Chapter - II

INDIAN JUDICIARY: STRUCTURE, COMPOSITION AND FUNCTIONING
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"The Judiciary was to be an arm of the social revolution upholding the equality that Indians had longed for."

2.1. GENERAL INTRODUCTION: One of the unique features of the Indian Constitution is that, notwithstanding the adoption of a federal system and existence of Central Acts and State Acts in their respective spheres, it has generally provided for a single integrated system of Courts to administer both Union and State laws. At the apex of the entire judicial system, exists the Supreme Court of India below which are the High Courts in each State or group of States. Below the High Courts lies a hierarchy of Subordinate Courts. Panchayat Courts also function in some States under various names like Nyaya Panchayat, Panchayat Adalat, Gram Kachheri, etc. to decide civil and criminal disputes of petty and local nature. Different State laws provide for different kinds of jurisdiction of courts. Each State is divided into judicial districts presided over by a District and Sessions Judge, which is the principal civil court of original jurisdiction and can try all offences including those
punishable with death. The Sessions Judge is the highest judicial authority in a district. Below him, there are Courts of civil jurisdiction, known in different States as Munsifs, Sub-Judges, Civil Judges and the like. Similarly, the criminal judiciary comprises the Chief Judicial Magistrates and Judicial Magistrates of First and Second Class.

2.2 SUPREME COURT: The essence of a federal Constitution is the division of powers between the Central and State Governments. The division is made by a written Constitution which is the Supreme Law of the Land. Since language of the Constitution is not free from ambiguities and its meaning is likely to be interpreted differently by different authorities at different times; it is but natural that disputes might arise between the Centre and its constituent units regarding their respective powers. Therefore, in order to maintain the supremacy of the Constitution, there must be an independent and impartial authority to decide disputes between the Centre and the States or the States inter se. This function can only be entrusted to a judicial body. The Supreme Court under our Constitution is such an arbitration. It is the final interpreter and guardian of the Constitution. In addition, to the above function of maintaining the supremacy of the Constitution, the Supreme Court is also the guardian of the Fundamental Rights of the people. Truly, the Supreme Court has been called upon to safeguard civil and minority rights and plays the role of "guardian of the social revolution."¹ It is the great tribunal which has to draw the line between individual liberty and social control.² It is also the highest and final interpreter of the general law of the country. It is the highest court of appeal in civil and criminal matters.

2.2.1 Constitution of Supreme Court: On the 28th of January, 1950, two days after India became a Sovereign Democratic Republic, the Supreme

² Sri Alladi Krishnaswamy Alfer, Member of Drafting Committee.
Court came into being. The inauguration took place in the Chamber of Princes in the Parliament building which also housed India’s Parliament, consisting of the Council of States and the House of the People. It was here, in this Chamber of Princes, that the Federal Court of India had sat for 12 years between 1937 and 1950. This was to be the home of the Supreme Court for years that were to follow until the Supreme Court acquired its own present premises.

The Supreme Court of India comprises the Chief Justice and not more than 25 other Judges appointed by the President of India. Supreme Court Judges retire upon attaining the age of 65 years. In order to be appointed as a Judge of the Supreme Court, a person must be a citizen of India and must have been, for at least five years, a Judge of a High Court or of two or more such Courts in succession, or an Advocate of a High Court or of two or more such Courts in succession for at least 10 years or he must be, in the opinion of the President, a distinguished jurist. Provisions exist for the appointment of a Judge of a High Court as an Ad-hoc Judge of the Supreme Court and for retired Judges of the Supreme Court or High Courts to sit and act as Judges of that Court.

The Constitution seeks to ensure the independence of Supreme Court Judges in various ways. A Judge of the Supreme Court cannot be removed from office except by an order of the President passed after an address in each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of members present and voting, and presented to the President in the same Session for such removal on the ground of proved misbehaviour or incapacity. A person who has been a Judge of the Supreme Court is debarred from practising in any court of law or before any other authority in India. The proceedings of the Supreme Court are conducted in English only. Supreme Court Rules, 1966
are framed under Article 145 of the Constitution to regulate the practice and procedure of the Supreme Court.

2.2.2 Composition of Supreme Court: The Supreme Court of India consists of a Chief Justice and, until Parliament may by law prescribes a large number, not more than seven other Judges. Thus Parliament may increase this number, by law. Originally, the total number of Judges was seven but in 1977 this was increased to 17 excluding the Chief Justice. In 1986\(^3\) this number has been increased to 25 excluding the Chief Justice. Thus the total number of judges in the Supreme Court at present is 26 including the Chief Justice. The Constitution does not provide for the minimum number of Judges who will constitute a Bench for hearing cases.

2.2.3 Appointment of the Chief Justice of India: The majority held that the appointment to the office of the Chief Justice of India should be made on the basis of seniority, that is the senior most Judge considered suitable to hold office be appointed as Chief Justice of India.

The important guidelines laid by the Court are the following—

(1) Individual initiation of high constitutional functionaries in the matter of Judges appointments reduced to minimum. It gives primacy to the Chief Justice of India but puts a rider that he must consult his two colleagues.

(2) Constitutional functionaries must act collectively in judicial appointments.

(3) Chief Justice of India has the final say in transfer of Chief Justice and Judges of High Courts.

(4) Transfers of Chief Justices and Judges of High Courts cannot be challenged in Courts.

(5) Appointment of the Chief Justice of India by seniority.

\(^3\) CAD, Vol. 8, p. 285.
(6) No Judge can be appointed by the Union Government without consulting the Chief Justice of India.

(7) Fixation of the strength in High Courts is justiciable.

(8) Supreme Court decision in S. P. Gupta v. Union of India, case overruled. The majority judgment of the Supreme Court on the appointment and transfer of the judges have undone the serious injustice which was done to the judiciary in the S. P. Gupta's case and restores to it the rightful place for its freedom and independent functioning.

2.2.4 Appointment of Judges.—the Judges of the Supreme Court are appointed by the President. The Chief Justice of the Supreme Court is appointed by the President with the consultation of such of Judges of the Supreme Court and the High Courts as he deems necessary for the purpose. But in appointing other Judges, the President shall always consult the Chief Justice of India. He may consult such other Judges of the Supreme Court and High Courts as he may deem necessary [Article 124 (2)]. It should, however, be noted that the power of the President to appoint Judges is purely formal because in this The Supreme Court (Number of Judges) Amendment Act, 1986: matter he acts on the advice of the Council of Ministers. There was an apprehension that Executive may bring politics in the appointment of Judges. The Indian Constitution, therefore, does not leave the appointment of Judges on the discretion of the Executive. The Executive under this Article is required to consult persons who are ex-hypothesis well qualified to give proper advice in matters of appointment of Judges. 

It is, therefore, essential to evolve and establish a healthy convention so as to exclude the arbitrary interference of Executive in the matter of appointment of the Chief Justice of the Supreme Court and High Courts. It is, therefore, suggested that a Judicial Committee, consisting of the Attorney-General, Law Minister, the
President of the Bar Council of India, the President of the Supreme Court Bar Association and the Retiring Chief Justice of India, may be constituted and authorised to suggest a penal of names for the appointment of Judges of the Supreme Court and the High Courts. The above view of the author has now been approved by Bhagwati, J (as he then was) in the Judges Transfer case, where his Lordship has suggested for the appointment of a judicial committee for the judicial appointments. The existing constitutional provisions, he feels, are not adequate. He said, "It is unwise to entrust power in any significant or sensitive area to a single individual however high or important may be the office, which he is occupying." At present it is left to the Central Government to select any one or more of the judges of the Supreme Court and the High Courts for the purpose of consultation. This safeguard is not adequate. This change is essential for maintaining the independence of Judiciary.

In 1977 general elections the Congress party was defeated and the Janata Party won with huge majority and formed the Government at the Centre. The Janata Party was opposed to the policy of the supersession of the Judges of the Supreme Court. Consequently, they again revived the old practice of appointing the Chief Justice of the Supreme Court on the basis of seniority. It is submitted that the rule of seniority, though a mechanical rule, is beyond controversy and will ensure independence of Judiciary.

2.2.5 Qualification of Judges.—A person to be qualified for appointment as a Judge of the Supreme Court must be a citizen of India: and

(1) has been Judge of a High Court at least for five years,

(2) has been for at least ten years an advocate of a High Court,

(3) is in the opinion of the President, a distinguished jurist, [Article 124 (6)].

Thus, a non-practising or an academic lawyer may also be appointed as Judge of the Supreme Court if he is, in the opinion of the President, a

\(^{1}\) AIR 1982 SC 49.
distinguished jurist. There are precedents in America where non-practising lawyers had been appointed as Judges of the American Supreme Court. The appointment of Mr. Felix Frank Furter to the Supreme Court of America may be cited as an example. Mr. Frank Furter was a Professor of Law at Harvard University before his appointment to the Supreme Court. In India, so far, no non-practising lawyer has been appointed as Judge of the Supreme Court.

Every person who is appointed as a Judge of the Supreme Court before entering upon his office has to make and subscribe an oath or affirmation before the President, or some other person appointed in that behalf by him [Article 124 (6)].

2.2.6 Tenure and Removal of Judges.—A Judge of the Supreme Court shall hold office until he attains the age of 65 years. The age of the Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide [Article 124 (2-A) (a)]. A Judge may, however, resign his office by writing to the President [Article 124 (2) (a)]. Under Clause (b) it is not clear whether a resignation sent to the President becomes final immediately or it becomes effective only when accepted by the President or can it be withdrawn before it is accepted by the President? This question was raised before the Supreme Court in the case of Union of India v. Copal Chandra Misra. Although the case is based on Article 217 relating to the resignation of a High Court Judge but it applies to Article 124 (6) also because Article 124 (6) is in similar terms. The Court has held that in the absence of a legal, contractual or constitutional base a "prospective" resignation be withdrawn before it becomes effective and it becomes effective when it operates to terminate the employment of the office tenure of the resignor. 'Resignation' takes place when

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6 AIR 1976 SC 664.
a Judge of his own volition chooses to sever his connections with his office. If in terms of his own writing he resigns in present! the resignation terminates his office-tenure forthwith, and cannot, therefore, be withdrawn or revoked thereafter. But, if by such writing he chooses to resign from a future date, the act of resigning is not complete because it does not terminate his tenure before such date and the Judge can at time before the arrival of that prospective date on which it was intended to be effective, withdraw it, because the Constitution does not bar such withdrawal.

2.2.7 Removal of Judges: Impeachment: (Article 124 (4) (5)): A Judge may be removed from his office by an order of the President only on grounds of proved misbehaviour or incapacity. The order of the President can only be passed after it has been addressed to both Houses of Parliament in the same session. The address must be supported by a majority of total membership of that Houses and also by a majority of not less than two thirds of the members of that House present and voting\(^7\). The procedure of the presentation of an address for investigation and proof of the misbehaviour or incapacity of a Judge will be determined by Parliament by law\(^8\). The security of tenure of the Supreme Court Judges has been ensured by this provision of the Constitution. In America, the Judges of Supreme Court hold office for life. They can, however, be removed by impeachment in cases of treason, bribery or other high crimes and misdemeanours.

In a historic judgment in K. Veeraswami v. Union of India,\(^9\) a five Judge bench of the Supreme Court by a majority of 4-1 has held that a Judge of the Supreme Court and High Court can be prosecuted and convicted for criminal misconduct. Mr. Veeraswami was the Chief Justice of the Madras High Court in 1969. In 1976 the CBI registered a case against him charging him with amassing wealth disproportionate to his known income and had thus committed an offence under the Prevention of Corruption Act. When he came to know these developments he

\(^7\) [Article 124, Clause (4)]
\(^8\) [Article 124 (5)]
proceeded on leave from March 9, 1976 and subsequently retired on April 8, 1976. The appellant filed a petition in the High Court for quashing the FIR filed by CBI which was dismissed. He went to Supreme Court by way of special leave petition. The Supreme Court dismissed the appeal against the Madras High Court and ordered his prosecution. The expression "misbehaviour" in Article 124 (5) includes criminal misconduct defined in the Prevention of Corruption Act. The expression "public servant" in Section 6 (1) (c) and (2) includes Judges of the High Court and the Supreme Court. The Judges (Inquiry) Act, 1968 enacted by Parliament under Article 124 (5) and the Judges (Inquiry) Rules, 1969 made there under provide for removal of a Judge on the ground of proved misbehaviour or inability. It does not provide for prosecution of a Judge for offences under Section 5 (1) (e) of the Prevention of Corruption Act.

The impeachment proceeding initiated against Mr. Justice V. Ramaswami a sitting Judge of the Supreme Court of India is the first case after the present Constitution came into force. Justice Ramaswami was appointed as a Judge of the Madras High Court on November 12, 1987 and he was transferred from the Madras High Court as Chief Justice of Punjab and Haryana High Court before being elevated to the Supreme Court on October 6, 1989. He got into lime light when reports appeared in newspapers about audit objections to the purchase of furniture, carpets and air-conditioners far in excess of the limits prescribed for Judges, when he was Chief Justice of Punjab and Haryana High Court. He was charged with having exceeded limits on telephone expenses and misuse of official cars. A motion sponsored by 108 MPs of the Ninth Lok Sabha for his impeachment was admitted by the then Speaker, Mr. Rabi Ray on March 12, 1990 and he constituted a three Judge Committee of the Supreme Court Judges to inquire into the allegations of "financial irregularities" against him under the Judges Inquiry Committee Act. The Ninth Lok Sabha was dissolved when Mr. V. P. Singh Government fell due to withdrawal of the support by the BJP. When the Tenth Lok Sabha was constituted after the parliamentary elections it took up for
consideration of the impeachment motion. Justice Ramaswami filed a petition in Supreme Court requesting it to issue a direction that the impeachment motion was lapsed on the dissolution of the Ninth Lok Sabha and the new Lok Sabha cannot take it up for consideration. The Court, however, held that the motion admitted by the Speaker of previous Lok Sabha for his impeachment had not lapsed on its dissolution and the three Judge Committee could probe into the matter under the Judges Inquiry Act. He again filed a petition through his wife challenging the procedure and authority of the Committee and also refused to appear before it. At this stage the Supreme Court held that he has no right to challenge the findings of the Inquiry Committee. The Committee came to the conclusion that there was "wilful and gross misuse of office, purposeful and persistent negligence in the discharge of his duties, intentional and habitual extravagance at the cost of the public exchequer and moral turpitude by using public funds for private purposes in diverse ways." The Committee held that these 'acts' constituted 'misbehaviour' within the meaning of the Article 124 (4) of the Constitution.

The impeachment motion was, however, defeated in the Lok Sabha as it failed to get the support of the two-thirds majority of the members present and voting. The Congress party abstained from voting. The result was that there was 176 votes in favour of the impeachment but none against. The defeat of the motion for impeachment of Justice Ramaswami in the Lok Sabha has created new imperative for Parliament to amend the Constitutional provisions relating to the procedure for "removal" from office of the Supreme Court Judge on "grounds of proved misbehaviour". The belated resignation of Justice Ramaswami does not alter the urgency of an amendment. It is to be noted that the impeachment motion was not 'negatived' by Lok Sabha. There was not a single vote against the motion. It was defeated only because the whole lot of Congress MPs abstained from voting. The ruling party adopted a negative approach. It did not suffer the defeat on the ground of merit.
The Supreme Court held that the resolution passed by Bar Council and Bar Association against the Chief Justice of Bombay alleging bad conduct and pressurise or coercing him to resign from his office has no constitutional sanction and it would amount to contempt and affect independence of judiciary which is an essential attribute of rule of law. The Court held that the Constitution has already put the nail squarely on the projections, prosecutions or attempts by any other forum or group of individuals or Associations statutory or otherwise, either to investigate or inquire into or discuss the conduct of a Judge or the performance his duties and on-off court behaviour except as per procedure provided under Arts. 124 (4) and (5) of the Constitution, and Acts and the Rules. Thereby, equally no other agency or authority like the CBI, Ministry of Finance, the Reserve Bank of India would investigate into the conduct or acts or actions of a Judge. No mandate or direction would be issued to the Speaker of Lok Sabha or Chairman of Rajya Sabha to initiate action for impeachment.

Referring the question as to what should be done when the Judge cannot be removed by impeachment process for his bad conduct or bad behaviour which does not amount to "misbehaviour" as used in Art. 124 (4) of the Constitution, the Court held that in such a situation such a Judge could be disciplined by self-regulation through inhouse procedure (by judiciary itself) which will fill the gap between bad conduct and misbehaviour and yield statutory effect on the erring Judge. The Chief Justice of India is the first among the Judges and he should be approached and appraised with necessary material against the erring Judge and be requested to deal with the matter appropriately. Explaining the importance of the independence of judiciary the Court said that in a democracy governed by rule of law 'under a written Constitution', judiciary is the protector of the fundamental rights and pose even scales of justice between the citizens and the States in terse Rule of law and judicial review are basic features of the Constitution. As its integral
constitutional structure, independence of the judiciary is an essential attribute of rule of law. Judicial review is one of the most potent weapon in the armoury of law. It is, therefore, absolute by essential that the judiciary must be free from executive pressure or influence which has been secured by making elaborate provisions in the Constitution. The independence of judiciary is not limited only to the independence from the executive pressure or influence, it is a wider concept which takes within its sweep independence from any other pressure and prejudices. It has many dimensions, viz., fearlessness of other power centers, economic or political and freedom from prejudices required and nourished by the class to which the Judges belong.

2.2.8 Salaries and Allowances.—The Judges shall be paid salaries as are specified in the Second Schedule. He shall also be entitled to such privileges and allowances as may be determined by Parliament by law. Until such law is passed by the Parliament they are entitled to such allowances and privileges which are specified in the Second Schedule.

The Supreme Court on 27th July 2009 sought a response from states and all high courts on the three-fold salary hike recommended for trial court judges by the Second National Judicial Pay Commission (SNJPC) of Justice E Padmanabhan. Justice Padmanabhan has fixed a whooping salary scale starting from Rs 73,370 for a district judge (super time scale) as against the existing Rs 24,850 fixed by the First National Judicial Pay Commission of Justice Jagannatha Shetty. Following is the increase in starting salary of various other grades of judges along with the previous figures.

The recommendations for higher pay scale comes in the backdrop of a similar pay hike effected for the Chief Justice of India, judges of the Supreme Court and judges of the high courts. The Government had on January 3 this year brought in an ordinance hiking the salary of the Chief Justice of India to Rs one lakh as against (Rs 33,000), SC judges and Chief Justices of High
Courts to Rs 90,000 (Rs 30,000) and high court judges to Rs 80,000 (Rs 26,000).¹⁰

The Supreme Court in its judgments has held,¹¹ that the salary of the Judges of the Supreme Court and the High Courts is taxable under the Income-tax Act like that of any other citizen.

Accordingly, the Court dismissed the contention of the former judge of the Allahabad High Court that a Judge of the High Court and the Supreme Court has no employer and therefore what he receives is not salary but remuneration and therefore is not taxable under the head 'salary'. The Supreme Court shall sit in Delhi. However, the Chief Justice of India may with the previous approval of the President require it to sit in such other place or places as he may decide.¹²

2.2.9 JURISDICTION OF THE SUPREME COURT

2.2.9.1 Court of Record.—Article 129 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. A Court of Record is a court whose records are admitted to be of evidentiary value and they are not to be questioned when they are produced before the court. Once a court is made a Court of Record, its power to punish for contempt necessarily follows from that position.¹³ The power to punish for contempt of court has been expressly conferred on the Supreme Court by our Constitution. This extraordinary power must be sparingly exercised only where the public interest demands.¹⁴

The Contempt of Courts Act, 1971, defines the powers of courts for punishing contempt of courts and regulates their procedure. It also provides for

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¹⁰ Express India .com

¹¹ The Hindustan Times May 21, 1999.

¹² [Article 130].

¹³ CAD, Vol VIII, p. 852 (862).

judges to be tried for Contempt of Court. According to Section 2 of the Act, 'Contempt of Court' includes both 'civil' and 'criminal' contempt. 'Civil contempt' means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court. 'Criminal contempt' means the publication (whether by words spoken or written by signs or by visible representation or otherwise) of any matter or doing of any act whatsoever which—(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court, or (ii) prejudices, or interferes or tends to interfere with the due course of any judicial proceeding, or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

A judge or magistrate or other person acting judicially shall be liable for contempt of his own court or of any other court in the same manner as any other individual is liable. However, this section shall not apply to any observations or remarks made by him regarding a subordinate Court in an appeal or revision pending before him. The following acts or publications will not amount to contempt—

(a) Innocent publications and its distribution;
(b) Fair and accurate report of judicial proceedings;
(c) Fair criticism of judicial act;
(d) Complaint made in good faith against presiding officers of subordinate courts (below High Court);
(e) Publication of fair and accurate report of a judicial proceeding before a court sitting in camera.

A Contempt of Court may be punished with simple imprisonment for a term which may extend to 6 months or with fine which may extend to Rs. 2,000 or with both.
In Delhi Judicial Service Assn. v. State of Gujarat,\textsuperscript{15} it has been held that under Article 129 the Supreme Court has power to punish a person for the contempt of itself as well as of its subordinate courts. The expression "including" extends and widens the scope empower. The plain language of Article 129 clearly indicates that the Supreme Court as a Court of Record has power to punish for contempt of itself and also something else which would fall within the inherent jurisdiction of the court of record. This inherent power is necessary to safeguard and protect the subordinate judiciary which forms the very back bone of administration of justice. In the instant case the court had sent five police officers to jail as they were found guilty of criminal contempt for harassing and handcuffing the Chief Judicial Magistrate of town Nadiad in the State of Gujarat.

In an important judgment\textsuperscript{16} the Supreme Court has held that neither the Supreme Court nor the High Court has power to direct dispossession of any one in a contempt proceedings. In any event, in a contempt proceeding, no order can be passed against a person who is not a party thereto and without giving any notice to him and affording an opportunity of hearing to such person. Under Art. 215, the High Court's jurisdiction to punish for contempt of court includes all necessary and incidental powers to effectuate that jurisdiction. The power of a High Court not to punish for contempt of itself is a special and inherent jurisdiction which is founded on the Constitution and never founded on the Criminal Procedure Code. It follows, therefore, that neither Art. 133 nor Art. 134 is applicable to a proceeding for contempt which High Court initiates as a court of record. It must, however, follow the principles of natural justice and, if there is a breach of such rules, the Supreme Court itself may intervene under Art. 136 of the Constitution. Similarly, under Art. 129 of the Constitution, the Supreme Court has authority to fine and imprison for contempt of itself. This is an extraordinary power which must be sparingly exercised but where the public interest

\textsuperscript{15} (1991) 4 SCC 406.
\textsuperscript{16} The Hindustan Times, Feb 7. 1994.
demands it, the court will not shrink from exercising it and imposing punishment even by way of imprisonment in case where a fine may not be adequate.

In a number of cases the Supreme Court has exercised its power of contempt to punish erring bureaucrats who were either found guilty of disobeying certain Court's orders for enforcing fundamental rights of citizens or were charged with corruption. In 1995 for the first time since Independence a senior IAS officer was convicted for contempt of courts and sentenced to imprisonment by the highest Court. Mr. A AO, Senior, IAS officer of Manipur who was found guilty under the Prevention of Corruption Act 1947, and Indian Penal Code for awarding a contract on exorbitant rates to a person who was blacklisted by him.\textsuperscript{17} Similarly, a senior Haryana IPS officer M. S. Ahlawal was sentenced to one year's rigorous imprisonment and punishment for criminal contempt for fabrication and forgery of document in connection with a case of wrongful confinement of two minor boys.\textsuperscript{18} In another case a senior IAS officer of Karnataka Mr. Vasudevan was sent to jail for contempt of court. The Court has rightly asserted that its power under Art. 129 of the Constitution to make public servants aware of their duties and perform it in a responsible manner and also warned them that they would be held accountable for administrative inaction.

2.2.9.2 Original Jurisdiction: Article 31: The Supreme Court has original jurisdiction in any dispute;—

(a) between the Government of India and one or more States;

(b) between the Government of India and any State or States on one side and one or more other States on the other;

(c) between two or more States.

The Supreme Court in its original jurisdiction cannot entertain any suits brought by private individuals against the Government of India. The dispute relating to the original jurisdiction of the Court must involve a question of law or

\textsuperscript{17} The Hindustan Times, Oct. 15, 1995.
\textsuperscript{18} The Hindustan Times, Jan. 19, 1996.
fact on which the existence of legal right depends. This means that the Court has no jurisdiction in matters of political nature. The term 'legal right' means a right recognised by law and capable of being enforced by the power of a State but not necessarily in a court of law.\textsuperscript{10}

In State of Karnataka v. Union of India,\textsuperscript{20} the Central Government appointed a Commission of Inquiry against the Chief Minister of Karnataka under Section 3 of the Commissions of Inquiry Act, 1952 on charges of corruption, nepotism, favouritism and misuse of the Government's power. The plaintiff State of Karnataka filed a suit under Article 131 of the Constitution for a declaration that the appointment of Commission of Inquiry was illegal and ultra vires on the grounds (1) that the Commission of Inquiry Act, 1952, did not authorise the Central Government to constitute such a commission in regard to matters falling exclusively within the sphere of State legislative and executive powers, and (2) that if the provisions of the Act did so empower, they were ultra vires of the provision of the Constitution as well as the federal structure implicit and accepted as an inviolable basic feature of the Constitution. The defendant Union of India raised a preliminary objection that since the inquiry was against the Chief Minister and certain other Ministers as individuals and not against the State of Karnataka, the suit under Article 131 was, therefore, not maintainable. The Supreme Court by a majority of 4-3 held that plaintiff's suit was maintainable. The Union of India, acting through the Central Government could be said to represent the whole of the people of each individual State and their interests. When difference arise between the representative of the State and those of the whole people of India on questions of interpretation of the Constitution,

Beg. C.J. said, "It appears to be too technical an argument to be accepted that a suit does not lie under Article 131 of the Constitution. It is true that there is a

\textsuperscript{10} United Provinces v. Governor-General, AIR 1939 PC 58.
\textsuperscript{20} (1978) 11 SCJ 190.
distinction between the "State" and the "State Government". But it cannot be accepted that any action or incapacity of the Government may not affect the State and the State would not be interested in it. There is close relationship between the "State" and the "State Government". Any action which affects the State Government or the Ministers in their capacity as Ministers would raise a matter in which the State would be concerned. The claims of the State Government are the claims of the State. The State acts through its Minister. The acts of Ministers are acts of the State. It is not necessary under Article 131 that the plaintiff should have some legal right of his own to enforce. It only requires that the dispute must be one which involves a question "on which the existence or extent of legal right depended." The plaintiff must of course be a party to the dispute and obviously it cannot be a party to the dispute unless it is affected by it. The State has sufficient interest to maintain a suit under Article 131 because the action of the Central Government against the State affects the interest of the Ministers who exercise its powers. The word "right" is used in Article 131, in a generic sense and not according to its strict meaning. In its generic sense it includes not only right in the strict sense, but "any advantage or benefit conferred upon by a rule of law."

As regards the contention of ultra virus the Supreme Court held that the appointment of Commission of Inquiry against the Chief Minister and other Ministers of the State under Section 3 of the above Act was valid and did not effect the federal structure as implicit in the basic feature of the Constitution. In democratic countries the statute can provide for inquiries of the kind which are meant to be conducted under the Commission of Inquiry Act. The object of the Act is to enable the machinery of the democratic Government to function more efficiently and effectively. It could hardly be construed as an Act meant to thwart democratic method of Government. The kind of federation established in India has a strong unitary bias with power given to the Central Government of supervision in certain circumstances of State Government. Hence, it cannot be
said that the Centre can take no action which results in interference with Governmental functions of a State Government. The Central Government has power under Article 356 to order an inquiry for the purposes of the satisfaction required by Article 356. The machinery provided by the Commission of Inquiry Act can be utilised to decide whether action under Article 356 is really called for.

In Union of India v. State of Rajasthan,\(^2\) it has been held that a State’s suit against the Union of India for the recovery of damages under Section 80 of Railways Act, 1890 is not a ‘dispute’ falling under Article 131 (a) and therefore not maintainable. The Supreme Court’s jurisdiction under Article 131 is not attracted to such ordinary dispute of commercial nature between the State and the Union of India.

The original jurisdiction of the Supreme Court, however, does not extend to the following matters:

(1) The jurisdiction of the Supreme Court shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar instrument which was executed before the commencement of the Constitution and continues to be in operation or which provides that the jurisdiction of the Supreme Court shall not extend to such a dispute (Article 131, proviso).

(2) Under Article 264 Parliament may by law exclude the jurisdiction of the Supreme Court in disputes with respect to the use, distribution or control of the water of any inter-State river or river-valley.

(3) Matters referred to the Finance Commission (Article 280).

(4) The adjustment of certain expenses between the Union and the State (Article 290).

Article 32 confers original jurisdiction on the Supreme Court to enforce Fundamental Rights. Under Article 32 every citizen has a right to move the Supreme Court by appropriate proceedings for the enforcement of the

Fundamental Rights. The Supreme Court is given power to issue directions or orders or writs including writs in the nature of habeas corpus, mandamus, prohibition and certiorari whichever may be appropriate. Article 32 provides a quick remedy for the enforcement of the Fundamental Rights. Under this Article a person can directly go to the Supreme Court. The Supreme Court has thus been constituted the protector and guarantor of the Fundamental Rights.

2.2.9.3 Appellate Jurisdiction—Article 132.—The Supreme Court is the highest Court of Appeal in the country. The writ and decrees of the Court run throughout the country. It can be truly said that the jurisdiction and powers of the Supreme Court in their nature and extent are wider than those exercised by the High Courts of any country in the Commonwealth or by the Supreme Court of the U.S.A.

The Appellate jurisdiction of the Supreme Court can be divided into four main categories:

(a) constitutional matters,
(b) civil matters,
(c) criminal matters,
(d) special leave to appeal.

2.2.9.4 Advisory Jurisdiction (Art. 143): Article 143 provides that 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, 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. Under clause (2), if the President refers to the Supreme Court matters which are
excluded from its jurisdiction under the proviso to Art. 131, the Court shall be bound to give its opinion thereon.

There is no provision similar to this in the Constitution of the United States of America or in the Australian Constitution. Accordingly, the American Supreme Court and the High Court of Australia have refused to give advisory opinions to the Executive. They have held that the jurisdiction and powers of the court extend only to the decision of the concrete cases which come before the Court. But in Canada under Section 60 of the Canadian Supreme Court Act, 1906, the Governor-General in Council may refer important question of law concerning certain matters to the Supreme Court for its advisory opinion. The Supreme Court of India, like the Canadian Supreme Court, exercises the powers to give advisory opinion to the President. The Government of India Act, 1935, empowered the Governor-General to consult the Federal Court.

2.2.9.5 Power to review its judgments Art. 137

Under Article 137 the Supreme Court has expressly been given the power to review its judgment. However, this is subject to any law passed by the Parliament. This power is exercisable under rules made by the Court under Art. 145, on grounds mentioned in Order 57, Rule 1 of C.P.C.A. review will lie in the Supreme Court on:

1. discovery of new important matters of evidence;
2. mistake or error on the face of the record; and
3. any other sufficient reason.\(^{22}\)

In R. D. Sugar v. V. Nagary,\(^{23}\) the Supreme Court has held that a judgment of the final Court of the land is final. A review of such a judgment is an exceptional phenomenon, permitted only where a grave and glaring error or other well established ground is made out. In the present case, the petitioner sought the review of an earlier judgement on the ground that certain

\(^{22}\) Loknath Tolaram v. B.N. Rangmani, AIR 1975 SC 279.

\(^{23}\) AIR 1976 SC 2183.
observations in the judgment amounted almost branding him as unindicated criminal, that is, guilty of abetting, forgery and perjury which were unmetted and should, therefore, be obliterated. The Court declined to cancel the above observations. However, it modified its rigour by making certain observations.

2.2.9.6 Enforcement of Decree and Orders of Supreme Court (Arts. 142 & 144)

Article 142 provides that the Supreme Court in exercise of its jurisdiction, may pass such decrees or orders as is necessary for doing complete justice in the matter pending before it. The decree or order made by the Court shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament. Until provision is made by Parliament the orders of the Court will be enforced in the manner prescribed by the President. Article 144 provides that, "all authorities civil and judicial, in the territory of India shall act in aid of that Supreme Court.

The power under Art. 142 is inherent power and can be used for doing complete justice. The power of the Court under Art. 144 is very wide and the Court can formulate legal doctrines to meet the ends of justice. The object of this article is to enable the Court to declare law to give such directions or pass such orders as are necessary to do complete justice.

In Delhi Judicial Service Assn. v. State of Gujarat, the proceeding for contempt of Court was started against some police officials of Gujarat for assaulting, handcuffing and maliciously prosecuting a Chief Judicial Magistrate. It was contended by the respondents that the Supreme Court had no power to quash the criminal proceedings against the CJM. But the Court held that its inherent power under Art. 142 coupled with the plenary and residuary powers under Arts. 32 and 136 give it power to quash criminal proceedings pending before any Court to do complete justice in the matter before Supreme Court. The Court not only sentenced the police officers but also quashed the criminal
proceedings against the CJM. Similarly, in Union Carbide Corp. v. Union of India, the Supreme Court upheld the settlement between the Central Government and the Union Carbide Corporation and quashed all civil and criminal proceedings against the UCC pending in any Court in order to do complete justice in the matter pending before it.

In a landmark judgment in Spencer & Co. v. Vishwadarshan Distributors the Supreme Court has held that under Articles 141, 142 and 144 an order of the Supreme Court even if it is in the form of a request, is binding on High Court and if it is flouted by the High Court it is open to the Supreme Court to initiate contempt proceedings against the erring judges of the High Court under the Constitution. The Supreme Court has a singular Constitutional role and correspondingly all authorities, civil or judicial in the territory of India have assisting role towards it. The High Court is one such judicial authority covered under Art. 144. In this case the Supreme Court had requested the Madras High Court to dispose the case of the appellant within three months. This order was passed on 14.1.1994. The Supreme Court kept the matter adjourned from time to time awaiting the outcome of the High Court's decision but the High Court on 18.8.1994 passed the order that the appellant must come in his turn as large number of appeals were pending in the Court. This order of the High Court had clearly flouted the order of the Supreme Court. The order of the Supreme Court was a judicial order and enforceable throughout the territory of India under Art. 144. The language of request often employed by the Supreme Court in such a situation is to be read by the High Court as an obligation in carrying out the constitutional mandate. When one superior speaks to another it is always in language sweet, soft and melodious, more suggesting than directive. Judicial language is always chaste, the Court declared.

Inherent power under Art. 142 cannot be invoked when alternative remedy is available and has already been availed of. The inherent power is meant only to correct orders when other remedy is not available. Since the remedy by way of review under the rules of this Court has been provided the inherent power cannot be invoked.\textsuperscript{16} All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court (Art. 144).

Under Article 145 the Supreme Court has power, with the approval of the President, to make rules to regulate its own procedure. This is, however, subject to any law made by Parliament. As a result of the insertion of new Article 139-A by the Constitution (42nd Amendment) Act, 1976 some consequential changes have been made in Art. 145 of the Constitution.

2.2.9.7 PIL Jurisdiction of Supreme Court: Public interest litigation, or PIL as it is conveniently called, has become a major and prominent segment of the jurisdiction of the Supreme Court and High Courts in India. It is an old maxim that "delay defeats justice". For the foregoing reasons, in the author's opinion, there was no need to invent this new mechanism of curative petition which is beyond the preview of the Constitution.

In A. B. S. K. Sangh (Rly) v. Union of India\textsuperscript{25} it was held that the Akhil Bhartiya Soshil Karmachari Sangh (Railway), though an unregistered association could maintain a \textsuperscript{L} writ petition under Art. 32 for the redressal of a common grievance. Access to justice through 'class actions', 'public interest litigation' and 'representative proceedings' is the present constitutional jurisprudence, Krishna Iyer, J., declared.

In Krishna Swami v. Union of India\textsuperscript{26} the petitioner filed a public interest litigation under Art. 32 of the Constitution for quashing the motion given to the Speaker by 108 members of the Ninth Lok Sabha for initiating proceedings for

\textsuperscript{25} AIR 1981 SC 298.
\textsuperscript{26} (1992) 4 SCC 605
the removal from office of Mr. Justice V. Ramaswami of the Supreme Court against whom there were allegations of financial irregularities. The petitioner, Krishna Swami, a member of the Tenth Lok Sabha from Tamil Nadu, claimed that he had sufficient interest to file the petition. He alleged that there were certain illegalities in procedure adopted by the Inquiry Committee and therefore it should be quashed. The second petitioner Raj Kanwar, an advocate of District of Karnal in Haryana claimed that the notion of motion by 108 members of the Ninth Lok Sabha and its admission by the Speaker and the constitution of Inquiry Commission under the Judges (Inquiry) Act, 1968, were unconstitutional being violative of Art. 124 (4) of the Constitution liable to be quashed. The Supreme Court by 4-1 majority held that the petitioners had no locus standi to file the petition. The petitioners have no public purpose in filing the petition.

In Peoples Union for Democratic Rights v. Union of India,\textsuperscript{27} it was held that the Peoples Union for Democratic Rights and locus standi to file a petition for enforcement of various labour laws under which certain benefits is conferred on the workers. The Union brought this fact to the notice of the Court through a letter. The Court rejected the argument that such 'public interest litigation' would create arrears of cases and therefore they should not be encouraged. Bhagwati, J., (as he then was) declared, "No State had the right to tell its citizens that because a large number of cases of the rich are pending in our courts we will not help the poor to come to the courts for seeking justice until the staggering load of cases of people who can afford rich lawyers is disposed off."

In Bandhu Mukti Morcha v. Union of India\textsuperscript{28} it has been held that the provisions-conferring on the Supreme Court the power to enforce fundamental rights in the widest possible terms show the anxiety of the Constitution-

\textsuperscript{27} AIR 1983 SC 339
\textsuperscript{28} AIR 1984 SC 802
makers not to allow any procedural technicalities to stand in the way of enforcement of fundamental rights. It is not at all obligatory that an adversary procedure must be followed in proceedings under Art. 32 for the enforcement of fundamental rights. There is no such compulsion in clause (2) of Art. 32 or in any other part of the Constitution. Public interest litigations for the enforcement of fundamental rights is very much included in Art. 32.

The Supreme Court has now realised its proper role in a welfare State, and it is using this new strategy not only for helping the poor by enforcing their fundamental rights of persons but for the transformation of the whole society as an ordered and crime free society. The Supreme Court's pivotal role in making up for the lethargy of the Legislature and the inefficiency of the Executive is commendable. Those who oppose to the growing judicial activism of the higher courts do not realise that it has proved a boon for the common men. Judicial activism has set right a number of wrongs committed by the States.

In Sunil Batra v. Delhi Administration, it has been held that the writ of habeas corpus can be issued not only for relating a person from illegal detention but also for protecting prisoners from inhuman and barbarous treatment. The dynamic role of judicial remedies imports to the habeas corpus writ a versatile vitality and operational utility as bastion of liberty even within jails. Wherever the rights of a prisoner either under the Constitution or under other laws are violated the writ power of the court can run and should run to rescue, declared Krishna Iyer, J. In Veena Sethi v. State of Bihar, the Court was informed through a letter that some prisoners, who were insane at the time of trial but subsequently declared sane, were not released due to inaction of State authorities and had to remain in jails from 20 to 30 years. The Court directed that they be released forthwith.

30 AIR 1983 SC 339
In *D.S. Nakara v. Union of India*\(^{21}\) it has been held that a registered society, non-political, non-profit-making and voluntary organisation is entitled to file a writ petition under Art. 32 for espousing the cause for the large number of old infirm pensioners who are unable to approach the court individually.

In *M, C. Mehta v. State of Tamil Nadu*\(^{32}\) it has been held that the children cannot be employed in match factories which are directly connected with the manufacturing process as it is a hazardous employment within the meaning of Employment of Children Act 1938. They can, however, be employed in packing process but it should be done in area away from the place of manufacture to avoid exposure to accidents. Every children must be insured for a sum of Rs. 5000/- and premium to be paid by employer as a condition of service.

In *D. C. Wadhwa v. State of Bihar,*\(^{33}\) the petitioner, a professor of political science who had done substantial research and deeply interested in ensuring proper implementation of the constitutional provisions, challenged the practice followed by the State of Bihar in repromulgating a number of ordinances without getting the approval of the legislature. The Court held that the petitioner as a member of public has 'sufficient interest' to maintain a petition under Art. 32. Every citizen has right to insist that he should be governed by laws made in accordance with the Constitution and not laws made by the executive in violation of the constitutional limitations. The Court directed the State of Bihar to pay Rs. 10,000 to Dr. Wadhwa whose research brought in light this repressive practice. Under Art. 32 of the Constitution the Supreme Court has power to award compensation by way of exemplary costs to the petitioner whose constitutional right is violated by the illegal and mala fide action of the State and its officials.

\(^{21}\) AIR 1985 SC 541

\(^{32}\) AIR 1981 SC 417

\(^{33}\) AIR 1987 SC 579
In *Rural Litigation and Entitlement Kendra v. State of U.* 34 the Court ordered the closure of certain lime stone quarries on the ground that there were serious deficiencies regarding safety and hazards in them. The Court had appointed a committee for the purpose of inspecting certain lime stone quarries. The Committee had suggested the closure of certain categories of stone quarries having regard to adverse impact of mining operations therein. A large scale pollution was caused by lime stone quarries adversely affecting the safety and health of the people living in the area.

In *Shriram Food and Fertilizer case,*35 the Supreme Court directed the Company manufacturing hazardous and lethal chemicals and gases posing danger to health and life of workmen and people living in its neighbourhood, to take all necessary safety measures before reopening the plant. There was a leakage of chlorine gas from the plant resulting in death of one person and causing hardships to workers and residents of the locality. This was due to the negligence of the management in maintenance and operation of the caustic chlorine plant of the Company. The matter was brought before the Court through Public interest litigation. The management was directed to deposit a sum of Rs. 20 lacs by way of security for payment of compensation claims of the victims of Oleum gas leak with the Registrar of the Court. In addition, a bank guarantee for a sum of 15 lacs was also directed to be deposited which shall be encashed in case of any escape of chlorine gas within a period of three years from the date of the judgment resulting in death or injury to any workman or any person living in the vicinity. Subject to these conditions the Court allowed the partial reopening of the plant.

The efforts of the highest court in environment pollution control through public interest litigation is indeed laudable, particularly when the legislature is

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34 (1985) 2 SCC 431
35 *M.C. Mehta v. Union of India* (1986) 2 SCC 176
lagging behind in bridging the lacuna in the existing legal system and administration is not well equipped to meet the challenge.

In Indian Council for Enviro-Legal Action v. Union of India\(^{30}\) the Supreme Court has held that if by the action of private corporate bodies a person's fundamental right is violated the Court would not accept the argument that it is not 'State' within the meaning of Art. 12 and therefore, action cannot be taken against it. If the Court finds that the Government or authorities concerned have not taken the action required of them by law and this has resulted in violation of the right to life of the citizens, it will be the duty of the Court to intervene. In this case an environmentalist organisation filed a writ petition under Art. 32 before the court complaining the plight of people living in the vicinity of chemical industrial plants in India and requesting for appropriate remedial measures. The fact was that in a village Bichari in Udaipur district of Rajasthan an industrial complex had developed and respondents have established their chemical industries therein. Some of the industries were producing chemicals like oleum and single phosphate. The respondent had not obtained the requisite licences and nor did they install any equipment for treatment of highly toxic effluents discharged by them. As a result of this the water in the wells became unfit for human consumption. It spread diseases, death and disaster in the village and surrounding areas. The villagers revolted against all this resulting in stoppage of manufacturing ‘H’ acid and ultimately these industries were closed. But the consequences of their action remained in existence causing damage to the village. The Court requested the National Environment Engineering Research Institute to study the situation and to submit their report. In the technical report, it was found that out of 2440 tonnes of sludge, about 720 tonnes was still there. With a view to conceal it from the eyes of the inspection teams the respondents had

\(^{30}\) 21886) 3 SCC 212; See also Vellore Citizen Welfare Forum v. Union of India (1986) 5 SCC 647.
dispersed it all over the area and covered it with earth. Inspite of the court’s order they did not remove the sludge. Likewise in Council for Enviro-legal Action v. Union of India\(^37\) the Court issued appropriate orders and directions for implementing and enforcing the laws to protect ecology. The petition was filed by a registered voluntary organisation working for the cause of environment protection in India as a public interest litigation complaining ecological degradation in coastal areas. It was contended that the government was not implementing its own Notification which was issued to regulate activities in the said zones. It was said that there was blatant violation of this Notification and industries were being set up causing serious damage to the environment and ecology of that area. It held that the matter be raised before the concerned State High Courts which shall issue necessary orders or directions.

In Ramesh v. Union of India,\(^38\) it has been held that public interest litigation for ensuring communal harmony is maintainable under Art. 32 of the Constitution. In Subhas Kumar v. State of Bihar,\(^39\) it has been held that public interest litigation is maintainable for ensuring enjoyment of pollution free water and air which is included in the right, of life under Art. 21 of the Constitution. If any thing endangers or impairs that quality of life in violation of laws a citizen has right to have recourse to Art. 32 for removing the pollution of water or air which may be detrimental to the quality of life. Such a petition under Art. 32 are maintainable at the instance of affected persons or even by a group of social workers or journalists. In M. C. Mehta v. Union of India,\(^40\) it was held that public interest litigation against pollution in Delhi caused by increasing number of petrol and diesel driven vehicles in maintainable. The Court

\(^{37}\) (1996) 5 SCC 281

\(^{38}\) (1985) 1 SCC 688

\(^{39}\) AIR 1991 SC 420

\(^{40}\) 91991) 2 SCC 137
directed the Delhi Administration to make the Central Motor Vehicle Act, 1989 effective from April, 1991 and to implement it seriously and effectively.

In Sachidanand Pandey v. State of W. B., the appellants through a public interest writ petition challenged the Government of West Bengal's decision to allot a land for the construction of a Five Star Hotel in the vicinity of the Zoological Garden of Calcutta. It was argued that multi-storied building in the vicinity of the Zoo would disturb the animals and the ecological balance and would affect the bird migration which was a great attraction. The decision was thus taken without considering its impact on the Zoo. The Court held that although in view of the Articles 48-A and 51-A (g) whenever a problem of ecology is brought before the Court it would not refuse to interfere only on the ground that priorities are matter of policy and so it is a matter for the policy making authority. At least the Court may examine whether appropriate considerations are borne in mind and irrelevancies excluded. The court has always the power to give necessary directions. In the present case, however, it was held that the interference of the Court was not called for. It was held that the decision to allot the land for the construction of Hotel was taken openly by the Government after taking into consideration all facts and considerations including ecology. Its action was neither against the interest of the Zoo nor against the financial interest of the State. The Government had acted bonafide in allotting the land to the Taj Group of Hotels for the constructions of a Five Star Hotel at the vicinity of the Zoo.

In Harbans Singh v. State of U.P., it was held the under Art. 32 very wide power has been conferred on the Supreme Court for due and proper administration of justice. This inherent power is to be exercised in extraordinary situations in the large interests of administration and for prevention of manifest injustice. Accordingly, the court commuted the death

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41 (1987) 2 SCC 295
42 AIR 1982 SC 849
sentence of the petitioner into the imprisonment for life on the ground that one of his co-accused's sentences was commuted by the court. The Court recommended that the President should normally exercise his power under Art. 72 to commute the death sentence because he has considered petitioner's mercy petition and rejected it. But if he fails to exercise his power the court will interfere to do justice in a particular case. Under Art. 32 the Supreme Court has power to commute death sentence into life imprisonment if there is undue delay in execution of sentence of death. However, for this, no period can be fixed for making the sentence of death to be changed into life imprisonment. The court will examine the nature of delay in the light of all circumstances of the case and then decide whether death sentence should be carried out or altered into life imprisonment.\textsuperscript{43}

In a significant judgment in 'Vishaka v. State of Rajasthan',\textsuperscript{44} the Supreme Court has laid down exhaustive guidelines for preventing sexual harassment of working women in place of their work until a legislation is enacted for this purpose. The Court held that it is the duty of the employer or other responsible person in work place and other institutions, whether public or private, to prevent sexual harassment of working women. The judgment of the Court was delivered by J. S. Verma, C.J., on behalf of Sujata V. Manohar and B. N. Kripal, J.J. on a writ-petition filed by Vishaka a non-governmental organisation working for "gender equality" by way of PIL seeking enforcement of fundamental rights of working women under Articles 14, 19 and 21 of the Constitution. The immediate cause for the filing of this writ petition was the alleged brutal gang rape of a social worker of Rajasthan. The Court directed the employers to set up procedure through which working women can make their complaints heard. In holding so the Court relied on International convention and norms to which India is a party and held that in absence of

\textsuperscript{43} Triveniben v. State of Gujaral, AIR 1989 SC 142; Sher Singh v. State of Punjab (1983) 2 SCC 344

\textsuperscript{44} AIR 1997 SC 3011
any domestic law on the point, they can be relied on interpreting the guarantee of 'gender equality' in Articles 14, 19 and 21 of the Constitution.

The Court held that the Court has the power under Article 32 to lay down such guidelines for effective enforcement of fundamental rights of working women at their work places and declared that this would be treated as the law declared by the Supreme Court under Article 141 of the Constitution.

In *Nilabati Behera v. State of Orissa*, the Supreme Court has laid down the principle on which compensation is to be awarded by the Court under Arts. 32 and 226 to the victim of State action. The object to award compensation in public law proceedings under Arts. 32 and 226 is different from compensation in private tort law proceeding. Award of compensation in proceeding under Arts. 32 and 226 is a remedy available in public law based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply even though it may be available as a defence in private law in an action based on tort. The purpose of public law is not only to civilize power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. The payment of compensation in such cases to provide relief by way of "monetary amends" for wrong done due to breach of public duty of not protecting the fundamental rights of the citizen.

2.3 HIGH COURTS

The Judiciary in States consists of a High Court and a system of courts subordinate to the High Court. Article 214 says that there shall be a High Court in each State. However, under Art. 231 (1) Parliament can establish by law a common High Court for two or more States or for two or more States and a Union Territory. The High Court stands at the head of the Judiciary in the State.

45 *(1993) 2 SCC 748*
2.3.1 Constitution of High Courts.—Every High Court consists of a Chief Justice and such other Judges as the President may, from time to time, deem it necessary to appoint (Art. 216). Thus the Constitution does not fix any maximum number of Judges of a High Court.

2.3.2 Appointment of Judges.—Article 217 provides that every judge of a High Court shall be appointed by the President. The President appoints the Chief Justice of a High Court after consultation with the Chief Justice of India and the Governor of the State concerned. In case of appointment of a Judge other than the Chief Justice he may consult even the Chief Justice of the High Court concerned.

2.3.3 Transfer of a Judge from one High Court to another.—Article 222 (1) empowers the President after consultation with the Chief Justice of India to transfer a Judge from one High Court to any other High Court. Clause (2) makes provisions for the grant of compensatory allowance to a Judge who goes on transfer to another High Court.

2.3.4 Qualifications.—A person to be qualified for appointment as Judge of a High Court—

(a) must be a citizen of India,

(b) must have held a judicial office for at least ten years, in the territory of India,

(c) must have been an advocate of High Court for at least ten years. [Art 217 (1) and (2)].

2.3.5 Term and removal of Judges.—A Judge of the High Court shall hold office until he attains the age of 62 years. If a question arises as to the age of a Judge of a High Court, then it shall be decided by the President after consultation
with the Chief Justice of India and the decision of the President shall be final. [Art. 217 (3)]. A Judge may, however, be removed from the office by the President in the same manner and on the same grounds as a Judge of the Supreme Court. The office of a Judge falls vacant by his being appointed by President to be Judge of the Supreme Court or being transferred to any other High Court. A Judge may also resign his office by writing to the President. [Art. 220].

2.3.6 Restriction after retirement.—Article 220 prohibits a person who held office as a permanent Judge of a High Court from acting or pleading in any court or before any authority in India except the Supreme Court and the other High Courts. This prohibition is necessary in order to maintain the independence of judiciary.

2.3.7 Salaries and Allowances.—The Judges of the High Court are paid such salaries as are specified in the Second Schedule. The Chief Justice shall get a salary of Rs. 30,000 and other Judges Rs. 26,000 per month. They are also entitled to such allowances in respect of leave and pension as Parliament may determine by law from time to time. Their salaries, allowances and pensions are charged on the Consolidated Fund of India and cannot be varied to their disadvantage after their appointment. [Art. 221], now raised the salary of the Chief Justice of a High Court to Rs. 90,000 and Judges of a High Court to Rs. 80,000.

2.3.8 JURISDICTION OF THE HIGH COURT

2.2.8.1 A Court of Record.—Article 215 declares that every High Court shall be a Court of record and shall have all powers of such a court including the power to punish for its contempt. The scope and nature of the power of High Court under this Article is similar to the powers of the Supreme Court under Article 129.
2.2.8.2 General Jurisdiction.—Article 225 says that subject to the provisions of the Constitution and to the provisions of any law of the appropriate Legislature (a) the jurisdiction of the High Court, (b) the law administered in the existing High Court, (c) the powers of the Judges in relation to the administration of justice in the courts, (d) the power to make rule of the High Court shall be the same as immediately before the commencement this Constitution. Thus the pre-Constitutional jurisdiction of the High Court is preserved by the Constitution. Article 225 thus gives jurisdiction over revenue matters. In pre-Constitution period the decisions of the Privy Council were binding on all the High Courts under section 212 of the Government of India Act. The effect of the present Article is the same and they are still binding on the High Courts unless it is reversed by the Supreme Court or by a law of the appropriate legislature.

This means that the jurisdiction and powers of the High Courts can be changed both by the Union Parliament and the State Legislatures.

2.2.8.3 Power of superintendence over all courts by the High Courts.—Under Article 227 every High Court has the power of the superintendence over all courts and tribunals throughout the territory in relation to which it exercises jurisdiction. For this purpose, the High Court may call returns from them, make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts and prescribe forms in which books, entries and accounts are to be kept by the officers of such courts, and settle table of fees to be given to the sheriff, clerks, attorneys, advocates and pleaders.

The power of Superintendence conferred on the High Court by this Article is a very wide power. This power is wider than the power conferred on the High Court to control inferior courts through writs under Art. 226. It is not confined only to administrative superintendence but also judicial superintendence over all
subordinate courts within its jurisdiction. The power of superintendence conferred on the High Court by Article 227 being extraordinary to be exercised most sparingly and only in appropriate cases in order to keep the subordinate Courts, within the bounds of their authority and not for correcting mere error of facts, however, erroneous those may be. The main grounds on which the High Court, usually interferes are when the inferior courts act arbitrarily or act in excess of jurisdiction vested in them, or fail to exercise jurisdiction vested in them, or act in violation of principles of natural justice or if there is error of law apparent on the face of record. In exercise of jurisdiction under Art. 227 the High Court can go into the question of facts or look into the evidence if justice so requires it. However, the High Court should not interfere with a finding within the jurisdiction of the inferior tribunal or court except where the finding is perverse in law in the sense that no reasonable person properly instructed in law could have come to such finding or there is misdirection in law or view of fact has been taken in the teeth of preponderance of evidence or the finding is not based on any material evidence or it resulted in manifest injustice. Thus for example, where both the trial court and the appellate court after discussing evidence came to the conclusion that the appellant was a licensee in possession of a premises it was held that the High Court's interference to appraise of evidence was not justified. In D. N. Banerji v. P. R. Mukherji, employee by the Industrial Tribunal was wrongful or justified. The Supreme Court held that the High Court cannot interfere with the decision of the Tribunal. The Supreme Court said that "unless there was grave miscarriage of justice or flagrant violation of law calling for intervention it was not for the High Court under Arts. 226 and 227 to interfere. The power should not ordinarily be exercised if some alternative remedy is available. However, the

49 Ibid.
existence of alternative remedy is no bar if without High Court's interference flagrant violation of law is likely to result if the alternative remedy is not effective or speedy."

2.2.8.4 Transfer of certain cases to High Courts.—Under Article 228 the High Court has power to withdraw a case from a subordinate Court, if it is satisfied that a case pending —in a subordinate Court involves a substantial question of law as to the interpretation of the Constitution. It may then either dispose of the case itself or may determine the said question of law and return the case to the subordinate Court with a copy of its judgment. The subordinate Court will then decide the case in conformity with the High Court's judgment.

2.2.8.5 Writ Jurisdiction of the High Court (Article 226).: Article 226 provides that notwithstanding anything in Article 32 every High Court shall have power, throughout the territorial limits in relation to which it exercises jurisdiction to issue to any person or authority including the appropriate cases, any Government, within those territories, directions, orders of writs, including writs in the nature of 

habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them—(a) for the enforcement of fundamental rights conferred by Part III, and (b) for 'any other purpose'. Thus the jurisdiction of a High Court is not limited to the protection of the fundamental rights but also other legal rights as is clear from the words "any other purpose". Those words make the jurisdiction of the High Court more extensive than that of the Supreme Court which is confined to only for the enforcement of fundamental rights. The words "for any other purpose," refer to enforcement of a legal right or legal duty. They do not mean that a High Court can issue writs for any purpose it pleases.

The writs mentioned in Article 226 are known as prerogative writs because they had their origin in the prerogative power of superintendence over its officers and subordinate courts. These writs are among the great safeguards provided by British judicial system for upholding the rights and liberties of the people. In India before the commencement of the Constitution only three Presidency High Courts of Calcutta, Bombay and Madras had power to issue writs. Their writs jurisdiction was limited to presidency-towns within which they had original jurisdiction. This Article now invests all High Courts in India with the power to issue prerogative writs for the enforcement of fundamental rights. The makers of the Constitution having provided certain basic rights for the people which they called fundamental rights evidently thought it necessary to provide also quick and inexpensive remedy for the enforcement of such rights and vested High Courts with jurisdiction.

In Sarita Sharma v. Sushil Sharma, the Supreme Court has held that where after a decree of divorce between husband and wife the petition is filed by wife for custody of children the High Court can exercise its jurisdiction under Art. 226 of the Constitution for the welfare of minor children. In the instant case the appellant Sushil Sharma filed the appeal in the Supreme Court against the judgement of the High Court of Delhi seeking a writ of habeas corpus in respect of two minor children aged 7 and 3 years respectively. It was alleged that the children are in illegal custody of Sarita Sharma whom he has married on 23-12-1988. The High Court allowed the petition and directed Sarita Sharma to restore the custody of two children to Sushil Sharma according to the decree passed by the American Court. The American Court had granted the custody of children solely to husband. The wife filed a habeas corpus petition in High Court in India for custody of children. The Supreme Court held that considering all the aspects relating to the welfare of the children, the High Court should not have passed the order allowing habeas corpus petition and directed the appellant wife to

89 AIR 2000 SC 1019.
handover custody of the children to the respondent husband and to permit him to take them to U.S.A. In view of the facts and circumstances of the case, the decree passed by the American Court though a relevant factor, cannot override the consideration of welfare of the minor children. The husband was staying with his mother aged about 80 years. There is no one in the family. The respondent appears to be in the habit of taking excessive alcohol. Though it is true that both the children have the American citizenship and there is a possibility that in U.S.A they may be able to get better education, it is doubtful if the respondent will be in a position to take care of the children when they are so young. Out of them one is female child, she is aged about 5 years. Ordinarily, a female child should be allowed to remain with the mother so that they can be properly looked after. It is also not desirable that two children are separated from each other. In India also proper care of the children is taken and they are at present studying in good schools. Appellant was not found wanting in taking proper care of the children. Both children have desire to stay with the mother. Considering all the aspects relating to the welfare of the children it was not proper for the High Court to have allowed the habeas corpus petition and directed the appellant wife to handover custody of children to the respondent husband and permit him to take them to U.S.A. Inspite the order passed by the Court in U.S.A.

This trend is to be welcomed. This would go a long way in creating a sense of responsibility in public authorities about their duties and obligations towards the people. Henceforth, the public authorities would be much more vigilant in performing their public duties and obligations.

2.2.86 Scope of Article 226.—Speaking on the scope of this power of the High Court in T. C. Basappa v. Nagappa\(^5\), the Supreme Court held that Art. 226 is couched in comprehensive phraseology and it confers a wide power on the High

Courts to remedy injustice wherever it is found. The Constitution has purposely used wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of writs is widened by the use of the expression "nature" of habeas corpus, mandamus, prohibition and quo warranto and certiorari, or any of them, for the enforcement of the rights conferred by Part III and for any other purpose. The expression does not equate the writs that can be issued in India with those in England but only draws analogy from them. Apart from that, High Courts can also issue directions, orders or writs other than the prerogative writs. Thus Art. 226 enables the High Courts to mould the reliefs to meet the peculiar, and complicated requirement of this country.

In Murari Mohan Deb v. Secretary to Govt. of India\(^{33}\) the Court held that if there was technical error in the draftsmanship of the petition by a lawyer, a class IV low grade servant should not have been made to suffer. The lawyer had failed to implead the Union of India as a respondent. The objection was raised after a lapse of 6 years which was accepted by the Trial Court. It was held that an oral request to correct the petition for impleading the respondent would have satisfied the procedural requirement.

2.2.8.7 High Courts for Union Territories.—Under Article 241 Parliament is empowered to constitute a High Court for a Union Territory or declare any court in any such territory to be a High Court for all or any of the purposes of this Constitution. The provision relating to the High Courts in the States shall apply to the High Courts for Union Territories with such modifications or exceptions as may be provided by Parliament by law. According to clause (3) every High Court exercising jurisdiction immediately before the commencement of the Constitution

\(^{33}\)(1985) 3 SCC 120.
(Seventh Amendment) Act, 1956, in relation to any Union Territory shall continue to exercise such jurisdiction until Parliament by law excludes such jurisdiction.

2.4 SUBORDINATE COURTS

The whole judicial system in modern India is organised on hierarchical pattern. At the apex there is a Supreme Court, then come the High Courts of which there is one in each State. Below the High Courts, there are subordinate civil and Criminal Courts. The Civil Courts below the High Courts owe their existence and jurisdiction to the enactment of each state concerned. Now civil and criminal procedures fall in the concurrent list. Hence, a State Legislature can pass legislation for this purpose subject to any law which Parliament may enact in this area, in spite of dissimilarities in different states about the jurisdictional matters of subordinate 'courts, some uniformity is found in the organization of these subordinate Courts throughout the country.

2.4.1 SUBORDINATE CIVIL JUDICATURE: The bulk of the judicial work is done by the subordinate judicature, i.e. the courts below the High Courts. These courts come in close contact with the people, and their proper organisation and functioning are thus very important. The subordinate civil courts owe their existence in each State to the law of the State concerned. Each State is divided into districts. Each district has a three-tier system of courts. At the lowest rung of the ladder, there function subordinate courts whose nomenclature, designation and jurisdiction vary from State to State. The subordinate judiciary can be broadly classified in to -i) Subordinate Civil Judicature and ii) Subordinate Criminal Judicature. i) Subordinate Civil Judicature: It comprises of —
2.4.2 The Court of District Judge or District Court: 1. Each State is divided into several districts. In each district there is a District Court which is the principal civil court of original jurisdiction. Under the District Court, there function a number of lower Courts whose nomenclature and jurisdiction vary from State to State. The District Court acts as an appellate Court and hears appeals from the lower courts in the district in all cases upto Rs. 10000 though in some states, the limit has been raised to higher amount. Appeals in cases involving over the amount go direct to the High Court instead of the District Court. The main function of the District Court is to hear appeals from the subordinate Courts and to take cognizance of original matters under certain special statute e.g. the Indian Succession Act, the Guardians and Wards Act, The Land Acquisition Act etc. The role of the primary responsibility for supervising and controlling judicial work in the district rests upon him. He holds a key position in the judicial structure of the district and is in a measure responsible for the efficient judicial administration therein. To relieve load of work on the district judge, provision is made to appoint additional District Judges having practically the same status and powers as the district judges.

2. Below the District Courts, there are some of the Courts of judges having different designations in different States, viz. Subordinate Judges, Civil Judges (Senior Division), Civil Judges (Class-I). Civil Courts Acts of various States fix the limits of the pecuniary jurisdiction from time to time. They can try cases of a higher denomination than the Munsiffs.

3. Below these Courts, comes the Courts of judges having different designations in different States, viz. Civil Judges (Class-II) and have jurisdiction to decide cases upto a few thousand rupees. Their pecuniary jurisdiction varies from State to State and time to time. The District Court is subordinate to the High Court, and all subordinate Civil Courts in the district
are subordinate to the District Court and the High Court. Besides the above hierarchy of civil Courts, there are Courts of Small Causes established by the State Governments under the Provincial Small Causes Courts Act, 1887.

These Courts can take cognizance of civil suits upto a value of five hundred rupees; but the State Government may extend their jurisdiction to one thousand rupees. These Courts follow a summary procedure. There is no full record of evidence, examination or cross-examination of witness is not elaborate, issues are not framed, and the judgment simply states the points for decision with the courts findings thereon but not the reasons thereof. A number of categories of cases are excluded from the purview of these Courts e.g. regarding government acts, concerning possession of immovable property. A suit cognizable by a Court of Small Causes is not to be tried by any other Court. The decisions of the small cause courts are final, but the High Court exercises a power of revision. A Court of Small Causes is subject to the administrative control of District Court and to the superintendence of the High Court.

b) Village Panchayat Courts: Panchayat have now been established in almost all the States. The institution of the Panchayats as a media of dispensation of justice is in experimental stage. Their civil jurisdiction is limited to suits involving property of small values prescribed. A civil suit for recovery of money due to on contract, or for recovery of movable property or for realising compensation for wrongfully taking or injuring a movable property or for damages caused by cattle trespassers can be instituted before Nyaya Panchayat. In some States, the pecuniary limit of the jurisdiction of a panchayat is Rs.200 but a Panchayat with enhanced power can entertain claims upto Rs.500. The jurisdiction of the Nyaya Panchayats depends upon the State enactment. The Sub-Divisional Magistrate, the Munsiffs or the Sub-Divisioned Officers are generally empowered to withdraw any case, pending
before Nyaya Panchayat, criminal or civil to their own Courts at their own instance or at the instance of the party and try or dispose it of or transfer it to another Bench. The Law Commission has observed that 'with safeguards designed to ensure their proper working and improvement, the courts (Nyaya Panchayats) are capable of playing a very necessary and useful part in the administration of justice in the country.'

2.4.3 Revenue Courts: In States Revenue Courts are established through Land Revenue Acts. The hierarchy of revenue courts are: i) Board of Revenue; ii) Commissioners and Additional Commissioners; iii) Collectors and Additional Collectors; iv) Assistant Collectors; v) Tahsildars and Naib-Tahsildars (Mandal Revenue Officers in Andhra Pradesh) and Record Officers. They deal with revenue matters according to the provisions of Land Revenue Acts.

2.4.4 Subordinate Criminal Judicature: It comprises of -

a) Courts of Sessions: A State is divided into sessions divisions and every such division is a district or consists of districts. There is a Court of Sessions for every Session division. A Session Judge is appointed by the High Court. The High Court may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in a Court of Sessions. These judges try serious offences, such as dacoities, homicide, serious thefts by habitual offenders etc. An Assistant Sessions Judge may pass any sentence except that of death, life imprisonment or imprisonment for a term exceeding 10 years. A Sessions Judge may pass any sentence authorised by law; but any sentence of death passed by him subject to confirmation by the High Court. The Sessions Judge has appellate jurisdiction also. He hears appeals from the various Judicial and Metropolitan Magistrates. It is the District Court,
which acts as the Sessions Court and thus the same court acts in both capacities, civil and criminal.

b) **Courts of Magistrates:** There are a number of Magistrates in each district. Magistrates are of two categories i.e. Judicial Magistrates and Executive Magistrates. The Judicial Magistrates are under the control of the High Court. Judicial Magistrates are of the I and II classes. A district has a Chief Judicial Magistrate, Additional Chief Judicial Magistrate, Sub Divisional Judicial Magistrates who are all Magistrates of I Class, and other Judicial Magistrates who are all Magistrates who are Magistrates of II class. In each of the big cities having a population of not less than one million, known as the Metropolitan areas, there may be appointed a Chief Metropolitan Magistrate, an Additional Chief Metropolitan Magistrate and other Metropolitan Magistrates. A Chief Judicial Magistrate may pass any sentence except that of death or of imprisonment for life or of imprisonment for a term exceeding seven years. A first class Magistrate may pass a sentence of imprisonment for a term exceeding three years or of fine not exceeding five thousand rupees, or of both. A Magistrate of second class may pass a sentence of imprisonment for a term not exceeding one year or of fine not exceeding one thousand rupees, or of both. The Chief Metropolitan magistrate has the powers of a Chief Magistrate; a Metropolitan Magistrate has the powers of a Magistrate of the I class. The Executive Magistrates are under the control of the State Government. Functions of 'Police' or administrative nature belong to the Executive Magistrates. The Executive Magistrates in a district are District Magistrate; Additional District Magistrates, Sub Divisional Magistrates and other Subordinate Executive Magistrates.

**2.4.5 Panchayats and Criminal Justice:** As regards criminal jurisdiction of Nyaya Panchayat it is not empowered to inflict a substantive sentence of
imprisonment. With regard to criminal jurisdiction, even panchayat is empowered to take cognizance of petty crimes including offences in the nature of breach of peace. It may impose a fine generally not exceeding Rs.100 upon the offenders. In default of the payment of fine, imprisonment cannot be awarded. It is not required to take cognizance of such criminal cases where it thinks that the offence is such for which it cannot award adequate punishment or that it has got no jurisdiction otherwise to try it. The Sub Divisional Magistrates are generally empowered to withdraw any criminal case pending before the Nyaya Panchayat to their own courts at their own instance or at the instance of the party and try to dispose it or transfer it to another Bench.

2.4.6 CONSTITUTION AND SUBORDINATE CIVIL JUDICIARY: The Indian Constitution makes a few provisions so as to secure pure and impartial administration of justice in the country. It ensures the independence of the Supreme Court and the High Courts. The Constitution also seeks to safeguard the integrity of subordinate civil judiciary. It is the subordinate judiciary, which comes into close contact with the people, and therefore it is important that its independence be protected. For efficient administration of law and justice in the country, it is necessary to ensure that subordinate judiciary remains above temptation, corruption and nepotism. With this in view, the Constitution of India incorporates a few provisions regarding subordinate judiciary. However, it may not be correct to say that subordinate judiciary has been completely immunized from the influence of the executive. Art.50 of the Constitution, a directive principle, emphasizes upon separation of the judiciary from the executive. Nevertheless, as the constitutional provisions are drafted, the executive continues to exercise a certain measure of control over subordinate judiciary in such matters as appointment, promotion, posting etc.
2.4.7 Appointment of District Judges: Article 233 of the Constitution provides for the appointment of a District Judge. As per Article 236 of the Constitution, the expression 'district judge' includes judge of a City Civil Court, additional district judge, joint district judge, assistant chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, session judge, additional session judge and assistant session judge. Appointments of persons to be and the postings and promotion of, District Judges in any stage shall be made by the Governor to the State in consultation with the High Court exercising jurisdiction in relation to such State. A person not already in the service of the Union or of the State shall only be eligible to be appointed a District Judge if he has been for not less than seven years an advocate or a 'pleader and is recommended by the High Court appointment. Recruitment of Persons other than District Judges to the Judicial Service: According to Article 234 of the Constitution, appointment of persons other than district judges of the judicial service of a state shall be made by the governor of the state in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such state. The 'Consultation with High Court' here is only with regard to the framing of the rules and not for actual selection of the appointees.

Control over Subordinate Courts: As per Article 235 of the Constitution, the control over District Courts and Courts belonging to the judicial service of the State and holding any post inferior to the post of District Judges shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law. 'Control' under Article 235 signifies
control over the conduct and discipline of the judges. The 'Control' includes both disciplinary and administrative jurisdiction. The control over subordinate judiciary is vested in the High Court to secure its independence. The High Courts can hold enquiries and impose punishment over judicial officers short of dismissal or removal, which are covered under Article 311 of the Constitution. The Government is not competent to institute disciplinary proceedings against District Judges.

Complete security of service has been provided to a judge of High Court and the Supreme Court. But so far subordinate judiciary is concerned appointments are generally in the hands of the State governments which continue to exercise certain measure of control over the judges even after the appointment in matter such as promotion and posting etc. which is not a healthy tradition and may undermine sometimes the judicial independence.

2.5. JUDICIAL SYSTEMS IN OTHER COUNTRIES

2.5.1 Judicial system in U.S.A: The judicial system in the United States is unique insofar as it is actually made up of two different court systems: the federal court system and the state court systems. While each court system is responsible for hearing certain types of cases, neither is completely independent of the other, and the systems often interact. Furthermore, solving legal disputes and vindicating legal rights are key goals of both court systems. This lesson is designed to examine the differences, similarities, and interactions between the federal and state court systems to make the public aware of how each system goes about achieving these goals.

2.5.1.1 Federal Court System: The term federal court can actually refer to one of two types of courts. The first type of court is what is known as an
Article III court. These courts get their name from the fact that they derive their power from Article III of the Constitution. These courts include (1) the U.S. District Courts, (2) the U.S. Circuit Courts of Appeal, and (3) the U.S. Supreme Court. They also include two special courts: (a) the U.S. Court of Claims and (b) the U.S. Court of International Trade. These courts are special because, unlike the other courts, they are not courts of general jurisdiction. Courts of general jurisdiction can hear almost any case. All judges of Article III courts are appointed by the President of the United States with the advice and consent of the Senate and hold office during good behavior. The second type of court also is established by Congress. These courts are (1) magistrate courts, (2) bankruptcy courts, (3) the U.S. Court of Military Appeals, (4) the U.S. Tax Court, and (5) the U.S. Court of Veterans' Appeals. The judges of these courts are appointed by the President with the advice and consent of the Senate. They hold office for a set number of years, usually about 15. Magistrate and bankruptcy courts are attached to each U.S. District Court. The U.S. Court of Military Appeals, U.S. Tax Court, and U.S. Court of Veterans' Appeals are called Article I or legislative courts. Federal courts can have jurisdiction over a case of a civil nature in which parties are residents of different states and the amount in question exceeds the amount set by federal law. Federal courts have jurisdiction over cases that arise under the U.S. Constitution, the laws of the United States, and the treaties made under the authority of the United States. These issues are the sole prerogative of the federal courts and include the following types of cases: In addition, the federal courts have jurisdiction over several other types of cases arising from acts of Congress. For example, the courts have jurisdiction in a wide variety of (1) civil rights, (2) labor relations, and (3) environmental cases. While these laws provide a "floor" for the states, they do not provide a "ceiling." If states regulate more extensively in these areas than the federal government, then state courts also will have jurisdiction in these areas.
2.5.1.2 U.S. District Courts: There are 94 U.S. District Courts in the United States. Every state has at least one district court, and some large states, such as California, have as many as four. Each district court has between 2 and 28 judges. The U.S. District Courts are trial courts, or courts of original jurisdiction. This means that most federal cases begin here. U.S. District Courts hear both civil and criminal cases. In many cases, the judge determines issues of law, while the jury (or judge sitting without a jury) determines findings of fact.

2.5.1.3 U.S. Circuit Courts of Appeal: There are 13 U.S. Circuit Courts of Appeal in the United States. These courts are divided into 12 regional circuits and sit in various cities throughout the country. The U.S. Court of Appeals for the Federal Circuit (the 13th Court) sits in Washington. With the exception of criminal cases in which a defendant is found not guilty, any party who is dissatisfied with the judgment of a U.S. District Court (or the findings of certain administrative agencies) may appeal to the U.S. Circuit Court of Appeal in his/her geographical district. These courts will examine the trial record for only mistakes of law; the facts have already been determined by the U.S. District Court. Therefore, the court usually will neither review the facts of the case nor take any additional evidence. When hearing cases, these courts usually sit in panels of three judges.

2.5.1.4 U.S. Supreme Court: The Supreme Court of the United States sits at the apex of the federal court system. It is made up of nine judges, known as justices, and is presided over by the Chief Justice. It sits in Washington, D.C. Parties who are not satisfied with the decision of a U.S. Circuit Court of Appeal (or, in rare cases, of a U.S. District Court) or a state supreme court can petition the U.S. Supreme Court to hear their case. This is done mainly by
a legal procedure known as a Petition for a Writ of Certiorari (cert.). The Court decides whether to accept such cases. Each year, the Court accepts between 100 and 150 of the some 7,000 cases it is asked to hear for argument. The cases typically fit within general criteria for oral arguments. Four justices must agree to hear the case (grant cert). While primarily an appellate court, the Court does have original jurisdiction over cases involving ambassadors and two or more states.

2.5.1.5 Special Article III Courts

- **U.S. Court of Claims**: This court sits in Washington, D.C., and handles cases involving suits against the government.
- **U.S. Court of International Trade**: This court sits in New York and handles cases involving tariffs and international trade disputes.

2.5.1.6 SPECIAL COURTS CREATED BY CONGRESS

- **Magistrate Judges**: These judges handle certain criminal and civil matters, often with the consent of the parties.
- **Bankruptcy courts**: These courts handle cases arising under the Bankruptcy Code.
- **U.S. Court of Military Appeals**: This court is the final appellate court for cases arising under the Uniform Code of Military Justice.
- **U.S. Tax Court**: This court handles cases arising over alleged tax deficiencies.
- **U.S. Court of Veterans' Appeals**: This court handles certain cases arising from the denial of veterans' benefits.
- **Family court**: This court handles matters concerning adoption, annulments, divorce, alimony, custody, child support, etc.
- **Traffic court**: This court usually handles minor violations of traffic laws.
• **Juvenile court**: This court usually handles cases involving delinquent children under a certain age, for example, 18 or 21.

• **Small claims court**: This court usually handles suits between private persons of a relatively low dollar amount, for example, less than $5,000.

• **Municipal court**: This court usually handles cases involving offenses against city ordinances.

2.5.2 JUDICIAL SYSTEM IN UNITED KINGDOM: The United Kingdom has three legal systems: English law, which applies in England and Wales, and Northern Ireland law, which applies in Northern Ireland, are based on common-law principles. Scots law, which applies in Scotland, is a pluralistic system based on civil-law principles, with common law elements dating back to the High Middle Ages. The Treaty of Union, put into effect by the Acts of Union in 1707, guaranteed the continued existence of a separate law system for Scotland. The Acts of Union between Great Britain and Ireland in 1800 contained no equivalent provision but preserved the principle of separate courts to be held in Ireland, now Northern Ireland.

In England and Wales, the court system is headed by the Supreme Court of England and Wales, consisting of the Court of Appeal, the High Court of Justice (for civil cases) and the Crown Court (for criminal cases). The Courts of Northern Ireland follow the same pattern. In Scotland the chief courts are the Court of Session, for civil cases, and the High Court of Justiciary, for criminal cases, while the sheriff court is the Scottish equivalent of the county court. The Judicial Committee of the Privy Council is the highest court of appeal for several independent Commonwealth countries, the British overseas territories, and the British Crown dependencies. There are also immigration courts with UK-wide jurisdiction — the Asylum and Immigration Tribunal and Special Immigration Appeals Commission. The Employment
tribunals and the Employment Appeal Tribunal have jurisdiction throughout Great Britain, but not Northern Ireland.

2.5.2.1 THE ROYAL COURTS OF JUSTICE IN LONDON, HOME OF THE SUPREME COURT OF ENGLAND AND WALES: "English law" is a term of art. It refers to the legal system administered by the courts in England and Wales. The ultimate body of appeal is the Law lords in the House of Lords. They rule on both civil and criminal matters. English law is renowned as being the mother of the common law. English law can be described as having its own distinct legal doctrine, distinct from civil law legal systems since 1189. There has been no major codification of the law, and judicial precedents are binding as opposed to persuasive. In the early centuries, the justices and judges were responsible for adapting the Writ system to meet everyday needs, applying a mixture of precedent and common sense to build up a body of internally consistent law, e.g., the Law Merchant began in the Pie-Powder Courts see Court of Piepowder (a corruption of the French "pieds-poudrés" or "dusty feet", meaning ad hoc marketplace courts). As Parliament developed in strength, and subject to the doctrine of separation of powers, legislation gradually overtook judicial law making so that, today, judges are only able to innovate in certain very narrowly defined areas. Time before 1189 was defined in 1276 as being time immemorial.

2.5.3 Northern Irish legal system: The law of Northern Ireland is a common law system. It is administered by the courts of Northern Ireland, with ultimate appeal to the House of Lords in both civil and criminal matters. The law of Northern Ireland is closely similar to English law, the rules of common law having been imported into the Kingdom of Ireland under English rule. However there are still important differences. The sources of the law of Northern Ireland are English common law, and statute law. Of the latter,
statutes of the Parliaments of Ireland, of the United Kingdom and of Northern Ireland are in force, and latterly statutes of the devolved Assembly.

2.5.4 Scots law: Scots law is a unique legal system with an ancient basis in Roman law. Grounded in uncodified civil law dating back to the Corpus Juris Civilis, it also features elements of common law with medieval sources. Thus Scotland has a pluralistic, or 'mixed', legal system, comparable to that of South Africa, and, to a lesser degree, the partly codified pluralistic systems of Louisiana and Quebec. Since the Acts of Union, in 1707, it has shared a legislature with the rest of the United Kingdom. Scotland and England & Wales each retained fundamentally different legal systems, but the Union brought English influence on Scots law and vice versa. In recent years Scots law has also been affected by both European law under the Treaty of Rome and the establishment of the Scottish Parliament which may pass legislation within its areas of legislative competence as detailed by the Scotland Act 1998.

2.5.5 Judicial System In Poland: The constitution of 1952 reflected the communists' disdain for the concept of judicial independence. As in the Soviet system, the Polish judiciary was viewed as an integral part of the coercive state apparatus. The courts were not allowed to adjudicate the constitutionality of statutes. Instead, the function of constitutional review was within the purview of the legislative branch until 1976, when it passed to the Council of State. A key provision of the Round Table Agreement was the reemergence of an independent judiciary, a concept rooted in the Ustawa Rzadowa, the constitution of 1791. By 1992 most of the communist political appointees had left the Supreme Court, and at all levels new judges had been recruited from among qualified academic and courtroom barristers.
2.5.5.1 The Supreme Court: Reform of the appointment mechanism for justices was a necessity to ensure an independent judiciary. In the communist era, the Council of State appointed Supreme Court justices to five-year terms, making selections on purely political grounds. Because the Supreme Court had jurisdiction over all other courts in the land, the political reliability of its members was an important consideration in appointment decisions. Judicial reform after the Round Table Agreement provided that the president appoint Supreme Court justices from a list prepared by an independent National Judicial Council, and that justices be appointed for life terms. The presiding officer of the Supreme Court, called the first chairman, is appointed from among the Supreme Court justices by the National Assembly upon the recommendation of the president. Dismissal from the chairmanship follows the same procedure.

The Supreme Court reviews the decisions of all lower courts; hears appeals of decisions made by the district courts, along with appeals brought by the minister of justice (who simultaneously serves as the prosecutor general) and the first chairman of the Supreme Court; and adopts legal interpretations and clarifications. The court is organized into four chambers: criminal, civil, labor and social insurance, and military. Because of its heavy case load, the Supreme Court is a large body, employing 117 judges and a staff of 140 persons in late 1990.

2.5.5.2 Lower Courts: In 1990 the system of lower courts included forty-four district and 282 local courts. These numbers were scheduled to be increased to forty-nine and 300, respectively, in 1991. Thereafter the local courts were to concentrate on minor, routine offenses, and the district courts were to take on more serious cases and consider appeals of local court verdicts. Misdemeanors generally are handled by panels of "social adjudicators," who
are elected by local government councils. In 1991 these panels heard about 600,000 cases, of which about 80 percent were traffic violations. To relieve the heavy appeals case load of the Supreme Court, ten regional appeals courts were set up in late 1990 to review verdicts of the district courts.

2.5.5.3 The Supreme Administrative Court: The Supreme Administrative Court was established in 1980 to review and standardize administrative regulations enforced by government agencies and to hear citizens' complaints concerning the legality of administrative decisions. In 1991 the court heard some 15,600 cases, mostly dealing with taxes, social welfare issues, and local government decisions. As of late 1990, the court employed 105 judges and 163 staff members.

2.5.5.4 The Constitutional Tribunal: The Constitutional Tribunal was established by the Jaruzelski regime in early 1982 to adjudicate the constitutionality of laws and regulations. The Sejm appoints the tribunal's members to four-year terms. Initially, the body did not have authority to review laws and statutes enacted before 1982. Findings of unconstitutionality could be overruled by the Sejm with a two-thirds majority vote. Selected by the Sejm for their superior legal expertise, the members of the Constitutional Tribunal are independent and bound only by the constitution. In 1992 the tribunal made controversial findings that government plans to control wages and pensions retroactively violated rights constitutionally guaranteed to citizens.

2.5.5.5 Judicial System in Sri Lanka: The court-structure consists of a Supreme Court, a Court of Appeal, High Courts, Municipal Courts, and Primary Courts. Additionally, there are numerous tribunals, etc. In cases involving criminal law, a Magistrate's Court or a High Court is the only court
with primary jurisdiction; the respective legal domains of each are provided in the Code of Criminal Procedure.

2.5.5.6 The Supreme Court: The Supreme Court is the highest and final court of record, and exercises final civil and criminal appellate jurisdiction. Litigants who do not agree with a decision of the original court, be it civil, criminal, or Court of Appeal, may take the case before the Supreme Court, with permission from the Court of Appeal, or special permission from the Supreme Court. The Supreme Court, however, will only agree to consider cases involving a substantial legal issue. The Supreme Court is composed of a Chief Justice and not less than six, and not more than ten, other judges.

The Supreme Court also has the sole and exclusive jurisdiction to hear and determine issues relating to the infringement of fundamental rights by Executive or Administrative action. These fundamental rights include freedom of thought, conscience and religion; freedom from torture; right to equality; freedom from arbitrary arrest, detention and punishment; prohibition of retroactive penal legislation; and freedom of speech, assembly, association and movement. The Constitution provides for temporary restrictions on fundamental rights if national security issues are involved. The Supreme Court also exercises consultative jurisdiction. If the President of the Republic deems that a question of law or fact that has arisen is of such a nature and of such public importance, the President may refer the question directly to the Supreme Court for an opinion.

2.5.5.7 High Courts: Trials at a High Court are conducted by the State (Sri Lanka), through the Attorney-General's Department. The Attorney-General's Department prosecutes on behalf of the State. Murder trials and various offenses against the State are tried at the High Court; other criminal offenses are tried at a Magistrate's Court. While some High Court trials will have a
jury, some trials will not have a jury. The types of cases that require a jury are provided in the Second Schedule of the Judicature Act No.2 of 1978. This Court sits in 16 provinces in the country (16 High Courts).

2.5.5.2 **District Courts:** District Courts are the Courts of first instance for civil cases. District Courts have jurisdiction over all civil cases not expressly assigned to the Primary Court or a Magistrate's Court. Sri Lanka has 54 judicial districts. Every District Court is a court of record and is vested with unlimited original jurisdiction in all civil, revenue, trust, insolvency and testamentary matters, other than issues that are assigned to any other court by law.

2.5.5.9 **Magistrate's Courts:** The Magistrate's Courts are established under the Judicature Act, No.2 of 1978. Each Judicial division has one Magistrate's Court, and there are 74 judicial divisions in Sri Lanka. Each Magistrate's Court is vested with original jurisdiction over criminal offenses (other than offenses committed after indictment in the High Court.)

2.5.5.16 **Primary Courts:** Each Primary Court is vested with the following jurisdictions:

- Original civil jurisdiction over cases involving debt, damages, demands, or claims that do not exceed Rs. 1,500.
- Enforcement of by-laws by local authorities and disputes relating to recovery of revenue by these local authorities.
- Exclusive criminal jurisdiction over cases relating to offenses "prescribed" by regulation by the Justice Minister.
• Offenses in violation of the provisions of any Parliamentary Act, or subsidiary legislation, that is related to jurisdiction vested in the Primary Courts.

2.5.5. Other Courts and Tribunals: The other courts include the Kathi Court, the special tribunal that adjudicates on matrimonial matters relating to Muslims. Buddhist ecclesiastical matters that fall under the purview of the Buddhist Temporalities Ordinance of 1931 are heard by the ordinary courts. Disciplinary matters pertaining to Buddhist clergy are handled by religious councils which are under the authority of the Buddhist priests themselves.