CHAPTER - II

ADMINISTRATION OF JUSTICE IN INDIA - FROM A HISTORICAL PERSPECTIVE
The system of Legal Aid is closely connected with the system of courts operating in our country. The two components of the system of courts and the system of Legal Aid together constitute an important aspect of the present day system of Administration of Justice. Owing to the close collaboration of the existing institutions of justice with the emerging institutions and the various forms in which Legal Aid is being administered through various channels, the system of Administration of Justice has assumed quite a new completion altogether.

In view of the fact that an insight into the concept of Legal Aid calls for an insight into the framework of the existing system of justice. It is imperative to study this important aspect of the system of justice before going into the other aspect of Legal Aid.

For about six hundred years between the eleventh century and the early eighteenth century, the Muslim and Moghul rule prevailed in India. Initially, the Muslim Rule was in parts of the country and gradually the Moghul empire spread over the bulk of it. The feudal lords who raised their beads had also broadly accepted the system of Panchas. Thus, until the middle of the 18th century and the advent of the British in India, first through the East India Company and later by the middle of the 19th century through direct rule, the traditional system thrived in India. The traditional dispute-resolution system
through Panchas was not very much affected by the introduction of the Khazi as the social adjudicatory system under the Muslim and Mughal rule.¹

The most important advantage of the indigenous system was cheap and quick justice. In fact, a fair procedure was all that was adopted and depending upon given situations procedure to ensure fairness was innovated. Since the dispute-resolution system was localized, it did not involve movement from place to place, calling of witnesses, assistance of lawyers or law-knowing persons, and once the dispute was resolved, there was no further challenge. Thus, there being no time-lag between the occurrence of the dispute and the settlement, there was no occasion for ill-feeling to become more deep by the passing of time and quick resolution brought about restoration of friendliness and the fall out did not have any corrosive effect on social life. The Panchas had a moral authority which was more or less pervasive in the local area and enforcement of their decision got automatically supervised on account of the availability of the Panchas in the area. Very often no other effort was necessary to effectuate the decision.

The East India Company carried with it the concept of common Law as prevailing in England by then. The colonies which they established in and around modern Bombay, Calcutta and Madras, and their gradual acquisition of other parts of the country came to be subjected to an admixture of common law and the local system of adjudication. They did not immediately dislocate the system of the Kazi; nor did they interfere with the Panchas. But the establishment of the adjudicatory court in course of time brought about formalization of the justice system. The Muslim rulers were indigenous; the Englishmen brought with them the concept of the ruler and the ruled and the
sense of superiority over the local men. The Englishmen was, therefore not subjected to the local laws and the system of justice kept him out of the purview of law that bound the local people. Gradually, the adjudicatory process became more and more formal with the introduction of the Anglo-Saxon system of jurisprudence.

ADMINISTRATION OF JUSTICE IN ANCIENT HINDU PERIOD

The system of justice in ancient Hindu period maybe described with reference to the developments of the following four periods, namely, (1) the Vedic period, (2) the Sruti period, (3) the Smriti period, and (4) the Post Smriti period.

The Vedic period comes down to about the seventh or sixth century B.C.; the Sruti period stretches over a period of about three to four centuries coming near the establishment of the Mauryan period. The Smriti period extends to the fourth or fifth century A.D.; the post-Smriti period is represented by commentaries and Nibandha Granthas, the leading commentaries being those on Narada, Yajnavalkya, Manu etc. The Nibandha began with the Kapatraru and the works of Jimutavahana in the eleventh and twelfth century A.D.

Evolution of Judicial Institutions in Hindu Period

The early ancient Indian life was pastoral and rural. The villages were autonomous institutions. The people were composed of tribes (Janas). The territory in which a group of villages possessing a common tie was situated, came to be known as Janapada which corresponded to a district of the present day. The Gotra was an aggregate of a number of families
(Kulas) and the Gosthi was Gramani who was generally known as Vyasa in early days.⁶ He represented the people before the ruler, and the ruler before the people.

Elderly persons with mature worldly experience of different matters and having leisure at their disposal developed into assemblies which discharged the social, political and judicial institutions functions and these were known by different names. The Vedic period is known for the emergence of the three institutions of Parishad, Samiti and Sabha.⁷ The villagers, traders and guilds had their own judicial systems which composed of their own men and the presiding officer of the court held the office either by election or by inheritance to local customs; such courts settled the disputes in case of grave crimes or when the condemned party refused to obey the judgment of the local courts, the court presided by the king gave the final verdict in such a case. The institutions of justice evolved with the people participating in the process of justice. The State through the king assumed the responsibility of performing judicial functions in certain matters.

Judicial functions of the King

The King discharged judicial functions in the Sabha along with Ministers, Purohits and Sabhyas. According to Vasishta, the king and his ministers transacted business on the Bench. Nilkanta has also said that in the perception of truth numerous eyes of the king, the Ministers, the Purohits and the Assembly were engaged. Manu also says, ‘the king when desirous of dealing with Vyavahara shall in all humility enter the Sabha with Brahmins and with Ministers skilled in counsel. According to Manu and Yajnavalkya, a learned Brahmin was asked by the king to take his place when he himself was

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unable to attend. But in the absence of learned Brahmin, a Kshatriya and a Vaishya who knew Dharmasastra might be appointed as judges. All this shows that justice was administered by the king in a Sabha\(^8\) (Assembly) with the help of Sabhasadas (members) and in the absence of the king a learned person preferably a Brahmin used to administer justice on behalf of the king and the decision so given was binding upon the parties which was to be enforced by the king.\(^9\)

**Criminal Trial**

The Hindu legal system attached more importance to duty rather than to right. Every deviation from Dharma, if brought to the notice of the king, was to be appropriately dealt with by him for which appropriate sanctions were prescribed, including the Vagdanda (admonition), Dhigdanda (rebuke), Arthadanda (fine) and Vadhadanda (corporal punishment). The latter two punishments could be inflicted only by the king alone subject to certain limitations.

The King as an appellate authority had a special position in securing justice as well as in reinforcing the dignity and authority of the judicial system. He had thus a three-fold responsibility. Firstly, he had to look into the matter himself and give redress to the aggrieved party. Secondly, he had to punish the officers and Sabhyas responsible for the miscarriage of justice, and lastly, if a suitor made an unfounded allegation that justice had not been done to him, the king must punish him.

**Rights of the accused**

The practice of examination of witnesses was well recognized by the ancient Hindu legal system as the Judges had the opportunity of seeing
the witnesses and of deciding upon their credibility. The proceedings always opened with speeches by the prosecutor and the defender and after them followed the examination of witnesses and the accused, as well. No institution of lawyers as understood in the present sense had existed in ancient India. But persons well versed in the laws of Smritis were appointed and could be engaged by parties for the representation of their case before the court. Persons well versed in Smritis helped the parties, for monetary considerations.¹⁰

Thus, the mode of trial by Jury in ancient India had always been looked upon as the basic unit of the administration of Justice since the early Vedic times and it is thus quite evident that the practice to select a jury to determine the facts of the case remain in vogue in Lok Adalats which functioned throughout the length and breadth of the country. It may also be submitted that there are a number of scriptures and historical accounts which lend support to the existence of jury system in Ancient India.¹¹

ADMINISTRATION OF JUSTICE IN MUSLIM PERIOD

In the early period of Muslim rule, the king used to keep four Muftis to whom he allotted quarters in the precincts of his own palace.....so that when any one was arrested upon any charge he might in the first place argue with the Muftis about his due punishment.¹² Sher Shah Suri improved his judicial system by appointing different officials; Shiqdars were the executive officers for the administration of criminal justice and Muftis for the administration of civil justice. He appointed Muqaddams or the village headmen who were held responsible for the commission of offences in the
village and were required to produce the offenders before proper authority. Their duties were to keep watch over thieves, robbers and bad characters and to detect crimes when committed.

The Mughal period is considered the most important period of the Muslim rule in India. The idea of justice of Akbar the Great can be gathered from the ‘Ayeen-e-Akbar, the saying of Akbar, which said, "If I were guilty of an unjust act, I would rise in judgment against myself". He was very much deliberate in inflicting the punishment. The Ayeen-e-Akbari mentioned the duties of Khaziz as saying that ‘He should strive to reclaim the disobedient by good advice. If that fails, let him punish with reprimands. Threats, imprisonment, stripes even amputations of limbs; but he shall not take away life till after most mature deliberations.....Those who apply for justice let them not be inflicted by delay and expectation". Akbar instructed his officers that manifold inquiries be made to gather evidence in the matter.

The Muslim criminal law administered by the Qazis was divided into two portions: (1) That portion of the Islamic canon law which dealt with religious infringement, was applied to Muslims only; such as drinking, marrying within the prohibited degree, apostasy etc. For such offences Non-Muslims were not held liable to punishment under the laws of the Shariah. (2) That portion of the Islamic Criminal Law which punished the act which constituted crimes in the estimation of all nations was applied to Muslims and Non-Muslims, alike, e.g., adultery, murder, theft, robbery, assault etc.

In the administration of justice, the Qazis considered themselves subordinate to none but Allah, and they commanded respect from the sovereign. In this system, the position of a Muslim king was like that of the
king of England. As the king of England was the fountain of justice, so the Muslim monarchs in India were regarded as legislators, dispensers of justice and the defenders of laws. The king alone had the authority to set up courts and appoint judges (Qazis) who held their office during the pleasure of the king. He alone had the power to remove the Qazis from their positions.14

In Medieval India the Sultan, being head of the State, was the supreme authority to administer justice in his kingdom. The administration of justice was one of the important functions of the Sultan, which was actually done in his name in three capacities. As arbitrator in the disputes of his subjects he dispensed justice through the Diwan-e-Qaza; as head of the bureaucracy, justice was administered through the Diwan-e-Mazalim; as the Commander-in-Chief of Forces through his military commanders who constituted Diwan-e-Siyasat to try the rebels and those charged with high reason.15 It was the Sultan's role prerogative to order the execution of a criminal and the courts were required to seek his prior approval before awarding the capital punishment.

The judicial system under the Sultan was organized on the basis of administrative divisions of the kingdom. A systematic classification and gradation of the courts existed at the seat of the capital, in Provinces, Districts, Parganahs and villages.16 The powers and jurisdiction of each court was clearly defined.

The trial procedure in Criminal Courts

The procedure in criminal trials was; the complainant was to be presented to the court in person or through a representative. Government
Prosecutions were instituted by Mohtasibs or Kotwals.17 The court could summon the accused at once or after hearing the complainant's evidence first. Evidence could be heard in the absence of an absconding accused but the prosecution witnesses were to be recalled when he was arrested and his trial commenced. In the absence of the complainant the accused could be set free. Judgment of the court was pronounced by the presiding officer in open court in the presence of parties and the same was recorded in a book maintained for the purpose. No judgment could be pronounced in the absence of both the parties or their counsel.

**Rights of the accused**

Rights of the accused in some form or the other existed in Muslim Criminal Jurisprudence, and ways and means were devised to ensure a fair trial to a person accused of crime. The right of the accused to be released on bail did exist during Mughal rule in India. There was no custom of keeping the accused in prison; he was immediately taken to the court, examined and sentenced. An accused charged with an offence if he so desired, had a right to be represented through a lawyer. Expert knowledge of law was required both for practice of law and for acting as Qazi. Every person who could afford to engage a Vakil could engage especially Zamindars, Mansabdars, Fauzdaras, Commandants and Kotwals were represented by Vakils in their cases to the Emperor.18 The royal princes also had their vakils.19 Quick disposal as the right of accused was well recognized in Muslim period. A standing judicial committee for the purpose of expediting justice and saving the people from the distress caused by delay as also for general improvement in the tone and practice of justice was created by the Emperor Akbar in 1585.

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A.D. The right to benefit of doubt was not unknown to the Muslim jurisprudence in the administration of criminal justice. The benefit of doubt was known as the doctrine of Shuba (doubt) which entitled an accused to be acquitted.20 In the case of Madari Faquir, the accused was acquitted of the offence of theft as his merely running out of the house at night did not warrant conclusive proof of his guilt so the benefit of doubt was given to him.

The right to Equal Protection of Laws

The Muslim law during the Mughal period made no distinction in criminal cases between Hindus and Muslims. All were entitled to equal protection of the laws.21

The right of Appeal

Appeals were made against the orders of the trial court and the appellate court could either confirm, reverse or remand for fresh trial or prefer the point of law to Qaziulul-Quazat (the Chief Justice's bench) or cause an additional evidence to be recorded.22 The appellate court could also try witnesses for perjury and the accused in such cases could run the risk of sentence of death. Appeal could abate on the death of the appellant.

Liability of Executive Officers

The state not only punished the criminals but also made the officers in charge of law and order including the Governor to pay compensation to the complainant in cases of theft and robbery. In some cases the Government itself paid from its treasury. The executive officers were liable to be transferred on the slightest lapse of duty and sometimes the officers were dismissed on the ground of their oppressive activities on the subject.
Within five decades after the death of Aurangzeb and the grant of Diwani to the East India Company in 1765 the grandeur of the Mughal empire crumbled down. Due to the disturbances to which the country was frequently exposed the administration of justice became lax and sluggish in many of the provinces as in the capital.

Administration of Justice during British period

The British period in India dates back to the establishment of the East India Company under a Charter granted by the British Sovereign to the merchants of England. The Company had occupied certain areas in India which came to be known as Company's factories. These factory establishments later on became the nurseries of the English law, which in course of time brought about tremendous influence over the laws and the system of administration of justice in the whole of sub-continent. The influence of English Law on Indian legal system was largely due to the fall of Muslim rule. As shrewd ruler the Britisher never attempted nor pretended to interfere with the sovereignty of the Mohammedan rulers for some centuries after their settlement for trade in India. They gradually brought their laws and the sovereignty of their own state over Indians.23

In the early days of East India Company, the Charter of Charles II, which transferred the Island of Madras to the company required the company to pass laws "consonant to reason, and not repugnant or contrary to the English laws. It was also directed in the Charter that the courts and their procedures "should be like those that are established and used in the realm of England". In 1669 a direction was issued which provided for establishing a method for due proceedings. According to this direction the administration of
criminal justice was to be done by a judge appointed by the governor and Council and all trials were to be by a Jury of twelve Englishmen.\textsuperscript{24}

In 1726 the Crown granted Letters Patent to the East India Company, creating thereby the Mayor's courts in the Presidency Towns of Madras, Bombay and Calcutta. Each Court consisted of a Mayor and Nine Aldermen with power to try all civil suits. The Governor and five senior members of Governor's Council were made Justices of Peace and they were authorized to hold quarter sessions for the trial and punishment of all offences except treason. The Mayor's Courts applied the Common Law and the Statute law of England as they stood in 1726.

When the East India Company transformed itself from a commercial concern into a political power, the Mayor's Courts and the Justices of the Peace were found inadequate to discharge judicial functions. Hence the Regulating Act, 1773 established the Supreme Court of Judicature at Calcutta in 1773.\textsuperscript{25} It consisted of a Chief Justice and three other Judges. The Court had jurisdiction in civil, criminal, ecclesiastical, admiralty and equity members over the inhabitants of Calcutta and over the British subjects in the Provinces of Bengal, Bihar and Orissa.\textsuperscript{26} There was provision for appeals from the decisions of the Court to the King-in-Council, but the Mayor's Courts at Madras and Bombay continued till 1787 when they were replaced by the Recorder's Courts. Each Recorder's Court consisted of the Mayor, three Alderman and a Recorder appointed by His Majesty. In 1801 the Recorder's Court at Madras was abolished and a Supreme Court was established.
Similarly in 1823 the Recorder's Court at Bombay was replaced by a Supreme Court. These Supreme Courts functioned till 1861.

It is to be noted that the Indian judicial system during this period consisted of two systems of Courts; the Supreme Court in the Presidency towns and the Sadr Courts in the provinces. The latter Courts were established by the East India Company in 1772 in each of the district of Bengal, Bihar and Orissa. These were of two kinds, namely, civil and criminal. The former was called the Diwani Adalat and was presided over by the Collector. The latter was called, the Faujdari Adalat and was presided over by the Muslim law officers and tried all criminal offences. At Calcutta, two Courts of appeal, the Sadr Diwani Adalat and the Sadr Nizamat Adalat were established. The former heard appeals from the District Civil Courts and the latter heard appeals from the District Criminal Courts.

A few minor reforms were effected in the judiciary by the Governor-General Warren Hastings, Cornwallis and Lord William Bentinck. Warren Hastings, the first Governor-General, effected separation of judicial from revenue functions. However, Lord Cornwallis, his successor, reunited the judicial and revenue functions. He also abolished the Fauzdari Adalats in the districts and established Circuit Courts. He reorganized the entire judicial system by creating 'an ascending hierarchy' of Courts with provision for appeal. Lord William Bentinck also reorganized the judicial system. The Provincial Courts were abolished and Commissioners of Revenue and Circuit were appointed. Later on, the judicial functions of the Commissioner were transferred to the civil judges.
By the Indian High Courts Act, 1861, the Supreme Courts in the Presidency towns and the Courts established in the Provinces by the Company were integrated. The Act also empowered the Crown to establish High Courts at Madras, Bombay and Calcutta. After the establishment of these High Courts, the Supreme Court and Sadr Courts were abolished and their judges became the judges of the new Courts. In 1866, another High Court was established at Allahabad. Under the Indian High Courts Act, 1911, two more High Courts were established, one at Patna in 1916 and another at Lahore in 1919. The Judicial Commissioner's Court at Nagpur was converted into a High Court in 1936. In addition to these seven High Courts, there was a Chief Court in Oudh and Judicial Commissioner's Courts in the North-West Frontier Province and in Sindh.

The jurisdiction of the High Courts included every field of judicial adjudication within the province. Every High Court served as a Court of appeal, reference and revision from all the subordinate Courts in the province. It also had powers of superintendence over all the Courts for the time being subject to its appellate jurisdiction.

The Highest Court of appeal was the Judicial Committee of the Privy Council; for within India, there was no Court to hear any appeal from any High Court.

Finally, the Federal Court of India was established by the Government of India Act, 1935. We may examine its contribution in the field of civil liberties.
The Federal Court came into being in October 1937, six months after the inauguration of Provincial Autonomy and functioned only for a little over a decade. But the Court provided the balance and poise essential for the proper functioning of a federal structure and endeavoured to uphold individual liberty and freedom of speech even in the absence of guaranteed Fundamental Rights. It may be noted that the pioneering work of the Federal Court in the field of civil liberties convinced the people of our country of the necessity of incorporating a list of Fundamental Rights in the Constitution. Hence it seems appropriate to briefly review the work of the Federal Court which has rendered valuable service in the field of constitutional advancement in India.

The Government of India Act, 1935, was passed without a list of Fundamental Rights incorporated in it. However, the people enjoyed a few Fundamental Rights though in a restricted measure. For example, the writ of habeas corpus had been incorporated with some modifications in the Indian statutory law. By a liberal interpretation of the laws, the Federal Court had endeavoured to maintain and promote the liberties of the people. However, it is to be noted that the problem of civil liberties remained in the background, for the people did not have self-government though the Provinces in India were granted a substantial degree of autonomy since April, 1937.

But after the outbreak of the Second World War, the Governor-General declared under Section 102 of the Government of India Act, 1935 that a state of grave emergency had arisen by which the security of India was threatened. The Defence of India Act enacted in 1939 and the Rules made under the Act affected almost every aspect of life and activities of the citizen
in disregard of his elementary liberties. For example, Rule 26 had provided for preventive detention of any citizen in the interests of defence of British India, public safety, maintenance of public order and efficient prosecution of the war, if it was necessary to do so. Under this Rule, thousands of citizens were detained.

It was during this period of emergency that the Courts were called upon to afford relief to the aggrieved and oppressed citizens. Only a comparatively small number of cases on civil liberties were heard by the Federal Court, because of the limited jurisdiction of the Court. Moreover, since the Government of India Act, 1935 had not incorporated a list of Fundamental Rights, it was very difficult for cases involving civil liberties to get into the Federal Court on appeal.

However, the British Rule of almost two hundred years, particularly the English model of the adjudicatory process, had the effect of formalizing the procedure. The effect was that the poor man found it difficult to enter the portals of the court and the rich man was able to use the legal process as an instrument of harassment of his poor adversary.30

In view of this Gandhiji had rightly cautioned the people of India that if was dangerous for them merely to copy the British Judicial model making the judicial machinery cumbrous and slow-mourning. He therefore, suggested that there was a dire need for the Indians to have a simple and effective judicial system avoiding the law's delay, expense and complicacy. He reminded the people to resort to the home-spun judicial system or Lok Adalats so that the poor litigants need not to go out of his village, spend hard earned money and waste weeks and months in towns on litigation.
JUDICIAL SYSTEM IN INDIA DURING POST-INDEPENDENCE PERIOD

The dawn of independence, the consequent establishment of National Government and the implementation of Constitution of India had provided for a single, integrated judicial system in India. Among the noble aims and objective of the Constitution, the founding fathers accorded the highest place to 'Justice'. The Preamble of Indian Constitution speaks of "We, the people of India" resolving to secure inter alia "Justice-social, economic and political" to "all its citizens". The juxtaposition of words and concept in the Preamble is important. Most significantly, 'Justice' is placed higher than the other principles of 'Liberty', 'Equality' and 'Fraternity'. Again, the Preamble clearly enjoins precedence to social and economic justice over political justice. People turn to the judiciary in the quest of justice.31

The Constitution lays down the structure and defines, delimits and demarcates the role and functions of every organ of the State including the Judiciary and establishes norms for their interrelationships, checks and balances. Independence of judiciary as an essential character to the rule of law and constitutional norms has been established in India.

The Structure

Provisions in regard to the judiciary in India are contained in Part V ('The Union') under Chapter IV titled "the Union Judiciary" and Part VI ('the States') under Chapter VI titled 'Subordinate Courts' respectively. It is, however important to emphasize that unlike other federal systems, for example, that of the United States, India do not have separate hierarchies of federal and State Courts. Though the polity is dual, the judiciary is integrated in India. For the entire Republic of India, there is one unified judicial system-
one hierarchy of courts—with the Supreme Court as the Highest Court and also as the arbiter in matters of between the Union and the States and the States inter se.

The Supreme Court and the High Courts as the custodians and watchdog of the fundamental rights and freedoms of the people and their constitutional rights have an awesome responsibility. The Superior Judiciary has successfully preserved and protected the fundamental rights of the citizens and vulnerable groups against the innovations of "an excited democracy" and for that purpose, it has drawn substantially upon the Directive Principles of State Policy.

While the Constitution of India did not introduce all of a sudden drastic charges in the system of Courts of India it created a system of courts in which the Judiciary was to function as an independent institution, i.e., a Judiciary independent of the control of the executive but not independent of the control of the Constitution and the people who made the constitution.

The constitution created a system of courts which had the first important feature of being a single and integrated Judiciary. The ideal in creating a single and integrated judiciary was that the courts throughout the country should have the judicial power to deal with questions coming under the federal as well as the State Laws.

The framers of the constitution took note of the fact that such a system of single Judiciary was best suited to the needs of the country not only to maintain public confidence but also to ensure uniformity in the fundamental conditions of civil and criminal branches of Law.
Under the system introduced by the Constitution from January 1950 onwards, the Supreme Court stands at the apex of the Indian Judicial hierarchy with effective power to supervise and control the working of the entire system and to ensure the realization of the high judicial standards that it might set as an integral part of the democratic system of government sought to be established by the constitution.

At the apex of the entire judicial system exists Supreme Court of India with a High Court for each state or group of states, and under High Courts, there is 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 provided for jurisdiction of these courts.

Each state is divided into judicial districts presided over by a District and Sessions Judge, who is the principal civil court of original jurisdiction and can try all offences including those punishable with death. He 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, criminal judiciary comprises chief judicial magistrate and judicial magistrates of first and second class.

THE SUPREME COURT

The Supreme Court is the Apex Court of the Union of India. During the British regime the final authority in judicial matters was vested in the Privy Council. Appeals used to come to the Council from various judicial institutions of India to the privy council for its final decision. Towards the end
of the British rule the judicial power at the highest level was exercised by the Federal Court functioning at Delhi under the Government of India Act 1935.33 After the passing of the Abolition of Privy Council Jurisdiction Act 1949, the appellate jurisdiction was exercised by the Federal Court. When the country became independent and a Constitution was enacted the Federal Court ceased to function and its place was taken over by the Supreme Court of India. The Federal Court had worked only for a limited period as the highest court of the land and ultimately yielded place to the Supreme Court.

The Supreme Court was constituted and established on the inauguration of the Republic of India. The inauguration of the Supreme Court on January 26, 1950 completed the process of development and integration of the judiciary in India.

The two-fold jurisdiction of the Privy Council and the Federal Courts have been unified in the Supreme Court and thus this institution has inherited the jurisdictions and powers of both of them. It is the Privy Council and the Federal Court rolled into one. It has also succeeded the judicial committees of Hyderabad State, the State of Jammu and Kashmir, with effect from 14th May 1954 and the other like bodies of the Indian States which were merged into the Indian Union after their accession to the Dominion of India.

The Supreme Court of India consists of 26 Judges (including the Chief Justice of India). The Judges hold office until they attain the age of 65 years. The Supreme Court of India has original jurisdiction in any dispute arising: (a) between the Government of India and one or more states: or (b)
between the Government of India and any state or states on the one side and one or more States on the other; or (c) between two or more states.

An appeal shall lie to the Supreme Court from any judgment, degree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding.
Table - 2.1

India's Court structure

- Supreme Court (National Level)
  - High Courts (State Level)
    - Sessions Courts (Districts Level)
      - Sessions Judges/Additional Sessions Judges
        - Chief Metropolitan Magistrate/Additional chief Metropolitan Magistrate
          - Metropolitan Magistrates
          - Judicial Magistrates of I class
        - Assistant Sessions Judges
          - Special Metropolitan Magistrates (Honorary)
          - Judicial Magistrates of I Class (Honorary)
        - Chief Judicial Magistrate/Additional Chief Judicial Magistrates
          - Sub-Divisional Magistrates
          - Judicial magistrates of II class
          - Special Judicial Magistrates of II class
Table 2.1 shows India's court structure. Only six of the High Courts have original jurisdiction, that is, civil suits can be directly filed in these courts, provided the monetary value of the suit is above a certain amount. These are the High Courts of Bombay, Calcutta, Delhi, Himachal Pradesh Jammu and Kashmir, and Madras. The minimum monetary values admissible differ among these six courts. Other High Courts are appellate courts. In states where the High Court does not have original jurisdiction, even disputes involving large sums of money have to go through lower courts, which often do not have the expertise to decide complicated issues. These cases eventually go to the High Courts, but only after considerable delay. On the other hand, where High Courts have original jurisdiction, the monetary limit is often so low that far too many cases go straight to already clogged High Courts.

There are 26 Supreme Court judges, 540 High Court judges and 900 subordinate judges (including 336 District Judges). These are the maximum numbers of allowable judges in respective courts. In reality, most courts have vacancies, and are very seldom at full strength.

THE HIGH COURTS

The institution of High Court as the highest judicial institution of a State in India did not emerge all of a sudden on the commencement of the Constitution. This institution is comparatively an old institution and was in existence even before the Constitution came into operation. For the first time the three High Courts, of Calcutta, Bombay and Madras were established in
1862 by the charters issued by the British crown under the Indian High Courts Act 1861.34

Before 1861 there existed a dual system of courts in the country; (i) the Supreme Courts which were the Crown's courts and which functioned in the three Presidency Towns of Calcutta, Bombay and Madras, and (ii) the Sadar Divwani Adalat and the Sadar Nizamat Adalat which were the Company's courts and which functioned as the Mofussil of each Presidency.

The High Courts Act 1861 provided for the abolition of these courts and the dual system of judiciary, and established in their place a new set of High Courts. The three High Courts of Calcutta, Bombay and Madras were to succeed basically to all the jurisdiction vested in these dual courts. In course of time other High Courts were established in other Provinces. With the advent of the Constitution the High Courts have assumed a constitutional status, they form part of the system of government introduced by the Constitution at the State level in the Union of India. Article 214 of the Constitution provides that there shall be a High Court for each State, But Parliament may under Article 231 of the Constitution establish a common High Court for two or more States or for two or more States and Union territories.

In every State except the States of Arunachal Pradesh, Nagaland, and Tirupura, Goa Haryana, Manipura, Meghalaya, Mizoram, there is a High Court of Judicature. The Punjab High Court has jurisdiction over the States of Haryana and Punjab, and the Assam High Court over the States of Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland and
Tirupura. The Bombay High Court's jurisdiction extends to Goa as well.\(^{35}\)

(Vide Table 2.2)

**TABLE – 2.2**

**JURISDICTION OF HIGH COURTS IN INDIA**

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name</th>
<th>Year</th>
<th>State</th>
<th>Jurisdiction</th>
<th>Seat</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Allahabad</td>
<td>1866</td>
<td>Uttar Pradesh</td>
<td></td>
<td>Allahabad (Bench at Lucknow)</td>
</tr>
<tr>
<td>2.</td>
<td>Andhra Pradesh</td>
<td>1956</td>
<td>Andhra Pradesh</td>
<td></td>
<td>Hyderabad</td>
</tr>
<tr>
<td>3.</td>
<td>Bombay</td>
<td>1862</td>
<td>Maharashtra, Goa, Dadra and Nagar Haveli and Daman and Diu</td>
<td>Bombay (Benches at Nagpur, Panaji and Aurangabad)</td>
<td>Bombay (Bench at Nagpur, Panaji and Aurangabad)</td>
</tr>
<tr>
<td>4.</td>
<td>Calcutta</td>
<td>1862</td>
<td>West Bengal</td>
<td></td>
<td>Calcutta (circuit Bench at Port Blair)</td>
</tr>
<tr>
<td>5.</td>
<td>Chhattisgarh</td>
<td>2000</td>
<td>Chhattisgarh</td>
<td></td>
<td>Bilaspur</td>
</tr>
<tr>
<td>6.</td>
<td>Delhi</td>
<td>1966</td>
<td>Delhi</td>
<td></td>
<td>Delhi</td>
</tr>
<tr>
<td>7.</td>
<td>Guwahati</td>
<td>1948</td>
<td>Assam, Manipur, Meghalaya, Nagaland, Tripura, Mizoram and Arunachal Pradesh</td>
<td>Guwahati (Benches at Kohima, Aizwal &amp; Imphal. Circuit Bench at Agartala &amp; Shillong)</td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Gujarat</td>
<td>1960</td>
<td>Gujarat</td>
<td></td>
<td>Ahmedabad</td>
</tr>
<tr>
<td>9.</td>
<td>Himachal Pradesh</td>
<td>1971</td>
<td>Himachal Pradesh</td>
<td></td>
<td>Shimla</td>
</tr>
<tr>
<td>12.</td>
<td>Karnataka</td>
<td>1884</td>
<td>Karnataka</td>
<td></td>
<td>Bangalore</td>
</tr>
<tr>
<td>14.</td>
<td>Madhya Pradesh</td>
<td>1956</td>
<td>Madhya Pradesh</td>
<td></td>
<td>Jodhpur (Benches at Gwalior and Indore)</td>
</tr>
<tr>
<td>15.</td>
<td>Madras</td>
<td>1862</td>
<td>Tamilnadu &amp; Pondicherry</td>
<td></td>
<td>Madras (Bench at Madurai)</td>
</tr>
<tr>
<td>16.</td>
<td>Orissa</td>
<td>1948</td>
<td>Orissa</td>
<td></td>
<td>Cuttack</td>
</tr>
<tr>
<td>17.</td>
<td>Patna</td>
<td>1916</td>
<td>Bihar</td>
<td></td>
<td>Patna</td>
</tr>
<tr>
<td>18.</td>
<td>Punjab &amp; Haryana</td>
<td>1975</td>
<td>Punjab, Haryana and Chandigarh</td>
<td></td>
<td>Chandigarh</td>
</tr>
<tr>
<td>19.</td>
<td>Rajasthan</td>
<td>1949</td>
<td>Rajasthan</td>
<td></td>
<td>Jodhpur (Bench at Jaipur)</td>
</tr>
<tr>
<td>20.</td>
<td>Sikkim</td>
<td>1975</td>
<td>Sikkim</td>
<td></td>
<td>Gangtok</td>
</tr>
<tr>
<td>21.</td>
<td>Uttaranchal</td>
<td>2000</td>
<td>Uttaranchal</td>
<td></td>
<td>Nainital</td>
</tr>
</tbody>
</table>

**Source:** India-2006 A Reference Annual – Publication Division, Ministry of Information and Broadcasting, Govt. of India.

The position of High Courts maybe gathered from chapter V of Part VI of the Constitution. A perusal of the provision in this Chapter shows
that the State Legislatures and the State Governments have very little to do so far as the organization of the High Courts is concerned. Clause (3) of Article 214 states that Chapter V of Part VI did not apply to any particular High Courts but generally to all the High Courts.

High Court stands at the head of the state’s judicial administration. There are 21 High Courts in the country (vide Table 2.2), three having jurisdiction over more than one state. Among the Union Territories, Delhi alone has a High Court of its own. Other six Union Territories come under jurisdiction of different State High Courts. Each High Court comprises a Chief Justice and such other judges as the president may, from time to time, appoint. The Chief Justice High Court is appointed by the President in consultation with the Chief Justice of India and the Governor of the State. The procedure for appointing puisne judges is the same except that the Chief Justice of the High Court concerned is also consulted. They hold office up to 62 years of age and are removable in the same manner as a judge of the Supreme Court. To be eligible for appointment as a judge, one must be a citizen of India and should have held a judicial office for 10 years or must have practiced as an advocate of a High Court or two or more such courts in succession for a similar period.

Each High Courts has the power to issue to any person or authority and government within it jurisdiction, direction, orders or writs including writs which are in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for enforcement of Fundamental Rights and for any other purpose. This power may also be exercised by any
High Court exercising jurisdiction in relation to territories within which the cause of action, wholly or in part, arises for exercise of such power, even if the seat of such Government or authority or residence of such person is not within those territories. The total sanctioned strength of judges and additional judges in different High Courts is 726, of which 572 posts are filled as on January 1, 2006 (Vide Table 2.3).

TABLE – 2.3
VACANCIES IN COURTS IN INDIA
SUPREME COURT OF INDIA (As on 14th April, 2006)

<table>
<thead>
<tr>
<th>Approved Strength</th>
<th>Actual strength</th>
<th>Vacancies</th>
</tr>
</thead>
<tbody>
<tr>
<td>26</td>
<td>24</td>
<td>2</td>
</tr>
</tbody>
</table>

B) HIGH COURTS (As on 1st April, 2006)

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Nam of the High Court</th>
<th>Approved strength</th>
<th>Actual strength</th>
<th>Vacancies</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Allahabad</td>
<td>95</td>
<td>82</td>
<td>13</td>
</tr>
<tr>
<td>2</td>
<td>Andhra Pradesh</td>
<td>39</td>
<td>31</td>
<td>08</td>
</tr>
<tr>
<td>3</td>
<td>Bombay</td>
<td>64</td>
<td>57</td>
<td>07</td>
</tr>
<tr>
<td>4</td>
<td>Calcutta</td>
<td>50</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>5</td>
<td>Chattisgarh</td>
<td>08</td>
<td>08</td>
<td>09</td>
</tr>
<tr>
<td>6</td>
<td>Delhi</td>
<td>36</td>
<td>30</td>
<td>06</td>
</tr>
<tr>
<td>7</td>
<td>Gauhati</td>
<td>27</td>
<td>17</td>
<td>10</td>
</tr>
<tr>
<td>8</td>
<td>Gujarat</td>
<td>42</td>
<td>34</td>
<td>08</td>
</tr>
<tr>
<td>9</td>
<td>Himachal Pradesh</td>
<td>09</td>
<td>04</td>
<td>05</td>
</tr>
<tr>
<td>10</td>
<td>Jammu and Kashmir</td>
<td>14</td>
<td>09</td>
<td>05</td>
</tr>
<tr>
<td>11</td>
<td>Jharkhand</td>
<td>12</td>
<td>10</td>
<td>02</td>
</tr>
<tr>
<td>12</td>
<td>Karnataka</td>
<td>40</td>
<td>36</td>
<td>04</td>
</tr>
<tr>
<td>13</td>
<td>Kerala</td>
<td>29</td>
<td>28</td>
<td>01</td>
</tr>
<tr>
<td>14</td>
<td>Madhya Pradesh</td>
<td>42</td>
<td>38</td>
<td>04</td>
</tr>
<tr>
<td>15</td>
<td>Madras</td>
<td>49</td>
<td>40</td>
<td>09</td>
</tr>
<tr>
<td>16</td>
<td>Orissa</td>
<td>22</td>
<td>15</td>
<td>07</td>
</tr>
<tr>
<td>17</td>
<td>Patna</td>
<td>43</td>
<td>21</td>
<td>22</td>
</tr>
<tr>
<td>18</td>
<td>Punjab &amp; Haryana</td>
<td>53</td>
<td>40</td>
<td>13</td>
</tr>
<tr>
<td>19</td>
<td>Rajasthan</td>
<td>40</td>
<td>31</td>
<td>09</td>
</tr>
<tr>
<td>20</td>
<td>Sikkim</td>
<td>03</td>
<td>03</td>
<td>00</td>
</tr>
<tr>
<td>21</td>
<td>Uttarakhand</td>
<td>09</td>
<td>08</td>
<td>01</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>726</td>
<td>572</td>
<td>154</td>
</tr>
</tbody>
</table>

C) DISTRICT & SUBORDINATE COURTS (As on 1st January, 2006)

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Nam of the High Court</th>
<th>Approved strength</th>
<th>Actual strength</th>
<th>Vacancies</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Allahabad</td>
<td>2172</td>
<td>1416</td>
<td>756</td>
</tr>
<tr>
<td>2</td>
<td>Andhra Pradesh</td>
<td>699</td>
<td>661</td>
<td>38</td>
</tr>
<tr>
<td>State</td>
<td>Judges</td>
<td>Retired</td>
<td>Vacant</td>
<td></td>
</tr>
<tr>
<td>-------------------</td>
<td>--------</td>
<td>---------</td>
<td>--------</td>
<td></td>
</tr>
<tr>
<td>Bombay</td>
<td>1608</td>
<td>661</td>
<td>38</td>
<td></td>
</tr>
<tr>
<td>Calcutta</td>
<td>706</td>
<td>603</td>
<td>103</td>
<td></td>
</tr>
<tr>
<td>Chattisgarh</td>
<td>235</td>
<td>172</td>
<td>63</td>
<td></td>
</tr>
<tr>
<td>Delhi</td>
<td>414</td>
<td>291</td>
<td>123</td>
<td></td>
</tr>
<tr>
<td>Gujrat</td>
<td>906</td>
<td>858</td>
<td>48</td>
<td></td>
</tr>
<tr>
<td>Guwhati</td>
<td>409</td>
<td>337</td>
<td>72</td>
<td></td>
</tr>
<tr>
<td>Himachal Pradesh</td>
<td>117</td>
<td>112</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Jammu and Kashmir</td>
<td>191</td>
<td>175</td>
<td>16</td>
<td></td>
</tr>
<tr>
<td>Jharkhand</td>
<td>503</td>
<td>465</td>
<td>38</td>
<td></td>
</tr>
<tr>
<td>Karnataka</td>
<td>811</td>
<td>879</td>
<td>132</td>
<td></td>
</tr>
<tr>
<td>Kerala</td>
<td>418</td>
<td>394</td>
<td>24</td>
<td></td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>757</td>
<td>728</td>
<td>29</td>
<td></td>
</tr>
<tr>
<td>Pondichery</td>
<td>22</td>
<td>17</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>930</td>
<td>770</td>
<td>160</td>
<td></td>
</tr>
<tr>
<td>Orissa</td>
<td>477</td>
<td>420</td>
<td>57</td>
<td></td>
</tr>
<tr>
<td>Patna</td>
<td>1346</td>
<td>869</td>
<td>477</td>
<td></td>
</tr>
<tr>
<td>Punjab</td>
<td>328</td>
<td>256</td>
<td>72</td>
<td></td>
</tr>
<tr>
<td>Haryana</td>
<td>307</td>
<td>229</td>
<td>78</td>
<td></td>
</tr>
<tr>
<td>Chandigarh</td>
<td>20</td>
<td>18</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Rajasthan</td>
<td>821</td>
<td>726</td>
<td>95</td>
<td></td>
</tr>
<tr>
<td>Sikkim</td>
<td>15</td>
<td>7</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>Uttarakhand</td>
<td>200</td>
<td>101</td>
<td>99</td>
<td></td>
</tr>
</tbody>
</table>

Total: 14412 11682 2730

Source: 1) Ministry of Statistics, Govt. of India.
2) Registrar General, Ministry of Home Affairs, Govt. of India, 2005.

Each High Court has powers of superintendence over all courts within Jurisdiction. It can call for returns from such courts make and issue general rules and prescribe forms to regulate their practices and proceedings and determine the manner and form in which book entries and accounts shall be kept.

SUBORDINATE COURTS

The structure and functions of subordinate courts are more or less uniform throughout the country. Designations of courts connote their functions. These courts deal with all disputes of civil or criminal nature as per the powers conferred on them. They have been derived principally from two important codes prescribing procedures, the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973 and further strengthened by local statutes. As per direction of Supreme Court in WP (Civil), 1022/1989 in the
All India Judges Association case, a uniform designation has been brought about in the subordinate judiciary's judicial officers all over the country, viz., District or Additional District Judges. Civil Judge (Senior Division) and Civil Judge (Junior Division) on the civil side and on criminal side, Sessions Judge, Additional Sessions Judge, Chief Judicial Magistrate and Judicial Magistrate, etc., as laid down in the CrPC. Appropriate adjustment, if any, has been made of existing posts of indicating their equivalent with any of these categories by all state governments/UT administrations.

Under Article 235 of the Constitution of India, the administrative control over the members of subordinate judicial service vests with the concerned High Court. Further in exercise of powers conferred under proviso to Article 309 read with Article 233 and 234 of the Constitution, the state Government shall frame rules and regulations in consultation with the High Court exercising jurisdiction in relation to such state. The members of the State Judicial Services are governed by these rules and regulations. However, in pursuance of the Supreme Court's directive in the referred case, for the first time, the Central government has set up a National Judicial Pay Commission to examine the present structure of emoluments and conditions of service of judicial officers in the State and UTs. The Commission will make its recommendations to the State governments.

The next set of courts is described as courts of District and Sessions Judge which also includes courts of Additional Judge, Joint Judge or Assistant Judge. The Court of the District and Sessions Judge at district level is the principal court of original jurisdiction. It is presided over by an officer called District and Sessions Judge. As a rule, the same officer invested with
the power under both the statutes presides over the court and it is known as District and Sessions Court. Depending upon workload, a District Court may have jurisdiction over more than one district. In some states, there is a court called Court of Civil and Sessions Judge. These courts generally have unlimited pecuniary jurisdiction and depending upon the power conferred on the incumbent officer-in-charge of the court, it can handle criminal cases. In some states, these courts with unlimited pecuniary jurisdiction are called Courts of Civil Judges (Senior Division) while in other States they are described as Courts of Subordinate Judge of the and should have held a judicial officer in India for 10 years or must have practiced as an advocate of a High Court or two or more such courts in succession for a similar period.

THE CIVIL COURTS

In the hierarchy of civil courts in a state the High Court is at the top and then there is the District Court subordinate to the High Court. Every civil court of a grade inferior to that of a District Court and every court of small causes is a subordinate to the High Court and the District Court.39

Small Causes Courts are Civil Courts Constituted in some States under the Provincial Small Causes Courts Acts, (1887) and in some States under local laws. In the presidency towns small causes courts were constituted under the Presidency Small Causes Courts Act, 1882. There are also Revenue Courts which have jurisdiction to deal with proceedings relating to rent, revenue or proceeds of land used for agricultural purposes. These courts are constituted under the local laws. There are certain special courts as well, in addition to the ordinary courts. For example, there is a Family Court established under a special law as discussed in Chapter-III.
THE CRIMINAL COURTS

Following are the criminal courts at the State level besides the High Courts:

1. Courts of Sessions.
2. Courts of Judicial Magistrates of the First Class and in every Metropolitan area Metropolitan Magistrates.
3. Judicial Magistrates of the Second Class, and
4. Executive Magistrates.

Courts of Sessions

For the purpose of criminal justice at the State level every State is treated as a Sessions Division or it may consist of Sessions Divisions and every sessions Division may be a District or consists of Districts. But a Metropolitan area is considered as a separate Sessions Division and District.

The State Government may alter the limits or number of Divisions and Districts.

A metropolitan area is an area specified in the notification by the State Government which may comprise a city or a town or a district whose population exceeds one million.

The State Government may establish a court of Sessions for every Sessions Division.

Courts of Judicial Magistrates

The Code of Criminal Procedure 1973 brought about a change in the set up of Courts of judicial magistrates. As a result of separation of Judiciary from the Executive there are now two kinds of Magistrates, namely, judicial magistrates (including Metropolitan Magistrates in Metropolitan areas)
and Executive Magistrates. Judicial Magistrates are divided into two classes, namely, the First Class and Second Class. There are no third class Magistrates in the present set up.

In every District (not being a Metropolitan area) there are as many courts of judicial magistrates of the First Class and of the Second Class established and at such places as the State Government may after consultation with the High Court by notification.

**Courts of Chief Judicial Magistrate and Additional Chief Judicial Magistrates**

Under Sec. 12 of the Code of Criminal Procedure 1973 in every District (not being a Metropolitan area) the High Court may appoint a Judicial Magistrate of the First Class to be the Chief Judicial Magistrate.

The High Court may appoint any Judicial Magistrate of the First Class to be additional Chief Judicial Magistrate and such Magistrates for all or any of the powers of a Chief Judicial Magistrate under the Code of Criminal Procedure, 1973.42

**Special Judicial Magistrates**

Under Sec. 13 of the Code of Criminal Procedure 1973 the High Court may confer upon any person holds or has held any post under the Government all or any of the powers conferrable by the Code on a Judicial Magistrate of the First Class or of the Second Class in any area, not being a Metropolitan area. But no such power can be conferred on a person unless he possesses such qualifications or experience in relation to local affairs as the High Court may specify.
Prior to 1973 there used to be Honorary 'Magistrates under the Code of Criminal Procedure 1898. The provision made in the new Code of Criminal Procedure is intended to remove from the regular courts the burden of a large number of petty cases by having them disposed of by the Special Magistrates so that the regular courts may concentrate on more important cases.

**Courts of Metropolitan Magistrates**

During the British regime the Presidency Towns of Calcutta, Bombay and Madras had Presidency Magistrates. After independence, presidency towns became a part of the Indian Union and the concept of Presidency had disappeared from the political map. But there continued the Presidency Magistrates. The Law Commission of India in its report on the revision of Cr.P.C. recommended the institution of Presidency Magistrates under a new name altogether. The Commission felt that large areas may be called by the name of Metropolitan areas and these areas may have the status of a special class of Magistrates known as 'Metropolitan Magistrates' and the areas are known as 'Metropolitan areas'.

Under the new Cr.P.C. a State Government may by notification declare any area in the State comprising a city whose population exceeds one million to be a Metropolitan Area and then set up as many courts of Metropolitan for that area as it thinks fit.

Thus the Presidency towns of Bombay, Calcutta and Madras automatically became Metropolitan areas under the Code of 1973.
Chief Metropolitan Magistrates

Under Sec. 17 of the Code of Criminal Procedure 1973, the High Court may in relation to any Metropolitan Area appoint a Metropolitan Magistrate to be the Chief Metropolitan Magistrate for such metropolitan area. Likewise, the High Court may appoint any Metropolitan Magistrate to be the Additional Chief Metropolitan Magistrate.

This system of Special Metropolitan Magistrates represents the earlier system of Honorary Magistrates who were appointed under the old Code of Criminal Procedure 1892. There used to be Benches of Honorary Magistrates in the Presidency Towns. But there was widespread criticism against this kind of Benches of Honorary Magistrates. The only justification that was usually given was that the system of appointing Honorary Magistrates is that it was of great help in giving relief of stipendiary Magistrates by disposing of a large number of petty criminal cases, particularly in larger towns. However, the committee was convinced that the system of appointing retired Government officers as special magistrates sitting singly to dispose of petty cases can be adopted with advantage. The Magistrate invested with summary powers can dispose of a large number of petty cases with expedition. Therefore enabling provision was enacted in Sec. 18 of the Code of Criminal Procedure according to which a High Court may, if requested by State Government confer upon any person who holds or has held any post under the government all or any of the powers conferred or conferrable by this Code on a Metropolitan Magistrate in respect of particular cases or particular classes of cases in any Metropolitan area within its local jurisdiction.
Special Courts of Criminal Jurisdiction

According to Sec. 6 of Code of Criminal Procedure 1973 criminal courts may be constituted under any other Law, i.e., a special law or local law. Since these courts are constituted under special laws, they are known as Special Courts.43

Special Courts may be constituted under various laws for the trial of offences punishable under certain provisions of the Penal Code or punishable under certain provisions of the other statutes. For example, under Sec. 2(d) of the Disturbed Areas (Special Courts) Act, 1976, Special Courts may be constituted for the trial of offences punishable under Sections 120-B (Criminal Conspirary), Sec. 143 (Unlawful Assembly); Sec, 148 (Rioting), Sec. 151 (knowingly joining and unlawful assembly) etc.

ATTORNEY-GENERAL

The Attorney General for India is appointed by the President and holds office during the pleasure of the President.44 He must be a person qualified to be appointed as a Judge of the Supreme Court. It is the duty of the Attorney-General of India to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may be referred or assigned to him by the President, and to discharge the functions conferred or assigned to him by the President, and to discharge the functions conferred on him by or under the Constitution or any other law. In the performance of his duties, he has the right of audience in all courts in India as well as the right to take part in the proceedings of Parliament, without the right to vote. In the discharge of his functions, the Attorney-General is assisted by Solicitor-General and Additional Solicitor-General.
In India, the law relating to legal profession is governed by the Advocates Act, 1961 and the rules framed thereunder by the Bar Council of India. It is a self-contained code of law relating to legal practitioners and provides for the constitution of State Bar Councils and Bar Council of India. A person enrolled as an advocate under the Advocates Act, 1961, is entitled to practise law throughout the country. An advocate on the roll of a State Bar Council may apply for transfer to the roll of any other State Bar Council in the prescribed manner. No person can be enrolled as an advocate on the roll of more than one State Bar Council.

There are two classes of advocates, namely senior advocates and other advocates. An advocate with his consent, may be designated as a senior advocate, if the Supreme Court or a High Court is of the opinion that by virtue of his ability, standing at the Bar or special knowledge or experience in law, he deserves such distinction. A senior advocate cannot appear without an advocate-on-record in the Supreme Court or without some other advocate in the state roll in any other court or tribunal. Standards of education have been prescribed for enrolment as an advocate. There are also rules regulating standards of professional conduct and etiquette and other matters. State Bar Councils have disciplinary jurisdiction over advocates whose names appear on their rolls. This is subject to right of appeal to the Bar Council of India and a further right of appeal to the Supreme Court of India.

LAW COMMISSION OF INDIA

The Law Commission of India is constituted by the President of India for every three years. The 18th Law Commission has been reconstituted
with effect from September 1, 2006. It has a Chairman, Vice-Chairman and two other members. If these two other members one will act as Member-Secretary. The terms of reference of the Law Commission are:

(i) Review/Repeal of obsolete laws;

(ii) to examine the laws which affect the poor and carry out post-audit for socio-economic legislation;

(iii) to keep under review the system of judicial administration to ensure that it is responsive to the reasonable demands of the times and in particular to secure:

(iv) to examine the existing laws in the light of Directive Principles and to attain the objectives set out in the Preamble to the Constitution;

(v) to revise the Central Acts of general importance so as to simplify them and to remove anomalies, ambiguities and inequities;

(vi) to recommend to the Government measures for bringing the statue book up-to-date by repealing obsolete laws and enactments or parts thereof which have outlived their utility; and

(vii) to consider and to convey to the Government its views on any other subject relating to law and judicial administration that may be referred to it.

Various subjects were taken up by the Commission Suo motu in view of the importance of the issues while some subjects were taken up as a reference from the Government/Supreme Court of India. The Commission has as far submitted 191 reports.

**National Judicial Commission:**

The Constitution (Sixty-seventh Amendment) Bill, 1990 was introduced on 18th May, 1990 (9th Lok Sabha) providing for the institutional
frame work of National Judicial Commission for recommending the appointment of judges to the Supreme Court and the various High Courts.47 Further, it appears that latterly there was a movement throughout the world to move this function away from the exclusive fiat of the executive and involving some institutional frame work whereunder consultation with the judiciary at some level is provided for before making such appointments. The system of consultation in some form is already available in Japan, Israel and the UK. This Amendment Bill, provided for a collegium of the Chief Justice of India and two other judges of the Supreme Court for making appointments to the Supreme Court. However, it would be worthwhile to have a participatory mode with the participation of both the executive and the judiciary in making such recommendations. The Commission proposes the composition of the Collegium which gives due importance to and provides for the effective participation of both the executive and the judicial wings of the State as an integrated scheme for the machinery for appointment of judges. This Commission, accordingly, recommends the establishment of a National Judicial Commission under the Constitution.

The National Judicial Commission for appointment of judges of the Supreme Court comprise of:

(1) The Chief Justice of India: — Chairman
(2) Two senior most judges of the Supreme Court: — Member
(3) The Union Minister for Law and Justice: — Member
(4) One eminent person nominated by the President after consulting the Chief Justice of India — Member
The recommendation for the establishment of a National Judicial Commission and its composition are to be treated as integral in view of the need to preserve the independence of the judiciary.

NATIONAL JUDICIAL ACADEMY

The National Judicial Academy has been set up by the Government of India to provide in service training to Judicial officers. The Academy was registered on 17th August 1993 under the Societies registration Act 1860. The Academy located in Bhopal and has its registered office in New Delhi. It will provide training to judicial officers of State/UTs as well as ministerial officers working in the Supreme Court of India and the High Courts.

NATIONAL HUMAN RIGHTS COMMISSION (NHRC)

Since the enactment of the Code of Criminal Procedure, 1973, issues relating to the human rights have found a prominent place throughout the world. In India, the Protection of Human Rights Act, 1993 was enacted with a view to providing for establishment of the National Human Rights Commission and the various State Human Rights Commissions. Section 30 of the said Act Provides that the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a court of session to be a Human Rights Court to try the offences relating to human rights.

"93RD CONSTITUTION AMENDMENT BILL 2003"

The Government of India passed 93rd Constitution Amendment Bill in the year 2003. The said bill provides for constitution of a National Judicial Commission for the purpose of appointment of Supreme Court and High Court
Judges and the matters incidental thereto. The said commission is proposed to include the Judges of the Apex Court as well as non-Judicial members.50

The said bill provides for establishment of national judicial commission. Some of the provisions of the said bill are as follows:-

1. Constitution of the commission to be chaired by the Hon'ble Chief Justice of India with two seniormost of the Judges of the Supreme Court, Minister Incharge of Law and Justice, Union of India and an eminent Citizen to be nominated by the President, as its members.

2. Powers of the commission regarding appointment of the Supreme Court and High Court Judges, and matters incidental thereto.

3. Powers of the Commission to take action in cases of complaints against Judges and the matters incidental thereto.

4. Association of the Chief Ministers of the concerned State in the matters of appointment of High Court Judges.

The Constitution of the National Judiciary Commission is a welcome step and is perhaps required in the present times in view of the allegations of corruption and misuse of official position being made against sitting Judges of different High Courts.

An Overview:

The administration of justice in India dates back to ancient Hindu period, the period which could be divided into four sub-periods namely the vedic, the Sruti, the Smriti and the post-Smriti periods. During this period, the Indian life was pastoral and rural and the people were composed of tribes. Elderly persons with mature worldly experience of different matters and
having leisure at their disposal developed into assemblies which discharged the social, political and judicial functions. The villagers, traders and guilds had their own judicial system which composed of their own men and the presiding officer of the court held the office by election or by inheritance to local customs and such courts settled the disputes in case of grave crimes. The State through the King assumed the responsibility of performing judicial functions in certain matters. At that time there were criminal trial as well as civil trials. During Muslim period, the King used to keep Muftis to whom he allotted quarters in the precincts of his own palace so that when anyone is arrested on any charge he might in the first place argue with the Muftis about his due punishment. Shershah Puri improved his judicial system by appointing different judicial officials as Shiqdars for administration of criminal justice and the Muftis to administer civil justice. During the British period, the English Law brought about tremendous influence over the laws and the system of administration of justice in India. During the East India Company rule Mayor Courts were created at Presidency Towns of Madras, Bombay and Calcutta. It also created the Supreme Court of Judicature at Calcutta with Chief Justice and three other judges. This Court had jurisdiction over civil, criminal and ecclesiastical matters. The Federal Court came into existence in 1937.

With the dawn of independence and the consequent establishment of National Government and the implementation Constitution of India had provided for single, integrated judicial system in India with Supreme Court at Central level, High Courts at State level, District Courts at District level followed by Magistrate Courts. The Indian Judiciary and the
administration of justice in India during the post-independent period witnessed various trends and also challenges as discussed in the succeeding chapter.
REFERENCES:


8. Ibid., p.317.


19. Husain, Wahid, Administration of Justice during the Muslim Rule in India, Calcutta: University of Calcutta, 1934, p.84.


25. Regulating Act 1773.


27. Ibid.

28. Indian High Courts Act 1861.


