CHAPTER 5
COURTS

The word 'court' originally meant the King's palace. Later, it has acquired two important meanings, firstly, a place where justice is administered and secondly, the person or persons who administer justice. The Indian Evidence Act, 1872 is the only statute which defines the term court as such. The court, accordingly, includes all judges and magistrates and all persons except arbitrators legally authorised to take evidence.

The Indian Penal Code, 1860 expresses the idea more clearly while defining the words 'court of justice'. A judge empowered by law to act judicially alone or a body of judges so empowered to act judicially as a body is denoted as a court of justice when such judge or body of judges is acting judicially.

The person or persons constituting the court must be entrusted with judicial functions and powers. The judicial function means deciding litigated questions according

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2 The Indian Penal Code, 1860, s.19 provides: "The word 'Judge' denotes not only every person who is officially designated as a Judge, but also every person, who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment.
3 Illustrations
(a) A collector exercising jurisdiction in a suit under Act X of 1859, is a Judge.
(b) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.
(c) A member of a Panchayat, which has power, under Regulation VII, 1816, of the Madras Code, to try and determine suits, is a Judge.
(d) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.
4 The General Clauses Act, 1897, s.3 (32) provides: "'Magistrate' shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force."
5 The Indian Penal Code, 1860, s.20.
6 Ibid.
to law fairly, impartially and without arbitrariness. Such proceedings before the court are normally conducted in public and in the presence of the parties concerned. The powers such as those to receive evidence, to enforce the attendance of witnesses and the production of documents and material objects before it and to pronounce judgment and carry it into effect are conferred on the court for functioning properly. Another important feature of the court is that it exercises jurisdiction over person by reason of the sanction of law and not merely by reason of voluntary submission to such jurisdiction.

5.1 Territorial divisions

The entire territory of our nation is divided into as many units as necessary for the purposes of administration whether judicial or otherwise. Such a territorial division is very much expedient for the administration. The size and the number of such units vary upon the needs of the administration.

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5 The Code of Criminal Procedure, 1973, s. 2(i) provides: "'judicial proceeding' includes any proceeding in the course of which evidence is or may be legally taken on oath."

6 Mrs. Dirji v. Smt. Goel, AIR 1941, Pat 65 (FB), at p. 65: "In order to be a Court the person or persons who may be said to constitute it must be entrusted with judicial functions. 'Judicial function' means the function of 'deciding litigated questions according to law'- deciding them not arbitrarily but on evidence and according to certain rules of procedure which ensure that the person, who called upon to decide them, acts with fairness and impartiality. It is often said that two of the important features of a Court are (1) that the proceedings before it are normally conducted in public and (2) that it is conducted in the presence of the parties concerned. A court can not function properly unless it is armed with certain powers such as the powers to receive evidence bearing on the matters which it is called upon to decide, the power to enforce the attendance of witnesses and the production of documents and material objects before it and 'the power to pronounce judgment and carry it into effect between the person and parties who bring a case before it for decision'. Thus a Court must not only be charged with judicial functions but must also be invested with judicial powers. Another important feature of a Court is that it exercises jurisdiction over person by reason of the sanction of the law and not merely by reason of voluntary submission to such jurisdiction. Properly speaking, the Courts are created only by the authority of the sovereign power as the fountain of justice, such authority being exercised either by Statute, Charter, Letters Patent or Order in Council. It was suggested before us on behalf of the respondent that the Indian Legislature cannot create a new Court, but the matter is now concluded by the decision of the Full Bench, in which it has been held that the Governor-General-in-Council has power to create new Courts of Justice and to limit the jurisdiction of the existing Courts. The learned Judges who decided the case cited in support of their view the decision of the Privy Council, where it was held that the Indian Legislature has powers expressly limited by the Act of the Parliament which created it, but has, when acting within those limits, plenary powers of Legislature as large and of the same nature as those of Parliament itself. Now I do not pretend that the tests I have laid down above are exhaustive, but I believe that is a tribunal satisfies all those tests, it will be difficult to hold that it is not a Court."
On the basis of such territorial units various courts are established and their local jurisdiction is determined. India consists of several States and Union Territories. For the purpose of administration of criminal justice every State is a session division or consists of more sessions divisions than one. Every Sessions division is a district or consists of several districts. The State Government may divide any district into subdivisions after consultation with the High Court. It may as well alter the limits or the

9 See s.2(e), (j), (k), (v); s.3 & s.7.
10 The Code of Criminal Procedure, 1973, s.2(f) provides: "'India' means territories to which this Code extends." The Code only implies the idea that India consists of Union Territories besides States (See for example, the definition "High Court" under s.2(e)). A search for full clarification leads to the Constitution and the General Clauses Act. Article (1) of the Constitution provides: "Name and territory of the Union.- (1) India, that is Bharat, shall be a Union of States. (2) The States and the territories thereof shall be as specified in the First Schedule. (3) The territory of India shall comprise- (a) the territories of the States; (b) the Union Territories specified in the First Schedule; and (c) such other territories as may be acquired." Article 366(15) provides: "'Indian State' means any territory which the Government of the Dominion of India recognised as such a State" Article 366(30) provides: "'Union territory' means any Union territory specified in the First Schedule and includes any other territory comprised within the territory of India but not specified in that Schedule." In view of Article 367 it is useful to look into the General Clauses Act, 1897. S.3(28) provides: "'India' shall mean.- (a) as respects any period before the establishment of the Dominion of India, British India together with all territories of Indian Rulers then under the suzerainty of His Majesty, all territories under the suzerainty of such an Indian Ruler, and the tribal areas; (b) as respects any period after the establishment of the Dominion of India and before the commencement of the Constitution, all territories for the time being included in that Dominion; and (c) as respect any period after the commencement of the Constitution, all territories for the time being comprised in the territory of India." See also the Indian Penal Code, 1860, s.18.

11 The General Clauses Act, 1897, s.3(58) provides: "'State'- (a) as respects any period before the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean a Part A State, a Part B State or a Part C State; and (b) as respects any period after such commencement, shall mean a State specified in the First Schedule to the Constitution and shall include a Union Territory." S.3(62 A) provides: "'Union territory' shall mean any Union territory specified in the First Schedule to the Constitution and shall include any other territory comprised within the territory of India but not specified in that Schedule."

12 The Code of Criminal procedure, 1973, s.7(1).
13 Ibid.
14 Ibid, sub-sec(3).
number of such sessions divisions, districts and sub-divisions after consultation with the
High Court.\textsuperscript{15}

Every metropolitan area is a separate sessions division and district.\textsuperscript{16} A
metropolitan area is an area declared or deemed to be declared as such under the Code.\textsuperscript{17}
The Code empowers the State Governments to declare any area in the State comprising
a city or town whose population\textsuperscript{18} exceeds one million as a metropolitan area for its
purpose.\textsuperscript{19} The Code declares the Presidency-towns of Bombay, Calcutta and Madras
and the city of Ahmedabad as metropolitan areas.\textsuperscript{20} Recognising the needs of
metropolitan areas the Code envisages a set-up of courts different from one devised for
the other parts of State. The administration of criminal justice in large cities requires a
measure of special treatment. The magistrates there ought to be better qualified and
more competent to deal expeditiously with sophisticated crimes particularly in the
socio-economic field, which are more common in the cities.\textsuperscript{21}

5.2 Criminal Courts

The Code does not define the term ‘criminal courts’. However, it was
defined in the first and second Codes.\textsuperscript{22} Every judge or magistrate lawfully exercising
jurisdiction in criminal cases, whether for the decision of such cases in the first instance

\textsuperscript{15} Id, sub-secs.(2) and (3).
\textsuperscript{16} Ibid.
\textsuperscript{17} Id, s.2(k).
\textsuperscript{18} Id, Explanation.- In this section, the expression “population” means the population as ascertained at
the last preceding census of which the relevant figures have been published.”
\textsuperscript{19} Id, s.8(1).
\textsuperscript{20} Id, s.8(2).
\textsuperscript{21} The Law Commission of India, 41\textsuperscript{st} Report, p.17, para 2.11. It is to be noted that in the Presidency-
towns of Bombay, Madras and Calcutta, the magisterial work was in the hands of a special category of
magistrates known as the Presidency Magistrates. Usually persons appointed to these posts were
having special qualifications or experience and were paid higher emoluments. The special procedure
followed by those magistrates took less time. The system having been found useful, the Code has
adopted a similar system for the metropolitan areas.
\textsuperscript{22} The Code of Criminal Procedure, 1861 and the Code of Criminal Procedure, 1872.
or on appeal or for commitment to any other court or officer, constituted a criminal court as per the definition contained in the 1861 Code. The definition was modified in the second Code, whereby every judge or magistrate or body of judges or magistrates inquiring into or trying any criminal case or engaged in any judicial proceeding constituted a criminal court. It also explained the expression 'judicial proceeding' as any proceeding in the course of which evidence is, or may be, taken or in which any judgment, sentence or final order is passed on recorded evidence. Though the present Code does not specifically define the expression criminal courts it follows the meaning of the expression as defined by the earlier Codes.

5.3 Classes of criminal courts

The Code envisages the following courts as criminal courts:

i. Supreme Court,

ii. High Court,

iii. Court of Session,

iv. Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrates

v. Judicial Magistrates of the second class,

vi. Executive Magistrates, and

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23 The Code of Criminal Procedure, 1861, s.11.
24 The Code of Criminal Procedure, 1872, s.4.
25 Ibid; The difference in the definition of the expression contained in the present Code is relevant to be noted. The Code of Criminal Procedure, 1973, s.2(i) provides: “‘judicial proceeding’ includes any proceeding in the course of which evidence is or may be legally taken on oath”; Mayne’s Criminal Law of India, 2nd ed., p.565: “any step in the lawful administration of justice in which evidence may be legally recorded for the decision of the matter in issue in the case, or of any question necessary for the decision or final disposal of such matter”; In Queen v. Ghulam Ismail, I All (FB), at p.13, Spankie, J., defined judicial proceeding as “any proceeding in the course of which evidence is or may be taken, or in which any judgment, sentence, or final order is passed on recorded evidence.”; In E. Pedda Subba Reddy v. State, AIR 1969 AP 281 at 284, laid down: judicial proceeding includes any proceeding in the course of which evidence is or may be legally taken on oath. To constitute a judicial proceeding, therefore, evidence need not have necessarily been taken. It is sufficient if evidence is contemplated to be taken on oath; Chima Singh v. State, AIR 1951 MB 44; for determining the question whether an inquiry is a judicial proceeding or not one must look to (1) the object of the inquiry (2) the nature of the inquiry and (3) the powers of the person holding the inquiry has in relation thereto.
vii. The courts constituted under any law other than the Code.\textsuperscript{26}

5.4 Supreme Court

The Constitution deals with establishment and constitution of the Supreme Court and the High Court.\textsuperscript{27} The Supreme Court is the apex Court in the hierarchy of Courts. The law declared by it shall be binding on all Courts within India.\textsuperscript{28} The Supreme Court consists of the Chief Justice of India and as many other Judges as Parliament may by law prescribe.\textsuperscript{29} Every Judge of the Supreme Court shall be appointed by the President, after consultation with such Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose.\textsuperscript{30} The Chief Justice of India shall always be consulted in the matter of appointment of a Judge other than the Chief Justice.\textsuperscript{31} No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within India.\textsuperscript{32}

\textsuperscript{26} The Code of Criminal Procedure, 1973, s.6.

\textsuperscript{27} The Constitution of India, Arts. 124 and 214.

\textsuperscript{28} \textit{Id}, Art. 141.

\textsuperscript{29} The Constitution of India, Article 124(1); Originally, the total number of judges was seven as prescribed in the Article. In 1977 this was increased to seventeen in addition to the Chief Justice. In 1986 this number was again increased to twenty-five in addition to the Chief Justice by the Supreme Court (Number of Judges) Amendment Act, 1986. Thus, the total number of judges in the Supreme Court at present is twenty-six including the Chief Justice. Article 130 provides: "The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint."

\textsuperscript{30} Id, Art.124(2). The power of the President to appoint Judges is purely formal because in this 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 appointment of Judges; see the Constituent Assembly Debate, vol. 8, p. 283; For meaning of the word 'consultation' see \textit{Sankalchand Seth}’s case, AIR 1977 SC 2328. In Judges Transfer case (S.P. Gupta v. Union of India, AIR 1982 SC 149), the Court unanimously agreed with the meaning of the term 'consultation' as explained by the majority in \textit{Sankalchand Seth}’s case. The proposition that the ultimate power to appoint judges is vested in the Executive from whose dominance and subordination it was sought to be protected as laid down in S.P. Gupta’s case was overruled by 7-2 majority in \textit{Supreme Court Advocate-on-Record Association v. Union of India}, (1993)4 SCC 441; This historic judgment is the authority now for the proposition that in the matter of appointment of the judges of the Supreme Court and the High Courts the President is bound to act in accordance with the opinion of the Chief Justice of India who would tender his opinion on the matter after consulting his colleagues and the appointment of the Chief Justice of India shall be on the basis of seniority.

\textsuperscript{31} \textit{Id}, Art.124(6).
When the office of the Chief Justice of India is vacant or when he is unable to perform his duties by reason of absence or otherwise, the President may appoint one of the other judges of the Court as the Acting Chief Justice for performing such duties of the office.\textsuperscript{33}

The Constitution does not provide for the minimum number of Judges to constitute a Bench for hearing cases. If at any time there is no quorum of the Judges available in the Court to hold and continue any session of the Court, the Chief Justice of India may, with the previous consent of the President and after consultation with the Chief Justice of the High Court concerned, request a Judge of the High Court to act as \textit{ad hoc} Judge in the Supreme Court for such period as may be necessary.\textsuperscript{34} The \textit{ad hoc} Judge should be qualified to be appointed as a Judge of the Supreme Court.\textsuperscript{35} The \textit{ad hoc} Judge shall also have all the jurisdiction, powers and privileges and shall discharge all the duties of a Judge of the Supreme Court.\textsuperscript{36} Similarly, the Chief Justice of India may at any time, with previous consent of the President, request any person who has held the office of a Judge of the Supreme Court and has held the office of a Judge of a High Court and is duly qualified for appointment as a Judge of the Supreme Court to sit and act as a Judge of the Supreme Court.\textsuperscript{37}

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\textsuperscript{33} \textit{Id}, Art. 126.  \\
\textsuperscript{34} \textit{Id}, Art. 127.  \\
\textsuperscript{35} Ibid.  \\
\textsuperscript{36} \textit{Id}, Art. 127(2).  \\
\textsuperscript{37} Id, Art. 128. The Article provides that any person who has held the office of a Judge of the Federal Court be requested to sit and act as a Judge of the Supreme Court as well. It is not mentioned for such portion has no more any importance.
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5.5 Qualification of Judges

A person to be appointed as a Judge of the Supreme Court must be a citizen of India and

a) has been for at least five years a Judge of any High Court; or

b) has been for at least ten years an Advocate of any High Court; or

c) is in the opinion of the President, a distinguished jurist. 38

5.6 Tenure and removal of Judges

A Judge of the Supreme Court holds office until he attains the age of sixty-five years. 39 However, the age of a judge shall be determined by such authority and in such manner as Parliament may by law provide. 40 A Judge may however, resign his office by writing to the President. 41

38 Id., Art. 124 (3); A Judge of a High Court or two or more such courts in succession for five years and an Advocate of a High Court or two or more such Courts in succession are sufficiently qualified to be appointed as Judges of the Supreme Court under Clauses (a) and (b).” Explanation I.- In this clause ‘High Court’ means a High Court which exercises, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

Explanation II.- In computing for the purpose of this clause, the period during which a person has been an advocate, any period has held judicial office not inferior to that of a District Judge after he became an advocate shall be included.”

It is to be noted that though such a jurist can be appointed the Judge of the Supreme Court, so far no such person has been so appointed. The Law Commission of India, in its 141st Report on Reform of Judicial Administration, vol. I, pp. 36-37, deals with the position in America, where jurists or non-practising Lawyers were appointed Judges of the Supreme Court. Mr. Felix Frank Furter was appointed Judge of the Supreme Court while he was a Professor of Law at Harvard University.

39 Id., Art.124(2).

40 Id., Art.124(2-A), this sub-Article has been inserted by the Constitution (Fifteenth Amendment) Act, 1963, s.2.

41 Id., Art. 124 (2) (a). It is to be noted that under this clause 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. In Union of India v. Gopal Chandra Mishra, AIR 1978 SC 694, this question was considered. Although the case is based on Art. 217 relating to the resignation of a High Court Judge it applies to Art. 124 (6) in similar terms. Held, in the absence of legal, contractual or constitutional base a “prospective” resignation be withdrawn before it becomes effective when it operates to terminate the employment of the office tenure of the resignor. ‘Resignation’ takes place when a Judge of his own volition choses to sever his connections with his office. If in terms of his own writing he chooses to resign from a future date, the act of resignation 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.
A Judge of the Supreme Court can be removed from his office only on grounds of proved misbehaviour or incapacity. Such removal shall be done by an order of the President passed by each House of Parliament and presented to the President in the same session. The order of removal must be passed after an address by each House of Parliament supported by a majority of not less than two-thirds of the members of that House present and voting. No other procedure like forced resignation can be adopted for removal of a Judge.

5.7 Jurisdictions and powers

The Constitution as well as the Code and certain other statutes confers several powers and jurisdiction on the Supreme Court in various matters of criminal justice. In general it exercises, original, appellate and advisory jurisdictions. Besides, it has jurisdiction to transfer certain cases.

5.8 A court of record

The Supreme Court is a court of record. A court of record is one whose records are admitted to be of evidentiary value and they are not to be questioned when produced before any court. Such a court has inherent power to punish for its contempt. The Supreme Court has all the powers of a court of record including the power to

42 Id, Art. 124(4).
43 Ibid.
44 Ibid; Art. 124(5) provides that the procedure of the presentation of an address for investigation and proof of misbehaviour or incapacity of a judge will be determined by Parliament by law. The Judges (Inquiry) Act, 1968 enacted by Parliament under Art. 124(5) and the Judges (Inquiry) Rules, 1969 made thereunder provide for removal of a Judge on the ground of proved misbehaviour or incapacity. In K. Veeraswami v. Union of India, (1991)3 SCC 655, a five judge Bench of the Supreme Court by a majority of 4 – 1, held that the expression misbehaviour includes criminal misconduct as defined in the Prevention of Corruption Act.
46 The Constitution of India, Art.129.
47 The Constituent Assembly Debate, vol.VIII, 882.
punish for its contempt.\textsuperscript{48} The power to punish for the contempt of its subordinate court is also covered by this provision.\textsuperscript{49} This power being extraordinary must be sparingly exercised only where the public interest demands.\textsuperscript{50}

5.9 Enforcement of fundamental rights

The original jurisdiction of the Supreme Court does not extend to taking cognizance, conducting trial or to committing for trial in criminal cases. However, its writ jurisdiction has much significance in the administration of criminal justice. Issuing writs is usually come within its original jurisdiction.\textsuperscript{51}

The right to move the Supreme Court for enforcement of the fundamental rights guaranteed by the Constitution is also made yet another fundamental right.\textsuperscript{52} Corresponding to this fundamental right the Supreme Court is bound to issue appropriate directions or orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto for the enforcement of any of such fundamental

\textsuperscript{48}Ibid. The Constitution does not define the expression ‘contempt of court’. It is defined under the Contempt of Courts Act, 1971, an Act to define and limit the powers of certain courts in punishing contempt of courts and to regulate their procedure in relation thereto. S.2(a) provides: “contempt of court’ means civil contempt or criminal contempt.” S.2(b) provides: “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.” S.2(c) provides: “criminal contempt’ means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other 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.”


\textsuperscript{51} The original jurisdiction of the Supreme Court provided under Article 131 of the Constitution, does not have any bearing on criminal matters, because it relates to dispute (a) between the Government of India and one or more States; or (b) between the Government of India and any State or States on one side and one or more other States on the other, or (c) between two or more States.

\textsuperscript{52} The Constitution of India, Art. 32. Part III of the Constitution guarantees the fundamental right.
rights. This Article, according to Dr. Ambedkar, is the very soul of the Constitution and the very heart of it. It is an important and integral part of the basic structure of the Constitution. Parliament may by law confer on the Supreme Court power to issue directions, orders or writs including above mentioned ones for any purposes other than the enforcement of the fundamental rights.

5.10 Appellate jurisdiction

The Supreme Court is the highest Court of appeal in India. The orders of the Court run throughout the country. It has elaborate appellate jurisdictions in criminal matters besides several other appellate jurisdictions. In view of the limited scope of this paper the appellate jurisdiction in criminal matters alone need be considered herein. The criminal appellate jurisdiction of the Supreme Court is derived from the Constitution, the Code and certain other statutes. An appeal lies to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the following two ways:

(1) without a certificate of the High Court, and
(2) with a certificate of the High Court.

5.11 Without certificate

An appeal lies to the Supreme Court without any such certificate of the High Court if the High Court:

(a) has on appeal reversed an acquittal and sentenced the accused to death;
(b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused and sentenced to death.

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53 Id. Art 32(2).
55 Fertilizer Corporation Kamgar (Union) v. Union of India, (1981)1 SCC 568. The basic structure doctrine was evolved by the Supreme Court in Kesavanand Bharati v. State of Kerala, AIR 1973 SC 1461.
56 The Constitution of India, Art. 129.
57 The appellate jurisdiction of the Supreme Court extends to constitutional matters, civil matters and special leave to appeal as well.
58 The Constitution of India, Arts. 132, 134 & 134A.
59 Id. Art. 134 (a)(b).
5.12 With certificate

An appeal lies to the Supreme Court if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution. The High Court grants such a certificate only when the appeal is sought to be preferred against a judgment, final order or a sentence in a criminal proceeding of the High Court. The power of the High Court to grant fitness certificate in criminal cases is discretionary, but judicial. It must thus be exercised judicially along the well established lines which governs these matters. Where such a certificate is granted the ground of appeal to the Supreme Court will be that such question has been wrongly decided.

The Supreme Court is not constituted as a general court of criminal appeal under this provision. It entertains appeals from the High Courts only on certain settled principles. The provision confers on the Court only a limited criminal appellate jurisdiction. As a court of criminal appeal it exercises this jurisdiction only in exceptional cases where the demand of justice requires interference by the highest court of the land.
5.13 Enlargement of criminal appellate jurisdiction

The Constitution empowers Parliament to extend the appellate jurisdiction of the Supreme Court in criminal matters. By virtue of this power Parliament has enacted the Supreme Court Enlargement of Criminal Appellate Jurisdiction Act, 1970. It enables to prefer appeal to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India, without prejudice to the powers conferred on the Supreme Court by clause (1) of Article 134 of the Constitution, if the High Court-

a) has on appeal reversed an order of acquittal of an accused person and sentenced the accused to imprisonment for life or to imprisonment for a period not less than ten years;

b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused and sentenced him to imprisonment for a period not less than ten years.

5.14 Appeal by special leave

The Supreme Court may grant in its discretion special leave to appeal from any judgment, decree, determination, sentence or order, in any case or matter, passed or made by any court or tribunal in the territory of India. The only exception to this
power of the Supreme Court is with regard to any judgment, etc. of any court or tribunal constituted by or under any law relating to the Armed Forces.68

This power is very wide and is in the nature of a special residuary one, which is exercisable outside the purview of the ordinary law. The Supreme Court has a plenary jurisdiction in entertaining appeals by granting special leave in such matters. The exercise of this power is left entirely to the discretion of the Court unfettered by any restrictions. This power cannot be curtailed by any legislation short of amending the Articles itself.69

The power of the Supreme Court to grant special leave to appeal has more frequently been invoked in criminal appeals. The court grants special leave to appeal only when it is shown that special and exceptional circumstances exist, or it is established that grave injustice has been done and that the case in question is sufficiently important to warrant a review of the decision by the Supreme Court.70

5.15 Appellate jurisdiction under the Code

Any person convicted on a trial held by a High Court in its extraordinary original jurisdiction may appeal to the Supreme Court.71 However there shall be no appeal by a convicted person where the High Court passes only a sentence of

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68 Id. Art. 136(2).
69 The power of the Supreme Court under Art. 136 is not fettered with any of the limitations contained in Arts 132 to 135. Under Arts. 132 to 135 appeal can be entertained by the Supreme Court only against a 'final order', but under Art. 136, the word 'order' is not qualified by the adjective 'final' and hence the court can grant special leave to appeal even from interlocutory order. Under Arts. 132 to 134 appeals lie only against such orders of the High Court; while under Art. 136 the Supreme Court can grant special leave for appeal from "any court," including any subordinate court even without following the usual procedure of filing appeal in the High Court or even where the law applicable to the dispute does not make provision for such an appeal. See also Basu, D.D., An Introduction to the Constitution of India, p. 233.
71 The Code of Criminal Procedure, 1973, s. 374(1); The Law Commission of India, 41st Report on the Code of Criminal Procedure, 1898, p.259 para 31.10: Since such trials are extremely rare appeals should lie direct to the Supreme Court and not to another bench of the same High Court, in the interests of finality to the proceedings. Such appeals lie on fact as well as law. However, there is no appeal in the event of an appeal. If the State wishes to appeal from an acquittal by a High Court, it will have to seek leave to appeal under Article 136 of the Constitution.
imprisonment for a term not exceeding six months or of fine not exceeding one thousand rupees, or of both such imprisonment and fine.\textsuperscript{72} An appeal may be brought even against such a sentence if any other punishment is combined with it.\textsuperscript{73} Where the High Court has, on appeal reversed an order of acquittal of an accused and convicted and sentenced him to death or to imprisonment for life or to imprisonment for a term of ten years or more, he may appeal to the Supreme Court.\textsuperscript{74} Thus the appeals under the Code can be preferred to the Supreme Court as of right by such an accused.\textsuperscript{75} However, there shall be no such appeal if the accused has been convicted on a plea of guilty.\textsuperscript{76}

\section*{5.16 High Court}

Every State and every Union Territory has a High Court.\textsuperscript{77} However, Parliament can establish by law a common High Court for two or more States or for two or more States and a Union Territory.\textsuperscript{78} The High Court is the highest court in the hierarchy of courts in such State or Union Territory. The law declared by it shall be binding on all courts subordinate to it.\textsuperscript{79}

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  \item \textsuperscript{72} The Code of Criminal Procedure, s.376(a).
  \item \textsuperscript{73} Ibid. But such sentence shall not be appealable merely on the ground-
    (i) that a person convicted is ordered to furnish security to keep the peace; or (ii) that a direction for imprisonment in default of payment of fine is included in the sentence; or (iii) that more than one sentence of fine is passed in the case, if the total amount of the fine imposed does not exceed the amount herein specified in respect of the case.
  \item \textsuperscript{74} Id, s.379.
  \item \textsuperscript{75} Chandra Mohan Tiwari v. State of M.P., (1992)2 SCC 105 at pp. 113-114.
  \item \textsuperscript{76} The Code of Criminal Procedure, 1973, s.375.
  \item \textsuperscript{77} The Constitution of India, Art.214. The Code of Criminal Procedure, 1973, s.2(e) provides: "High Court" means-
    (i) in relation to any State, the High Court for that State;
    (ii) in relation to a Union territory, to which the jurisdiction of the High Court for a State has been extended by law, that High Court;
    (iii) in relation to any other Union territory, the highest court of criminal appeal for that territory other than the Supreme Court of India."
  \item \textsuperscript{78} Id. Art. 231(1).
  \item \textsuperscript{79} There is no specific Article in the Constitution in this regard. The common law practice of the doctrine of precedent as adopted by the Indian legal system by virtue of Article 372 read with Article 366 (10) envisages the same. See M.C. Setalvad, The Common Law in India, The Hamlyn Lectures, 12th series, 1960, pp 3 & 45; Director of R. & D. v. Corporation of Calcutta, AIR 1960 SC 1355 at p.1360; P.Ramaswamy v. Chandra Kinnaryya, AIR 1925 Mad 261 at p. 262; V.N. Sankarjee, "Authority of High Court Decisions as Judicial Precedent", AIR 1996 Journal 157-159.
\end{itemize}
Every High Court consists of a Chief Justice and such other Judges as the President may from time to time determine.80 The Constitution does not fix any maximum number of Judges of a High Court. The Judges are 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.81 In case of appointment of a Judge other than the Chief Justice he may consult even the Chief Justice of the High Court concerned.82

The President may appoint one of the Judges of the High court as Acting Chief Justice, when the office of the Chief Justice falls vacant or he is unable to perform his duties by reason of absence or otherwise.83 The President may appoint duly qualified persons to be additional judges of the court for a temporary period not exceeding two years, in order to clear off the arrears of work in High Court.84 The President may also appoint an acting Judge when any Judge of a High Court other than Chief Justice is unable to perform his duties by reason of absence or for any other reason, or is appointed to act temporarily as Chief Justice. An acting Judge is to hold office until the permanent Judge resumes his duties.85 Moreover, the Chief Justice of a High Court may at any time, with the previous permission of the President request retired Judges of the High Court to sit and act as Judges of the High Court.86 In actual practice, the appointment of judges are, however, made by the President on the advice of the Council of Ministers. The President may after consultation with the Chief Justice of India

80 Id. Art. 216.
81 Id. Art. 217; "
82 See Judge's Transfer case; AIR 1982 SC 149.
83 Id. Art. 217; "
84 Id., Art. 223.
85 Id., Art. 224(1).
86 Id., Art. 224 (2).
87 Id., Art. 224 A.
transfer a Judge from one High Court to any other High Court. A person who has held office as a permanent Judge of a High Court shall not plead or act in any court or before any authority in India except the Supreme Court and other High Courts. This prohibition is necessary to preserve independence of judiciary.

5.17 Qualification of Judges

Any person who is a citizen of India and has for at least ten years held a judicial office in India, or has for at least ten years been an advocate of a high Court or of two or more such courts in succession may be appointed as a Judge of the High Court. The independence, efficiency and integrity of the judiciary can only be maintained by selecting the best persons in accordance with the procedure provided under the Constitution.

5.18 Tenure and removal of Judges

A Judge of the High Court shall hold office until he attains the age of sixty-two years. If a question arises as to the age of a Judge of a High Court, then it shall be

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87 Id, Art.222(1). Clause (2) makes provisions for the grant of compensatory allowances to a Judge who goes on transfer to another High Court. See Union of India v. Sankalchand, AIR 1977 SC 2328; S.P. Gupta and ors. v. President of India and Ors., AIR 1982 SC 149, (Judges Transfer Case).
88 The Constitution of India, Art.220. the expression “High Court” does not include a High Court for a State specified in Part B of the First Schedule as it existed before the commencement of the Constitution (Seventh Amendment) Act, 1956.
89 Id, Art.217(2). It further provides: “Explanation.- For purpose of this clause
(a) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate of a High Court or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special Knowledge of law;
(aa) in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate;
(b) in computing the period during which a person has held judicial office in the territory of India or been an advocate of a High Court, there shall be included any period before the commencement of this Constitution during which he has held judicial office in any area which was comprised before the fifteenth day of August, 1947, within India as defined by the Government of India Act, 1935, or has been an advocate of any High Court in any such area, as the case may be.”
91 Art.217(1).
decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final. 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 the 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.

5.19 Jurisdiction of the High Court

The High Court has original, appellate, revisional, supervisory and disciplinary jurisdictions. Besides it has jurisdiction to answer the references made to it by its subordinate courts, and to transfer certain cases pending in its subordinate courts. The Constitution as well as the Code and certain other statutes confers these powers on the High Court.

5.20 Court of record

Every High Court is a court of record and shall has all the powers of such a court including the power to punish for its contempt. The scope and nature of the power of the High Court under this Article is similar to that in respect of the Supreme Court.

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92 Art. 217 (3).
93 Art. 220.
94 Art.215. (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 the courts, (d) the power to make rule of the High Court shall be the same as immediately before the commencement of this Constitution. Thus the pre-constitutional jurisdiction of the High Court is preserved by the Constitution. In pre-constitutional period the decision of the Privy Council were binding on all the High Courts unless it is reversed by the Supreme Court or by a law of the appropriate Legislature. The jurisdiction and powers of the High Courts can thus be changed by both the Union and State Legislatures.
5.21 Power of superintendence over all courts by the High Court

Every High Court has the power of 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. However this power of superintendence of High Court does not extend over any court or tribunal constituted by law relating to the Armed Forces.

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 Article 226. It is not confined to administrative superintendence, but also judicial superintendence over all subordinate courts within its jurisdiction. This power of superintendence conferred on the High Court being extraordinary to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts, within the bounce of their authority and not for correcting mere error of facts, however, erroneous those may be.

5.22 Original jurisdiction

The High Court gets original jurisdiction by virtue of the Code as well as the Constitution. It may try any offence defined and punishable under the Indian Penal

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Code. It may also try any offence under any other law when no court is mentioned in this behalf in such law. It may pass any sentence authorised by law as well.

Though the High Court has power to try any offence, in practice, it does not conduct any trial, nor does the First Schedule indicate any offence as being triable by it. However, on certain rare occasions, after considering the importance and widespread ramifications of a case, it may decide to try the case itself either at the instance of the Government or on its own initiative. The procedure to be observed in such a trial shall, according to s.474, be the same as would be followed by a court of session trying similar case.

5.23 Appellate jurisdiction

The High Court has a three-fold appellate jurisdiction. It extends to appeals against conviction, sentence and acquittal.

5.24 Appeal against conviction

Any person convicted on a trial held by a Sessions Judge or Additional Sessions Judge may appeal to the High Court. Similarly, any person convicted on a trial held by any other court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial may also appeal to the High Court. Where an accused has been convicted on his plea of guilty no such appeal lies to the High Court except as to the extent of legality of

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8 Id, s.26(b).
9 Id, s.28.
12 Ibid.
the sentence. Again, where a Court of Session passes only a sentence of imprisonment for a term not exceeding three months, or of fine not exceeding two hundred rupees, or of both such imprisonment and fine, no appeal lies.

5.25 Appeal against sentence

An appeal lies to the High Court against the sentence on the ground of its inadequacy in any case of conviction on a trial held by any court other than a High Court. Only the Government is competent to prefer an appeal against sentence. If such conviction is in a case in which the offence has been investigated by the Delhi Special Police Establishment, or by any other agency empowered to make investigation into an offence under any Central Act other than the Code, only the Central Government is competent to prefer such an appeal to the High Court. In such an appeal the High Court may enhance the sentence after affording the accused a reasonable opportunity of showing cause against such enhancement. The accused may as well plead for his acquittal or for reduction of the sentence while showing cause.

5.26 Appeal against acquittal

An appeal against acquittal has to be preferred with leave of that court. No other court has such an appellate jurisdiction. Only the Government is competent to

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103 Id, s.375(b).
104 Id, s.376(b).
105 Id, s.377(1).
106 Ibid, it provides that the State Government may direct the Public Prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy.
107 Id, sub-sec.(2); Delhi Special Police Establishment Act, 1946 (25 of 1946). Here also the Central Government has to direct the Public Prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy.
108 Id, sub-sec.(3).
109 Ibid, Joint Committee Report, p.xxvi: An appeal for enhancement of sentence can be entertained only by the High Court. This is because the punishment awarded by the competent court should not be disturbed except by the highest court in the State. Further, certain uniform standards have to be adopted in this regard and this can be secured only if the power is exercised by the High Court.
110 Id, s.378(1)(2) and (3).
prefer the appeal against acquittal in all cases involving public prosecution.\textsuperscript{111} Such an appeal lies from an original or appellate order of acquittal passed by any court other than a High Court or from an order of acquittal passed by a Court of Session in revision.\textsuperscript{112} The State Government has to prefer such an appeal in almost all cases. If the acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment or by any other agency empowered to make investigation under any Central Act other than the Code, the Central Government has to prefer the appeal against acquittal before the High Court.\textsuperscript{113} If the acquittal is passed in any case instituted upon complaint, the complainant may prefer appeal to the high Court with the special leave of that court.\textsuperscript{114}

5.27 Power of the High Court exercising Appellate jurisdiction

As in the case of every other appellate court the High Court also has certain powers in appeal against conviction. Thus it can summarily dismiss an appeal for lack of sufficient ground for interfering.\textsuperscript{115} On the other hand if there is sufficient ground for interfering it may (i) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by the subordinate court having jurisdiction, or, (ii) alter the finding maintaining the sentence, or, (iii) with or without altering the finding.

\textsuperscript{112}Id., s.378(1); see also Khemraj v. State of M.P., (1976)1 SCC 385; State of Maharashtra v. Vithal Rao Pratap Chavan, (1981)4 SCC 129.
\textsuperscript{113}Id., sub-sect. (2).
\textsuperscript{114}Id., sub-sect. (4); sub-sect. (5) provides that no application for the grant of special leave to appeal from an order of acquittal shall be entertained after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of acquittal. Sub-sect. (6) provides that no appeal from acquittal shall lie unless the special leave is granted. Article 114 of the Limitation Act, 1963 provides that in an appeal against acquittal by the State the period of limitation is ninety days from the date of the order appealed from, and in an appeal against acquittal in any case instituted upon complaint, the period is thirty days from the date of the grant of special leave.
\textsuperscript{115}Id., s.384(1).
alter the nature or the extent, or the nature and extend, of the sentence but not so as to enhance the same.\textsuperscript{116}

In an appeal against acquittal the High Court may reverse such order and direct that further inquiry be made or that the accused be retried or committed for trial as the case may be, or find him guilty and pass sentence on him according to law after examining the records.\textsuperscript{117} In an appeal for enhancement of sentence, the High Court may-

1. Reverse the finding and sentence and acquit or discharge the accused or order him to be retried by a court competent to try the offence, or

2. Alter the finding, maintaining the sentence, or

3. With or without altering the finding alter the nature or the extent, or the nature and extent of the sentence so as to enhance or reduce the same.\textsuperscript{118}

The High Court may make any amendment or any consequential or incidental order that may be just and proper.\textsuperscript{119} The sentence shall not be enhanced without affording the accused an opportunity of showing cause against such enhancement. Moreover, it shall not inflict greater punishment than might have been inflicted for the offence by court passing the order or sentence under appeal.\textsuperscript{120} In dealing with any appeal the High Court may take additional evidence itself or direct it to be taken by a court of session or a magistrate if it thinks necessary after recording its reasons.\textsuperscript{121} When the additional evidence is taken by the Court of Session or the

\textsuperscript{116} Id., s.386(b).
\textsuperscript{117} Id., s.386 r/w s.385(2).
\textsuperscript{118} Id., s.386(c).
\textsuperscript{119} [\textit{bid.}]
\textsuperscript{120} Id., s.391(1).
\textsuperscript{121} \textit{bid.}
magistrate, it or he shall certify such evidence to the High Court which shall thereupon proceed to dispose of the appeal.

5.28 Finality of the appellate judgment

Generally, the judgment and orders by an appellate court upon an appeal shall be final. However this general principle does not preclude an appeal for enhancement of sentence or an appeal against acquittal, or an appeal preferred by an appellant who is in jail and dismissed summarily, or for the purpose of reference under revision.¹²²

5.29 Revisional jurisdiction

The High Court exercises its revisional jurisdiction for examining the correctness, legality or propriety of any finding, sentence or order recorded or passed by, or the regularity of any proceeding of any inferior court situate within its local jurisdiction.¹²³ The High Court may call for the records of the inferior court in this regard.¹²⁴

The High Court may direct further inquiry into any complaint which has been dismissed or into any case in which the accused has been discharged, while exercising the power of revision.¹²⁵ An order discharging the accused shall not be revised without affording the person discharged an opportunity of being heard.¹²⁶ As a revisional court the High Court may in its discretion exercise those powers conferred on it as a court of appeal.¹²⁷

¹²² Id. s.393.
¹²³ Ibid. s.397(1).
¹²⁴ Ibid.
¹²⁵ Id. s.398; The dismissal of complaint means those under s.203 or sub-sec.(4) of s.204 of the Code.
¹²⁶ Ibid.
¹²⁷ Id. s.401; The powers conferred on a court of appeal mean those provided for under ss.386, 389, 390 and 391.
Concurrent revisional jurisdiction is conferred on the High Court and the Court of Session. Whenever two or more revision petitions are preferred against an order of conviction passed at the same trial, to the High Court and the Court of Sessions by different accused convicted at the same trial the High Court shall decide, having regard to general convenience of the parties and the importance of the questions involved, which of the two courts should finally dispose of the application for the revision. The High Court may decide all the applications for revision should be disposed of by itself and direct the Court of Session to transfer the application for revision pending before it to itself. The High Court may also decide that it is not necessary for it to dispose of the application for revision and direct that the applications for revision made to it be transferred to the Court of Session. On such transfer of applications for revision the High Court or the Court of Session as the case may be shall deal with the same as if it were an application duly made before itself.

5.30 Supervisory jurisdiction

The Constitution as well as the Code confers on the High Court certain supervisory jurisdiction to be exercised over its subordinate courts. Every High Court has superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. It may call for returns from such courts, 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 shall be kept by

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128 Id, s.402.  
129 Ibid.  
130 Ibid.  
131 Id, sub-sec.(2) & (3).  
132 The Constitution of India, Art.227(1).
the officers of any such courts.\textsuperscript{133} It may also settle tables of fees allowed to the Sheriff and all clerks and officers of such court and to attorneys, advocates and pleaders practicing therein.\textsuperscript{134} This power of superintendence does not extend to any court or tribunal constituted by or under any law relating to armed forces.

By issuing writ of \textit{certiorari} and prohibition the High Court can exercise supervisory jurisdiction over its subordinate courts.\textsuperscript{135}

5.31 Inherent power

The High Court has inherent power to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.\textsuperscript{136} This power cannot be invoked in respect of any matter covered by the specific provisions of the Code. Invoking this power shall never be inconsistent with any specific provision of the Code.\textsuperscript{137} The inherent power has to be exercised sparingly, carefully and with caution and only where such exercise is justified by the test specifically laid down in the section itself.\textsuperscript{138}

The inherent power of the High Court has a great role in the administration of criminal justice. In cases where the High Court is satisfied that the institution or continuance of any criminal proceedings against any accused is only an abuse of

\textsuperscript{133} Id, An.227(2).
\textsuperscript{134} Id, An.227(3).
\textsuperscript{135} Id, An.226.
\textsuperscript{136} The Code of Criminal Procedure, s.482.
\textsuperscript{137} Simrikhia \textit{v.} Smt. Dolley Mukherjee, (1990)2 SCC 437.
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process of court. It may quash the proceedings invoking the inherent power. And, in cases where if it is satisfied that quashing of the impugned proceedings would secure the ends of justice the High Court may do so. Where any criminal proceeding is instituted and continued in violation or in ignorance of any express legal bar such as absence of requisite sanction, etc. the High Court can quash the proceedings. In certain other cases even if the allegations in the first information report or in the complaint are taken at their face value and accepted in their entirety do not constitute the offence alleged. The High Court can very well quash the proceedings because in such cases no question of appreciating evidence arises and it would be manifestly unjust to allow the criminal process continued against the accused. Though the allegations in the first information report or in the complaint do constitute the offence alleged yet there is no legal evidence adduced in support of the case or evidence adduced clearly or manifestly inconsistent with the accusation, the High Court may quash the proceedings.

5.32 Superintendence over Court of Judicial Magistrates

The High Court is duly bound to exercise its superintendence over all courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates.

5.33 Jurisdiction to transfer cases

The High Court may suitably transfer certain cases pending before any courts subordinate to it, if it is satisfied that

120 Ibid; see also V.N. Sankarjee, 'Compounding of offences', 2000 (2) KLJ (Jour) 13.
122 The Code of Criminal Procedure, s.483.
I. a fair and impartial inquiry or trial cannot be had in any criminal court subordinate to it, or

II. some question of law of unusual difficulty is likely to arise, or

III. an order to transfer cases is required by any provision of the Code, or will tend to the general convenience of the parties or witnesses or is expedient for the ends of justice. The High Court may so transfer cases either on the report of the lower court or on the application of a party interested or on its own initiative. Where both the criminal courts from which and to which the case is to be transferred, situate in the same session division the High Court can entertain an application for transfer if and only if an application for such transfer has been made to the Sessions Judge and rejected by him.

5.34 Power in bail matters

The High Court may in its discretion direct that any person accused of offence including non-bailable ones and in custody be released on bail. It may impose any condition which it considers necessary when certain offences are involved. The High Court may also set aside or modify any condition imposed by a magistrate while

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143 Id., s.407(1); The section further provides as to the particulars of the cases to be transferred and the courts from and to which such cases and appeals be transferred as follows: "(1) that any offence be inquired into or tried by any court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence; (2) that any particular case or appeal or class of cases or appeals be transferred from a criminal court subordinate to its authority to any other such criminal court of superior jurisdiction; (3) that any particular case be committed for trial to a court of session; or (4) that any particular case or appeal be transferred to and tried before itself.

144 Id., s.439(1)(a).

145 Ibd; Here as to the particulars of offences and conditions to be imposed a reference is made to s.437(3). It provides: "When a person accused or suspected with imprisonment which may extend to seven years or more or of an offence, under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abetment of or conspiracy or attempt to commit any such offence is released on bail under sub-sec.(1), the court may impose any condition which the court considers necessary- (a) in order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or (b) in order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or (c) otherwise in the interest of justice.
releasing any person on bail. It may also direct that any person who has been released on bail be arrested and commit him to custody.

5.35 Anticipatory bail

The High Court may, upon application made by any person apprehending arrest on an accusation of having committed a non-bailable offence, direct that in the event of such arrest, he shall be released on bail. It may include such condition in such direction as it may think fit considering the factual situation of each case. If such person is thereafter arrested without warrant on such accusation, and is prepared either at the time of arrest or at any time while in the custody, he shall be released on bail.

5.36 Reference

The high Court is empowered to answer any reference made by any court subordinate to it. Such a reference is made when certain situations exist and for certain specific reasons. The court making the reference must satisfy that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation, or

146 Id., s.439(1)(b). The proviso to the sub-section provides that before granting bail to person who is accused of an offence which is triable exclusively by the court of session or which though not so triable is triable, is punishable with imprisonment for life, the High Court has to give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.
147 Id., s.439(2); see also Mohan Singh v. Union Territory, AIR 1978 SC 1095; Delhi Admu. v. Sanjay Gandhi, AIR 1978 SC 161.
148 Id., s.438(1); see Bhagirathi Mahapatra v. State, (1975)41 CriLJ 619.
149 Id., s.438(2); It can so impose conditions including:
   (i) a condition that the person shall make himself available for interrogation by a police officer as and when required;
   (ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;
   (iii) a condition that the person shall not leave India without the previous permission of the court;
   (iv) such other condition as may be imposed under sub-section (3) of sec.447, as if the bail were granted under that section.
150 Id., s.438(3).
151 Id., s.396.
any provision contained in an Act, Ordinance or Regulation. The determination of the question must be necessary for the determination of that case. The court making the reference must be of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which it is subordinate or by the Supreme Court. If all the situations exist, the court shall state a case setting out its opinion and reasons thereof and refer the same to the decision of the High Court.

A similar reference may be made to the High Court for determining any question of law arising in a case pending before the court making the reference. However, scope of this provision is narrower and only a court of session or a Metropolitan Magistrate can make such a reference to the High Court.

The High Court shall pass such orders as it thinks fit on the reference made to it and send a copy of such order to the court which made the reference to dispose of the case in conformity with the order.

5.37 Disciplinary jurisdiction

The High Court has disciplinary jurisdiction over all courts subordinate to it under Article 235. The Government has no jurisdiction to take disciplinary action against...
any judge or such other presiding officer of a subordinate court. Rather the High Court alone is competent to exercise disciplinary power against a judge of the inferior court. Any recommendation of the High Court to this effect shall be binding on the State Government. Similarly, the transfer of judges and presiding officers of the subordinate courts is within the power of the High Court and the Government has no power in this matter. However, the power of the High Court shall not extend to tribunals.

5.38 Writ jurisdiction

The High Court may issue any directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them for enforcement of fundamental rights or for any other purpose. This power can be exercised against any person or authority including the Government within the territories in relation to which the High Court exercises jurisdiction. The High Court may issue this power notwithstanding the power of the Supreme Court to issue writs for enforcement of the fundamental rights. Notwithstanding anything in Article 32 every High Court shall have power, throughout the territories in relation to which it exercise its jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-Warranto.

160 The Constitution of India, Art.226(1).
161 Ibid.
162 Ibid. Assistant Collector, Central Excise v. J.H. Industries, AIR 1979 SC 1889: The High Court should be careful to be extremely circumspect in granting these reliefs especially during the pendency of criminal investigations. The investigation of a criminal case is a very sensitive phase where the investigating authority has to collect evidence from all odd corners and anything that is likely to thwart its course may inhibit the interest of justice.
and Certiorari or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.¹⁶³

This power shall not be in derogation of the powers conferred on the Supreme Court by Clause (2) of Article 32.¹⁶⁴

5.39 Court of Session

For every Sessions division the State shall establish a Court of Session which shall be presided over by a Judge appointed by the High Court.¹⁶⁵ The High Court may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in a Court of Session.¹⁶⁶ The Additional Sessions Judge or the Assistant Sessions Judge exercises the powers of a Court of Session and his judgments and orders are considered as those of the Court of Session.¹⁶⁷ All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose court they exercise jurisdiction.¹⁶⁸

Where the office of the Sessions Judge is vacant, the High Court may make arrangements for disposal of any urgent application which is, or may be, made or pending before such court by the Additional or Assistant Sessions Judge in the sessions division. If there is no Additional or Assistant Sessions Judge the High Court may

¹⁶³ Article 226 (1).
¹⁶⁴ Article 226 (4).
¹⁶⁵ The Code of Criminal Procedure, 1973 s.9 (1) & (2). The explanation to the section provides that the term ‘appointment’ does not include the first appointment, posting or promotion of a person by the Government to any service, or post in connection with the affairs of the Union or of, a State, where, under any law such appointment, posting or promotion is required to be made by the Government.
¹⁶⁶ Id., s. 9 (3). Sub-section (4) provides that the High Court may appoint the Sessions Judge of one sessions division as an Additional Sessions Judge of another division and in such case he may sit for the disposal of cases at such places in the other division as the High Court may direct.
¹⁶⁸ The Code of Criminal Procedure, s. 10 (1).
arrange its disposal by a Chief Judicial Magistrate in the sessions division. Every such Judge or Magistrate shall have jurisdiction to deal with any such application.

5.40 Jurisdiction of Sessions Court

The Court of Session has original, appellate and revisional jurisdictions. Besides, it has power to transfer certain cases and to grant bail in certain cases.

5.41 Original jurisdiction

A court of session may try any offence under the Indian Penal Code. However, the first schedule appended to the Code clearly specifies what all cases are to be tried by the Court of Session. A sessions judge or additional sessions judge may pass any sentence authorised by law. However, any sentence of death passed by any such judge shall be subject to confirmation by the high Court. An assistant sessions judge may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years.

169 Id. s.9(5).
170 Ibid. Qualification: The Code does not provide any qualification for a person to be appointed as Sessions Judge. The Constitution stipulates the qualifications of a person for being appointed as District Judge under Art.233(2). The expression 'district judge' includes Sessions Judge. Additional Sessions Judge and Assistant Sessions Judge as per Art.236(a). Art.233(2) provides that 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 for appointment. Art.233(1) would show that such an appointment shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State. There is an apparent incongruity between Art.233 r/w Art.236(a) and s.9 of the Code of Criminal Procedure. The Constitution provides for the appointment of district judge including sessions judge by the Governor of the state in consultation with the High Court, while the Code provides for the appointment of sessions judge be made by the High Court in the court established by the State Government.
171 Id. s.26(a).
172 Id. s.28; The Indian Penal Code s.53 provides 'punishments'.
173 Ibid.
174 Id. s.28(3).
5.42 Appellate jurisdiction

Any person convicted on a trial held by a metropolitan magistrate or assistant sessions judge or magistrate of the first class or of the second class in which a sentence of imprisonment up to seven years has been passed against him may appeal to the Court of Session. Any person sentenced by a chief judicial magistrate in a case forwarded to him by a Magistrate to pass sentence sufficiently severe, may appeal to the Court of Session. Furthermore, any person convicted on a trial held by any of those courts, in respect of whom an order has been made or a sentence has been passed for failure to observe condition of the probation of good conduct, may appeal to the Court of Session. Again, any person who has been ordered to give security for keeping the peace or for good behaviour, or who is aggrieved by any order refusing to accept or rejecting a security may appeal against such order to the Court of Session.

There is no appeal to the Court of Session from any subordinate court against a conviction passed on a plea of guilty except as to the extent or legality of the sentence. There is no appeal to the Court of Session where a Metropolitan Magistrate passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred rupees or of both. Similarly, there is no appeal where a

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175 Id., s.374(3)(a).
176 Id., s.374(3)(b); The reference is to s.325 which provides that whenever a Magistrate is of opinion after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, he may record the opinion and submit his proceedings, and forward the accused, to the Chief Judicial Magistrate to whom he is subordinate. The Chief Judicial Magistrate may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case and may call for and take further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law.
177 Id., s.374(3)(c) and s.360.
178 Id., s.375(b).
179 Id., s.373; s.117 provides for giving security for keeping the peace or for good behaviour, while s.121 provides for refusing to accept or for rejecting a security.
180 Id., s.376(b).
Magistrate of the first class passes only a sentence of fine not exceeding one hundred rupees or where in a case tried summarily, a magistrate passes only a sentence of fine not exceeding two hundred rupees.\textsuperscript{181}

An appeal to the Court of Session is heard by the Sessions Judge or by an Additional Sessions Judge.\textsuperscript{182} An appeal against a conviction on a trial held by a Magistrate of the second class may be heard and disposed by an Assistant Sessions Judge or a Chief Judicial Magistrate.\textsuperscript{183} An Additional Sessions Judge, Assistant Sessions Judge or a Chief Judicial Magistrate hears only such appeals as the Sessions Judge of the division may, by general or special order, make over to him or as the High Court may, by special order, direct him to hear.\textsuperscript{184} As an appellate court a court of session has all such powers as the High Court has in appeal against conviction.

5.43 Revisional jurisdiction

The revisional jurisdiction of the Court of Session is concurrent with that of the High Court.\textsuperscript{185} It can exercise this jurisdiction over all inferior criminal court situate within its sessions division and thus examine the correctness, legality or propriety of any finding, sentence or order, recorded or passed and the regularity of any proceedings of such inferior court.\textsuperscript{186}

\textsuperscript{181} Id. s.376© & (d); The proviso to the section provides that an appeal may be brought against any sentence if any other punishment is combined with it, but such sentence shall not be appealable merely on the ground-
(i) that the person convicted is ordered to furnish security to keep the peace; or
(ii) that a direction for imprisonment in default of payment of fine is included in the sentence; or
(iii) that more than one sentence of fine is passed in the case, if the total amount of the fine imposed does not exceed the amount hereinbefore specified in respect of the case.

\textsuperscript{182} Id. s.376© & (d).

\textsuperscript{183} Id. s.381(1).

\textsuperscript{184} Id. s.381(2).

\textsuperscript{185} Id. s.397.

\textsuperscript{186} Ibid.
The Court of Session may exercise all or any of the powers which the High Court may exercise in the matter of revision. An additional sessions judge has and may exercise all the powers of a sessions judge in respect of any case which may be transferred to him by or under any general or special order of the sessions judge.

5.44 Jurisdiction to transfer of cases and appeals

A court of session may transfer any particular case from one criminal court to another in its sessions division when it is expedient for the ends of justice. It may act either on the respect of the lower court or on the application of a party interested, or on its own initiative. It may withdraw any case or appeal from, or recall any case or appeal which he has made over to any assistant sessions judge or chief judicial magistrate subordinate to him. Similarly, it may recall any case or appeal which he has made over to any additional sessions judge at any time before the commencement of the trial of the case or of the hearing of the appeal.

In dealing with the cases or the appeal so withdrawn or recalled, the Court of Session may try or hear itself or make over to another court for trial or hearing as the case may be.

5.45 Jurisdiction in bail matters

In the matter of regular bail and anticipatory the jurisdiction of the Court of Session is concurrent with that of the High Court.

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187 Id. s.399 r/w s.401.
188 Id. s.400.
189 Id. s.408(1).
190 Id. sub-sec (2).
191 Id. s.409(1).
192 Id. s.409(3).
193 See ss.438 and 439.
5.46 Court of Judicial Magistrate

The courts of judicial magistrate are established by the State Government after consultation with the High Court. The High Court appoints the Magistrates to preside those courts. The Government so establishes as many Courts of Judicial Magistrates of the first class and of the second class as it specifies at such places in every district not being a metropolitan area.

Similarly the Government may establish one or more Special Courts of Judicial Magistrates of the first class or of the second class for any local area to try any particular case or particular class of cases. The consultation with the High Court is mandatory for this purpose as well. Where any such Special Court is established, other than court of Magistrate in the local area shall have jurisdiction to try any such cases or class of cases.

5.47 Chief Judicial Magistrates

The High Court appoints a Judicial Magistrate of the first class to be the Chief Judicial Magistrate in every district not being a metropolitan area. Similarly the High Court may appoint any Judicial Magistrate of the first class to be an Additional
Chief Judicial Magistrate. The Additional Chief Judicial Magistrate has all or any of the powers of a Chief Judicial Magistrate as the High Court may direct.

5.48 Sub Divisional Magistrate

The High Court may designate any Judicial Magistrate of the first class in any subdivision as the Sub Divisional Magistrate and relieve him of the responsibilities as occasion requires.

5.49 Special Judicial Magistrates

The Special Judicial Magistrates are appointed by the High Court when the Central or the State Government request to do so. Such magistrates are appointed for such term not exceeding one year at a time as the High Court by general or special order direct. Such appointment is done by conferring upon a duly qualified person who holds or has held any post under the Government, all or any of the powers conferred or conferrable on a Judicial Magistrate of the first class or the second class in respect to particular cases or to particular classes of cases in any local area not being a metropolitan area. The High Court may empower a Special Judicial Magistrate to exercise the powers of a Metropolitan Magistrate in relation to any metropolitan area outside his local jurisdiction.

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200 Id. sub-sec.(2).
201 Ibid.
202 Id. sub-sec.3(a).
203 Id. s.13(1).
204 Id. s.13(2).
205 Id. s.13(3); The proviso provides that the High Court may specify the qualification or experience required for a person to be so appointed as Special Judicial Magistrates, by its rules.
206 Id. s.13(3).
5.50 Jurisdiction of Magistrates

The Judicial Magistrates may try all offences under the Indian Penal Code which are shown in the First Schedule of the Code as triable by it. They are also competent to try the offences punishable under any other Statute if such Statute so empowers them. The Court of Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.

The Court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years or of fine not exceeding five thousand rupees or of both. The Court of a Magistrate of the 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 powers of the Courts of Chief Metropolitan Magistrate and Metropolitan Magistrate are same as that of the Courts of Chief Judicial Magistrate and Judicial Magistrate of the First Class respectively.

Besides these courts may award such term of imprisonment in default of payment of fine as is authorised by law.

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20 Id. s. 26.
21 Ibid.
22 Id. s. 29(1).
23 Id. s. 29(2).
24 Id. s. 29(3).
25 Id. s. 29(4).
26 Id. s. 30; it provides that (1) The Court of a Magistrate may award such term of imprisonment in default of fine as is authorised by law; Provided that the term-
   (a) is not in excess of the powers of the Magistrate under Section 29;
   (b) shall not, where imprisonment has been awarded as part of the substantive sentence, exceed one-fourth of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.
(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awarded by the Magistrate under section 29.
When a person is convicted at one trial of two or more offences the court may sentence him for such offences to the several punishments prescribed therefor which such court is competent to inflict. Such punishment when consisting of imprisonment to commence the one after the expiration of the other in such order as the court may direct, unless the court directs that such punishments shall run concurrently.\textsuperscript{214} However this is subject to the provisions of the substantive law.\textsuperscript{215}

\textbf{5.51 Local jurisdiction of Judicial Magistrates}

Subject to the control of the High Court, the Chief Judicial Magistrate may, from time to time, define the local limits of the areas within which the Judicial Magistrates may exercise all or any of the powers with which they might be invested under the Code. But if the jurisdiction and powers of a Judicial Magistrate are not so defined, they shall extend throughout the district.\textsuperscript{216}

\textbf{5.52 Sentence in cases of conviction of several offences at one trial}

When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of Section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict, such punishment when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of

\textsuperscript{214} Id. s.31.
\textsuperscript{215} The Indian Penal Code, s.71.
\textsuperscript{216} Id. s. 14.
the punishment which it is competent to inflict on conviction of a single offence, to send
the offender for trial before a higher court. However, in no case such person shall be
sentenced to imprisonment for a longer period than fourteen years. Moreover, the
aggregate punishment shall not exceed twice the amount of punishment which the Court
is competent to inflict for a single offence. For the purpose of appeal by a convicted
person the aggregate of the consecutive sentences so passed against him shall be
deemed to be a single sentence.

5.53 Procedure when Magistrate cannot pass sentence sufficiently severe

Whenever a Magistrate is of opinion that the accused is guilty, and that the
ought to receive a punishment different in kind from, or more severe than, that which
such Magistrate is empowered to inflict or, being a Magistrate of the second class, is of
opinion that the accused ought to be required to execute a bond under section 106, he
may record the opinion and submit his proceedings, and forward the accused, to the
Chief Judicial Magistrate to whom he is subordinate.

When more accused than one are being tried together, and the Magistrate
considers it necessary to proceed as required above in regard to any of such accused, he
shall forward all the accused, who are in his opinion guilty, to the Chief Judicial
Magistrate.

The Chief Judicial Magistrate to whom the proceedings are so submitted
may, if he thinks fit, examine the parties and recall and examine any witness who has
already given evidence in the case and may call for and take any further evidence, and
shall pass such judgment, sentence or order in the case as he thinks fit, in accordance
with law.
5.54 Subordination of Judicial Magistrates

Every Chief Judicial Magistrate shall be subordinate to Sessions Judge; and every other Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate.217 The sub-divisional Judicial Magistrate also, subject to the general control of the Chief Judicial Magistrate, shall have and exercise such powers of supervision and control over the work of the Judicial Magistrates (other than Additional Chief Judicial Magistrate) in his sub-division as the High Court may specify.218

5.55 Courts of Metropolitan Magistrates

As in a district, every metropolitan area will have almost a parallel set-up of Judicial Magistrates. In every metropolitan area, the State Government may, after consultation with the High Court, establish courts of Metropolitan Magistrates at such places and in such number as it may specify.219 The presiding officers of such courts shall be appointed by the High Court, and the Jurisdiction and powers of every such magistrate shall extend throughout the metropolitan area.220 Likewise, in every metropolitan area, the High Court shall appoint a Metropolitan Magistrate as Chief Metropolitan Magistrate. It may similarly appoint an Additional Chief Metropolitan Magistrate and such Magistrate shall have all or any of the powers of a Chief Metropolitan Magistrate as the High Court may direct.221

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217 S. 15 (1).
218 S. 12 (3).
219 S. 16 (1).
220 S. 16 (2) (3).
221 S. 17.
5.56 Subordination of Metropolitan Magistrates

The Chief Metropolitan Magistrate and every Additional Chief Metropolitan Magistrate shall be subordinate to the Sessions Judge. Every other Metropolitan Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Metropolitan Magistrate. For the purposes of this Code, the High Court may define the extent of subordination, if any, of the Additional Chief Metropolitan Magistrates to the Chief Metropolitan Magistrate.

5.57 Executive Magistrates

Executive Magistrates are appointed for performing magisterial functions allotted to the Executive. This becomes essential while implementing the policy of separation of the Judiciary from the Executive. In every district and in every metropolitan area, the State Government may appoint as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate. The State Government may also appoint any Executive Magistrate to be an Additional District Magistrate who shall have such of the powers of a District Magistrate as may be directed by the State Government. Further, the State Government may place an Executive Magistrate in charge of a sub-division and such magistrate shall be called as the Sub-divisional Magistrate.

In some States, particularly in some metropolitan areas, the practice of conferring on a Commissioner of Police some magisterial powers of an executive nature.
has been already in vogue. This well established and smoothly operating arrangement, if authorised by any law, has been allowed to continue.\textsuperscript{227}

5.58 Courts under other statutes

Besides the courts established under the Constitution and the Code, the courts constituted under certain statutes such as the Juvenile Justice Act, the Prevention of Terrorism Act, 2002 are also coming under the expression ‘criminal courts’ for all the purposes of the Code. The jurisdiction and powers of such courts are provided under the concerned statutes.

\textsuperscript{227} S. 20 (5); \textit{M.Narasimha Swamy v. State of T.N.}, 1984 Cri LJ 1583 (Mad HC).