constitution and the law by the ministries and its subordinate bodies and citizens.

**7 Absence of judicial review of legislation.** An important feature of the Chinese judiciary is that the Supreme People's Court has no power to interpret the law. The power of interpreting the law is vested in the Standing Committee of the National People's Congress. The court has no authority to decide on the constitutionality of an action or order of the Government.

### **3 The Supreme People's Court**

The highest judicial body of China is the Supreme People's Court.

#### **Composition**

The Supreme People's Court is composed of a President, Vice-President and several judges. There is also a Judicial Committee of the Supreme People's Court.

The judges are elected. The President of the Court is elected by the National People's Congress, and other justices including the Vice-Presidents

are elected by the Standing Committee of the NPC at the suggestion of the president of the Court. All judges are elected for 5 years. But they may be removed by their electors before their term of office expires.

### **Powers and Functions**

The Supreme People's Court stands at the apex of the judicial system of the country. The Constitution has described it as "the highest judicial organ" of the country. But its powers are not wide. It administers justice in accordance with the Constitution and law of the country. It supervises the activities of the local people's courts at various levels and of the special people's courts. It is responsible and accountable to the National People's Congress and its Standing Committee.

### **4 Supreme People's Procuratorate** (composition)

The Supreme People's Procuratorate is an exact replica of the procurator's office of the erstwhile Soviet Union. It stands at the apex of the procuratorate system in the country. The Chinese Constitution of 1954 established the system but it was abolished during the Cultural Revolution. The 1978 Constitution reintroduced the system and 1982 Constitution maintains it.

Article -130

The Supreme People's Procuratorate is composed of the Procurator-General and several procurators. The Procurator-General is elected by the National People's Congress for 5 years but may be removed by NPC before his term expires. The other procurators are appointed by the Standing Committee of the NPC for five years subject to recall.

**Powers and functions.** As an integral part of the Chinese judicial system, the Supreme People's Procuratorate occupies a very important position in the constitutional system of the country.

The Supreme People's Procuratorate is duty bound to watch over the observance of the Constitution and law by all ministries, departments, local government bodies, officials and citizens generally. In content and scope of powers, general supervision is the broadest and most extensive branch of procuratorial activity. But this supervisory function is confined to questions of legality, it does not extend to efficiency or expediency. The duty of supervision means the duty to detect violations of the law by any state organ, official or citizen. In exercising this function the Supreme People's Procuratorate acts as the guardian of rights of the accused.

In addition to the above functions, the Supreme People's Procuratorate has the constitutional duty to direct the activities of local people's procuratorates at various levels and of special people's procuratorates.

### **5 Local People's Courts**

In China there exists a system of local people's courts at different levels of local governmental system. These courts are elected by their respective local people's congresses and they remain responsible to them. Under the Constitution, the local people's courts function under the supervision of the higher courts.

\* Article 130 of the Chinese Constitution mentions that the Supreme People's Procuratorate is at the apex of procurate system in the country.