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Judicial System and Reforms in Asian Countries (India)

Judicial System and Reforms in Asian Countries: The Case of India

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PREFACE

Due to the evolution of market-oriented economy as well as the increase of cross-border transactions, there is an urgent need to research and make comparison of judicial systems and role of law in development in Asian countries. Institute of Developing Economies (IDE-JETRO) established two research committees in FY 2000: Committee on 'Law and Development on Economic and Social Development' and Committee on 'Judicial Systems in Asia.' The former committee focuses on the role of law in social and economic development and seeks for its theoretical legal framework. The study conducted by member researchers ranges from marketization, development assistant and law to environment, labor, consumer and law. The latter committee studied the judicial systems and its reforms in process in Asian countries for further analysis of dispute resolution process therein.

In order to facilitate the committees' activity, IDE organized joint research work with research institutions in seven Asian countries, namely, China, India, Indonesia, Malaysia, Philippines, Thailand and Vietnam. This publication is the outcome submitted from each counter-partners on ***judicial systems and reforms in Asian Countries***. The purpose of the study was to research and analyze the current situation and reforms of judicial systems in Asian countries. In order to compare the judicial system and its reforms among the respective countries, each counter-partner were asked to include the following common contents, i.e. Judiciary and Judge, Prosecutor/Prosecuting Attorney, Advocate/Lawyer, Legal Education, Procedure/Proceedings, ADR etc., together with information of Statistical Data and Recent Trends and Movements.

We believe that this comprehensive work is unprecedented and we hope that this publication will contribute as a research material and for further understandings of legal issues we share.

Institute of Developing Economies

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Chapter I

JUDICIARY & JUDGE

1. JUDICIAL SYSTEM IN INDIA: AN OVERVIEW

In order to have a better perspective of the modern structure/status of the judiciary, a brief historical account is given as under:

During the ancient times,[1] in India, administration of justice was one of the main functions performed by the king. In those days the king was regarded as the fountain of justice. His schedule required him to spend every day about a couple of hours in adjudication.[2] The king constituted the highest appellate court. He decided all the cases according to law and was expected to be absolutely impartial.[3] Village *panchayats* and guild courts were encouraged for they were based on the principle of self-government and reduced the burden of the central administration. At the bottom of the hierarchy of courts was the family court in which an arbitrator within the family decided disputes.

During the medieval period immediately preceding the British rule,[4] Muslim system of government came to be established in several parts of the country. The medieval judicial system was based on Islamic law that divided the people into two classes, namely believers and non-believers.[5] Four types of courts were established

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[1] During 6th century B.C. to 6th centure A.D., source: Dr. Birendra Nath, *Judicial Administration in Ancient India* 2 *(*Janaki Prakashan, 1979).
[2] Dr. A.S.Altekar,: *State and Government in Ancient India* 247 (Delhi 1958), Arthshastra, 1.16
[3] *Ibid*.
[4] The Muslim Rule in India commenced from 1192 A.D. and continued until the East India Company came to India and took over from the *Mughals* in 1600 A.D.
[5] Dr. Ashirbadi Lal Srivastava, *The Moghul Empire* 214 (Agra, 1964).

under the Moghuls: Canon Law Courts, Revenue Courts, Civil Courts and Criminal Courts. The judicial system however was not well organized, jurisdiction and powers were not demarcated and hierarchy was not definite during this period.

During the British rule in India the traditional Indian judicial system was re-organised by the British authorities on the basis of Anglo-Saxon jurisprudence. Royal Charter granted in 1726, during the reign of George-I established Mayor's courts in the Presidency towns of Madras, Bombay and Calcutta. The Regulating Act, 1773 established the Supreme Court at Calcutta in 1773. Indian judicial system during this period consisted of two systems of courts: Supreme Courts in the Presidency Towns of Calcutta, Madras and Bombay and *Sadar* Courts in the provinces. In 1861, three high courts were established. In tune with the changing times, a legal and judicial system developed into a well-organised modern system of law and administration of justice, which India inherited on its becoming independent.[6]

2. CLASSIFICATIONS AND HIERARCHY OF COURTS, JURISDICTION

(a) Classification of Courts: The court structure in India is pyramidal in nature. Unlike the American model of dual court system, federal and state, India has monolithic system. The judiciary in all the states in India has practically the same structure with variations in designations.[7] The designations of courts are derived principally from the Code of Civil Procedure, 1908 (CPC) and the Code of Criminal Procedure, 1973 (Cr.P.C) further embellished by local statutes. These statutes also provide for their functions and jurisdiction. At the top of the judicial systems is the Supreme Court of India, followed by high court at the state level. There are about 21 high courts in the country. At the district level, there are subordinate courts.

Supreme Court of India: The apex court

The Supreme Court of India is the apex court at the national level, which was established on 28 January 1950, under Article 124(1) of the Constitution of India. In this context Article 124(1) reads as "there shall be a Supreme Court of India consisting

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[6] M.Rama Jois, *Legal and Constitutional History of India*, Vol II, (N.M.Tripathi Private Ltd. 1984).
[7] For detailed information see *infra* p.6.

of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than 7Judges." Through the (Amendment) Act of 1986,[8] the number of Judges in the Supreme Court was raised to 25.

All proceedings in the Supreme Court are conducted in English[9]. The seat of the Supreme Court is in Delhi[10] and the proceedings are open to the public[11]. Except for the chamber judge who sits singly, benches of two or more judges hear all matters. Five judges hear constitutional matters and, in special cases, larger benches are constituted.[12] In addition to the judicial autonomy, the Supreme Court has freedom from administrative dependence and has the power to punish for contempt.

High Courts:

The highest court in a state is the high court, constituted under Article 214 of the Constitution, which reads "there shall be a High Court for each State". There are, at present 21 high courts in the country,[13] 5 having jurisdiction over more than one state/union territory. In few states due to large population and geographical area benches have been set up under the high courts.[14] Each high court comprises of a Chief Justice and such other judges as the President of India, appoints from time to time.[15]

Subordinate Judiciary / the Judicial Services of the State:

The subordinate courts represent the first-tier of the entire judicial structure. It is the focal point on which the goodwill of the entire judiciary rests. As a general rule, civil cases are dealt with by one set of hierarchy of courts known as civil courts and criminal cases by another known as criminal courts. Workload determines whether the presiding officer would preside over both criminal and civil courts with powers under relevant statutes conferred on him. However, members of the judicial service, when posted in large urban areas are assigned either exclusively civil or exclusively criminal work. The powers and functions of the criminal courts are governed by the Code of Criminal Procedure (Cr. P.C.) and the civil courts by the Code of Civil Procedure (CPC)

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[8] Act 22 of 1986.
[9] Constitution of India, Art 348.
[10] *Id*, Art 130.
[11] *Id*, Art 145(1) (cc).
[12] SC Rules 1966, Order VII.
[13] With the creation of 3 new states viz., Uttaranchal, Chattisgarh and Jharkhand in 2000, three new high courts have been created in these states, thus raising the number of high courts from 18 to 21.
[14] For a detailed description of the high courts and their place of functioning and benches attached with them see *infra* p.11.

respectively. The Cr.P.C. provides following classes of criminal courts: courts of session, courts of judicial magistrates, courts of executive magistrate and, courts constituted under the laws other than the Cr.P.C. like, Prevention of Corruption Act, 1991, Terrorist and Disruptive Activities (Prevention) Act, 1984 etc.

Every state is divided into a sessions' division and every sessions' division into districts. The state government in consultation with the high court alters the limits / numbers of such divisions and districts.[16] There is only one Court of Sessions for every session's division, though it may be manned by several judges. In every district, following courts of judicial magistrates are constituted: chief Judicial magistrate,[17] additional chief judicial magistrates,[18] sub-divisional judicial magistrates,[19] judicial magistrates of the first class,[20] judicial magistrates of the second class[21] and special judicial magistrates.[22] The state government in consultation with the high court establishes as many courts of judicial magistrates of the first class and second class as it requires in a district.[23] In metropolitan areas (whose population exceeds one million) at the lower level, the courts of metropolitan magistrates are established.[24] The metropolitan magistrate has the powers of a magistrate of the first class and, the chief metropolitan magistrate has the powers of a chief judicial magistrate.[25]

Similarly, the **Code of Civil Procedure (CPC)** envisages setting up of a district court in each district as principal civil court of original jurisdiction subordinate to the high court.[26] All the courts in the district are subordinate to the district court, which is the highest court in every district.[27] Every state has enacted its own law for setting up courts subordinate to the district court. The jurisdiction to entertain cases by the civil courts mainly depends on their pecuniary limits.

There is a three-tier system of subordinate courts existing in most of the states.

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[15] *Supra* note 8, Art 216.
[16] Code of Criminal Procedure, sec 7.
[17] *Id*, sec 12(1).
[18] *Id*, sec 12(2).
[19] *Id*, sec 12(3).
[20] *Id*, sec 11(1).
[21] *Id*, sec 11(1).
[22] *Id*, sec 13(1)
[23] *Id*, sec 11.
[24] *Id*, sec 8.
[25] *Id*, sec 16.
[26] Code of Civil Procedure, 1908, sec 3.
[27] *Ibid.*

In fact each state is divided into districts as units of administration and each district is further divided into *taluks* or *tehsils* comprising certain villages contiguously situated. These are but administrative units. The court structure more or less corresponds with these administrative units except in urban areas. Ordinarily, a court of *munsif* / district *munsif*-cum-magistrate / civil judge (junior division) / subordinate judge, class-III and the sub-judge, class-II is set up at a *taluk* or *tehsil* level. Immediately above the district *munsif's* court in the hierarchy is the court of subordinate civil judge, class-I, whose jurisdiction so far as money matters are concerned, is unlimited in most cases.[28] In some states, these courts with unlimited pecuniary jurisdiction are called courts of civil judge (senior division) and in some states they are described as courts of subordinate judge. Vertically moving upward, the next set of courts are described as courts of district and sessions judge which also include the courts of additional judge, joint judge or assistant judge. In some states there is a court of civil and sessions judge. District judge when hears criminal cases, is known as Sessions Judge.[29] The court of the district and sessions judge at the district level is the principal court of original jurisdiction and is presided over by an officer called the District and Sessions Judge.[30]

In some states where workload does not justify existence of two separate cadres, the *munsif* (civil judge) is also invested with power of judicial magistrate of first class (criminal court). For example, in Maharashtra and Gujarat and few other states, at the base level, there are courts variously described as *munsif* magistrate or civil judge (junior division), or judicial magistrate second class. In some states, *munsif* is also described as district *munsif*. In most of the states, the posts of judicial magistrates, second class have ceased to exist. In metropolitan capitals such as Delhi, Bombay, Calcutta, Madras, etc., at the lower end, are the courts of small causes, which are subject to the administrative control of the district court and to the superintendent of the high court.[31]

(b) Hierarchy of Courts: Judges are not infallible and, as human beings, they are capable of committing mistakes even in the best of their judgments, reflective of their hard labour, impartial thinking and objective assessment of the problems put before

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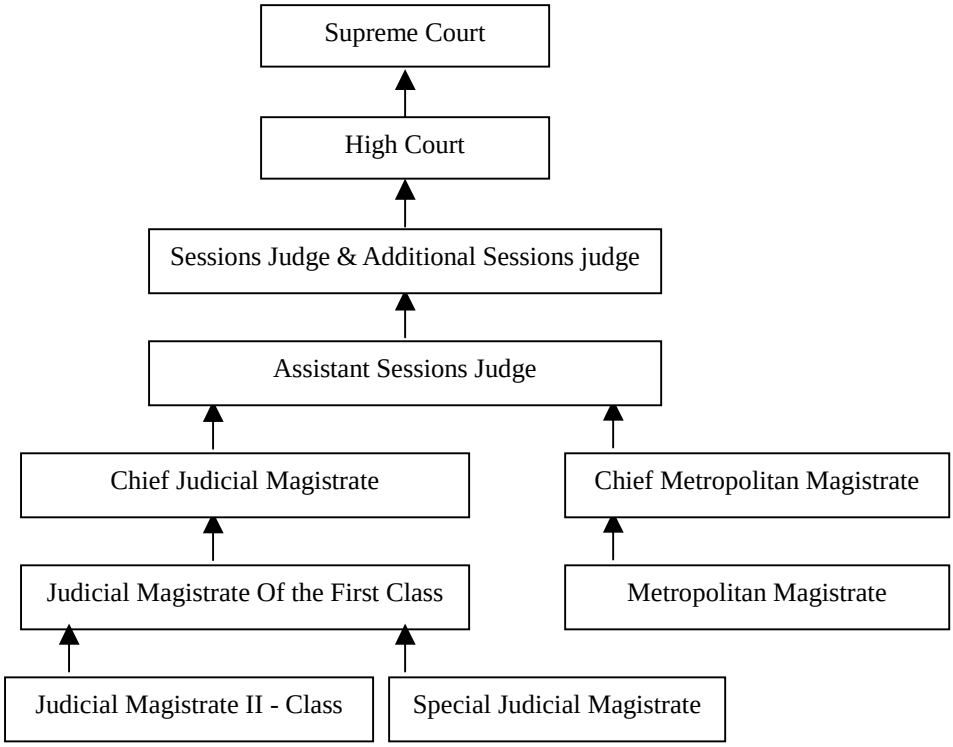
[28] This value differs from state to state.
[29] "Our Legal System," Andhra Pradesh Law Times, 70 (1992).
[30] G.O.I., *118th Report* of the Law Commission of India 1 (December 1986).
[31] Code of Civil Procedure, 1908, sec 7.

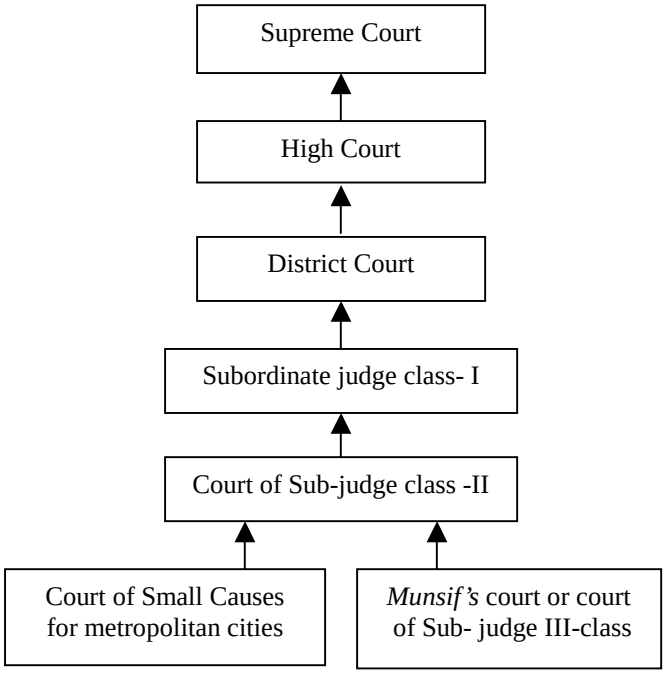
them, either in the matter of interpretation of statutory provision / while assessing evidence in particular case or deciding the question of law or facts. Such mistakes committed by them are corrected at the appellate stage. This explains the philosophy behind the hierarchy of courts.[32] General hierarchy of civil and criminal courts as well as hierarchy for every state is depicted beneath:

HIERARCHY OF CRIMINAL JUDICIAL SYSTEM:[33]



[32] *State of West Bengal v. Shivananda Pathak* 1998 (5) SCC 515.
[33] Criminal Procedure Code, 1973, sec 6.

HIERARCHY OF CIVIL JUDICIAL SYSTEM:[34]



The state wise hierarchy of Indian Judiciary:[35] In some of the states like, Maharashtra and Tamil Nadu separate courts exist to deal with civil and criminal cases. However, in majority of the states it is the workload that decides the jurisdiction of a court and assignment of work to a judge. Many a times a single judge entertains both civil and criminal cases. The following is a description of the hierarchy of courts in some of the states in India:

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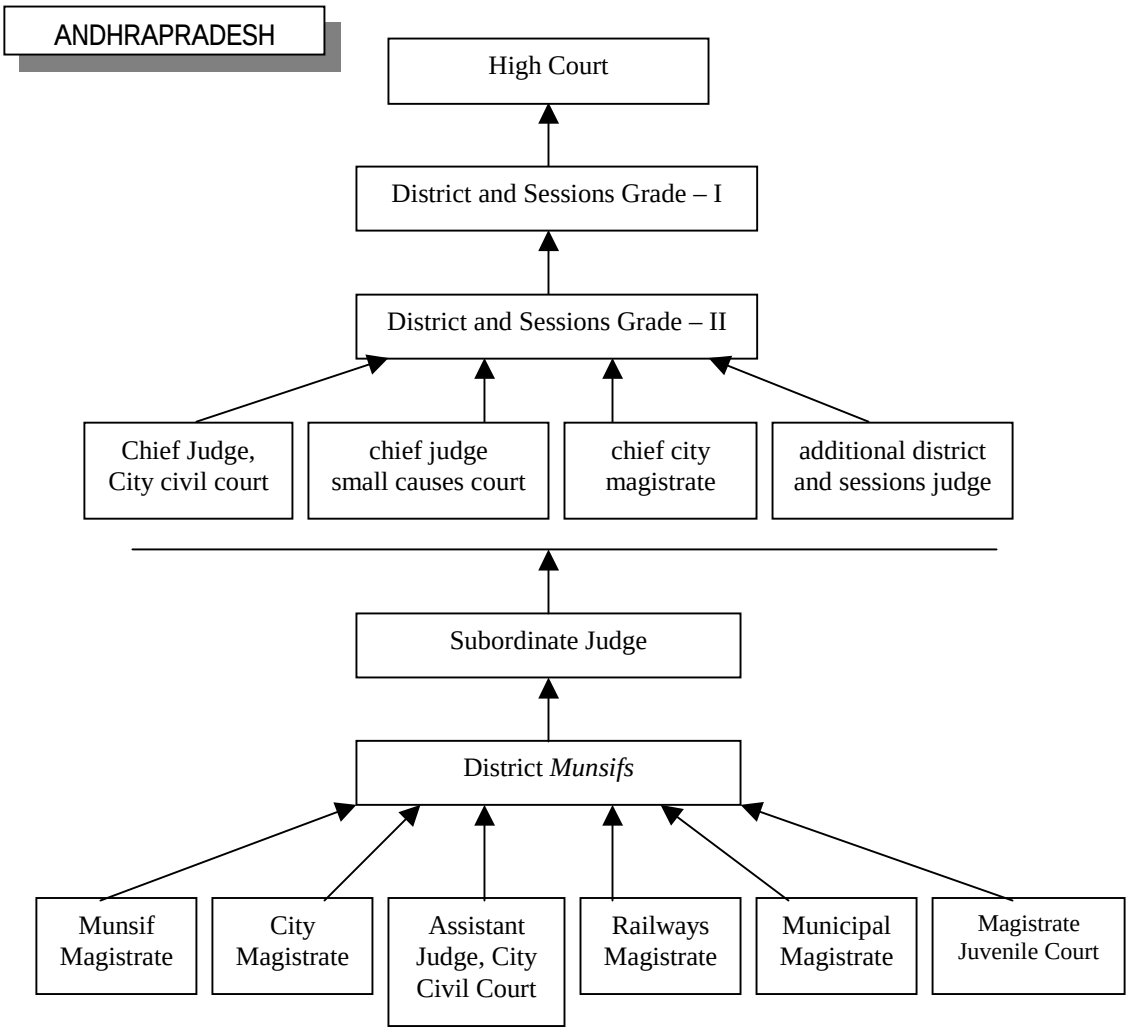
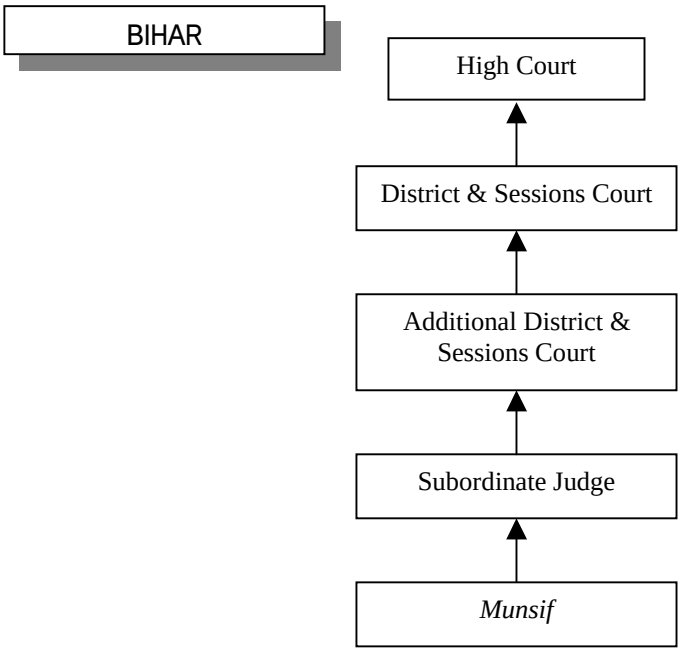
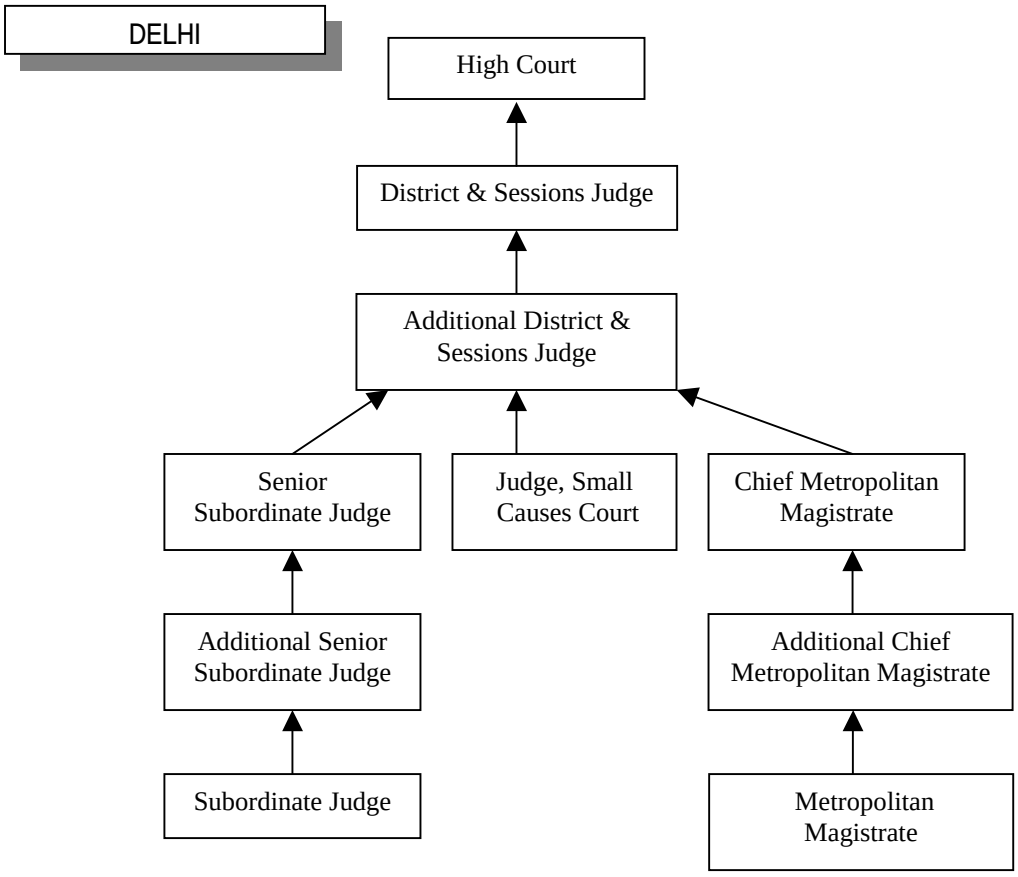
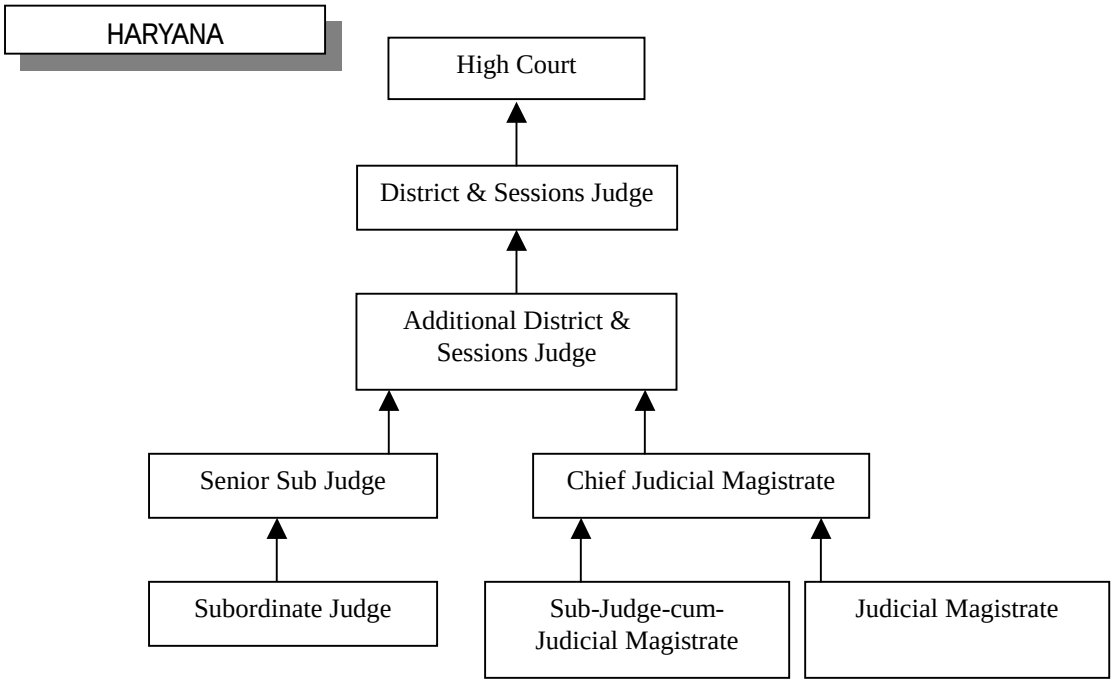
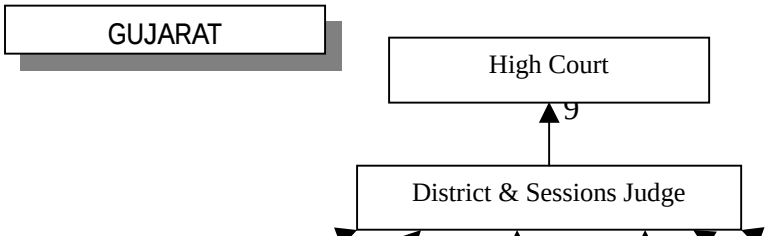
[34] *Supra* note 29, sec 3.
[35] *Supra* note 28.

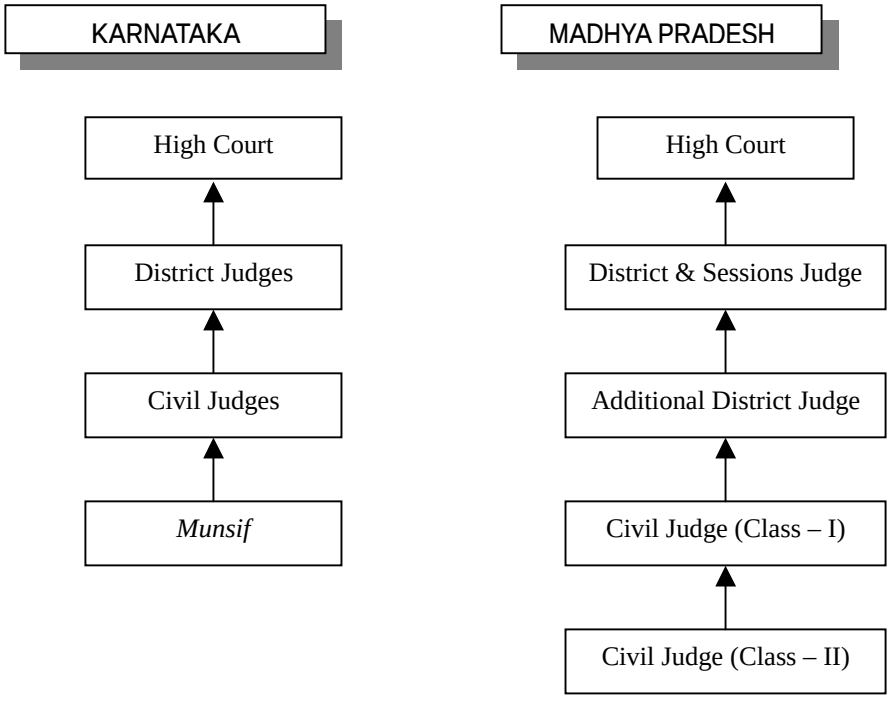

ANDHRAPRADESH
High Court
District and Sessions Grade – I
District and Sessions Grade – II
Chief Judge, City civil court
chief judge small causes court
chief city magistrate
additional district and sessions judge
Subordinate Judge
District *Munsifs*
Munsif Magistrate
City Magistrate
Assistant Judge, City Civil Court
Railways Magistrate
Municipal Magistrate
Magistrate Juvenile Court


BIHAR
High Court
District & Sessions Court
Additional District & Sessions Court
Subordinate Judge
Munsif

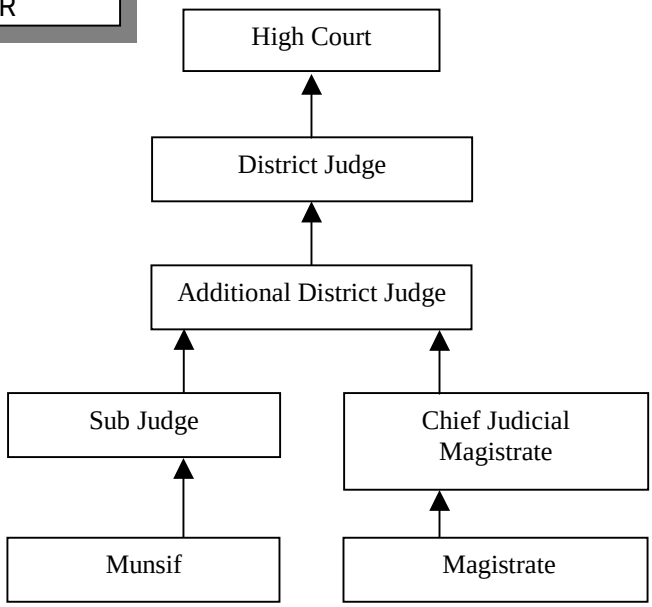

DELHI
High Court
District & Sessions Judge
Additional District & Sessions Judge
Senior Subordinate Judge
Judge, Small Causes Court
Chief Metropolitan Magistrate
Additional Senior Subordinate Judge
Additional Chief Metropolitan Magistrate
Subordinate Judge
Metropolitan Magistrate


HARYANA
High Court
District & Sessions Judge
Additional District & Sessions Judge
Senior Sub Judge
Chief Judicial Magistrate
Subordinate Judge
Sub-Judge-cum-Judicial Magistrate
Judicial Magistrate

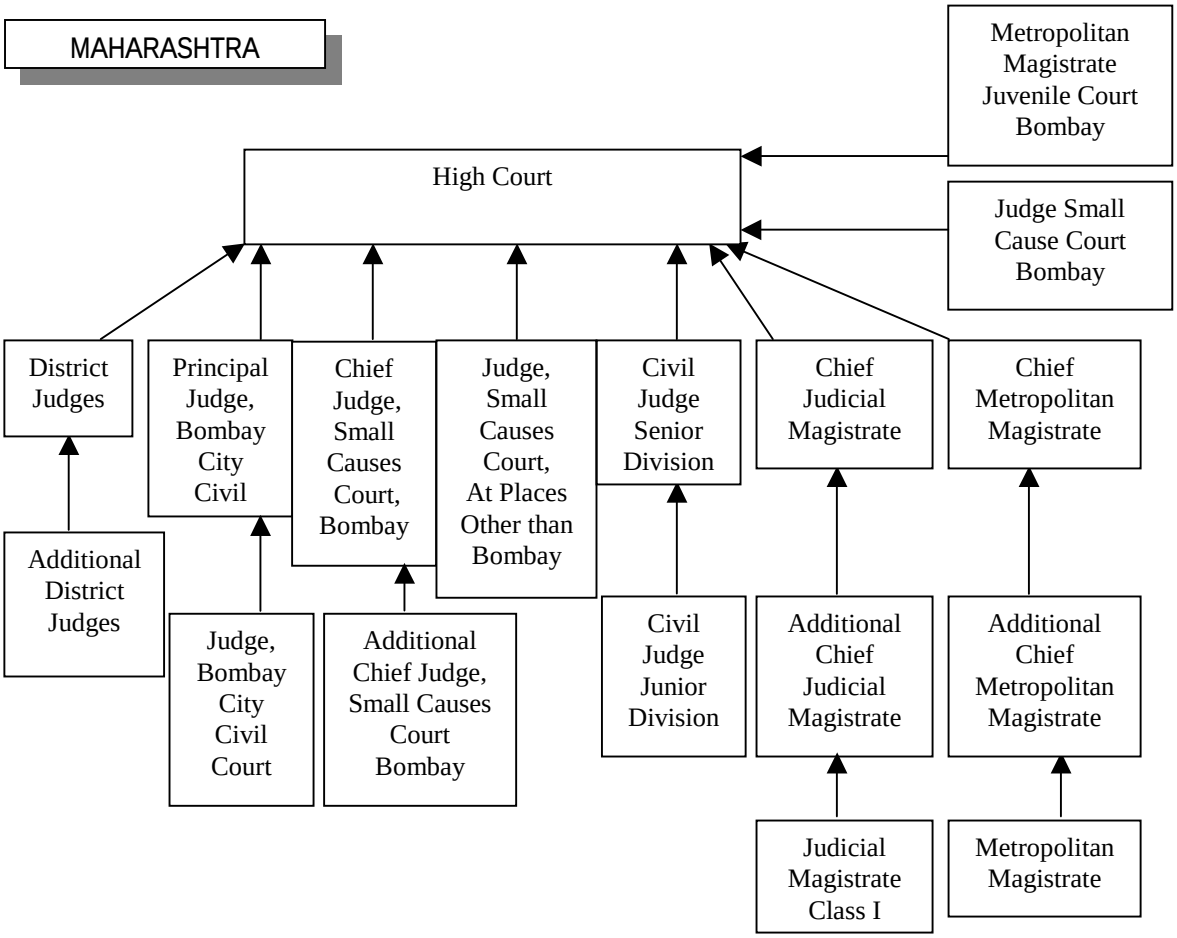

GUJARAT
High Court
District & Sessions Judge

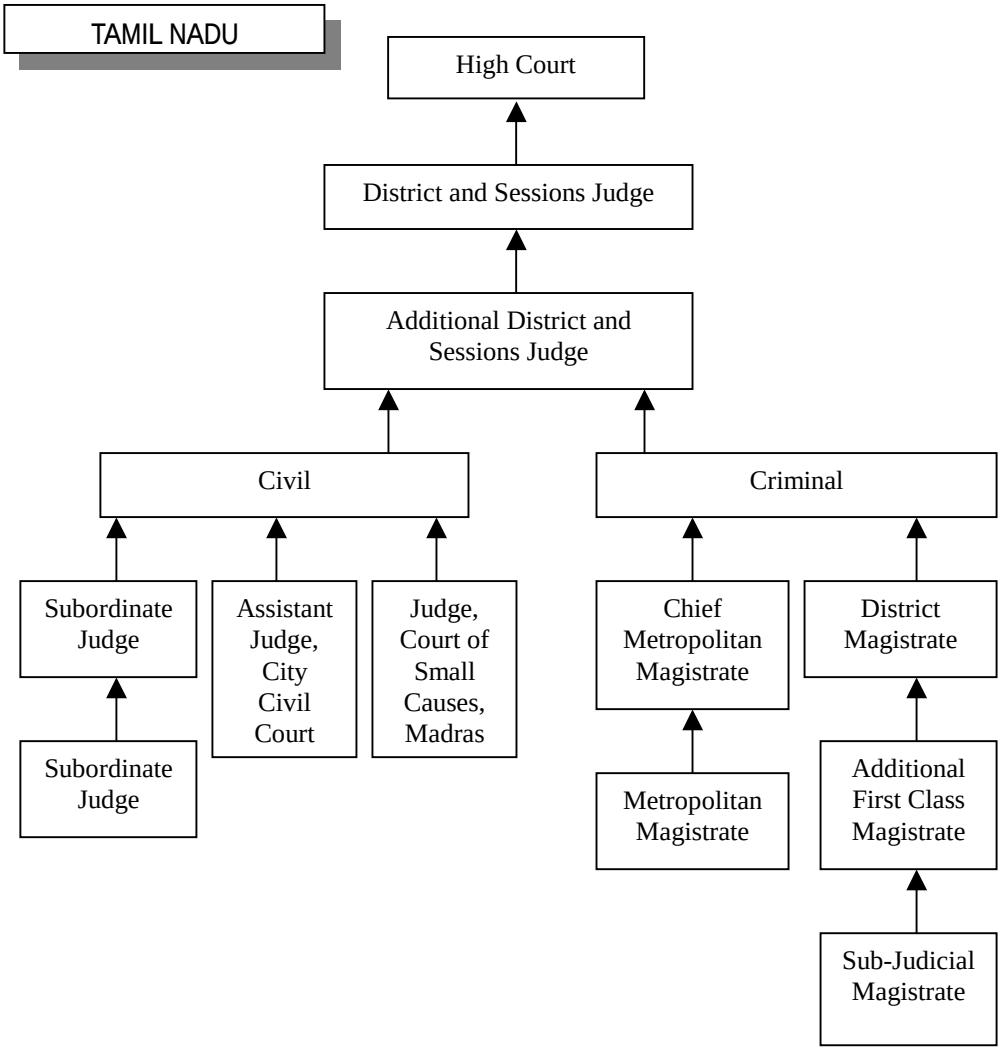

KARNATAKA
High Court
District Judges
Civil Judges
Munsif
MADHYA PRADESH
High Court
District & Sessions Judge
Additional District Judge
Civil Judge (Class – I)
Civil Judge (Class – II)

MANIPUR



MAHARASHTRA





(c) Jurisdiction: Jurisdiction distinguishes one court from another. It connotes the authority of a court to consider certain types of cases. The jurisdiction and function of the Supreme Court and high courts are precisely laid down in the Constitution of India and other procedural legislations, whereas in the matters of subordinate judiciary, the Cr. P.C., the C.P.C. and different state laws lay down the jurisdiction of these courts.

Jurisdiction and powers of the Supreme Court of India: The Supreme Court's jurisdiction is remarkably broad. It has exclusive jurisdiction in disputes between the Union and a State and between one State and another State or States;[36] exclusive jurisdiction with respect to matters arising out of territories of India;[37] jurisdiction in respect to such other matters within the competence of the Union as the

[36] *Supra* note 34, Art 131.
[37] *Ibid*.

Parliament may prescribe;[38] jurisdiction for the purpose of enforcement of fundamental rights guaranteed by the Constitution;[39] general appellate jurisdiction enjoyed by the Privy Council; [40] special jurisdiction to entertain by special leave, appeals from any judgement, decree, determination, sentence or order in any cause or matter passed or made by any Court or tribunal in the territory of India;[41]advisory jurisdiction to hear reference from the President on any question of law or facts;[42] special jurisdiction to decide disputes relating to the election of the President and the Vice-President of India;[43] and to enquire into the misconduct of the Chairman and members of the Union Public Service Commission.[44] Writ jurisdiction under Article 32 is an important and integral part of the basic structure of the Constitution. Through this the Court has extended its powerful and long hands to protect any person/body whose fundamental rights are violated or are under threat of violation. In order to ensure that an error is not perpetuated, the Court itself has decided that it is not bound by earlier pronouncements.[45]

The appellate jurisdiction of Supreme Court empowers it to determine its own jurisdiction and its decision in that regard is final.[46] The Supreme Court of India is not merely an interpreter of law but is by itself a source of law.[47] The law declared by the Supreme Court is binding on all the courts within the territory of India.[48] The Constitution has made the Court as a Court of record expressly conferring it with power to punish for contempt.[49] Further to give the Supreme Court freedom to regulate proceedings before itself, Constitution empowers it with rule making power whereby it can make rules for the regulation of the procedure for hearing appeals, reviews, writ petitions, other applications and for grant of bail, levy of fess on petitions, applications,

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[38] *Id*, Art 138.
[39] *Id*, Art 32.
[40] *Id*, Art 132 and 133.
[41] *Id* ,Art 136
[42] *Id*, Art 143.
[43] *Id*, Art 71.
[44] *Id*,Art 371.
[45] The Supreme Court under *Art.* 137 of the Constitution has power to review any judgement pronounced/Order made by it and the Court is not bound by its earlier pronouncements, see also *Mohindroo v. The District Judge, Delhi* (1970) 2 S.C.W.R. 619.
[46] *Commissioner of Police v. Registrar of High Court* 1996 (6) SCC 606.
[47] *Nand Kishore v. State of Punjab* 1995 (6) SCC 616.
[48] *Supra* note 34, Art141.
[49] *Id*, Art 129.

etc. and to make rules regarding the persons, practising or entitled to practice before it.[50]

Jurisdiction and power of High Courts: High courts have original as well as appellate jurisdiction.[51] The jurisdiction of the high court is coterminous with the territory of a state. Territorial jurisdiction of various high courts is given as under:

Name	Year	Territorial Jurisdiction	Seat
Allahabad	1866	Uttar Pradesh	Allahabad (Bench at Lucknow)
Andhra Pradesh	1954	Andhra Pradesh	Hyderabad
Bombay	1862	Maharashtra, Goa, Dadra & Nagar Haveli , and Daman & diu	Bombay (Benches at Nagpur, Panaji, Goa, Aurangabad and Daman & diu)
Calcutta	1862	West Bengal	Calcutta (Circuit Bench at Port Blair)
Delhi	1966	Delhi	Delhi
Guwahati	1948	Assam, Manipur, Nagaland, Tripura, Mizoram & Arunachal Pradesh	Guwahati (Benches at Kohima, Aizwal, Imphal, Shilong and Agartala)
Gujarat	1960	Gujarat	Ahmedabad
Himachal Pradesh	1971	Himachal Pradesh	Shimla
Jammu &Kashmir	1928	Jammu & Kashmir	Srinagar and Jammu
Karnataka	1884	Karnataka	Bangalore
Kerala	1958	Kerala & Lakshdweep	Earnakulam
Madhya Pradesh	1956	Madhya Pradesh	Jabalpur (Benches at Gwalior and Indore)
Madras	1862	Tamil Nadu & Pondicherry	Madras
Orissa	1948	Orissa	Cuttack
Patna	1916	Bihar	Patna (Bench at Ranchi)
Punjab & Haryana	1966	Punjab, Haryana,Chandigarh	Chandigarh
Rajasthan	1949	Rajasthan	Jodhpur (Bench at Jaipur)
Sikkim	1975	Sikkim	Gangtok
Ranchi	2000	Jharkhand	Ranchi
Raipur	2000	Chattisgarh	Raipur
Nainital	2000	Uttaranchal	Nainital

No High Court is superior over other. All the high courts have the same status under the Constitution.[52] Each High Court is a court of record,[53] with power to determine questions about its own jurisdiction and the power to punish for contempt of itself.[54] High court is the only court, other than the Supreme Court, vested with the

[50] *Id,* Art 145.
[51] *Id,* Art 225 and 227.
[52] *Id,* chapter v, part VI.
[53] *Id, Art.* 215.
[54] *Id,* Art 215.

jurisdiction to interpret the Constitution.

In the sphere of the states, high courts are given wide powers for issuing directions or writs or orders to all persons or authorities, including even governments, falling under the jurisdiction of the High Court, whether original or appellate, primarily for the enforcement of fundamental rights.[55] The supervisory jurisdiction of the High Court[56] obliges the High Court to confine to the scrutiny of records and proceedings of the lower tribunal, except when such conclusion is so perverse/unreasonable that no court could ever have reached them.[57] The High Court exercises its administrative, judicial, and disciplinary control over the members of the Judicial Service of the State.[58] Which includes general superintendence of the working of the subordinate courts, disciplinary control over the presiding officers of the subordinate courts and to recommend the imposition of punishment of dismissal, removal, and reduction in rank or compulsory retirement. Control also include suspension of a member of the Judicial Service for purposes of holding a disciplinary inquiry, transfer, confirmation and promotion.[59] The High Court is empowered to rise/lower the pecuniary jurisdiction of the subordinate civil judiciary/ withdraw powers of an Additional Sessions Judge, if some complaint is received against his conduct[60] / constitute a committee to deal with disciplinary matters pertaining to the subordinate judiciary and the staff working therein.[61] All persons convicted by Sessions Court or the State against acquittal appeal to the High Court [62]. High Court awards any sentence authorized by law as a criminal court:[63]

Single bench, division bench and full bench hear the appeals. Division bench is empowered to hear second appeal from the decision of judge constituting single bench. But that does not make single bench subordinate court to the high court. High Courts use local languages as specified by the notification issued by the state governments.[64] The High Court has power of revision if a civil court subordinate to the High Court

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[55] *Id, Art.* 226.
[56] *Id, Art.* 227.
[57] *Rena Drego v. Lalchand Soni* 1998 (3) SCC 341.
[58] *Supra* note 50 Art. 235.
[59] *High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal* 1998 (3) SCC 75.
[60] *High Court withdraws sessions judge's powers*, Hindustan Times 6-7-2000.
[61] *High Court of Judicature at Bombay v. Shirish Kumar Rangarao Patil* 1997 (6) SCC 339.
[62] *Supra* note 31, sec 377, 378.
[63] *Id, sec* 28, 29.

decides the case in cases where no appeal lies.[65]

Jurisdiction and power of subordinate Criminal Courts: The jurisdiction of every criminal court to try a particular offence is derived from the statute.

Jurisdiction of Sessions Court: A Sessions Judge hears appeals from the orders of first class magistrate and apply revision powers.[66] The serious cases such as death, murder, rape, etc. are tried by the sessions judge / additional sessions judge and not by assistant sessions judge.[67] A sessions judge has jurisdiction only inside his division. If the preliminary inquiry by the magistrate reveals any grave offence that requires a severe sentence to be awarded, beyond the powers of the magistrate, the case is referred to the sessions court for trial.[68] Maximum sentences that can be awarded by the Court of Session, are:[69]

SESSIONS JUDGE / ADDITIONAL SESSIONS JUDGE	Any sentence authorized by law, but any sentence of death passed shall be subject to confirmation by the High Court.
ASSISTANT SESSIONS JUDGE	Any sentence authorized by law other than a sentence of death, imprisonment for life or imprisonment for a term exceeding 10 years.

Jurisdiction and Powers of Chief Judicial Magistrate / Chief Metropolitan Magistrate:[70] To define the local jurisdiction of Judicial Magistrates; to control and supervise the work of other Judicial Magistrates subordinate to him and to distribute business of the court among them; to determine claims or objections to property attached or to make it over for disposal to any other Judicial Magistrate; to require the postal authority to deliver postal articles necessary for investigation, etc., and to grant warrant to search for such articles; to release persons imprisoned for failure to give security; to forward to a subordinate Magistrate for trial any case of which he / she has taken cognisance or to transfer a case from one Magistrate to another Magistrate, on

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[64] *Supra* note 51, sec 138, see also, Constitution of India, Art. 348.
[65] *Supra* note 29, sec 115.
[66] *Supra* note 31, sec 399.
[67] *Id,* sec 28(3).
[68] *Id,* sec 201and 202.
[69] *Id,* sec 28 and 29.

application of the accused; to receive a case from another Magistrate if in their opinion, the case needs to be tried by the Chief Judicial Magistrate / the Chief Metropolitan Magistrate; to withdraw or recall any case made over to any subordinate Magistrate. Maximum sentences that can be awarded by the Court are:

Chief Judicial Magistrate / Chief Metropolitan Magistrate	Any sentence authorized by law other than a sentence of death, imprisonment for life or imprisonment for a term exceeding 7 years.
Metropolitan Magistrate / Magistrate Of The First Class	Imprisonment for a term not exceeding 3 years; fine not exceeding Rupees 5000/-

Jurisdiction and Powers of the Judicial Magistrate / Metropolitan Magistrate are: Prevention of offences*;* order for maintenance of wives, children and parents unable to maintain themselves; to order a police officer to investigate a non-cognisable case or a cognisable offence of which he has taken cognisance; to hold investigation or preliminary inquiry on receipt of the report of a police officer; to record confessions and statements made in the course of investigations; to police and to authorise detention of arrested persons pending investigations; to stop investigations where it is not concluded within six months; to receive the accused for trial along with police reports; if, the offence of which the Magistrate has taken cognisance is such that it can be only tried by a Court of Session, he must commit that case to that court for trial; a Magistrate of the first class has wider jurisdiction and powers than a second class Magistrate.

Jurisdiction and Powers of Subordinate Civil Courts: The jurisdiction and powers of the subordinate courts are derived mainly from the C.P.C. and the Cr. P.C. Ordinarily, the district court has jurisdiction over a district demarcated as a unit of administration in every state also known as revenue district, but there are also cases of one district court having jurisdiction over two revenue districts.[71] Court of Munsif/ District Munsif-cum-Magistrate/ Civil Judge (Junior Division) / Judicial Magistrate set up at a *taluk* or *tehsil* level may have jurisdiction over more than one taluk/ tehsil. Similarly, depending upon the workload, a district court may have jurisdiction over

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[70] *Supra* note, sec 14, 15, 19.
[71] *Supra* note 28.

more than one district.[72]

The power of appeal is given to senior sub- judges of the first class from the decree and order of the Small Causes Court of a value not exceeding rupees 1000; and in land suits where the value of the suit does not exceed rupees 250. While hearing the appeal, the court of such senior sub- judge is regarded as a District Court for the purposes of appeal. A second appeal from such appellate orders, however, lies only to the High Court. Appeals from decrees and orders of the Subordinate Courts usually lie to the District Court. In some states, the appeal up to a particular amount lies to the District Court and if the amount is in excess of what is stipulated, the appeal lies directly to the High Court as a regular first appeal. Every Civil Court has three kinds of jurisdiction namely;

Territorial jurisdiction: Every court has its own local or territorial limits beyond which it cannot exercise its jurisdiction. The State Government in consultation with the High Court fixes these limits.

Pecuniary jurisdiction: Courts have jurisdiction only over those suits, the amount/ subject matter of which does not exceed the pecuniary limits of its jurisdiction**.**[73]

Jurisdiction as to subject matter: Different courts are empowered to decide different types of suits. Certain courts are precluded from entertaining some suits. For example, the court of small causes has no jurisdiction to try suits for specific performance of a contract, partition of immovable property, foreclosure or redemption of a mortgage, etc. In respect of testamentary matters, divorce cases, probate proceedings, insolvency proceedings, etc., only district court has jurisdiction.[74]

3. JUDGES: QUALIFICATION, APPOINTMENT AND POSITION

(a) Qualifications:

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[72] *Ibid.*
[73] *Supra* note 29, sec 6.
[74] C.K Takwani, *Civil Procedure* 7 (Eastern Book Co, 1997).

Supreme Court of India: Only a citizen of India who has been: (i) for at least 5 years a judge of a high court or (ii) for 10 years an advocate of high court or (iii) a person, who in the opinion of the President, a distinguished jurist - can qualify for appointment as a judge of the Supreme Court of India.[75]

High Court: for appointment as a judge in the high court, one must be a citizen of India and (i) held a judicial office in India for 10 years or (ii) practiced as an advocate of a High Court / two / more such courts in succession for a similar period.[76]

Subordinate Courts: Entry into subordinate judiciary pre-supposes knowledge of law and the practical experience of the working of the courts. Accordingly, eligibility criteria prescribing minimum requirements are prescribed as under:

(a) Academic qualifications: A degree in law is necessary requirement by way of academic qualifications.

(b) Age: Recruitment rules of most of the states provide for minimum and maximum age with relaxation in favour of weaker sections of society for recruitment to the subordinate judiciary. It varies from 21 to 45 years.

(c) Experience: The candidates who appear in the competitive examination held by the state public service commission is required to possess experience of practice as an advocate for the duration of one to five years.[77]

For recruitment to the Delhi Judicial Service, to be eligible to appear in the examination conducted by the Union Public Service Commission or High Court of Delhi, a person should: (i) be a citizen of India; (ii) practised as an advocate for not less than 3 years; (iii) should not be more than 32 years of age.[78]

The qualifying standards are not lowered for any category of candidates by prescribing lower qualifying marks as such relaxation can injure the institutional structure of the judiciary.[79][80]

(b) Appointments:

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[75] *Supra* note 34, Art 124 (3).
[76] *Id,* Art 217 (2).
[77] *Supra* note 61.
[78] "Exam to Delhi Judicial Service", Employment News, (5- 11 August 2000).
[79] The service Rules framed under the appropriate laws provide for reservation of seats and relaxation of qualifications and age for persons belonging to scheduled castes, schedule tribes and other backward classes.
[80] *Surendra Narayan Singh v. State of Bihar*, 1998 (5) SCC 246.

Supreme Court: Under Article 124(2) of the Constitution the President appoints every judge in the court after consultation with Chief Justice of India. The consultation with the Chief Justice along with his four senior colleagues is now mandatory.[81] In this context Article 124 (2) of the Constitution states that every judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the judges of the Supreme court and of the high courts in the states as the President may deem necessary.

High Court: The President appoints the Chief Justice of High Court by warrant under his hand and seal after consultation with the Chief Justice of India and the Governor of the state. The Chief Justice of India in consultation with the two senior most *puisne* judges of the Supreme Court makes the recommendation.[82] Article 217 of the Constitution states that (1) every judge of a high court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and in the case of appointment of a judge other than the Chief Justice, the Chief Justice of the High Court shall be consulted.

Subordinate Courts: Appointment, posting and promotion of district judges in any state is made by the Governor in consultation with the High Court exercising jurisdiction in relation to such state.[83] In this context Article 233 of the Constitution of India states that (1) appointment of persons to be, and the posting and promotion of, district judges in any state shall be made by the Governor of the state in consultation with the High Court exercising jurisdiction in relation to such state. (2) a person not already in the service of the Union or of the state shall only be eligible to be appointed a district judge if he has been for not less than 7 years an advocate and is recommended by the High Court for appointment. Recruitment to the cadre of district judge is made from two sources, viz. promotion from the subordinate judiciary and direct recruitment from the bar. In the matter of promotion from the subordinate judiciary, power is conferred on the Governor to give promotion in consultation with the high court exercising jurisdiction in relation to it. In some states the recruitment from the bar is made on the recommendation of the high court.[84] The provision of consultation with the

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[81] *Special Reference No. 1 of 1998*, RE: 1998 (7) SCC 773.
[82] *Ibid.*
[83] *Supra* note 34, Art 233.
[84] *Supra* note 61.

High Court in the matter of appointment is not a bare formality but is the vital essence of the Governor's power of appointment.[85]

Every state has made rules for recruitment of persons other than district judge to the state judicial service. These rules broadly lay down the age of entry, academic qualifications and practice at the bar, if any. Except where recruitment is by promotion, the state public service commission undertakes the process of recruitment on an indent received from the high court about existing and possible vacancies in the cadre in near future. The state public service commission invites applications by issuing advertisements setting out therein the minimum qualifications and other requirements. Some states provide for written examination conducted by public service commission and interview. Some states provide only for an interview by members of the state public service commission. The public service commission submits a list of candidates recommended by it as being eligible for appointment. The state government makes the appointments from the list. The relevant rules in this behalf vary from state to state.[86] In some states a sitting judge of high court is nominated by the Chief Justice for conducting interview test for such appointments.

If recruitment is by way of promotion, power is conferred on the high court alone to make recommendations even though the power to make appointment vests with the Governor. The state of Karnataka has made a departure from this practice. Even in the matter of recruitment from the bar to posts in the subordinate judiciary, a committee of five judges of the high court constituted by the high court of Karnataka conducts both written and viva-voce tests. In accordance with the merit list prepared by this committee, the Governor makes appointments. In case of Assam, recruitment to what is described as Grade III in subordinate judicial service is from two sources. Fifty percent of posts are filled by recruitment on the recommendation of the state public service commission by the governor and the Governor fills the remaining fifty percent on the recommendation of the high court. The state public service commission in order to select candidates holds a written examination. The high court, while making its recommendation, holds only a viva-voice test and the recruitment is from the members of the bar. The state of

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[85] *A.C. Thalawal v. High Court of Himachal Pradesh & Ors.* 2000 (5) SCALE, 204*;* see also, *Raj Kumar Bindlish v. State of Haryana* 1996 (9) SCC 5; see also, *Chandra Mohan v. State of Uttar Pradesh* 1966 A.L.J 778.

[86] *Supra* note 61.

Haryana has set up a committee charged with the duty of recommending persons for induction in subordinate judiciary from amongst members of Haryana Civil Service for whom there is a reserved quota of 20% of the total posts. It consists of three high court judges, the state advocate-general and the legal remembrancer of the government of Haryana and is called as Selection Committee. The remaining 80% of the posts are filled on the recommendations of the state public service commission based on the combined result of written and *viva-voce* tests.[87] The Supreme Court has directed the public service commission in every state to recruit the finest talent to the judicial service by having a real expert (sitting judge of the high court) whose advice constitutes a determinative factor in the selective process[88]. Thus, in majority of states candidates for recruitment to subordinate judiciary is done on the basis of combined result of written and viva-voce tests. The states of Assam and Punjab do not hold interview test and the selections are made on the basis of the written test by the public service commission. In Maharashtra and Gujarat, there is no provision for holding a written test and the candidates are selected on the basis of interview only.[89]

(c) Position:

Supreme Court Judge: The framers of the Constitution accorded highest respect and regard to higher Judiciary while laying down relevant provisions in the Constitution. They were mindful to maintain the independence of the Judiciary and to keep the Judges beyond the pale of executive favours. Very stringent provisions are thus, provided for the removal of a Judge. Every Judge of the Supreme Court on his appointment is irremovable from office during his tenure except on the ground of proved misbehaviour or incapacity.[90] The judges hold office until they attain the age of 65 years.[91] A judge of the Supreme Court can be removed only through impeachment by the Parliament.[92] The judges get high position in protocol. No discussion in Parliament is allowed in respect of their conduct in regard to discharge of their duties except upon a motion for presenting an address to the President praying for removal of the Judge as

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[87] *Id*, 6.
[88] *Ashok Kumar Yadav v. State of Haryana* (1985) 4 SCC 417.
[89] *Supra* note 61.
[90] *Supra* note 34, Art 124 (4) and (5).
[91] *Id*, Art 124 (2).
[92] Judges (Inquiry) Act, 1968, Sec 3.

provided in the Constitution.

The laws made by the Parliament determine salaries, privileges and allowances paid to the judges. After their appointment nothing can be varied to their disadvantage. All salaries, allowances and pensions payable to the judges remain a charge upon the consolidated fund of India[93] and are sufficient to maintain good standard of living. A retired Judge of the Supreme Court is not allowed to practice in any court of law or before any authority in India.[94] No other member of the public service in the government or public sector undertaking, exercises such powers, immunity and independence in the discharge of his functions and duties as the judge of the Supreme Court. They exercise wide powers in the exercise of their original and appellate jurisdiction.[95] Scurrilous abuse of a Judge or Court, or attacks on the personal character of a Judge, is punishable contempt.[96]

Chief Justice of India: The opinion of the Chief Justice of India has the greatest weight in the matter of selection of Judges of the Supreme Court, High Court and in the transfer of the High Court Judges. The Chief Justice has the power to appoint the staff of the court, to lay down the conditions of service of the said staff (without reference to any authority except in regard to pension, salary and allowances and leave, where consultation with the President is stipulated).[97] However, recommendations made by the Chief Justice of India without consulting four senior most puisne Judges of the Supreme Court are not binding on the Government of India in the matter of appointment of judges to the Supreme Court.[98] When the Bar of the High Court reasonably and honestly doubts the conduct of the Chief Justice of that High Court, necessarily the only authority under the Constitution that could be tapped is the Chief Justice of India, who in common parlance is known as the head of the judiciary of the country.[99] The Chief Justice makes rules regarding timing of offices of the Court and length of summer vacation and other holidays of the Court[100] and appoints one or more Judges as vacation

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[93] The Delhi High Court Act,1966, Sec 3-A.
[94] Supreme Court Rules, 1966.
[95] J. N.M.Kasliwal, "Removal of judges & judicial accountability," *50 years of Rajasthan HC*, (1999).
[96] *C.Ravichandran Iyer v. Justice A.M.Bhattacharjee*, 1995 (5) SCC 462.
[97] *Supra* note 34, Art 146.
[98] *Special Reference No. 1 of 1998*, RE, 1998 (7) SCC 773.
[99] *Supra* note 87.
[100] Supreme Court Rules, 1966, Order II Part I, Rule 1 and 4(1).

judges to hear matters of urgent nature.[101]

High Court Judge: A Judge of the high court holds office until he attains the age of 62[102] and is removable in the same manner as a Judge of the Supreme Court. Each judge is appointed to a particular high court and may be transferred to another high court.[103] As per the express provisions of the Constitution a judge of a high court is, independent of other two organs, the Executive and the Legislature.[104] High court judge is the holder of a constitutional office and not a government servant.[105] No minister or creation of the state can be conferred the rank of a high court judge by the State Legislature or Executive. The high position, access to justice and extraordinary powers of a judge cannot be diluted by the process of a political government selecting any appointments to services and posts and declaring them as enjoying the status of high court judges.[106] A judge of the high court beside his salary and allowances is provided with other official perks, in order to maintain his independence and impartiality. They dispose of heavy work, encounter issues of great national importance, discharge duties which demand high scholarship, and expected to perform without fear or favour.[107]

Chief Justice of the High Court: The power available to the Chief Justice of a High Court is akin to the power of the Chief Justice of India.[108] However, once appointed, any judge of the high court, including an additional, acting or *ad-hoc* judge has a single vote in the matter of deciding a case, heard by a Bench of which he is a member and the Chief Justice, if he is on the Bench, has no primacy on this point. The case will be decided according to the majority of the equal votes of all judges comprising the Bench. It is not unusual for a Chief Justice to be outvoted by two or more junior judges of the court. Administratively, however, chief justice has some special functions and powers, which the *puisne* judges do not have. Any proposal for establishing a permanent bench of the High Court in any other place in the State needs approval by the Chief Justice of that High Court. [109] The Chief Justice frames rules

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[101] *Id*, Order II, Part I, Rule 6.
[102] *Supra* note 34, Art 217(1).
[103] *Id*, Art 222.
[104] *Id*, Art 50, 214, 217, 219,221.
[105] *UOI v. Pratibha Bonnerjea*, 1995 (6) SCC 765.
[106] V.R.Krishna Iyer, "Why stultify judges status?" 10 *The Hindu* (23 –8 –2000).
[107] The High Court Judges (Conditions of Service) Act, 1954, Chapter IV.
[108] *Supra* note 34, Art 146 and 229.
[109] "SC of India", *The Hindu* (11-8-2000).

relating to the conditions of service of the staff, in matter of salaries, allowances, leave or pensions with the approval of the Governor.[110] The Chief Justice has power to grant advance or premature increments without Governor's approval.[111] An Acting Chief Justice,[112] however, is not equal to the Chief Justice.[113] The Chief Justice alone determines jurisdiction and work of various judges of the court.[114]

Members of the Subordinate Judiciary: The judicial officers belonging to the subordinate courts are placed under the protective umbrella of the high court.[115] Even the law made by the State Legislature concerning conditions of service of such officers and servants, is made separately,[116] emphasizing the separation of judiciary from the state services. Those who are promoted from the lower service of judiciary get advantage in the age of retirement as well as in the salary, allowances, perks and privileges and increase in dignity, status and judicial powers. No court is entitled to entertain or continue any civil or criminal proceedings against any member of the Judiciary for any act done in the course of acting or purporting to act in the discharge of his/her official or judicial duty or function.[117] Temporary appointments of judicial officers, who remain in the service for a long period, are not termed as makeshift or casual or purely *ad-hoc*. They are not excluded from the seniority list.[118] However, they are suspended or removed by the high court on account of misconduct, fraud, non-performance, judicial indiscipline and corruption.

The district judge has a higher position than the senior subordinate judge or subordinate judge 1st class. Delegation of certain powers of district judge to the latter does not equate posts of the two. The powers of the senior subordinate judge or subordinate judge 1st class and that of the additional district judge are also not co-extensive. Additional district judge is higher in rank than a senior subordinate judge or subordinate judge 1st class and is empowered to conduct session's trials exclusively.[119] The judicial officers are insulated from any pressure of whatsoever nature to adjudicate

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[110] *Supra* note 34, Art 229.
[111] *State of Uttar Pradesh andAnother v. C.L.Agarwal and Another*, 1997 (5) SCC 1
[112] Appointed under Art 223 of the Constitution
[113] *Id*, Art 217.
[114] *High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal* 1998 (3) SCC 84.
[115] *Supra* note 108 Art 233 to 237.
[116] Under Entry 3, List – II and not under Entry 41 dealing with Public Services of the State.
[117] Judges Protection Act, 1985, sec 3.
[118] "Re- determine judicial officers' seniority list: SC of India", *The Hindu*stan Times (23-8-2000).

disputes between the citizens and the state, without any favour or fear, prejudice or predilection.[120] Judicial officers are allotted quarters, a working library and efforts are made to bring in uniformity in the pay scales of judicial officers in different states.[121] In *the High Court of Judicature at Bombay v. Shirish Kumar Rangarao Patil*,[122] the apex court ruled that the judges, at every level represent the state ands its authority, unlike the bureaucracy or the members of other service.

4. STAFF OTHER THAN JUDGES IN THE COURTSAND OTHER JUDICIAL FORA

Staff other than judges in the Supreme Court:[123]

(i) Law officers of the central Government:

(a) Attorney General: The Attorney General of India, is appointed by the President of India to give advice to the Government of India upon legal matters and to perform such other duties of a legal character, as assigned to him by the President and discharge the functions conferred on him by Constitution or any other law for the time being in force. The Attorney General is the highest law officer in the country.

(b) Other law officers: Apart from Attorney General, the other law officers are the Solicitor General of India and Additional Solicitors General of India. These law officers represent the interest of the Government of India, public corporations, state governments in any high court or other subordinate courts as and when required.[124]

(ii) Central law agency: [125] The central and state governments and their agencies are today the biggest litigants causing maximum litigation in various courts and tribunals of India including the Supreme Court. The central government and its agencies are represented by Advocates-on-Record who are collectively designated as Central Law Agency. It consists of one administrative head having judicial experience and 12 Advocates-on-Record. They are allotted different types of work- civil, criminal,

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[119] *Gyan Prakash v. UOI* 1997 (11) SCC 670.
[120] *The High Court of Judicature at Bombay v. Shirish Kumar Rangarao Patil*, 1997 (6) SCC 343.
[121] *All India Judges' Association v. UOI* 1998 (9) SCC 246.
[122] 1997 (6) SCC 343.
[123] For a detailed description of officers of the court see chapter-ii.
[124] Supreme Court Rules, 1966.
[125] B.R.Agarwala , *SC Practice and Procedure* 18 (Eastern Book Company 4th edition, 1993).

income tax, customs and excise, gold control, constitutional etc. and are fully employed to initiate, prosecute or defend proceedings for the central government, its agencies and states.

(iii) Standing Advocates: Various state governments are represented in the Supreme Court by their own Advocates-on-Record and such persons are known as Standing Advocates of a particular state.[126]

(iv) Registry of the Supreme Court: It consists of one Registrar, Deputy Registrar, Additional Registrars, Joint Registrars, and Assistant Registrars. The Registrar has the custody of the records of the court.[127] They have wide powers and duties in relation to the business of the court.[128]

(v) Clerks of Advocates-on-Record: Every advocate-on-record or a firm of record employing clerks to attend the registry for presenting and receiving any papers on its behalf has to register their clerk with the registry.[129] Every clerk upon his registration with the registry of the Supreme Court is issued an identity card that is to be produced whenever desired. No advocate-on-record or firm of record can employ their own clerk or tout.[130]

Staff other than Judges in the High Court:

Advocate General: Advocate General is the highest law officer in the State. He is appointed by the State and holds office during the pleasure of the state government. Apart from the Advocate General there are Additional Advocates General and Government Advocates who attend to litigation in the courts in the state on behalf of the state, its agencies and the central government if they are required to do so.

Standing Counsels: They are Public Prosecutors in the High Court.[131]

The following is a brief description of the cadre wise strength of staff of Rajasthan High Court along with service conditions and existing pay scales. Same pattern exists for other 21 *high courts* of the country.

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[126] Source, Central Agency, Supreme Court of India, (2000).
[127] Supreme Court Rules, 1966, Rule 1, Order III, Part I.
[128] *Id*, Order VI, Part I, Rule 1.
[129] *Id*, Order IV, Part I, Rule 12.
[130] *Id*, Order IV, Part I, Rule 12, 13(3).
[131] For a detailed description see chapter II – Prosecutor / Prosecuting Attorney.

Cadre	Service conditions	No.	Pay scales	Nature of job
Deputy Registrars (Administrative, record, accounts, confidential)	By selection amongst Assistant registrars	8	12000- 16500	Administrative
Assistant Registrars/court officers	By selection amongst the Superintendents, seniority cum merit	6	10000- 15200	do
Assistant Registrars (paper books & translation)	No rules framed. As per practice post is being filled up according to seniority basis amongst the superintendents	2	10000- 15200	do
Private secretary	Seniority basis amongst the senior P.A.	33	10000- 15200	do
Senior librarians	Selection post	2	10000- 15200	do
Senior accounts officer	Deputation post	1	10000- 15200	do
Superintendents	Seniority basis- senior court masters	26	6500 - 10500	do
Chief accountant	By selection amongst superintendents	1	6500 - 10500	do
Assistant account officers	No rules framed. As per practice the post are being filled up from accountants of high court roll according to seniority cum merit	4	6500 - 10500	do
Senior P..A.	Seniority cum efficiency amongst the P.A's.	10	6500 - 10500	do
Senior court master	Seniority basis amongst court masters	1	6500 - 10500	do
Librarians	No rules framed	2	5500 - 9000	do
Assistant librarians	No rules framed	2	5500 - 8000	do
Court masters	Seniority cum suitability amongst stamp reporter / court fee examiners	34	5500 - 8000	do
Senior translators	By promotion amongst the translators	3	5500 - 9000	do
Translators	By holding qualification test amongst the graduate or lower division clerks on high court roll for at least 5 years.	10	5500 - 9000	do
Personal Assistants	Seniority basis amongst steno grade – II	8	5500 - 9000	do
Accountants	No rules framed. As per practice by promotion amongst the junior accountant on high court roll	4	5500 - 9000	do
Stamp reporter / court fee examiners	By holding qualifying test amongst Upper division clerks of high court roll	17	5500 - 9000	do
Office assistants	Seniority cum merit amongst the caretaker / U.D.C.s and L.D.Cs with at least 5 years on roll of high court	28	5500 - 9000	do
Care takers	No rules framed as per practice by selection amongst the UDCs/LDCs on high court roll	3	5000 - 8000	do
Manager (grade-II)	No rules framed	1	5000 - 8000	do

Stenographer	No direct recruitment (senior higher secondary exam must be passed)	45	5500 - 9000	do
Computer informers	No rules framed	2	5000 - 8000	Technical
UDCs	By promotion amongst LDCs on the basis of seniority subject to efficiency	111	4000 - 6000	Administ rative
LDCs/ Enquiry Clerk / House Keeper	Direct recruitment (senior higher secondary exam must be passed)	301	3050 - 4590	do
Record Weeders	No rules framed	16	3050 - 4590	do
Reference assistants	Direct recruitment	2	3050 - 4590	Technical
Library restorers	No rules framed	30	3050 - 4590	Technical
Data entry operators	Direct recruitment – Graduate with knowledge of computer operations	6	4000 – 6000	Technical
Cataloger cum classifiers	By direct recruitment – certificate course in library science	2	4000 – 6000	Technical
EPABX operators / Telex operators / Typewriter mechanics / generator operators	By direct recruitment – senior higher secondary trained	7	3050 – 4590	Technical
Pump drivers/ carpenters/ driver/library boys/cook/ *chowkidar*/gardeners	No rules framed. As per practice applications are invited amongst the class IV of high court having passed 8th and 5 years experience in relevant work.	70	3050 – 4590	Technical

Staff other than Judges in the Subordinate Judiciary:

The service conditions of the staff of the subordinate courts is a significant factor having bearing on the working of the subordinate courts and is directly connected to the administration of justice and thereby the rule of law.[132] Staff pattern for subordinate judiciary under the administrative control of Rajasthan High Court is illustrated below. In other states the pattern is more or less the same.

(A) Staff pattern for the courts of District & Sessions Judges:

MINISTERIAL STAFF		
DESIGNATION	**STRENGTH**	**PAY SCALE**
Senior Munsarim	1	6500 - 10500
Senior personal assistant	1	5500 - 9000
Senior reader	1	6500 - 10500
Junior Accountant	1	5000 - 8000
UPPER DIVISION CLERKS		
Senior Clerk	1	4000 – 6000
Head Copyist	1	4000 – 6000
Record keeper	1	4000 – 6000

[132] *All India Judges' Association v. U.O.I,* 1998 (2) 205.

Sale Amen – cum –Return clerk	1	4000 – 6000
Civil	1	4000 – 6000
Execution	1	4000 – 6000
Sessions	1	4000 – 6000
LOWER DIVISION CLERKS		
Assistant Nazir	2	3050 – 4590
Assistant record keeper	2	3050 – 4590
Copyist	2	3050 – 4590
Typist	1	3050 – 4590
Relieving clerk	3	3050 – 4590
Rept. And dispatch	1	3050 – 4590
CLASS – IV		
Orderly	3	2550 – 3200
Office peon	3	2550 – 3200
Record lifter	2	2550 – 3200
Waterman	1	2550 – 3200
Chowkidar	1	2550 - 3200
PROCESS SERVER		
On foot	4	3050 - 4590
On any animal, like camel	4	3050 - 4590
On cycle	As per load	3050 - 4590
Driver	1	3050 - 4590

(B) Staff pattern for the courts of Additional District & Sessions Judges, located at the headquarter of the district & sessions judges:

DESIGNATION	**STRENGTH**	**PAY SCALE**
MINISTERIAL STAFF		
P.A.	1	5500 - 9000
Senior reader	1	5000 - 8000
LOWER DIVISION CLERKS		
Civil clerk	1	3050 - 4590
Executive clerk	1	3050 - 4590
Sessions clerk	1	3050 - 4590
CLASS – IV STAFF		
Orderly	2	2550 – 3200
Office peon	2	2550 - 3200

(C) Staff pattern for the courts of Additional District & Sessions Judges, NOT located at the headquarter of the district & sessions judges:

DESIGNATION	STRENGTH	PAY SCALE
MINISTERIAL STAFF		
P.A.	1	5500 - 9000
Senior reader	1	5000 - 8000
LOWER DIVISION CLERKS		
Civil clerk	1	3050 - 4590
Executive clerk	1	3050 - 4590
Sessions clerk	1	3050 - 4590
Assistant Nazir	1	3050 - 4590
Assistant record keeper	1	3050 - 4590
Copyist	1 or more	3050 - 4590
CLASS – IV STAFF		
Orderly	2	2550 – 3200
Office peon	2	2550 - 3200
Record lifter	1	2550 - 3200
Chowkidar	1	2550 - 3200
Process servers	4 or more	2550 - 3200

(D) Staff pattern for the courts of Civil Judge (senior division) chief judicial magistrate located at the headquarter:

DESIGNATION	STRENGTH	PAY SCALE
MINISTERIAL STAFF		
Stenographer	1	5500 – 8000
Reader	1	4000 – 6000
LOWER DIVISION CLERKS		
Civil clerk	1	3050 – 4950
Executive clerk	1	3050 – 4950
Driver	1	3050 – 4950
Typist –cum-Copyist	1	3050 – 4950
CLASS – IV STAFF		
Orderly	1	2550 – 3200
Office peon	1	2550 – 3200

(E) Staff pattern for the courts of Civil Judge (senior division) chief judicial magistrate NOT located at the headquarter of the district & sessions judge:

DESIGNATION	STRENGTH	PAY SCALE
MINISTERIAL STAFF		
Stenographer	1	5500 - 8000
Reader	1	4000 - 6000
LOWER DIVISION CLERKS		
Civil clerk	1	3050 - 4950
Executive clerk	1	3050 - 4950
Copyist	1 or more	3050 - 4590
Typist –cum-Copyist	1	3050 - 4950
Assistant Nazir	1	3050 - 4590
Assistant record keeper	1	3050 - 4590
CLASS – IV STAFF		
Orderly	1	2550 – 3200
Office peon	1	2550 – 3200
Record lifter	1	2550 – 3200
Chowkidar	1	2550 – 3200
Process servers	4 or more	2550 – 3200

(F) Staff pattern for the courts of Civil Judge (junior division) & judicial magistrate class – I, located at the headquarter of the district & sessions judge:

DESIGNATION	STRENGTH	PAY SCALE
MINISTERIAL STAFF		
Stenographer	1	5500 - 8000
Reader	1	4000 - 6000
LOWER DIVISION CLERKS		
Civil clerk	1	3050 - 4950
Executive clerk	1	3050 - 4950
Criminal clerk	1	3050 - 4590
Typist –cum-Copyist	1	3050 - 4590
CLASS – IV STAFF		
Orderly	1	2550 – 3200
Office peon	1	2550 - 3200

(G) Staff pattern for the courts of Civil Judge (junior division) & judicial magistrate class-I, NOT located at the headquarter of the district & sessions judge:

DESIGNATION	STRENGTH	PAY SCALE
MINISTERIAL STAFF		
Stenographer	1	5500 - 8000
Reader	1	4000 - 6000
LOWER DIVISION CLERKS		
Civil clerk	1	3050 - 4950
Executive clerk	1	3050 - 4950
Copyist	1 or more	3050 - 4590
Typist –cum-Copyist	1	3050 - 4950
Assistant Nazir	1	3050 - 4590
Assistant record keeper	1	3050 - 4590
Criminal Clerk	1	3050 - 4590
CLASS – IV STAFF		
Orderly	1	2550 – 3200
Office peon	1	2550 - 3200
Record lifter	1	2550 - 3200
Chowkidar	1	2550 - 3200
Process servers	4 or more	2550 - 3200

Apart from above staff in various subordinate courts, there are following class of Public Prosecutors appointed to look after the matters in such courts:[133]

Public Prosecutors appointed by the central government; appointed by the state government; Additional Public Prosecutors appointed by the central or state government; Special Public Prosecutors appointed by the central government; Special Public Prosecutors appointed by the state government for special cases and for a particular time, working in the Criminal Courts.

5. STATISTICAL DATA[134]

(A) Statement of cases pending in Supreme Court as on 2.11.2000

Total	More than 2 years	More than 10 years
21657	8472	645

(B) Statement of pendency of cases in *high courts* as on 31.12.1999

High court of:	Number of cases pending:	Cases pending for more than	
		Two years:	Ten years:
Allahabad	815026	602292	201460
Andhra Pradesh	150222	7883	2823
Bombay	284203	155982	28404
Calcutta	310914	259054	146476
Delhi	178186	107427	33774
Gauhati	38702	19790	162
Gujarat	143274	87753	18592
Himachal Pradesh	11928	6367	37
Jammu & Kashmir	70336	44207	2392
Karanataka	84486	29214	1081
Kerala	308237	98512	533
Madhya Pradesh	106293	56176	5050
Madras	355382	129267	9655
Orissa	117339	60994	3313
Patna	82697	35880	6657
Punjab & Haryana	184970	122672	33791
Rajasthan	122899	62453	6674
Sikkim	206	11	2
TOTAL	3204083	1885934	500876

[133] B.R.Agarwala, *Our Judiciary* 44 (Eastern Book Co., 1993).
[134] Source: Ministry of Law, Justice & Company Affairs, Government of India, New Delhi (2000).

(C) Statement of number of cases pending in the district or subordinate courts in the States:

State/Union territory	As on	Civil	Criminal
Andhra Pradesh	12/99	561351	433523
Arunachal Pradesh	6/99	331	1469
Assam	12/99	44723	116804
Bihar	12/99	253692	999204
Goa	12/99	27542	12041
Gujarat	12/99	642133	2498023
Haryana	12/98	201656	293145
Himachal Pradesh	12/99	71297	67826
Jammu & Kashmir	12/98	46259	75386
Karanataka	12/99	662269	421046
Kerala	12/99	218847	376683
Madhya Pradesh	12/99	357390	1033516
Maharashtra	12/99	860508	1828967
Manipur	12/99	4524	3614
Meghalaya	12/97	261	1968
Mizoram	12/99	1890	1001
Nagaland	-	-	-
Orissa	6/99	129757	528780
Punjab	12/98	201118	174094
Rajasthan	6/99	280893	573999
Sikkim	12/98	467	1352
Tamil Nadu	12/99	537363	305889
Tripura	12/99	5921	12767
Uttar Pradesh	12/99	1008471	2298622
West Bengal	12/98	457254	854264
Andaman & Nicobar	6/99	552	56
Chandigarh	12/98	12961	32206
Dadra & Nagar Haveli	12/99	273	1035
Daman & Diu	12/99	558	598
Delhi	12/99	157531	305542
Lakshadweep	12/99	83	110
Pondichery	12/99	5845	5789
TOTAL: 20013309			

(D) Statement of number of cases pending in district and subordinate courts as on 31.12.1998:

State/Union territory	Total cases pending	Pending for less than 10 years:	Pending for more than 10 years:
Andhra Pradesh	1002172	992655	9517
Arunachal Pradesh	1849	1843	6
Assam	186799	184254	2545
Bihar	1223190	1165808	57382
Goa	43163	39350	3813
Gujarat	3000330	292837	71955
Haryana	494801	492921	1880
Himachal Pradesh	136443	135226	1217
Jammu & Kashmir	121915	118088	3827
Karanataka	1254655	1231952	22703
Kerala	554566	551885	2681
Madhya Pradesh	1456853	1371454	85399
Maharashtra	2955103	2728383	226720
Manipur	7970	7647	323
Meghalaya	-	-	-
Mizoram	3730	3730	0
Nagaland	-	-	-
Orissa	637277	630198	7079
Punjab	375212	371070	4142
Rajasthan	875065	821325	53740
Sikkim	1780	1771	9
Tamil Nadu	828097	816808	11289
Tripura	18853	18322	531
Uttar Pradesh	3244351	3103745	140606
West Bengal	1305855	1210300	95555
Andabar & Nicobar	607	603	4
Chandigarh	50043	49964	79
Dadra & Nagar Haveli	894	885	9
Daman & Diu	1156	1144	12
Delhi	397814	381328	16486
Lakshadweep	142	138	4
Pondichery	6228	6212	16
TOTAL	20186913	19367384	819529

(F) Statement of number of cases disposed of during the year 1999:

A	**Supreme Court**	34836
B	**High Court of:**	
Allahabad		73655
Andhra Pradesh		98123
Bombay		59906
Calcutta		29182
Delhi		31453
Gauhati		-
Gujarat		-
Himachal Pradesh		6447
Jammu & Kashmir		28993
Karnataka		71976
Kerala		90897
Madhya Pradesh		61813
Madras		94930
Orissa		26888
Patna		77345
Punjab & Haryana		60328
Rajasthan		36655
Sikkim		660

(G) Statement of number of cases disposed of during 1998 by the district or subordinate courts:

Andhra Pradesh	1066377
Arunachal Pradesh	831
Assam	96923
Bihar	331785
Goa	24147
Gujarat	1681231
Haryana	261817
Himachal Pradesh	148150
Jammu & Kashmir	133243
Karanataka	795071
Kerala	799747
Madhya Pradesh	910950
Maharashtra	1839683
Manipur	5438
Meghalaya	-
Mizoram	6747
Nagaland	-

Orissa	184511
Punjab	308291
Rajasthan	528308
Sikkim	4216
Tamil Nadu	1393563
Tripura	27538
Uttar Pradesh	1998627
West Bengal	609294
Andabar & Nicobar	334
Chandigarh	66813
Dadra & Nagar Haveli	466
Daman & Diu	840
Delhi	367022
Lakshadweep	485
Pondichery	23335
TOTAL	13615783

STATISTICS OF JUDICIARY IN STATES

1. Rajasthan:

Number of districts: 32 Number of district judges: 33
Number of district & sessions judge: 109 Number of additional district judges: 88
Number of additional district & sessions judge: 126 Number of sessions judge: 235
Number of chief judicial magistrates: 32 Number of additional chief judicial magistrates: 187
Number of judicial magistrates: 276 Number of special magistrates: 2
Number of civil judge (senior division)-cum-CJM/ACJM: 187
Number of civil judge (junior division) and Judicial Magistrates: 276

Pecuniary limit of:

Civil judge (junior division) and Judicial Magistrates – Rupees 25000.
Civil judge (senior division)-cum-CJM/ACJM – Rupees 50000.
Number of Judges in the High Court: 20 when permanent strength is 27.

2. Sikkim :

Number of districts: 2 Number of district judges: 2
Number of judicial magistrate first class: 4 Number of Sessions Judge: 3

3. West Bengal:

Number of judicial magistrates: 168 Number of district judges: 17
Number of S.D.J.M (senior division) with sessions power: 53 Number of Civil Judges: 92

Number of Additional District Judges: 84 Number of District Courts: 565
Number of district Munsif courts / Court of Small Causes: 123

4. Karnataka:

Number of Judicial First Class Magistrates: 301 Number of District Courts: 77
Number of Session Judges employed: 77 Number of Small Causes Courts: 27
Number of Chief Metropolitan Magistrates and Chief Judicial Magistrates: 108
Number of Munsiff including Additional Munsiff Courts: 297

5. Andhra Pradesh:

Number of districts: 23 Number of district judges: 23
Number of district & sessions judge: 109 Number of additional district judges: 39
Number of sessions judge: 6 Number of chief judicial magistrates: 32
Number of chief judicial magistrates: 23 Number of judicial magistrates: 395
Number of special magistrates: 207 Number of metropolitan magistrates: 39
Number of subordinate judge class - I: 129
Number of Court of Small Causes: 2 in the cadre of district judges and 1 in the cadre of subordinate judge class – I
Number of Judges in the High Court: 26 when permanent strength is 31.
Pecuniary limit of jurisdiction of subordinate judge class - I: Upto Rs. 10 lakhs
Pecuniary limit of High Court as a civil court: Upto Rs. 5 lakhs (single judge) and above Rs. 5 lakhs (division bench)

Observations:

In the light of available sources it may be stated that in India, there were 1000 unfilled vacancies in the subordinate judiciary and in the High courts, out of 618 High Court judges posts as on January 1,2000 there are 156 vacancies.[135] In 1987, India had only 10.5 judges per million, where as Australia 41.6, Canada 75.2, England 50.9 and USA 107 per million.[136]

The number of civil judges junior division and judicial magistrate first class in Maharashtra is over 700 now.[137] The Delhi High Court raised strength of senior civil judges from 1 to 9.[138] In addition to existing posts, 50 more posts in Delhi judicial services are created and 20 civil judges are promoted to senior level.[139]

Central Government Grants for Courts: The Central Government assistance for the upgradation of judicial infrastructure in the States has been raised from Rupees 50 crore to Rupees 75 crore for the financial year, 2000. Rupees 7.5 crore was allocated to north-eastern states for improvement of judicial infrastructure.[140] The union government constructed around 2000 courtrooms and judges' residences in different states and union territories at the cost of Rupees 710 crore.[141] Rupees 208 lakhs were allocated for use of information technology in courts and this amount was released to the states and union territories on July 5, 2000.[142]

Pendency and the backlog of cases in the courts:

India has a backlog of 2.31 crore cases in various courts, some for as long as 25 or 30 years. Over 31 lakh cases are pending in the country's 18 High courts alone. During 1998, the number of cases filed in High courts was about 15 lakhs and the disposal was about 13 lakh cases. Over 33 lakh cases are pending in high courts and more than 2 crore in subordinate courts.[143] The central and state governments are the single largest litigants, abetted by government owned corporations, semi- government bodies and other statutory organizations. In Bombay High Court alone, there are as many as 1,205 writ petitions filed against these bodies between January 1 to June 7,

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[135] P.P.Rao, "Holding up of judicial appointment" 7 *Indian Express*, (21–1–2000).
[136] Krishan Mahajan, "Judging the right number" 8 *Indian Express*, 18-5-2000.
[137] "High Court: Reservation does not apply to lower judiciary" 4 *The Hindu*stan *Times, dt.* 14-8-2000.
[138] "High Court raises strength of senior civil judges" 1 *The Hindustan* Times (1-6-2000).
[139] Row over High Court decision on jurisdiction 3 *Times of India*, 27-7-2000.
[140] Rajesh Kumar, "States told to computerise courts soon" *Indian Express* 7 (22-6-2000).
[141] Bisheshwar Mishra, "2000 court rooms, judges' houses built" 12 *Times of India,* (17-6-2000).
[142] The Law Minister, in a written reply to the Lok Sabha on 4th August, 2000.

2000- excluding those filed on the appellate side, while total number of suits filed is 2,402.[144]

High courts and various state governments are very slow in taking steps to fill the vacancies of judges on time.[145] In Mumbai, for example, 50 metropolitan magistrate courts serve a population of more than 12 million. At least 13000 judicial officers across the country are loaded with 40 million cases. They have been demanding appropriate representations in the High courts and the Supreme Court, at least 50 % of the vacancies in the High courts they are demanding to be filled up by the subordinate judicial officers.[146]

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[143] Arun Jaitly, "CJI for Maintaining independence of judiciary" 4 *The Hindu*, (6-8-2000).
[144] Subhash Kothari, "Courting Disaster: A case for Judicial Reform" 14*Times of India*, (28-6-2000).
[145] Dr. A.S.Anand, CJI, at the inauguration of principal Bench of CAT, see "Needed, an internal umpire", 11 *The Hindu* (6-8-2000).
[146] Rakesh Bhatnagar, "Judiciary will have to lead way on Supreme Court retirement judgment", 11 *Times of India* (10-7-2000).

Chapter II

PROSECUTOR/PROSECUTING ATTORNEY

1. PROSECUTING SERVICE IN INDIA: AN OVERVIEW

The administration of criminal justice involves three basic components viz., police (inputs); court (process); and corrections (output). The criminal justice is being administered by two important agencies, namely, investigation and prosecution. The primary investigation unit in India is the police department. In general parlance police includes all law enforcement and investigating agencies (directly or indirectly) involved in the process of identifying and apprehending individuals who are suspected of disobeying law or administrative regulation, and in arresting, or by other means causing those individuals to be brought before the appropriate *fora* to answer to the allegations of such violations. It is the responsibility of the police to make every effort to prevent crime, repress the incidence of criminal activities, identify and apprehend the individuals who violate the laws, assist in the presentation of testimony and evidence to provide the accused a fair trial with convictions of the guilty as its goal. The Indian Police Act, 1861 is the basic legislation governing the organization of police force in the country. After due investigation, police files charge sheets in the court,[147] on the basis of which an accused is prosecuted.

Public prosecution is another important component of administration of criminal justice system. The integrity of the person in charge of the prosecution, i.e., 'Public Prosecutor is key to success of any prosecution.[148] Thus the role of the prosecutor / prosecuting attorney is very significant, who has to collect the evidence and

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[147] Code of Criminal Procedure, 1973 (Cr. P.C.), sec 158.
[148] *V. K. Godwani v. State*, AIR 1965 Cal 79

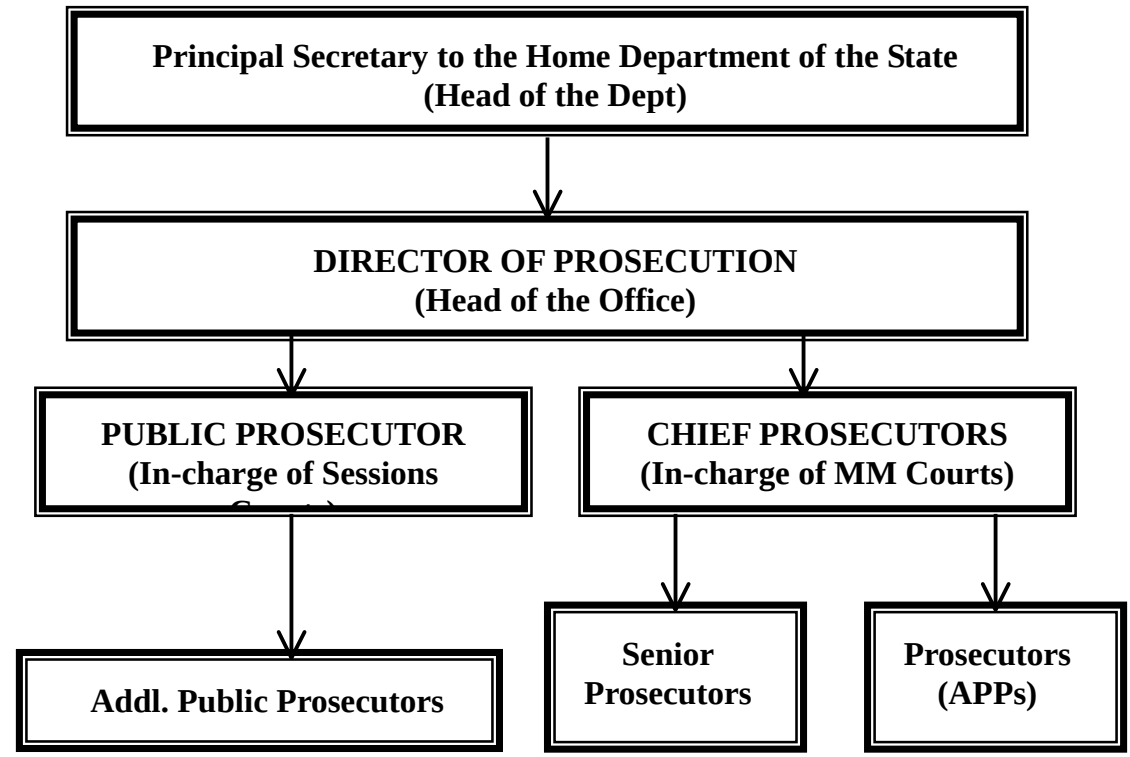
present it before the court in a convincing and effective manner. Assisting the court is a continuation of the law enforcement or investigative agency's responsibility for the arrest. During the British rule in India public prosecutors appearing before the Magistrate were under the direct control of the executive wing of the police at the district level. But in the Sessions' courts and high courts public prosecutors were not subordinate to the police department. Prior to the enactment of Code of Criminal Procedure, 1973 (herein after referred to as 'Code') the public prosecutors were attached with the police department and they were responsible to the district superintendent of police. The 1973 Code[149] has changed this practice on the basis of recommendation of the Law Commission in its 14th Report.[150] Public prosecutors are now no longer under the administrative control of the police. Under section 24 of the Code, a statutory obligation has been imposed on the State as well as the Central Government, to appoint assistant public prosecutors in every district for conducting the prosecutions in the magistrate's court concerned, and making such assistant public prosecutors independent of the police department by creating a separate prosecution department for them, with Director of Public Prosecution as its head directly responsible to the Government for the department's work.[151]

Structure of Prosecuting Services in India

The structure and composition of prosecuting service varies from state to state. In some states the prosecuting service is under the control of Home Department and in others under the Department of justice.[152] Generally the structure of directorate of prosecution in the states in India is given as under:

[149] Cr. P.C.
[150] *S.B.Shahane v. State of Maharashtra,* AIR 1995 SC 1629.
[151] Cr.P.C, sec 25.
[152] A detailed description of the prosecution department in various states under the Department of Justice and the Department of Home Affairs is given at *infra table 3 and 4.*

STRUCTURE & COMPOSITION OF PRPSECUTION DEPARTMENT



2. PROSECUTING ATTORNEY/PROSECUTOR:

The director of prosecution is responsible for the prosecution of cases in the magisterial courts as well as in the session's courts.[153] The public prosecutor is not a part of the investigation agency. He is an independent statutory authority.[154] The role of a public prosecutor is inside the court, whereas investigation is carried outside the court. Normally the role of a public prosecutor commences after the investigation agency presents the case in the court on culmination of investigation. The Supreme Court in *R. Sarala v. T.S.Velu*[155] while dealing with a case wherein the investigation officer was directed by the High Court to consult the public prosecutor and submit a fresh charge-

[153] Rules made under Legal Remembrancer Manual.
[154] *Hitendra Vishnu Thakur v. State of Maharashtra*, 1994 (4) SCC 611
[155] *R. Sarala v. T.S.Velu*, 2000 (4) SCC 461.

sheet in tune with the opinion of the public prosecutor, held that "at any rate no investigating agency can be compelled to seek the opinion of a public prosecutor". The Court gave strong note against this direction and ruled that the public prosecutor is to deal with a different field in the administration of justice and he is not involved in the investigation. However, the office of public prosecutor can help the investigation agency by: (i) appearing in the court and obtaining arrest warrant against the accused; (ii) obtaining search warrants from the court for searching specific premises for collecting evidence; (iii) obtaining police custody remand for custodial interrogation of the accused; (iv) if an accused is untraceable, initiating proceedings in the court for getting him declared a proclaimed offender and, thereafter, for the confiscation of his movable and immovable assets; in complicated cases, in order to fill up a possible lacuna in the prosecution case, to guide investigating officers.[156]

(a) Qualifications: The qualifications prescribed for the appointment of public prosecutors varies from state to state. Generally law graduates falling within a specified age group, practicing as Advocates and, on the roll of Bar Councils are appointed as public prosecutors.

In NCT of Delhi, law graduates with 3 years experience and below the age of 30 years are eligible for appointment as assistant public prosecutors. They are eligible to be promoted as senior prosecutors after 7 years of regular service as assistant public prosecutors, in the courts of judicial magistrates or additional public prosecutors in the sessions courts. After 3 years of regular service as senior public prosecutors or additional public prosecutors they are eligible for the post of chief prosecutors.[157] The senior most chief prosecutor with three years of regular experience is eligible to become a public prosecutor for a district. The qualifications prescribed for appointment to the post of director of prosecution is either 5 years regular service as a chief prosecutor or 3 years regular service as a public prosecutor. Special public prosecutors**,** appointed for the purpose of handling any particular case or class of cases, must have10 years experience.[158]

Qualifications for Standing Counsel (Public Prosecutor for the High Court): An advocate who practised for not less than 10 years is eligible for appointment

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[156] Source: Law Commission of India, 14th Report.
[157] Source: *Directorate of Prosecution*, Govt. of NCT Delhi (2000).
[158] Cr. P.C, *sec* 24(8).

as a standing counsel.[159]

Qualifications for Government Advocates on Record (Supreme Court): An advocate with 3 years experience may appear in the Advocate- on- Record examination conducted by the Supreme Court of India.[160] Out of these advocates-on-record, those who qualify in the examination conducted by the Central Government through the Union Public Service Examination are selected as Government Advocates on Record. The persons so selected will appear on behalf of the Government before the Supreme Court in criminal appeals.

(b) Procedure of Appointment: The appointment of public prosecutors is regulated by the Code of Criminal Procedure, 1973 and the rules and regulations framed by state governments from time to time. For example, the procedure for appointment in NCT of Delhi is given as under:

In the **Metropolitan Magistrate's Court and Sessions Court,** the recruitment of prosecutors in the directorate of prosecution is made on the basis of a competitive examination conducted by the Union Public Service Commission. The successful candidates in this examination are appointed as assistant public prosecutors. Rest of the appointments in the directorate of prosecution are made on the basis of internal promotion. The state government in consultation with the high court does all promotions.[161] The public prosecutor and additional public prosecutors are appointed from the panel of names prepared by the district magistrate in consultation with the sessions judge[162] if, in the opinion of the state government, no suitable person is available in the regular cadre of prosecuting officers (i.e., the assistant public prosecutors selected after conducting Union Public Service Examination or State Public Service Examination)[163] in a state.[164] The district magistrate in consultation with the sessions judge prepares panel of names on the basis of the counsel's work and suitability of such person, from the administrative point of view.[165]

In the **High Court,** the central / state government appoints a public prosecutor,

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[159] *Id,* sec 24(7).
[160] Supreme Court Rules, 1966.
[161] Cr. P.C, *sec* 24.
[162] *Id,, sec* 24(3), 24(4), 24(5).
[163] Rules framed by *Directorate of Prosecution*.
[164] Cr. P.C., sec 24(6).
[165] *Harpal Singh Chauhan v. State of Uttar Pradesh,* AIR 1993 SC 2436.

after consultation with the high court,[166] for conducting any case or class of cases.[167] He is known as standing counsel[168] / additional government advocate.[169]

In the **Supreme Court,** criminal appeals are taken up by standing counsels of a particular state who are Advocates-on-Record of their choice,[170]or by anyone from the panel of advocates prepared by the Ministry of Law, Justice & Company Affairs.[171]

Besides, special public prosecutors are also appointed on contract basis[172] by the Remembrancer of legal affairs in most deserving cases,[173] to deal with sensational or politically important / controversial cases.

Appointment of Public Prosecutors by the Central Bureau of Investigation (CBI): The CBI has a legal division, which plays prosecutory role in the organization. It is headed by a legal advisor, who is a deputationist from the Ministry of Law of the Central Government. He is assisted by a number of law officers, namely, additional legal advisor, deputy legal advisor, senior public prosecutor, public prosecutor, assistant public prosecutor etc. These ranks indicate descending order of seniority and rank. They are employees of the CBI.[174] Besides, CBI also engages special public prosecutors from the Bar on daily fee basis in important and sensational cases.

(c) Position/Status of Prosecutors: Unlike the judges, prosecutors are not absolutely independent officers. They are appointed by the Government for conducting in court any prosecution / other proceedings on behalf of the Government concerned. They cannot act contrary to the instructions issued by the Government.[175]

Director of Prosecution: The director of prosecution is the head of the prosecution wing in a state. He works under the supervision of law department or home department of the state. He is assisted by a number of additional directors, deputy directors and assistant directors, etc. He is a person of the rank of director general of police (executive force),[176]and over all in-charge of prosecution branch. He controls

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[166] Cr. P.C, sec 24(1).
[167] *Id*,, sec 24(2).
[168] In Delhi.
[169] *Mansoor v. State* AIR 1971 SC 1977.
[170] B.R.Agarwala, *Our Judiciary*, 104, (1993 Eastern Book Company).
[171] Source: Central Agency, Government of India, New Delhi (2000).
[172] CBI Notification No. 225/45/97-AVD-II (ii).
[173] *Mukul Dalal v. UOI*, 1988 (3) SCC 145.
[174] M.L.Sharma, *Towards Speedy Justice,* CBI Bulletin, 4, (August 1999).
[175] *Sheonandan Paswan v. State of Bihar,* AIR 1983 SC 195.
[176] M.L.Sharma, *Role and Function of Prosecution in Criminal Justice,* CBI Bulletin 4 (September

prosecution of cases in the sessions courts as well as in metropolitan magistrates courts[177] through public prosecutor of a district and chief prosecutors.[178]

Public Prosecutor: The public prosecutor supervises the work of additional public prosecutors working in the court of sessions, scrutinizes acquittal reports received from additional public prosecutors, refers the proposal for appeals and revisions to the director of prosecutions for filing in the high court and thereafter follows them. [179]

Additional Public Prosecutors: Additional public prosecutors conduct cases on behalf of the state in the court of sessions and work under the supervisory control of public prosecutor of a district.[180]

Chief Prosecutors: Chief prosecutors are in-charge of the prosecution work of their respective districts, render advice to the deputy commissioner of police from time to time and supervise the work of senior prosecutors and assistant public prosecutors posted in the metropolitan magistrate's courts[181] of their respective districts.[182]

Senior Prosecutors: Senior prosecutors are officers in charge of prosecution work of the sub-division / district and supervises the work of assistant public prosecutors posted in the metropolitan magistrate's courts. They are designated as additional public prosecutors when posted in the sessions' courts.[183]

Assistant Public Prosecutors: These officers conduct the prosecution of cases on behalf of the state in the metropolitan magistrates' courts and prepare the acquittal reports and send the same to the chief prosecutor through senior prosecutors of their division. [184] Assistant public prosecutors, hold an office of profit under the state government and consequently, they are not eligible to stand for election.[185]

Standing Counsel: Standing counsels or additional government advocates are the public prosecutors for the high court.[186] They are under the control of the state's law

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1997).

[177] Metropolitan Magistrate's Courts or Judicial Magistrate's Courts, as the case may be.
[178] *Supra* note 11.
[179] *Ibid.*
[180] *Ibid.*
[181] Metropolitan Magistrate's Courts or Judicial Magistrate's Courts, as the case may be.
[182] *Supra* note 11.
[183] *Ibid,* the procedure prescribed under Legal Remembrancer Manual.
[184] *Supra,* note 33.
[185] *Rabindra Kumar Nayak v. Collector* 1999 (2) SCC 627.
[186] *Mansoor v. State of Uttar Pradesh* AIR 1971 SC 1977.

department.[187] They present appeal in high courts against acquittal by lower courts.

Government Advocates-on-Record: They are central government employees, who handle litigation of the Union Government before the Supreme Court.[188] They appeal against order of acquittal passed by the high court. However, they are not designated as public prosecutors because at the stage of Supreme Court, there is no prosecution as such, but only questions of law are argued.

Special Public Prosecutors: There are two kinds of special public prosecutors namely, (i) those appointed by the state government to deal with any particular case or class of cases and (ii) those appointed by the central government and its various agencies like, enforcement department, customs department or any public sector undertaking, etc. They are free to do private practice except that they cannot sue the department in which they are employed.[189] Ordinarily, they are paid out of the state funds but in cases where the prosecutor is in a public sector undertaking or bank or educational institution and like, the remuneration is paid from the private source.[190]

CBI Prosecutors: The prosecutors attached with the CBI render legal advice to the investigating officers during the course of investigations as to the viability of proposed prosecutions. Their advice is taken seriously but can be overruled by the executive CBI officers.[191] The level of a prosecutor to prosecute the case is directly related to the level of the courts. Higher the court, higher is the rank of a prosecutor to prosecute it.

3. PROSECUTING SERVICE / DEPARTMENT OF JUSTICE:

Functions of Directorate of Prosecution:

The director of prosecution (i) renders advice and opinion to police authorities regarding prosecution; (ii) renders advice and opinion on references received from other departments of the state government; [192] (iii) processes appeals and revisions for filing in

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[187] Source: office of the *Addl. Director of Prosecution*, NCT of Delhi, (2000).
[188] Source: Central Agency Section, Supreme Court of India, New Delhi (2000).
[189] Central Board of Excise & Customs notification No. 278 A/80/98.
[190] *Mukul Dalal v. UOI*, 1988 (3) SCC 145.
[191] G.O.I., *CBI Bulletin* 6 (September 1997)
[192] *Supra* note 48.

the high court through law and judicial department of state government and sends appraisal of the same to the district magistrate so that the state government obtains his opinion before final decision;[193] (iv) transfer and post assistant public prosecutors in the districts; [194] (v) if tenure of public prosecutors expire, then to give extension till successor takes charge, in case of serious offences.[195]

The public prosecutor conducts the prosecution on behalf of the state and makes all possible efforts so that trial results in conviction; however, it is not his job to secure convictions at any cost to please the police.[196] The public prosecutor represents the state committed to the administration of justice as against advancing the interest of one party at the cost of other.[197] Besides prosecution, public prosecutor has other obligations as well.[198]

(i) Withdrawal from Prosecution:[199] Statutory discretion[200] is vested in it to withdraw from prosecution at any stage subject to the court's supervisory function, on larger grounds of public policy such as inexpediency of prosecutions; broader public interests like maintenance of law and order; maintenance of public peace and harmony, social, economic and political; changed social and political situation; avoidance of destabilization of a stable government and the like and on the grounds of paucity of evidence also.[201] There is no appeal provided against an order giving consent for withdrawal of prosecution, but the same is revisable.[202]

(ii) Burden of proof on prosecution: Prosecuting agency is required to establish the guilt against the accused in the court beyond reasonable shadow of doubt with the help of witnesses and on the basis of facts proved by the oral, documentary and any other evidence. He is also expected to draw the court's attention towards statutory

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[193] *State of Gujarat v. Ratilal Laljibhai Tandol* 1997 (7) SCC 228.

[194] It was held by the Supreme Court where in connection with murder of one person, two different cases are put up before Sessions Court, one pursuant to police investigation and other pursuant to a private complaint, accusing two different persons as perpetrators of crime, if possible, to appoint two different Public Prosecutors. See, *Balbir v. State of Haryana,* 2000 (1) SCC 287.

[195] *Raj Deo Sharma (II) v. State of Bihar* 1999(7) SCC 329.

[196] G.O.I., Law Commission of India, 14th Report

[197] Ratanlal & Dhirajlal, the Code of Criminal Procedure, 1973, 18, (Wadhwa Sales Corpn., 1982); see also, *Shiv Kumar v. Hukumchand* 1999 (7)SCC 467.

[198] Public Prosecutor cannot appear on behalf of the accused. See, *Sunil Kumar Pal v. Phota Shiekh* 1984 (4) SCC 533.

[199] *Sheonandan Paswan v. State of Bihar* AIR 1983 SC 197.

[200] Cr. P.C, *sec* 321.

[201] *Shrilekha Vidyarthi v. State of UP* (1991) 1 SCC 214.

law regarding presumptions against the accused.

Law Officers of the Union Government and State Governments: Apart from public prosecutors, government in various departments and ministries employs lawyers as law officers for rendering legal advice, in the internal decision-making process because regulatory agencies are created by statute, their powers are limited and vested by statute, and virtually all rules are subject to judicial review for substantive rationality, procedural correctness, and fidelity to the Constitution of India.[203]

Attorney General of India is the senior most law officer of the Government of India, who is appointed by the President of India under the Constitution.[204] He has the authority to address any court in the country.[205]

Besides, there is a **Solicitor-General for Government of India** and 4 Additional Solicitor-Generals**.** The office of Solicitor-General is not a constitutional office.

Central Agency Section:[206] The Central Agency is a nodal cell, which handles central Government litigations in the Supreme Court. It consists of 13 government advocates on record.

Apart from these there is a **panel of advocates**, being prepared by judicial section of the Ministry of Law, Justice & Company Affairs. Form this panel, advocates are chosen to handle Union Government's cases. But, the panel of advocates are not government employees.

The senior most law officer in a state is the **Advocate-General** who is also a constitutional authority. The Governor of a state appoints him.[207] He has the authority to address any court in the state.

The duties of Law Officers of Government of India and State Governments:[208]

The function of the law officers is: (i) to render advice to the government of India upon such legal matters and to perform such other duties of a legal nature, as may from time to time be referred or assigned to them by the Government of India or the

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[202] Cr. P.C., s*ec* 397, see also, *Sheonandan Paswan v. State of Bihar* 1987 (1) SCC 289.
[203] Neal Devins, *Government Lawyering, L & CP,* 61, (1998).
[204] Constitution of India, *Art* 76.
[205] The Advocates Act, 1961, *sec* 23 (inserted by Act 47 of 1980).
[206] G.O.I., Min. of Law, Justice & Co. Affairs, *Annual Report* 39, (1997-98).
[207] *Supra* note 58, Art 165.
[208] B.R.Agarwala, *Our Judiciary*, 102, (National Book Trust, 1993).

concerned state government as the case may be; (ii) to appear, whenever required before the Supreme Court or before any high court on behalf of the Government of India in cases (including suits, writ petitions, appeals and other proceedings) in which the Government of India is concerned as a party or is otherwise interested; (iii) to represent the Government of India in any reference made by the President to the Supreme Court under Article 143 of the Constitution; and (iv) to discharge such other functions as are conferred on a law officer by or under the Constitution or any other law for the time being in force.

In order to avoid any complications and conflict of duty, a law officer is not allowed to: (i) advice or hold briefs against the Government of India; (ii) advice or hold briefs in a case in which he is likely to be called upon to advice (iii) appear for the Government of India; (iv) defend accused persons in criminal prosecution without the permission of the Government of India; (v) accept appointment as a director in any company or corporation without the permission of the Government of India.

4. STATISTICAL DATA:

Law Officers at the Centre: Attorney- General of India-1, Advocate-General in a State-1, Solicitor-General of India-1 and Additional Solicitor-Generals-4**.**

Central Agency: 1-Senior Government Advocate, 1-Government Advocate, 2-Additional Government Advocates, 3-Deputy Government Advocates and, 6- Assistant Government Advocates. They are Central Government employees. They usually assist and instruct law officers of the Government.

Panel of Advocates: The judicial section of the Ministry of Law, Justice & Company Affairs prepares from time to time such number of panels of advocates as are necessary to represent the Union Government.

Statistics of Prosecutors in the States: The number of prosecutors appointed by the Government in a state varies from state to state. The sanctioned strength of prosecutors under the Directorate of Prosecution in NCT of Delhi is given below: [209]

In NCT of Delhi: Director of prosecution- 1; public prosecutors- 1 for each district; chief prosecutors-12; additional public prosecutors/senior prosecutors-71;

assistant public prosecutors-120.

Statistics regarding Conviction & Disposal of Criminal Cases:

The conviction percentage in India has been falling over the years. It was 64.8% in 1961, which fell down to 42.9% in 1994. All India average conviction rate in the year 1997 is as low as 38.2.The disposal of cases by the courts is also falling over the years. In 1994 it stood at 15.5% of the total cases pending in the courts in that year.

The disposal & conviction rate for whole of India in the year 1997 is depicted below:

STATE/UT	Incidence of Indian Penal Code crimes	Disposal rate by police	Charge-sheet rate by police	Disposal rate by courts	Conviction rate	Policemen per lakh of population
Andhra Pradesh	114,963	70.6	87.2	31.6	37.3	101
Arunachal Pradesh	1,876	71.8	59.9	8.1	46.6	394
Assam	36,562	49.4	55.4	22.6	22.6	193
Bihar	117,401	63.2	73.8	18.2	26.2	88
Goa	2,395	74.7	47.9	19.3	23.9	182
Gujarat	117,823	86.5	78.3	13.1	35.0	138
Haryana	31,981	79.2	79.9	19.0	37.0	162
Himachal Pradesh	10,242	80.5	85.4	15.9	29.1	188
Jammu & Kashmir	17,192	77.7	63.5	20.9	36.0	446
Karnataka	114,863	78.0	75.5	31.0	15.8	117
Kerala	92,523	79.6	89.8	27.1	32.5	114
Madhya Pradesh	205,026	95.4	81.3	19.1	47.0	110
Maharashtra	185,122	78.5	71.7	10.7	18.1	155
Manipur	2,974	40.2	4.6	43.2	0.1	614
Meghalaya	1,978	50.4	53.8	8.8	56.5	333
Mizoram	2,120	30.2	84.1	15.3	93.9	783
Nagaland	1,477	38.2	46.8	9.3	82.8	1,102
Orissa1	51,359	81.4	85.9	17.1	11.8	99
Punjab	15,069	67.3	83.8	23.5	37.0	297
Rajasthan	165,469	95.9	80.6	22.0	50.8	117
Sikkim	623	70.1	64.3	37.4	73.1	604
Tamil Nadu	141,867	75.5	91.1	42.8	64.0	124

[209] *Supra* note 11.

Tripura	3,444	69.5	54.2	25.9	10.1	354
Uttar Pradesh	152,779	85.1	71.0	21.1	51.4	103
West Bengal	65,481	66.0	54.1	6.8	21.9	106
A&N Islands	477	59.2	78.0	9.3	64.7	725
Chandigarh	2,181	71.6	47.9	25.4	61.1	497
D &N Haveli	347	80.5	67.3	15.8	27.3	128
Daman & Diu	267	64.9	66.6	22.5	19.8	256
Delhi	60,883	32.1	73.4	8.7	38.0	392
Lakshadweep	26	54.7	23.4	33.3	33.3	511

source: G.O.I., *Crime in India,* 1998

The disposal of IPC crime cases from 1961 to 1997 is given under:

YEAR	No. of cases for trial	TRIED	CONVICTED
1961	800784	242592	157318
1971	943394	301869	187072
1981	2111791	505412	265531
1991	3964610	667340	319157
1994	4759521	736797	316245
1995	5042744	763944	321609
1996	5297662	843588	318965
1997	5461004	879928	336421

source: G.O.I., *CBI Bulletin*, 10 (August 1999)

The Directorate of Prosecutions in some states is under the control of Home Department, while in others is under the control of Law Department.

Prosecution System under the Control of Home Department:

STATE	CONVICTION RATE OF 7 YEARS
Tamil Nadu	67.8
Madhya Pradesh	64.5
Uttar Pradesh	54.0
Andhra Pradesh	51.6
Delhi	47.6
Maharashtra	39.4
Bihar	36.7
Kerala	17.7
Jammu & Kashmir	37.4

source: G.O.I., *CBI Bulletin,* 12 (1997)

Prosecution System under the Control of Department of Law:

In the States of	Average percentage of conviction of 7 years
Meghalaya	76.4
Pondichery	72.2
Sikkim	67.2
Chandigarh	65.5
Haryana	61.2
Gujarat	61.0
Manipur	47.6
Goa	44.4
Karnataka	31.9
Himachal Pradesh	21.9

source: G.O.I., *CBI Bulletin,* 12 (1997)

Statement of Criminal Cases for NCT of Delhi:

In Metropolitan Magistrate Courts:

Years	Previous balance	Fresh received	Total	Conviction	Acquitted	Others	Disposal
1997	102436	32746	135182	7298	11041	10805	29144
1998	106038	27705	133747	7259	9865	9272	26396
1999	107351	28853	136014	6410	10986	8829	26225
July 2000	109789	19199	119988	4150	6054	4419	14623

source: *Directorate of Prosecution*, NCT of Delhi (2000)

In Sessions Courts:

Years	Previous balance	Fresh received	Total	conviction	Acquitted	Others	Disposal
1997	11657	4983	16640	1191	2881	1246	5318
1998	11322	2930	14252	1032	2954	727	4713
1999	9539	4049	13588	1205	2720	860	4785
July 2000	8803	2615	11418	633	1465	594	2692

source: *Directorate of Prosecution*, NCT of Delhi (2000)

Average Workload: In NCT of Delhi, only about 150 public prosecutors are handling nearly 3 lakh criminal cases pending in the three lower courts. In the Patiala House courts alone, only 27 prosecutors handle 35000 cases, which means a prosecutor handles over a thousand cases at one time.[210]

Observations: In the recent years the Supreme Court has played a significant role in bringing reforms in the prosecution system. In *S.B. Shahane v. State of Maharashtra*[211] it directed the state of Maharashtra to have autonomous prosecuting agency with a regular cadre of prosecuting officers. However, one may find some lacunae in the existing prosecution system. The first and the foremost problem in the area of prosecution is the poor quality of entrants in the prosecution agency. The earnings in the open market are much higher than what the government offers to the prosecutors. Resultantly, able and competent advocates shy away from prosecution agency. The only way to remedy the situation is to make the job attractive by improving the salary structure and by providing other perks, such as government housing, transport, telephone facilities and allowances, such as non-practicing allowance, rob allowance, library allowance, etc.

Experience shows that the public prosecutors are overburdened with cases and their number is not adequate enough to efficiently handle the cases entrusted to them.[212] It is thus imperative to fix a norm as to the number of cases to be entrusted to a public prosecutor, as it would help in improving their efficiency and making the office of

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[210] Utpal Parashar, "Crime and punishment", *The Hindustan Times* 7 (12 – 2 – 2000).
[211] *Supra* note 4.
[212] In NCT of Delhi on an average a prosecutor handles 20-30 cases per day; source: Directorate of Prosecution, NCT of Delhi (2000).

public prosecutors more responsible and accountable. Further it is suggested that a national level training institute should be set up for imparting training to the public prosecutors. The proposed training could be supplemented with refresher courses from time to time.

The prosecutors generally do not have access to good library facilities. Due to their rather inadequate pay scales, they are not in a position to spend on books. The libraries of the Bars are not made available to the prosecutors. It would be advisable to set up exclusive libraries for the prosecutors in cities and bigger towns at Government cost. There is virtually no- accountability on the part of Prosecution Agency. The departmental superior should play a dominant role in this regard.

Chapter III

ADVOCATE/LAWYER

1. LEGAL PROFESSION IN INDIA: AN OVERVIEW

The legal profession is one of the important components of the justice administration system. The legal system prevailing in India at present owes its origin to its colonial masters from Britain who ruled the country for almost two centuries. The legal profession as it exists in India today is the natural outcome of that legal system.[213]

The Advocates Act, enacted by the Parliament in 1961 regulates the legal profession in India. Prior to this enactment, there was no uniformity in granting licence to practice and with respect to the designations of legal practitioners. There were '***Mukhtars'*** appearing in magistrates' courts, who did not possess a law degree. Then there were '**Revenue Agents'** in all revenue courts. The practitioners known as '**Pleaders'** had to pass examination held by the Council of Legal Education presided over by a judge of high court. In the high court there were three categories of practitioners. First category included ***Vakil***, meaning the advocate who was not barrister from England / Scotland. They generally possessed a law degree, but sometimes on account of their prominence, the chief justice of the high court would make a pleader a *vakil* and sometimes *vakil* could appear as an advocate. Then there were ***barristers*** and ***solicitors / attorneys.*** Barristers could only plead but not allowed to act as advocates and solicitors. The Indian Bar Councils Act, 1926 placed the *vakils* and the barristers on the same footing and both they were designated as advocates of the court.

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[213] *Report of the All-India Bar Committee*, Ministry of Law, Government of India, New Delhi (1953)

In the Supreme Courts,[214] the barristers (British) and advocates could alone be enrolled as advocates and attorneys. Indians, therefore, started going to England to qualify as solicitors and to get enrolled in the Supreme Court. However, the British barristers and solicitors predominated on the original side for a considerable time.

The Indian High Courts Act, 1861 passed by the British Parliament enabled the crown to erect and establish high courts in India by Letters Patent and these Letters Patent empowered the high courts to frame rules for enrolment of advocates and attorneys (commonly known as solicitors). Under these rules, a suitor on the original side of the High Court had to approach an advocate only through the conduit of a solicitor. The high courts made a distinction between the advocates of British origin and *vakils*. The *vakils* suffered from the following infirmities: (1) total exclusion from the original side in Calcutta high court; (2) the compulsion of having to qualify in an extra examination for enrolment as an advocate on the original side of the Bombay high court; (3) the denial of their right to act on the insolvency side of the Madras high court; (4) arrogant air of superiority assumed by the fresh advocates; (5) the compulsion imposed on *vakils* to file *vakalatnamas* which advocates were not required to do.

All these distinctions offended the self-respect of the *vakils*. In the province of Punjab, during 1870's, the Punjab Chief Court held its own examination for pleadership and admission to the Bar. In 1874 the Chief Court assigned the task of holding the pleadership examination to the Punjab University College. The course of study, as before, extended to 2- years and the success in the first examination classified the candidate for *mukhtarship* and success in the second examination qualified him for pleadership of the subordinate courts. Pleader of 5-years standing was admitted to the bar of the Chief Court.

The Advocates Act, 1961

The Advocates Act, 1961[215] abolished this dual system with a view to simplifying and streamlining court procedure, avoiding stratification of the profession and reducing the cost of litigation keeping the needs of the litigants a matter of

[214] Before Independence there existed three Supreme Courts in the Presidency towns of Calcutta, Madras and Bombay under the Regulating Act of 1773. A detailed description on the judicial system is given in chapter-II.

[215] Amendment Act 107 of 1976, S.O.R. – Gazette of India, Pt.II, S.2, Ext, 1285 (24 –8 – 1976).

paramount importance.[216] The Advocates Act is aimed at raising the prestige of the profession, to improve the morale of the profession besides inculcating the spirit of oneness and harmony in the profession. The Act creates the Bar Council of India at the national level, empowering it to lay down the uniform qualifications for the enrolment of advocates. There are bar councils at the state level, where an advocate is enrolled on the state list. An advocate enrolled in any state bar council can practice before any court throughout the country.

2. BAR COUNCIL

Pre- 1961 Period: The classifications made among the advocates during the British rule resulted in revolt from *vakils* and demand for an All India Bar. In view of the pressure of the indigenous legal professionals the Government of India eventually in November 1923 set up the Indian Bar Committee, popularly known as Chamier Committee. It dealt only with the advocates and *vakils* practising in the high court. It did not touch pleaders and *mukhtars* except by stating that the control over them should be left to the high court. To give effect to the recommendations of the Chamier Committee relating to the establishment of Bar Councils, the central legislature enacted the Indian Bar Councils Act, 1926.[217] It extended to the whole British India. It provided for the constitution and incorporation of Bar Council as a body corporate and the powers of making rules regarding the same and byelaws and procedure for appointment of ministerial officers and servants. However, the power of enrolment of advocates continued with the high court and the bar councils functions were mainly advisory. The 1926 Act left the pleaders, *mukhtars*, revenue agents entirely out of consideration and did not bring about a unified bar. Further the bar councils constituted during this period were neither autonomous nor had any substantial authority.

Bar Council of India Established under the Advocates Act, 1961: The demand for uniformity in the designation and functioning of the advocates was finally granted, by formation of the Bar Council of India (BCI) under the Advocates Act which made the Council (BCI) an important domestic tribunal. The Advocates Act creates

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[216] *Ibid.*
[217] Act 38 of 1926.

autonomous All-India Bar Council and state bar councils, which are competent to enrol advocates and try all the cases of professional misconduct. The Act provides for the general supervision and control of the BCI over all state bar councils in order that they may, in the exercise of their powers, follow a uniform all-India policy.[218]

Composition of the Bar Council of India: The BCI consists of 18 members.[219] The Attorney-General of India and Solicitor-General of India as *ex-officio* members and one member elected by each state bar council from amongst its members.[220] Among its elected members again, election is held for the post of chairman & vice-chairman.[221] They are elected for a term of two years but continue to hold the post till further elections are held for these posts.[222] The representation given to state bar councils on the BCI is of a uniform pattern and no distinction has been made between states, which have large number of advocates, and those, which have a small number of advocates. Advocates of at least 10 years' standing are eligible for being elected as members.[223]

Functions of Bar Council of India: The important functions of the BCI are: to lay down standards of professional conduct and etiquette for advocates; to lay down the procedure to be followed by its disciplinary committee and the disciplinary committee of each state bar council; to safeguard the rights, privileges and interests of advocates; to promote and support law reforms; to deal with and dispose of any matter arising under this Act, which may be referred to it by a state bar council; to exercise general supervision and control over state bar councils; to promote legal education and to lay down standards of such education in consultation with universities in India imparting such education and the state bar councils; to recognise universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect universities; to conduct seminars and organise talks on legal topics by eminent jurists and publish journals and papers of legal interest; to organise legal aid to the poor; to recognise on reciprocal basis foreign qualifications in law obtained from outside India for the purpose of admission as an advocate; to manage and invest the funds of the Bar

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[218] Act 21 of 1964, S.O.R. – Gaz. of Ind., (18-4-1964)
[219] As on October 30, 2000.
[220] Advocates Act, 1961, sec 4(1).
[221] *Id*, sec 4(2).
[222] *Id*, sec 4(3).
[223] *Id*, sec 3(2).

Council; to provide for the election of its members; to give financial assistance to a state bar council if the latter needs the same for the purpose of performing necessary functions, by way of grant or otherwise; and to perform all other functions conferred on it under this Act.[224]

Apart from these obligatory functions, the BCI constitutes funds for the purposes of giving financial assistance to organize welfare schemes for indigent, disabled or other advocates; giving legal aid or advice in accordance with the rules made in this behalf; establishing law libraries etc.[225] It receives grants, donations, gifts or benefactors for all or any of the purposes mentioned above.[226]

Committees Constituted by the Bar Council of India: Besides, above mentioned functions, the BCI constitutes committees such as: (i) special committee consisting of the *ex-officio* member of the state bar council as Chairman (but, if there are more than one *ex-officio* members, the senior most amongst them shall be the chairman) and two members from amongst advocates on the electoral roll of the state bar council, where a state bar council fails to provide for the election of its members before the expiry of the term of five years or the extended term, as the case be, to discharge the functions of the State Bar Council;[227] (ii) an executive committee consisting of nine members elected by the council from amongst its members;[228] (iii) a legal education committee consisting of ten members, of whom five are persons elected by the council from amongst its members and five co-opted by the council who are not members thereof;[229] and (iv) a disciplinary committee for disposing the complaints of alleged misconduct filed against the advocates. [230]

The Bar Council of India's Power to Formulate Rules: The Advocates Act[231] empowers the BCI to formulate rules for discharging its functions such as the conditions subject to which an advocate may be entitled to vote at an election to the state bar council, including the qualifications or disqualifications of voters, and the manner in which an electoral roll of voters may be prepared and revised by a state bar council;

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[224] *Id*, sec 6.
[225] *Id*, sec 6(2).
[226] *Id*, sec 6(3).
[227] *Id*, sec 8A.
[228] *Id*, sec 10(2)(a).
[229] *Id*, sec 10(2)(b).
[230] *Id*, sec 36.
[231] *Id*, sec 49.

qualifications for membership of a bar council and the disqualifications for such membership; the time within which and the manner in which elections are held for the state bar council; the manner in which the name of any advocate may be prevented from being entered in more than one state roll; the manner in which the seniority among advocates may be determined; the minimum qualifications required for admission to a course of degree in law in any recognised university; the class or category of persons entitled to be enrolled as advocates; the conditions subject to which an advocate shall have right to practice and the circumstances under which a person shall be deemed to practice as an advocate in a court; the form in which an application shall be made for the transfer of the name of an advocate from one state roll to another; the standards of professional conduct and etiquette to be observed by advocates; the standards of legal education to be observed by universities in India and the inspection of universities for that purpose; the foreign qualifications in law obtained by person other than citizens of India which shall be recognised for the purpose of admission as an advocate; the procedure to be followed by the disciplinary committee of a state bar council and by its own disciplinary committee; the restrictions in the matter of practice to which senior advocates shall be subject; the form of dresses or robes to be worn by advocates, having regard to the climatic conditions, appearing before any court or tribunal; the fees to be levied in respect of any matter.

State Bar Councils: There are 17 State Bar Councils[232] functioning in various states in India.

Composition of State Bar Councils:[233] A state bar council consists of the following *ex-officio* members, namely: -

In the State Bar Council of Delhi: the Additional Solicitor-General of India.

In the State Bar Council of Assam & Nagaland: the Advocate- General of each of the States

In the State Bar Council of Punjab & Haryana: the Advocate- General of each of the States

In the State Bar Council of any other State: the Advocate- General of the State.

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[232] *Supra* note 8, sec 3. (In the State of Jammu & Kashmir (J&K) the High Court of J&K plays the role of Bar Council in enrolment of Advocates and other related matters).

[233] *Id*, sec 3(2).

Other than *ex-officio* members, other members are elected to the state bar council, in accordance with the system of proportional representation by means of single transferable vote from amongst advocates on the electoral roll of state bar council:[234]

Electorate in the state Bar Council	**Strength of members elected to the state Bar Council**
Up to 5000	15
5000 – 10000	20
Exceeding 10000	25

The elected members of the state bar councils hold office for a term of 5 years.[235] Out of these elected members a Chairman and a Vice- chairman for each state bar council are elected for a period of two years.[236] Every state bar council appoints a secretary and such other staff as necessary.[237]

Functions of the State Bar Council: Every state bar council is a body corporate having perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and to contract, and capacity to sue and be sued.[238] It has to admit persons as advocate on roll; prepare and maintain such roll; entertain and determine cases of misconduct against advocates on its roll; giving legal aid or advice in accordance with the rules made thereof; establishing law libraries; safeguard rights, privileges and interests of advocates on its roll; promote growth of bar associations for the purpose of effective implementation of welfare schemes; to promote and support law reforms; conduct seminars and organise talks on legal topics by eminent jurists and publish journals and papers of legal interest; organise legal aid to the poor in the prescribed manner; manage funds and invest them; provide for the election of its members; visit and inspect universities in respect of rules made by it; send to the Bar Council of India an authenticated copy of the roll of advocates prepared by it; and issue certificate of enrolment to every person who is enrolled by it.[239]

Supreme Court on Power of State Bar Councils to Formulate Rules: In *Dr.*

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[234] *Id*, sec 3(2)(b).
[235] *Id*, sec 8
[236] *Id*, sec 8, 54
[237] *Id*, sec 11.
[238] *Id*, sec 4.
[239] *Id*, sec 6.

Haniraj L. Chulani v. Bar Council of Maharashtra & Goa,[240] the Supreme Court of India made it clear that the state bar councils possess powers to formulate rules regarding advocacy and it would not interfere or struck down any rule so formulated, for the Advocate Act itself has entrusted the power and duty to elected representatives of the profession constituting the state bar councils to lay down the high standards of professional etiquette as expected of the advocates enrolled by it. That would naturally bring in its wake the power to regulate entry to such a noble profession. Hence rule formulated by Maharashtra & Goa Bar Council that persons already engaged in any other profession, such as medical profession, is disqualified from being admitted as an advocate, is valid rule made within the periphery of power it has under the Advocates Act.

Formation of Committees by State Bar Councils: For discharging its functions in an effective manner the bar councils of states forms various committees such as; an **executive committee** consisting of 5 members elected by the council from amongst its members[241]; an enrolment committee consisting of 3 members elected by the council from amongst its members[242]; one or more disciplinary committees consisting of two persons elected by the council from amongst its members and one person co-opted by the council from amongst advocates who has been enrolled as an advocate for at least 10 years and who is not a member of the council.[243] The senior-most advocate amongst these is designated as the Chairman; one or more legal aid committees consisting of maximum of 9 members.[244] However, constitution of legal aid committee has been made optional vide rules made by the BCI.

Formulation of Rules by State Bar Councils:[245] Under the provisions of the Advocates Act, 1961, the state bar councils also formulate rules regarding the; election of members of the bar council by secret ballot including the conditions subject to which persons can exercise the right to vote by postal ballot, the preparation and revision of electoral rolls and the manner in which the results of election shall be published; the manner of election of the chairman and the vice-chairman of the bar council; the filling

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[240] (1996) 3 SCC 342.
[241] *Supra* note 8, sec 10(a).
[242] *Id,* sec 10(b).
[243] *Id,* sec 9.
[244] *Id,* sec 9A.
[245] *Id,* sec 15.

of casual vacancies in the bar council; the manner in which and the authority by which doubts and disputes as to the validity of an election to the bar council or to the office of chairman and the vice-chairman shall be finally decided; the powers and duties of the chairman and the vice-chairman of the bar council; the constitution of one or more funds by a bar council for the purposes of giving financial assistance or giving legal aid or advice; organization of legal aid to the poor, constitution and functions of committees and sub- committees for that purpose and description of proceedings in connection with which legal aid or advice may be given; the summoning and holding of meetings of the bar council, the conduct of business there at, and the number of members necessary to constitute a quorum; the qualifications and the conditions of service of the secretary, the accountant and other employees of the bar council; the maintenance of books of accounts and other books by the bar council; and the management and investment of the funds of the bar council. However, no rule made by the state bar councils shall have any effect unless it has the approval of the Bar Council of India.

3. BAR ASSOCIATION

Unlike some of the nations such as USA, Japan where Bar Associations are statutory bodies with the powers to enrol advocates and take disciplinary action for misconduct etc., the Bar Associations in India are entirely private bodies set up at various levels. A group of advocates by joining together form bar associations at various levels such as at the Supreme Court, high courts, in district levels. The associations are also formed by advocates practicing in specialised areas such as 'Income Tax Lawyers Association', 'Labour Law Association' etc. At present there are 498 bar associations formed in India.[246]

The bar associations are formed mainly with the objective of overall protection and development of its members. For example, the aims and objectives of the Supreme Court bar association are; to conduct and hold seminars, symposia, conferences on issues and topics of interest to the legal profession and to disseminate information in this behalf; to promote the welfare of the members of the association.[247] The office

[246] Source: Bar Council of India, New Delhi (2000).
[247] Supreme Court Bar Association, *Aims Objects &* Rules 2, Supreme Court Bar Association (1993)

bearers to these associations are elected through election held every year. The membership to these associations is "optional". An advocate interested may become a member of different associations by paying the requisite fees. The bar associations are bereft of taking any disciplinary action against any erring advocate.

4. ADVOCATE (QUALIFICATIONS, DISQUALIFICATIONS AND CLASSIFICATION)

(i) Qualifications: The Advocates Act 1961 prescribes uniform qualifications for enrolment throughout India.[248] A person may be admitted as an advocate on a state roll, if he: (a) is a citizen of India;[249] (b) has completed the age of 21 years; (c) has obtained a degree in law after undergoing a 3 years course (or more) of study in law from any University in India which is recognized by the Bar Council of India /any University outside the territory of India, if the degree is recognised by the Bar Council of India,[250] (d) fulfils such other conditions as may be specified by the state bar council.

Only advocates enrolled under the Act can practice the profession of law in all courts including the Supreme Court, any tribunal / any other authority who is legally authorized to take evidence.[251]

(ii) Disqualifications: No person shall be admitted as an advocate on rolls if he / is: (i) convicted of an offence involving moral turpitude; (ii) convicted of an offence under the provisions of Untouchability (Offences) Act, 1955 and (iii) dismissed / removed from employment / office under the state on any charge involving moral turpitude.

(iii) Procedure for Enrolment as an Advocate: Unlike some of the nations such as Japan, USA, Germany, etc., in India no Bar examination is conducted for enrolment as an advocate. Under the Advocates Act, 1961, an application for enrolment as an advocate is made to the State Bar Council within whose jurisdiction the applicant proposes to practice along with requisite fee enclosing certificates of proof of

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[248] Act 47 of 1980, -S.O.R. – Gazette of India, 1285, Pt.II, S.2, Ext., (12 –6 – 1980).

[249] Provided that subject to the other provisions contained in this Act, a national of any other country may be admitted as an advocate on a state roll, if citizens of India, duly qualified, are permitted to practise law in that country.

[250] *Supra* note 8, sec 24.

[251] *Id*, sec 30.

educational qualifications.[252] State bar council is required to refer to every application for admission as an advocate to its enrolment committee.[253] The enrolment committee of a state bar council shall dispose of every application. Where it proposes to refuse such application, it refers the application for opinion to the BCI and also gives to the applicant a statement of the grounds in support of refusal of such application. On receipt of the opinion of the BCI, the state bar council shall dispose of such application in conformity with the opinion of the Bar Council of India. Where a state bar council has refused the application, no other state bar council can entertain the application of such person for admission as an advocate on its roll, except with previous consent in writing of the state bar council which has refused the application and of the Bar Council of India.[254]

Pre-enrolment Training: Prior to the enactment of the Advocates Act, 1961, a person had to undergo two years legal training from any university/law college as a condition for enrolment as an advocate. Under the new Act[255] there is no provision for pre-enrolment training. The Bar Council of India with an aim to raise the standards of the legal profession and to equip the new entrants with compulsory training in law, in 1995 introduced pre-enrolment training rules, [256] prescribing 1-year training (apprenticeship) under a senior lawyer having at-least 10 years standing as a perquisite for enrolment as an advocate. However, the Supreme Court, through its judgment in *V. Sudeer v. Bar Council of India & Anr.*[257] struck down the rules on the ground that the rule making power of the Bar Council of India under section 49(1)(ah) of the Advocates Act deals with a situation which is post-enrolment of an advocate and does not deal with pre-enrolment situation for a candidate seeking enrolment and thus held the rules violative of the scheme of the Act. Hence at present obtaining a law degree from a law school recognised by the Bar Council of India is the only perquisite for entry into the Bar.

(iv) Classification of Advocates: The Advocates Act, 1961 for the first time nationalized the legal profession in the sense that every practitioner, from top to bottom,

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[252] Stamp duty chargeable and an enrolment fee payable to the state bar council (which is rupees 2200/-) and to the Bar Council of India (which is rupees 170/-) by way of a bank draft.
[253] *Supra* note 8, sec 25, 26.
[254] *Id*, sec 26, 27.
[255] *Supra* note 8.
[256] *Id*, sec 49(1)(ah).

is known as advocate. It closed doors to the *mukhtar,* revenue agent and pleader and as a matter of fact these classes have become extinct, and all legal practitioners are designated as advocates. In 1980,[258] the Advocates (Amendment) Act abolished the class of legal practitioners known as attorneys and the pre-existing attorneys were required to become advocates under the Advocates Act. The only classification permitted under the new Act[259] is **senior advocates** and **advocates**.

Senior Advocates: An advocate may, with his consent be designated as senior advocate if the Supreme Court / High Court is of the opinion that by virtue of his ability, standing at the bar or special knowledge or experience in law, he deserves such a distinction.[260]

5. PROFESSIONAL ETHICS

Conduct of Advocates:[261] The Bar Council of India, through its resolutions, formulates rules,[262] prescribing the standards of 'Professional Conduct and Etiquette' to be observed by advocates. Prior to these rules, the advocates have been guided by the principles of professional ethics already well established partly as a result of judicial decisions by the Supreme Courts and High Courts and partly by adoption of such of the rules laid down by the General Council of the Bar of England and Wales regulating the conduct and etiquette at the Bar, as have been found suitable pertaining to the legal profession in India. Under the rules formulated by the BCI, an advocate, during the presentation of his case / otherwise acting before a court, has to conduct himself with dignity and self-respect. He has to maintain towards the court a respectful attitude, bearing in mind that the dignity of judicial officer is essential for the survival of a free community and not influence the decision of a court by any illegal / improper means. Private communications with a judge relating to pending cause are forbidden. Advocates are directed to use best efforts to restrain and prevent clients from resorting to sharp and unfair practices / from doing anything in relation to the court, opposing counsel / parties

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[257] JT 1999(2) SC 141.
[258] Act, 47 of 1980, S.O.R. Gazette of India., 12-6-1980, part. II, S.2, Ext., 418.
[259] *Supra* note 8.
[260] *Id*, sec 16.
[261] *Id*, sec 35-44

that the advocate himself ought not to do. An advocate has to avoid scurrilous attack in pleadings, and using intemperate language during arguments in court and appear in court at all times only in the prescribed dress. Advocates are prohibited from practicing before a court, tribunal / any other authority if the sole or any member thereof is related to the advocate by any relation and for or against an organisation or an institution, or society or corporation, if he is a member of the Executive Committee of the same. Advocate cannot withdraw from a case, once accepted, without sufficient cause and unless reasonable and sufficient notice is given to the client. Upon withdrawal from a case he has to refund such part of the fee as has not been earned. Likewise many obligations are put upon members of this profession so that they are honest and do not indulge in any thing that breach confidence and trust of litigants in the judiciary itself.

Disposal of disciplinary proceedings:[263] The disciplinary committee of a state bar council, upon receipt of a complaint of professional misconduct against an advocate fixes a date for hearing of the case and gives notice thereof to the advocate concerned and to the Advocate- General of the state. Advocate-General of the state represents the case of a complainant or a state bar council. The disciplinary committee of state bar council after giving an opportunity to both Advocate-General and the advocate concerned may make the following orders, namely, (i) dismiss the complaint or where the proceedings were initiated at the instance of the state bar council, direct that the proceedings be filed; (ii) reprimands the advocate; (iii) suspend the advocate from practice for such period as it may deem fit; and (iv) remove the name of the advocate from the State roll of the advocates.

The Advocate suspended from practice is not entitled to practice during the period of suspension in any court or before any authority or person in India. Any person aggrieved by an order of the disciplinary committee of state bar council, within 60 days of the communication of the order to him, prefer an appeal to the Bar Council of India. The disciplinary committee of the Bar Council of India hears every such appeal thereon and after hearing both parties, passes an appropriate order. Any person aggrieved by an order made by the disciplinary committee of the Bar Council of India or the Attorney-General of India or the Advocate-General of the State concerned, within 60 days of the

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[262] Bar Council of India, resolution No. 51/1965.
[263] *Supra* note 8, sec 36B.

date on which order is communicated, prefer an appeal to the Supreme Court and the Supreme Court after giving reasonable opportunity to be heard to both the concerned parties can pass an appropriate order thereon. As a general rule Supreme Court does not interfere with the concurrent findings of fact by the disciplinary committee of the Bar Council of India and also of state bar councils unless the finding is based on no evidence or it proceeds on mere conjectures and surmises.

The disciplinary committee of Bar Council of India if finds any advocate whose name is not entered on any state roll, to be guilty of professional or other misconduct, it refers the case for disposal to its disciplinary committee. In disposing of any proceedings the disciplinary committee of Bar Council of India is competent to make any order, which the disciplinary committee of state bar council can make and the state bar council concerned has to give effect to such order.

The disciplinary committee of Bar Council of India, either on its own motion or on a report of state bar council or on application made to it by any person interested (advocate on a state roll or complainant) withdraw for inquiry before itself any proceedings for disciplinary action against any advocate pending before the disciplinary committee of state bar council and dispose of the same.

The disciplinary committee of a state bar council has to dispose of the complaint within a period of one year from the date of initiation of proceedings, failing which such proceedings stand transferred to the Bar Council of India which disposes of the same as if it were a proceedings withdrawn for inquiry.

6. STATISTICAL DATA

Table 1-1

Statement of Total Number of Advocates (Men & Women) Enrolled with the State Bar Councils						
	As on 31-3-1985			As on September 1999		
State Bar Council of	**Men**	**Women**	**Total**	**Men**	**Women**	**Total**
Andhra Pradesh	12, 918	403	13, 321	36, 111	3, 855	39, 966
Assam, Nagaland	3, 345	139	3, 484	7, 255	1, 183	8, 438
Bihar	23, 898	230	24, 128	66, 440	1, 170	67, 610
Delhi	8, 822	815	9, 637	22, 500	3, 650	26, 150
Gujarat	12, 204	1, 111	13, 315	25, 346	4, 721	30, 067
Himachal Pradesh	1, 299	60	1, 359	2, 522	297	2, 819
Kerala	8, 426	600	10, 214	17, 568	3, 015	20, 583
Madhya Pradesh	18, 879	760	19, 639	37, 487	3, 477	40, 964
Tamil Nadu	17, 284	618	17, 902	30, 329	3, 500	33, 829
Karnataka	11, 841	-	12, 239	26, 389	3, 169	29, 558
Maharashtra & Goa	27, 499	2, 569	30, 069	45, 000	11, 000	56, 000
Orissa	7, 161	129	7, 290	21, 500	1, 272	22, 772
Punjab & Haryana	15, 497	445	15, 942	29, 123	2, 266	31, 389
Rajasthan	12, 246	359	12, 605	18, 198	1, 299	19, 497
Uttar Pradesh	71, 500	500 (approx)	72, 000	1,48, 141	5, 859	1, 54, 000
West Bengal	27, 364	1, 358	28, 722	39, 395	3, 343	42, 738
Jammu & Kashmir	NA	NA	Na	1, 038	185	1, 223
Total	**2, 80, 183**	**10, 493**	**2, 90, 676**			**6, 26, 603**

Source: Bar Council of India, New Delhi. (2000)

Table 1-2

Statement of Total Number of Advocates Enrolled with the State Bar Councils			
State Bar Council of	**Total as on 31-3-85**	**Total as on December 31, 1994**	**Total as on Sept 99**
Andhra Pradesh	13, 321	31, 230	39, 966
Assam, Nagaland	3, 484	6, 450	8, 438
Bihar	24, 128	44, 318	67, 610
Delhi	9, 637	18, 142	26, 150
Gujarat	13, 315	23, 108	30, 067
Himachal Pradesh	1, 359	2, 177	2, 819
Kerala	10, 214	13, 582	20, 583
Madhya Pradesh	19, 639	35, 596	40, 964
Tamil Nadu	17, 902	29, 347	33, 829
Karnataka	12, 239	23, 178	29, 558
Maharashtra & Goa	30, 069	49, 556	56, 000
Orissa	7, 290	17, 811	22, 772
Punjab & Haryana	15, 942	26, 380	31, 389
Rajasthan	12, 605	16, 568	19, 497
Uttar Pradesh	72, 000	1, 17, 460	1, 54, 000
West Bengal	28, 722	37, 865	42, 738
Jammu & Kashmir	--	--	1, 223
Total	**2,90,676**	**4,92,759**	**6,26,603**

Source: Bar Council of India, New Delhi. (2000)

Table 2: Statement of number of advocates expelled from the state roll for professional misconduct in the years:

Bar Council of State of:	**1998**	**1999**
Kerala	Nil	Nil
Madhya Pradesh	01	NA
Orissa	01	Nil

Table 3: Statement of number of complaints received against advocates on roll for professional misconduct by various Bar Councils in the years:

Bar Council of State of:	1998	1999
Orissa	46	43
Madhya Pradesh	56	13
Kerala	179	90

Table 4: Statement of number of committees (Disciplinary and legal aid) constituted by various State Bar councils:

Bar Council of State of:	Number of Disciplinary committees constituted:	Number of Legal aid committees constituted
Kerala	4	1
Orissa	6	1
Madhya Pradesh	8	Nil

Table 5: Statement of number of indigent, disabled and other advocates who received financial assistance from the welfare schemes organised in the years:

Bar Council of State of:	1998	1999
Orissa	56	44
Kerala	Nil	Nil
Madhya Pradesh	31	50

Table 6: Statement of number of senior and other advocates practising and enrolled up to August 2000 on rolls of various state bar councils:

State Bar Council of	No. of advocates admitted on roll in the year 1998	No. of advocates admitted on roll in the year 1999	No. of senior advocates practising	No. of advocates on roll up to August 2000
Kerala	1531	3609	35	24,856
Madhya Pradesh	3359	4009	46	50102
Orissa	859	3768	20	1313

Table 7: Number of advocates admitted on roll

	State Bar Council of	Year 1970	70	72	73	74	75	76	77	78	79	80	81	82	83	84	85	Average Enrolment per year in 1980s
1.	**Andhra Pradesh**	120	130	233	194	289	227	306	305	505	535	659	610	667	739	994	1064	600 approx
2.	**Bihar**	2040	900	791	786	536	675	815	766	613	697	1485	1166	*424 *(upto 30.3.82)	-	-	-	1,000 ”
3.	**Delhi**	285	236	300	329	345	378	397	330	393	444	419	502	564	604	602	621	500 ”
4.	**Gujarat**	305	188	281	366	333	442	506	631	534	763	710	740	772	844	865	551	600 ”
5.	**Himachal Pradesh**	19	28	51	66	52	58	92	92	97	102	106	102	97	72	87	103	90 ”
6.	**Madhya Pradesh**	693	630	542	687	496	713	1000	624	1019	963	808	1069	1101	1057	1092	1156	1,000 ”
7.	**Maharashtra**	539	631	604	668	756	817	1050	1042	1097	1430	1645	1903	1557	1836	1630	1643	1,500 ”
8.	**Orissa**	75	153	185	266	266	526	242	259	279	475	423	*387 (*upto 13.8.81)	-	-	-	-	300 ”
9.	**Punjab & Haryana**	303	415	453	531	672	685	596	933	854	929	1081	1110	1037	785	-	-	800 ”
10.	**Rajasthan**	198	301	320	305	404	464	804	707	572	783	554	848	887	627	599	406	700 ”
11.	**Tamilnadu**	496	241	226	465	453	527	545	654	610	496	941	851	677	1113	1025	680	800 ”
12.	**Uttar Pradesh**	992	1507	1650	1760	2060	2214	4930	3263	3397	3760	*2970 (*upto 11.10.82)	-	-	-	-	-	3000 ”
13.	**Karnataka**	150	156	283	297	388	436	345	502	522	585	643	697	708	768	860	1010	700 ”
14.	**Kerala**	193	184	204	309	338	380	506	388	316	729	308	508	*100 (upto 13.3.82)	-	-	-	350 ”
15.	**Assam, Nagaland etc.**	107	105	120	134	134	190	186	153	149	110	131	*119 (*upto 15.3.83)	95				150 ”
16.	**West Bengal**	541	490	449	838	*500 (*upto 2.4.74)	1454	1301	1631	1938	751	1424	2147	*1092 (*upto 21.6.83)	1100			1500 ”

Observations: The Bar Council of India for the last one decade has been geared up and playing a significant role in laying down standards for advocates. Quite apart from this the Supreme Court of India has raised the standards of professional responsibility of the advocate towards his client and has awarded damages to the clients for gross neglect on the part of the advocates. Be that as it may the legal profession has a vital role to play in the matter of law reforms, reducing the pendency of cases, removing roadblock in access to justice etc.

Chapter IV

LEGAL EDUCATION

1. LEGAL EDUCATION IN INDIA: AN OVERVIEW

Legal education occupies a key place in a country like India where there is rule of law. It equips students with necessary skills and capabilities to understand the complex process of enactment, enforcement and interpretation of law with a view to secure equitable justice to all citizens irrespective of their caste, creed, religion or sex. A social consciousness of the significance of law to the people is an attribute of a ripening civilization.[264] As the content and quality of legal education have a direct bearing on the legal profession, a sound and pragmatic legal education policy is a *sine qua non* for prestige and performance of the legal profession. The concern to make legal education more modern and contemporary and to make it socially relevant and humanistic for the teacher and the taught has always guided the discourse on law teaching and research in India.[265]

Legal education in India had its roots in English History. This heritage has had a profound effect on the development of legal education, on the evolution of legal institutions, and on the outlook on law in India.[266] No Indian institution, excepting perhaps the field of literature, bears so close a tie to corresponding English institution, as does the law. The structure of Indian law is erected on the foundations of the English

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[264] Brown, *Lawyers And The Promotion of Justice*, 11 (1938).
[265] 2nd *UGC workshop on Legal Education in India* (1980).
[266] *Ibid*.

common law.[267] At present, legal education is governed by two national bodies: the Bar Council of India (BCI) and the University Grants Commission (UGC).

2. LEGAL EDUCATION SYSTEM IN INDIA

Pre-Independence Period: A journey over the history of legal education in India is a journey over ridge and furrow. For the most part, the value of the systematic study of fundamental principles was recognized.[268]

In 1868, in the province of Punjab, the law classes were started by the *Anjuman-I-Punjab*, which was taken over by the Punjab University in 1870. The duration of the course was 2-years and education was given in two separate classes, one in English and the other in Urdu. Neither any test for admission nor any examination was held, as the college certificate possessed no value for the purpose of admission to the Bar. The Punjab Chief Court held its own examination for pleadership and admission to the Bar. In 1873 rules were framed by the Senate of Punjab University requiring the passing of entrance examination as a condition precedent for admission to the law classes. The following year the Chief Court assigned the task of holding the pleadership examination to the Punjab University College. The course of study, as before, extended to 2- years. Success in the first examination classified the candidate for *mukhtarship* and success in the second examination qualified him for pleadership of the subordinate courts. Pleader of 5-years standing was admitted to the Bar of the Chief Court. From 1885 to 1906 the course of instruction extended to three years. In 1887 passing of the intermediate examination was made perquisite for admission to the law classes and graduate examination for admission to the licentiate in law examination. The attendance requirement was also laid down. The candidates were, however, permitted to pursue law and arts studies simultaneously.[269]

It was in 1874 that the foundation for legal education was laid in the former state of Travancore. Vernacular classes in law were held to train the applicants for the posts in the police department. In 1875, a law school was started and judge of the *Sadar*

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[267] Albert J. Hanro, *Legal Education in the United States,*154-158 (Bankcraft/Whitney Co. 1952).
[268] Harold Greville Hanbury, *The Vinerian Chair and Legal Education,* (Oxford Basil Blackwell, 1958).

court was appointed as professor of law in the law school.

The development of legal education in the 18th century in Bengal significantly affected and characterised the growth and development of the system in other parts of the country.[270] Ever since the establishment of the Supreme Court in Calcutta in 1774, the need was felt for training native lawyers. The foundation of the Asiatic Society in January 1774, at the initiative of Sir William Jones, judge of the Supreme Court, was a landmark in the educational and cultural history of India. In 1800, Lord Wellesley founded the college of Fort William for training of young civilians in Calcutta. The Hindu College (later Presidency College), Calcutta, was founded in 1817, to take the law classes. Soon thereafter the university of Calcutta was established on January 24, 1857. In 1841 a barrister of the Supreme Court was appointed to take law classes in the Hindu College. The degree in law was a recognised post-graduate degree. The aim of imparting legal education from the beginning was to prepare practising lawyers and judicial officers for the subordinate courts. During the academic year 1864-65, colleges in Dacca, Berhampore, Patna, Hooghly, and Krishinagar were granted affiliation to start law classes. The Presidency College was allowed affiliation for law classed since 1857. In 1870, the faculty of law revised substantially the courses to be taught for the degree of bachelor of laws and also provided for the award of the degree of doctor of laws by examination. The teachers in most of the affiliated colleges were practising advocates who worked on part-time basis. Notwithstanding the above, the University of Calcutta did aim at achieving the lofty ideal of promoting research in law in a limited manner. In 1885, the Ripon College, (now Surendra Nath College) was granted affiliation by Calcutta University to start Bachelor of Law (B.L) classes. It was at this juncture that the Calcutta University was reorganised under the Indian Universities Act, 1904.[271] In 1909, the University College of Law, Calcutta, had on its rolls 520 students. The teaching faculty at the time comprised one principal, three professors and eight assistant professors. The college imparted instruction for a 3-year course with three university examinations.[272]

The year 1885 is significant in the promotion of legal education and research in

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[269] Paras Diwan, *Legal Education in India-status and problems*, 54-74 (Bar Council of India Trust, 1983).
[270] *14th Report* of the Law Commission of India, 520 (1958).
[271] See, Hundred Years of the University of Calcutta, 224 (Calcutta, 1957).
[272] *Ibid*.

India. It was in 1885 that Allahabad University was established. The Punjab University had come into being in 1882. The colleges imparting legal education in the North Western Provinces and Punjab ceased to be affiliated with Calcutta University.

The first law college of the state was Raja Lakshmi Law College, started in 1939 by some prominent lawyers. This Institution then imparted legal education to candidates passing the intermediate examination. The LL.B. course was of 3 years duration for those passing intermediate and 2 years' duration for graduates. The Government of Mysore established the second law college, Government Law College, at Bangalore, in 1948. In the wake of independence of the country, new colleges began to spring up in different parts of the state. [273]

During his tenure as Vice-Chancellor of the Delhi University, a distinguished jurist and educational pioneer Sir Maurice Gwyer started 3- year Honours degree course in law in the university leading to the degree of Bachelor of Civil Law 1923. This 3-year B.C.L. degree course operated in the law faculty of the Delhi University since 1947 alongside with a 2-year L.L.B. degree course. With the ushering in of the new 3-year L.L.B. degree course, admissions to the B.C.L. course were automatically stopped.[274] In 1966 when LL.B. became a 3-year course, the Faculty of law introduced the semester system, dividing 3-years of LL.B course into 6 bi-annual semesters.[275]

In the light of the above facts, it is clear that there was no uniform pattern of legal education in the country. During the aforesaid period, the main purpose of university legal education was not to teach law as a science or as a branch of learning, but merely to impart knowledge of certain principles and provisions of law. Part-time institutions were regarded during those days sufficient for this purpose. Most of the students who attended morning and evening classes conducted by the institutions were in employment somewhere or pursued some other post graduate study, whereas teachers in law were generally practicing lawyers who had to attend their professional business during the office hours.[276] During those days most of the lawyers were educated abroad, particularly in England. Preparation, for the profession for the most part, was through

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[273] N.R.Madhava Menon: *Legal Education In India*, (Bar Council of India Trust, 1983).
[274] Prof. M.Ramswamy: *A Paper On The Re-Organization Of Legal Education In The University Of Delhi* 14 (1963)
[275] Tahir Mahmood, "Delhi University Law Faculty-Seven Decades", *Delhi Law Review*,3 (1994).
[276] *Ibid*.

apprenticeship in the offices of members of the Bar.[277] Law books were extremely scarce. In a 2-year degree course offered during that time, there was hardly any time at the student's disposal to mentally digest what was placed before him with the result that the student indulged in unprofitable cramming[278], without learning the intricacies of law.

State of legal education during 1947-1960: There was tremendous growth of law colleges in this period. However, this was not based on any rational planning or on the availability of even the minimum resources. Law schools were opened indiscriminately without enough resources. This resulted in law colleges without any infrastructure, viz., building or libraries, full time teachers or facilities for professional training, or even the final sanction from the university concerned.[279]

State of legal education during 1961 – 1978: A major development of this period was the coming into operation of the Advocates Act, 1961. The Act constituted the Bar Council of India (BCI) which was conferred the power to prescribe standards of legal education and recognize law degrees for enrolment of persons as advocates.[280] In pursuance of its statutory obligation to prescribe, maintain and improve standards of legal education, the BCI did attempt to bring about the desired changes in the curriculum, pedagogy and in the organization and functioning of law colleges. Consequently, some uniformity and structural changes were brought about throughout the country in early 1960s.[281] No non-collegiate degree holder in law had ever been enrolled as an advocate since 6 September 1975. Under Rule 1 of the BCI Rules, 1962, after March 12, 1967 the degree of law was not to be recognised unless the course of study in law has been by regular attendance at the requisite number of lectures, tutorials and moot courts in a college recognised by a University. It is amply clear that considerable emphasis has now been laid on the regular attendance at the law classes.[282] Duration of the law course was now made of three years as compared to the earlier 2-year programme and attempts were made though partially successful to integrate practical training schemes in legal education.[283] By and large it received the support and

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[277] Albert J. Harno, *The formative period of American Legal Education*, 19 (1953).
[278] *Supra* note 9.
[279] *Report of the Committee on Reforms in Legal Education in 1980s*, 16 All India Teachers Association, (DU Law Faculty, 1979)
[280] Tripathi, *Directory of Law Colleges in India*, 9 (ILI, 1971).
[281] *Supra* note 16.
[282] *Bar Council of India v. Aparna Basu Mallick* 1994 (2) SCC 108.
[283] *Supra* note 15.

cooperation from universities and state governments in this endeavour. The problem of indiscipline created as a result of overcrowding in the law schools forced the universities to make a realistic appraisal of the policy of unrestricted admissions.[284]

State of legal education during last two decades: After 1979, the BCI took control over legal education in India. The Ministry of Education, Government of India for the first time in 1980, constituted a working group to examine the status of legal education in the country and to suggest measures for improvement of the structure and quality of legal education.[285] The major change introduced by the BCI was 5 year integrated course in the year 1983. This 5-year course after intermediate (10+2) was started in some of the universities after establishment of the national law school at Bangalore. The Bar Council is since then committed to the successful implementation of this scheme and is mobilising the co-operation of universities and state governments in this regard.[286]

Control of the BCI and UGC over law colleges:

1. The Bar Council of India (BCI): The position of the BCI *vis–a-vis* legal education is of great significance. In this respect, the BCI is required to promote legal education and to lay down standards of such education and to recognize universities whose degree in law shall be a qualification for enrollment as an advocate and for that purpose visit and inspect universities.[287] The BCI formulates rules as to permissible student intake, teacher student ratio, number of part time teachers and full time teachers, curriculum of the law course, etc. Those who do not comply with the rules of the BCI stand at risk of disapproval of affiliation.[288] However, it is almost impossible for the Council to take action if the erring college is either Government College or University Department due to extraneous reason in the form political pressure, etc.[289] A law college is required to furnish all the information to the Inspection Committee of the BCI as and when required, and co-operate with it in every possible manner in the conduct of

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[284] D.N.Saraf, *Some problems of legal education in India*, 2nd Regional UGC Workshop on Legal Education, 42 (1976).
[285] *Supra* note 18.
[286] Ram Chandra Jha, in the seminar and workshop on *Practice in trial courts and writ jurisdiction under Indian Constitution*, held in Calicut on 27- 12- 1998.
[287] The Advocates Act, 1961,sec 7.
[288] Bar Council of India Rules, 1998, sec A, Rule 18- 21, inserted by way of amendment that came into effect from 26-7-1987.
[289] Source: Bar Council of India, New Delhi (2000).

inspection[290]. The Inspection team before recommending approval of affiliation to a new law college has to make a specific recommendation as to why such a law college is required at the same place/area in view of the total number of existing law colleges there.[291] If the Legal Education Committee is satisfied that the standards of legal education and/or the rules for affiliation or continuance of affiliation provided for by the BCI are not complied with and that the courses of study, teaching and/or examination are not such as to secure to persons undergoing legal education, the knowledge and training requisite for the competent practice of law, the Legal Education Committee may recommend to the BCI or dis-continuance of affiliation as the case may be.[292] The directives issued from the BCI from time to time have to be necessarily followed by the law colleges.[293] Whenever approval of affiliation is granted to a law college, the college is required to deposit the prescribed fee in the shape of guarantee to fulfill all the norms of the BCI. The Council can forfeit the same if its norms are not complied with.[294]

2. The University Grants Commission (UGC): In order to maintain and raise standards of legal education the UGC in consultation with the universities or other bodies concerned, takes all such steps as it may think fit for the promotion and co-ordination of university education and for the determination and maintenance of standards of teaching, examination and research in universities.[295] To this end it shall allocate and disburse, grants to universities established or incorporated by or under a Central Act for the maintenance and development of such universities or for any other general or specified purpose; it may allocate and disbruse, out of the fund of the Commission, such grants to ther universities as it may deem necessary for the development of such universities or for any general or specified purpose; it may allocate and disburse out of the fund of the Commission, such grants to institutions deemed to be universities in pursuance of a declaration made by the Central Government; recommend to any university the measures necessary for the improvement of university education and advise the university upon the action to be taken for the purpose of implementing

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[290] *Supra* note 25, sec A, Rule 18(c).
[291] *Id*, Rule 18 (d).
[292] *Id*, sec A, Rule 18(g).
[293] *Id*, Rule 21.
[294] *Id*, Rule 23.
[295] University Grants Commission Act, 1956, sec 12.

such recommendation; etc.[296] As far as legal education, the UGC is concerned with the terms and conditions of the appointment of teachers as well as providing necessary fund support for infrastructure, and maintaining uniformity of standards of education. The role of the BCI is limited only to LL.B. and its rule making power is confined only to professional legal education, the liberal legal education is left to be managed by the UGC which is also responsible for the LL.M. curriculum and teaching. While LL.M. is the basic qualification for law teaching, LL.B. degree is required for enrolment as an advocate.[297]

Consequences of failure to comply with the UGC norms: If any university fails with in a reasonable time to comply with any recommendation made by the Commission or contravenes the provisions of any rule made, the Commission, after taking into consideration the cause, if any, shown by the university may withhold from the university the grants proposed to be made out of the fund of the Commission.[298]

The structure of law schools imparting legal education: LL.B is taught by either University faculties and colleges affiliated to universities. Whereas LL.M teaching is exclusive domain of universities.

Library: Library resources play an important role in the sustenance of legal education. The library is the laboratory of the law school. But most of the libraries are not well equipped to cater the needs of the students. Besides the problem of access, most of them are underdeveloped.[299]

The financial status of law schools: At present, law schools, both university and government are supported primarily, or wholly, by the government grants, which are always inadequate; private colleges are run either by private educational societies or by other private bodies. Prior to 1977, in some states, private colleges were also covered by the grant-in-aid code and the state government used to assist by providing 80% finance (e.g. Karnataka). However, in 1977 the government's assistance was withdrawn. Now the entire financial burden is borne by the management alone.[300] Tuition fees to be charged from the students are determined by the university authorities in consultation

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[296] *Ibid*.
[297] S.K.Verma, "Legal Education, Research and Social Change", *Indian Journal of Public Administration*, vol. XLV(3) 518-525 (Indian Institute of Public Administration, July-September 1999).
[298] *Supra* note 32, sec 14.
[299] *Supra* note, 39.
[300] *Supra* note 10.

with state government.

Physical facility: To enhance the quality of legal education in the country, the BCI in 1986, framed rules regarding building and other facilities that a law school must have.[301] Now many of the universities and law colleges in India are making efforts to adhere to these guidelines prescribed by the BCI.

Qualifications, appointment, position of law teachers:

1. Qualification: The norms prescribed by the U.G.C for becoming a full-time lecturer in law are; a person must be a post-graduate in law and have qualified the examination conducted by the UGC.[302] Where the holders of a Master's degree in law are not available, persons with teaching experience for a minimum period of 5-years in law for 3-year course in law and persons with teaching experience for a minimum period of 10-years in law for 5-year course in law can be considered for full time faculty. And for part time faculty, if persons holding a Master's degree in law are not available, persons with a minimum practice of 10-years in law for 3-year course and persons with a minimum practice of 5-years in law for 5-year course can be considered.[303]

2. Appointment: The teachers in the university department of law are appointed by duly constituted selection committees. Full time teachers in government degree colleges are appointed through Public Service Commission.

3. Service conditions: The university or college receiving grants from UGC is required to follow the UGC guidelines for service conditions. For whole time posts pay scale of the UGC is given. The universities generally have three tier teaching cadre: Professors, Readers, and Lecturers. The probationary period is normally one year. The teaching hours are fixed as per UGC norms.[304] The full-time teachers retire at 60 years in state universities, but 62 in central universities and generally an extension may be granted up to the age of 65. They enjoy the benefit of contributory provident fund/ pension and gratuity.[305] Though the trend is towards appointment of full time teaching staff, yet in majority of the institutions part-time teaching staff predominates.[306] However, after 1996, the BCI has made mandatory for every law college has to have a

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[301] See, *Supra* Annexture II.
[302] See, *Supra* note 51.
[303] *Supra* note 25, sec A, Rule 12 and sec B, Rule 8.
[304] Paras Diwan, *Legal Education in India-Status and Problems*, Bar Council of India Trust, 54-74 (1983).
[305] Mukhopadhyaya, *Legal education in India*, The Bar Council of India Trust (1983).
[306] *Supra* note 17.

whole time principal and 4 full time teachers.[307]

Number of lectures or tutorials allotted to LL.B. degree course: There is no uniform pattern in the scheme of number of lectures for a subject. This is primary due to the fact that some colleges conduct annual examination, some follow semester system, some are day and full time colleges while others are evening and part time colleges.[308] The BCI prescribes for every law college to have classroom lectures of not less than 20 hours per week,[309] and for each paper lecture classes for at least three hours and one hour of tutorial work per week.[310]

Requirement for admission: Prior to 1960 some universities in India such as University of Bombay offered the 2-year and 3-year law course after Intermediate without insisting on basic degree.[311] But after 1967, only a graduate from a recognised university could be admitted to the 3-year law course[312] and after 1983 when two streams of law course were recognized, only student who has passed an examination in 10+2 or 11+1 course of a school recognized by the government authority can seek admission to 5-year law course.[313]

Curriculum: After 1960, a uniform curriculum with a limited scope for regional or local variations in respect of optional subjects as per the rules laid down by the Bar Council of India came to be accepted in all universities and law schools[314] but, traditional subjects held their sway in the list of compulsory subjects. In few universities an odd feature has been the combination of two entirely different subjects in the same paper.[315] A few universities like Banaras and Delhi universities have proceeded farthest in terms of curricular innovations. A large number of electives are offered and opportunities for specialization are provided.[316] Delhi university for example, offers a curriculum of 46 subjects, out of which a student has to pass 30 subjects in six

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[307] *Supra* note 25, sec A, Rule 8(2).
[308] See, *infra* statistics.
[309] *Supra* note 25, sec A, Rule 3(2).
[310] *Id*, Rule 10.
[311] *Supra* note 16.
[312] *Supra* note 17.
[313] *Supra* note 25, Rule 2(1)(a).
[314] *Supra* note 16.
[315] *Directory of Law Colleges in India*, 9, Tripathi, ILI (1971). (For example, Administrative Law & Tort (Dibrugarh); Drafting, pleading and Taxation (Guwahati); Administrative and Comparative Law (Agra).
[316] *Supra* note 11.

semesters.[317] The BCI, in exercise of the powers vested under Advocates Act, 1961 and the rules made there under once again revised the curriculum to meet the challenges of the globalisation and to give bent to court centric education in the year 1997.[318] The BCI has now recommended 21 compulsory papers in addition to 4 compulsory practical training papers and 3 optional papers.[319] The Council's curriculum prescriptions do not completely pre-determine the LL.B. curriculum. There are leeways of choice among the optional subjects; any number of subjects can be imported from outside the list. For most of the law colleges the curriculum of LL.B. is inevitably shaped by the Council's prescriptions.[320]

Medium of instruction in law schools: The medium of instruction is totally left to the discretion of the universities. However, in most of the universities particularly in northern, southern and western India the medium of instruction is English.

Method of Teaching: At present, the teaching method in all the universities is lecture method, though[321] sporadic attempts are made to supplement it by the case method.[322] Some universities provide students with case material that form part of the syllabus for the examination[323]. Students are also required to attend moot courts as well as visit to the courts.[324]

Part-time and Correspondence Courses in Law: After the Bar Council's requirement of 3 years' degree course, many universities have instituted following Bachelors degrees in law - a two-year degree and a three-year degree. These two degrees in different universities are respectively known as: B.G.L (Bachelor of General Laws) in Annamalai University, LL.B and LL.B (Hons) in Aligarh; B.G.L and B.L. in Andhra; LL.B. (General) and LL.B.(Special) in Baroda and Punjab; B.G.L. and LL.B. in Bombay and Nagpur; LL.B.(Academic) and LL.B.(Professional) in Meerut and Rajasthan.[325] These degrees hold no value for the purpose of enrolment as advocates.[326] With regard

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[317] *Ibid.*
[318] *Supra* note 34.
[319] *Supra* note 25, Part IV, sec A Rule 9 and sec B Rule 5.
[320] Upendra Baxi, *Working Paper for the UGC Regional Workshop in Law*, 5-6 (1975-76).
[321] Paras Diwan, *Legal Education in India-Status and Problems*, Bar Council of India Trust, 54-74 (1983).
[322] *Supra* note 17.
[323] For example Delhi University.
[324] *Ibid*.
[325] *Ibid.*
[326] Charles S. Rhyne, *Law and Judicial Systems of Nations*, 335 (1978).

to part-time/evening law courses, the BCI through a resolution[327] has directed all the law colleges running part-time LL.B. courses to switch over to day session from the academic year 2001-2002.

LL.M Degree: The university in conformity with the UGC guidelines frames the LL.M. curriculum.

The Role of Judiciary in Setting Standards in Legal Education:

Supreme Court on Bar Council's Control on Law Colleges: In *Bar Council of India v. Aparna Basu Mallick*[328] the apex court held that if the acquisition of a degree in law is essential for being qualified to be admitted on a state roll, it is obvious that the Bar Council of India must have the authority to prescribe the standards of legal education to be observed by universities in the country. Conditions of standard laid down by the Bar Council of India as to attendance in the law classes, lectures, tutorials, moot courts, etc., must be fulfilled before enrolment as an advocate. In this case the Supreme Court of India upheld the validity of provision denying, after March 12, 1967, recognition to degree in law to those not attending lectures, tutorials and moot courts as per the BCI Rules.

Supreme Court on Equality of Treatment in Admissions: In *Deepak Sibal v. Punjab University*[329] the Court struck down the rules formulated by the university restricting admission for the evening classes only to the employees of government/semi-government institutions/affiliated colleges, statutory corporations and government companies. The Court held that the objective of starting evening classes was to accommodate in the evening classes employees in general who were unable to attend morning classes because of their employment. In framing the impugned rule of admission the respondents have deviated from this objective. The restriction of admission to certain categories of employees is unreasonable, unjust and does not serve any fair and logical objective.

Supreme Court on Grant-in-Aid by State to Law Colleges: In *state of Maharashtra v. Manubhai Pragaji Vashi*[330] the Supreme Court of India termed denial of grant-in-aid by the state of Maharashtra to the recognized private law colleges as was

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[327] Bar Council of India, resolution no. 68/99 dated 5-1-2000.
[328] (1994) 2 SSC 102
[329] (1989) 2 SCC 145
[330] (1995) 5 SCC 730

afforded to other faculties unconstitutional as well as violative of Articles 21 and 39-A of the constitution. It held that Article 21 read with Article 39-A of the constitution mandates or casts a duty on the state to afford grant-in-aid to recognized private law colleges, similar to other faculties, which qualify for the receipt of the grant. The aforesaid duty cast on the state cannot be whittled down in any manner, either by pleading paucity of funds or otherwise. In order to enable the state to afford free legal aid and guarantee speedy trial, a vast number of persons trained in law are essential. This is possible only if adequate number of law colleges with proper infrastructure including expertise law teachers and staff are established to deal with the situation in an appropriate manner. Lack of sufficient colleges called for the establishment of private law colleges. If the state is unable to start college of its own, it is only appropriate that private law colleges, which are duly recognized by the university concerned and the Bar Council of India are afforded reasonable facilities to function effectively and in a meaningful manner. It is in that direction the grants-in-aid by the state will facilitate and ensure the recognized private law colleges to function effectively and in a meaningful manner and turn out sufficient number of well trained or properly equipped law graduates in all branches year after year.

The Supreme Court in *Bar Council of India v. Aparna Basu Mallick*[331]upheld the Bar Councils' authority to prescribe standards of legal education to be observed by the universities in the country.

3. BAR EXAMINATION

The compulsory apprenticeship system and the Bar examination prior to the enrolment existed till 1962. However, there is no such provision in the Advocates Act, 1961 or the rules made there under providing for bar examination. In 1995, the BCI introduced pre-enrolment training rules, prescribing 1-year training (apprenticeship) under a senior lawyer having at-least 10 years standing. However, the Supreme Court, through its judgment in *V. Sudeer v. Bar Council of India & Anr.*[332] struck down the rules and, once again put the clock back.

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[331] (1994) 2 SSC 102
[332] JT 1999(2) SC 141.

4. STATISTICAL DATA

Available data suggests there are about 491 law schools in the country with a student enrolment exceeding 6 lakhs, which constitutes the highest among all professional faculties.[333]

In 1955-56 there were 7 Law Departments and 36 law colleges under 25 universities in the country with 20,159 students pursuing law on their rolls.[334] In 1962 there were only 31 universities having about 90 institutions either affiliated to, or part of, the university, imparting instructions in law leading to a law degree, in 1970, this rose to 54 universities with about 165 institutions.[335] In 1978 there were about 21,000 students in Indian Law Schools.[336] 25 years after independence, in 1981-82 the statistics had shown impressive growth with 47 law departments, 302 law colleges enrolling over 2,50,000 students.[337] In 1999-2000, statistics have considerably increased, with 491 law colleges, and 6,23,603 students passing out as law graduates in the academic year 1999-2000.[338] For example, the law faculty of Delhi University expanded from about 50 students in 1924 and 300 in 1944 to 500 students in 1965 to well over 3500 students in 1975.[339] The intake for the LL.B. course, at present is 1500. The number of students taking entrance has been arising and has now gone up to 5000. [340]

Though the BCI prescribes to have at least half of the faculty as full time, the reality is just the reverse. For example, in the university of Calcutta law college, in a faculty of 83, only 3 are full time law teachers.[341] Also, Madhya Pradesh, Orissa, Bihar, Meghalaya, West Bengal, Assam, Maharashtra, Gujarat, have an infinitesimally smaller number of full time law teachers compared with the rest of the country.[342] With regard to part time teachers, their salary is very low.[343]

Statistics pertaining to law colleges in India:

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[333] Source: Bar Council of India, New Delhi (2000).
[334] 14th Report of Law Commission of India, 155
[335] *Supra* note 17.
[336] Charles S. Rhyne, *Law and Judicial Systems of Nations*,335 (1978).
[337] *Supra* note 10.
[338] *Supra* note 111.
[339] *Towards A Socially Relevant Legal Education*: A Consolidated Report of the UGC's Workshop on Modernization of Legal Education, 5-40 (UGC, 1979).
[340] *Supra* note 12.
[341] *Ibid*.
[342] See *infra* statistics.
[343] See *infra* statistics.

Total number of law colleges in India: 491.(Out of theses private bodies run 80% of the colleges.)

Number of Colleges de-recognized in the country by the BCI during the academic years:

1997-: New Colleges:- 17, Old Colleges:- 29

1998-: New Colleges:- 48, Old Colleges:- 17

1999-: New Colleges:- 23, Old Colleges:- 12

2000-: New Colleges:- 8, Old Colleges:- 13[344]

Reasons for cancelling their licenses: They did not comply with the rules laid down in Part IV of the BCI Rules 1998. They had no basic infrastructure to run law college.[345]

State wise distribution of Law Colleges:

Andhra Pradesh: 51, out of these 7 are university departments,1- National Academy of Legal Studies and Research, Hyderabad run by the state government.

Assam, Meghalaya, Nagaland, Mizoram: 29, out of which 1 is government law college, 2 university departments, rest are all private law colleges.

Bihar: 24. All are government law colleges.[346]

Delhi: 5. Out of these 1 is private college and rest 4 are university departments.

Gujarat: Total 33.[347]

Himachal Pradesh: 2 University departments.

Jammu & Kashmir: 3. Out of these 1 is private law college and 2 are university departments.

Karnataka: 56. Out of these 2 are university departments. 1 is National Law School run by the BCI. It is the only law college run by Bar Council of India. 1 is Government Law College and rest of all are private law colleges.

Kerala: 7. All are government law colleges.

Madhya Pradesh: 93. Out of these 4 are university departments. Out of which

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[344] 12 in Bihar alone.

[345] Source: Bar Council of India, New Delhi (2000).

[346] In 2000, 12-law colleges are closed down in Bihar, due to poor infrastructure facilities and absence of all basic requirements necessary to run a legal institution.

85% of them are government law colleges and the remaining are private law colleges.

Maharashtra and Goa: 51. Only 1-university department and rest are all private law colleges.

Orissa: 26. Only 1-university department.[348]

Punjab & Haryana: 8. Out of these 7 are university law departments and only 1 is a private law college.

Rajasthan: 23. Out of these 3-university law departments. Amongst rest, maximum are government law colleges.

Tamil Nadu & Pondicherry: 7. All are government law colleges.

Uttar Pradesh: 46. Out of them 7 are university law departments. Regarding rest no information is available.

West Bengal: 10. Out of these, 3 are university law departments, 1 is government law college and, rest are private law colleges.

LL.B. 5 Years Course: New Trend

Although 70% law colleges in India offer 3-year LL.B course after graduation, in Andhra Pradesh and Karnataka 70% law colleges offer LL.B of 5-year duration after intermediate. As far as Bar Council of India is concerned, it encourages the latter practice. In Madhya Pradesh, 2 University department law colleges offer 5- year law course. In Delhi Amity law school has introduced 5-year course after intermediate.

Number of universities offering legal education in states:

State	No. of university offering law degree
Andhra Pradesh	8
Assam, Meghalaya, Sikkim, Mizoram, Nagaland, Manipur	7
Bihar	10
Delhi	3
Gujarat	7

[347] No information is available regarding number of private, government colleges or university departments.
[348] No information available regarding rest of the law colleges.

Himachal Pradesh	1
Jammu & Kashmir	2
Karnataka	7
Kerala	5
Madhya Pradesh	9
Maharashtra & Goa	10
Orissa	3
Punjab & Haryana	6
Rajasthan	4
Tamil Nadu and Pondicherry	2
Uttar Pradesh	15
West Bengal	3
Punjab & Haryana	6

Number of students obtaining law degrees in states

Even though the state of Madhya Pradesh has 93 colleges imparting legal education, it could produce only 40964 lawyers in 1999-2000. While, Maharashtra & Goa with only 51 law colleges, the output per annum is around: 56000 and West Bengal with 10 law colleges produces 42738 advocates.

Law schools at a glance

The description of the structure, management, faculty, students, fee charged etc., in 5 law schools run by the Universities, 5 government run colleges and 5 privately managed colleges, taken on sample basis is given as under:

Table 1: LAW SCHOOLS RUN BY THE UNIVERSITIES

Name of the college	**Faculty of Law, University of Jammu.**	**Dept. of Law, Kurukshetra University, Kurukshetra.**	**Kumaun University, Almora Campus, Almora, Uttar Pradesh**	**NALSAR, University, Hyderabad (A.P.)**	**North Bengal University Law College**
Year of functioning	1969	1969	1976	1998	1979
Number of full-time teachers	15	1-Prof.&Dean 3-Prof.,5-Readers, 9-Lecturers, 1-Research Assistant 15- Research Scholors	Readers 2- Lecturers	9	1-Principal 1-Reader and 5-Lecturer
Number of part time teachers	6	1	Readers Lecturers	Visiting Prof.-3	10 (senior advocates from the Bar.)
Number of students Year wise:	180-LL.B-I 139-LL.B-II 102-LL.B-III	Day Centre: 60 Evening Centre : 41 in the LL.B-I of 5-year law course.	100-LL.B-I 53 LL.B-II 75- LL.B-III Girls-35	Ist Yr - 54 IInd Yr - 35 Girls - 39	90-LL.B-I 86-LL.B-II 92-LL.B-III 74-LL.B-IV 55-LL.B-V
Mode of selection	Merit basis.	Merit on the basis of percentage of entrance test.	Entrance test subject to 40 percent marks in qualifying examination.	Entrance Exam. + Admission for 10 foreign nationals.	*******
Structure of the college	University law college.	University law college.	University law college.	University funded by Govt.	University law college.
Teacher-student ratio	1:25	1:31	1:35	1:7	
Reading hours	Winter: 9-3 p.m. Summer: 8-1.30 p.m.	8.30 a.m. to 7 p.m.	.	9 a.m. - 12 midnight	10.30 a.m. – 5 p.m.
Expenses on Library: Building Student welfare:	170755/- 3500(furniture)	37398/-	30000/ 3000	Library-633996 Building-16445914	Total expenses in the previous academic

Teaching Administration Other:			20000	Furniture-537915 Welfare-144626	year stands at:140079.
Full time college or part time college or both	Both morning &evening college.	Both day and evening college.		Full time	
income from tuition fees	3,99,950	*******	450000/	Income from Tution fees and also grants from government	454000
Total income from other sources like UGC or State Govt. or University funds	Fees from the students and endowment fund of Rs. 500000 from the university .	6215440/-	All expenses are met by grants given to it by the State Govt. or UGC.	***	UGC and state govt. grants.
Pay scale of full time teachers				***	
Pay scale of part time teachers				***	
Annual examination or semester system that is followed	Semester	Annual	Semester	Semester	Annual examination in November every year.
Number of books in the library	19852	18000	11000.	3200+360 reference books and 1275 Law Journals.	5167
Number of moot courts held in a year		********		4 Internal and 6 External	12
Steps taken for imparting practical training		********		Placement with NGOs and other agencies	12 practical training classes are held in a year.
Tuition fee per student annually	950.	1061 per annum.	2690	25000 per annum	
3-year or 5-year course in law offered or both	******	Only 3-year LL.B course is offered.		Only 5 year law course	Only 5-year LL.B course is offered.

Table 2: GOVERNMENT LAW COLLEGES*

Name of the college	Govt. Law College, Trivendrum, Barton Hill.	B.S.R. Govt. Arts College, Alwar, Rajasthan.	Govt. Law College, Madurai, Tamilnadu	Govt. Law College, Kolar	Bundelkhand College, Jhansi, U.P.
Year of functioning	1875	1979-80	1974-75	1996	1961
Number of full-time teachers	20	1-Principal 1-Vice Principal 1-Lecturer & Head 7- senior lecturers 4- lecturers	17	***	4
Number of part time teachers	1	2	9	***	4
Number of students Year wise:	Day: 102-LL.B-I, 92-LL.B-II, 96 - LL.B-III Evening: 102-LL.B-I 73-LL.B-II 79-LL.B-III	540-LL.B-I 150-LL.B-II 120-LL.B-III out of these 113 are SC 87 ST and 86 are Girls.	Ist Yr - 169 II Yr-170 III Yr-158	I Yr-96 II Yr-69 III yr-70 IV Yr-50 V Yr- SC - 28 ST - 14 Girls-68	Regular: 316-LL.B-I 267- LL.B-II 365-LL.B-III Evening: 130-LL.B-I 46- LL.B-II 117-LL.B-III
Mode of selection	Through entrance test & interview conducted by the university of Kerala.	Merit basis, no entrance, no interview	Entrance Test	Entrance Test	Entrance test
Structure of the college	Government law college.	Affiliated to University of Rajasthan.	Govt. Law College affiliated to Tamilnadu Dr. Ambedkar Law University, Chennai	Govt. Law College affiliated to University of Bangalore	Part of Bundelkhand University.
Teacher-student ratio	1:32	1:70	1:70	1:15	1:190

* These colleges are controlled by the Government.

Reading hours	9.30 a.m. – 8.30 p.m.	10 a.m. – 4 p.m.	10 Hrs.	10 a.m. to 4.30 p.m.	1 to 7 p.m.
Expenses on Library: **Building** **Student welfare:** **Teaching** **Administration** **Other:**	700000/- 800000/- (furniture) total: 4462015	12300 600000 3710(fur)	50000	135119	
Full time college or part time college or both	******		Full time	Full time	Day college as well as evening college under self finance scheme.
income from tuition fees	383912	*****	No tuition Fee	No tuition fees	911093
Total income from other sources like UGC or State Govt. or University funds	Fees from the students is the only source of income.	269659/ from UGC grants. State Govt. and fee from students.	***	***	UGC grants also.
Pay scale of full time teachers	Principal – 7300/-per month, senior lecturers- 5000 per month, and lecturers 3500/- per month.		As per the Govt. scales	As per the Govt. Rules	12000-24000.
Pay scale of part time teachers			***	***	Rs. 100 per period or Rs.5000 per month under U.P. Govt. order.
Annual examination or semester system that is followed	Semester	Annual	Annual	Annual	***
Number of books in the library	15208	61190	21033	3184	8201
Number of	64	2	***	***	3

moot courts held in a year					
Steps taken for imparting practical training	15 day court visit for 5-year LL.B course & 7 day court visit for 3-year LL.B course &		Courts visit etc.	***	*****
Tuition fee per student annually	LL.B both 3 & 5- year: 375 per annum & LL.M per annum 567.		Rs.200 towards admission fee and Rs.50 exam fee	Rs.606	Tuition fee:180, university examination fee: 1570 for all 3 years.
3-year or 5-year course in law offered or both	Both.	Only 3-year LL.B course is offered.	3 Year and 5 Year courses	Only 5 Year Course	Only 3-year course is offered.

Table 3: PRIVATELY MANAGED LAW COLLEGES*

Name of the college	Surendranath Law College, Calcutta, WB.	Amity Law School, Delhi.	Kerala Law Academy Law College, Thiruvananth a-puram, Kerala	Symbiosis Law College, Pune (Maharashtra)	Andhra Christian College of law Andhra Pradesh
Year of functioning	1885	1999	1982	1977	1974
Number of full-time teachers	7	1-Prof.&Director 5-others.	9	6	1-Principal and 5 others
Number of part-time teachers	19	4 – all of them teach non-law subjects.	27	8 Visisting Faculty - 27	5 lecturers
Number of students	I Yr- 320 II Yr- 313 III Yr- 287 IV Yr – 268 V Yr - 252	80 students in the first year out of which SC-4, ST-1 and Girls –19.	I Yr - 100+100 2 Batches Evening-100 II yr - 266 III Yr - 287 SC/ST - 52 Ladies - 204 5 Year Law Course I Yr- 80 II Yr- 85 III Yr- 90 IV Yr – 80 V Yr - 78 SC/ST-45 Ladies - 306	3 Year Course I Yr - 320 II Yr - 131 III Yr - 101 5 Year Law Course I Yr- 271 II Yr- 249 III Yr- 200 IV Yr – 131 V Yr - 71	217 in LL.B-I 157, LL.B-II 146 in LL.B final
Mode of selection	Order of Merit	Selection was done on the basis of an entrance test conducted by the GGSIP University, eligibility being 50% marks in qualifying examination.	Order of Merit	First come first served basis	Common Entrance Test conducted by the State of A.P.
Structure of the college	Privately Managed Law College affiliated to	Privately Managed Law School affiliated to Guru Govind	Privately Managed Law College affiliated to	Privately Managed Law College Affiliated to	Privately Managed Law College Temporarily

* They are also affiliated to a University.

	University of Calcutta, W.B.	Singh Indraprastha University	University of Kerala	University of Pune	affiliated to the Nagajuna University.
Teacher-student ratio	1: 40	1:10	1:40	1:32	1:40
Reading hours of the library	6.30 a.m. to 12.00 noon.	9.30 a.m. to 4.30 p.m. on all days except Sunday.	9 a.m. to 1 p.m. 2 p.m. to 8 p.m.	8 a.m. to 8 p.m.	8a.m.- 2 p.m., 5p.m. – 10p.m.
Expenses on Library: **Building:** **furniture** **Student welfare:** **Teaching** **Administration** **Other:**	Library expenses Rs. 62, 000/-	520000(books) 300000(furni) 700000(comput) 200000(phot,fax 250000(internet, A.C.,telephone) 1909000(faculty) 1100000(other) 100000(deposited with BCI).	Library - 25588 Building-989746 Furniture-36040 Welfare-50000	40, 56, 384	40246/- 17000/- 25300/- 1972654/-
Full time college or part time college or both	Full-time	Full time day school.	Both Full time and Evening Course	Full time Law College	Both Morning classes are held from 9 to 2 p.m. and evening from 5 to 10 p.m.
Income from tuition fees	***	24,60,000	24,55,500	Only tution fees	20,75,214.
Total income from other sources like UGC or State Govt. or University funds	***	Fees collected forms the only source of income.	***	***	Fees from the student is only source of income.
Pay scale of full time teachers	***		***	***	
Pay scale of part time teachers	***	*****	***	***	Rs.2000 – 2550.
Annual examina-	Annual	Semester system is followed. Odd	Annual	Annual	Annual

tion or semester system that is followed		semester: 17 weeks and even semester 14 weeks.			
Number of books in the library	16000+	10107	11271	12895	7661
Number of moot courts held in a year	12	2	86	3	11
Steps taken for imparting practical training	***	College established recently.	Court visits etc.	Court visits etc.	*****
Tuition fee per student annually	***	Free seats(40): Rs. 12000 per annum. Paid seats(36) Rs. 45000 per annum. NRI seats(4): US $ 2000 per annum plus 1000 per semester as examination fee.	2100 per annum Exam fee - 115 per annum	***	Rs. 4500 per annum, and Rs. 505 as total examination fees for 3-year LL.B course and Rs. 775 for 5-year LL.B course.
3-year or 5-year course in law offered or both	3 Year	Only 5-year course	Both 3 Year and 5 year Law Course	5-Year & 3-Year courses	Both

Observations: The appalling conditions in which legal education is being presently imparted at several places in the country are most worrying factors for the judiciary and the Bar Councils especially for the last one decade. The state of legal education is particularly deplorable, in the affiliated colleges, which in some states have had mushroom growth without adequate provision for teaching staff and library facilities.[349] Most of the colleges are part-time colleges where instructions are provided for 2-3 hours in the morning or in the evening. In some cases college runs in to two shifts – morning and evening. In the last few years the state of legal education in India is slowly improving due to the role being played by the judiciary, the Bar Council and the demand for qualitative lawyers thrown by the society in the wake of globalisation.

[349] State of Madhya Pradesh, Bihar as evidenced by the *Annual Reports* submitted with the Bar Council of India.

Chapter V

PROCEDURE/PROCEEDINGS

1. CIVIL PROCEDURE

Civil Procedure in India- An Overview:

The procedural law regarding civil matters is contained in a very detailed manner in the Code of Civil Procedure, 1908. Prior to the enactment of the existing Code in 1908, varying systems of civil procedure existed in different parts of the country. The first uniform Code of Civil Procedure was enacted in the year 1859, but there were many defects in it, and thereafter, a new Code was enacted in 1877, which was modified from time to time. In the year 1908, the present Code of Civil Procedure (herein after referred to as "Code") was enacted. On the whole, this Code has worked satisfactorily. Some important changes were made to it by way of Amendment Act of 1976.[350]

In 1999, new Bill[351] amending the Code was passed by the Parliament. The amendments to the Code, which are devised with the purpose of speeding up the tardy justice delivery system, which have not yet been implemented due to intense opposition to it from the lawyers. While the government feels that the amendments would benefit poor litigants, the lawyers hold the view that they would cause hardship to poor litigants.

Court Procedure under the Code:

The various stages through which a civil case runs in the courts is given as

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[350] *Manharlal v. Seth Hiralal* AIR 1962 SC 527

[351] Act 46 of 1999, Bill No. 50 of 1999, which received the assent of the President of India on December 30, 1999.

under:

(i) Initiation of proceedings by filing a plaint or suit or an application;

(ii) Issue of notice or summons by the court to the defendants or respondents;

(iii) Appearance of the defendants and filing of written statement or reply by him/her;

(iv) Framing of the points of controversy called 'issues' between the parties;

(v) Recording of evidence of the petitioner, defendants or respondents; and

(vi) Pronouncement of judgment by the court.

The aforesaid procedure is common in all the civil courts functioning in the country. The preliminary step in the process of adjudication of civil rights is institution of the suit by filing a plaint along with the list of relevant documents and requisite fee for the service of summons on the defendants within the time fixed by the court.[352] The plaint consists the name of the court in which suit is filed, the name, description and place of residence of the plaintiff and defendant; the facts constituting the cause of action, facts showing that the court has jurisdiction; value of the subject matter of the suit; the relief claimed; the precise amount claimed; description of property if suit relates to immovable property; the interest and liability of the defendant; and if the suit is not filed within the prescribed period of limitation, the cause of the delay,[353] and any other statement in concise form of the material facts.[354] The plaint is filed in the court from Monday to Friday between 10 a.m. to 5 p.m. by litigant himself or his advocate or recognized agent or a person duly authorized by him in that behalf. But if it happens to be the last day for filing of plaint then, even a judge is allowed to accept the plaint after office hours.[355] After this the particulars of the plaint are entered in a book known as register of civil courts.[356]

Valuation of the suit: As per the procedure, litigant has to make valuation of the suit.[357] Valuation decides forum of the suit as courts in India are separated into hierarchy of different pecuniary limits. Pecuniary jurisdiction goes on increasing as we

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[352] Code of Civil Procedure, 1908, (CPC) Order 7,Rule 9.
[353] *Id*, Order 7, Rules 1-8.
[354] *Id*, Order 6,Rule 2.
[355] *Id*, Order 4, Rule 1.
[356] *Id*, Order 4, Rule 2.
[357] *Id*, Order 7 Rule 10.

move up in the ladder of hierarchy of courts. Litigant is not free to assign any arbitrary value to the suit for the purpose of choosing the forum. The court has power to require the litigant to prove that the valuation is proper.[358] However, in practice, most of the time the valuation made by litigant in respect to the suit is accepted.[359]

Filing of plaint / suit when barred: The courts of concurrent jurisdiction are barred from entertaining and adjudicating upon parallel litigation in respect of the same course of action, the same subject matter and the same relief. The suit once decided by the court of competent jurisdiction is binding in nature and other competent courts cannot entertain a petition seeking same relief on same grounds and from the same parties.[360] But, when the previous suit is not decided on merits or when it is dismissed for want of jurisdiction or on default of plaintiff's appearance or non-joinder of parties or because it was premature or due to some technical defect, then such dismissal does not bar filing of the same suit again seeking same relief.[361] Also a withdrawal of suit does not bar filing of the subsequent suit.[362] Furthermore, there is no bar on the power of civil courts to try a subsequently instituted suit if the previously instituted suit is pending in a foreign court.[363]

The forum where a suit is to be filed: It is mandatory to file a suit in the court of the lowest grade competent to try it.[364] When parties to the dispute have more than one forum available for filing a suit, it may select any particular forum by agreement or otherwise excluding other forums.[365] The allegations made in the plaint also decide the forum.[366] The provisions regarding the place of filing a suit is given as under:

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[358] *Balgonda v. Ramgonda* (1969) 71 BLR 582.
[359] *Commercial Aviation & Travel Co. v. Vimla Pannalal* (1988) 3 SCC 423.
[360] CPC, sec. 11.
[361] *Krishan Lal v. State of Jammu & Kashmir* (1994) 4 SCC 422.
[362] *Supra* note 25.
[363] CPC, 1908, explanation to sec. 10.
[364] CPC, 1908, sec. 15.
[365] *Hakam Singh v. Gammon (India) ltd.* (1971) 1 SCC 286.
[366] *Abdulla v. Gallappa* (1985) 2 SCC 54

NATURE OF SUIT	JURISDICTION OF COURT
1. Every suit	Court of lowest grade competent to try it.[367]
2. Suits for recovery of; /partition of; /foreclosure, sale / redemption of mortgage of /charge upon; /determination of any right or interest in; /compensation for wrong to; Immovable property:	Courts within whose jurisdiction the immovable property is situated[368].
3. Recovery of moveable property under actual distraint or attachment	Courts within whose jurisdiction the moveable property is situated[369].
4. Relief in respect of or compensation for wrong to Immovable property held by or on behalf of the defendant; where the relief sought can be entirely obtained through his personal obedience:	Court within whose jurisdiction the immovable property is situate or the defendant resides or carries on business or personally works for gain[370].
5. Relief in respect of or compensation for wrong to Immovable property situated within the jurisdiction of different courts:	Court within whose jurisdiction any portion of the property is situated, provided that the entire claim is within the pecuniary jurisdiction of such court[371].
6. Where it is uncertain within the jurisdiction of which two or more courts any Immovable property is situated:	Any of those courts provided that the court has pecuniary jurisdiction and jurisdiction as regards the subject matter of the suit.[372]
7. Compensation for wrong to person or moveable property, if the wrong is done within the jurisdiction of one court and the defendant resides/ carries business/ personally works for gain within the jurisdiction of another court:	In either of the courts at the option of the plaintiff[373].
8. Any other suit:	Where the cause of action wholly or partly resides / the defendant resides / carries on business / personally works for gain / where there are two or more defendants and any of them resides,

[367] CPC, Sec. 15.
[368] *Id*, Sec. 16(a) to (e).
[369] *Id*, Sec. 16(f).
[370] *Id*, proviso to Sec. 16.
[371] *Id*, Sec. 17.
[372] *Id*, Sec. 18.
[373] *Id* Sec. 19.

	carries on business or personally works for gain. [374]

Besides the matters falling within the exclusive jurisdiction of Revenue Courts are dealt with by special tribunals under the relevant statutes like Industrial Tribunal, Income Tax Tribunal, Election Tribunal, Revenue Tribunal, Rent Tribunal, etc. or by the domestic tribunals such as Bar Council, Medical Council, etc. are expressly barred from the cognizance of a civil court.[375]

Procedure followed in some special suits: Separate procedure is being followed in some special suits listed below:

Suits by / against government or public officers: Before instituting such suits, notice has to be given to the defendant – opponent by the litigant – plaintiff, except where an urgent or immediate relief is required to be obtained.[376] Notice in writing is required to be delivered to or left at the office of person authorised by the government in that behalf. The plaint can be filed only after the expiration of two months, containing a statement that the notice as required has been delivered, failing which courts reject the plaint[377]. Also in such suits plaint as well as written statement is required to be signed and verified by any person appointed by Government who is acquainted with the facts of the case.[378] Reasonable time to file the written statement is given to the government and the counsel for the government is not required to file *Vakalatnama.*[379]

Suits involving substantial question of law: In a suit or appeal in which substantial question of law as to the interpretation of the Constitution is involved, the courts do not proceed with such suits and appeals till the notice to the Attorney-General of India is given if the question of law concerns the Central Government and to the Advocate-General, in case the question of law concerns the state government[380]. These persons are sometimes made party to the suit or appeal.[381]

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[374] *Id* Sec. 20.
[375] C.K.Takwani, *Civil Procedure*, 32 (Eastern Book Company, 1997).
[376] Sec. 80(1) and (2), the CPC, 1908
[377] *State of A.P v. Suryanarayana* AIR 1965 SC11.
[378] CPC, Order 27, Rules 1,2,4,6,8,8-B.
[379] A form submitted by the advocate of the party to the court signed by both party as well as advocate indicating to the court that the advocate is appointed by the party to conduct its case in the court.
[380] CPC, Order 27-A, Rules 1 and 4.
[381] *Id,* Order 27-A, Rule 2.

Suit by or against foreign and alien rulers: A foreign state and alien enemies residing in India with the permission of the court, are competent to sue in any competent court for enforcement of private right vested in such ruler or any officer of such state in his public capacity, in the name of his state.[382] However, no person can file a suit against a foreign state or its officers, envoys, ambassadors without the consent of the Central Government. And no decree can be executed against the property of any foreign state, except with the consent of the Central Government. [383]

Suits by or against corporations: A corporation, incorporated under the law of the country can be sued and sue in its name and, any pleading may be signed on behalf of the corporation by secretary or the director or other principal officer of the corporation competent to depose the facts of the case.[384]

Suits by or against minors and lunatics: Every suit by a minor is required to be instituted in his name by his next friend. Where the defendant is minor, the court appoints a proper person to be the guardian for the suit who is known as *guardian ad litem* for such minor.[385]

Suits by indigent persons: The Code has made provisions to enable the indigent persons to institute and prosecute suits without payment of any court fee.[386] A person who is very poor is exempted from such court fee to be paid at the first instance and he is allowed to prosecute his suit in *forma pauperies* if it is proved to the court that he does not hold sufficient means to enable him to pay the fee prescribed by law.[387]A court appointed pleader may represent such a person. [388] The state and central government both are empowered to provide free legal services to the indigent persons.[389]

Parties to the suit: More than one person may join in a suit as plaintiff or defendant, if[390]

1. the right to relief alleged exists in each of them arises out of the same

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[382] *Id*, Sec. 83, 84 and 87.
[383] *Id*, Sec. 86.
[384] *Id*, Order 29, Rule 1- 3.
[385] *Id*, Order 32.
[386] *Id*, Order 33.
[387] *Id*, Order 33, Rule 1.
[388] *Id*, Rule 9-A, Order 33.
[389] *Id*,Rule 18, Order33.
[390] *Id*, Order 1, Rule 1 and 3.

act or transaction,

2. the case is of such a character that, if such persons brought separate suit, any common question of law or fact would arise so that the matters involved therein are finally adjudicated upon and fresh litigation over the same is avoided. However, one or more of them can act as representatives on behalf of themselves and others, with permission of the court[391].

If a party suing in representative capacity fails to proceed the suit / defence with due diligence, the court substitutes it with any other person having the same interest in the suit.[392] Courts are empowered to make addition and substitution of the parties to the suit after the action has been brought[393] or strike out the name of any party improperly joined at any stage of the proceedings either upon application of the parties or *suo-motu* in appropriate cases and on such terms and conditions as appear to be just.[394] In the absence of necessary parties no decree can be passed.[395]

Documents to be presented along with the plaint: Parties to the dispute / pleaders are under a duty to produce all the documentary evidence in their possession/power on which they rely.[396] The documents that ought to be presented alongwith the plaint cannot be produced or entertained later without permission of the court.[397] However, the court may receive any document at a later stage if the genuineness of document is beyond doubt and it is relevant for deciding the real issue in controversy[398] or if it is necessary for the just decision of the case. The document admitted in evidence forms part of the record of the suit.[399] It is returned to the party after disposal of the suit or even during the pendancy of the suit on furnishing necessary undertaking.[400] The court impounds any document in cases of forgery and apprehension that the document may be destroyed or altered.[401]

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[391] *Id*, Order 1 Rule 8.
[392] *Id*,Order 4 Rule 8(5).
[393] *Id*, Rule 10(1).
[394] *Id*, Rule 10(2).
[395] *U.P.Awas Evam Vikas Parishad v. Gyan Devi* (1995) 2 SCC 326.
[396] *Supra* note 32, Order 13, Rule 1-2.
[397] *Id*, Order 7, Rules 14-17.
[398] *Billa v. Billa* (1994) 4 SCC 659
[399] CPC, Order 13, Rule 7.
[400] *Id*, Order 13, Rule 9.
[401] *Id*, Order 13, Rule 8.

An officer appointed by the court receives the plaint and examines it thoroughly and in case of deficiencies, calls upon the Plaintiff to do away with the objections.

After the filing of a plaint, the court issues a notice with the seal of the court, signed by the judge, to the defendants, directing a person to appear before a particular judge in the designated court, on a day and time specified therein.[402] It is served on the defendant, by delivering or tendering a copy thereof,[403] either to the person to whom it is directed / his agent / if none is found, by affixing a copy of the same on the outer door of the house in which he resides / in some circumstances by an advertisement in a newspaper. [404] After issuing such notice to the defendant(s), adequate time and opportunity is given to them to file their reply which is called as written statement. This written statement enables the court to know the position of the defendant. And is filed in the court concerned before first hearing of the suit or within such time as the court allows.[405]

Before filing a written reply if the defendant raises preliminary objections as to maintainability of the suit for reasons such as lack of jurisdiction in the court entertaining plaint or the plaint does not disclose cause of action or relief claimed is undervalued by the litigant in order to avoid court fees or the plaint is written on a paper insufficiently stamped or suit is not filed within the limitation period,[406] etc., the court resolves such preliminary issue or objection and if the same is proved true, the court either returns the plaint for presenting it to the proper court[407]or dismisses the suit or rejects the application. All orders regarding impleadment of parties, maintainability of a suit, jurisdiction of the court, etc., once passed are not re-opened in the same proceedings. Only correctness of such order is challenged by regular appeals,[408] or by instituting a fresh suit on the same cause of action.[409] The suit is dismissed on other reasons as well like time barred by limitation / cause of action has been decided earlier by the court / the plaint discloses no cause of action / motivated case / plea raised at the

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[402] *Id,* Order 5, Rules 1-2.
[403] *Id,* Order 5, Rule 16.
[404]*Id,* Order 5, Rules 17-20.
[405]*Id,* Order 8, Rule 1, see also *Food Corporation of India v. Yadav* (1982) 2 SCC 499.
[406]*Id,* Order 7, Rule 11.
[407]*Id,* Order 7, Rule 10(1).
[408] *Prahalad Singh v. Sukhdev Singh* (1987) 1 SCC 727
[409] *Supra* note 8, Order 7, Rule 13.

hearing of the suit was different from those mentioned in the plaint, etc.[410]

If the defendant fails to file a written statement within the time permitted by the court, the court in its discretion pronounces judgment on the basis of the plaint or makes any appropriate order as to costs.[411] If the written statement admits wholly or partly the claim as made in the plaint, a decree on admission is passed, otherwise, the court determines the issue or points of dispute between the parties.

After filing of written reply, the stage of framing and settlement of issues comes. Such framing of issues facilitates the applicant to lead necessary evidence in support of the claim and the relief prayed enlightens the court conducting proceedings to appreciate the same in proper perspective.[412] The day, on which such issues are framed, is the first hearing of the suit.[413] At first hearing of the suit court ascertains from each party or his pleader, whether he admits or denies such allegations of facts as are made in the plaint or written statement.

In case any party to the suit requires some information from the adversary as to the facts or documents in possession, relevant to the suit, the same is submitted before the judge in the suit who, if considers them proper, compels the other side to answer them on oath before trial.[414]

Admissions by the parties in trial or proceedings: According to Indian Evidence Act, 1872, the facts admitted need not be proved. After filing of the suit in the court following kinds of admissions can be made:

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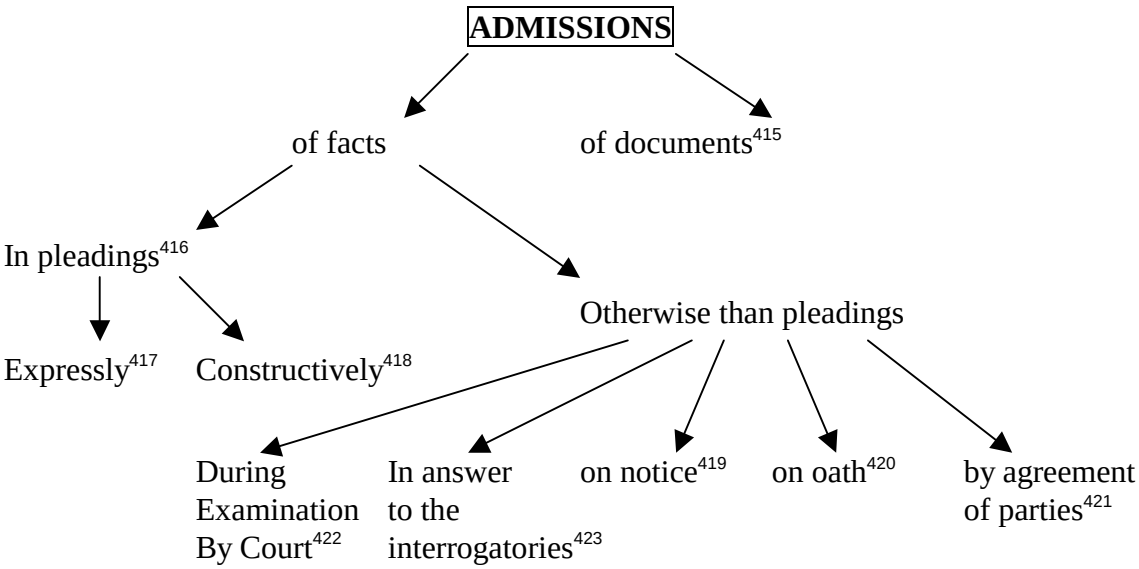
[410] C.K.Takwani, *Civil Procedure* 287 (Eastern Book Company, 1997).
[411] CPC, 1908, Order 8, Rule 5(2).
[412] *State of Gujarat v. Jaipal Singh* 1994 (35) Guj Law Reporter 258.
[413] CPC, Order 14, Rule 1.
[414] *Id,*Order 11



At any stage of the proceedings whether in trial/first appeal/final appeal/revision in a proceeding before the Supreme Court or any other court, on the request of a party, the court allows amendment to the plaint[424] for reasons like fresh arrival of information/ interrogacies are fully answered by the opponent / documents whose existence was unknown are disclosed which necessitates amendment of the claim.

Generally, the courts do not require compulsory appearance of the parties except in special circumstances.[425] A person by himself / his recognized agent / his pleader may represent the suit.[426] Where court orders for their appearance in person and

1. Both / plaintiff-litigant do not appear; if sufficient cause for default of appearance is not shown, the suit is dismissed.[427]

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[415] *Id*, Order 12, Rule 2.
[416] *Id*, Order 7 &8.
[417] *Id*, Order 7, Rule 11, see also Order 11, Rule 22.
[418] *Id*, Order 8, Rule 3-5 and Order 12, Rule 2-A.
[419] *Id*, Order 12, Rule 4.
[420] *Id*, Order 10, Rule 2 and Order 18, Rule 3.
[421] *Id*, Order 23, Rule 3.
[422] *Id*, Order 10, Rule 1-2.
[423] *Id*, Order 11, Rule 8, 22.
[424] *Id*, Order 6 Rule 17.
[425] *Id*, Order 3 Rule 1.
[426] *Id*, Order 9 Rule 1.
[427] *Id*, Order 9 Rule 3.

2.The litigant –plaintiff alone does not appear and defendant appears and admits claim in part, the court passes a decree against the defendant upon such admission.[428]

3.Defendant alone does not appear nor does he show any sufficient cause for non-appearance, the court proceeds *ex-parte,*[429] if the plaintiff proves service of summons on the defendant.[430]

There are four remedies against an *ex-parte* decree; (i) to apply to the court which has passed such decree for setting it aside on the grounds of irregularity in serving of summons / if there was any other sufficient and good cause that prevented the defendant from appearing when the suit was called for hearing;[431] (ii) to prefer an appeal against it;[432] (iii) to apply for review;[433] and (iv) to file a suit if such order was obtained by fraud. No *ex-parte* decree is set-aside without notice to the opposite party and once it is set aside the suit is restored as it stood before. Appeal can be filed against an Order rejecting an application to set aside an *ex-parte* decree.[434]

After framing of issues by the court, a stage is reached where parties in the suit are in a position to know the facts and documents they need to prove. At this stage parties apply to the court for summoning and getting attendance of witnesses. If party needs assistance of the court to secure presence of witnesses, whom it proposes to call to give evidence / to produce documents, it files a list of witnesses on / before the date given by the court and not later than 15 days after the issues are framed[435]. The court has machinery at its disposal to enforce attendance of any person to whom summons are issued and for the same purpose it can issue a warrant of arrest / attach / sell property / impose a fine / order to furnish security for appearance and in default to commit to the civil prison.[436] The legislature has not prescribed any time limit within which the witnesses should be produced and examined. The adjournment is generally sought many a times on flimsy or frivolous grounds. This had resulted in undue delay in

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[428] *Id,* Order 9 Rule 8.
[429] *Id,* Order 9 Rule 12.
[430] *Id,* Order 9 Rule 6.
[431] *Id,* Order 9 Rule 13.
[432] *Id, sec* 96(2).
[433] *Id,* Order 47, Rule 1.
[434] *Id,* Order 43, Rule 1(d).
[435] *Id,* Order 16, Rule 1.
[436] *Id,* sec. 32Order 16 Rule 10.

disposal of the cases. Be that as it may where the party wants to produce his witnesses without assistance of the court, it is free to bring in any witnesses at any stage of the suit / proceedings.[437] Even courts summon any person as a witness if the ends of justice require so. However, the courts exercise such powers only in compelling necessities.[438] Unless the court otherwise directs, the person summoned is required to attend the court on the day of hearing.[439] Non-appearance without sufficient cause attracts penalties not exceeding rupees 500.[440]

When a witness appears he is examined first by the party that called him and thereafter by other party. In cases of court witness also, both the parties get an opportunity to cross-examine the witness. The evidence is either recorded verbatim or in a summary form depending on the kind of proceedings.

Appointment of Receiver: The civil courts appoint a receiver who is known as the officer of the court, to receive and preserve property/fund in litigation, to institute and defend suits, to realize, manage, protect, preserve the property, to collect, apply and dispose of the rents and profits, to execute documents and to do any other thing for which he has been empowered by the court.[441]

Judgement by the Court: After final hearing of the suit, the court pronounces judgment in an open court, either at once / on some future day, after giving due notice to the parties and their pleaders. The judgment is recorded by giving findings on each issue and ultimately the conclusion is recorded and is called as decree.

Only in exceptional circumstances, to administer justice, courts hold a trial in camera, for example in matrimonial or espionage cases, etc.[442]

Appeal procedure:

Normally against each judgment or decree, there are appeals, provided by the Code.[443] There is intra-court appeal within the same subordinate court or within the High Court and an appeal may lie in the Supreme Court either as a right or by way of special leave to appeal. All orders regarding impleadment of parties, maintainability of a suit, jurisdiction of the court, etc., once passed are not reopened in the same proceedings.

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[437] *Id,*Order 16, Rule 1-A.
[438] *Id,* sec. 30(b) Order 16 Rule 14.
[439] *Id,* Order 16 Rule 16-17.
[440] *Id,* Order 16 Rule 11,12,13.
[441] *Id,* Order 40 Rule 1(1) (d).
[442] *Id,* Order 32-A Rule 14.

Only correctness of such order is open to be challenged by regular appeals.[444]

Every person aggrieved by the decree / judgment / order of the court, according to the rules of the court, files memorandum of appeal. A memorandum of appeal sets forth the grounds of objection to the decree appealed from, signed by the appellant / his pleader, presented to the court / to such officer appointed in that behalf, along with certified copies of the judgment unless the court dispenses with it[445] and in case of appeal from a money decree, the decretal amount or security in respect thereof is also submitted.[446] The memorandum of appeal acts as a notice to the respondent of the case he has to meet at the hearing of the appeal. Appellant is not allowed to urge, except with prior permission of the court, any grounds of objection not set forth in the memorandum of appeal.[447] Where the memorandum of appeal is not in a proper form, the court may rejects it or returns it to the appellant for the purpose of being amended.[448] After presentation of the memorandum of appeal, the appellate court fixes a day and issues a notice for hearing of the appeal giving sufficient time to the respondent to appear and answer the appeal on such day.[449] This notice to the respondent contains a statement declaring that, if respondent fails to appear on the date fixed by the court for hearing of the appeal, it will be heard *ex-parte*.[450] The lower court whose decree is challenged by way of appeal, dispatches all material papers in the suit or such papers as are asked by the appellate court, to be deposited with the appellate court.[451] On the day fixed for hearing the appeal, the appellant is heard in support of the appeal. On hearing him, if the court finds no substance in the appeal, it dismisses the appeal at once without calling the respondent to reply.[452] But if the appellate court does not dismiss the appeal at once, it hears the respondent against the appeal and the appellant is entitled to reply.[453] If appellant appears and respondent fails to appear, the appeal is heard *ex-parte*.[454]

If a bench of two or more judges hears the appeal, it is decided according to the

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[443] *Shankar v. Krishnaji* (1969) 2 SCC 74
[444] *Prahlad Singh v. Sukhdev Singh* (1987) 1 SCC 727.
[445] CPC, 1908, Order 41 Rule 1(1).
[446] *Id*, Order 41 Rule 1(3).
[447] *Id*, Order 41 Rule 2.
[448] *Id*, Order 41 Rule 3.
[449] *Id*, Order 41, Rule 12.
[450] *Id*, Order 41, Rule 15.
[451] *Id*, Order 41, Rule 13(2).
[452] *Id*, Order 41, Rule 16(1).
[453] *Id*, Order 41, Rule 16(2).

opinion of majority of such judges.[455] Where the majority, does not concur in a judgment, in varying or reversing it, the decree from which it is appealed is confirmed.[456] In case appeal is heard by a bench consisting of even number of judges of a court having more judges than the bench, and bench differs on a point of law, the appeal is then heard upon points, on which they differ, by other judges than that of Bench and is decided according to the opinion of the majority of such judges.[457]

Decree is not reversed or varied or remanded in appeal just because of mis-joinder or non-joinder of parties or cause of action or error or defect, irregularity in any proceeding in the suit, if the same is not affecting merits of the case or jurisdiction of the court.[458] Mere filing of appeal does not suspend the operation of a decree. After an appeal is presented, the appellate court grants the order of stay of proceedings under the decree or execution of such decree,[459] if (1) the appeal is filed without unreasonable delay, (2) substantial loss is going to accrue to the appellant and (3) security for due performance of the decree or order is submitted in the court by the appellant.[460] The courts even make *ex-parte* order for stay of execution pending the hearing of the application.[461] Order of stay becomes effective from the date of communication to the court of first instance and not prior thereto.[462] The court of first instance acts upon an affidavit sworn by the appellant, stating that the appellate court has made an order for the stay of execution of a decree.[463] Where an order is made for the execution of a decree from which an appeal is pending, on sufficient cause being shown by the appellant, the court that passed the decree either *suo motu* or on directions from appellate court, takes security from the decree holder for restitution of property taken in execution and for due performance of decree or order of appellate court.[464]

Against the decision of the first appeal second appeal is provided in the majority of cases. This second appeal is filed in the appropriate court (High Court or

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[454] *Id*, Order 41, Rule 17(2).
[455] *Id*, Sec. 98(1).
[456] *Id*, Sec. 98(2).
[457] *Id*, Sec. 98(3).
[458] *Id*, Sec. 99.
[459] *Id*, Order 41, Rule 5(1).
[460] *Id*, Order 41, Rule 5(3).
[461] *Id*, Order 41, Rule 5(5).
[462] *Id*, explanation to Order 41, Rule 5(1).
[463] *Id*, Explanation to Order 41, Rule 5(1).
[464] *Id*, Order 41, Rule 6(1).

Supreme Court) within a period of 90 days from the date of decree appealed against.[465] However, second appeal is admitted only if the issue has not been determined by both the subordinate courts or has been wrongly determined by them.[466] Procedure for filing and hearing the second appeal is same as that of first appeal.

In addition to appeal, high courts in the country have been given revision powers. Accordingly, high courts call for the record of any case decided by any court subordinate thereto, from which no appeal lies to it if it appears that such subordinate court has exercised jurisdiction not vested in it by law or has failed in exercising a jurisdiction vested in it or has acted in the exercise of its jurisdiction illegally or with material irregularity and makes any appropriate order thereon as it thinks fit.[467]

Apart from the above, appellate court frames issues and refers them to court of first instance, when the latter has omitted framing and trying of any issue / determination on any question of fact essential for proper decision of the suit upon merits.[468] For the same purpose it directs the lower court to take any additional evidence. The lower court returns the evidence and findings within the time fixed by the court, which forms part of the record of the suit. Either party to the suit is competent to raise objections against these findings.

The judgment of the appellate court is in writing and contains, points for determination, the decision thereon, reasons for the decision and decree of the lower court, along with fact that it is reversed / varied /confirmed, and the relief to which parties are entitled, signed by the judges concurring therein.[469] Dissenting judge is not obliged to sign the decree.[470] Certified copies of the judgment and decree in appeal are furnished to the parties at their expense and to the court against whose decree / judgment decision was rendered by the higher court and is filed in the court along with original proceedings in the suit and an entry of the judgment of the appellate court is made in the register of civil suits.[471]

Transfer of a case from one court to another: Any party to the suit by showing sufficient grounds can plead before the concerned high court for transfer a case

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[465] Limitation Act, 1963, Art 116.
[466] *Id*, sec. 103.
[467] *Id*, sec. 115.
[468] *Id*, sec. 107(1) (c).
[469] *Id*, Order 41, Rules 31 and 32.
[470] *Id*, proviso to Rule 35, Order 41.

from one civil court to another with in its jurisdiction, for example reasonable apprehension in the mind of the litigant that he might not get justice in the court in which it is instituted since the judge is prejudiced or interested party etc.[472] The supreme court of India has power to transfer any suit, appeal / other proceeding from one high court to another and from one civil court to another in any other state, if the same is expedient in the ends of justice[473] for example if the court is situated at a long distance from the place of the residence of the applicant. Though the Code has elaborate provisions as to the grounds for transfer of a case. Besides the judiciary has also set certain parameters in this regard. [474]

Interim orders: The civil courts generally pass interim and interlocutory orders during the pendency of a suit or proceeding. Such orders do not finally determine the substantive rights and liabilities of the parties in respect of the subject matter of the suit or proceedings. [475] These interim orders are generally in the form of:

(1) Issuing of commissions:[476] The courts relax the rule of attendance in court if the person sought to be examined as a witness resides beyond the local limits of the jurisdiction of the court / when the witness is a man of high rank and position in the Constitution / he is unable to attend the court on grounds of sickness or infirmity. In such a case commission is issued and are given powers to examine such person, make local investigation, examine accounts, make partition, hold scientific investigation, conduct sale or perform a ministerial act[477], to issue summons for procuring the attendance of parties and their witnesses, to call for documents and examine them, to proceed ex- parte, etc.[478] A date is fixed for return of a commission. The expenses of this commission are either met by the party requiring the commission or out of court funds[479]. The courts issue commissions either *suo-motu* or on the application of any party to the

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[471] *Id*, Order 41, Rules 37.
[472] *Manak Lal v. Prem Chand* AIR 1957 SC 425, see also *Indian Overseas Bank v. Chemical Construction Co.* (1979) 4 SCC 358; *Gujarat Electricity Board v. Atmaram* (1989) 2 SCC 602; *Arvee Industries v. Ratan Lal* (1977) 4 SCC 363; *Union of India v. SGPC* (1986) 3 SCC 600.
[473] CPC, 1908, sec. 25.
[474] *Sharref v. Hon'ble Judges of the Nagpur Hihg Court*, AIR 1955 SC 19, see also, *Maneka Gandhi v. Rani Jethmalani* (1979) 4 SCC 167; *Manohar Lal v. Seth Hiralal* AIR 1962 SC 567
[475] CPC, 1908, sec. 94(e).
[476] *Id*, sec. 75.
[477] *Id*, sec. 75.
[478] *Id*, Order 26, Rule 16-18.
[479] *Id*, Order 26, Rule 15.

suit.[480] The evidence collected by commission forms part of the record.[481]

(2) Arrest before judgment:[482]When the court itself is in doubt about the integrity of the litigant – defendant, and it has reasons to believe that justice will not be otherwise met to the plaintiff, it orders for the arrest of defendant. If later, it is proved that the arrest was made on the insufficient grounds, court order litigant – plaintiff to pay compensation of maximum of 1000/- rupees to the defendant for the injury of reputation caused to him.[483]

(3) Attachment before judgement:[484] Attachment before judgement is ordered where the court on an application is satisfied that the defendant, with intent to obstruct or delay the execution of any decree that can be passed against him, is about to dispose of the whole or any part of his property or is about to remove the same from the local limits of the jurisdiction of the court. It is a sort of guarantee against decree becoming infructuous for want of property available from which the plaintiff can satisfy the decree[485]. An attachment practically takes away the power of alienation and as such a restriction is placed on the right of ownership of the defendant.[486] However, this order of attachment can be withdrawn if the defendant furnishes security or the suit is dismissed[487].

(4) Temporary Injunctions are granted by the court with respect to disputes involving immovable property.[488] Instances wherein the courts grant temporary injunctions included:[489]

(a) the property in dispute is in danger of being wasted, damaged / alienated by any party to the suit / wrongfully sold in execution of a decree;

(b) the defendant threatens to / intends to remove / dispose of his property with a view to defraud his creditors / dispossess the plaintiff / causes injury to the plaintiff in relation to any property in dispute in the suit;

(c) to restrain repetition / continuation of breach of contract / injury of the

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[480] *Id*, Order 26, Rule 2 and 6.
[481] *Id*, Order 26, Rule 7.
[482] *Id*, Order 38, Rule 1-4.
[483] *Id*, *sec* 95.
[484] *Id*, Order 38, Rule 5-12.
[485] *Sardar Govind Rao v/s Devi Sahai* 1982(1) SCC 237.
[486] *Jai Prakash v. Basant Kumari* (1911) 15 IC 604.
[487] CPC, 1908, Order 38, Rule 9.
[488] *Id*, Order 39 Rule 1.

like kind.

The courts detain any person in a civil prison for violation of the order of an injunction for a term not exceeding 3 months.[490] The courts do not grant temporary injunction without giving notice to the opposite party.[491] Only in exceptional circumstances when irreparable/serious mischief will ensue to the plaintiff and its delay would defeat the ends of the justice, that the courts in India grant *ex-parte* injunctions for a limited period of time, by recording reasons for the same.[492] However, if later it is found by the court that the injunction was granted on insufficient grounds, or where suit of the litigant-plaintiff fails, the courts in some cases order for compensation of the defendant by an amount not exceeding rupees 1000/-.[493]

Withdrawal of a suit: At any time after the institution of the suit, the plaintiff can abandon his suit / any part of his claim against all / any of the defendant without permission of the court. The court however, can order the plaintiff to compensate / award such costs to the defendant as it thinks fit.[494] The granting of the permission to withdraw the suit with liberty to file a fresh suit with an aim to rectify the mistakes committed in the earlier suit removes the bar of *res judicata*. It restores the plaintiff to the position, which he would have occupied had he brought no suit at all. Withdrawal of the suit with the permission of the court with liberty to file a fresh suit is governed by the law of limitation in the manner as if first suit was not brought at all.[495] If more than one litigant files suit, any one of them, is capable of withdrawing without consent of others from the suit to the extent of his interest in it.[496]

Compromise: The courts permit compromise between parties after the institution of the suit.[497] However, the courts inquire whether the terms of the agreement are lawful and enforceable against all the parties to the compromise and then, pass the order in accordance with it.[498] Prior to the Amendment of the Code in 1976, a compromise decree could be passed only so far as it relates to the suit, but after the

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[489] *Id*, Order 39 Rules 1 & 2.
[490] *Id*, Order 39 Rule 2-A.
[491] *Id*, Order 39 Rule 3.
[492] *Id*, proviso to Order 39 Rule 3, see also *Morgan Stanley v. Kartik Das* (1994) 4 SCC225.
[493] *Id*, sec. 95.
[494] *Id*, Order 23 Rule 1(4).
[495] Limitation Act, 1963, sec. 14 (3), see also *supra* note 164 Order 23 Rule 2.
[496] CPC, 1908, Order 23 Rule 1(5).
[497] *Id*, Order 23 Rule 3.

amendment, every compromise that is lawful, is converted into the decree of the court. This decree is non-appealable[499] and cannot be set aside by a separate suit, except on the ground of fraud, undue influence or coercion[500], which invalidates an agreement.[501]

Death of a party: The death of any of the party to a suit creates various difficulties. If, during the pendency of a suit, a party dies, a number of consequences ensue:

SITUATION	CONSEQUENCES
1.Where one of the several plaintiffs or defendants dies and the right to sue survives in favour of the surviving plaintiffs/ plaintiif alone or defendants/defendant alone.	The court records such fact and proceeds with the suit.
2. where one of the several plaintiffs/defendants dies and the right to sue does not survive in favour of surviving plaintiffs / defendants alone.	On an application being made, the court makes legal representatives of the deceased plaintiff / defendant a party and proceeds with the suit.
3. Where a sole surviving plaintiff /defendant dies and the right to sue survives.	On an application being made, the court makes legal representatives of the deceased plaintiff / defendant a party and proceeds with the suit. If no such application is made within the prescribed period given by law of limitation, the suit is abated so far as the deceased is concerned.
4. Either party dies between the conclusion of the hearing and the pronouncement of the judgment.	Suit does not abate whether the cause of action survives or not.

Insolvency of a party: The insolvency of a plaintiff does not cause the suit to abate and is continued by his assignee / receiver for the benefit of his creditors. But if the assignee or receiver declines to continue the suit / to give security for costs as ordered by the court, the court on the application of the defendant dismiss the suit and award costs to the defendant for defending the suit to be paid as a debt against the

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[498] *Banwari Lal v. Chando Devi* (1993) 1 SCC 581.
[499] CPC, 1908, Order 23 Rule 3-A.
[500] *Id, sec* 96(3).
[501] *Ruby Sales and Services v. State of Maharashtra* (1994) 1 SCC 531.

plaintiff's estate.[502] In case the defendant becomes an insolvent, the court stays the suit or proceedings pending against him.[503]

Burden of proof: The Indian Evidence Act, 1870 deals with burden of proof. As a general rule, the plaintiff has to prove his claim and therefore the plaintiff has right to begin unless the defendant admits the fact alleged by the plaintiff and contends on point of law / on some additional facts alleged by him, in which case, the defendant has right to begin. The party having right to begin states its case and produces evidence. Only afterwards, other party can state its case and produce evidence to support it.[504] If the party having right to begin is absent / his counsel arrives late, then this right is transferred to other party.[505]

Adjournment: Once court starts hearing of a suit, it is continued till the final disposal of the suit, day to day and the adjournment is granted only for unavoidable reasons.[506] The grant or refuse of adjournment is in the discretion of the court. There are no guidelines laid down by the Code in this regard, but courts[507]grant adjournments in cases of: sickness of a party, his witness or his counsel, non-service of summons, reasonable time for preparation of a case, withdrawal of appearance by a counsel at the last moment, liability of the counsel to conduct a case, inability of a party to engage another counsel, etc. However, if the party fails to appear even on the adjourned day, the court either proceed to dispose of the suit *ex-parte* / dismiss the suit in case of the plaintiff / fix any other day for proceedings with the suit / proceed with a case even in absence of a party where evidence of such party has already been recorded as if such party were present / make any other suitable order[508].

Rules regarding recording of evidence: generally witnesses are examined at the time of hearing of the suit. However, when witness is about to leave the jurisdiction of the court, his evidence is taken immediately without waiting further. In special circumstances witness is examined on commission.[509] If the evidence is recorded by the judge who dies / transferred / is prevented from conducting the trial due to some other

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[502] CPC, 1908, Order 22 Rule 8.
[503] C.K.Takwani, *Civil Procedure,* 224 (Eastern Book Co. 1997).
[504] CPC, 1908, Order 18 Rule 1-3.
[505] *Sheela Barse v. Union of India* (1988) 4 SCC 226
[506] CPC, 1908, proviso to Rule 1, Order 17.
[507] *CIT v. Express Newspapers ltd.,* (1994) 2 SCC 374.
[508] CPC, 1908, Order 17 Rule 2.
[509] *Id,* Order 18 Rule 16.

reason, before judgment is passed, his successor deals with such evidence as if it was recorded by him and proceeds with the suit from the stage at which it was left.[510]

Judgement: Judgment other than those of a court of small causes contains a concise statement of the case, the points for determination and the decision thereon along with reasons for such decision. The judgment of a court of small causes contains only points for determination and decision thereon.[511]

Rules regarding awarding of costs by the court: So far as costs in civil proceedings are concerned, it is in the discretion of the court to award such costs as it thinks fit. No hard and fast rules are laid down for awarding such costs. However, the rule has come to be established that the loser pays costs to the winner. Even successful party is not awarded costs if the court founds it guilty of misconduct.[512] The courts award four types of costs with regard to the proceedings in the court:

(1) **General costs**, awarded to a litigant to secure him the expenses incurred by him in the litigation.[513]

(2) **Miscellaneous costs:** The Code empowers the civil courts to award costs in respect of certain expenses incurred in giving notices, typing charges, inspection of records, producing witnesses and obtaining copies[514].

(3) **Compensatory costs** for the vexatious claims or defences: If the court is satisfied that the litigation was inspired by vexatious motive and altogether groundless, it can take deterrent action. But such action can be taken only in suits and proceedings before the court of first instance and, not in the appeals or revision. The maximum cost that can be awarded is rs.3000.[515]

(4) **Costs for causing delay**, are awarded to check upon the delaying tactics of the litigating parties. It empowers the court to impose compensatory costs on the parties who are responsible for causing delay at any stage of the litigation. Such costs are awarded irrespective of the

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[510] *Id*, Order 18 Rule 15.
[511] *Id*, Order 20 Rules 4,5 and 6.
[512] *Saroj v. Sudarshan* (1984) 4 SCC 90.
[513] *Id*, under sec. 35.
[514] Order 20-A.
[515] *Id*, sec. 35- A.

outcome of the litigation. [516]

The courts determine by whom and out of what property and to what extent such costs are to be awarded by the party.[517] However parties are directed to bear their costs where law is settled for the first time / litigation has arisen because of ambiguity in the statute / the court itself has been in error / appellant does not press part of his claim / case involves important question of law for decision / case is a test case / involves any question related to interpretation of recent statute / court clarifies a judicial decision. Costs are taxed according to the rules framed by the high court.

Summary procedure: The general rule is, after a plaint has been presented in the court, summons is served on the defendant-opponent who is given the right to defend his suit. However, in the summary procedure after the summons of the suit is issued to the defendant, he has to appear in the court and the plaintiff serves for a summons for a judgement on the defendant.[518] The defendant is not given the right to defend the suit against him unless he appears in the court. In default of this, the plaintiff is entitled to a decree, to be executed forthwith.

Suits relating to public nuisance: The Code authorizes filing of a suit for declaration and injunction or for some other appropriate relief in respect of public nuisance by the Advocate- General or by two or more persons with the leave of the court.[519]

Apart from above special procedures in the Code, there are special rules formed with respect to suits relating to public charities[520], interpleader suits[521], suits relating to mortgages, sale, redemption, foreclosure of immovable property and to enforces charges thereon[522], suits concerning family matters[523], suits relating to trustees, executors and administrators[524] and, suits relating to firms.[525] Further there exists rules regarding appeal, review, revision, remand, etc.

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[516] *Id*, sec. 35- B.
[517] *Id*, sec. 35.
[518] *Id*, Order 37, Rules 2-3.
[519] *Id*, sec. 91.
[520] CPC, sec. 92.
[521] *Id*, sec. 88, Order 35.
[522] *Id*, Order 34.
[523] *Id*, Order 32-A.
[524] *Id*, Order 31.

Appeal: Lies to a superior court, not necessarily a High court Lies only from the decree and appealable orders. Appeal is a substantive right conferred by the statute Lies on any question of law or fact or both.

Reference: Is always made to the high court. Made use by courts in non-appealable cases.[526] Lies on any question of law / usage having force of law.

Review: Lies to the same court that passed decree or order. It is practically rehearing of a case by the same judge who has decided it. Lies on grounds of discovery of new and important matter / evidence/ mistake / error apparent on the face of the record/ any other sufficient reason.[527]

Revision: The high courts in the country are given the powers of revision under the Code by which it can call for the record of any case decided by any court subordinate thereto from which no appeal lies to it, if it appears to the high court that such subordinate court; (i) has exercised jurisdiction not vested in it by law, (ii) has failed in exercising a jurisdiction vested in it (iii) has acted in the exercise of its jurisdiction illegally or with material irregularity.[528] The high court then, makes any appropriate order thereon as it thinks fit.[529] The revision jurisdiction keeps subordinate courts within the bounds of their authority and to make them act according to the procedure established by law.[530] Courts in India convert an appeal in a case in which no appeal lies to revision and vice versa.[531]

Decree & execution thereof: A decree is executed either by the court, which passed it / to which it is sent for execution by the appellate court[532], by filing of an application for execution[533]. The court, which originally passed the decree, does not lose its jurisdiction to execute it, by reason of subject matter thereof being transferred subsequently to the jurisdiction of another court.[534]

A judgment debtor is liable for arrest and detention in a civil prison in

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[525] *Id,* Order 30.
[526] C.K.Takwani, *Civil Procedure* 320 (Eastern Book Co., 1997).
[527] CPC, Order 47 Rule 1.
[528] *Id,* sec. 115.
[529] *Id,* sec. 115.
[530] *Lakshmi Dyeing Works v. Rangaswami* AIR 1980 SC 1253.
[531] *Reliable Water Supply Services v. Union of India* (1972) 4 SCC 168
[532] CPC, sec. 39.
[533] *Desh Bandhu v. Anand* 1994 (1) SCC 131
[534] CPC, Explanation to sec. 37.

execution of a decree.[535] His arrest is made between sunrise and sunset, only if the decretal amount exceeds Rs.500[536] only for the period till judgment debtor does not pay the decretal amount and costs of arrests to the officer. Not every application of the decree holder for the arrest of the judgment debtor for not complying with the decree is accepted forthwith. The courts issue notice to the judgment debtor calling upon him to appear before it and show cause as to why he should not be detained in a civil prison in execution of a decree.[537] Where the judgment debtor appears before the court in obedience of such notice and satisfies to the court his inability to pay the decretal amount, the courts reject application made by the decree holder for his arrest.[538] But if the court is not satisfied of his inability to pay, it makes an order of detention.[539] And where the judgment debtor does not appear in the court in obedience to the notice given to him under the code, the court on the request of the decree holder issues a warrant for the arrest of the judgment debtor.[540] In case of money decree which is unsatisfied for a period of 30 days, the court on the application of the decree holder orders the judgment debtor to produce an affidavit stating his assets. The latter has to comply with the order or face the detention up to period of 3 months[541]. However, following class of persons cannot be arrested or detained in civil prison: A woman; judicial officers, while going to, presiding in, or returning from their courts; the parties their pleaders, recognized agents, their witnesses acting in obedience to a summons, while going to or attending or returning from the court; member of the legislative bodies; any person or class of persons, whose arrest, might be attended with danger or inconvenience to the public.

A judgment debtor is released before the expiry of the period of detention on any one of the grounds mentioned below[542]:on the amount mentioned in the warrant being paid / decree against him being otherwise fully satisfied / on the request of the decree-holder / omission of the decree holder to pay subsistence allowance / due to his illness[543].

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[535] *Id*, sec. 55.
[536] *Id*, sec. 58(1-A).
[537] *Id*, Order 21 Rule 37.
[538] *Id*, Order 21 Rule 40(1).
[539] *Id*, Order 21 Rule 40(3).
[540] *Id*, Order 21 Rule 37(2).
[541] *Id*, Order 21 Rule 41(2) and (3).
[542] *Id*, sec. 58.
[543] *Id*, sec. 59.

All saleable property (movable or immovable) belonging to the judgment debtor or over which he has a disposing power which he can exercise for his own benefit, are liable to attachment in execution of a decree against him.[544] The procedure for attachment of different types of moveable and immovable properties is depicted below:

Type Of Property	Mode Of Attachment
Movable Property other than Agricultural Produce in possession of the Judgment Debtor	By actual seizure thereof. But if such property is subject to speedy and natural decay, or the expense of keeping it is likely to exceed its value, it may be sold.[545]
Movable Property not in possession of the Judgment Debtor	By an order prohibiting the person in possession thereof from giving it to the judgment debtor[546]
Negotiable instrument neither deposited in a court nor in the custody of a public officer	By actual seizure and bringing it into court[547]
Debt not secured by a negotiable instrument	By an order prohibiting the creditor from recovering the debt and the debtor from paying the debt[548]
Share in the capital of a corporation	By an order prohibiting the person in whose name the share stands from transferring it or receiving dividend thereon[549]
Share or interest in Movable Property belonging to the Judgment Debtor and another as co-owners	By a notice to the judgment debtor prohibiting him from transferring or charging it[550]
Salary or allowance of a public servant or a private employee	By an order that the amount shall be withheld from such salary or allowance either in one payment or by monthly installments[551]

[544] *Balkrishna Gupta v. Swadeshi Polytex ltd*. (1985) 2 SCC 1470
[545] CPC, Order 21 Rule 43.
[546] *Id*, Order 21 Rule 46(1) (c).
[547] *Id*, Order 21 Rule 51.
[548] *Id*, Order 21 Rule 46(1) (a).
[549] *Id*, Order 21 Rule 46(1) (b).
[550] *Id*, Order 21 Rule 47.
[551] *Id*, Order 21 Rule 48 & 48-A.

Partnership property	By making an order – 1. charging the interest of the partner in the partnership property; 2. appointing a receiver of the share of the partner in profits; 3. directing accounts and inquiries and 4. ordering sale of such interests[552]
Property in custody of court or public officer	By notice to such court or officer, requesting that such property, and any interest or dividend thereon, may be held subject to the order of the court[553]
Decree for payment of money or sale in enforcement of a mortgage or charge – (a) passed by the court executing the decree - (b) passed by another court – decree other than that mentioned above -	By an order of such court[554] By issuing notice to such court requesting it to stay execution thereof[555] By issuing a notice (a) to the decree holder prohibiting him from transferring it or charging it in any way; (b) to the executing court from executing it until such notice is cancelled. [556]
Agricultural produce	By (a) affixing a copy of the warrant, in case of growing crop, on land on which such crop has grown and in case of ready crop, the place at which it is lying; (b) by affixing a copy on the house in which the judgment debtor ordinarily resides, carries on business or personally works for gain, or last resided, carried on business or personally worked for gain[557]
Immovable property	By an order prohibiting the judgment debtor from transferring it or charging it in any way and all persons from taking any benefit from such transfer or charge. [558]

The court which passed the decree can order any other court within whose jurisdiction property of the judgment debtor is situate, to attach any property specified in

[552] *Id*, Order 21 Rule 49.
[553] *Id*, Order 21 Rule 52.
[554] *Id*, Order 21 Rule 53(1) (a).
[555] *Id*, Order 21 Rule 53(1) (b).
[556] *Id*, Order 21 Rule 53(4).
[557] *Id*, Order 21 Rule 44.
[558] *Id*, Order 21 Rule 54.

the order in pursuant to the decree.[559] However no such attachment is effected, if the property is outside India.[560] Any court executing the decree can order any property attached by it to be sold to satisfy the decree and proceeds of such sale are paid to the party entitled under the decree to receive the same.[561] An officer of the court in public auction conducts every such sale in execution of a decree[562]. Every proclamation of a sale is made by beat of drum or other customary mode. Such proclamation is published in the Official Gazette and or in the local newspaper, on the directions of the court.[563] Every sale can be stopped, if before the property is knocked out, debts and costs are tendered to the officer conducting the sale or paid into the court.[564] A decree-holder / a mortgagee of immovable property / any officer / other person having any duty to perform in connection with any execution sale, cannot either directly or indirectly bid for, acquire or attempt to acquire any interest in the property sold in execution, except with the permission of the court, which courts seldom grant. [565] The Code contains elaborate and exhaustive provisions for execution of decrees and orders, takes care of different types of situations and provides effective remedies not only to the decree holders and judgment debtors but also to the objectors and third parties. [566]

Powers with respect to foreign judgment: the conclusiveness of a foreign judgment between parties is provided for, except when it is not pronounced by a court of competent jurisdiction / not given on the merits of the case / it is founded on incorrect view of international law / is obtained by fraud / it sustains a claim founded on breach of any law in force in the country. A foreign judgment is enforced in India in 2 ways: by instituting a suit on such foreign judgment and by instituting executing proceedings.[567]

Caveat: The Code also provides for lodging of caveat, which is nothing but an entry made in the books of the offices of a registry or court to prevent a certain step being taken without previous notice to the person entering the caveat. It is a precautionary step taken against the grant of probate or letters of administration, by the

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[559] *Id,* Sec. 46.
[560] *Supra* note 177, p. 393
[561] *Id,* Order 21 Rules 64.
[562] *Id,* Order 21 Rules 65.
[563] *Id,* Order 21 Rule 67(2).
[564] *Id,* Order 21 Rule 69(3).
[565] *Id,* Order 21 Rule 72 – 73.
[566] *Id,* Order 21.
[567] *Id,* Sec. 44-A.

person lodging the caveat.[568] Where an application is expected to be made, in a suit or proceeding instituted/ about to be instituted, any person claiming right to appear before the court for hearing of such application lodges a caveat in respect thereof. [569] The notice of the same is also given to the person by whom application is made/ about to be made. [570] The court when application comes for hearing serves a notice to the caveator of the same. [571]Applicant at the expense of caveator furnishes him the copy of the application along with copies of any paper or document, which he is going to file. [572] All notices are given by registered post. A caveat lodged remains in force for 90 days from the date of its filing[573].

Besides powers expressly conferred by the Code on Indian Civil courts, every court possesses inherent powers to do justice between the parties.[574]

Exemption on the basis of Sovereign Immunity: Civil Courts in India cannot entertain suits against a class of persons such as foreign rulers, ambassadors and other officers, except with the consent of the central government, or if such a party voluntarily submits to the jurisdiction of the court. no foreign state can be sued in any court otherwise competent to try the suit except with the consent of the central government certified in writing by a secretary of that government.

STATISTICAL DATA:

IN RAJASTHAN HIGH COURT

ORIGINAL CIVIL PETITIONS		
Year	**Admitted**	**Disposed of**
1998	1188	NA
1999	1484	NA
2000	361(up to June)	NA
CIVIL WRIT PETITIONS		
Year	**Admitted**	**Disposed of**
1998	5001	5065
1999	5214	5877

[568] *Id*, sec. 148-A.
[569] *Id*, sec. 148-A(1).
[570] *Id*, sec. 148-A(2).
[571] *Id*, sec. 148-A(3).
[572] *Id*, sec. 148-A(4).
[573] *Id*, sec. 148-A(5).
[574] *Id*, sec. 151.

2000	2094(up to June)	2790(up to June)
CIVIL APPEALS		
Year	**Admitted**	**Disposed of**
1998	2740	1371
1999	3335	1378
2000	1204(up to June)	802(up to June)
CIVIL TRANSFER PETITIONS		
Year	**Admitted**	**Disposed of**
1998	25	21
1999	20	8
2000	6(up to June)	17(up to June)
REVIEW PETITIONS		
Year	**Admitted**	**Disposed of**
1998	105	104
1999	105	95
2000	27(up to June)	22(up to June)

2. CRIMINAL PROCEDURE/PROCEEDINGS

Criminal Procedure in India:

An Overview: In India criminal jurisprudence existed since the days of Manu.[575] Manu recognized assault, theft, robbery, false evidence, slander, breach of trust, cheating, adultery and rape as punishable offences. Different laws came into existence in the reins of various rulers. At present the criminal procedure is contained in three extensive statutes, viz., the Code of Criminal Procedure, 1973 (here in after referred to as the Code), the Indian Evidence Act, 1872, and the Indian Penal Code, 1860, given to the country by its colonial masters from Britain who ruled the country for almost 200 years. During those times, there used to be variations in the procedural law adhered to in the presidency towns from that of the *mofussils*. Not only this, the procedural law practiced in the presidency towns and *mofussil* areas lacked uniformity *inter se*. Steps were taken in the 19th century to introduce uniformity in the procedural law in the presidency towns. In 1852 the laws of the presidency towns were first of all consolidated by the Criminal Procedure Supreme Courts Act, 1852.[576] This enactment

[575] Period of ancient Hindu India: 6th century B.C to 6th century A.D.
[576] CPC, Act XIV of 1852.

was superseded by the High Court Criminal Procedure Act, 1865.[577] On the other side, the law applying in the provinces was replaced by Criminal Procedure Code, 1861.[578] The 1861 enactment was further replaced by Act X of 1872. This too was not uniform Act for the whole of India. Later on Criminal Procedure Code of 1882[579] was enacted that gave uniformity in the procedure for the whole of India, both in presidency towns and *mofussils*. It was replaced by the Code of 1898.[580]

The Code of Criminal Procedure is essentially a procedural law with the object of providing machinery for punishment of offenders under the substantive criminal law. It lays down the procedure to be followed in every investigation, inquiry and trial, for every offence under the Indian Penal Code or under any other law. The concern for speedy trial is the main premise underlying the Code, both with regard to investigation and trial.

The main objective of legal reform is to promote justice after the offence is committed. It is in this background that reforms in the procedure were incorporated from time to time.[581] After independence, the first Law Commission in 1958,[582] made extensive recommendations on the reform of criminal justice system specially on the subjects of organization of criminal courts, police investigation, prosecuting agencies, delays in criminal trials, committal proceedings, criminal appeals, revisions and inherent powers, procedure for trial of perjury cases, etc. As a result, the Code of Criminal Procedure, 1898 was modified to give effect to some of the recommendations. Again, the Fifth Law Commission undertook a detailed study of the Code from where the previous commission had concluded its report and rendered the 41st Report representing a comprehensive review of the Code in 1969. Consequent to this report, Parliament enacted the Code of Criminal Procedure, 1973, which came into effect on April 1, 1974, repealing the old Code. With a view to do away with certain difficulties experienced in its working, the Code of 1973 underwent following amendments in 1974, 1978, 1980, 1983, 1988, 1990, 1991 and 1993 for specific purposes:

1. In 1976 in pursuant to 41st Report of Law Commission of India, major

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[577] *Id*, Act XIII of 1865.
[578] *Id*, Act XXV of 1861.
[579] *Id*, Act X of 1882.
[580] *Universal's Criminal Manual*, 1 (Universal Law Publishing Co. Pvt. Ltd. 1999).
[581] Law Commission of India, 84th Report, 20(April 1980).
[582] The First Law Commission, *Reform of Judicial Administration*, 14th Report, Vol. II, 714 – 849

amendments were brought to the Code. Some of them included, the committal proceedings were omitted, state government was given power to declare any area as metropolitan area if the population of the same exceeds one million.[583]

2. In 1978 additional duty was imposed on the police officer of reporting and transporting the seized property to the court or any person on bond who undertakes to produce the same before area Magistrate. Prior to this amendment the police officer seizing any property had to report to the officer in-charge of the police station. Some additions were made to the Code to enable the Magistrate to detain the accused for a period over 15 days if adequate ground exists. Further to the general rule that 'complaint must be made by the aggrieved person', an exception was introduced by allowing in specific circumstances complaint from his near relations if he or she is lunatic or idiot or incapable of complaining because of some sickness or due to any other valid reason. The Code empowered state government for speedy disposal of petty cases and in this context, gave power to the Magistrate to impose fine on the accused of petty offences and release him. In the same year defamation was made a compoundable offence. Besides minimum imprisonment of 14 years was prescribed for accused convicted of an offence punishable with death.

3. In 1980 the Code empowered the court and the police officer to release the accused on bail in a bailable case except when he is guilty of an offence punishable with life imprisonment / death / has been previously convicted of the same. The Executive Magistrate was authorized to keep peace in his area.

4. In 1983, keeping in view the increasing number of dowry deaths in the country, and also in conformity with the provisions incorporated under the Indian Penal Code[584] and the Indian Evidence Act, 1870[585] a provision was made for inquest by executive magistrates for conducting post-mortem in all cases where a woman died within 7 years of her marriage under unnatural circumstances. Further to end police torture leading to deaths of accused inside the jails/prisons the same amendment provided for inquest by nearby Magistrate in case of death of a person in police custody. Further, the Code allowed trial of cases relating to rape and other offences against

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(26 September, 1958).

[583] Indian Penal Code, 1860, sec 8.

[584] *Id,* sec 304-B.

[585] Indian Evidence Act, 1870, sec 114-B.

women *in-camera***.**

5. In 1990 by way of amendment, two new provisions were added to facilitate ongoing investigations in the matter of kickbacks and commissions by a foreign gun factory A. B. BOFORS of Sweden finalizing sale of its product to the Ministry of Defence, Government of India. The necessity of such a provision was felt because the money paid was deposited in the accounts of the accused persons in the banks of Switzerland.

6. The Amendment Act of 1993 enlarged the list of all those who are under duty to report to the police / magistrate if they happen to be aware of the commission of any offence or intention of any person to commit offence, by including the offence of kidnapping for ransom within its ambit.

7. In 1994, the Government introduced the Code of Criminal Procedure (Amendment) Bill, 1994 incorporating many amendments in the Code. The Bill is at present pending before the Parliamentary Standing Committee.

Various Stages of Procedure:

Law enforcement and management of law and order, security, crime prevention and crime detection are essentially enforced and performed by the police authorities. The Indian Penal Code (IPC), 1860, is the general penal law for the country. It identifies the acts and omissions that constitute the offences and provides punishments for them. The Code of Criminal Procedure (Cr.P.C.), 1973 prescribes procedure to be followed by the police and other state authorities once the commission of crime comes to its notice. Criminal proceedings are divided into three stages viz. Investigation, inquiry and trial.

Investigation is a preliminary stage conducted by the police and usually starts after recording of FIR in the police station. If from statement of FIR or when the magistrate directs[586] or otherwise, the officer- in-charge of a police station suspects the commission of an offence, he / other subordinate officer (known as ASI, i.e., Assistant Sub-Inspector) proceeds to the spot to investigate facts and circumstances of the case and if necessary, take measures for the discovery and arrest of the offender. Investigation primarily consists in the ascertainment of facts and circumstances of the case. It includes all the efforts of a police officer for collection of evidence. Investigation consists of following steps: proceeding to the spot; ascertainment of the facts and circumstances of

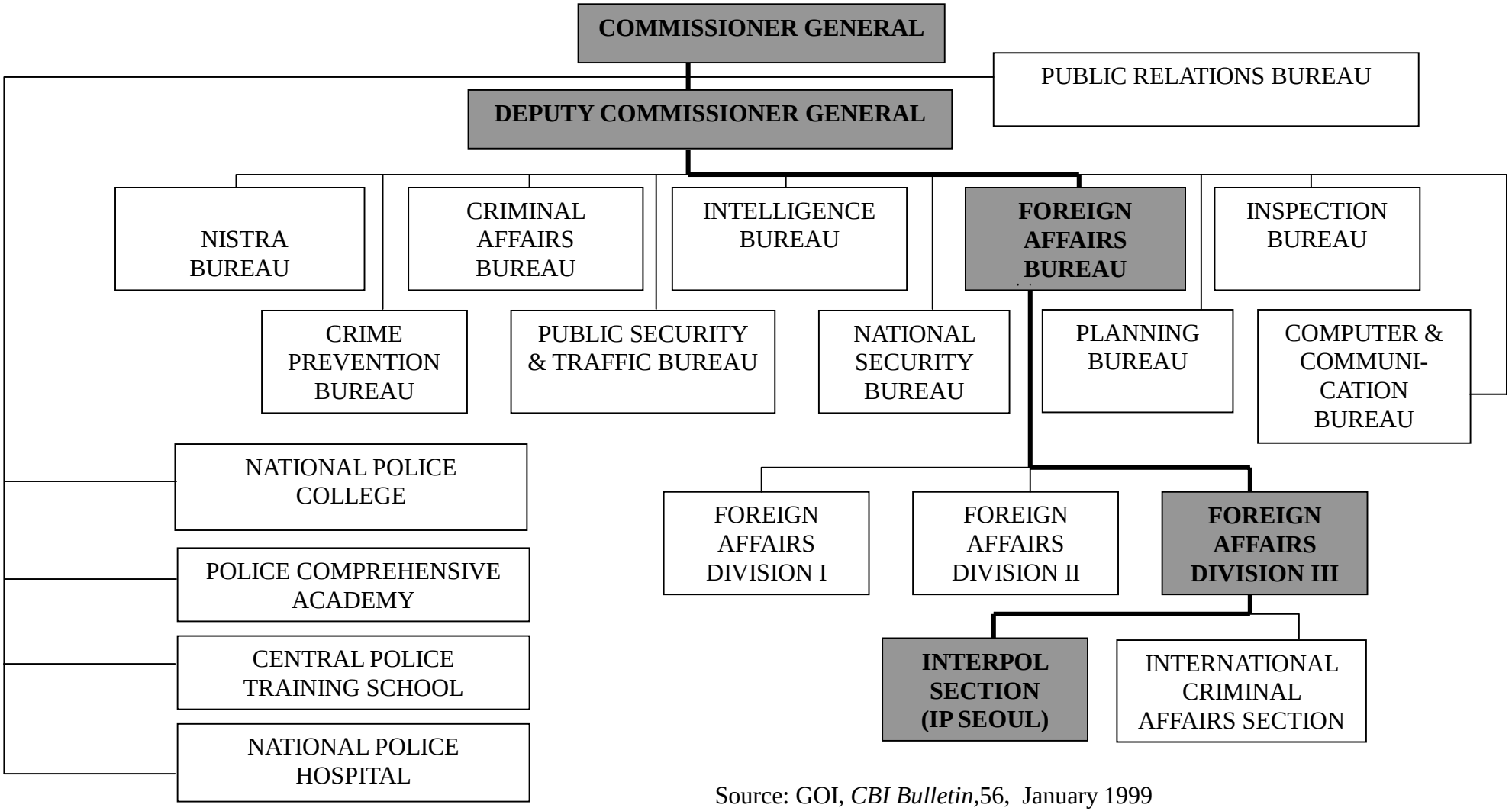
[586] IPC, sec 159.

the case; discovery and arrest of the suspected offender; collection of evidence relating to the commission of offence which may consist of - the examination of various persons including accused and taking their statements in writing[587] and the search of places or seizure of things considered necessary for the investigation and to be produced at the trial; formation of opinion as to whether on the material collected there is a case to place the accused before a magistrate for trial and if so, taking the necessary steps for the same for the filing of charge-sheet.[588] Investigation ends in a police report to the magistrate.

The organization and structure of police in India, is given below:[589]

[587] Cr.P.C, sec 161.
[588] Cr.P.C, sec 173.
[589] G.O.I., *Crime in India*, (National Crime Records Bureau, 1997).

POLICE ORGANISATION CHART



Source: GOI, *CBI Bulletin*,56, January 1999

The Code gives powers to police officers regarding various acts. For instance, powers to arrest,[590] means for getting arrest,[591] power of searching the place and person suspected of any crime,[592] power to seize any objectionable and offensive object in the possession of any person,[593] power to discharge the accused if no case is made out against him, release accused on bail in non-cognizable offence/arrest him without prior permission of the magistrate in cognizable offence.[594]

Inquiry and trial are two stages in a criminal proceeding before a court. Trial starts after the charge has been framed and the stage preceding it is called inquiry. An inquiry is conducted by the magistrate / court for satisfying itself about any fact. Inquiry is done by the magistrate either on receiving a police report[595] / complaint by any other person.[596] After the inquiry, the charge is prepared and after the formulation of the charge trial of the accused starts. A charge is nothing but formulation of the accusation made against a person who is to face trial for specified offence. It sets out the offence that is committed by the accused. After the charge is framed either the accused is convicted / acquitted.

Arrest: The Code provides a two-fold classification of the offences mentioned in the Indian Penal Code, having regard to their nature and seriousness viz., bailable and non- bailable and the other is cognizable and non-cognizable. A cognizable offence is one in which a police officer is authorized to arrest a person without a warrant.[597] In a non-cognizable offence, the police officer cannot arrest a person, without a warrant. In case of bailable offences, the person arrested has to be released on bail either by the police or by the magistrate if he is ready to furnish bail. In case of non-bailable offences, it lies in the discretion of the court. Besides, the police also have the power to make preventive arrests under the Code and various other legislations.[598] It is mandatory for the police officials to produce the arrested before a magistrate having jurisdiction in the

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[590] Cr.P.C, sec 41.
[591] *Id,* sec 46(2).
[592] *Id,*sec 47, 51.
[593] *Id,* sec 52.
[594] *Id,* sec 2.
[595] *Id,*sec 157.
[596] *Id,*sec 200- 202.
[597] *Id,* sec 41.
[598] B.P.Jeevan Reddy, "Reforming the arrest law", *The Hindu* (18 –11 – 2000).

case, within 24 hours of arrest, excluding the time necessary for the journey from the place of arrest to the Magistrate's court. But if it appears that the investigation could not be completed within the period of 24 hours and there are grounds for believing that the accusation or information is well founded, the officer-in-charge of police station (SHO) or police officer making the investigation (IO) has to transmit to the nearest judicial magistrate a copy of the entries in the diary, relating to the case (like FIR, Daily Diary Report, etc.) and at the same time produce the accused before such magistrate. The trial court if forms an opinion that the accused concerned has committed the offence, which he is competent to try, it frames charges in writing against the accused. But if it decides to discharge the accused, it is obligatory to record reasons.[599]

The Supreme Court in *Joginder Kumar v. State of Uttar Pradesh*[600] after examining the Report of Sir Cyril Phillips Committee (Report of the Royal Commission on Criminal Procedure) and the Royal Commission's Enunciation of Guidelines laid down following guidelines for making arrests reconciling two conflicting interests, the need for arrest and the right to personal liberty in Article 21 of the Constitution were enunciated: (i) an arrested person held in custody is entitled to consult one friend, relative or other person known to him or likely to take an interest in his welfare; (ii) the police officer should inform the arrested person of this right; (iii) an entry to be made in the diary as to who was informed of the arrest. Further the Supreme Court in its epoch making judgment in *D. K. Basu v. State of West Bengal*[601] wherein the Court has formulated detailed guidelines which are referred to as "Commandments" to be followed by the police during arrest and detention.

Bail: Bail in essence means security for the appearance of the accused person on giving which he is released pending investigation / trial. The law relating to the bail constitutes an important branch of the procedural law and dovetails two conflicting interests namely, the requirements of shielding the society from the hazards of those committing crimes and the fundamental principle of criminal jurisprudence, namely, the presumption of innocence of an accused till he is found guilty[602]. With a view to fulfilling the above objectives, the legislature has provided directions for granting or

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[599] T.Padmanabha Rao, "SC ruling on framing of charges by trial courts", *The Hindu*,(6-1-2000).
[600] Crimes 1994(2) 106 at 107
[601] AIR 1997 SC 610.
[602] *Supdt., & Remembrancer of Legal Affairs v. Kumar Roy Choudhury* (1974) 78 Cal W.N. 320, 325.

refusing bail. Where law allows discretion in the grant of bail, it is to be exercised according to the guidelines provided therein; further the courts have evolved certain norms for the proper exercise of such discretion.[603] Cr.P.C. prescribes a statutory time frame for conclusion of investigation and filing of charge- sheet, failing which the accused in custody is liable to be released on bail.[604] Certain state governments, particularly government of West Bengal, have provided that if investigation is not completed within prescribed time frame, the magistrate will not take cognizance of such offences. In *Rajdeo Sharma case*[605] the Supreme Court of India observed that while determining whether undue delay has occurred, one must have regard to all the attendant circumstances, including nature of offences, number of accused and witnesses, the workload of the court concerned, prevailing social conditions and so on, that is what is called, the systematic delays. Further he Supreme Court in *Moti Ram v. State of M.P.*[606] held that bail covers release on one's own bond, with or without securities. Grave offences, namely, offences punishable with imprisonment for 3 years / more have been treated as non-bailable offences.

A person accused of a bailable offence is entitled to be released on bail as a matter of right if he is arrested or detained without a warrant. But if the offence is non-bailable, depending upon the facts and circumstances of the case, the court has discretion. The courts while granting/refusing bail in non-bailable offences consider, enormity of the charge; nature of the accusation; severity of the punishment which the conviction will entail; nature of the evidence in support of accusation; danger of the accused person absconding if he is released on bail; danger of witnesses being tampered with; protracted nature of the trial; opportunity to the applicant for preparation of his defence and access to his counsel; health, age and sex of the accused; nature and gravity of the circumstances in which the offence is committed; position and status of the accused with reference to the victim, witnesses and probability of accused committing more offences if released on bail, etc. These considerations are by no means exhaustive. Factors such as previous convictions, criminal records of the accused, etc., are also

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[603] Cr. P. C, sec. 2(a)
[604] *Id*, *s*ec 167
[605] 1998(8) SCALE.
[606] (1978) 4 SCC 47

taken into account while deciding the question of bail.[607]

The Code incorporated provisions for grant of anticipatory bail,[608] and has laid down the following conditions for the grant of anticipatory bail:[609] (i) the person applying for anticipatory bail must believe that he will be arrested. Mere 'fear' of arrest will not suffice. (ii) filing of FIR (first information report before the police) is not a condition precedent to the granting of anticipatory bail; (iii) anticipatory bail can be granted after arrest; (iv) no extensive order of anticipatory bail is to be passed by any court.

Bail procedure: In Delhi and in many other states the general procedure is that the court releases the accused on bail after a local person is willing to stand surety, the guarantor has to produce documents to the Court to prove his domicile and solvency. This is done by producing a ration card or a passport. In addition, a power-of-attorney attested by a Notary Public, a motor vehicle registration document, a bank fixed deposit receipt or a certificate from the Income Tax Department is required to be submitted to authenticate the guarantor's solvency.

Pre-trial Detention: The purpose of pre-trial detention is not punishment. A survey of decided cases reveals that law favours release of accused on bail, which is the rule, and refusal is the exception.[610] The plight of under trial prisoners was vividly brought out in *Hussainara Khatoon-I v. Home Secretary.*[611] The case disclosed a dismal state of affairs in the state of Bihar in regard to administration of criminal justice. It held that the prisoner, in appropriate cases, should be released on his bond without sureties and without any monetary obligation. In *R.D. Upadhyay v. State of Andhra Pradesh*[612]

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[607] See, *Rao Harnarain Singh v. State* AIR 1958 123; *State v. Captain Jagjit Singh* AIR 1962 SC 253: *Gurcharna Singh v. State* (Del. Admn.) (1978) 1 SCC 118; *Gudikanth Narasimhulu v. Public Prosecutor* (1978) 1 SCC 240, *Bhagirati Singh v. Judeja* AIR 1984 SC 372; *Johny Wilson v. State of Rajasthan* 1986 Cri. L.J. 1235 (Raj).

[608] Cr. P.C., sec 438. However Uttar Pradesh legislature has repealed the provision for anticipatory bail. West Bengal legislature enacted amendments in 1990 incorporating following limitations on the power to grant anticipatory bail: (i) mere filing of application in the high court or court of session for grant of anticipatory bail does not debar the police from apprehending the offenders; (ii) the high court or the court of session are required to dispose of an application for anticipatory bail within thirty days from the date of such application and (iii) in offences punishable with death, imprisonment for life / imprisonment for a term not less than 7 years, no final Order shall be made without giving the state a minimum of seven days' notice to present its case.

[609] Cr. P.C, sec 438.

[610] *Supra* note 259.

[611] *Hussainara Khatoon [I] v. Home Secretary*, (1980) 1 SCC 81.

[612] Report of the Legal Aid Committee (1971) quoted in *Moti Ram v. State of M.P. supra* note 259.

the Supreme Court issued, specific directions for expediting the trial of under trials accused of serious offences as murder, attempt to murder etc. under I.P.C., Arms Act, Customs Act, Narcotic Drugs and Psychotropic Substances Act, Official Secrets Act, Extradition Act, Terrorist and Disruptive Activities Act and Dowry Prohibition Act etc. The Court also issued directions for release on bail without the necessity of applications for bail in cases where under trials are charged with attempt to murder and cases are pending for more than two years. In cases where under trials are charged with the offence of kidnapping, theft, cheating, counterfeiting, rioting, hurt, grievous hurt or any of the offences under the Arms Act, Customs Act, in detention for more than one year, they should be released on bail without application of bail. The Supreme Court in *Common Cause v. Union of India*[613] directed criminal courts to release the accused on bail / on personal bond subject to conditions, as are necessary when:

1. Accused is charged with the offences under I.P.C. / any other law in force which is punishable with imprisonment not exceeding three years with / without fine and trial is pending for one year / more and the concerned accused is in jail for a period of six months or more.[614]

2. Accused is charged with the offences under I.P.C. / any other law in force which is punishable with imprisonment not exceeding 5-years with / without fine and trial is pending for one year / more and the concerned accused is in jail for a period of 2-years /more,[615] and the concerned accused is in jail for a period of 6-months / more.[616]

3. Accused is charged with the offences under I.P.C. / any other law in force which is punishable with imprisonment seven years or less, with / without fine and trial is pending for 2 year / more and the concerned accused is in jail for a period of one year or more.[617]

However the aforesaid directions are not applicable in subsequent offences committed by the same offenders or against whom more than one case is pending or when a person has been convicted for more than one case.

Summons cases, warrant cases, summary trial – Procedure: In respect of offences other than those tried at the session courts, two broad divisions are made, viz.,

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[613] 1996 (4) SCALE, 129.
[614] Cr. P.C, sec 437.
[615] *Id,* sec 437.
[616] *Id,* sec 437.
[617] *Id,* Sec 437.

summons cases and warrant cases.

A **warrant-case** relates to offences punishable with death, imprisonment for life/ imprisonment for a term exceeding 2-years.[618] The Code provides for two types of procedure for the trial of warrant cases by the Magistrate, viz., those instituted upon a police report and those instituted upon complaint.[619] In respect of cases instituted on police report, the Code provides for the discharge of the accused by the Magistrate upon consideration of the police report, documents sent with it and making such examination. In respect of the cases instituted otherwise than on police report, the Magistrate, hears the prosecution and takes the evidence.[620] If evidence makes no case, accused is discharged.[621] If the accused is not discharged, the Magistrate holds regular trial after framing of charge, etc.[622]

Summons-case means a case relating to an offence, not being a warrant case, thereby implying that all cases relating to offences punishable with imprisonment not exceeding 2 - years[623] falls in the category of summons cases.[624] In respect of summons cases there is no need to frame a charge. [625] In this class of cases arising on a private complaint /on a police report, the evidence of both sides is recorded at a single sitting followed by a judgment without any delay. The trial is thus designed to occupy the minimum amount of time. In both summons case and warrants case, in the absence of the complainant, accused is discharged or acquitted.[626] Also the court has the power to convert summons case into warrant case, if the Magistrate thinks that in the interest of justice requires so.[627]

Summary trials: Magistrates of first class can be empowered by the high court to try in a summary way any of the offences mentioned therein.[628] When in the course of summary trial it appears to the magistrate that the nature of the case is such that it is undesirable to try summarily, he recalls the witnesses and proceeds to rehear the

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[618] *Id*, sec 2 (x).
[619] *Id*, chapter XIX.
[620] *Id*, sec 244.
[621] *Id*, sec 245.
[622] *Id*, sec 246 and 247.
[623] *Id*, sec 256.
[624] *Id*, sec 2(w).
[625] *Id*, chapter XX.
[626] *Id*, sec 249 and 256.
[627] *Id*,sec 259.
[628] *Id*,chapter XXI.

case.[629] Second class magistrate can try summarily an offence, punishable only with fine/imprisonment for a term not exceeding six months.[630] In summary trial no sentence of imprisonment for a term exceeding 3 months is passed in any conviction.[631] Particulars of the summary trial are entered in the record of the court.[632] In every case tried summarily in which accused does not plead guilty, the magistrate records the substance of the evidence and a judgment containing a brief statement of the reasons for the finding.[633]

Examination of Accused:[634] The court examines the accused at any stage of any inquiry /trial for the purpose of enabling the accused to explain any circumstances in the evidence appearing against him.[635] It is mandatory for the court to question the accused after the examination of evidence of the prosecution and before he enters on his defence.[636] The Code gives a reasonable opportunity to accused to explain incriminating facts and circumstances in the case. The accused in compliance with the provision, can file written statements with the permission of the court.[637]

Compounding of Offences: The Code contains detailed provisions for compounding of offences. It lists various compoundable offences under the Indian Penal Code, of which 21 may be compounded by the specified aggrieved party without the permission of the court[638] and 36 that can be compounded only after securing the permission of the court.[639]

Enquiry and trial of persons of unsound mind: The right to be informed of the accusation and an opportunity to consult his counsel is recognised under the Cr. P.C. The Cr. P.C., provides for postponement of the inquiry proceedings or trial of a person, who is incapable of defending himself due to unsoundness of mind.[640] The Code provides no time limit for which the postponement will subsist and the only safeguard against indefinite confinement is the obligation to send six monthly medical reports on

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[629] *Id*,sec260(2).
[630] *Id*,sec 261.
[631] *Id*,sec 262 (2)
[632] *Id*, sec 263
[633] *Id*, sec 264
[634] *Id*,sec 313
[635] *Id*, sec 313(1) (a).
[636] *Id*,sec 313(1) (b).
[637] *Id*, sec 313
[638] *Id*,sec 320(1)
[639] *Id*,sec 320(2)

the mental condition of the accused. This is demonstrated by *Veena Sethi v. State of Bihar,*[641] wherein it was unearthed from the jails of Bihar cases of individuals whose trials were postponed because they were incapable of defending themselves. Subsequent to postponement of their trials they were lodged in Hazari Bagh Central Jail wherein they were detained for periods ranging from 19 to 37 years. This detention continued even after the accused regained sanity. During the resumption of the trial, the accused is released on surety of safe conduct. However, if the case is not fit for the grant of bail / if no surety for the release of the accused is offered, the accused is detained in safe custody which can be that of a jail or a mental hospital.

Appeal, revision and reference:[642] A criminal appeal lies to the high court under the Code, in a limited number of cases. Any person convicted on a trial held by a sessions judge or an additional sessions judge or on a trial held by any other court in which sentence of imprisonment of more than 7 years has been passed, an appeal lies to the high court.[643] There are certain statutory limitations on the right of appeal.[644] The state government can, in any case of conviction on a trial held by any court other than a high court, direct the public prosecutor to present an appeal to the high court against the sentence on the ground of its inadequacy and, in certain cases this power of appealing to the high court can be exercised by the central government.[645] Subject to certain limitations, government may direct the public prosecutor to present an appeal to the high court from an original or appellate order of acquittal passed by any court other than the high court.[646] This appeal cannot be entertained except with the leave of the high court[647]. In case of an order of acquittal passed in any case instituted upon complaint, the complainant can present an appeal against acquittal to the high court after obtaining

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[640] *Id*,sec 342

[641] AIR 1983 SC 339, see also, "Acquitted after 32 Years" *Indian Express* (Delhi ed., May 1, 1996) (Sixty five year old A.N. Ghosh, was arrested in 1964 on charges of murdering his brother. A city court in Calcutta found him to be insane and asked the jail authorities to keep him for treatment. Though Ghosh regained his mental balance after some time, he continued to languish behind the bars awaiting trial. He was released from the Presidency jail in Calcutta after his case was taken by a local NGO, Antara.)

[642] Law Commission of India, *delay & arrear in high courts & other appellate courts* 57 (79th Report, 1979).

[643] Cr. P.C. sec 374(2).

[644] *Id,* sec 375 and 376.

[645] Cr. P.C., sec 377.

[646] *Id,* sec 378 Code of Criminal Procedure,1973.

[647] *Id, s*ec 378(3).

special leave of the high court. [648]

There has been a tendency in some courts of dismissing first appeals against judgments of conviction *in limini* with a one word order – dismissed. Many such orders are reversed on further appeal and the cases are remanded.[649] So far as the courts of session and of the chief judicial magistrate are concerned, there already exists a provision in the code that such courts, while dismissing an appeal summarily, should record reasons for doing so.[650]

[648] *Id*, sec 378(4).
[649] *Supra* note 295.
[650] Cr. P.C., sec 384(3).

STATISTICS:

ALL INDIA CRIME STATISTICS – 1997:

IPC CRIMES	17.19 lakhs
SLL CRIMES	46.91 lakhs
COGNIZABLE CRIMES REPORTED IN ONE MINUTE	12
SLL CRIMES REPORTED IN ONE MINUTE	9
IPC CRIMES REPORTED IN ONE MINUTE	3
RATE OF INVESTIGATION OF IPC CRIMES	75.8%
RATE OF CHARGE-SHEET IN IPC CRIMES	77.5%

STATE/UT	**Incidence of IPC crimes**	**Disposal rate by police**	**Charge-sheet rate by police**	**Disposal rate by courts**	**Conviction rate**	**Policemen per lakh of population**
Andhra Pradesh	114,963	70.6	87.2	31.6	37.3	101
Arunachal Pradesh	1,876	71.8	59.9	8.1	46.6	394
Assam	36,562	49.4	55.4	22.6	22.6	193
Bihar	117,401	63.2	73.8	18.2	26.2	88
Goa	2,395	74.7	47.9	19.3	23.9	182
Gujarat	117,823	86.5	78.3	13.1	35.0	138
Haryana	31,981	79.2	79.9	19.0	37.0	162
Himachal Pradesh	10,242	80.5	85.4	15.9	29.1	188
Jammu & Kashmir	17,192	77.7	63.5	20.9	36.0	446
Karnataka	114,863	78.0	75.5	31.0	15.8	117
Kerala	92,523	79.6	89.8	27.1	32.5	114
Madhya pradesh	205,026	95.4	81.3	19.1	47.0	110
Maharashtra	185,122	78.5	71.7	10.7	18.1	155
Manipur	2,974	40.2	4.6	43.2	0.1	614
Meghalaya	1,978	50.4	53.8	8.8	56.5	333
Mizoram	2,120	30.2	84.1	15.3	93.9	783
Nagaland	1,477	38.2	46.8	9.3	82.8	1,102
Orissa1	51,359	81.4	85.9	17.1	11.8	99

Punjab	15,069	67.3	83.8	23.5	37.0	297
Rajasthan	165,469	95.9	80.6	22.0	50.8	117
Sikkim	623	70.1	64.3	37.4	73.1	604
Tamil Nadu	141,867	75.5	91.1	42.8	64.0	124
Tripura	3,444	69.5	54.2	25.9	10.1	354
Uttar pradesh	152,779	85.1	71.0	21.1	51.4	103
West Bengal	65,481	66.0	54.1	6.8	21.9	106
A&N Islands	477	59.2	78.0	9.3	64.7	725
Chandigarh	2,181	71.6	47.9	25.4	61.1	497
D&N Haveli	347	80.5	67.3	15.8	27.3	128
Daman &Diu	267	64.9	66.6	22.5	19.8	256
Delhi	60,883	32.1	73.4	8.7	38.0	392
Lakshwadeep	26	54.7	23.4	33.3	33.3	511
Pondicherry	2,530	97.7	87.4	65.5	92.6	NA

DISPOSAL OF IPC CRIME CASES BY POLICE DURING 1961-1991,1995-1997

YEAR	**TOTAL NUMBER OF CASES FOR INVESTIGATION**	**NUMBER OF CASES INVESTIGATED**			
		FOUND False/ Non Cognizable /Mistake of Fact	**CHARGE-SHEETED**	**TOTAL TRUE (cases charge-sheeted ,finally reported)**	**TOTAL (Excluding cases where investigaton was refused)**
1961	6,96,155	54,128	2,85,059	5,32,151	5,86,279
1971	11,38,588	83,663	4,28,382	8,10,691	8,94,354
1981	16,92,060	1,27,655	7,40,881	12,08,339	13,35,994
1991	20,75,718	1,18,626	10,91,579	15,30,861	16,49,487
1995	21,53,628	1,14,072	11,68,251	15,72,137	16,86,209
1996	21,66,618	1,,12,560	12,04,346	15,65,893	16,78,453
1997	21,95,848	1,16,616	11,98,529	15,47,050	16,63,666

DISPOSAL OF IPC CRIME CASES BY COURTS (ALL INDIA) DURING 1961-1991,1995-1997

YEAR	TOTAL NUMBER OF CASES FOR TRIAL (Including pending cases)	NUMBER OF CASES	
		TRIED (Excluding withdrawn/ compounded cases)	CONVICTED
1961	800784	242592	157318
1971	943394	301869	187072
1981	2111791	505412	265531
1991	3964610	667340	319157
1995	5042744	763944	321609
1996	5297662	843588	318965
1997	5461004	879928	336421

Special and Local Laws (SLL) CASES PENDING TRIAL IN 1997

CRIME HEAD	PENDING TRIAL
Arms Act	222187
NDPS Act	81462
Gambling Act	195252
Excise Act	294946
Prohibition Act	1432447
Explosives & explosive substance Act	18904
TADA	2500
Essential Commodities Act	24834
TOTAL	3625072

3. DOMESTIC PROCEDURE

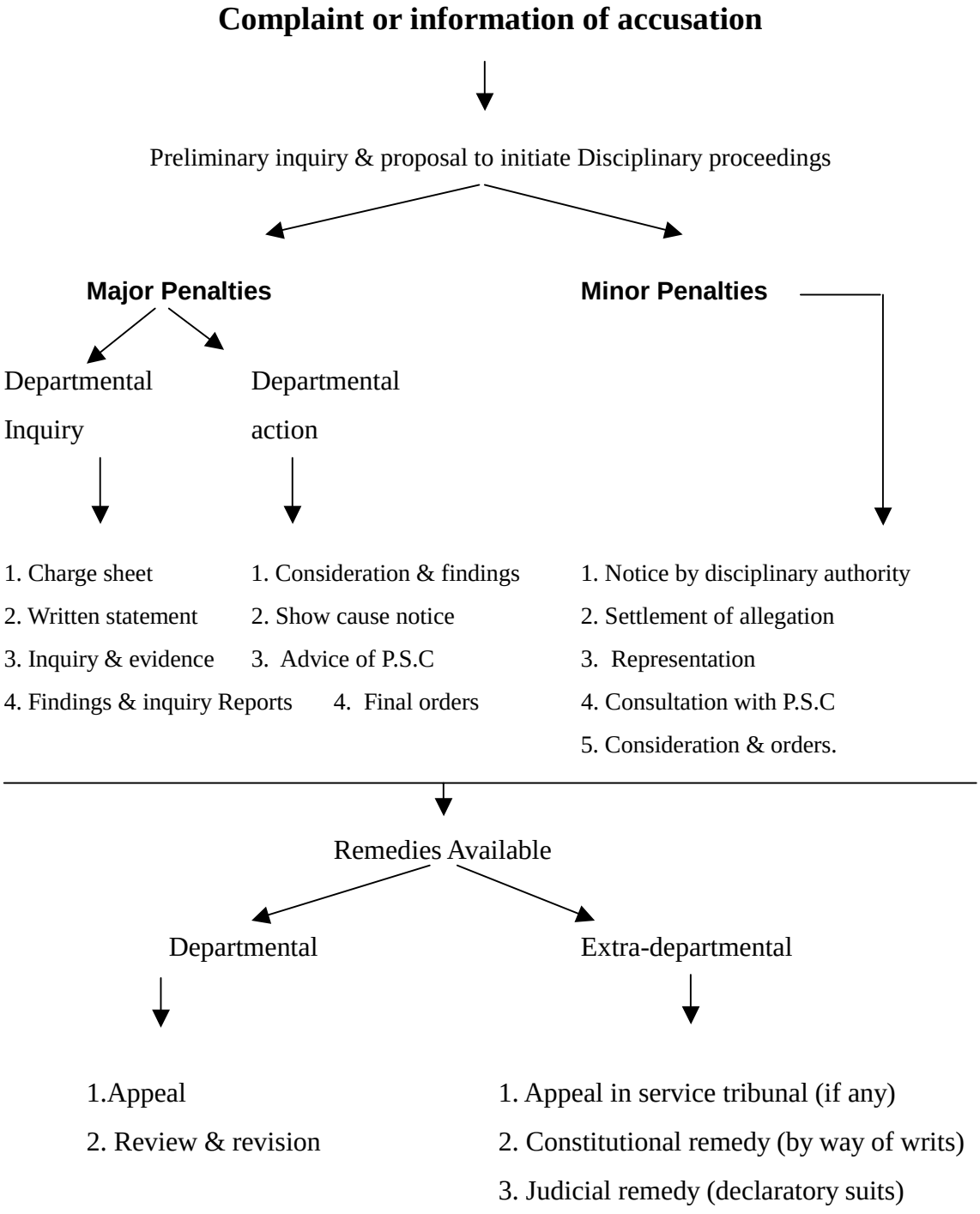
Domestic procedure regulates the service rights of any employee and prescribes procedure to be followed in disciplinary proceedings taken against employee while in service. The Central Civil Services (Classification, Control and Appeal) Rules, 1965;

Central Civil Services (Conduct) Rules, 1964;The All India Services (Conduct) Rules, 1968; The All India Services (Discipline and Appeal) Rules, 1969;The Administrative Tribunal Act 1985; The Railway Servants (Discipline and Appeal) Rules, 1968; the Bar Council of India Rules, 1962; etc. are some of the statutory instruments elaborating the procedure to be followed by domestic tribunals constituted to conduct disciplinary proceedings.

The domestic tribunals in the country, though not regular courts of law, adjudicate upon the rights of persons *vis-a -vis* the rights of the employers or other bodies deriving authority from the statute. These are eminently non-judicial bodies, like - statutory bodies or corporations, clubs, universities, unions, departments, officers of the government and so on.[651]

The many service rules, which are now in force, contain greater details of procedure for conducting these inquiries. The graphic description of the procedure given in the Central Civil Services (Classification, Control and Appeal) Rules, 1965 is illustrated below with the help of following chart:

[651] *Dipa Pal v. University of Calcutta* AIR 1952 Cal 594.



A domestic inquiry is generally considered as a managerial function and the Enquiry officer is more often a man from the establishment. Ordinarily he combines the role of a presenting–cum-prosecuting officer, an enquiry officer, a judge and prosecutor rolled into one. It is held in the establishment office or part of it. Witnesses are generally employees of the employer who directs an inquiry into misconduct.

The law governing the method as well as safeguards to be followed in departmental proceeding against the civil servants in India is contained in Articles 309 to 313 of the Constitution of India. Article 309 provides for recruitment and conditions of service of persons serving the union or a state. Article 310 for the terms of office of such persons. Article 311 for the mode of dismissal, removal or reduction in rank of persons employed in civil capacities under the union or under a state and, Article 312 deals with All India services.

These provisions do not govern public servants who are not civil servants. But they are provided with the same protection under Articles 14, 16 and 21 of the Constitution and by rules provided by the Department of Public Undertakings or similar authorities which are similar to the rules governing civil servants. Public companies, private companies and other employers apply rules framed by them which conform to the principles of natural justice as interpreted by the judiciary and / or as required by standing orders and other regulations framed in accordance with the prevailing laws governing the relationship between the employers and employees, such as Industrial Tribunal Act, the Labour Laws and other Labour welfare regulations. Even amongst the civil servants, who are governed by Article 311 of the constitution, separate rules have been framed under Article 309 and 313 viz., the rules governing the All India Services, the Foreign Service, the Railway Service, the Civil services and civil posts under the states. The basic structure of these procedural rules is the same whether they are intended for the inquiries to be held against a civil servant, a public servant, who is not a civil servant and employees of public sector undertakings, local or other authorities, which are considered as instrumentality of the state under Article 12 of Constitution, and the employees in private sector. The domestic procedure followed by any body whether government or private has to conform to the constitutional requirement of Articles 14, 19 and 311 of Constitution of India and to the principles of natural justice.

The source of power vested in employer: The source of the power of associations like clubs, lodges, universities, bar associations, medical professionals, etc. to expel their members is the contract on the basis of which they become members.[652] This contractual origin of the rule of expulsion has its corollary in the cognate rule that in expelling a member the conditions laid down in the rule must be strictly complied

[652] Restated by Lord Morton in *Bonsor v. Musician's Union* 1956 AC 104.

with.[653] The doctrine of strict compliance with rules implies that every minute deviation from the rules, whether substantial or not, would render the act of such body void depends upon the nature of the rule infringed; whether a rule is mandatory or directory depends upon each rule, the purpose for which it is made and the setting in which it appears.[654] A person who joins an association governed by rules, under which he may be expelled, has no legal right of redress if he is expelled according to the rules.[655]

Application of Evidence Act: If domestic tribunals follow the principles of natural justice then they are not bound to follow procedure, which prevails in a court of law.[656]

Domestic procedure followed in case of public servants:

Public servants are entitled to protection against arbitrary action by the employer and consequently no major penalties as defined above in the chart, can be imposed, except after providing reasonable opportunity to defend themselves. Employees in the private sector are also protected from arbitrate action in view of the principles of natural justice. The Inquiry system is, an important part of Indian Domestic procedure. The findings of the Inquiring authority do not result in a decision of the case, but they are subject to the acceptance or rejection by the Disciplinary Authority.[657] A departmental proceeding is just one continuous proceeding though there are two stages in it. The first being coming to a conclusion on the evidence as to whether the charges levelled are established or not and the second stage, is reached only if charges are established in earlier stage, and deals with the action to be taken against the concerned government servant.[658] The procedure does not require that the authority empowered to dismiss or remove an official should itself initiate or conduct the inquiry proceedings. The only right guaranteed is that the employee cannot be removed by an authority lower in rank to the appointing authority by virtue of constitutional provision.[659] The Supreme Court of India, in as early as in 1979 gave directions regarding the procedure to be

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[653] *Maclean v. Workers' Union* 1929-Ch 602 623
[654] *T.P Daver v. Lodge Victoria* AIR 1963 SC 1144.
[655] *Supra* note 306.
[656] *Union of India v. T.R.Varma* AIR 1957 SC 882
[657] A.S.Ramachandra Rao, *Law Relating to Departmental Enquiries for Government Servants*, 20 (Universal, 1997).
[658] *Bachittar Singh v. State of Punjab* AIR 1963 SC 395.
[659] Constitution of India, Art 311(2), see also *State of Madhya Pradesh v. Shardul Singh* (1970) 3 SCR 302.

adopted in domestic proceedings and it held that "you must act on relevant considerations properly before you and not on rumour or hearsay assertions or inscrutable hunch."[660] In the departmental proceedings scrupulous care has to be exercised by the enquiring authority, the disciplinary authority, and the Appellate/ Revisional authorities.[661]

Domestic tribunals are mainly of two kinds:

1. Government disciplinary authorities such as Central Administrative Tribunals(CAT), state administrative tribunals, etc.
2. Non-government disciplinary authorities, which includes Heads of Departments and Heads of offices.

THE GIST OF RULES FORMULATED BY ALL INDIA SERVICES (DISCIPLINE AND APPEAL) RULES, 1969

A member of the service in respect of, or against, whom an investigation, inquiry or trial relating to a criminal charge is pending may, at the discretion of the Government may be placed under suspension until the termination of all proceedings relating to that charge, if the charge is connected with his position as a member of the Service or is likely to embarrass him in the discharge of his duties or involves moral turpitude.[662] As soon as a member or the service is placed under suspension, this fact is communicated to the concerned department telegraphically and a detailed report or the case may be furnished within 15 days as provided for in the rules.[663] An officer (under suspension) is entitled to receive subsistence allowance at the rate equal to leave salary, which he would have drawn while on leave on half average pay or half pay as the case may be, for the first twelve months. If after the expiry of that period, the competent authority does not find it necessary to increase or decrease the amount, the officer (under suspension) will continue to receive the same amount of subsistence allowance and it is

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[660] *D. Nataraja Mudaliar v. State Transport Authority, Madras* AIR 1979 SC 114.
[661] *Ibid.*
[662] Rule 3(b) (3) Ins. by DP & AR Notification No. 6/9/72-AIS (Ill), dated 8th July, 1975 i.e. O.S.R. 872 dated 19th July, 1975, All India Services (Discipline and Appeal) Rules, 1969.
[663] D.P. & A.R.letter No. 11018/1/76-AIS (III), daled I1th February, 1976

not necessary to issue fresh orders in this regard.[664] If member of the service who has been dismissed, removed or compulsorily retired has been reinstated as a result of appeal or review, he will have to be paid full pay and allowance to which he would have been entitled had he not been dismissed, removed, compulsorily retired or suspended[665] and he is reinstated without holding any further inquiry, his period of absence from duty is regularised subject to the directions, of the Court.[666]

The penalties imposed on a member of the service on his being found guilty are of two types:

(1) Minor penalties and (2) Major penalties:[667]

Minor Penalties: censure, withholding of promotions, recovery from pay of the whole, or part of any pecuniary loss caused to Government / a company / association /body of individuals, by negligence / breach of orders, withholding of increments of pay.

Major Penalties: reduction to a lower grade in the time scale of pay for a specified period.[668]

No order imposing any of the major penalties is made except after an inquiry held in the manner provided. Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any Imputation of misconduct or misbehaviour against a member of the service, it appoints an authority to inquire into the truth thereof. Where a Board is appointed as the inquiring authority it has to consist of not less than two senior officers. However, at least one member of such a Board has to be an officer of the service to which the member of the service belongs.

Before conducting an inquiry against a member of the service, the disciplinary authority draws -

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, that contains a statement of all relevant facts including any admission or confession made by the member of the Service ; a list of documents by which, and a list of witnesses by whom the articles of charge are proposed to be

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[664] GOI, MHA, letter No 7/8/62-A1S (111), dated 5th May, 1972.
[665] All India Services (Discipline and Appeal) Rules, 1969, comment to Rule 8
[666] *Id*, Rule 5-A.
[667] *Id*, Rule 6.

sustained.[669]

The disciplinary authority is competent to appoint a Government servant or legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.[670]

The disciplinary authority forwards to the inquiring authority a copy of the articles of charge and the statement of imputations of misconduct or misbehaviour, a copy of the written statement of defence if any, submitted by the member of the service, a copy of the statements of witness, evidence proving the delivery of the documents to the member of the service and a copy of the order appointing the Presenting Officer. The member of the Service has to appear in person before the inquiring authority at any time prescribed by the inquiring authority.[671]

The member of the Service can take the assistance of any other Government servant to present the case on his behalf but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or the disciplinary authority, having regard to the circumstances of the case, so permits,[672] However, the member of the Service shall not take the assistance of any other Government servant who has two or more pending disciplinary cases on hand in which he has to give assistance.[673]

If the member of the Service who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence appears, before the inquiring authority, such- authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the article of Charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the member of the service thereon. The inquiring authority has to return a finding of guilt in respect of those articles of charge to which the member of the Service pleads guilty. The inquiring authority, if the member of the Service fails to appear within the specified time refuses /omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge and shall adjourn the case to a later date, not

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[668] *Id*, Part III, Rule 6.
[669] *Id*, Rule 8 part IV.
[670] *Id*, Rule8(5) (c)
[671] *Id*, Rule 10.
[672] *Id*, Rule 10(a).
[673] *Id*, note to Rule 10(a)

exceeding 30 days.[674] On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by, or on behalf of, the disciplinary authority. The witness shall be examined by, or on behalf of, the Presenting Officer and may be cross-examined by, or on behalf of, the member of the Service. The Presenting Officer shall be entitled to re-examine, the witnesses on any points, on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.[675] The inquiring authority if necessary allows the Presenting Officer to produce evidence not included in the list given to the member of the Service or call for new evidence or recall and re-examine any witness and, in such case, the member of the Service shall be entitled to have, if he demands, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment arid the day to which the inquiry is adjourned. The inquiring authority shall give to the member of the service an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the member of the Service to produce new evidence, if it is of opinion that the production of such evidence is necessary in the interests of justice.[676] Such evidence may be called for only when there is an inherent lacuna or defect in the evidence, which has been produced originally.[677] The witness produced by the member of the Service shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witness for the disciplinary authority.[678] The inquiring authority may, after the member of the service closes his case, and shall, if the member of the Service has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the member of the service to explain any circumstances appearing in the evidence against him.[679] The inquiring authority may, after the completion or the producing of evidence, hear the Presenting Officer, if any,

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[674] *Id*, Rule 12
[675] *Id*, Rule 15
[676] *Id*,Rule 16
[677] *Id*, note to sec. 16.
[678] *Id*, Rule 18.
[679] *Id*, Rule 19.

appointed and the member or the Service or permit them to file written briefs or their respective cases, if they so desire. [680] If the member of the Service, to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry *ex parte*.[681]

The Central Government may act on the evidence on record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interest of justice, recall the witness and examine, cross-examine and re-examine such witnesses. If the Central Government do not find justification for imposing one of the penalties specified in CIs. (vii) to (ix) of rule 6 in a case referred to it by a State Government then it shall refer it back to the State Government. [682] After the conclusion of the inquiry, a report shall be prepared and it shall contain- the articles of charge and the statement of imputations of misconduct or misbehaviour; the defence of the member of the Service in respect of each article of charge; an assessment of the evidence in respect of each article of charge; and the findings on each article of charge and the reasons there for.[683]

The inquiring authority has to forward to the disciplinary authority the records of inquiry, which shall include, the report prepared by it , the written statement of defence, if any, submitted by the member of the Service; the oral and documentary evidence produced in the course of the inquiry; written briefs, if any, filed by the Presenting Officer or the member of the Service or both during the course of the inquiry ; and the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry. [684]

Action on the inquiry report:-

(l) The disciplinary authority may, for reasons to be recorded by it in writing, remit the case to inquiring authority for further inquiry and report, and the inquiring authority shall thereupon proceed to hold further inquiry according to the provisions.

(2) The disciplinary authority, if it disagrees -with the findings of the inquiring

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[680] *Id*, Rule 20.
[681] *Id*, Rule 21.
[682] *Id*, Rule 22(b).
[683] *Id*, Rule 24(I).
[684] *Id*,Rule 24(2), see also *K.C. Venkata Reddy v. Union or India*, 1987 (4) S.L.R. 46 -70 (CAT.).; *Badrinatb v. Union or India*, 1987 (1) S.L.R. 218- 235.

authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties should be imposed on the member of the Service, it shall[685], make an order imposing such penalty.

(4) and it shall not be necessary to give the member of the Service any opportunity of making representation on the penalty proposed to be imposed.

The role of Indian judiciary in reforming laws of domestic inquiry procedure:

All the disciplinary matters are essentially matters for the domestic tribunal to decide. If the domestic tribunal does not exceed its jurisdiction and acts honestly and in good faith, the courts do not intervene, even if the penalty is severe.[686] However, courts in India do give such interpretation to provisions relating to disciplinary matters and inquiries conducted on behalf of the employer so that no room is left for the exploitation.[687]

The Supreme Court of India continues to show extensive judicial creativity in interpreting statutory provisions relating to domestic procedure to be followed while taking any disciplinary action. It has been found that in majority of cases the court gives meaning to provisions as well as lays down guidelines to be followed and which are binding under the Constitution of the country to help weaker party. Below are given some examples:

In *Associated Cements Companies v. Workmen*[688] the apex court held that it is not fair in domestic inquiries against industrial employees that at the very commencement of the inquiry, the employee is closely cross-examined even before any evidence is laid against him. The fact that most of the industrial employees in the country are ignorant about their rights, illiterate and poor weighted with the court in laying down such proposition.

In *Mysore Steel Works v. Jitendra Chandra Kar,*[689] *Bharat Sugar Mills Ltd. V.*

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[685] *Id, n*otwithsatnding anything contained in Rule 10
[686] *Lennox Arhtur Patrick O'Reilly v. Cyril Cuthbert Gittens* AIR 1949 PC 313.
[687] *D.R.Venkatachalam v. Deputy Transport Commissioner* AIR 1977 SC 842.
[688] (1963) 2 LLJ 396 .
[689] (1971) 1 LLJ 543.

Jai Singh[690] and *Swatantra Bharat Mills v. Ratan Lal*[691] the Supreme Court made it imperative to hold the departmental inquiry against the workers who are under suspension as early as possible without unnecessary delay.

In the case of *Calcutta Dock Labour Board v. Jaffar Imam*,[692] the apex court made it amply clear that even if workmen were terrorized and not willing to give evidence in a departmental inquiry, management is still required to hold a domestic inquiry. Any attempt to short circuit the procedure based on considerations of natural justice is discouraged if the rule of law is to prevail, and in dealing with the question of livelihood and liberty of a citizen, considerations of expediency, have no relevance.

In *D.K.Yadav v. J.M.A.Industries Ltd.*[693] the apex court laid down the right of private employer to terminate service of employee under the standing order without holding any domestic inquiry or affording any opportunity to the workman, as violative of constitutional provisions and also the principles of natural justice. It therefore ordered relief of reinstatement with 50 percent back wages.

4. JUDICIAL REVIEW OF ADMINISTRATIVE & LEGISLATIVE ACTS

The judicial review as a preserving instrument of constitutionalism extends to three principal areas: **(i)** it preserves the constitutional balance of authority between the central and state governments in a federal system; **(ii)** it maintains and preserves the balance between the executive power and the legislative power on the same governmental level; **(iii)** it defends the fundamental human freedoms and thus acts as the great sentinel of the cherished values of life.[694]

The three organs of the state Legislature, Executive and Judiciary are subordinate to the Constitution of India. The courts have been enabled to determine the validity of statutes passed by Parliament or state legislatures by examining whether they are in accordance with the constitution. The source of judicial review is the existence of

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[690] (1961) 2 LLJ 644
[691] AIR 1961 SC 1156
[692] AIR 1966 SC 282
[693] (1993) 3 SCC 259

fundamental law, namely, the constitution of India. It seeks to review administrative action and therefore it is called judicial review of administrative action. If, on the other hand, it is directed against a statute of legislature in the nature of rules, regulations, byelaws, etc., then because it seeks to determine validity of legislation, it is called as judicial review of legislation. Basically, judicial review is the assertion of the rule of law as controlling state action.[695] The judicial review thus, is the measuring rod of the extent of the invalidity of the statute. The courts have no power to invalidate a statute. The process of judicial review is a mere discharge of function than the exercise of a power.[696]

(i) Judicial Review of Legislative Action:

Judicial review is accorded a more positive and direct status in the constitution of India. It is explicitly provided for in the context of federal structure with defined and delimited competence of central and state legislatures. It is based on the assumption that the laws made by the competent legislatures must be in accordance with the detailed scheme of distribution of powers embodied in the seventh schedule to the constitution. Further the incorporation of a chapter on fundamental rights, with guaranteed provisions for their enforcement through the Supreme Court and high courts invites judicial review most decisively.[697] In exercising power of judicial review the courts are not only giving effect to the real will of the people of India but also abiding by the sacred pledge of upholding the constitution and the laws.[698]

It is indeed very difficult to make a correct appraisal of the course and development of judicial review and its specific directions and tendencies, during last five decades in the history of nation. No generalization in this direction is possible. The foundation of the Indian Supreme Court's review power was laid firmly and well in the case of *A.K. Gopalan v. State of Madras.*[699] This case not only elucidated the principle of judicial review and the basis on which it would rest in future, but at the same time evolved a set of guidelines which would eventually set the pattern for the fundamentals of judicial approach to the Indian Constitution. Generally two tendencies apparent from

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[694] Ray, *Judicial Review & Fundamental Rights*, 24 (Eastern Law House, 1974).
[695] V.S.Deshpande, *Judicial Review of Legislation*, 18 (Eastern Book Co., 1975).
[696] *Id*,116
[697] Constitution of India, Art 32 and 226.
[698] *Supra* note 347. p 67
[699] AIR 1950 SC 27

the behavior of judiciary in India are:

(i) a halting, over cautious and tradition bound attitude of the judiciary in restricting its own freedom of action by sticking to the express phraseology of the Constitution, and construing the law in favour of the legislature; and

(ii) a big, bold and almost revolutionary effort to resurrect judicial review by expanding its horizon beyond a literal interpretation of the constitution.[700]

The court showed its impartiality and independence when in *Prem Chand v. Excise Commissioner*[701] wherein, it declared its own rule requiring deposit of security before moving writ petition as *ultra vires*. In the interest of justice Supreme Court of India discounted the argument that it is bound by its earlier decisions.[702] The Supreme Court refused to bind by technical hurdles like the finality of facts, etc. and has used its powers to undo injustice.[703] In *State of West Bengal v. Anwar Ali,*[704] the Supreme Court of India declared the West Bengal Special Courts Act of 1950 as invalid and violative of Article 14 of the Constitution for it conferred wide discretion on the government.

Position of the judiciary and its review power vis-à-vis legislative predominance: - The Constitution endows the judiciary with the power of declaring a law as unconstitutional if that is beyond the competence of the legislature according to the distribution of powers provided by the constitution / is in contravention of the fundamental rights. Though basic power of review by the judiciary was recognized, significant restrictions were placed on such a power especially in relation to fundamental rights concerning freedom, liberty and property.[705] From time to time, Indian Supreme Court has tried to assert its power of judicial review vigorously by relying on the scheme and pattern of the Constitution of India. The exercise of the power of judicial review by the Supreme Court of India is hedged in by several limitations. Most of the limitations are specifically incorporated in the constitution itself. These are

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[700] T.S.Rama Rao, "Judicial Review in India: A Retrospect" 121 *Year Book of Legal Studies*, (1957).
[701] AIR 1963 SC 966
[702] *Dhakeshwari Cotton Mills v. Commissioner of Income Tax*, 1955 S.C.W.R. 941
[703] *Ibid.*
[704] AIR 1952 SC 75.
[705] *Supra* note 350, Art 71.

as depicted below:

(a) Constitutional limitations: The Constitution of India itself excludes many acts from the purview of judicial review. There are numerous provisions of the constitution categorically precluding judicial review. For example, Article 77(2) relating to the conduct of the business of the government of India prohibits calling of validity of an order or instrument made and executed in the name of the President. Article 74(2) instructs courts not to question regarding any aid and advice given by the Council of Ministers to the President. Articles 122(1) and 212(1) preclude courts from inquiring into the proceedings of the Parliament and state legislature respectively. Also the exercise of powers vested in an officer or member of a legislature for regulating procedure or maintaining order is not subject to the jurisdiction of any court.[706] Court's power of judicial review is expressly limited in cases of powers, privileges of the House of Parliament and state legislatures.[707] No Member of Parliament is liable to any proceedings in any court of law in respect of anything said or any vote given by him in Parliament and no person is liable in respect of the publication by or under the authority of either house of Parliament of any report, paper, votes or proceedings.[708] Judicial review does not apply in the case of nomination of a limited number of persons to the Upper House of the Parliament and the state legislatures.[709] The President and the governors are immune from answering in any court for acts done in their official capacities.[710]

(b) Intrinsic limitations are grounded on the fundamental or commonly accepted norms of Anglo-Saxon jurisprudence, such as (i) judges do not legislate but only decide cases presented before them; (ii) every question is not fit for judicial determination, hence every political and non-justifiable question are excluded from the purview of judicial scrutiny; (iii) it is business of the court to apply the proper law to the facts of each case and never to make a new rule for the future or to change existing law; (iv) court has to decide any question only on a proper pleading and on facts on the record.

(c) Self imposed limitations: The Supreme Court of India has adopted in the

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[706] *Id*, Art 122(2) and 212(2).
[707] *Id*, Art 105, 194.
[708] *Id*, Art 105(2).
[709] *Id*, Art 80, 172.

last 50 years, following limitations in its task of deciding constitutionality of laws:

(1) The court does not entertain a challenge to constitutionality of law unless the constitutional question involved is substantial.[711]

(2) The constitutionality is determined as the last resort, when it is absolutely necessary / unavoidable for the ascertainment of the rights of the parties before it and not when it is capable of being decided on other grounds.[712]

(3) The court will adjudicate within the narrow limits of controversy and will not embark upon an unnecessary wide or general inquiry.[713]

(4) There is presumption of constitutionality of legislation.[714]

(5) Most of the time court follows doctrine of *stare decisis*.[715]

(6) The supreme court has also imposed on itself another guiding principle of interpretation, known as doctrine of severability, which means that if invalid part or section of a statute can be separated from the other parts, then the latter remains, whereas only invalid part is treated as void.[716]

(ii) Judicial Review of Administrative Action:

The Preamble of the constitution with an emphasis on social justice and the directive principles of the state policy envisage the establishment of a welfare state in India. The attempts of governments, to achieve this ideal have resulted in an immense increase in legislative output and the expansion of administrative action into fields previously uncovered. This in turn has given rise to the problem of controlling state action to ensure that the rights of the individual are safeguarded against arbitrariness on the part of administration.[717] The constitutional provisions have sanctioned the operation of administrative adjudicatory authorities, which have been set up under the specific

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[710] *Id,* Art 361.
[711] *State of Jammu & Kashmir v. Ganga Singh* AIR 1960 SC 356
[712] *State of Bihar v. Hurdut Mills* AIR 1960 SC 378
[713] *Attiabari Tea Co. v. State of Assam* AIR 1961 SC 232
[714] *Chiranjitlal v. Union of India*, AIR 1950 SC 41; see also, *Ramakrishna Dalmia v. Justice Tendulkar* AIR 1958 SC 538;
[715] H.M.Seervai, *The Position of the Judiciary under the Constitution of India*, viii (University of Bombay, 1970).
[716] *R.M.D.C. v. Union of India*, AIR 1957 SC 538
[717] Marcose A.T, *Judicial Control of Administrative Action in India,* 1 (Madras Law Journal 1956).

statutes.[718] The post independence years have seen the emergence of a plethora of administrative tribunals, boards, agencies widely differing from one another in constitution, powers, procedure, some approximating closely to the courts in the strict sense of the term, others bearing a close resemblance to informal committees / interviewing boards.[719]

The constitution makers clearly envisaged a welfare state with unprecedented extension of the administrative process. They also drew up a list of fundamental rights and provided appropriate machinery for their enforcement. They incorporated in the constitution, which vested the courts with broad powers of review. Article 32 empowers the Supreme Court to issue writs, directions and orders for the enforcement of fundamental rights. Article 136 confers plenary powers upon the Supreme Court to entertain appeals. Article 227 gives the high court power of superintendence over all inferior courts and tribunals. The most important provision for the purpose of judicial review is, however, Article 226, which empowers the high court to issue to any person / authority including government, directions, orders, writs. Thus the constitution has provided the necessary safeguards against the extended powers of administration. [720]

Position of the judiciary and its review power vis-à-vis Administrative Action: The Supreme Court of India has evolved new tools, devised new procedures, invented new relieves to provide redress. In view of new dimensions of public law evolved by the Supreme Court in the areas of accountability and liability of public servants, it is now imperative for public authorities and public functionaries to avoid misfeasance in public office, ensure that exercise of discretion is not malafide and discharge public duties in accordance with the procedure prescribed. They are also accountable individually for their actions when the courts call for judicial review.[721] In administrative actions the grounds for review for judiciary are: abuse of discretion, violation of fundamental rights, ultra vires, violation of natural justice, etc. In *Bhuth Nath v. State of West Bengal,*[722] made clear that it has control over the discretion exercised by the administrative authority. It held that it could strike down any discretion

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[718] *Administrative Process under the Essential Commodities Act*, 1955 (Indian Law Institute Studies No. 9 1964).
[719] Fazal, *Judicial Control of Administrative Action in India & Pakistan* 8 (Oxford, 1969).
[720] *Id*. 21
[721] Jaytilak Guha Roy, "Judicial Creativity: Its Expanding Horizons", *The Administrator*, XLII,49,(April-June 1997).

that is colourable, fanciful and unrelated to the object of the Act. In the case of objective type of discretion the court can examine the existence of the facts contemplated in the statute and satisfaction of the authority in arriving the decision. In *Kraipak's case*[723] the principles of natural justice have been held to be applicable to administrative tribunals determining or affecting civil rights of nationals. Judicial review is directed against administrative / legislative action as being without jurisdiction / unconstitutional. But it is necessary that the main attack must be against the competence of the state/ public authorities.[724] In *Jagannath v. State of Orissa*[725], authority while detaining had acted mechanically, without applying its mind on the provisions that authorised such detention. The Supreme Court of India held act of administration as abuse of the discretion and quashed its order. In *Dwaraka Prasad v. State of U.P.,*[726]clause 3(2) of U.P. Coal Control Order, 1953, was struck down by the Supreme Court of India, as it empowered the licensing authority to exempt any person / class of persons from taking out a license and gave absolute power to him to grant / refuse to grant, renew / refuse to renew, suspend, revoke, cancel / modify any license without any rules, principles / directions to guide.

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[722] AIR 1974 SC 806
[723] *A.K. Karaipak v.UOI*(1969) 1 S.C.W.R 1122
[724] *Supra* note 348, 14
[725] AIR 1966 SC 1140
[726] AIR 1954 SC 224

Chapter VI

ALTERNATE DISPUTE RESOLUTION

1. ARBITRATION / MEDIATION / RECONCILIATION / COMPROMISE / SETTLEMENT

Not every dispute is or can be decided by the court. For different reasons, the disputing parties, depending on the nature of dispute and other constraints resort to less formal modes of dispute resolution. They are considered to be informal, less expensive and tardy. Parties have more say over the procedure and venue, which also makes those modes as preferred one in certain kinds of disputes, for example, family disputes, commercial disputes, etc. Proceedings can be conducted without the intervention of the lawyers, which, in India, is the main cause of tardy and expensive court proceedings.

In India, *Panchayats* (informal courts consisting of five selected at the community level) has been the oldest mode of alternative dispute resolution (ADR). There are statutory recognition of ADR, viz., arbitration, conciliation, mediation, negotiation, etc., under the Code of Criminal Procedure, Code of Civil Procedure, the Arbitration and Conciliation Act and other statutes.

Arbitration in India: The settlement of disputes through the mode of arbitration has a long history in India. In ancient India there were several grades of arbitrators in systematic hierarchy: ***Puga*** - board of persons belonging to different sects and tribes but residing in same locality; ***Sreni*** - assemblies of traders, artisans connected in some way with each other; and lastly ***Kula / Kulani*** - group of persons bound by family ties. The decision of *Kula* was subject to revision by *Sreni*, which in term could be revised by *Puga*. These arbitral tribunals were having sanction of society and not of

king and were widely accepted.

When power came to the East India Company, the Company framed Regulations in exercise of power vested in it by the British Parliament. Some of the Regulations touching arbitration were: Bengal Regulations I of 1772, 1781, 1787, XVI of 1793, 1795, 1893, etc.; Bombay Regulations I of 1799, IV, VI of 1827 and Madras Regulations I of 1802 and IV, VI, VII of 1822. the provisions of few of them may be noted. Bengal Regulations XVI of 1793 empowered the courts to submit the matters in dispute in a suit to the decision of an arbitrator mutually agreed by the parties, but if they could not agree as to the person to be appointed / if the person nominated by them refused to act and parties could not agree upon another, the court with the consent of the parties could appoint an arbitrator who was not interested in the dispute. If the parties did not consent, the case was not to be referred to arbitration but was to be tried by the court. Subsequent legislation namely, sections 312 and 314 of the Code of Civil Procedure, 1859 and the Arbitration Act 1899 likewise provided that the arbitrator has to be appointed in such manner as might be agreed upon by the parties.[727] Bengal Regulation (VII of 1822) for the first time empowered revenue officers to refer rent and revenue cases to arbitration[728]. The Code of Civil Procedure, 1908 extended to all places in India also dealt with arbitration in suits. In regard to arbitration agreements entered outside India and foreign awards, Arbitration (Protocol And Convention) Act, was passed in 1937. For dealing with domestic arbitration, Arbitration Act, 1940 came into being. In 1961, for the enforcement of certain foreign awards, the Foreign Awards (Recognition and Enforcement) Act was enacted.[729]

Till 1996, the law of arbitration was governed by the Arbitration (Protocol And Convention) Act, 1937, the Indian Arbitration Act, 1940 and Foreign Awards (Recognition and Enforcement) Act, 1961. The first two were enacted before the independence of the country by the British rulers. In 1996, the Arbitration and Conciliation Act was passed repealing all three previous enactments. The need for this new Act was felt from long time because repealed enactments did not prove to be adequate to meet the need of the changing times resulting in painfully long arbitral proceedings which most of the time used to end up in a court of law.

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[727] *Sheonath v. Ramnath*, (1905) 10 MIA 413 (a decision under the Code of Civil Procedure, 1859).
[728] R.S.Bachawat, *Law of Arbitration and Conciliation*, 3(Wadhwa & Company, Nagpur, 1999).
[729] P.M.Bakshi, *Arbitration Law in India* 7 (N.M.Tripathi Pvt. Ltd., Bombay, 1986).

Further, arbitral procedure under the 1940 Act had dissolved into a legal swamp, which left both the parties short of time and money. Efficiency and speed, therefore, were the criteria adopted in the course of reform. The Act of 1996 has encompassed the law relating to international arbitration as well as the enforcement of foreign awards as well as conciliation as a new mode of dispute resolution. This new Act is mainly modelled on the United Nations Resolution on International Trade laws adopted in 1985. it is also to meet the challenges of globalisation of the economy and remove the anomalies existing under the earlier law.

Arbitration procedure as given under the Act of 1996:

As per the new law, arbitration agreement has to be in writing, in the form of an arbitration clause in a contract/ as a separate agreement. [730] An arbitration agreement is said to be in writing, if it is contained in- a document signed by the parties / an exchange of letters, telex, telegrams/ other means of telecommunication, providing a record of agreement / an exchange of claims and defence in which the existence of the agreement is alleged by one party and not denied by another[731]. The parties are free to adopt any procedure for the appointment of arbitrators. They are also free to decide on the number of arbitrators that will constitute arbitral tribunal[732]. However, in case they fail to reach an agreement for such appointment, the Act provides for the appointment to be made by the Chief justice of the High Court or institution designated by him, upon the request by a party,[733](in case of domestic arbitration) and the Chief Justice of India (in cases of international commercial arbitration). Party has to raise plea of arbitral tribunal not having jurisdiction before the submission of the statement of defence.[734] The arbitral proceedings commence on the date on which the request for referring the dispute to arbitration is received by the respondent.[735] Within the period of time agreed upon by the parties / determined by the arbitral tribunal, the claimant has to state the facts supporting his claim, the points at issue and relief and remedy sought. Thereafter the respondent is required to state his defence.[736]

Powers and functions of arbitral tribunal:

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[730] Arbitration And Conciliation Act, 1996, section 7(2).
[731] *Id*, section 7(4).
[732] *Id*, section 10(1)
[733] *Id*, section 11(2)
[734] *Id*, section 16(2)
[735] *Id*, section 21

1. The arbitral tribunal is empowered to rule on its jurisdiction including on any objection with respect to the existence / validity of the arbitration agreement. [737]
2. The arbitral tribunal has inherent power to order a party to take interim measures of protection, unless the power is excluded by agreement between the parties.738
3. Arbitral tribunal is neither bound by the Code of Civil Procedure, 1908 nor by the Indian Evidence Act, 1872. The parties are given freedom to agree as regards the procedure to be followed by the arbitral tribunal. However, if they fail in this regard, the arbitral tribunal is free to follow such procedure, as it considers appropriate.739 Hence arbitral tribunal is empowered to determine the admissibility, relevance, materiality and weight of any evidence.740
4. The arbitral tribunal has to decide, unless otherwise agreed upon by the parties, whether to hold oral hearings for the presentation of the evidence / for oral arguments / whether the proceedings should be conducted on the basis of documents and other materials.741
5. An arbitral tribunal has to encourage settlement of the dispute by using mediation, conciliation / other procedures at any time during the arbitral proceedings to encourage settlement.742
6. Every award has to be in writing and signed by the members of the arbitral tribunal.743
7. Arbitral tribunal is also empowered to specify the costs to the party, procedure for its payment and so on, unless otherwise is agreed upon by the parties.744
8. Subject to any such agreement, where the award is for the payment of

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[736] *Id*, section 23(1)
[737] *Id*, section 16(1)
[738] *Id*, section 17
[739] *Id*, section 19
[740] *Id*, section 19(4)
[741] *Id*, section 24(1)
[742] *Id*, section 30(1)
[743] *Id*, section 31(1)
[744] *Id*, section 31(8)

money, the arbitral tribunal may award interest on the amount at a rate, which it may consider to be reasonable.745

9. Arbitral tribunal is authorised by the Act
   - To correct computation, clerical / typographical errors;
   - To give interpretation of specific points / any part of the award;
   - To make additional award as to claims omitted from the original award.[746]

The award passed by the arbitral tribunal is a decree in itself.[747] It is an operative document and requires registration if it declares, assigns, limits / extinguishes any right, title / interest in immovable property of rupees 100 or upwards. [748]

The role of the court: Recourse to a court against an arbitral award may be made only by an application for setting aside such award.[749] An arbitral award may be set aside by the court only if –

(i) the party making application furnishes proof that it was under some incapacity / the arbitration agreement is not valid under the law to which the parties have been subjected to / the party making the application was not given proper notice of the appointment of an arbitrator / of arbitral proceeding / was otherwise unable to present his case / the arbitral tribunal has dealt with a dispute not contemplated by / not falling within the terms of the submission to arbitration / it contains decisions on matters beyond the scope of the submission to arbitration / the composition of arbitral tribunal / procedure was not in accordance with the agreement by the parties;

(ii) the court finds that the subject matter of the dispute is not capable of settlement by arbitration / the arbitral award is in conflict with the public policy of India.[750]

Such application has to be made before expiry of three months from the date on

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[745] *Id*, section 31(7).
[746] *Id*, section 33
[747] *Id*, section 36
[748] The Registration Act, section 17 (1) (b).
[749] Arbitration And Conciliation Act, 1996, section 34(1).
[750] *Id*, section 34(2).

which such award has been made[751]. On receipt of the application the court is empowered to adjourn the proceedings for a period of time to give arbitral tribunal an opportunity to resume arbitral proceedings and take such actions that will eliminate the grounds for setting aside the arbitral award.[752]

Appeal against orders of the court: According to the **Kinds of Arbitration in India:**[753] The arbitration in India is held through various modes, such as *ad-hoc*, institutional, specialized and statutory[754], which are described as under:

Institutional Arbitration:[755] There are 23 recognised arbitral organizations in India, which provide facilities for domestic and international commercial arbitration.[756] The most prominent among these are the Indian Council of Arbitration, the Federation of Indian Chambers of Commerce and Industry (FICCI), the Bengal Chamber of Commerce and Industry (BCCI), Indian Chamber of Commerce, the East India Cotton Association Ltd. and the Cotton Textiles Export Promotion Council etc. Some of the arbitral agencies deal with specific disputes such as the Bengal Chamber of Commerce, though providing facilities for arbitration for all commercial disputes, administers arbitration primarily in the jute trade. The East India Cotton Association and the Cotton Textiles Export Promotion Council deal with settlement of disputes in the field of foreign cotton trade and foreign trade in textiles respectively.

Specialised Arbitration:[757] The Indian Council of Arbitration was established in 1965 as the apex arbitrage organization at the national level, to promote the amicable settlement of commercial disputes through arbitration. The Government of India, and all-important chambers of commerce and trade associations in India as well as export promotion companies and firms are its members. Disputes between the Government of India, State Governments and public sector undertaking with foreign Governments, trading organizations or parties are referred to arbitration under the Council's rules. The Council also provides arbitration services for settlement of maritime disputes arising out of charter party contracts and it has framed maritime arbitration rules for such disputes.

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[751] *Supra* note 23, section 34(3)
[752] *Id,* section 34(4)
[753] G K Kwatra *The Arbitration And Conciliation Law Of India: A Comparative Study Of Old And New Law*, , 7 (Indian Council Of Arbitration 1999)
[754] Under the Arbitration and Conciliation Act, 1996, and many other central acts.
[755] *Supra* note 27.
[756] *Id,* Appendix 26.
[757] *Id,* 71.

The Council maintains a panel of arbitrators, who are eminent and experienced persons from various fields of trade and professions. Foreign nationals, willing to act, as arbitrators are integrated in the panel to provide a wide choice to the foreign parties in the selection of their arbitrators. In order to provide arbitration services under the rules of foreign arbitral organizations, the council has entered into arbitration service agreements with 33 arbitral organizations in different parts of the world. The Council has framed its conciliation rules to provide conciliation proceedings in an economical and expeditious manner. Under the rules of arbitration of the council, either a sole arbitrator or three arbitrators are appointed. If the claim is below Rs.5 million, a sole arbitrator is appointed, whereas for claims above Rs.5 million, three arbitrators are appointed, unless the parties agree otherwise. The sole arbitrator is appointed by the parties, failing such consent, the council appoints the arbitrator. Where three arbitrators have to be appointed, each of the parties appoints one arbitrator and the council appoints third arbitrator who acts as the chairman of the arbitrage tribunal. The council also provides for the fast track arbitration under which the arbitral tribunal before the commencement of the arbitration proceedings tries to settle dispute in a fixed time frame of 3-6 months. The Government of India also recommends the use of institutional arbitration services.[758]

Statutory Arbitration: Apart from the Code of Civil Procedure, 1908 and the Arbitration and Conciliation Act, 1996 many central as well as state Acts provide for arbitration in respect of disputes arising on matters covered by those Acts. There are about 24 such central Acts. Among them are the Railways Act, 1890, the Land Acquisition Act, 1894, the Indian Electricity Act, 1910, the Cantonment Act, 1924 and the Forward Contracts Regulation Act 1956. These Acts also provide for combine sequentially, direct negotiations and, where the differences are not settled through direct negotiations, for compulsory arbitration. Government contracts generally provide for compulsory arbitration in respect of disputes arising there under and usually the arbitrators appointed to decide such dispute are senior government officers. A standing committee consisting of senior officers is constituted to ensure that no litigation involving such dispute is taken up in a court / tribunal without the matter having been first examined by the said committee and the committees clearance for litigation has to

[758] Office Memorandum, Sectt.0..M. 53/3/6/91 – Cab. Dated 31st December 1991.

be obtained. This procedure has helped in settlement of a large number of disputes in an amicable manner, which otherwise would have ended up in litigation. The award of the arbitrator in such dispute is binding on parties to the dispute. Any party aggrieved by the award may make a reference for setting aside / revision of the award to the union law secretary whose decision binds the parties finally and conclusively. The courts are under an obligation to make efforts and to assist the parties in arriving at a settlement in certain categories of suits/proceedings.

2. ADMINISTRATIVE AGENCY AND TRIBUNALS (CLASSIFICATION & PROCEDURE):

Two decades after framing of the Constitution, it was realized that the existing courts of law were insufficient to meet the judicial aspirations of the people and to deal with all types of disputes. Various new problems arose in view of the new socio-economic context and as result of this, it became imperative to look out for other *fora*, besides traditional judicial system. To address these new problems as well as to provide speedy disposal of cases, the idea of setting up of tribunal, commissions, district boards, etc., to entertain and dispose of large number of disputes evolved. These are constituted by the Act of Legislature and are invested with specific judicial powers. The Constitution of India authorizes state legislatures to constitute tribunals, special courts for the adjudication / trial of any disputes/ complaints / offences concerning:[759]

(a) levy, assessment, collection and enforcement of any tax;
(b) foreign exchange, import and export across customs frontiers;
(c) industrial and labour disputes;
(d) land reforms by way of acquisition by the state;
(e) ceiling on urban property;
(f) election to either house of Parliament;
(g) production, procurement, supply and distribution of food stuffs and such other goods as the President by notification declares essential goods;
(h) rent, its regulation, control and tenancy issues including the right, title and interests of landlords and tenants;

[759] Constitution of India, Article 323-B.

Once the tribunal is set up, the matters for which it is set up is tried by it to the exclusion of courts.

Classification and hierarchy of Tribunals and Commissions: The Legislature is empowered to establish a hierarchy of tribunals. In pursuance to the provision in the Constitution, following tribunals, commissions and special courts are created. They have a permanent existence and are adjudicating bodies. The tribunals and commissions set up in India are listed below:

Statute providing for tribunal / special court / commission:	**Tribunal/ Special Court / Commission set up under the statute:**
Administrative Tribunal Acts, 1985.	(i) Central Administrative Tribunal. (ii) State Administrative Tribunal & Joint Administrative Tribunal.
Air Force Act, 1950	General Courts Martial. (ii) District Courts Martial. (iii) Summary-General Courts Martial.
Aluminum Corporation of India (Acquisition & Transfer of Aluminum Undertakings) Act, 1984	Commissioner of Payments.
Amritsar Oil Works (Acquisition & Transfer of Undertakings) Act, 1982	Commissioner of Payments.
Andhra Scientific Company Ltd. (Acquisition & Transfer of Undertakings) Act, 1982.	Commissioner of Payments
Army Act, 1950.	(i) General Courts Martial. (ii) District Courts Martial. (iii) Summary-General Courts Martial.
Auroville (Emergency Provisions) Act, 1980.	Auroville (Emergency Provisions) Tribunal
Banking Regulation Act, 1949.	Banking Regulations Tribunal
Bengal Chemicals Pharmaceutical Works Ltd. (Acquisition & Transfer of Undertakings) Act, 1980.	Commissioner of Payments
Bengal Immunity Company Ltd. (Acquisition & Transfer of Undertakings) Act, 1984.	Commissioner of Payments
Bird & Company Ltd. (Acquisition & Transfer of Undertakings) Act, 1980.	Commissioner of Payments

Border Security Force Act, 1968	(i) General Security Force Courts. (ii) Petty Security Force Courts. (iii) Summary Security Force Courts.
Braithwate & Company (India) Ltd. (Acquisition & Transfer of Undertakings) Act, 1976.	Commissioner of Payments.
Brentford Electric (India) Ltd. (Acquisition & Transfer of Undertakings) Act, 1987	Commissioner of Payments.
Britannia Engineering Company Ltd. (Mokameh Unit) & the Arthur Butler & Company (Muzaffarpore) Ltd. (Acquisition & Transfer of Undertakings) Act, 1978.	Commissioner of Payments.
British India Corporation Ltd. (Acquisition of Shares) Act, 1981.	Commissioner of Payments.
Burn Company & Indian Standard Wagon Company (Nationalization) Act, 1976.	Commissioner of Payments
Cinematograph Act, 1952.	Cinematograph Tribunal.
Cine-workers & Cinema Theatre Workers (Regulation of Employments) Act, 1981.	Cine-workers Tribunal.
Coal Bearing Areas (Acquisition and Development) Act, 1957.	Coal Bearing Areas (Acquisition & Development) Tribunal
Coal Mines (Nationalization) Act, 1973.	Commissioner of Payments.
Coast Guard Act, 1978.	Coast Guards Courts.
Coking Coal Mines (Nationalization) Act, 1972	Commissioner of Payments.
Consumer Protection Act, 1986	(i) District Forum. (ii) State Commission. (iii) National Commission
Customs Act, 1962, Central Excises and Salt Act, 1944, Gold Control Act, 1986.	Central Excises and Gold (Control Appellate Tribunal).
Customs & Excise Revenues (Appellate Tribunal Act), 1986.	Customs & Excise Revenues Appellate Tribunal
Dalmia Dadri Cement Ltd. (Acquisition & Transfer of Undertakings) Act, 1981.	Commissioner of Payments.
Delhi Rent Control Act, 1958	Appellate Tribunal.
Displaced Persons (Compensation & Rehabilitation) Act, 1954.	Commissioner.
Displaced Persons (Claims Supplementary Act), 1954.	Commissioner.
Displaced Persons (Debts, adjustment) Act, 1951	Displaced Persons (Debts adjustment) Tribunal.
Employees Provident Funds and Miscellaneous Provisions Act, 1952.	Employees Provident Funds Appellate Tribunal.

Employees State Insurance Act, 1948	Employees' Insurance Court.
Equal Remuneration Act, 1976	Appellate Authority.
Evacuee Interest (Separation) Act, 1951	Appellate Authority.
Family Courts Act, 1984	Family Courts.
Foreign Exchange Regulation Act, 1973	Foreign Exchange Regulation Tribunal.
Foreigners Act, 1946	Foreigners Tribunal.
Gresham & Craven of India (Pvt.) Ltd. (Acquisition & Transfer of Undertakings) Act, 1977.	Commissioner of Payments.
Hind Cycles Ltd. & Sen-Raligh Ltd. (Nationalisation) Act, 1980.	Commissioner of Payments.
Hindustan Tractors Ltd. (Acquisition & Transfer of Undertakings) Act, 1978.	Commissioner of Payments
Illegal Migrants (Determination by Tribunals) Act, 1983.	(i) Illegal Migrants Tribunal. (ii) Illegal Migrants Appellate Tribunal.
Income Tax Act, 1961, Business Profits Tax Act, 1947, Companies (Profits) Surtax Act, 1964, Expenditure Tax Act, 1987, Gift Tax Act, 1974, Hotel Receipts Tax Act, 1980, Interest Tax Act, 1974, Wealth Tax Act, 1957	Income Tax Appellate Tribunal
Indian Iron & Steel Co. (Acquisition of Shares) Act, 1976.	Commissioner of Payments.
Industrial Disputes Act, 1947 and Payment of Bonus Act, 1965	(i) Labour Courts (ii) Industrial Tribunal (iii) National Tribunal
Inland Vessels Act, 1917	Inland Vessels Accident Claims Tribunal.
Insurance Act, 1938	Insurance Courts
Inter-State Water Disputes Act, 1956	Water dispute Tribunal.
Jute Companies (Nationalisation) Act, 1980	Commissioner of Payments.
Life Insurance Corporation Act, 1956	Life Insurance Corporation of India Tribunal.
Maruti Ltd. (Acquisition & Transfer of Undertakings) Act, 1980.	Commissioner of Payments.
Merchant Shipping Act	Merchant Shipping Tribunal.
Minimum Wages Act	Commissioner.
Monopolies & Restrictive Trade Practices Act, 1969	Monopolies & Restrictive Trade Practices Commission

Motor Vehicles Act, 1988.	(i) State Transport Appellate Authority. (ii) Accident Claims Tribunal.
Narcotic Drugs & Psychotropic Substances Act, 1985	Appellate Authority.
National Company Ltd. (Acquisition & Transfer of Undertakings) Act, 1980.	Commissioner of payments.
Naval & Aircraft Prize Act, 1971	Prize Courts.
Navy Act, 1957	(i) Commanding Officer. (ii) Disciplinary Court. (iii) Court Martial.
Plantations Labour Act, 1951	Commissioner.
Press & Registration of Book, 1867	Appellate Board.
Railway Claims Tribunal Act, 1987	Railway Claims Tribunals.
Railways Act, 1989	Railways Tribunal.
Recovery of Debts to Banks and Financial Institutions Act, 1993.	(i) Debts Recovery Tribunal. (ii) Debts Recovery Appellate Tribunal.
Richardson & Cruddas Ltd. (Acquisition & Transfer of Undertakings) Act, 1972.	Richardson & Cruddas Ltd. (Acquisition & Transfer of Undertakings) Tribunal.
Securities Law (Amendment) Act, 1995	Appellate Authority.
Sick Industrial Companies (Special Provisions) Act, 1956	Appellate Authority for Industrial and Financial Reconstruction
Sick Textiles Undertakings (Nationalisation) Act, 1974.	Commissioner of Payments.
Smith, Stanistreet & Co. Ltd. (Acquisition & Transfer of Undertakings) Act, 1977.	Commissioner of Payments.
Smugglers and Foreign Exchange Manipulators (Forefeiture of Property) Act, 1988.	Appellate Tribunal.
Special Protection Group Act, 1988	Special Protection Group Tribunal.
Textiles Committee Act, 1983	Textiles Committee Tribunal.
Transformer & Swichgear Ltd. (Acquisition & Transfer of Undertakings Act, 1983.	Commissioner of Payments.
Unlawful Activities (Prevention) Act	Unlawful Activiites (Prevention) Tribunal.
Urban Land (Ceiling & Regulation) Act	Urban Land (Ceiling & Regulation) Tribunal
Wakf Act, 1954	Wakf Tribunal
Working Journalists & Other Newspaper Employees' (Conditions of Services) & Miscellaneous Provisions Act, 1955	(i) Tribunal for Working Journalists. (ii) Tribunal for non-journalists.
Workmen's Compensation Act, 1923.	Commissioner.

Due to such large number of tribunals and other administrative *foras* that exist in India, it is not possible to discuss every one of them in detail. The composition, power and functions as well as procedure followed by one of the principal tribunal is discussed below in detail.

Central and State Administrative Tribunals

India is a vast country. The Supreme Court sits only in Delhi and high courts mainly in capital cities of the states.[760] The number of complaints against administration is very large. For every infringement of right, it is impossible for an ordinary citizen as well as government servant to move to a proper court. Administrative tribunals have been set up with the aim and object of providing speedier justice to government servant regarding their service complaints or dispute and ease burden of the judiciary. Besides the principal bench at Delhi, the Central Administrative Tribunal (CAT) has benches in various states given below:

Bench	**Territorial jurisdiction of the bench**
Principal Bench (New Delhi)	National Capital Territory Of Delhi
Ahmedabad Bench	State Of Gujarat
Allahabad Bench	(i) State Of Uttar Pradesh Excluding The Districts Mentioned Under The Jurisdiction Of Lucknow Bench (ii) State Of Uttaranchal
Lucknow Bench	Districts Of Lucknow, Hardoi, Kheri, Rai Bareli, Sitapur, Unnao, Faizabad, Ambedkar Nagar, … In The State Of Uttar Pradesh
Banglore Bench	State Of Karnataka
Calcutta Bench	(i) State of Sikkim (ii) State Of West Bengal (iii) Union Territory of Andaman & Nicobar Islands
Chandigarh Bench	(i) State Of Jammu & Kashmir (ii) State of Haryana (iii) State of Himachal Pradesh (iv) State Of Punjab (v) Union Territory Of Chandigarh
Cuttack Bench	State of Orissa

[760] In very few states benches have been set up under the high courts. Besides some of the high courts have jurisdiction over more than one state.

Ernakulam Bench	(i) State of Kerala (ii) Union Territory of Lakshawadeep
Guwahati Bench	(i) State Of Assam (ii) State of Manipur (iii) State of Meghalaya (iv) State of Nagaland (v) State of Tripura (vii) State of Arunachal Pradesh (viii) State of Mizoram
Hyderabad Bench	State Of Andhra Pradesh
Jabalpur Bench	(i) State Of Madhya Pradesh (ii) State of Chattisgarh
Jodhpur Bench	State of Rajasthan Excluding The Districts Under The Jurisdiction of Jaipur Bench
Jaipur Bench	Districts of Ajmer, Alwar, Baran, Bharatpur, Bundi, …
Chennai Bench	(i) State Of Tamil Nadu Union Territory of Pondicherry
Mumbai Bench	(i) State of Maharashtra (ii) State of Goa (iii) Union Territory of Dadra And Nagar Haveli (iv)Union Territory Of Daman And Diu
Patna Bench	(i) State Of Bihar (ii) State of Jharkhand

Procedure followed by Administrative tribunals:

The tribunal is not bound by the procedure laid down by the Code of Civil Procedure, but is guided by the principles of natural justice and rules laid down by the tribunal itself as well as higher judiciary. Ordinarily every application is decided on a perusal of documents, written representations and affidavits and after hearing such oral arguments as are advanced. The tribunal is vested with same powers as civil court in respect of following matters: Summoning & enforcing the attendance of any person and examining him on oath; (b) requiring the discovery & production of documents; (c) receiving evidence on affidavits; (d) requisitioning any public record / document / copy thereof; (e) issuing commissions for the examination of witnesses / documents; (f) reviewing its own decisions; (g) dismissing an application for default / deciding it *ex-parte*; / setting aside any such order that is made by it.

Powers and jurisdiction of administrative tribunals: It has power to regulate conditions, fix place and time of its inquiry and to decide whether to conduct its proceedings in public or private. It has additional powers to: summon and enforce the attendance of any person and examine him on oath;[761] require the discovery and production of documents; receive evidence on affidavits; requisition any public record or document or copy of such record or document from any office; issue commissions for the examination of witnesses or documents; review its decisions; dismiss or set aside any representation for default or decide it *ex-parte*; to review its decision if review petition is filed within 30 days; to rectify its orders in case of mistake apparent on the face of the record;[762] to punish for contempt under the Contempt of Court Act, 1971.[763]

The tribunal is under an obligation to follow decisions laid down by the Supreme Court of India.[764] It cannot adjudicate upon the *vires* of their own parent statute. In other respects these tribunals would continue to be the courts of first instance in the areas of law for which they have been constituted. As a consequence no direct appeal from any judgment / order of the tribunals lies to the Supreme Court and special leave can only be filed against the decision of Division Bench of the High Court.[765] It exercises the jurisdiction, powers and authority exercisable by all courts except the

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[761] *Supra* note 23, section 22
[762] *Id.*, Section 22(2).
[763] *Id.*, Section 22(3).
[764] *UOI v. Kantilal Hematram Pandya* 1995 (3) SCC 17.

Supreme Court of India in relation to;[766]

(a) Recruitment and matters concerning recruitment, to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being in either case, a post filled by the civilian;

(b) All service matters concerning- a member of any All India Service; or a person appointed to any civil service of the Union or to any civil post under the Union; or a civilian appointed to any defence services or to a post connected with defence.

In 1997, the Supreme Court of India in *L. Chandra Kumar v/s Union of India* [767] held that the tribunals constituted under Articles 323A and 323B of the Constitution can be vested with the power of judicial review over administrative action. But the power of judicial review of legislative action cannot be conferred upon them. It struck down the decision in *Sampath Kumar's* case[768] that held that the tribunals would be effective substitutes for the high courts, and held such proposition is factually and legally incorrect on account of various differences between high courts and tribunals as to power, jurisdiction, appointment and qualification of judges, expenditure and source of finance, etc.

Procedure of appointment in Administrative tribunals:

Each tribunal consists of a Chairman and a number of Vice-Chairmen and Judicial and Administrative members as are required.[769] A person shall not be appointed as the Chairman unless he – is, or has been, a Judge of a High Court; or (b) has, for at least 2 years, held the office of Vice-Chairman.

A person shall not be appointed as the Vice-Chairman unless he (a) is, or has been, or is qualified to be, a Judge of High Court; or (b) has, for at least 2 years, held the post of a Secretary or Additional Secretary for at least five years to the Government of India or any other equivalent post; or (c) has, for at least 3 years, held the office as a Judicial member or an Administrative member.

A person shall not be appointed as a Judicial member unless he- (a) is, or has been, or is qualified to be, a Judge of High Court; or (b) has been a member of the Indian Legal Service as Grade I officer for at least 3 years.

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[765] *L.Chandra Kumar v. UOI* 1997 (3) SCC. 261
[766] *Supra* note 23, section 14.
[767] *Supra* note 39.
[768] (1987) 1 SCC 124.

A person shall not be appointed as an Administrative member unless he- (a) has, for at least 2 years, held the post of an Additional Secretary for at least five years to the Government of India or any other equivalent post; or (b) has, for at least 3 years, held the post of a Joint Secretary to the Government of India or any other equivalent post.[770]

In most of the tribunals, appointments are made by Central Government after approval of the Chief Justice of India or the Chief Justice of High Court in whose jurisdiction the tribunal is established.

3. OTHER FORUMS (e.g., LOK ADALATS, NYAY PANCHAYATS IN INDIA)

Evolution of other forums: The concept of parties settling their disputes by reference to a person / persons of their choice / private tribunals was well known to ancient India. Long before the king came to adjudicate disputes between persons, such disputes were peacefully decided by the intervention of the ***Kulas,***[771] ***Srenis,***[772] ***Parishads***[773] and such other autonomous bodies. There were ***Nyay Panchayats*** - an indigenous system of participatory justice at the village level, before the advent of the British system of justice. Even in day-to-day affairs, ADR procedures were invoked without conscious efforts in respect of some categories of disputes, within family, between neighbours, disputes involving employer and employees, etc. Under this system, respectable members of the village community would form the *Panchayat*, the five preferred ones amongst them to resolve the disputes by a process of conciliation, mediation at the village level. Their decisions were generally honoured and accepted by the village community, and hardly a few disputes landed in courts.

While the *Mughal* rulers made some attempts for centralization of justice system, the British realized an emotional attachment to *Panchayat* system.[774] The earliest statutory recognition came in the form of the Village Courts Act, 1888 in Madras.

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[769] *Supra* note 23, Section 5(1).
[770] *Id*, section 6.
[771] Family or clan assembly
[772] Guilds of men following the same occupation
[773] Assemblies of learned men who knew law
[774] Law commission of India, 114th Report on Gram Nyayalya, (August 1986).

Subsequently, after the introduction of the Government of India Act 1935 some of the provinces enacted legislation for the revival of *Panchayat*s

After independence, the Eleventh Law Commission of India had recommended conferring of extensive civil and criminal jurisdiction on the these fora.[775] The Commission laid down detailed guidelines as to selection/nomination of lay Judges for Gram Nyayalaya (synonym for Nyay Panchayat), their qualifications and disqualifications, composition, procedure and jurisdiction in civil, criminal and miscellaneous matters. Further, with a view to liberating the proposed forum from cumbersome, complex and time-consuming procedural shackle, the Commission suggested that neither the Civil Procedure Code nor the Evidence Act should apply to the proceedings before Gram Nyayalaya. It also emphasized to provide transport vehicle so that this new forum can speedily travel to the place of dispute, carry justice to the doorstep of the people and dispose of the matter on the spot

This historically popular institution of Nyaya *Panchayat* still exists and has attained Constitutional recognition. The Constitution 73 and 74 (Amendment) Acts provide for creation of village *Panchayats* and also reservation of 33% seats for women in the election for members and chairman of these *Panchayats.* [776] This *fora* for resolution of disputes with people's participation in the administration of justice is very popular in India and is adopted by almost every state in the country by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen on the grounds of economic or other disabilities.[777] In this respect, Nyaya *Panchayat*s constitute an aspect of overall development.[778]

Legal aid Movement and setting up of *Lok Adalats*:

Article 39A of the Constitution of India directs State to secure the operation of the legal system, promote justice on the basis of equal opportunity, and provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reasons of economic or other disabilities. Articles 14 also require the State to ensure equality before law and a legal system that promotes justice on the basis of equal opportunity to all. Legal aid

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[775] The Eleventh Law Commission, 114th Report of Law Commission of India (1986).
[776] *Supra* note 9, Appendix 1, 51, Para 2. 10.
[777] Constitution of India, Article 39.
[778] Upendra Baxi, "Access Development and Distributive Justice: Access Problems of the "Rural"

strives to ensure that constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker sections of the society. Since 1952, the Government of India became aware of this fact. In 1960, some guidelines were drawn by the Government for legal aid scheme. In some of the states legal aid schemes were floated through Legal Aid Boards, Societies and Law Departments. This system goes a long way in providing effective and meaningful legal assistance to under trail prisoners, who feel handicapped in their defence on account of lack of resources / other disabilities and cannot engage a counsel to defend them. In 1980, a Committee at the national level was constituted to oversee and supervise legal aid programmes throughout the country under the chairmanship of a judge of the Supreme Court of India. This Committee came to be known as CILAS (Committee for Implementing Legal Aid Schemes) and it started monitoring legal aid activities throughout the country. This gave birth to *Lok Adalats* (People's Courts). Civil cases, and petty criminal matters with the consent of both the parties are referred to *Lok Adalats.* The retired judges mainly from the district courts form the court.

The introduction of *Lok Adalats* added a new chapter to the justice dispensation system in India and succeeded in providing a supplementary forum to the litigants for conciliatory settlement of their disputes. In 1987 Legal Services Authorities Act was enacted to give a statutory base to legal aid programmes throughout the country on a uniform pattern. This Act was finally enforced on 9 November 1995.

National Legal Services Authority was constituted on 5th December 1995. It has branches in all the states. It was constituted for giving legal services to the eligible persons. The judge of the Supreme Court of India heads National Legal Services Authority. It is the apex body constituted to lay down policies and principles for making legal services available under the provisions of the Act and to frame most effective and economical schemes for legal services. It also disburses funds and grants to State Legal Services Authorities and NGOs for implementing legal aid schemes and programmes. In every State a State Legal Services Authority is constituted to give effect to the policies and directions of the Central Authority (NALSA) and to give legal services to the people and conduct *Lok Adalats* in the State. The Chief Justice of the State High Court who is its *Patron-in-Chief* heads State Legal Services Authority. Every person who has to file /

Population", 18 *Journal of the Indian Law Institute* (1976).

defend a case is entitled to legal services if that person is (a) a member of a Scheduled Caste or Scheduled Tribe; (b) a victim of trafficking in human beings or beggar; (c) a woman or a child; (d) a mentally ill or otherwise disabled person; (e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or (f) an industrial workman; or (g) in custody, including custody in a protective home; or in a juvenile home or in a psychiatric hospital or psychiatric nursing home; or (h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government,[779] if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court. Legal Services Authority after examining the eligibility criteria of an applicant and the existence of a prima facie case in his favour provide him counsel at State expense, pay the required court fee in the matter and bear all incidental expenses in connection with the case. The person to whom legal aid is provided is not called upon to spend anything on the litigation once a Legal Services Authority supports it. A nationwide network has been envisaged under the Act for providing legal aid and assistance. A serving or retired Judge of the High Court is nominated as its Executive Chairman. District Legal Services Authority is constituted in every District to implement legal aid programmes and schemes in the district. The District Judge of the district is its *ex-officio* Chairman. After the constitution of the Central Authority and the establishment of NALSA following schemes and measures have been envisaged and implemented by the Central Authority:- (a) establishing Permanent and Continuous *Lok Adalats* in all the Districts[780] in the country for disposal of pending matters as well as disputes at pre-litigative stage; (b) establishing separate Permanent & Continuous *Lok Adalats* for Government Departments, Statutory Authorities and Public Sector Undertakings for disposal of pending cases as well as disputes at pre-litigation stage; (c) accreditation of NGOs for Legal Literacy and Legal Awareness campaign; (d) appointment of Legal Aid Counsel in all the Courts of Magistrates in the country; (e) disposal of cases through *Lok Adalats* on

[779] The amount varies from state to state and the government keeping in view the living conditions prescribes the slab from time to time.

[780] Recently the National Legal Services Authority has set up permanent *Lok Adalats* in all the districts.

old pattern; (f) publicity to Legal Aid Schemes and programmes to make people aware about legal aid facilities; (g) emphasis on competent and quality legal services to the aided persons; (h) legal aid facilities in jails; (i) setting up of Counselling and Conciliation Centers in all the Districts in the country;(j) sensitisation of Judicial Officers in regard to Legal Services Schemes and programmes; (k) publication of *Nyaya Deep* the official newsletter of NALSA; (l) enhancement of income ceiling to Rs.50,000/- p.a. for legal aid before Supreme Court of India and to Rs.25,000/-p.a. for legal aid up to High Courts; and (m) steps for framing rules for refund of court fees and execution of Awards passed by *Lok Adalats*.[781] In Delhi Permanent *Lok Adalats* is established in Delhi Vidyut Board, Delhi Development Authority, and Municipal Corporation Of Delhi, MTNL and General Insurance Corporation.

Further the Legal Services Authorities Act, 1987 (as amended by Act No. 59 of 1994) has provided a statutory base to *Lok Adalats* by conferring wide powers on *Lok Adalat* Judges in the matter of summoning and examining witnesses on oath, discovery and production of documents, reception of evidence of affidavits, requisitioning of public records or documents etc.[782] The Awards passed by Lok Adalat judges are now deemed to be decrees of a civil court and the court fee paid in such cases is liable to be refunded in the manner provided under the Court Fees Act,1870. These Awards are final and binding on all the parties to the dispute and no appeal lies to any court against these Awards. In some of the states including the National Capital Territory of Delhi, a scheme has been introduced under which one advocate called "Remand Advocate" is attached to every court of Magistrate and is under directions to give free legal assistance to all those who are produced in custody and have counsel to represent them because of their inability to engage one. He gives legal assistance for opposing remand applications, securing orders for bail and moving miscellaneous applications as may be required. He is under an obligation to remain present in the court assigned to him, during the remand hour and such other hours of the day as may be directed by the court.

These *Lok Adalats* are becoming popular day-by-day and it is expected that very soon a large number of disputes between public and statutory authorities would

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[781] NALSA issues Press Releases in almost all the leading newspapers in the country in English, Hindi and regional languages to bring awareness among the public the salient provisions of the Legal Services Authorities Act, 1987 and the important schemes introduced by NALSA for providing legal aid and the utility of *Lok Adalats.*

start getting settled at pre-litigative stage itself saving the parties from unnecessary expense and litigation inconvenience.

4. STATISTICAL DATA

Central Administrative Tribunal:[783]

Year	No. of cases filed	No. of cases pending
1999	22, 944	47, 889
2000 (upto Oct)	20, 605	25,588

Railway Claims Tribunal: At present, the number of Benches of Railway Claims Tribunal is 21. 2 are located in Delhi, 3 in Calcutta and the remaining are located at some other major cities of the country.[784] Pending cases before the tribunal as on January 1998: AS on 1-2-1998, the total number of cases pending before the Claims tribunal are: 23041 out of this, 17825 were filed in the tribunal after it was set up in 1989. The remaining 5216 are transferred to it from different courts in the country to the various benches of the Railway Claims Tribunal. The maximum number of cases are pending before the Calcutta Bench, i.e., 6995 which is nearly 33 % of the total pending cases. The pendency before other benches is depicted below: [785]

Bench	Pendency
Chandigarh	3013
Mumbai	2049
Guwahati	1652
Chennai	1174
Ahmedabad	1144
Lucknow	1135
Patna	1166
Bhopal	1034
Gorakhpur	1010
Delhi	736
Bangalore	630

In the remaining benches of the tribunal, the pendency cases vary from 109 to 417.

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[782] Legal Services Authorities Act, 1987 (as amended by Act No. 59 of 1994), Section 22

[783] source: Central Administrative Tribunal, Principal Bench, New Delhi. (2000).

[784] At Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Chandigarh, Chennai, Ernakulam, Ghaziabad, Gorakhpur, Guwahati, Jaipur, Lucknow, Mumbai, Nagpur Patna and Secundarabad.

[785] R.N.Saxena, *Railway Claims Tribunals of India*; 170 (AIR Journal, 1998).

Total number of cases disposed of by various benches of railway claims tribunal from 1989 to 1998:

Bench	No. of cases
Chandigarh	3236
Mumbai	3975
Guwahati	11580
Chennai	10246
Ahmedabad	6759
Lucknow	10539
Patna	12645
Bhopal	7103
Gorakhpur	8995
Delhi	4895
Bangalore	1104
Calcutta	61243
Jaipur	6403
Secundarabad	4786
Nagpur	4150
Ernakulam	2650
Bhubaneshwar	1170
Ghaziabad	N. A.

Appeals filed in respective high courts against orders of different benches of Railway Claims Tribunals as on January 1998:

Bench	No. of cases decided	No. of appeal filed	Percentage
Chandigarh	3236	78	3
Mumbai	3975	250	7
Guwahati	11580	39	Less than 1 %
Chennai	10246	83	Less than 1 %
Ahmedabad	6759	145	2
Lucknow	10539	25	Less than 1 %
Patna	12645	40	Less than 1 %
Bhopal	7103	107	2
Gorakhpur	8995	8	1
Delhi	4895	36	1
Bangalore	1104	51	5
Calcutta	61243	19	Less than 1 %
Jaipur	6403	96	Less the 2%
Secundarabad	4786	175	4
Nagpur	4150	411	10
Ernakulam	2650	48	2
Bhubaneshwar	1170	12	1
Ghaziabad	N. A.	N. A.	-

Statement showing the number of persons benefited through legal Aid & Advice in law courts up to 31.12.1999:

SC	3,92,365
ST	2,26,640
BC	1,03,808
Women	2,77,907
Children	9,066
In Custody (Sec. 12 (g))	8,399
General	14,26,893
Total	21,45,078

No. of Lok Adalats held	No. of cases (including MACT cases) settled	Compensation paid in MACT cases (Rs.)
49,415	97,20,289	23,06,07,32,170

Statement showing number of Lok Adalats held, Motor Accident Claims cases settled and compensation paid by Motor Accident Claims Tribunals in cases, as on 31.12.1999. (Bases on the information provided by the State Legal Services Authorities)

Thus up to 30.6.2000 about 31.47 lakh persons have taken benefit of legal aid through Legal Services Authorities out of whom about 5 lakhs belong to Scheduled Castes, over 2 lakhs to Scheduled Tribes, about 2.75 lakh are women and about 9,000 are children.

Up to 31.12.99 the Supreme Court Legal Services Committee has provided legal aid and assistance to10,125 applicants.[786]

Madhya Pradesh Government in 1996 set up 'Village Courts' to decide civil matters pertaining to disputes involving below Rs1000 besides criminal cases involving theft, quarrel and threats.[787]

As per information available with NALSA office, 72,038 *Lok Adalats* have been organized throughout the country up to 30.6.2000 in which about 1.2 crore cases have been amicably settled. Out of these over 5 lakh cases pertain to Motor Accident Compensation Claims in which compensation amounting to over Rs.2, 469 crores has been awarded.

In the year 1999, 15,198 *Lok Adalats* were organized throughout the country in which over 9,67,000 cases were amicably settled.

[786] Information downloaded from site of NALSA on Internet.

[787] One Village Court is established for a cluster of 10/ more Village *Panchayat*s through a Government notification. Each Village Court consists of 7 members.

Chapter VII

PUBLIC INTEREST LITIGATION AND OTHER RECENT TRENDS

1. PUBLIC INTEREST LITIGATION IN INDIA: AN OVERVIEW

(PIL) or Social Action Litigation is a new remedy initiated by the judiciary to enable the persons to knock the doors of the Court on behalf of those who are either ignorant / have no access to the courts. The traditional rule of *locus standi* that a petition can only be filed by a person whose rights infringed has now been considerably relaxed by the Supreme Court in its recent rulings. The court now permits public interest litigations or social interest litigations at the instance of public spirited person who because of his poverty or socially or economically disadvantaged position is unable to approach the court for relief.

In *S.P. Gupta v. Union of India*,[788] the Supreme Court held that "where a legal wrong or legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction or

[788] *AIR* 1982 SC 149.

writ.

In *Fertilizer Corporation Kamgar Union v. Union of India*[789] Justice V. R. Krishna Iyer has enumerated the following reasons for the liberalization of the strict rule of *locus standi.* (i) when corruption permeates the entire fabric of government, the state power may be exercised on grounds unrelated to its nominal purposes. In such a climate civil remedies for administrative wrong doing depend upon the action of individual citizens. (ii) social justice warrants liberal judicial review of administrative action until other control arrangements are made. (iii) restrictive rules of standing are antithesis to a healthy system of administrative law. If a plaintiff with a good case is turned away merely because he is not sufficiently affected personally, that means that some government agency is left free to violate the law, and that is contrary to the public interest. (iv) in India, freedoms suffer from atrophy and 'activism is essential for participative public justice' and therefore, public minded citizen must be given opportunities to rely on legal process and not be repelled by narrow pedantic concept of *locus standi.*

Over the years the number of PILs filed in the courts have increased. Some of the areas in which the courts have dispensed justice by entertaining PILs includes; combating inhuman prison conditions,[790] horrors of bonded labour,[791] right to speedy trial, right to legal aid, right to livelihood, right against pollution, a right to be protected from industrial hazards,[792] the right to human dignity etc. A detailed description contribution of the Courts in expanding the concept of PIL is given as under:

Public Accountability: PIL facilitates judicial intervention to detect the malaise, prevent its spread and initiate remedial measures.[793] In ***Pleasant stay Hotel case***[794] Palani Hills Conservation Council (PHCC) filed a PIL in the Madras High Court seeking a writ of mandamus to the state government to ensure that the hotel did not put up any illegal construction. Allowing the PIL, the High Court quashed the government order granting exemption to the hotel and issued order to demolish the portion of the building constructed in violation of the sanctioned plan. The Supreme Court on appeal

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[789] AIR 1981 SC 344.
[790] *Sheela Barse v. State of Maharashtra* AIR 1983 SC 1978.
[791] *Bandua Mukti Morcha v. Union of India* AIR 1984 SC 802.
[792] *Indian Council for Enviro-Legal Action v. UOI* 1995(2) SCALE 584.
[793] *All India Judges' Association v. Union of India* 1995(5) SCALE 634.
[794] *Pleasant Stay Hotelv. Palani Hills Conversation Council & Others* (1995) 6 SCC 127.

upheld the judgment of the High Court.

Out of turn allotments: The central government's discretion in the allotment of retail outlets for petroleum products, LPG dealership and SKO dealership without any guidelines governing such discretion was challenged by *Centre for Public Interest Litigation v. Union of India*[795] in a public interest petition. The Supreme Court laid down various norms to determine all future allotments of dealerships under the discretionary quota on compassionate grounds.

Environment: The Supreme Court in catena of cases has played commendable role in protecting the environment thereby saving the people from environmental hazards. For example, in a PIL filed by the Indian Council for Enviro-Legal Action, the Supreme Court directed the state governments not to permit the setting-up of any industry or any construction up to 500 meters from the seawater at the maximum high tide. By a subsequent order, the court modified the direction and directed that none of the activities mentioned, as being prohibited under the CRZ notification would be permitted. It took note of an interim site visit report prepared in the ministry of Environment and called for an action-taken report thereon.[796]

The Supreme Court while entertaining a PIL in *S. Jagannathan v. Union of India*[797] directed the respective state governments to provide free access to the sea through the aquaculture units and also arrange to supply drinking water to the villages through tankers. The court further directed that no groundwater withdrawal for aqua-culture purposes be permitted to any of the industries set up and no shrimp or aqua-culture farm be permitted to be set up in the ecologically fragile areas of the coastline. The Collectors and Superintendents of Police were directed to ensure enforcement of the court's-orders.

In *Ajay Singh Rawat v. Union of India*[798] a PIL filed in the Supreme Court, to prevent polluting of a lake and surroundings in Nainital, a hill station, the court called for a report from an advocate. The court further directed that sewage water and horse dung had to be prevented from entering the lake and declared a ban on construction of multi-storied group housing and commercial complexes in the town area of Nainital. It

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[795] 1995 Supp (3) SCC 382.
[796] *Indian Council for Enviro-Legal Action v. UOI* 1995(2) SCALE 584
[797] 1995(3) SCALE 737
[798] 1995 (3) SCC 266

recommended constitution of a monitoring committee comprising public-minded persons for taking concrete steps.

The pollution caused to water and soil by the discharge of untreated effluents from the tanneries in Tamil Nadu formed the subject matter of a PIL in the Supreme Court by the *Vellore Citizens Welfare Forum.*[799] The Supreme Court directed the closure of the 162 tanneries and directed the district magistrate and superintendents to ensure compliance. The pollution control board was directed to carry out periodic inspections.

The Supreme Court in *Consumer Education and Research Centre v. Union of India* [800] a writ petition filed in public interest by CERC (Consumer Education and Research Centre), highlighting the occupational health hazards of workmen employed in the asbestos industry declared that the right to health and medical care to protect health while in service or post-retirement is a fundamental right of a worker under article 21 of the Constitution.

Given the abysmal record of governments in this area, PIL continues to remain an important avenue for environmentalists to pursue preventive and corrective measures.

Custodial deaths*:* Based on newspaper reports about the custodial death of a scheduled tribe youth, two writ petitions were entertained by the Orissa High Court.[801] On the same day the Orissa High Court dealt with another case of death in police custody. The High Court received a telegram from certain advocates in Sambalpur district that officers of Sambalpur police station beat a betel shop owner Bijay Kumar Choudhury to death. The telegram was treated as a writ petition and notices issued to the police.

Prisoners: An advocate, in a PIL challenged the method of execution of death sentence by hanging as prescribed under the Punjab Jail Manual as being inhuman and violative of the fundamental right to life under article 21of the constitution. He further contended that the procedure under the manual requiring the body of the prisoner to be kept suspended for half an hour after it fell from the scaffold violated the right to dignity, which attached to a dead body too. The court while rejecting the first contention accepted the second and directed that the jail authorities should not keep the body of the

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[799] 1995 (5) SCALE 592
[800] 1995(3) SCC 42
[801] *Srikar Kumar Rath v. UOI* 1995(7) SCALE 7; *Bishnu Priya Bhoi v. state of Orissa* 80(1995) CLT 894

condemned prisoner suspended after the medical officer had declared the person dead.[802] Kuldip Nayar, a renowned journalist and president of Citizens for Democracy, upon visiting a government hospital in Gauhati, Assam was shocked to find TADA detenues kept in one room handcuffed to the bed and tied to a long rope to restrict their movement. This in spite of the door being locked from outside and a posse of armed policemen guarding them. The letter sent by him to the court was treated as a petition and on examining the affidavit filed by the State of Assam, the court held that the handcuffing and in addition tying with ropes of the patient-prisoners who are lodged in the hospital is inhuman and in utter violation of human rights. The court declared that handcuffs or other fetters should not be forced on a prisoner while lodged in a jail or while in transport or transit from one jail to another or to the court and back. The authorities had to take permission of the magistrate for handcuffing the prisoner.[803]

Judicial Accountability of Public Servants: In *Saheli v. Commissioner of Police,*[804] the Supreme Court directed the Delhi administration to pay Rupees 75000 as damage to the parents of a child who died in police custody because of beating and assault by police officials. The Delhi administration was further directed to take appropriate steps to recover the amount / part thereof from the officers responsible for the incident. In *Sheela Barse v. State of Maharashtra*[805] wherein the Court entertained a PIL filed by a journalist alleging violence on a woman while in police lock up in the city of Bombay. In *Nilabati Behera v. State of Orissa,*[806] the Supreme Court in a case of custodial death considered a letter as a PIL and gave directions to the State of Orissa to pay Rupees 1,50,000 as compensation to the mother of a child who died in police custody.

Extension of Fundamental Rights to Non-citizens: The Supreme Court of India in *Chairman Rialway Board v. Chandrima Das*[807] wherein a woman of Bangladesh nationality was raped by some of the employees of the Railways in *Rail Yatri Niwas* in Calcutta, upheld the compensation of rupees 10 lakhs awarded by the Calcutta High Court. The Supreme Court while rejecting the argument that 'relief under

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[802] *Parmanand Katara v. UOI* 1995(3) SCC 248
[803] *Citizens for democracy v. state of Assam* 1995(3) SCC 743
[804] AIR 1990 SC 1390
[805] *Sheela Barse v. State of Maharashtra* AIR 1983 SC 1978.
[806] AIR 1993 SC 610.
[807] (2000) 2 SCC 465.

public law could not be extended to foreign national' ruled that 'according to the tenor of language used in Article 21, it will be available not only to every "citizen" but also to every "person" who is not a citizen of this country.

PIL in other matters:

Life Insurance Corporation of India v. C E R C, Ahmedabad[808] a clause in a term policy of the LIC (Life Insurance Corporation) restricting its availability to persons employed in government or quasi-government organizations was struck down by the Gujarat High Court[809] as being arbitrary and discriminatory. The Supreme Court upheld this decision.

In *Common Cause v. Union of India,*[810] in a PIL the Supreme Court held that the strikes should be resorted by the lawyers only in the rarest of contingencies and as a last resort.

2. STATISTICAL DATA:

Statement of number of PILs admitted and disposed of by various High Courts:

Court	Admitted	
	1998	1999
Calcutta	54	102
Sikkim	20	11
Karnataka	651	510
Rajasthan	550	456 & 325 in 2000.
Andhra Pradesh	513	568 & 529 in 2000.

3. RECENT TRENDS

In the recent times significant developments have taken place in the area of judicial reforms. To begin with the Constitution which guarantees several fundamental rights to the citizens, and also contains numerous directives to the state, has been

[808] 1995(5) SCC 482
[809] *CERC v. LIC* 1995(1) GLH 3

elaborated by the Supreme Court. The Court has held that right to life and personal liberty as enshrined in Article 21 of the Constitution does not mean *mere animal existence but a life with human dignity.*[811] It further gave impetus to the directive principles of state policy by embarking upon a course of judicial activism in interpreting positively certain directive principles. This was necessitated due to the absence of any legislative effort by the state to implement these directives, which are important for all the citizens for leading a life with basic human dignity. In some of the most deserving areas such as right to education,[812] right to immediate medical aid in emergency accident cases,[813] right to health care[814] right to free legal aid,[815] where the judiciary in general and the Supreme Court in particular has given certain directives to the State by raising these rights to a higher pedestal. Most importantly the courts have considered letters[816] as a PIL and also extended the rights to life and personal liberty guaranteed under Article 21 of the Constitution to persons of foreign origin[817] while rendering justice to the poor and the needy.

The Bar Council of India the UGC are playing increasingly active role in the recent times in the sphere of legal education. The BCI is setting new standards to the law colleges imparting legal education and is taking action against the law colleges not adhering to the standards set by it. Further the BCI, which has banned the degrees obtained through correspondence education for enrolment has recently came out with the direction to all the colleges imparting part-time/evening law colleges to switch over to full time course from the academic year 2001-2002.

Significant developments are taking place to reform the procedural laws in the country. In 1999, new Bill[818] amending the Code was passed by the Parliament. The amendments to the Code, which are devised with the purpose of speeding up the tardy justice delivery system, which have not yet been implemented due to intense opposition

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[810] 1995(1) SCALE 6.
[811] *Maneka Gandhi v. Union of India* AIR 1978 SC 597.
[812] *Mohini Jain v.State of Karnataka* AIR 1992 SC 1858, see also*Unnikrishnan v. State of A.P.* 1993 (1) SCC 645.
[813] *Pandit Parmananda Katara v. Union of India* AIR 1989 SC 2039.
[814] *Paschim Banga Khet Mazdoor Samity v. State of West Bengal* AIR 1996 SC 2426.
[815] *M. H. Hoskot v. State of Maharashtra* AIR 1978 SC 1548.
[816] *Supra* note 19.
[817] *Supra* note 20.
[818] Act 46 of 1999, Bill No. 50 of 1999, which received the assent of the President of India on December 30, 1999.

to it from the lawyers. While the government feels that the amendments would benefit poor litigants, the lawyers hold the view that they would cause hardship to poor litigants.

Besides the legislature and executive are playing their part to make the concept of "Door delivery of justice" into a reality. The setting up of; plethora of tribunals and other commissions;[819] legal services authority at the national, state and district levels for providing free legal aid and advice; permanent *lok adalats* for the speedy disposal of cases; fast track courts for reducing the burden on courts etc., are steps in this direction. Quite apart from these to reduce the burden of judiciary in handling matters relating to administration the government has set up *lok adalats* in the offices of Mahanagar Telephone Nigam Limited, Electricity Boards, Insurance Authorities, Statutory Land Authorities such as Delhi Development Authority etc., for easy settlement of disputes on a day to day basis.

[819] For a detailed description of the various tribunals and commissions functioning in the country see chapter vi.

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