



Indian Legal System



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Introduction

- India has the oldest judiciary in the world. No other judicial system has a more ancient or exalted pedigree.
- The present judicial system of India was not a sudden creation. It has been evolved as the result of slow and gradual process and bears the imprint of the different period of Indian history.
- The judicial system deals with the administration of the laws through the agency of the courts. The system provides the machinery for the resolving of the disputes on account of which the aggrieved party approaches the court.

Indian Legal System

Indian law refers to the system of law which operates in India. It is largely based on English common law. Various Acts introduced by the British are still in effect in modified form today. Much of contemporary Indian law shows substantial European and American influence.

□ Law?

Law is a set of rules recognised by the state in the administration of justice, which governs the government, the relation between the government and its citizen and also the relation between the citizens.

History of Legal system In Ancient India

Manu's **Manusmriti**, Brihaspati's **Dharma Shastra's**, Narada the **Smritis**, and Kautilya the **Arthshastra** were considered as the Ancient texts of law.

Civil judicial proceeding in ancient India

- As at present commenced ordinarily with the filing of a plaint or what was known as **Purva Paksha** before a competent authority.
- Written statements known as **Uttara Paksha** were required to be filed by the defendants and the rules enjoined that they must not be vague and must meet all the points of the plaint.
- Normally, parties were required to produce their witnesses.
- Different modes of proof for substantiating allegations were prescribed.
- On the conclusion of the trial, judgment known as **Nirnaya** was pronounced and the successful party became entitled to **Jayapatra** or a document of success, Execution of the decrees could entail imprisonment, sale, fine and demand for additional security.

History of Legal system In Ancient India

Criminal judicial proceeding in ancient India

- In criminal law there was an elaborate classification of offences. Apart from offences like rape, dacoity and the like, there were other offence like not running to the rescue of another person in distress.
- Punishment was prescribed for causing damage to trees in city parks, to trees providing shades, to trees bearing flowers and fruits and to trees in holy places.
- It was an offence for a judge to give a wrong decision out of corrupt motive.
- Perjury by a witness attracted severe penalty.
- There were six types of punishment, namely, fine, reprimand, torture, imprisonment, death and banishment.
- Theft was classified into three kinds according to the value of the thing stolen.

Hierarchy of Courts in ancient India

- ❑ Manu prescribed the following oath for parties and witnesses: “Let the Judge cause a Brahmin to swear by his truth or sat, a Kshatriya by his chariot or the animal he rides or by his weapons, a Vaishya by his cattle, grain and gold, and a Shudra by imprecating on his head the guilt of all grievous offences”.
- ❑ According to Brihaspati Smiriti, there was a hierarchy of courts in Ancient India beginning with the family Courts and ending with the King. The lowest was the family arbitrator. The next higher court was that of the judge; the next of the Chief Justice who was called adhyaksha; and at the top was the King’s court.
- ❑ The jurisdiction of each was determined by the importance of the dispute, the minor disputes being decided by the lowest court and the most important by the king. The decision of each higher Court superseded that of the court below.

Hierarchy of Courts Continued.....

A very strict code of judicial conduct was prescribed for the king. He was required to decide cases in open trial and in the court-room, and his dress and demeanour were to be such as not to overawe the litigants.

- He was required to take the oath of impartiality, and decide cases without bias or attachment.
- According to **Katyayana**: "The king should enter the court-room modestly dressed, take his seat facing east, and with an attentive mind hear the suits of his litigants. He should act under the guidance of his Chief Justice (Praadvivaka), judges, ministers and the Brahmana members of his council. A king who dispenses justice in this manner and according to law resides in heaven".
- According to **Brihaspati**: "A judge should decide cases without any consideration of personal gain or any kind of personal bias; and his decision should be in accordance with the procedure prescribed by the texts. A judge who performs his judicial duties in this manner achieves the same spiritual merit as a person performing a Yajna".

Hierarchy of Courts Continued.....

The strictest precautions were taken to ensure the impartiality of judges. A trial had to be in open court and judges were forbidden to talk to the parties privately while the suit was pending because it was recognised that a private hearing may lead to partiality

- Another safeguard of judicial integrity was that suits could not be heard by a single judge, even if he was the king. Our ancients realized that when two minds confer, there is less chance of corruption or error, and they provided that the King must sit with his counsellors when deciding cases, and judges must sit in benches of uneven numbers.
- Corruption was regarded as a heinous offence and all the authorities are unanimous in prescribing the severest punishment on a dishonest judge. Brihaspati says: *“A judge should be banished from the realm if he takes bribes and thereby perpetrates injustice and betrays the confidence reposed in him by a trusting public”*.

History of Legal System in Medieval India

It is the period of Islam Kings and Sultans. The sovereignty in Muslim state essentially belonged to the god. The administration of justice was regarded by the Muslim kings as a religious duty. They considered themselves as God's humble servants.

- ❑ **Shershah** considered justice as the most excellent of religious rites.
- ❑ **Jahangir** regarded daily administration of justice in public as one of his most sacred duties.
- ❑ **Shahjahan** once remarked as justice was the mainstay of his government.
- ❑ Quran was considered as the main text of law.
- ❑ Quazis were appointed to assist the king in administration of justice and they held the office till the pleasure of the king.

- The ideal of justice under Islam was one of the highest in the Middle ages. The Prophet himself set the standards. He said in the Quran, "*Justice is the balance of God upon earth in which things when weighed are not by a particle less or more. And he appointed the balance that he should not transgress in respect to the balance; wherefore observe a just weight and diminish not the balance*".
- Individual Sultans had very high ideals of justice. But unfortunately the administration of justice under the Sultans worked fitfully. The reason was that the outstanding feature of the entire Sultanate period was confusion and chaos. No Sultan felt secure for a long time. One dynasty was replaced by another within a comparatively short period, and the manner of replacement was violent. Consequently the quality of justice depended very much on the personality of the sovereign.

- Muslim law in India was incapable of growth and change, except so far as it reflected changes of juristic thought in Arabia or Egypt because no Indian Emperor's or Qazi's decisions was ever considered authoritative enough to lay down a legal principle to elucidate any obscurity in the Quran, or supplement the Quranic law by following the line of its obvious intention in respect of cases not explicitly provided for by it. Hence, it became necessary for Indian Qazis to have at their elbow a digest of Islamic law and precedent compiled from the accepted Arabic writer.
- After the conquest of Bengal by the British the process of replacement of the Mughal system of justice by the British began. But it took a long time.
- The Mughal judicial system has left its imprint on the present system, and a good part of our legal terminology is borrowed from it. Our civil courts of first instance and called Munsifs, the plaintiff and the defendant are termed Muddai and Muddaliya and scores of other legal terms remind us of the great days of the Mughal Empire.

Legal system During British Era

- ❑ The system of administration of justice and laws we have today are the product of British rule in India.
- ❑ Not less than 4 Law commissions and committees were appointed by the British rulers during 1834-1947 to give shape to the system.
- ❑ The common law system means the system of law based on recorded judicial precedents came in to India with the British East India Company.
- ❑ The company was granted charter by King George I in 1726 to establish **Mayor's Court** in Madras, Bombay, and Calcutta.
- ❑ Following the first war of Independence in 1857 the control of company territories in India passed to the British crown.
- ❑ The next big shift in the Indian legal system was the establishment of **Supreme Courts** replacing the existing Mayor's courts.

Legal system During British Era

The doors of newly created SC were closed to the Indian practitioners, right of audience was also limited to the members of English, Irish and Scottish professionals. Later the Legal Practitioners Act, 1846 which opened up the profession regardless of nationality or religion to all.

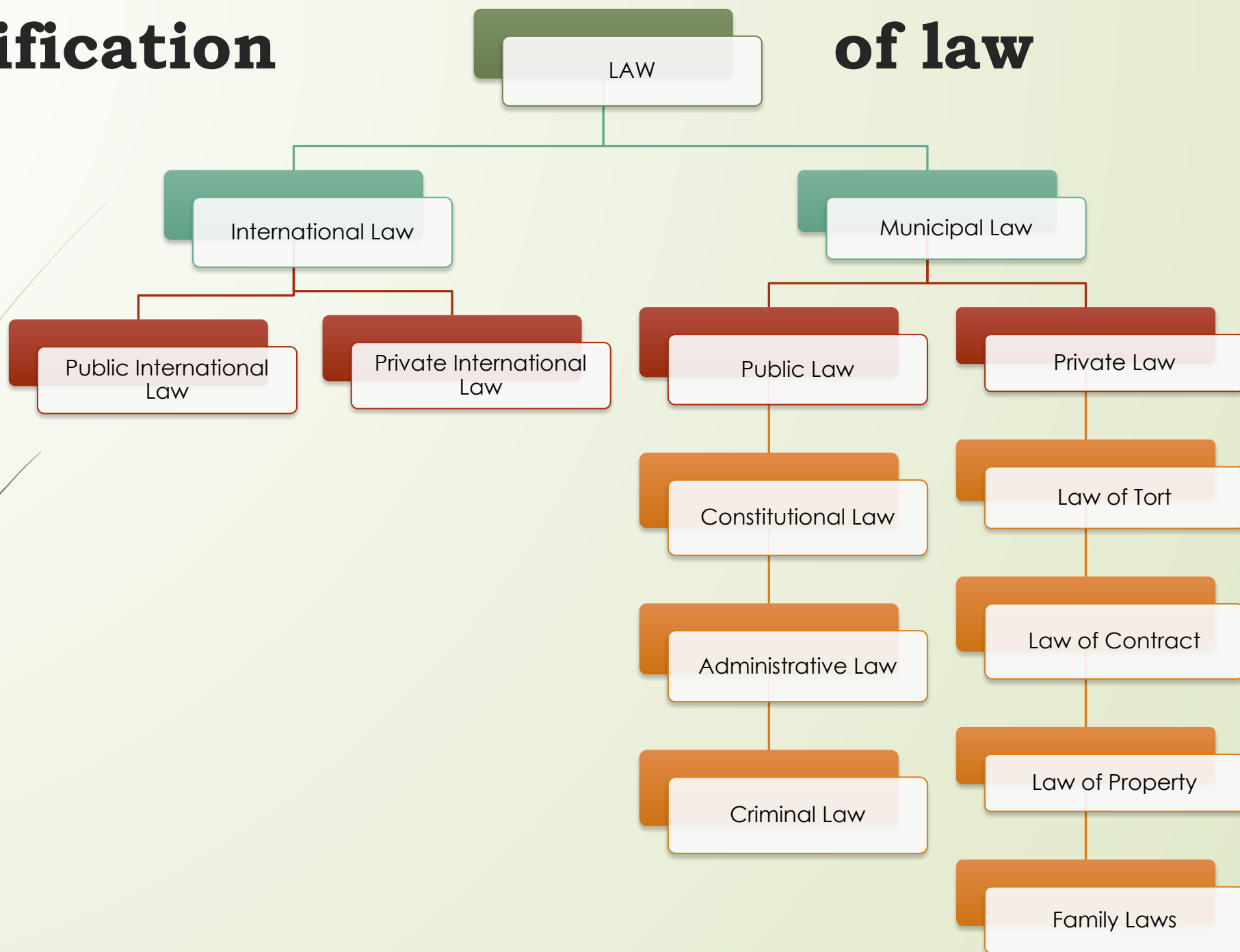
- ❑ These courts were later converted in to the **first High Courts** through letters of patent authorised by the Indian High Courts Act passed by British parliament in 1862.
- ❑ During British Raj the **Privy Council** acted as the highest court of appeal. Cases before the council were adjudicated by the house of lords.
- ❑ Coding of law also began with forming of the first law commission. The IPC was drafted, enacted and brought in to force in 1862.
- ❑ The CrPC also was drafted by the same commission.
- ❑ Later in 1937 the **Federal court** was established at Delhi under the provisions of Government of India Act 1935 with original, appellate and advisory jurisdiction. The court was in function till 1950.
- ❑ The right of appeal from the decisions of the federal court was granted to Privy Council in London.

Legal system in Present India

- There are certain **sources of law** from which the rules of conduct came in to existence and derived the legal and binding force. They are namely;
 1. **Precedents**: These are the judgements passed by some of the learned jurists.
 2. **Customs**: It is a rule or a law which is not written, but is established by long use of a particular class, family, section, district or tribe and obtained the force of law.
 3. **Legislations**: It is the direct or primary source of law framed by the parliament or state legislatures.
 4. **International agreements and treaties.**

Classification

of law

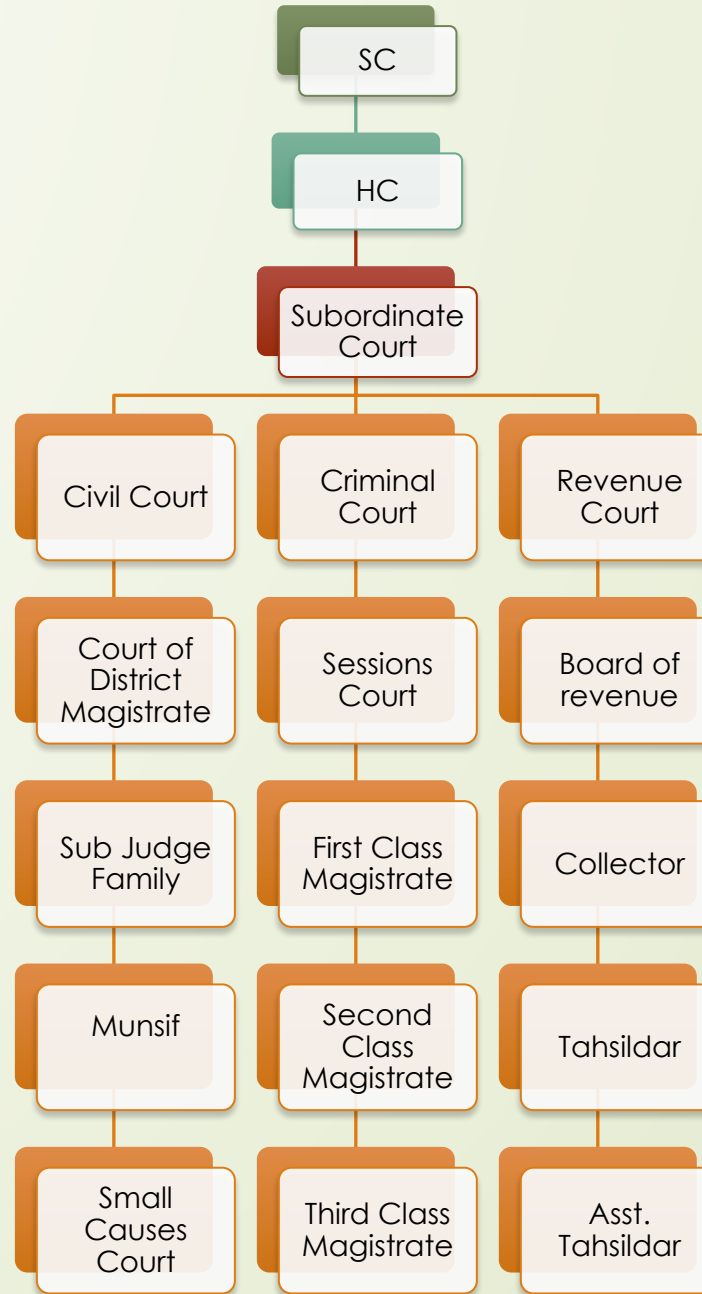


Judiciary in Post independent India

A State consists of three organs, the legislature, the executive and the judiciary. The courts have by and large enjoyed high prestige amongst and commanded respect of the people. This is so because of the moral authority of the courts and the confidence the people have in the role of the courts to do justice between the rich and the poor, the mighty and the weak, the state and the citizen, without fear or favour.

- Judiciary is a part of the democratic process. Judiciary not only administers justice, it protects the rights of the citizens and it acts as the interpreter and guardian of the constitution. The judiciary enjoys the power of judicial review by virtue of which the judiciary decides the constitutional validity of the laws enacted or of the decree issued. It can invalidate laws and decrees which are not constitutional. The justice system is the mechanism that upholds the rule of law. Our courts provide a forum to resolve disputes and to test and enforce laws in a fair and rational manner. The circumstances of any particular case may result in a modification or refinement of the law and its application.

Hierarchy of courts



Hierarchy of Courts in Present India

The judicial system provided by the Constitution of India is comprised the three type of courts. At the top, it is **Supreme Court**, at middle the **High Courts** and at bottom the **subordinate Courts** in addition to the Constitution, there are other laws and rules which direct the composition, power and jurisdiction of these courts.

1. **Supreme Court of India**: It is the highest court of the land seated at New Delhi, comprised of one Chief Justice twenty other judges (at the time of constitution). Now there are 29 sitting judges against the maximum possible number of 31 (**A. 124(1)**).
 - The CJI is **appointed** by the President of India. Every other judge of the Supreme Court shall be appointed by the President of India after consulting the CJI (**A. 124(2)**).
 - According to **A. 124(3) Qualification** to be appointed as judge is that he should be citizen of India, should have been Judge of High Court for at least five years or an advocate of High court for at least 10 years or is in the opinion of the President a distinguished jurist.
 - **Tenure**: As per A. 124(4), the Judge of Supreme Court holds office up to the age of sixty five years unless he resigns earlier or removed on the ground of proved misbehaviour and incapacity by impeachment.

Supreme Court in Independent India

Jurisdiction of SC: The jurisdiction of Supreme Court is classified as under;

1. Original Jurisdiction
2. Appellate Jurisdiction
3. Advisory Jurisdiction
4. **Original Jurisdiction:** According to Article 131 the Supreme Court has exclusive original jurisdiction to hear dispute between;
 - The Centre and the States or the States interest
 - Between states
 - One or more states and centre
 - Issues relating to enforcement of Fundamental Rights(Article 32).

Supreme Court in Independent India

2. Appellate Jurisdiction:

- **Article.132:** It can hear appeal against the decision every High Court on the granting of certificate by the High Court if substantial question as to the interpretation of the Constitution is involved
- **Article.133:** In a civil case a substantial question of law of general importance involved and the High Court thinks that the question needs the decision of the Supreme Court or in a criminal case is fit one to be hear by the Supreme Court.
- **Article.134:** The Supreme Court can hear the criminal appeal even without the certificate of High Court against a decision of a High Court in which death sentence has been pronounced after reversing the acquittal order passed by the lower Court or after withdrawal of case from the lower court.

Supreme Court in Independent India

Article.136: It also enjoy extra ordinary jurisdiction to allow an appeal in any matter against the decision of any court or tribunal by way of **special leave petition** except the tribunals concerning Armed Forces.

- ❑ The Supreme Court can transfer or withdraw the cases from any High Court. It can review any judgment pronounced or order made by it. The law declared by the Supreme Court is binding on all courts within India.
- ❑ It can make its own rule of government with the approval of the President.
- ❑ It is a Court of record and has power to punish in contempt of it.

3. Advisory Jurisdiction (Article 143)

- ❑ The Court can report to the President its opinion about a question of public importance referred to it by the President.
- ❑ **Beruberi Case**

High Courts in Independent India

- ❑ Chapter V of part VI of the Constitution contains the provisions regarding the High Court.
- ❑ There is to be High Court for each state or one High Court for more than one State. There are the judicial Commissioner Courts in the Union Territories of Manipur, Goa and Tripura. The High Court can be established for Union Territories.
- ❑ **Appointment:** The Judges of a High Court are appointed by the President after consulting the Chief Justice of India, the Governor of the concerned and the Chief Justice of the concerned High Court.
- ❑ **Number of Judges:** The number of judges of a High Court is fixed by the President from time to time. In this way, flexibility is maintained with respect to the number of Judges in a High Court which can be settled by the Central Executive keeping in view the quantum of work before the Court.
- ❑ **Qualifications:** A person to be eligible for appointment as a High Court Judge must be a citizen of India and must either have held a judicial office in India for 10 years or been an Advocate of a High Court for at least ten years.
- ❑ **Tenure** : The Judges have a fixed tenure and they retire at the age of sixty two years. They cannot be removed earlier except when the two Houses of Parliament pass an address on the ground of proved misbehaviour or incapacity by a majority of not less than two thirds of the members present and voting.

High Courts in Independent India

Court of Record: Each High Court is to be a Court of Record having the powers to punish for contempt of itself (**A. 215**).

- ❑ **Writ Jurisdiction**: Every High Court has power to issue various writs under Article 226 of the Indian Constitution
- ❑ **Superintendence**: Article 227 which authorize every High Court to have superintendence over all Courts and Tribunals within its territorial jurisdiction. The High Courts thus occupy high position of respect, dignity and authority in the Judicial System of India.
- ❑ Article 226-A empowers the HC's to check the validity of central and state laws.
- ❑ **Appellate Jurisdiction**: it is the highest court of appeal in the state.
- ❑ Power to punish for contempt.

Subordinate courts in Independent India

Chapter VI under Part VI of the Constitution provides the provisions regarding subordinate courts.

- Below the High Court there is the Court of District Judge which is top court among subordinate courts.
- The appointment, posting and promotion of District Judge are made by the Governor of the concerned State in consultation with the concerned High Court.
- As regards eligibility for the post of the District Judge, a person not already in the service of the Union or of the State shall only be eligible to be appointed as District Judge if he has been for not less than seven years an Advocate or a Pleader and is recommended by the concerned High Court.

Subordinate courts in Independent India

Appointments of a person other than District Judges to the judicial service of the State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with concerned State Public Service Commission and with concerned High Court.

- As regards control over subordinate courts, including the matters of posting , promotion, leave etc., the concerned High court is vested with the power to have control over subordinate courts but the High court is to exercise the control in accordance with the conditions of service under the law applicable in relation to subordinate courts.
- The Governor may by public notification direct the application of the provisions of Chapter VI of the Constitution and the rules made there under on any class or classes of magistrates in the concerned State subject to any exception or modification.

The litigation process in present India

Generally, there are two types of legal cases- civil and criminal.

1. **Civil litigation:** Civil litigation is a lawsuit whereby a party seeks damages against another party. The damages can come in the form of money or the modification of some type of conduct.
- ✓ The first stage of civil litigation is the pleading stage. The pleading stage simply refers to the filing of the complaint against the party that is the defendant. The next stage of civil litigation is discovery.
 - ✓ Discovery is simply the process of learning what evidence each side has regarding the dispute.
 - ✓ Once discovery comes to a close, the defendant will often file something known as a motion for summary judgment.

The litigation process in present India

2. Criminal litigation: The criminal justice process typically begins when a police officer places a person under arrest. After a criminal suspect is arrested, the next steps in the case are the processing of the person into police custody and a determination of his/her eligibility for release from custody in exchange for the posting of a set amount of money (bail).

- ✓ After a criminal defendant is formally charged with a crime, the case proceeds to the trial phase.
- ✓ After a defendant is convicted or pleads guilty, a judge will decide on the appropriate punishment/sentence during the sentencing phase of a criminal case.
- ✓ Sentencing for criminal offenses can range from probation and community service to prison and even the death penalty.



Thank you