



Unit 4

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**JUDICIARY : CONSTITUTIONAL, CIVIL AND  
CRIMINAL COURTS AND PROCESSES**



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## CHAPTER

## 1

# Judiciary: Constitutional, Civil and Criminal Courts and Processes

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## Learning Outcomes

After the completion of this chapter, the students will be able to:

- State reasons for independence and impartiality of judiciary
- Draw a flow chart of hierarchy of courts in India
- Explain legislations governing courts in India
- Distinguish between Civil and Criminal Cases



- Explain the process of criminal investigation, inquiry and trial
- Distinguish between Cognizable and Non Cognizable offences, Bailable and Non Bailable offences
- Describe the role of police
- Examine the importance of FIR in Criminal Investigation
- Analyse the judicial structure envisaged in the Constitution of India

## I. Introduction

The aim of this chapter is, in the first place, to understand the salient features of Indian judiciary, its constitution, its roles and its independence. The introduction to this topic is meant to spur thoughts about court structure and their functions. The Indian legal system derives its authority from the Constitution of India and is deeply embedded in the Indian political system. The presence of judiciary substantiates the theory of separation of powers wherein the other two organs, viz., legislature and executive stand relatively apart from it.

Parliamentary democracy as envisaged in the Constitution of India works at Union and State level. Especially in making of law, there is direct participation of the legislature and the executive. It is the judiciary that safeguards the interest of citizens by not allowing the other organs to go beyond their role assigned in the Constitution.

In brief, the Supreme Court of India is the logical and primary custodian of the Constitution of India, while also being its interpreter and guardian. Parliament enjoys the authority to amend the Constitution and the Supreme Court has the authority to examine the validity of constitutional amendments. The Supreme Court ensures that the other branches of government perform their responsibilities in accordance with the Constitution.

Judiciary is the final authority in interpreting legal issues and constitutional arrangements. The nature of democracy and development of the state depends upon how the legal system conducts itself to sustain the overall socio-economic and political environment.

## Establishment of Supreme Court and High Courts

After India attained independence in 1947, the Constitution of India came into being on 26 January, 1950. The transition from the Federal Court to the Supreme Court of India (SCI) was seamless. Justice Kania became the first Chief Justice of India. It is often said that the Supreme Court of India exercises jurisdiction far greater than that of any comparable court in the world.

The original Constitution of India envisaged a Supreme Court with a Chief Justice and seven puisne judges, while empowering the Parliament to increase the number of judges. Subsequently, the Parliament has the power to increase the number of judges of Supreme Court. Judges generally sit in smaller benches of twos or threes and form larger benches of five or more only when required to do so, or to settle a difference of opinion or controversy.

The Supreme Court has a threefold jurisdiction. As a **federal court**, it has exclusive original jurisdiction in any dispute arising between the Government of India and one or more states, between the Government of India and any state or states on one side and one or more states on the other or between two or more states.

As an **appellate court**, the Supreme Court of India can hear appeals from the State High Courts on civil, criminal and constitutional matters.

The Supreme Court has also a very wide appellate jurisdiction in as much as it has the discretion



to grant special leave to appeal under Article 136 of the Constitution from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. In addition, the Supreme Court hears a number of statutory appeals provided under separate legislations.

The Supreme Court has **special advisory jurisdiction** in matters, which may specifically be referred to it by the President of India under Article 143 of the Constitution.

Furthermore, the Supreme Court has a **concurrent original jurisdiction** along with the High Courts, for the enforcement of fundamental rights under Article 32 of the Constitution of India. The jurisdiction of the Supreme Court of India can be enlarged by the Parliament.

The Supreme Court may also pass any decree or order as may be necessary for doing complete justice. According to Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India.

More importantly, the Supreme Court of India exercises **judicial review** - the power to strike down or declare unconstitutional, both legislative and executive actions, which are contrary to the provisions of the Constitution of India, or violative of the fundamental rights guaranteed by the Constitution, and also on the distribution of powers between the Union and the States.

The President appoints the Judges after consultation with the Judges of Supreme Court and High Courts of States. Article 124 (4) confers on the President power to remove the Judges if a motion is passed by a special majority of each House of Parliament, on the basis of proved misbehavior or incapacity to discharge one's duties.

The Supreme Court of India has the special responsibility to render justice (social, economic and political) and to enforce equality, liberty, dignity and the ideals of democracy, socialism, secularism and such other values enshrined in the Constitution of India. Professor K.T.Shah, a member of the Constituent Assembly observed as follows: "the judiciary is the only authority that we are going to set up in the Constitution to give effect to whatever hopes and aspirations, ambitions and desires, we may have, in making these laws and in laying down this Constitution. Even constitutional and legislative amendments are not immune from judicial challenges".

In the historic Fundamental Rights case (*Kesavananda Bharti case*, 1973), the Supreme Court of India held that the power to amend the Constitution was subject to the limitation that the 'basic structure' of the Constitution cannot be taken away. This decision means that the sovereign's power to change or alter the Constitution of India is subject to limitations.

After the President's Rule case (1994), the 'basic structure' doctrine was not just limited to challenges to constitutional validity, but was also extended to interpret the validity of exercise of power by the legislature and the executive.

The High Courts in various states are the apex judicial bodies of the States. There are currently 25 High Courts in India. The bulk of the work of the High Courts consists of appeals from lower courts and writ petitions under Article 226 and 227 of the Constitution of India. Apart from writ petitions, any civil or criminal case which does not fall within the purview or ambit of the subordinate courts of that State, due to lack of pecuniary or territorial jurisdiction, can be heard by the High Court of that State. Also certain other matters or issues may be heard by the High Court as part of its original jurisdiction, if the law laid down by the legislature provides to that effect.

## II. Judiciary: It's Constitution, Roles and Impartiality

The Judiciary, in India, today is an extension of the British Legal System. The Supreme Court is the apex body, followed by 25 High Courts, which in turn supervise and govern numerous District Courts.



Article 129 of the Constitution of India makes the Supreme Court a ‘court of record’ and confers all the powers of such a court including the power to punish for its contempt as well as of its subordinate courts.

Article 141 of the Constitution of India provides that the law declared by Supreme Court is binding on all courts.

Judiciary in India plays an important role of interpreting and applying the law and adjudicating upon controversies between the citizens, the states and various other parties. It is the function of the courts to uphold the rule of law in the country and to safeguard civil and political rights. As India has a written constitution, courts have an additional function of safeguarding the supremacy of the Constitution by interpreting and applying its provisions and limiting the functioning of all authorities within the constitutional framework.

In a federation [i.e. union of states], the judiciary has another meaningful assignment (legally known as Original Jurisdiction of the Supreme Court of India envisaged in the Constitution of India), namely to decide controversies between the constituent states inter se as well as between the Union and the States.

A federal government is a legislative government, a characteristic feature of which is the allocation of power between the Centre and the States. Disputes usually arise between the governments relating to distribution of power and function between them. An arbiter is therefore, required to examine laws to see whether they fall within the allotted legislative domain of the enacting legislature and this function is usually left to the judiciary.

In this connection, the Supreme Court of India often invoked the following principles of interpretation of law viz., doctrine of pith and substance, doctrine of severability and doctrine of colourable legislation etc.

**Doctrine of pith and substance** i.e., the true object of the legislation or a statute, relates to a matter with the competence of the legislature which enacted it. In order to ascertain the true character of the legislation one must have regard to the enactment as a whole, to its object and to the scope and effect of its provisions.

**Doctrine of severability** separates repugnant provisions of a statute or law from others that are constitutional. The violating part of any provision of a statute is declared unconstitutional and void to the extent of such inconsistency, but the remainder remains enforceable and valid.

**Doctrine of colourable legislation** prevents legislatures to make laws that they would otherwise not be able to create given the constitutional constraints. The whole doctrine of colourable legislation is based upon the maxim that *you cannot do indirectly what you cannot do directly*.

## Case Laws

### State of Maharashtra v. FN Balsara

#### Facts

State of Maharashtra passed a law putting a cap on the maximum amount of liquor (both domestic and imported) that could be held by any dealer/wholesaler.

The petitioner, FN Balsara was aggrieved by this law and challenged it in the SC as the law was putting a cap on quantity of imported liquor which was a topic in union list and hence state government was incompetent to make such a law.

State government took the stand that the purpose of law was to regulate consumption of liquor in the state and not regulation of import and export. Cap was on both domestic and foreign liquor.



### Issue

Was the law made by state government valid or violative of Art 246?

### Decision

The supreme court held that when judging the validity of any law, the Act should be read as a whole to get its essence. The essence of the law in this case is not regulation of import and export but regulation of liquor consumption in the state, which is a topic in the state list and hence the law is valid.

### Balaji v. State of Mysore

- Mysore government introduced reservations to the extent of 51% under article 16 of the constitution.
- This was challenged in the SC as being violative of Article 14.
- The government took defense that it did not make reservations under Art 14 but made them only under Art 16.

### Decision

- SC held that a law made should be legal under all provisions. By resorting to one provision only, the government cannot ignore another provision by applying the doctrine of colorable legislation.
- By applying doctrine of severability, the court upheld 49% of reservations but struck down as invalid 2% of the excess reservation.

While the power of the Parliament to legislate is supreme, at the same time the Judiciary has been made the watchdog of Indian democracy. The role of the judiciary has been ever changing and has evolved based on the constitution of India and the socio-economic needs of the country.

The phrase '**basic structure**' was introduced for the first time in the Golaknath case (Golaknath v. State of Punjab, AIR 1967 SC 1643), but it was only in 1973 that this phrase was used by the Supreme Court and it means and includes those features of the Constitution which lay at its core requiring much more than the usual procedures to change them. It was held in the historic Kesvananda Bharati case that any amendment which aims at abrogating the basic structure of the Constitution would be unconstitutional. Hence, every proposed amendment is subject to judicial scrutiny if it is aimed at abrogating the basic structure of the Constitution.

Constituent elements of the basic structure include the supremacy of the Constitution, republican and democratic form of government, secular character of the Constitution, separation of powers between the legislature, executive and the judiciary and primarily the federal character of the Constitution.

In addition, the Judiciary also has the power of judicial review. It implies that every piece of legislation passed by the Parliament is subject to judicial scrutiny by the Supreme Court of India. No specific provisions exist for this arrangement, however the power and extent of judicial review has been clarified through judicial pronouncements.

The Supreme Court of India, thus, has the power to strike down any piece of legislation aimed at amending the Constitution of India on two grounds.

- Firstly, if the procedure prescribed under Article 368 is not followed; and
- Secondly, if the amending Act seeks to violate one or more basic features of the Constitution.



In India, in addition to the above, the Judiciary also has the significant function of protecting and enforcing the fundamental rights of the people guaranteed to them by the Constitution. The Supreme Court keeps a watch on the functions of the other limbs of the state as to whether they are working in accordance with the Constitution and other laws made by the Parliament and the State legislatures.

### Supreme Court and Judicial Review

The Supreme Court has concurrent jurisdiction with the High Courts to issue directions, orders and writs for enforcement of fundamental rights (Article 32 of Constitution of India). These are in the nature of the writs of Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo Warranto. These writs make the Supreme Court a protector and guarantor of fundamental rights. The idea is that in case of violation of a law or right, the Court may issue directions for compliance with the Constitution. Thus, the citizens of India are secure as far as fundamental rights are concerned. The Supreme Court has the power to declare a law passed by the legislature null and void if it encroaches upon the fundamental rights. It has exercised this power on several occasions. This shows how the Supreme Court has always served as the guardian of fundamental rights.

Further, the Supreme Court has also assumed additional duties under a concept called '**Public Interest Litigation**' (PIL), under which any citizen can bring any matter of general importance to the general public for consideration of the Supreme Court. If the Supreme Court finds that the executive has been failing in due discharge of its duties, it passes the required directions to the concerned authorities in government.

### Appellate Jurisdiction of the Supreme Court

**Appeal in Constitutional Matters:** Under Article 132 (1) of the Constitution of India, an appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court whether in civil, criminal or other proceedings, if the High Court certifies under Article 134-A that the case involves a substantial question of law as to the interpretation of this Constitution.

**Appeal in Civil cases:** Article 133 provides that an appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court only if High Court certifies under Article 134-A - (a) that the case involves a substantial question of law of general importance; and (b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

**Appeal in Criminal Cases:** Article 134 provides that an appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court.

This appeal can be in two ways: without a certificate of High Court and with a certificate of the High Court.

An appeal lies without the certificate if the High Court:

- (i) has on appeal reversed an order of acquittal of an accused person and sentenced him to death.
- (ii) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death.

### Advisory Jurisdiction of the Supreme Court

The Supreme Court of India also has advisory jurisdiction. Article 143 reads if at any time it appears to the President that - (a) a question of law or fact has arisen or is likely to arise and (b) the question is of such a nature and of such public importance that it is expedient to obtain the opinion of the



Supreme Court upon it, s/he may refer the question for the advisory opinion of the Court and the Court may after such hearing as it thinks fit, report to the President its opinion thereon.

In re Kerala Education Bill case (1958), the Supreme Court laid down the following principles: (a) The Supreme Court has under clause (1) a discretion in the matter and in proper case and for good reason to refuse to express any opinion on the question submitted to it; (b) It is for the President to decide what question should be referred to the Court and if he does not entertain any serious doubt on the other provisions it is not for any party to say that doubts arise also out of them; (c) The advisory opinion of the Supreme Court is not binding on courts because it is not a law within the meaning of Article 141.

But in re Special Court Bill case (1979), the Supreme Court held that its advisory jurisdiction is binding on all courts in the territory of India. It also held that the Supreme Court is under duty under Article 143 to give its advisory opinion if the question referred to it is not vague and of a political nature.

## A. Independence and Impartiality of the Supreme Court

‘Independence’ and ‘impartiality’ are most crucial concepts for any court. The two concepts are separate and distinct. ‘Impartiality’ refers to a state of mind and attitude of the court or tribunal in relation to the issues and the parties in a particular case, while ‘independence’ refers not only to the state of mind or attitude, but also to a status or relationship to others particularly to the executive branch of Government that rests on objective conditions or guarantees.

We now refer to some of the factors that contribute to ‘judicial impartiality and independence’ and thus help to ensure a ‘pure and efficient administration of justice between the individual and the State as well as between the two individuals’.

Though, the limits of judicial review and independence of Judiciary were the main issues addressed by the Constituent Assembly, other subsidiary questions were also raised during the debates. Some of the ancillary issues addressed included whether the jurisdiction of the Supreme Court, for example, be confined to ‘federal’ issues? Or should it have original and appellate jurisdiction in a wide variety of civil and criminal matters? Another question was whether India should have a dual system of courts, state and federal, as in the United States?

As discussed earlier, India is a parliamentary democracy having a federal constitution system. The Constitution of India has not provided for a dual system of courts. There is a single integrated system of courts for the Union as well as the States which administer both Union and State laws. Dr. B R Ambedkar, the architect of the Constitution of India was perhaps the greatest proponent in the Constituent Assembly for establishing ‘**one single integrated judiciary**’ capable of providing remedies in civil, criminal and constitutional law matters.

Thus, India has a unified judicial system with the Supreme Court at the apex. There are High Courts below the Supreme Court and under each High Court there exists a system of subordinate courts. The Supreme Court is the supreme interpreter of the Constitution and the guardian of various fundamental rights guaranteed by the Constitution. The Supreme Court also helps in maintaining uniformity of laws throughout the country.

The Constitution of India has ensured independence of judiciary through a number of provisions. These include: (1) subscribing to an oath or affirmation; (2) providing security of tenure for judges by ensuring that judges cannot be removed except through a special impeachment procedure;

### Review of its own Judgements

If the Supreme Court discovers that there are some new facts or evidences or if it is satisfied that some mistake or error took place in its previous decision, it has the power to review the case and alter its previous decisions. This is generally done when a review petition is filed. Normally, review is done by the same bench that originally decided the case. In a review petition, an error of substantial nature only can be reviewed.

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(3) retirement at the age of 65 years for judges of Supreme Court and 62 for judges of High Court, which is significantly higher than the retirement age in other public services; (4) protection of privileges, allowances, perks and emoluments by charging them to the Consolidated Fund of India; (5) the power to punish for their contempt; (6) not being subject to discussion on the floor of a legislature for their conduct in judicial matters, etc.

### Appointment of Judges of Supreme Court

The Constitutional provisions regarding the appointment of a judge is that only those persons can be appointed as a judge of the Supreme Court, who are citizens of India, and has been judge of a High Court or of two or more courts in succession at least for five years; or (b) has been an advocate of a High Court or of two or more such courts in succession at least for ten years; or (c) is a distinguished jurist, in the opinion of the President. However, most of the appointments to the Supreme Court have been made from sitting judges or Chief Justices of High Courts.

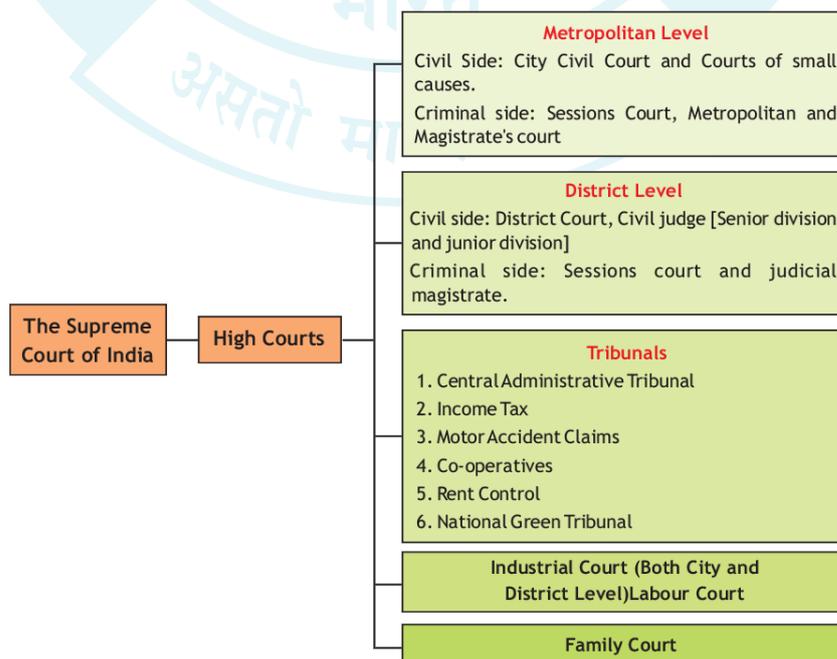
As Dr. Ambedkar said in the Constituent Assembly, it was the intention of the framers to create a judiciary and to give it ample independence so that it could act without fear or favour of the executive or anybody else. The judiciary through its collegium of judges enjoys considerable powers in the appointment of judges to the higher constitutional courts.

It has also been reported that the Government of India has initiated various measures to introduce reforms in the judiciary. It has proposed to enact a new law, 'The Judges Standards and Accountability Act', which seeks to introduce greater accountability in judiciary.

## B. Structure and Hierarchy of Courts in India

Below the Supreme Court and High Courts, there are subordinate courts such as civil courts, family courts, criminal courts and various other district courts which are involved in the administration of justice.

### HIERARCHY OF INDIAN LEGAL SYSTEM





The High Court stands at the head of the Judiciary in a State. It enjoys civil as well as criminal, ordinary as well as extraordinary and general as well as special jurisdiction. The institution of the High Court is fairly old as it dates back to 1862 when under the Indian High Court Act, 1861, High Courts were established at Calcutta, Bombay and Madras. In course of time, other High Courts have also been established.

The High Courts enjoy Original Jurisdiction in respect of testamentary, matrimonial and guardianship matters. Original Jurisdiction is conferred on the High Courts under various statutes. The High Courts also enjoy extraordinary jurisdiction under Article 226 to issue various writs. Each High Court has supervisory power over subordinate courts under it. Each High Court, being a court of record enjoys the power to punish for its contempt as well as of its subordinate courts.

### CONSTITUTION OF INDIA: HIGH COURTS

Article 214: High Courts for States.-There shall be a High Court for each State.

Article 215: High Courts to be courts of record.

Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

There is a High Court for each of the States, except Mizoram, Arunachal Pradesh and Nagaland which have the High Court of Assam at Guwahati as their common High Court; and Haryana, which has a common High Court (at Chandigarh) with Punjab; and Goa which is under Bombay High Court.

The Supreme Court has appellate jurisdiction over the High Courts and is the highest court of the land.

#### Subordinate Courts in India

The subordinate courts, at the level of districts and lower levels, have almost similar structure all over the country with slight variation. They deal with civil and criminal cases in accordance with their respective jurisdictions. At the lowest stage, the two branches of judicial system, civil and criminal, are bifurcated.

The Munsiff's Courts are the lowest civil courts. Above the Munsiffs are Subordinate Judges. The District Judge hears first appeals from the decisions of Subordinate Judges and also from the Munsiffs (unless they are transferred to a Subordinate Judge) and he possesses unlimited original jurisdiction, both civil and criminal.

The District and Sessions Judge is the highest judicial authority (civil and criminal) in the district since the enactment of the Code of Criminal Procedure, 1973 (CrPC). The criminal trials are conducted exclusively by Judicial Magistrates. The Chief Judicial Magistrate is the head of the criminal courts in a district. In metropolitan areas, there are Metropolitan Magistrates.

Appeals can be made from the District Court to the High Court.

#### Appointment of Subordinate Court Judges

The subordinate judiciary in each district is headed by a District and Sessions Judge.

The usual designations on the civil side are District Judge, Additional District Judge, and Civil Judge.

On the criminal side, the widely known designations are Sessions Judge, Additional Sessions

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Judge, Chief Judicial Magistrate, Judicial Magistrate etc.

The Governor in consultation with the High Court of that particular State appoints the district judges. A person who is not already in Government Service should have at least seven years experience at the bar to become eligible for the position of a District Judge (Article 233).

Appointment of persons other than District Judges to the judicial service of a State shall be made by the Governor in accordance with rules made there under. Besides the State Public Service Commission, the High Court has to be consulted in the matter of such appointments (Article 234).

### C. The Civil Process and functioning of Civil Courts

The Code of Civil Procedure 1908 (CPC) is a procedural law; it neither creates nor takes away any right. It is intended to regulate the procedure to be followed by civil courts. In other words, the CPC regulates the functioning of civil courts. Civil case is such that it is not criminal in nature. It is generally on property, business, personal domestic problems, divorces and such types where ones constitutional and personal rights are breached.

In brief, CPC lays down the procedure of filing a civil case; Powers of court to pass various orders; Court fees and stamps involved in filing of a case; Rights of the parties to a case (plaintiff & defendant); Jurisdiction and parameters of civil courts functioning; Specific rules for proceedings of a case; Right of Appeals, review or reference.

In fact, the first uniform Code of Civil Procedure was enacted in 1859. The present Code of Civil Procedure was enacted in 1908. The object of the Code is to consolidate and amend the laws relating to procedure of Civil Judicature. CPC is designed to further the ends of justice and is not a penal enactment for punishments and penalties.

The CPC can be divided into two parts:

- (a) the main body of the CPC containing 158 sections; and
- (b) the First Schedule, containing 51 Orders and Rules.

The Sections deal with matters of a substantive nature laying down the general principles of jurisdiction, while the First Schedule relates to the procedure and the method, manner and mode in which the jurisdiction may be exercised.

The body of the CPC containing sections is fundamental and cannot be amended except by the legislature.

The First Schedule of the CPC, containing Orders and Rules, on the other hand, can be amended by High Courts. The CPC has no retrospective operation.

## III. The Civil Court Structure

Disputes relating to property, breach of contracts, wrongs committed in money transactions, minor omissions etc. are categorized as civil wrongs and are subject to a civil process. In such cases civil suits should be instituted by the aggrieved persons. Courts of law administer justice by considering the nature of the wrong done. Civil wrongs are redressed before civil courts by granting injunctions or by payment of damages or compensation to the aggrieved party.



## A. Common Legal Terminologies

Some Common terminologies :

- Plaintiff- person who files the civil case against another
- Defendant- person against whom the case has been filed
- Plaint- document filed by the plaintiff containing his version of the case
- Written statement- reply to the plaint, filed by the defendant
- Appellant- one who files the appeal
- Respondent- other party against whom appeal has been filed
- Prosecution- (criminal)victim's side. They file the case
- Defence- from the side of accused
- Application- document seeking an urgent instant relief. It can be filed by the plaintiff or the defendant. It can be filed with the plaint/ written statement or even in between the proceedings. An application is always filed under a plaint(after a case has been filed). The person who files an application is known as an applicant and person against whom application is filed is known as respondent.
- Interim- in between the proceedings
- Arrested and Accused Person- When a person is arrested by the police during investigation merely on the basis of suspicion that he/she has committed an offence, the person is known as an arrested person. Arrest of a person does not necessarily amount to conviction.

When concrete evidence is gathered against an arrested person and a trial is initiated against the person, the person becomes an accused.

## B. Types of Jurisdiction

Jurisdiction means the extent of power of a court to entertain suits and applications.

### Types of jurisdiction

1. Territorial jurisdiction- The physical area or local limits within which a court exercises its jurisdiction is known as territorial jurisdiction.
2. Pecuniary jurisdiction- Jurisdiction defined on the basis of money claims that can be heard by a Court.
3. Original jurisdiction- The power of a Court to hear and try a case for the first time is known as original jurisdiction.
4. Appellate jurisdiction- The power of the Court to hear appeals from decisions of a lower court is known as appellate jurisdiction.
5. Jurisdiction as to subject matter- This is defined on the basis of types of cases that can be heard by a Court. Eg- Family law, Criminal law, etc

## C. Res sub judice and Res judicata in Code of Civil Procedure, 1908

- Res sub judice- Sec 10, Code of Civil Procedure, 1908- It implies that where the same subject matter is pending in a Court of law for adjudication between the same parties, any

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other Court is barred from entertaining that case as long as the first suit is going on.

- Res judicata- Sec 11, Code of Civil Procedure, 1908- It literally means a thing which has been decided. This doctrine operates as a bar to the trial of a subsequent suit on the same cause of action between the same parties.
- It is based on the principle of finality of litigation and conclusiveness of a decision.
- It is founded on the principle of justice, equity and good conscience.

Eg- X sues Y for breach of contract. The suit gets dismissed. X now files a suit for damages for breach of contract. The suit for damages is barred as it is res judicata.

Eg- X files a case for negligence in service against Y, his employee. Whilst this suit is pending, he also files another suit for claiming accounts from his employee. The subsequent suit is stayed as the matter is Res sub-judice.

- Once the first suit is determined the matters raised in the subsequent suit would be res judicata by reason of the decision in prior suit.

Difference between res judicata and Res Sub-Judice

- Res judicata refers to matters already decided where as res sub judice applies to matters pending in a Court of law.

## IV. Structure And Functioning of Criminal Courts in India

Administration of criminal justice is carried out through Magistrate Courts and Sessions Courts.

The Indian Penal Code, 1860 (IPC), together with other penal laws' constitutes India's substantive criminal law. The IPC draws inspiration from the English criminal law and has stood the test of time. However, it cannot be self-operative.

As a sequel to the IPC, a Code of Criminal Procedure, 1861 was enacted. The 1861 Code was repealed after which a new Code of Criminal Procedure, 1973 (CrPC) was enacted to carry out the process of the administration and enforcement of the substantive criminal law. The CrPC also controls and regulates the working of the machinery set-up for the investigation and trial of the offences.

In addition to the CrPC, the Indian Evidence Act of 1872 was enacted to guide the process of investigation and trial.

### Categories of Criminal Courts in India

#### Courts of Session

As per Section 9 of CrPC, the court is established by the State Government for every sessions division. The court is presided over by a Judge, appointed by the High Court of that particular state. The High Court may also appoint Additional Sessions Judges and Assistant Sessions Judges in this court. It has the power to impose any sentence including capital punishment.

#### Chief Judicial Magistrate and Additional Chief Judicial Magistrate, etc.

In every district (not being a metropolitan area), the High Court shall appoint a Judicial Magistrate of the First Class to be the Chief Judicial Magistrate. A Chief Judicial Magistrate may impose a sentence except (a) sentence of death, (b) imprisonment of life, or (c) imprisonment for a term exceeding seven years. A Chief Judicial Magistrate shall be subordinate to the Sessions Judge; and every other Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate.



## Courts of Judicial Magistrates

Section 11 of CrPC states that in every district (not being a metropolitan area), there shall be established as many Courts of Judicial Magistrates of the first class and of the second class and at such places, as the State Government may after consultation with the High Court, by notification specify. Courts of Judicial Magistrate of First Class are at the second lowest level of the Criminal Court structure in India. According to Section 15 of the CrPC, a Judicial Magistrate is under the general control of the Sessions Judge and is subordinate to the Chief Judicial Magistrate. In terms of Section 29 of the CrPC, a Judicial Magistrate of First Class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding 10 thousand rupees or of both.

The Court at the lowest level is called Judicial Magistrate of the Second Class. This Court is competent to try the case if the offence is punishable with imprisonment for a term not exceeding one year, or with fine not exceeding five thousand rupees, or with both. The First Class Magistrate is competent to try offences punishable with imprisonment for a term not exceeding three years or with fine up to ten thousand rupees. In States such as Kerala, the Second and the First Class Magistrate Courts have been unified. The Chief Judicial Magistrate can impose any fine and impose punishment up to seven years of imprisonment. The Assistant Sessions Judge is competent to impose punishments up to ten years imprisonment and impose any fine. The Sessions Judge can impose any punishment authorized by law, but the sentence of death passed by him should be subject to the confirmation by the High Court. (See for details Sections 28 and 29 of CrPC).

## Metropolitan Magistrates

The Courts of Metropolitan Magistrates were created by Section 16 of the Code of Criminal Procedure. The Court of Chief Metropolitan Magistrate and those of The Additional Chief Metropolitan Magistrates were created by Section 17 of the Code. Section 18 of the Code also provided for Special Metropolitan Magistrates. The towns having population exceeding one million could be declared as Metropolitan Areas. Metropolitan magistrate is under the general control of the Sessions Judge and is subordinate to the Chief Metropolitan Magistrate.

## Executive Magistrates

In every district and in every metropolitan area, the State Government may appoint as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate.

Belonging to the executive organs, these officers work in tandem with the police to maintain law and order in the city. They are also responsible for some judicial acts like traffic challans, registration of documents (like sale deed, wills, marriage certificates, birth and death certificates). They are known as District Magistrates (DM), Sub Divisional Magistrate (SDM), executive magistrate, special executive magistrates.

## A. Types of Offences

### Bailable and Non-bailable Offences

There is no definition of the term 'bail' under the CrPC although the terms 'bailable' and 'non-bailable' have been defined. The object of detention of an accused is primarily to secure his/her physical appearance at the time of trial and at the time of sentence if found guilty. However, the grant of bail has been a matter of judicial discretion. The Supreme Court of India held that bail covers both release on one's own bond, with or without sureties.

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CrPC has classified all offences into 'bailable' and 'non-bailable' offences. The first schedule read with Section 2(a) of the CrPC, it can be generally stated that all serious offences, i.e., offences punishable with imprisonment for three years or more have been considered as **non-bailable offences**. This general rule can be suitably modified according to specific needs.

If a person accused of a bailable offence is arrested or detained without warrant he/she has a right to be released on bail (Section 436 of Cr P.C). But if the offence is non-bailable that does not mean that the person accused of such offence shall not be released on bail. In such a case bail is not a matter of right, but only a privilege to be granted at the discretion of the court.

The power to cancel bail has been given to the court and not to a police officer. The court which granted the bail can alone cancel it.

### Anticipatory Bail

Section 438 of the CrPC enables the superior courts to grant anticipatory bail. An anticipatory bail can be applied for when the person has reason to believe that he/ she may be arrested. An application for anticipatory bail can be made to the Sessions Court, the High Court or even the Supreme Court. However, normally it is to be presumed that the Court of Sessions would be first approached for grant of anticipatory bail. The court may consider the following aspects when considering an application for anticipatory bail: (i) the nature and gravity of accusation; (ii) the antecedents of the applicant; (iii) the possibility that the accused may flee from justice; and (iv) the accusation appears to be aimed at humiliating the applicant.

### Cognizable and Non-cognizable Offences

The CrPC has not given any test or criterion to determine cognizable or non-cognizable offences. The First Schedule of CrPC, however, indicates that all offences punishable with imprisonment for not less than three years are taken as serious offences and are treated as cognizable. Offences such as murder, robbery, dacoity, rape and kidnapping are cognizable offences. Offence of bigamy is punishable with more than five years imprisonment, yet they have been included in the category of non-cognizable offences.

The classification of offences as 'cognizable' and 'non-cognizable' is apparently and essentially intended to indicate as to whether the arrest in respect of an offence can be made with or without a warrant [Section 2 (c) and (l)]. The classification presupposes the need of immediate action in respect of every cognizable offence. However, in the case of non-cognizable offences, warrant is required for the arrest of the accused.

### Compoundable and Non-compoundable offences

In certain offences, the State which conducts the prosecution and the accused can come to an arrangement where, instead of being imprisoned, the accused can pay a fine. These are compoundable offences. The most common example of this is where you get caught without a ticket on a bus or a train and have to pay a fine. In this case, the officer fining you is in fact compounding your offence. Of course not all offences are compoundable; it would not be desirable that murderers should be able to compound their offences.

## B. Criminal Investigation and First Information Report (FIR)

FIR is the abbreviated form of First Information Report. It is the information recorded by the police officer on duty, given either by the aggrieved person or any other person, about the commission of cognizable offence. The statement of the informant as recorded under Section 154 will be treated as the FIR. The main object of the FIR from point of view of the informant is to set the criminal law in motion (Hasib v. State of Bihar, AIR 1972 SC 283). The police cannot



refuse to register the complaint. The power of police to lodge an FIR cannot be usurped by the Magistrate. If any person is aggrieved by a refusal on the part of the Police officer in charge of police station to record the information, he may send by post the substance of such information in writing to the Superintendent of Police concerned [Section 154(3)].

FIR can be filed in the police station of the concerned area in whose jurisdiction the offence has occurred. FIR can be registered either on written or verbal statement of complainant which is later reduced in writing by police officer and is signed by the complainant. It must be made to the officer-in-charge of the police station and if he is not available, the Assistant Sub-Inspector is competent to enter the same upon the investigation. On the basis of the FIR, the police starts its investigation.

Section 154 of the CrPC provides for the manner in which such information is to be recorded. The Following could be drawn from Section 154 (1) of the CrPC:

### Some Important Facts about FIR

1. Information of cognizable offence can be given by any person to police having jurisdiction in the area where the commission of crime took place.
2. FIR is not substantive piece of evidence. It has to be duly proved as any other fact by evidence and can be used as relevant fact in order to prove the substantive issue.
3. Police officer shall reduce such information in writing.
4. Informant's signature must be obtained.
5. Contents of such information should be read over to Informant and must be entered in record by the police officer.
6. Police officer shall give a copy of such information to the informant forthwith.
7. Original FIR must be sent to the Magistrate forthwith.
8. Despite a police officer refusing to register an FIR, the aggrieved person can send such information to the Superintendent of Police by post.
9. FIR is to be made immediately after the occurrence of an incident, when the memory of the person giving it is fresh in his mind about the occurrence.
10. Telephonic information from an ascertained person which discloses commission of the cognizable offence would also constitute FIR.
11. The Government has formulated the provisions of **Zero FIR** in adverse situations, in order to protect the rights of the people. According to this, the victim can file his complaint in any police station for any offence for a quick action and the case can be transferred to the concerned police station thereafter.

### Information to the Police as to Non-cognizable offence

Section 155 of CrPC provides that if any person gives information to an officer in charge of a police station of the commission of non-cognizable offence, the officer shall enter or cause to be entered the substance of the information in a book prescribed for this purpose. The Police officer has no further duty unless Magistrate directs the Police officer to investigate the case. Generally speaking, non-cognizable offences are more or less considered as private criminal wrongs. The basic rule is that no police officer shall investigate a non-cognizable case without the order of a magistrate having power to try such a case or commit the case for trial.

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In a situation where a criminal case consists of both cognizable and non-cognizable offences, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

### Arrest and Rights of the Arrested Person

Under Section 57/167 of the CrPC, the accused must be produced before a Magistrate within 24 hours of arrest. If the investigation cannot be concluded within this time, a Magistrate may order for the remand of the arrested person to police custody u/s 167 (3) of the Cr.P.C. The Magistrate should be fully satisfied that there is good ground to remand the accused to police custody.

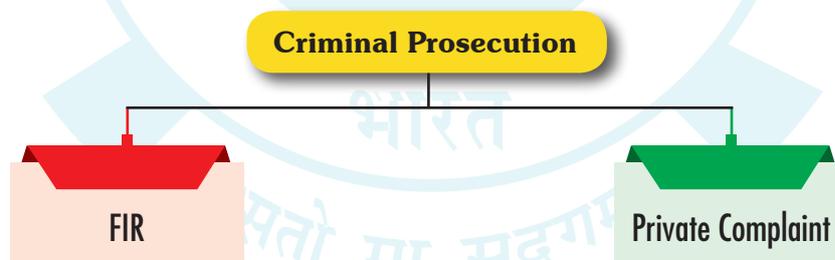
Under Section 50 of the CrPC, the arrested person is to be informed of the particulars of the offence or any other grounds for arrest. Further, if arrested without a warrant for an offence which is bailable, he/she must be informed that he/she is entitled to be released on bail.

Under Section 50A of the CrPC, the arrested person is entitled to have a person nominated by him informed about the arrest and moreover the Magistrate is required to satisfy himself that the provisions of this Section are complied with. The Supreme Court has also recognized the right of the arrested person to have access to a lawyer in the case of Nandini Satpathy [(1978) 2SCC 424] and DK Basu [(1997) 1 SCC 410].

Under Section 51 CrPC, a person who is arrested may be searched and a list shall be prepared of any articles found on his person. This personal search memo is especially important if there is any allegation of recovery of incriminating material from the person of the accused.

Under Section 54 CrPC, the arrested person can request that he/she be examined by a medical practitioner if the examination of his person will either disprove the commission of the offence by him, or will prove the commission of any offence against his body by another person. Under Section 53 and 53A CrPC, the police can send the arrested person for medical examination.

### C. The Criminal Process - Investigation and Prosecution



Criminal prosecution has generally two streams in India. The first relates to criminal cases which are initiated on the basis of police report or FIRs lodged with the police, whereas the second stream relates to cases that are initiated on the basis of private complaints. In respect of the first stream, prosecution is conducted by the Director of Public Prosecution through public prosecutors. Specifically Section 225 of the CrPC provides that every trial before a Sessions Court shall be conducted by a public prosecutor.

In addition to this, private parties can also conduct the cases through their own lawyers in respect of private complaints. Private complaint under Section 138 of the Negotiable Instruments Act, 1881 is one such example. Thus, a 'private complaint' basically means a complaint which is directly filed by the complainant in the court.

The Magistrate has the power to take cognizance of such private complaint under Section 190(1)



(a) of the Cr.PC

The CrPC elaborates the procedure to be followed in every investigation, inquiry and trial, for every offence under the Indian Penal Code 1860 or under any other law. It divides the procedure to be followed for administration of criminal justice into three stages, namely: **investigation**, **inquiry** and **trial**.

In brief, the objective of investigation is to collect evidence for the purpose of any inquiry or trial. Investigation is a preliminary stage enquiry conducted by the Police and usually starts after the recording of a First Information Report (FIR) in the Police Station (Section 154-155 of the Code). If the officer-in-charge of a Police Station suspects the commission of an offence from statement of FIR or when the magistrate directs or otherwise, the officer or any subordinate officer is duty-bound to proceed to the spot to investigate the facts and circumstances of the case and if necessary, take measures for the discovery and arrest of the offender.

Investigation primarily consists of ascertaining facts and circumstances of the case. It includes:

- i. The collection of evidence;
- ii. Inspection of the place of occurrence of the commission of the crime;
- iii. Ascertainment of facts and circumstances;
- iv. Discovery of any article or object used for the commission of the crime;
- v. Arrest of the suspected offender;
- vi. Interrogation and examination of various persons including the accused and taking of their statements in writing;
- vii. Search of places or seizure of things considered necessary for the investigation and considered to be material at the time of the trial, etc.

Investigation ends in a police report to the Magistrate. Once the investigation is completed, the matter will be brought before the Magistrate or the concerned court.

Inquiry is the second stage of the process wherein a Magistrate seeks to find out whether the accused should be committed to the Sessions or discharged. According to Section 2 (g) of the CrPC, 'inquiry' means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court. In other words, inquiry refers to proceedings before a Magistrate prior to the framing of the charge which does not result in conviction of the accused.

'Trial' is judicial determination of a person's guilt or innocence. Trial is a proceeding which involves examination and determination of the cause by a judicial tribunal, and which ends in conviction or acquittal of the accused.

In India, the system of criminal trial envisaged by the CrPC is the adversary system based on the accusatorial method. In this system the prosecutor representing the State (or the people) accuses the defendant (the accused person) of the commission of some crime; the law requires him to prove his case beyond reasonable doubt. The accused person is presumed to be innocent unless his guilt is proved beyond reasonable doubt (presumption of innocence). Presumption of innocence is one of the cardinal principles of the Indian criminal justice system.

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### Investigation, Inquiry, Trial

The three terms denote three different stages of a criminal case. The first stage, is reached when a Police officer either by himself or under order of a Magistrate investigates into a case. If the Police officer finds that no offence has been committed, the officer reports the fact to the Magistrate who drops the proceedings. If the Magistrate is of a contrary opinion, the matter will be taken up for further inquiry. Then begins the second stage, which is an inquiry into the case by Magistrate. If no prima facie case is made out, the Magistrate dismisses the complaint or discharges the accused. If a prima facie case is made out, the Magistrate frames the charges. The third and final stage is reached when the charge is framed and the trial begins. The Magistrate may conduct the trial and may either convict the accused, or acquit him/ her. In cases of serious offences such as murder or dacoity the trial takes place before the Sessions Court.

### Warrant, Summons and Summary Trials

Under the CrPC, criminal trials have been categorized into two types:

- Warrant case
- Summons case

A Warrant case relates to offences punishable with death, imprisonment for life or imprisonment for a term exceeding two years. The CrPC provides for two types of procedure for the trial of warrant cases by a Magistrate, triable by a Magistrate, viz., those instituted upon a Police report (Section 238-243) and those instituted otherwise than on Police report i.e., upon complaints (Section 238-243).

Section 2(x) of the CrPC defines 'warrant-case' as a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years.

In respect of cases instituted on Police report, it provides for the Magistrate to discharge the accused upon consideration of the Police report and attached documents, if there is no legal basis for the case. In respect of the cases instituted otherwise than on Police report, the Magistrate hears the prosecution and takes the evidence. If there is no case, the accused is discharged. If the accused is not discharged, the Magistrate holds regular trial after framing the charge, etc. In respect of offences punishable with death, life imprisonment or imprisonment for a term exceeding seven years, the trial is conducted in a Sessions Court after being committed or forwarded to the court by a Magistrate.

A 'summons case' means a case relating to an offence not being a warrant case, implying all cases relating to offences punishable with imprisonment not exceeding two years. In respect of summons cases, there is no need to frame a charge. The court gives substance of the accusation, which is called 'notice' to the accused when the person appears in pursuance of the summons. The court has the power to convert a summons case into a warrant case, if the Magistrate thinks that it is in the interest of justice.

'Summary trial' is the name given to trials where cases are disposed of speedily and the procedure is simplified. In a summary trial, only small offences are tried and complicated cases are reserved for summons or warrant trial. Sections 260 to 265 of the Code of Criminal Procedure, 1973 (Cr.P.C.) deal with the provisions relating to summary hearings.

A criminal trial will have the following distinct stages:

#### i. Framing of charge or issuance of notice

Framing the charges and issuing notice indicates the beginning of a trial. At this stage, the judge is required to sift and weigh the evidence for the purpose of finding out whether or not a prima



facie case against the accused has been made out or not. If the materials placed before the court discloses the commission of an offence, the court frames the charge and proceeds with the trial. On the other hand, if the judge considers that there is no sufficient ground for proceeding, the judge discharges the accused and records the reasons for doing so. Again, the charge shall be read out and explained to the accused and the accused shall be asked whether he/ she pleads guilty of the offence charged with or claims to be tried.

### ii. Recording of prosecution evidence

After the charge is framed, the prosecution is asked to examine its witnesses before the court. The statement of witnesses is taken under an oath. This is called examination-in-chief. The accused has a right to cross-examine all the witnesses presented by the prosecution. Section 309 of the CrPC provides that the proceeding shall be held as expeditiously as possible and in particular, when the examination of witnesses has once begun, the same shall be continued day-to-day until all the witnesses in attendance have been examined.

### iii. Statement of accused

The court has powers to examine the accused at any stage of inquiry or trial for the purpose of eliciting any explanation against incriminating circumstances appearing before it. However, it is mandatory for the court to question the accused after examining the evidence of the prosecution if it incriminates the accused. This examination is without oath and before the accused enters a defence. The purpose of this examination is to give the accused a reasonable opportunity to explain the incriminating facts and circumstances in the case.

### iv. Defence evidence

If after taking the evidence for the prosecution, examining the accused and hearing the prosecution and defence, the judge considers that there is no evidence that the accused has committed the offence, the judge is required to record the order of acquittal. However, when the accused is not acquitted for absence of evidence, a defence must be entered and evidence adduced in its support. The accused may produce witnesses who may be willing to depose in support of the defence. The accused is also a competent witness under the law.

The accused may apply for the issue of process for compelling attendance of any witness or the production of any document or thing. The witnesses produced by accused are cross-examined by the prosecution. The accused person is entitled to present evidence in case he/she so desires after recording of the statement.

Most accused persons do not lead defence evidence. One of the major reasons for this is that India follows the common law system where the burden of proof is on the prosecution and the degree of proof required in a criminal trial is beyond reasonable doubt.

### v. Final arguments

This is the final stage of the trial. The provisions of the CrPC provide that when examination of the witnesses for the defence, if any, is complete, the prosecutor shall sum up the prosecution case and the accused is entitled to reply.

### vi. Judgement

After conclusion of arguments by the prosecutor and defence, the judge pronounces his judgment in the trial. If after hearing the prosecution and the defence, the judge considers that there is no evidence to indicate that the accused has committed the offence with which he/ she is charged, the judge can record an order of acquittal.

If the judgment is one of conviction and the judge does not proceed to invoke the benevolent provisions of the Probation of Offenders Act, 1958 and the judge shall hear the accused on the

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question of the appropriate sentence.

Under the CrPC, an accused can also be withdrawn from prosecution at any stage of trial with the permission of the court. If the accused is allowed to be withdrawn from prosecution prior to framing of charge, it will be considered as a discharge, whereas if such withdrawal is allowed after framing of charge, it will be treated as an acquittal.

#### *Age and Criminal Liability*

Age	Whether liable
Uptil 7 yrs	No criminal liability
7-12 yrs	Mental agility of child is assessed
12-16 yrs	A child is liable under the Juvenile Justice Act
16-18 yrs	Child is liable under Juvenile Justice Act but if the crime committed is heinous in nature, then the child can be tried as an adult under IPC and other criminal legislations.
Above 18 yrs	Criminally liable under IPC and other criminal legislations.

#### **D. Doctrine of autrefois acquit and autrefois convict (i.e. previously acquitted or previously convicted)**

According to this doctrine, if a person is tried and acquitted or convicted of an offence he/ she cannot be tried again for the same offence or on the same facts for any other offence. This doctrine has been substantially incorporated in the Article 20(2) of the Constitution of India and is also embodied in Section 300 of CrPC. This could be preliminary plea taken as a bar to criminal trial. Some more instances could be where the accused may raise certain preliminary pleas, viz., court does not have the jurisdiction, or competence to try the accused person or barred by the limitation of time prescribed by law.

#### **Accused and the Right against Self-incrimination**

The right against self-incrimination is provided under Article 20(3) of the Constitution of India, which stipulates that 'No person accused of an offence shall be compelled to be a witness against himself'. However, the following restrictions are placed on the exercise of this right:

- Only such documents/statements are protected as are within the personal knowledge of the accused, and thus records that are maintained in fulfillment of a statutory requirement may not be protected. Further, the accused can be required to give a handwriting sample/blood/ DNA sample as the same are not within the 'personal knowledge' of the accused.
- The protection against Article 20(3) protects the accused only against being compelled to produce documents. The Supreme Court has held that a search and seizure does not amount to 'compulsion to produce' and is thus outside the protection of Article 20(3).
- Summons under Section 91 CrPC cannot be issued to an accused person, however, a general search warrant under Section 93(1)(c) CrPC is not protected under Article 20(3) of the Constitution of India.



## E. Function and Role of Police

Police is one of the most omnipresent organisation of the society. The policemen, therefore, happen to be the most visible representatives of the government. In an hour of need, danger, crisis and difficulty, when a citizen does not know, what to do and whom to approach, the police station and a policeman happens to be the most appropriate and approachable unit and person. The police are expected to be the most accessible, interactive and dynamic organisation of any society. Their roles, functions and duties in the society are natural to be varied, and multifarious on the one hand; and complicated, knotty and complex on the other. Broadly speaking the twin roles, which the police are expected to play in a society are maintenance of law and maintenance of order. However, the ramifications of these two duties are numerous, which result in making a large inventory of duties, functions, powers, roles and responsibilities of the police organisation.

The role and functions of the Police in general are:

- a. to uphold and enforce the law impartially, and to protect life, liberty, of the public;
- b. to promote and preserve public order;
- c. to protect internal security, to prevent and control terrorist activities, breaches of communal harmony, militant activities and other situations affecting Internal Security;
- d. to protect public against acts of vandalism, violence or any kind of attack;
- e. to prevent crimes, and reduce the opportunities for the commission of crimes through their own preventive action and measures as well as by aiding and cooperating with other relevant agencies;
- f. to accurately register all complaints brought to them by a complainant or his representative;
- g. to register and investigate all cognizable offences coming to their notice through such complaints or otherwise;
- h. to create and maintain a feeling of security in the community;
- i. to provide, as first responders, all possible help to people in situations arising out of natural or man-made disasters;
- j. to collect intelligence relating to matters affecting public peace, and all kind of crimes including social offences, communalism, extremism, terrorism and other matters relating to national security, and disseminate the same to all concerned agencies, besides acting, as appropriate on it themselves;
- k. To take charge, as a police officer on duty, of all unclaimed property and take action for their safe custody and disposal in accordance with the procedure prescribed;
- l. To train, motivate and ensure welfare of police personnel;

Police Force comes under the State Government and comes under the Executive realm. The Police Act, 1861 describes the structure and function of the police in general.

## V. Other Courts in India

In addition to the civil and criminal courts outlined and discussed above, there are a number of special courts and tribunals established in India to govern specific areas of law. A few such examples include the Motor Accidents Claims Tribunal (MACT), Rent Control Tribunal, Railway Claims Tribunal, Debt Recovery Tribunal (DRT), Central Excise and Service Tax Appellate Tribunal (CESTAT), Income Tax Appellate Tribunal (ITAT), National Green Tribunal (NGT), etc. The purpose of these special courts is to bring efficiency in the judiciary by lowering the case burdens on the traditional courts while providing a quick relief to the parties involved.



## A. Family Courts

The Family Courts in India deal with matters related to matrimonial relief which includes nullity of marriage, judicial separation, divorce, restitution of conjugal rights, declaration as to the validity of marriage and matrimonial status of the person, property of the spouses or any of them and declaration as to the legitimacy of any person, guardianship of a person or custody of any minor, maintenance including the proceedings under the CrPC.

The Family Courts Act, 1984 in India was enacted on 14 September, 1984 to provide for the family courts with a view to promoting conciliation and secure speedy settlement of disputes relating to marriage and family affairs. The objective was to take family and marital disputes away from the overcrowded intimidating and congested environment of traditional courts of law and bring them to congenial and sympathetic surroundings. The aim was 'conciliation' between the estranged family members and not 'confrontation'. The emphasis was on a non- adversarial method of resolving family disputes.

The Act stipulates that a party is not entitled to be represented by a lawyer without the express permission of the Court. However, invariably the court grants this permission and usually it is a lawyer which represents the parties. The most unique aspect regarding the proceedings before the Family Court is that they are first referred to conciliation and only when the conciliation proceedings fail to resolve the issue successfully, will the matter be taken up for trial by the Court. The Conciliators are professionals who are appointed by the Court. Once a final order is passed, the aggrieved party has an option of filing an appeal before the High Court. Such appeal is to be heard by a bench consisting of two judges.

## B. Administrative Tribunals

With a view to easing the congestion of pending cases in various High Courts and other Courts in the country, Parliament enacted the Administrative Tribunals Act, 1985 which came into force in July, 1985. Central Administrative Tribunals were established in November, 1985 at Delhi, Mumbai, Calcutta and Allahabad. As of now, there are 17 Benches of the Tribunal located throughout the country with 33 Division Benches. In addition, circuit sittings are held at Nagpur, Goa, Aurangabad, Jammu, Shimla, Indore, Gwalior, Bilaspur, Ranchi, Pondicherry, Gangtok, Port Blair, Shillong, Agartala, Kohima, Imphal, Itanagar, Aizwal and Nainital.

The Central Administrative Tribunal (CAT) has been established for adjudication of disputes with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or other local authorities within the territory of India or under the control of Government of India and for matters connected therewith or incidental thereto. **Article 323 A has been added by the 42nd amendment of the Constitution of India.** The conditions of service of Chairman, Vice-Chairmen and Members are governed by the provisions of the Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairmen and Members), Rule, 1985, as amended from time to time.

## V. Exercises

Based on your understanding, answer the following questions:

Q-1 Answer the following questions briefly-

1. What are the two grounds on which the Supreme Court can strike down a legislation aimed at amending the Constitution?
2. What were the principles laid down by the Supreme Court regarding advisory jurisdiction of the Supreme Court in (i) Re Kerala Education Bill case (1958), (ii) re Special Court Bill case (1979)?



3. Give the Constitutional provisions regarding the appointment of a judge to the Supreme Court.
  4. Write a short note on the Code of Civil Procedure, 1908.
  5. What is jurisdiction? Explain any two types of jurisdiction.
- Q-2** Answer the following questions in detail-
1. Explain the appellate jurisdiction of the Supreme Court of India.
  2. Discuss the three stages in the procedure for administration of Criminal Justice in India.
  3. Elaborate the six stages in a criminal trial.
  4. Discuss the functions performed by Police.
- Q-3** Ms. Anukriti went to the police station to get an FIR filed in relation to her chain snatching. The officer in charge of the police station was not available.
- (i) Who is competent to file the FIR in absence of the officer in charge?
  - (ii) What if the officer in charge was present but refused to file the FIR? What remedy is available to Ms. Anukriti?
- Q-4** Mr. Ranjeet Sahay, a journalist was unhappy over a judgement given by the Supreme Court. In his TV programme he openly criticized the judgment given by the Supreme Court. Is it allowed? Can Supreme Court take any action against him? If so, mention the relevant article.
- Q-5** Varun is 9 years old. While playing with his friends there was a quarrel amongst them and he ended up hitting one of the boys with a rock on the head. He is very young and lacks maturity to understand the gravity and consequences of his actions.
- (i) Would Varun be punished for the criminal act?
  - (ii) Discuss the relation between age and criminal liability.
- Q-6** In 2010, Madhu was arrested for attempt to murder. After the trial, she was acquitted by the court due to lack of evidence. In 2021, can Madhu be tried again for the same offence in which she was earlier acquitted? Discuss with relevant doctrine and provision of law.
- Q-7** Sanjay is arrested in relation to a case of theft. The police asks him to submit the following-
- (a) DNA sample
  - (b) Handwriting sample
  - (c) His personal diary
  - (d) He is forced to be a witness against himself.
- (i) Which among the above mentioned he cannot be asked to submit?
  - (ii) Discuss in context to the rights of the accused and arrested.
- Q-8** There is criminal dispute where the maximum punishment could be capital punishment.
- (i) Which court is competent to hear the case?
  - (ii) Make a flow chart of hierarchy of criminal courts in India.

## Activities

- Q-1** Divide your class into groups. Each group can choose a topic relating to Independence of Judiciary. You can collect information from newspapers, social media, internet, television news or other sources. Present your findings to the class.
- Q-2** Divide your class into four groups. Each group can choose one country mentioned below to find proportion of judges and cases with them and also identify the percentage of female judges. Following countries may be appropriate for the study: India, US, UK and Australia.



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